MORAIS LEITÃO
LEGAL CIRCLE

GUIDE TO DOING BUSINESS IN MOZAMBIQUE

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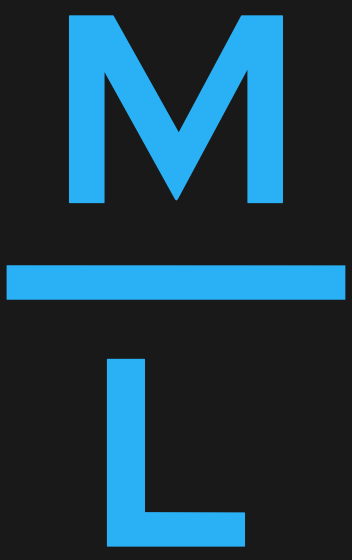

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Doing Business Mozambique is a guide jointly prepared by Morais Leitão, Galvão Teles, Soares da Silva & Associados (Morais Leitão) and MDR Advogados (MDR), members of the Morais Leitão Legal Circle.

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, Cape Verde, Mozambique and Singapore, as well as in Portugal. All offices are independent and leaders in their jurisdictions and provide, through the partnerships established, a legal practice geared to meeting the needs of their clients, ensuring service quality and professionalism in all 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 the Portuguese-speaking African countries. They work closely with the firms that are part of the Morais Leitão Legal Circle.

MDR, a member of the Morais Leitão Legal Circle in Mozambique, was founded by a group of Mozambican lawyers whose aim and ambition were to become a center 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 MDR and other parties potentially interested in some areas of the Mozambican legal system. It does not therefore intend to be nor should be construed as legal advice on any of the matters addressed.

1. INTRODUCTORY CHAPTER: MOZAMBIQUE IN 2023

Mozambique is an important destination as regards foreign direct investment in Southern Africa. Apart from its 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 privatizations programs for public companies, which has had a positive effect in attracting potential investors.

According to the World Bank, the growth of the Mozambican economy is expected to accelerate in the medium term, reaching 6% p.a. in 2023-2025, driven by a continued recovery in services, an increase in the production of liquefied natural gas and high raw material prices. However, negative factors, caused by climate shocks, security risks and pressure on food and fuel prices, could reduce GDP growth in the medium term to 4.5%.

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

Politically, Filipe Nyusi has, since 2014, been the President of Republic (having been re-elected in 2019) and the leader of the party in power, FRELIMO (*Frente de Libertação de Moçambique*), and, next years, new general elections will be held, in which a new President of the Republic will be elected.

Mozambique has sought, over the past few years, to re-establish macroeconomic stability and trust and is trying to overcome the difficulties occurring in 2016/2017 (and also the economic effects of COVID-19). Pursuant to the hidden debt crisis, the Government has taken various measures aimed at stabilizing the banking sector, while the Central Bank has also tried to tackle low foreign exchange reserves, 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 amount to circa 100 trillion cubic feet. Without forgetting the 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 major players showing their interest in the area (ENI, Total, Anadarko/Occidental Petroleum and Exxon) over the last few years.

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

Mozambique is also renowned as a metal exporter and, as regards the Mining Sector, it should be highlighted that the country has significant deposits of coal, ruby, titanium, marble, copper and gold, among others. In this sector too world-renowned international players, from in particular Brazil, Australia and India, have been investing. An ongoing and growing influx of investment is therefore expected, boosting Mozambique's competitiveness in this area even more.

Mozambique is a country with enormous potential as regards the tourism sector, whether regionally or internationally. Thus is a result not only of its wealth of natural resources and its history and culture, but also its proximity to the Republic of South Africa, one of the most popular destinations in Africa and in the world. In this sector there is an almost unparalleled range of opportunities for potential investors, especially when compared to other countries in Southern Africa.

As such, in all these sectors investors seeking to enter the Mozambican market, as investors or providers of services, know-how or equipment, among others, have a vast range of options.

2. GENERAL PRIVATE FOREIGN INVESTMENT LEGISLATION

Act no. 8/2023, of June 9 (*Lei de Investimentos*), replacing Act no. 3/93, of June 24 (*Lei de Investimentos*) was recently approved. However, the regulations contained in the now repealed Act, approved by Decree no. 43/2009, of August 21 (Investment Act Regulation/*Regulamento da Lei de Investimentos*, amended by Decree no. 48/2013, of September 13, and Decree no. 20/2021, of April 13) are still in force, given that a new regulation on the matter has not yet been approved.

The Investment Act (*Lei de Investimentos*, Act no. 08/2023, of June 9) establishes the basic legal framework for domestic and foreign investments that can benefit from the guarantees available and tax and non-tax incentives. The investments benefitting from the Investment Act have to contribute to the sustainable economic and social development of Mozambique and are subordinate to the principles and objectives of 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.

The governmental entity responsible for the approval of investment projects in Mozambique is the Agency for the Promotion of Investment and Exportats (hereinafter APIEX), created by Ministerial Order no. 29/2020, of July 7, operating under the aegis of the Ministry of Industry and Trade.

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 (in cash); *(ii)* equipment and respective accessories, materials and other imported goods; *(iii)* assignment of the rights to use patented technologies and trademarks, the remuneration for which is limited to participation in the distribution of the company's profits, resulting from the activities in which

such technologies or trademarks have been or will be applied, under the terms determined by the competent authorities; *(iv)* incorporation of technologies and knowledge that can be the subject of pecuniary valuation; *(v)* provision of specialized services from abroad in favor of economic projects in the country; *(vi)* investment of capital in the national territory in the context of reinvestment; and *(vii)* conversion of the value of Mozambican foreign debt, relating to loans and with the competent Authority, under the terms of the applicable legislation.

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 with 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 capital invested 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 procedures.

Firstly, for profits to be transferred out of the country and for the capital invested to be re-exported, the minimum direct foreign investment, resulting from equity investment, is MZN 7.5 million (corresponding to approximately USD 120,000).

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

- generating an annual turnover not less than three times the amount of MZN 7.5 million (corresponding to approximately USD 120,000) from the third years of activity;

- making annual exports of goods or services for a minimum amount of MZN 4.5 million (corresponding to approximately USD 71,000);

- creating and maintaining direct employment of at least 25 national employees, registered in the national social security system from the second years of activity.

Secondly, the investment project or investment contract has to be registered in the name of the implementing company or the company name that was reserved for such purpose.

For an investment project proposal to be carried out in the Special Economic Zones (*Zonas Económicas Especiais*/ZEE), Free Industrial Zones (*Zonas Francas Industriais*/ZFI) or outside those areas, it should be presented to APIEX. Applications should be submitted on the official forms preferably in Portuguese and should be accompanied by the required documents for analysis by APIEX: *(i)* copy of the applicant's 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 involves the establishment of a foreign commercial branch).

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

If the project is approved, its implementation has to start within 120 days (unless another deadline has been set in the authorization), and the foreign investor has to register the direct foreign investment with the Bank of Mozambique within 90 days of the date of authorization by the relevant authority or of the actual entry into the country of the value of the investment.

For purposes of export of profits and re-export of the capital invested, the status of foreign investor remains in force indefinitely (for as long as the terms and conditions leading 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 authorization is obtained) and the fulfilment of certain legal obligations is demonstrated.

Authorization 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 Regulations or of the conditions laid down in the respective authorization 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 under three main headings.

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 authorized investments and carried out in accordance with the Investment Act and its regulations. The nationalization or expropriation of property and rights forming part of the authorized investment confers the right to fair and equitable compensation.

Claims lodged by investors that are not resolved by State institutions and which cause an investor losses due to the immobilization 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 an investor to transfer funds abroad for the following reasons:

- 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;

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

- product of compensation for nationalization or expropriation of property and rights constituting authorized 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 realized, from the Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas*/IRPC) assessment, up to a maximum of the assessment itself, with respect to the business carried out within the framework of the project (during five tax years);

- accelerated depreciation and amortization – 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 amortization 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 the tax assessment – possibility of deducting costs related to modernization and the introduction of new technologies and the training of Mozambican workers from 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, up to 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 (authorized investment projects which exceeds

the equivalent of 12.500.000,00 MT, as well as investments in public domain infrastructures carried out under the concession regime); *(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. 1/2022, of May 25, that revoked the formed Commercial Code approved by Decree-Law no. 2/2005, of December 27.

The CCM covers only limited liability companies, as follows: limited partnerships/*sociedades em nome colectivo de responsabilidade* limitada, private limited companies/*sociedades por quotas*, simplified public limited company/*Sociedade por acções simplificadas* 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 be invested, confidentiality issues regarding ownership of the share capital and also if there are licensing requirements imposing the choice of a particular type of company.

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 some 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 can have a minimum of one shareholder and a maximum of 30 shareholders. The recently approved CCM establishes that a sole shareholder can be a natural or legal person, contrary to the previous CCM which only allowed a sole shareholder to be a natural person.

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

Quotas – 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.) and are registered in the name of their owners.

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 Legal Entities 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 an investor's contractual position in accordance with the terms of the Investment Project Authorization, for which the prior authorization 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 authorize this assignment after obtaining the opinion of the regulatory authority of the respective sector.

Asset liability – Shareholders are liable only for the value of the shares they have subscribed and for the value of any extra share capital they are prepared to pay up. Creditors' claims are limited to the company's assets.

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 can participate in the general meeting. Unless otherwise provided for by the articles of association, resolutions are taken by simple majority of votes cast. Each MZN 1.00 of the par value of a quota represents one vote.

Private limited liability 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 a shareholders' resolution.

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

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 years shall mandatorily be distributed among the shareholders.

Legal reserve – at least 20% of the years's profits shall be retained by the company as a legal reserve, until its accumulated amount is 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 for its shareholders, in particular that the transfer of shares is not subject to any special form.

Number of shareholders – an SA can now be incorporated with only one shareholder but there is no limit to the maximum number of shareholders. In the former CCM, SAs could not be incorporated with only one shareholder, being this an innovation of the recently approved CCM.

When any of the shareholders is resident or domiciled abroad, he/she/it shall communicate to the company the complete identity of the person that will be entitled to receive, on his/her/its 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 should be appropriate to carrying out the corporate purposes and must be expressed in local currency. Regarding the subscription 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 are always nominative, represented by share certificates. Nominative shares may be classified as ordinary or preferential, registered or dematerialized.

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 registered shares, the transfer takes effect by means of a declaration of assignment in the share register or in any instrument that may replace it; in the case of dematerialized 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 for 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 relating 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 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). The company can have a sole director provided that the share capital does not exceed MZN 5,000,000 and that the company does not resort to public subscription or offer shares or bonds traded on the securities market. As a rule, the directors are entitled to receive remuneration, the amount of which is to be fixed by a shareholders' resolution. In addition, the directors' liability can be guaranteed if so determined by the company's articles of association.

Among others limitations foreseen 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 a minimum of three or more members, with always an odd number of 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 after each fiscal years, the share of profits established in the articles of association or, if these omit it, 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 years. 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 years 5% has to be set aside as a fund for the legal reserve, which shall not exceed 20% of 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. However it may not be as fast as it could be, since the public entities responsible for registration and licensing often fail to meet the deadlines set out in the law due to constant failures in their IT systems and some internal lack of coordination. The process of incorporation comprises the following formalities:

- application for certificate of reservation of the company's name at the Legal Entities Registrar 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 with a 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 contribute to 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 Legal Entities Registrar 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 a 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 Labor 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. 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 SAs, matters such as the transfer of shares, the appointment of directors, the exercise of control of the company or investment and profit-distribution policies. It should be noted that shareholders' agreements have a contractual nature, which means that they are only binding on their signatories (the shareholders executing such a shareholder agreement), but not on the company (that is, the company incorporated to implement the joint venture). Acts by the company or the shareholders towards the company based on such agreements cannot, therefore, be challenged.

3.3. 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 has to appoint a representative ordinarily resident in Mozambique.

Whatever the type of foreign commercial representation, it is an entity without legal personality whose representation always refers to the parent company. Moreover, the articles of association and the name of the parent company also 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. A 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 Authorization 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 Legal Entities Registrar Office (*Conservatória do Registo das Entidades Legais*);

- obtaining of a Single Tax Identification Number (*Número Único de Identificação Tributária*/NUIT);
- obtaining 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 a foreign representation in Mozambique is subject to the obtaining of the 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. 23/2022, of December 29 (Foreign Exchange Act), which repealed Law no. 11/2009, of March 11, was recently approved. The Foreign Exchange Act governs acts, deals, transactions and operations of all kinds: *(i)* taking place between residents and non-residents and resulting or possibly resulting in payments to or receipts from foreign countries; or *(ii)* taking place in the country due to a special exchange rate regime or because they involve foreign currency; *(iii)* 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, 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;

- to currency transactions conducted by non-residents concerning goods or values located in a foreign territory and rights to those goods or values or to activities carried out in the respective territory, when they have a connection with Mozambican territory; and

- to the State and other legal persons governed by public law, that carry out foreign exchange transactions concerning goods or valuables located in national territory or abroad and rights over those goods or values or activities carried out in the respective territory.

The Foreign Exchange Act also applies to forms of representation of resident and non-resident legal entities, and to concessionaires, special purpose specific purpose entities and each main subcontractor, as well as financiers, non-resident subcontractors and expatriate staff, as players in the oil and gas sector operating in the Republic of Mozambique.

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 years;
- Mozambicans whose stay abroad for a period equal to or greater than one years is for health or study reasons;
- all foreign nationals living in Mozambique for over a years, excluding diplomats, consular representatives or similar, foreign military personnel performing governmental duties in the country, and members of their families;
- private-law corporate persons having their registered office in Mozambique;
- Mozambican citizens who are habitually resident in Mozambique and carry out non-occasional activity in foreign territory, namely frontier or seasonal workers and crews of ships, aircraft or other mobile equipment operating wholly or partially abroad;
- public-law corporate entities;
- the Mozambican State, local authorities, public companies, public funds and institutes and other national legal persons governed by national public law with administrative and
- financial autonomy;

- Mozambican citizens who are diplomats, consular representatives or similar, military personnel performing governmental duties abroad, and 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 authorization of the Bank of Mozambique, as in the case of foreign exchange transactions classified as current 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 a credit institution or financial company:

- acquisition and sale of gold and silver coins;

- export of gold, silver, platinum and other precious metals in bar, ingot or in other non-processed form;

- opening and using accounts by non-residents in domestic currency, when related to 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 or 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 authorization by the Bank of Mozambique, which is obtained through the submission of the relevant application to a credit institution or financial company, 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, whereas, if the requirements are not fulfilled, they do not need previous authorization;

- foreign direct investment;

- foreign (abroad) investment;
- 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, still in force, certain transactions listed above are free of previous authorization upon fulfilment of certain requirements, *e.g.*:

- foreign direct investment;
- 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:
  - the interest rate is not higher than the base lending rate of the currency of credit denomination, plus four basis points;
  - the sum of the reference rate and the margin does not exceed the credit interest rate practiced in the national banking system; and
  - it has a maturity of three years or more;
- shareholder loans: prior authorization by the Bank of Mozambique is not required, provided that:
  - the interest rate is 0%, with a maturity period equal to or greater than three years and free of commissions and other charges; or

– 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 an amount equivalent to USD 5 million.

4.3. Current transactions

Current transactions (not currently subject to prior authorization 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 classification table 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 authorized 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 authorized to carry on foreign exchange trade.

4.4. General principles and duties

Order no. 20/GBM/2017, of December 27, establishes the rules and procedures to be followed in foreign exchange actions, deals, transactions and operations under the Foreign Exchange Act.

All foreign exchange transactions (that is, capital transactions, current transactions and other exchange transactions that are not part of the two transactions mentioned above) 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 investor. The investor may only contact the Bank of Mozambique directly in cases in which it is not possible to resort to any credit institution or financial company, and this impediment has 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 brokers the export operation.

According to Order no. 10/GBM/2019, of December 20, an exporter or investor may open bank accounts in foreign currency with the purpose of receiving the revenues from the exportation of goods and services or an investment made abroad by such

investor, but these accounts entail limitations on the transfer of funds within the country as their main purpose is to receive and pay abroad.

On a case-by-case basis, the Bank of Mozambique may authorize 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 authorized 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 authorization of or registration with the Bank of Mozambique is punishable with a 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 additional penalties may also be applied, such as the impossibility of exporting profits/dividends or re-exporting the capital invested.

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

The following do not need MIC's authorization:

- 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 mission or for personal use;
- foreign employees of international organizations, 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 in accordance with the specific categories of products stipulated in an applicant's permit. Import permits are renewable annually and export permits every five years, with the renewal 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 authorized by the Directorate General of Customs (*Direcção Geral das Alfândegas*) and hired by the importer/exporter.

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

For imports, the base value is, as a rule, the CIF value (cost, insurance and freight). Exports are generally free of duty, subject to an 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. 20/2020, of December 31 (Credit Institutions and Financial Companies Act/*Lei das Instituições de Crédito e Sociedades Financeiras)* governs the process of the establishment and 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 cooperatives, 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 issuers or management companies, exchange *bureaux* and discount houses.

To carry on any of the activities governed by the Financial Institutions Act, a company is required to adopt one of the forms prescribed by law and obtain authorization from the respective regulator, in this case, the Central Bank.

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 out by banks.

6.2. Type of financial entities

The Mozambican financial system is composed of the Central Bank, which is the regulatory and supervisory entity, and the financial institutions, which are operating entities.

Under the terms of Article 132 of the Constitution of the Republic of Mozambique, Bank of Mozambique "Banco de Moçambique" is the Central Bank and is governed by its own law and by the international standards to which the Republic of Mozambique is bound.

At the national level, the objectives and main roles of the Bank of Mozambique are set forth by Law no. 01/92 "Organic Law of the Bank of Mozambique", and, on an international level, the Bank of Mozambique observes the rules disseminated by the bodies to which it is affiliated such as the International Monetary Fund, World Bank and Africa Development Bank.

One of the most important missions 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 15 in 2023. This evolution of the financial system has also been seen in the greater robustness of the system itself in that the reduction in non-performing loans and the current solvency ratios are better than the parameters 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, with reference to September 2023, and according to the regulations in force, the national banking system consists of 15 banks and 13 microbanks.

Credit institutions and financial companies authorized to operate in Mozambique must be properly registered with the Bank of Mozambique. The list of authorized credit institutions and financial companies is available on the Bank of Mozambique website (Licenciamento de Instituições – Banco de Moçambique).

6.4. Possibility for foreign investors to obtain bank loans

A foreign investor may obtain credit from the Mozambican banking system. However, if the loan is granted in favor of foreign entities by a Mozambican Bank, then the transaction may be subject to some restrictions and strict requirements provided by the Foreign Exchange Act (*Lei Cambial*) and its rules.

There are also restrictions on granting credit in foreign currency. Loans and associated guarantees are subject to registration with or authorization by the Bank

of Mozambique unless they are taken out under an investment project which is properly documented and approved.

7. TAX LEGISLATION

The Mozambican tax system has undergone substantial changes in recent years, with a view to modernizing, 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 years.

There are several State taxes in Mozambique. The direct taxes in force comprise Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas*/IRPC) and Personal Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares*/IRPS), which are very comprehensive, taxing all conceivable forms of income. In the field of indirect taxation, the tax system comprises 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 corporate income taxes in Organisation for Economic Cooperation and Development (OECD) countries, encompassing all types of income obtained by all persons and entities liable to it in a single tax.

7.1.1. Who is taxed

Article 2 of the IRPC Code defines who is 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 which is not taxed under IRPS. Resident entities are all those having their registered office or effective management in Mozambique.

With regards to corporate entities, the following are expressly considered corporation tax payers: *(i)* commercial companies; *(ii)* civil companies with 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 recognized social solidarity institutions, as well as to social welfare institutions and non-governmental organizations that, having met certain requirements, perform cultural, recreational, sports and other activities recognized 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 (that is, transparent) basis, their income being attributed directly to their shareholders or partners, who are then 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 on 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 is 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 years (which coincides with the calendar years) when this option is motivated by the type of activity exercised and when they are held 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 taxable income for IRPC purposes may be based on the accounting profits, adjusted as foreseen in the IRPC Code, or on the sum of the net income of each of the income categories, also modified in accordance with the same rules. The first method applies to resident companies engaged in business activities and also to the 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 who receive income in 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 to 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 the 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 to workers' journeys in their own vehicles;
- costs evidenced in documents issued by taxpayers with a missing or invalid tax identification number or by taxable persons whose 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 (12 months MAIBOR) 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 years 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 service 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 years after the years in which they are incurred. However, tax losses cannot be carried forward if they are incurred by activities benefitting from partial exemptions or reductions of tax rates or where there is a substantial change in the economic activity carried on. Following corporate reorganizations, the period for carrying forward tax losses may be transferred between the companies involved if so authorized 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 depreciation (50%) for tangible assets subject to a higher than normal attrition, in the case of new investments;
- deduction of 110% (if situated in Maputo) or 120% in expenditure for the construction or rehabilitation of infrastructures 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 years for a period of five years;
- an investment credit corresponding to 10% of the investments made within a five years 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 in Mozambique; *(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, which can be 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, insurance company or consortium (*associação em participação*), there are no thresholds as regards holding percentages and periods.

Shareholdings not qualifying for this exemption 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 a 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 arising from a disposal of assets but also the result of 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 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 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 company distributing the dividends is listed in the Mozambique Stock Exchange, in which case the rate is reduced to 10%. Finally, the internal withholding tax rate for royalties is also 20%, but can be reduced if an 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 (together with the assembling and installation of equipment related to those services); *(ii)* services related to the maintenance and freight of aircraft; *(iii)* services related to the construction, rehabilitation and production of infrastructures or 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 interest on treasury bills and debt securities listed on a stock exchange, is subject to a final 10% IRPC rate.

Mozambique has, to 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 has been in force since January 1st, 2018, was approved by 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 dealing with related parties, namely when one entity/individual has:

- direct or indirect control over another entity;
- an interest in another entity, provided that such interest grants significant influence;
- is associated in a joint venture in which the other entity is an investor;
- is a member of the key management personnel of the relevant entity or its respective holding company;
- belongs to the close family of any individual included in a. or c.

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

- Comparable Uncontrolled Price;
- Resale Sale Price;
- Cost-Plus Method;

- Profit Split Method;
- Transitional Net Margin; or
- other method deemed appropriate to assure the maximum respect of the arm's length principle, considering the specific conditions of each transaction.

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

On the other hand, the entities that in a previous financial years have obtained an amount of net sales and other revenues of at least MZN 2.5 million have to prepare a transfer pricing file.

Thin capitalization – 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 such conditions is deemed 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 occurs in particular 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, and presents such proof within 30 days of the end of the tax years concerned.

CFC provisions – Mozambican controlled foreign companies (CFC), that is, overseas companies controlled by Mozambican persons or companies 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 the 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 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 they constitute 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. 8/2023, of June 8), tax incentives may be granted to investment or development projects in specific areas, by means of candidatures lodged through applications to the effect submitted to the Agency for the Promotion of Investment and Exports (*Agência para a Promoção de Investimento e Exportações/APIEX*).

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 and 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 modernization of hotels and other infrastructures 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 infrastructures 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, development of telecommunications and information technology and research and development in general;

- major investment projects – this scheme is available for industrial investment projects involving investments of at least MZN 12.5 billion or related to public infrastructures considered important for Mozambique's economy;

- Rapid Development Zones – Rapid Economic Development Zones (*Zonas de Rápido Desenvolvimento*) are geographical areas having great potential in natural resources, but lacking in infrastructures and with little economic activity. The Rapid Development Zones are: the Zambeze valley, Niassa province, Nacala district, Mozambique island and Ibo, and others that may be classified as such by a 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 on the proposal of the Investment Commission. Proposals for the creation of ZFIs 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 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 or deferred payment of tax.

In parallel with the tax incentives already mentioned, Acts no. 14/2017, and no. 15/2017, both of December 28, 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 years 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 a 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 it and on the respective income of each person. A household may be composed of: *(i)* spouses and dependents; *(ii)* either the father or the mother, if unmarried, and the dependents; or *(iii)* the unmarried adopter and dependents.

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 from 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); and *(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 to a 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 years 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; and 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 annual turnover does not exceed MZN 2.5 million, opt for a simplified taxation mechanism, whereby they pay a lump sum of MZN 75,000 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 in the second category whenever they are obliged to maintain organized accounting, this being optional for other taxpayers.

7.2.4. Social security contributions

Employers' contributions amount to 4% and employees' to 3% of the total gross remuneration. The notion of "remuneration" for the purpose of these contributions

has several important 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 was subjected to some important changes in 2012. Recently, Decree no. 7/2008, of April 16, was subjected to a new amendment, put in place by Decree no. 8/2017, of March 30, and also Act no. 32/2007, of December 31, was revoked by Law no. 22/2022, of December 28.

7.3.1. Who is taxed

There is no expressly overarching concept of taxable person for VAT purposes in Mozambique, but it can be said that a typical taxable person is 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 into 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, telecommunications, 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;
- in the absence of transport, the goods are made available to an 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. On the other hand, all these services are taxed in Mozambique if they occur on 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, licenses, trademarks and similar rights, engineering and consultancy services, lawyers, accountants, economists, and consultants in any area of economic activity, including organization, 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 a 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 an invoice give rise to payment of VAT on the respective amounts.

The VAT tax base is the value of the item supplied 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

The VAT rate is 16% for most taxable transactions under the normal VAT regime.

There is also a reduced VAT rate of 5% applicable to some transfers of goods and services in the area of health and education.

7.3.5. Exemptions

VAT exemptions may be full (or "zero-rate") or partial. Full exemptions allow an economic agent to recover in full the VAT on goods and services already acquired, while they exempt goods sold or services provided by that economic agent from VAT. 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 (in both cases, whenever subjected to the stamp tax), education (when carried out by public establishments integrated into the National Education System and recognized by the Ministry that oversees the area of Education), health (carried out by public dispensaries and the like), leases for housing

purposes, services performed in connection with farming, forestry, livestock or fishing activities and the acquisition of services related to drilling, research and construction of infrastructures in the context of mining and oil activities which are at the prospecting and research stage. Until December 31, 2025, the transfer of factors of production of solar panels for rural electrification, listed in the Customs Tariff and detailed in Annex IV (of VAT Code) is exempt.

7.3.6. Methods of deduction

If a 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* on 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 whenever the taxpayer conducts distinct economic activities and the application of the *pro rata* method generates significant distortions.

Tax assessed on transactions in which a 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 conduct his declared activity.

Deduction rights must be exercised on the issuance date of the invoice or, if not possible, up to 90 days after the corresponding VAT becomes 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 a usufruct or similar right, and also includes other operations which do not consist, from a legal point of view, in transfers of rights, but 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 favorable 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 years (0.03% per month), loans with a term of between one years and five years (0.4% per years), loans with a term of five or more years (0.5% per years);
- mortgages and other collateral (0.02% per month or 0.2% and 0.3% per annum for guarantees of less than one years, 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, swapping and assignment for consideration of real estate (0.2% of the value).

There are also a number of important 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 to 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 – 0% to 2.5%;
- consumer goods – 7.5% to 20%;
- luxury goods – 20%.

Additionally, importers have to pay a customs fee in an amount ranging between MZN 250 and MZN 2,000.

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, jewelry 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, whether imported or locally produced, which are intended for use in the activities 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 a producer or holder, using the appropriate statement form, 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 a produce resulting from an import is introduced into consumption, ICE shall be assessed by the customs office.

Whenever there is a special relationship between a producer and a 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 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, performing petroleum operations in Mozambique under a concession agreement, which in turn was amended and republished by Decree no. 77/2022, of November 30.

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.

The tax rate is 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 it is up to the taxpayers to 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 a 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 a concessionaire in 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

There are some special rules for determining taxable income and assessing the tax due: *(i)* the characterization and clarification of deductible and non-deductible costs and expenses; *(ii)* amortization rules; *(iii)* thin capitalization rules; *(iv)* registration of inventures; 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 regards costs and losses deemed allowable for the purposes of determining IRPC, this regime regulates, in particular, costs incurred overseas and 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 labor expertise acquired from a corporation affiliated to the entity which is subject to IRPC (resident in Mozambique) are deductible under the general terms.

However, the deductibility of expenses incurred under a concession agreement is 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 to 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 activities downstream from 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, generally, be assessed individually 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).

As regards 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.

Gains resulting from the sale, whether for consideration or free of charge, or direct or indirect disposal of petroleum rights located in Mozambican territory, are considered capital gains. Gains resulting from the direct or indirect transfer, whether onerous or gratuitous, direct or indirect, between non-resident entities, of parts of the share capital of entities holding a petroleum right, or of a petroleum right, or other movable and immovable assets issued by such entities, relating to real estate issued by such entities, relating to that right, involving petroleum real estate assets located in Mozambican territory are considered to be obtained in Mozambican territory, regardless of where the sale takes place.

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

Moreover, it also allows a buyer to step into a seller's shoes regarding the amortization of costs incurred at the stage of research and development. In these circumstances, the buyer can amortize any tangible and intangible assets, as well as any operational costs attributable to the 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, amended by Decree no. 77/2022, of November 30 (namely the equipment intended for usage in petroleum operations under class K of the Customs Tariff and the goods in 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.

There is also an option for a tax stabilization regime, which is applicable for 10 years from the start of commercial production, without affecting a project's

viability and profitability, through a proven investment of an amount equivalent to USD 100.000.000 (one hundred million dollars). The period of tax stability can be extended until the end of the initial concession, by paying an additional 2% of Production Tax, from the eleventh years of production.

LIQUEFIED NATURAL GAS PROJECT IN THE ROVUMA BASIN

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

These provisions are applicable to each enterprise in the Rovuma Basin (*empreendimento da Bacia do Rovuma*), provided it operates under the terms of the research and production concession agreements or the combined terms of the research and production concession agreements and governmental agreements, and other contractual instruments of which the Government is a part of, and provided these contractual instruments are related to 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, the labor regime applicable to both employers and workers, the insurance and reinsurance contract regime, and 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 taxes in US dollars).

7.7.2. Mining operations taxation

The current mining operations taxation regime entered into force on January 1, 2015, and is applicable to both individuals and legal persons, regardless of their residence, performing 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, and likewise recently amended by Decree no. 76/2022, of November 30: *(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 taxable income under IRPS and IRPC.

TAX ON MINING PRODUCTION

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

The Tax on Mining Production (IPM) obligation occurs once the mineral product (diamonds, precious and semiprecious stones and heavy sands, charcoal and ornamental rocks, sand and stone) 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, for instance: *(i)* mineral products intended for construction, extracted in areas which are not under a mining title or mining authorization, provided the extraction is conducted by qualified agents; *(ii)* mineral products extracted for geological research if done by qualified agents; *(iii)* 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 after treatment of the mineral product extracted. The value of the mineral product is determined by specific rules, which also set the quantitative limit for the tax deduction. For instance, transport costs from the mine to the point of export are deductible from the value of the mineral product, including transshipment and mineral handling costs at the port or from the mine to the national point of sale, depending on the case.

With regards to the value of minerals exported in their raw form, it is determined by calculating the amount of the final product covered in the exported final product,

multiplied by the international market reference price for the final mineral product (some costs are deductible).

The export of mineral products 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 Authority may correct the taxable income filed, specifically where there are no documents proving the transfer for consideration of the mineral product, when anomalies and inaccuracies are detected in documents or where mineral product is transferred at a lower price than the international market reference one.

SURFACE TAX

Entities which perform mining operations in Mozambique (title holders or not) are subject to this tax from the moment they are granted an 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 regards 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 years of prospecting and research or to the seventh and eighth years of the mining concession, respectively, and are levied on the number of hectares in 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*) for 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 is levied on the cash earnings accumulated (*ganhos de caixa líquidos acumulados*) during the years.

For the purpose of this tax, cash earnings (*ganhos de caixa líquidos*) refer to the taxable income determined under the general IRPC rules, but before any tax losses have been deducted nor any interest or any other financial expenses and amortizations has been added, provided that they are filed and declared as deductions for IRPC purposes, and that *(i)* the 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 years alone), are deducted.

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 years.

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 some adjustments for 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 for 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 regards costs incurred overseas. As such, costs which include the deductible expenses of a resident legal entity in Mozambique on behalf of consulting connected to hired staff and assistance with legal and financial services given to an affiliated corporation which is non-resident in Mozambique, may not exceed 3% of the total costs of the entity resident in Mozambique in the same years.

Costs incurred by an entity performing mining operations in Mozambique with the amortization of assets used for 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 the 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 described above, specifically as regards 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 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 settlement smaller than a village, which aims to safeguard common interests through the protection of their residential areas, agricultural areas, sites of cultural importance, pastures, water sources and expansion areas). The DUAT acquired by a 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 for 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, in accordance with 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

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

In urbanized 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 urbanization (this method is for Mozambicans only);

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

- private negotiation – negotiation between local state bodies and local/municipal government authorities and those submitting projects regarding setting up industrial and agro-livestock facilities and supermarkets, construction of housing through co-operatives or housing associations, and 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 with the local 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.

Holders may transfer the DUAT *inter vivos* or by legacy. This transfer includes infrastructures, buildings and improvements thereon and is done by public deed, with prior authorization 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 holders of the right can place a mortgage on the real property and improvements thereto, and that a DUAT acquired for the home of its holder is for an indefinite period.

Regarding the DUAT for economic activities, a business plan must be presented, and a provisional authorization 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 authorization, definitive authorization 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. In 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 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 authorization under the DUAT does not waive the need to acquire a license for 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 authorization 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 to rentals that do not conflict with it, and the 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 rural properties other than for production purposes or in 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 in-person authentication of the signatures of landlord and tenant.

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

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

The law further provides that a 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 that more than one month's rent be paid in advance, and only a personal guaranty (*fiança*) is accepted as collateral for the obligation.

A tenant answers for the maintenance of a 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 Condominiums provides that a lease agreement should define who takes responsibility for the payment of amounts due as well as the duty of a landlord to notify the administrator of the occupancy of the unit by a tenant.

Subleasing is lawful only if authorized by law, by the contract or with the subsequent consent of the landlord. A 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 the former.

At the end of a contract, it is 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 with not less notice 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 years; 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 years.

A 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 returns 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 one uninterrupted years of a property leased for trade or industry, unless the closure occurs as a result of *force majeure* or forced absence of the 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 when certain legal requirements are met. A rental agreement therefore expires:

- 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 order, 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 it is revoked or rescinded, or expires, the tenant or his successor remains in the enjoyment of the property for one years 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 if it is not leased again. The tenant may also transmit his legal position, without consent of the landlord, in the case of transfer of business (*trespasse*); the landlord has, however, a 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 a lessor is also the tenant's employer, the rent is deducted from the latter's earnings. The tenant may take in paying guests if he 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 authorized 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 the debt (50% in the first month, 100% in the second month and 200% in the third month) and leads to termination of the contract when overdue by more than three months;
- the tenant may terminate the contract at any time provided he 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 properties to verify their use, inspections to be notified in advance.

8.3. Land registry

The 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 is 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 initial record is a provisional one, insofar as it has since been converted into a definitive one).

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

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

8.4. Tourism

Tourism is recognized by the Mozambican State as an industry that promotes employment and generates foreign exchange, and sundry legislation specifies and complements 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 authorization granted at the request of the interested parties. The process of acquisition of the DUAT through this authorization 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 authorization 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 authorization.

Consequently, 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 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

An 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;
- the opinions of the authorities and/or local authorities of the respective area;
- environmental-impact assessment; and
- DUAT for tourism purposes.

After submission of the application, an applicant must apply for approval of the location, which, if granted, allows him 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 documents 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 years 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 similar written request for the issuance 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 favorable to the opening of the undertaking, the respective permit is issued. However, since the issue of it 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 the business of an 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. Areas of Interest to Tourism

The legislation on Areas of Interest to Tourism (*Zonas de Interesse Turístico*/ZIT) was enacted by Decree no. 77/2009, of December 15, and is intended to favor primarily regions that have important 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 priority in the implementation of the tourism undertaking, 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 (amended by Decree-Law no. 1/2022, of May 25, which approved the new Commercial Code), which repealed the Securities Regulations (*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 (market for trading previously issued securities between third parties). However, 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 authorized financial intermediaries.

Equally important are 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.

Regulation no. 1/GPCABVM/2010, of May 27, which revoked Circular no. 2/GPCDBVM/99, of September 15, determines the rules to be observed governing the preparation, procedures and decisions 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 the advertising of these offerings (Article 1).

The following legislation must also be taken into account:

- 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 involving non-resident entities admitted to trading on the Mozambique Stock Exchange;

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

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

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

- Ministerial Order no. 90/2015, of October 2, that establishes the rate applicable to the purchase and sale of Public Debt Securities on the Central Securities Exchange.

As regards the powers of the Bank of Mozambique, the legislator establishes that, as the regulatory authority, it must exercise them with a view to the security, efficiency, modernization and development of the securities market, as fundamental objectives of the Mozambican capital markets, with importance also being given to an ongoing reduction in 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 follows:

- 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 in the market.

With regard to public offerings, the common mechanism is still underdeveloped and limited to defining the terms of their acceptance and implementation, plus 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) was established in 1998 as a public entity, through Decrees no. 48/98, and no. 49/98, both of September 22, approving the first Securities Market Regulations and creating the BVM, respectively. Both decrees were revoked in 2007 due to the enactment of the CMVM and the Internal Regulations of the Mozambique Stock Exchange (approved by Decree no. 45/2007, of October 30), respectively. In 2023 the Mozambican Government decided to transform the BVM into a private entity and through Decree no.18/2023, of April 28, incorporated Bolsa de Valores de Moçambique, S.A., a joint stock company, responsible for the creation and maintenance of the means required to operate a free and open market for the purchase and sale of securities. The stock market also provides for registration, clearing and settlement services, guaranteeing the sufficient and timely disclosure of information on any transactions undertaken.

In accordance with Ministerial Diploma no. 10/99, of February 24, financial intermediation activities to be undertaken at the BVM may be carried on by firms of brokers and dealers, as well as by credit institutions (Act no. 20/2020, of December 31). 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 market operators and financial intermediaries in general, and of issuers and investors as part of its intervention in the securities market;
- ensuring compliance with the requirements of informing the public that are 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;
- authorizing 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 deemed to be necessary for the effective discharge of its duties.

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

- the possibility of subscription by small or large companies, provided they commit to organize themselves internally in a way that cumulatively meets the admission requirements established for ascending to the 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 Law (*Lei da Concorrência*, enacted by Law no. 10/2013, of April 11), in the Competition Law Regulations (*Regulamento da Lei da Concorrência*, enacted by Decree no. 97/2014, of December 31, as amended), 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, as amended).

The Competition Regulatory Authority (*Autoridade Reguladora da Concorrência*/ARC) is an entity that is independent and impartial in the performance of its duties, and endowed with administrative, patrimonial, financial and technical autonomy, and wide regulatory, supervisory and sanctioning powers. The ARC has exclusive responsibility 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 Law 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 through not having an equivalent alternative.

The Competition Law contains an extensive but non-comprehensive list of prohibited practices.

Prohibited agreements and abuses of a 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 Law 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 mergers between two or more undertakings, 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) and the creation of a full-function joint venture.

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

- the combined turnover of the undertakings concerned in Mozambique in the preceding years is equal to or exceeds MZN 925 million, as long as each of at least two of the undertakings concerned achieved a turnover in the preceding years of at least MZN 105 million in Mozambique;

- 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, if each of at least two of the undertakings concerned achieved a turnover in the preceding years of at least MZN 105 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 the regular notification form approved by the ARC.

Concentrations notified 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 for certain public interest reasons set forth in the Competition Law.

10.3. Sanctions

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

The Competition Law 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. 79/2022, of 30 December), applicable to all State bodies and institutions (both direct as indirect), including their representation abroad, local government and other public authorities. State-owned companies and companies where the State has shareholdings are governed by a specific framework.

The Regulation covers 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 at a preliminary stage. It is adopted when competitiveness through public tender may be restricted in view of the complexity of the 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 10 million in the case of

construction contracts, or MZN 7 million in the cases of supply of goods and provision of services. It targets natural persons, or 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, at the first stage, an initial technical proposal and, at the next stage, a final technical proposal and 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 most satisfactory for and suited 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 a 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 1,500,000 in the case of construction contracts, or MZN 1,050,000, for the supply of goods and services, and restricted to individuals or micro and small companies. 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 to or higher than MZN 1,000,000 in the case of construction contracts, or MZN 700,000 in the case of supply of goods and services, and a previous tender is deemed deserted, due to disqualification of all the bidders, and may not be repeated without damage to the public interest. It is also applicable to contracts entered into between diplomatic and consular missions. The quotations are requested by means of a public invitation;

- direct award – procurement mechanism applicable in certain situations listed in the Regulation (such as emergency situations or where a contract may be entered into 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 for supply of goods and services. Unlike other types of procurement, publication of a notice is not required.

When using the special procurement mechanism, the procuring entity may, with the prior authorization of the Minister of Finance, implement rules different from those defined in the Regulations:

- procurement stemming from a treaty or other form of international agreement between Mozambique and other State or international organizations, 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 in the respective agreement or contract.

As regards 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 a technical evaluation, the price and other assessment factors, but it must provide the grounds for this choice.

The Regulations include measures favoring domestic bidders, which are defined as: *(i)* natural persons of Mozambican nationality, 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 share capital held in the majority by foreigners are also deemed domestic bidders.

The application of a preference margin for domestic bidders is mandatory and corresponds to: *(i)* 15% of the amount of a contract, without taxes, in the case of work contracts and supply of services; and *(ii)* 20% of the amount of a contract, without taxes, for the supply of goods. In order for the margin to be applied, the domestic bidder in question has to comply with the conditions of the tender documents. Other situations are also set forth in the Regulations.

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, and append 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 coordinating 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 Regulations establish three types of guarantees which may be demanded from bidders: *(i)* provisional guarantee; *(ii)* definitive guarantee; and *(iii)* guarantee for payment of advance amount (which has to 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). A provisional guarantee is granted upon presenting a bid for tender whose estimated price is higher than the following thresholds: MZN 10 million in the case of work contracts and MZN 7 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 cases, with the reasons provided for in the tender documents.

The Regulations also contain 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 bonds, provisional and final acceptance, deficient performance, supply or provision, and amendment and termination of contracts.

According to the Regulations, it is mandatory to proceed with the publication of the declaration of the effective beneficiary, whenever the awarded bidder is a corporate

entity, for contracts awarded following a tender with an estimated contract value exceeding MZN 60,000,000 million.

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 covers contracts of any nature or amount related to personnel, public works, loans, concessions, and 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 preemptive supervision by the Administrative Court are contracts non-related to personnel of a value less than that established by the 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 can 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.

Lastly, note that the Government has been making efforts to make the public procurement system more modern and efficient through information and communication technologies. In this sense, in December 2022, the Government approved a Strategy for Electronic Public Procurement (e-CP), to be implemented in the period from 2023 to 2025.

The expectation is that there will be a progressive transition from the manual system to the e-CP, until 2025 – the years in which its implementation will be evaluated.

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 observe 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 drawing up 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 license granted by the administrative bodies for the construction of new buildings, and their alteration, enlargement or demolition. However, this license 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 the respective plans and elements that justify the concept of the work, and it is also necessary to show the processes and materials adopted, together with 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 enacts several administrative provisions to which buildings are subject, so as to ensure minimum safety, health, comfort and aesthetic conditions.

13.ENVIRONMENTAL LICENSING

As regards 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 the environmental impact assessment procedure and environmental licensing.

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

The Environmental Impact Assessment Regulations (*Regulamento sobre o Procedimento de Avaliação Ambiental*) are 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).

Responsibility 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 an application, accompanied by the documentation stipulated in the Regulationss to the Environmental Impact Assessment Authority, at the central level, or to the respective Provincial Directorate for Co-ordination of Environmental Action, at the local level.

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 critical issues pertaining to the implementation of the activity, and to define the scope of the environmental impact study (EIS) and consequently the outline of the Terms of Reference (ToR), in cases where there are no critical issues deemed to render the activity 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 required in the carrying out of the said studies, the minimum content of which is also set out in the Regulations.

The EIS or SES are subject to the approval of the ToR, with 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 environmental impact assessment process.

The Technical Assessment Committees set up under the Regulation reviews 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 constitutes the grounds for the decision regarding the licensing of the proposed activity and forms 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 does not actually start within two years of its granting is deemed to have expired. Should an 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 license 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^+), of an updated environmental management plan if the environmental audits carried out and current practices justify it (for categories A and B activities) or of an 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 of natural resources or other resources or national assets, carried out under a respective contract or other means whereby the Government grants the rights within the scope of the undertaking;

- major projects (MP) – investment undertakings authorized or agreed through a contract by the Government, whose value exceeds, as of January 1, 2009, the sum of MZN 12.5 billion.

Both PPPs and BCs can be elevated to MPs.

As a rule, the procedure for the contracting of PPP undertakings is public tender, the legislation governing public procurement being subsidiarily applicable. 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 with a duration not less than the life of the contract relating to the undertaking.

The granting 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.

A PPP contract is subject to prior approval by the Administrative Court, together with publication of the main terms of the contract in the *Boletim da República* (Official Gazette) and on the Government Web Portal, and to 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 expiry of the PPP undertaking contract must be sufficient to allow the implementation and amortization 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 created *ex novo* (the maximum period amounting, respectively, to 10, 20 and 30 years, although situations in which such deadlines may be extended are foreseen).

In each PPP the user-payer principles 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 this regard, Act no. 15/2011, of August 10, states that the financial benefits for Mozambique from a venture shall be expressly referred to in the PPP contract, namely:

- a participation, between 5% and 20%, in the share capital of the venture or in the consortium equity, reserved 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 a venture or the equity of a 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 Decree no. 16/2012, of July 4, the minimum annual value of financial benefits attributable to the State cannot, in any case, be less than 35% of the total net profit determined for tax purposes in each economic years.

The PPP contract must also include clauses that expressly address the socio-economic benefits of the venture for 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;
- technical-professional training program and actions;
- 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 local communities, at the expense 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 provided by the contracting 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, and risks relating to the granting 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 the 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 so that the State needs to 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).

As regards the termination of a contract, the procurement entity may redeem it out of public interest, the contractor being entitled to compensation taking into account the time still remaining for the payback 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 PPPs and BCs whose investment does not exceed MZN 5 million (small dimension ventures).

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

The contracts required for 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 the underlying public interest (the maximum term varies from 6 to 10 or 15 years whether it involves the management contract of an operational venture, the operation contract of an existing venture requiring rehabilitation or expansion, or the 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.

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

15. LABOR RELATIONS

Current labor legislation, notably Act no. 13/2023, of August 25 (Labor Act), is directed at facilitating investment and business development, and it is seen as more wide, 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 Labor Act (*Lei do Trabalho*/LT) applies to the legal labor relations established between employers and employees, domestic and foreign, of every branch of activity carried on in the country, and to those constituted between state owned companies or non-profit organizations and their employees and between international organizations and diplomatic and consular delegations and their employees hired locally. The LT is not applied to those relationships that are governed by specific legislation (State employees and persons employed by municipalities).

The LT does not govern employment contracts concluded before February 25, 2024, as regards trial period, vacations, lapse of rights and procedures, together with procedures for disciplinary action and termination of an employment contract, as such contracts continue to be subject to previous legislation (Act no. 23/2007, of August 1).

The LT defines an employment contract in broad terms, considering it one whereby an employee undertakes, for remuneration, to perform an activity for an 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. In addition, a provision of services contract which, though entered into of free will, puts the provider in a position of subordination to the beneficiary of the economic activity is also considered to be an employment contract.

Lastly, the application of the LT depends, in some matters, on the classification of the employer as: *(i)* large enterprise, if it employs more than 100 employees; *(ii)* medium enterprise, if it employs between 30 and 100 employees; *(iii)* small

enterprise, if it employs between 11 and 30 employees; or *(iv)* micro enterprise, if it employs up to 10 employees.

For this purpose, the number of employees corresponds to the average number during the current calendar years and, in the first years of activity, the number as of the date of its commencement.

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 exceptional situations, permitted subject to fulfilling the respective legal requirements.

Term contracts are only allowed for carrying 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 job; *(ii)* performance of tasks required due to an exceptional or abnormal increase in production, or for carrying out seasonal activities; *(iii)* performance of activities that do not relate to meeting the employer's permanent needs; *(iv)* performance of construction work, a project or other specific, temporary activity, including conducting, 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 any contractual provision, it is renewed for the same period as the original).

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

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

If the duration or number of renewals limits is exceeded or the purpose becomes null and void, a fixed-term contract gets converted into a permanent employment one.

An unfixed-term employment contract is converted into a permanent employment one if, once the termination of the fact that led to his employment has occurred, 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 was hired.

Lastly, although the law stipulates that all types of employment contract shall be in writing (with the exception of employment contracts for the instantaneous performance of 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

The 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 important reasons including the 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.

The general rules on hiring foreigners are set out in Decree no. 37/2016, of August 31, as amended by Decree 45/2021 of 1 July and Decree 43/2022 of August 19, 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 in investment projects approved by the Government;
- short-duration hiring; and
- hiring with authorization (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; *(iii)* in small enterprises, 10% of all employees; and *(iv)* in micro enterprises, 15% of all employees. For this purpose, account is taken only of the number of national employees actually employed, mentioned in the company's employee list.

The admission of foreign employees under the quota system requires communication to the minister who oversees the employment area or the entity to which he delegates, accompanied by all the documents required by law. The compliance of the communication shall be confirmed by the services responsible 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 to whom he delegates is sufficient. This should be done within 15 days following the date of entry of the foreign citizen into the country.

The hiring of foreign employees for short-term employment (which duration shall not exceed 120 consecutive or interpolated days) is aimed at the carrying out of one-off, unforeseeable work involving high scientific knowledge or specialized professional techniques. 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; this communication must be made before the foreign citizen enters the country. The compliance of the communication shall be confirmed by the services responsible and communicated within five working days.

Besides the three types mentioned, an employer can also hire foreign employees provided that, having submitted an application accompanied by all documents required by law, he obtains the necessary authorization from the minister who oversees the employment area or the entity to 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 labor market. The application, once all the legal requirements are 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 authority responsible. 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 that System, valid for 30 days from the date of its issue, the request of which relies on the entity that oversees the area of employment of the province.

Foreign employees 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 employee 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 copies of several documents, in particular of a compliance statement of the hiring or working authorization. Nevertheless, should the transfer be permanent, as a result of a total or partial moving of the company or employer, it can only be carried out if a quota available exists in the destination location.

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

With regard to the 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 does not exceed 180 consecutive or interpolated days, during a calendar years, even if the foreigner is bound by contract to a company, concessionaire, operator or subcontractor, or their principals have 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 he promotes the termination of Mozambican citizens' employment contracts.

Lastly, included in the scope of supervision and sanctioning, the revocation process was introduced. It may be carried out by the General Inspectorate of Labor 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, with the employee having the prerogative to file a complaint within five days or pursuing 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 a six-day week, 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, 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 period of six months.

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

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

Determination of the 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 involving 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 of not less than 30 minutes or more than two hours.

Lastly, the compulsory weekly rest must correspond to, at least, 24 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 a 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 years – one day of vacation for each month of active service;
- at the first years of work – twelve days of vacation;
- from the second years of work – 30 days of vacation for each years of actual work.

For this purpose, actual work is deemed to be the time during which an employee provides actual work to his 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 vacations with additional remuneration, provided that a vacation of at least six working days can be taken.

Lastly, should the nature and organization of work and production conditions so require or permit, an 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 involve 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 or the branch of activity, or previously established norms so permit.

Under the contract or collective bargaining agreement or when specific conditions so warrant, there are also benefits additional to the basic wage, which can be either temporary or permanent, including travel costs, cashier's allowance, meal subsidy, night work, sundry bonuses related to seniority and productivity and 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 representatives of the private sector employers and unions in 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, defense and security.

The lowest minimum wage is currently MZN 5800, in the fisheries sector, and the highest is set for the financial sector, at MZN 16,061.32.

15.6. Termination of the employment contract by the employer

Mozambican labor 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 performance of the contract), either party may terminate the contract without the need to invoke due cause and without a right to compensation, provided that a minimum of 3 days' notice, for contracts in which the duration of the trial period is 15 days, and 7 days' notice for others is given. The trial period has the following maximum duration:

- term employment contract – 90 days for fixed-term contracts lasting more than one years; 30 days for fixed-term contracts lasting between six months and one years; 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 senior technicians and employees engaged in leadership and management positions, and 90 days for mid-level technicians.

The duration of the trial period may be reduced by means of a 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 involving 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, or administrative or productive reorganization of the company, following compliance with the formal procedure required for the purpose. In this case, where the termination embraces at tne same time more than 8 employees, in micro and small enterprises, and more than 10 at medium and large enterprises, it is considered a collective redundancy, which involves a specific and distinct procedure.

This type of termination of the contract entitles a term employee to a 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 5 and 30 days of pay per years of service (depending on the employee's wage and the date of termination of the contract).

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

If a termination is declared unlawful by the court, the employee is entitled to receive a compensation corresponding to 45 days of salary for each years of service.

15.7. Collective bargaining

Employers and employees are constitutionally entitled to organize 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 labor 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 stabilization of collective labor relations through the regulation of reciprocal rights and duties and means of resolving labor disputes, though they cannot set conditions less favorable to employees or limit an 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 a company, regardless of their membership of the signatory union and date of joining the company.

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

Trade union organizations may include, by order of increasing complexity, shop stewards, union or company committees, trade unions, or federations and general confederations of unions. The absence of one of these in a company means that the employees' rights are assured by the next level, without prejudice to the possibility of the existence of an 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. Members of trade union governing bodies and trade union delegates enjoy special protection in transfers of workplace and terminations 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 a permanent establishment, employees of embassies and non-governmental organizations, sportsmen and entertainers linked to a club or company and 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 a 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 any updates of or changes to its employment 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, or an alteration of the employment contract. If these conditions are not fulfilled, the continuation 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, with the former responsible for withholding and paying all contributions due each month to the INSS, to be paid between the 20th of the month in question and the 10th of the following month, using 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, and 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 services 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 caused 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, together with repayment of the respective expenses, lies with the employer and not with the INSS, and the former 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. 23/2022, of December 29, repealing Act no. 5/93, of December 28 (regulated by Decree no. 108/2014, of December 31, amended by Decree no. 46/2022, of September 16), establishes the legal regime for foreign citizens in Mozambique, and sets out the rules applicable to entry, staying and departure from the country, together with 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 Act referred to above and its regulations, 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)* visa for sports and cultural activities; *(xiii)* visa for investment activity; *(xiv)* visa for temporary residence; *(xv)* visa for humanitarian assistance; and *(xvi)* visa for transhipping.

Entry visas can be obtained from the diplomatic and consular missions of Mozambique, at border posts authorized for this 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 Mozambican authorities responsible.

The general requirements for a visa application are:

- the specific form duly completed;
- the presentation of passport or equivalent document valid for at least six months;

- written authorization from the parents or parental authority, in the case of a child under the age of eighteen;
- not being prohibited from entering the Republic of Mozambique;
- not having been expelled or declared *persona non grata* in the Republic of Mozambique;
- presentation of means of subsistence;
- payment of the respective fee.

In addition, there are specific requirements depending on the type of visa requested. 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 issued by the Ministry of Foreign Affairs and Cooperation.

The following visas are issued by the Immigration Services:

- student visas – allow for entry to attend an officially recognized school (valid for 12 months, renewable);
- border visas – 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)* for tourism; or *(iii)* upon submission of due justification and subject to the discretionary power of the local authorities;
- business visas – for trips related to the business or economic activity conducted by an 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). The work visa allows foreign citizens to stay for a period of up to one years, extendable for an equal period, in accordance with their employment contract. For this, a health certificate, a letter from the employer assuring that the worker has the means to stay in Mozambique, an employment agreement, work permit and a guarantee for the possible repatriation of the foreign citizen together with his family, are required. The applicant must be present at a visa office when applying for a visa. The rules for foreign nationals employed to work in extractive industry projects are different. In this case the process follows distinct formalities, that is, the company involved must apply for a work visa for the relevant employees. Only after obtaining the 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 – 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 – for tourism or recreational purposes (usually valid for 30 days and cannot exceed 90 days). The tourist visa allows foreign citizens to stay for up to 90 days, continuous or interpolated, and is valid for 12 months. The letters supporting the application must have valid signatures 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. 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 providing the applicant with accommodation. For those entering the country by air, a return ticket to the country of origin is required;

- residence visa – 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 the authority responsible in the applicant's country of nationality or the country where the applicant has been resident for the last years, a health certificate, subsistence guarantees and accommodation in Mozambique, supporting income documents (if the applicant wishes to live on his own income), a liability waiver (if minor or dependent), and usually the applicant's presence in the office issuing the visa are required. Letters of support with valid signatures are also 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 – issued to foreign citizens who come to the country to visit (valid for a minimum of 15 days, extendable up to 90 days);

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

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

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

- visas for investment activity – granted to foreign investors, representatives or attorneys-in-fact of an investing company for the purpose of implementing projects in an amount no less than USD 500,000, approved by the authority responsible. The visa 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 and five years for investment projects worth USD 50 million or more or equivalent, 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 the responsible 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 a visa exemption agreement for diplomatic and service passports (such as Argentina, Italy, Russia, Vietnam and members of the Community of Portuguese Speaking Countries) or citizens of countries that Mozambique has unilaterally exempted (namely Canada, Switzerland, United Arab Emirates, Israel, United States of America, Russia, Japan, Saudi Arabia, Belgium, Denmark, Spain, Norway, Sweden, the Netherlands, Great Britain, Korea, Ivory Coast, Finland, Indonesia, Ireland, Singapore, Ghana, Senegal, Germany, France, Italy, China, Portugal and Ukraine) do not need 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 entry 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 or there has been an irregular visa issuance.

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. Permanent residence is granted to a foreigner who has held temporary residence for over 10 years.

Authorizations for temporary residence are valid for one years, extendable for the same period, provided the reasons for their award remain valid. Permanent 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 applying for a residence permit are:

- holding a residence visa or work visa;
- having a valid passport or travel document (passport with at least four blank pages and six months validity);
- the presence of the owner of a collective passport (if applicable);
- being of legal age (or, if less, having written permission from a parent or legal guardian);
- not being forbidden to enter Mozambique or being expelled or declared *persona non grata*;
- not conducting any activity subject to penalty of expulsion in Mozambique;
- holding proof of means of subsistence or submit a terms of responsibility form signed by a citizen of legal age and resident in the country;
- submit documentary evidence of the right to work, if the applicant intends 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 from 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 or residence visa;
- permit or license of the employer;
- tax clearance certificate;
- clearance certificate from the National Institute of Social Security;
- employment agreement entered into with the employer (if applicable) and the correspondent communication work submitted to the Ministry of Labor (if applicable);
- terms of responsibility form 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 the 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 passport-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 Organization (and to the TRIPS agreement), the World Intellectual Property Organization (WIPO) and the 1981 Madrid Agreement and its 1989 Protocol relating to International Registration of Marks administered by the WIPO, the Patent Co-operation Treaty and the African Regional Intellectual Property Organization (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 years by Decree no. 19/99, of May 4.

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

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

With the intention of updating the Industrial Property regime, a Second Industrial Property Code was approved, through Decree no. 4/2006, of May 12.

In order to define precise terms for the protection of 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 established a significant number of provisions that criminalize some acts of violation of the rights registered titled by the creators of intellectual property.

The Third Industrial Property Code was approved, on 2015 through Decree no. 47/2015, of December 31, aiming at: *(i)* systematizing the scattered legislation in a single instrument; *(ii)* the introduction of new categories of industrial property

rights; *(iii)* a reduction in the processing time of the processes at the Industrial Property Institute; and *(iv)* introduction of a legal registration system at a regional level.

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

In view of the need to modernize the law and adapt the legal regulations to the various international conventions, together with 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, such as the originals of radio broadcasts, and of their authors, performers, record and video producers, 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 a work, reflected in the option of authorizing its reproduction, translation, adaptation, import or export, and of selling copies 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 licenses must be in writing.

In turn, non-economic rights are of a personal nature and consist of an author's right to claim authorship of a 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 honor, 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 the case 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 the 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 activities customary under the contract.

According to a general rule, economic rights expire 70 years after an 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 license, its registration having a purely declarative role (that is, the copyright does not arise from registration, which merely publicizes 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 a copyright.

Violation of copyright is civilly 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 of national publishers and booksellers, the registration of national publications and the organization 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 actions with the Intellectual Property Institute ("IPI"): *(i)* a natural person concerned in 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 in 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 actions with 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 involve technology transfer, franchise agreements and the like is a requirement for them 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 must be recorded in the granting document. Transfer *inter vivos* must be made in writing with the signature of the holder notarized, 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.

A patent has a term of 20 years, a utility model a duration of 15 years, and industrial design five years (renewable for like periods for a total of up to 25 years). Trademarks, trade names, insignia and logos have a 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 reducing the time of conduct of proceedings in the Industrial Property Institute, the current Code gives greater emphasis to impugnation guarantees, reducing the time for their presentation, which, on the onje hand, has a useful effect in periods of concession or refusal, and, on the other, gives more time for the presentation of the elements found to be missing 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 power to challenge the decisions made in a complaint. This remedy has a purely devolution effect to the Minister that oversees the sector (the Ministry of Trade and Industry).

As regards judicial protection, this Code provides the possibility of using 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 years from the date of publication of a 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. Organization and general rules of jurisdiction

The Mozambican system includes five different categories of courts: judicial courts, administrative courts, Constitutional Council, Fiscal Courts and Customs Court.

According to the Courts Act (*Lei de Organização Judiciária*, Act no. 24/2007, of August 20) ammended and derogated by Law no. 11/2018, of October 3, the judicial courts include the Supreme Court, High Court of Appeal and 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' powers to give judgement on issues of family and minors law, eliminated the overlapping in territorial terms between the 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, approved new guidelines regarding the exercise of functions by the judges elected in the various judicial courts, while also defining the calendar of the judicial years and vacations, among other changes.

The Administrative Court is now a specialized entity responsible for reviewing the legality of administrative acts and of the execution of the regulatory norms issued by the Public Administration, together with the State's accounts and those of public expenditure.

The Constitutional Council is a specialized entity responsible for constitutional and electoral matters, verifying and controlling the constitutionality of laws and the legality of the Executive's normative acts, 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 the final court of review.

The tax court has jurisdiction to settle tax disputes.

The customs court has jurisdiction over customs disputes.

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 Mozambican State's principles of public order, although the confirmation process does not assess the merits of the decision.

A ruling recognized 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 a simple means of evidence subject to appraisal by those judging a case.

18.1.3. International jurisdiction of Mozambican courts

The Mozambican courts consider themselves internationally qualified when an 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 an 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 a 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 situates 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 arising 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 of the court corresponds to a serious interest of the parties or of one of them (provided it does not involve a major detriment to 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 12), 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), this to be done explicitly.

In many issues the Mozambique Arbitration Act 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 a formal order and procedural principles laid down in the law, in particular in the case of manifest disregard of procedures with an impact on the exercise of the rights of defense.

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, and is a party in several Bilateral Investment Treaties (BITs) with other States, including, among others, Portugal, in which several guarantees in matters of investment are foreseen. Through these agreements, a 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.

Irrespective 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 carried out in the country, allowing that, in certain circumstances foreseen by law and without prejudice to agreements to the contrary, disputes emerging therefrom be resolved by arbitration, by applying, on the basis of a prior expressed agreement between 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 responsible 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, years 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. This new framework and its regulatory regime 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 where money laundering occurs.

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 Regulations from the Mozambique Central Bank (specifically, Regulation no. 4/GB/2015).

Recently, following the placement of Mozambique in the Financial Action Task Force's (FATF) grey list for an observation period of two years (2022-2024), a new Anti-money laundering/Combating Terrorist Financing Law was published (Law no. 14/2023, of August 28), which revokes the previous regime. Law no. 14/2023 has been in force since 28 August 2023 and is regulated by Decree no. 53/2023, of August 31.

As entities that play the role of gatekeepers of the financial system or there have intervention, the following are subject to the provisions of Law no. 14/2023 and its Regulations:

- financial institutions, such as credit institutions and financial corporations, microfinance institutions, insurance and reinsurance companies, pension

fund management companies, insurance intermediaries and related ones, stock exchanges, virtual asset providers, and any other entities that may be contemplated 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, postal companies, insofar as they carry out any financial activity, travel and tourism agencies, hotels and similar, when authorized by the Central Bank to carry on a partial commercial activity; and

- lawyers, notaries, solicitors and other independent legal professionals, independent accountants and auditors, when acting on behalf of a 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 and providing services to companies, and other corporate persons or centers 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 to 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 to or greater than MZN 900,000, or if there is suspicion that 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, and also when they conduct any casino and gambling operations (social and amusement games) with transactions of a value equal to or greater than MZN 190,000 and MZN 60,000, respectively.

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 ones where the identification elements are clearly fictitious. These duties are applicable

irrespective of the nature of the entities involved in the financial operation, including, among others, charities and foundations. Politically Exposed Persons, that is, persons holding a high-level public office, are also subject to strict duties of identification, control and monitoring.

Accordingly, the *gatekeepers* and other concerned entities must, within 24 hours and up to a maximum of 3 days (if it is not possible to in the first 24 hours), notify the GIFiM whenever: *i)* they find operations incompatible with the nature or volume of a business or a client profile; *ii)* they suspect or have justified reasons to suspect that funds or goods arise from or are related to an illicit activity; *iii)* they have evidence that said funds are being used for terrorist financing or proliferation of weapons of mass destruction; and *iv)* they have information regarding a fact or activity that may indicate the crimes of money laundering, terrorist financing or the proliferation of weapons of mass destruction.

Law no. 14/2023 also foresees an Ultimate Beneficial Owner (UBO) registry, to be implemented by the Legal Entities Registry Office.

For said purpose, an UBO is a natural person who is the ultimate owner or has final control of a client and/or the person in whose interest a transaction is carried out. This definition covers:

- in the case of legal persons – a natural person who, ultimately, holds ownership or controls, directly or indirectly, a share equal to or greater than 10% of the capital or voting rights of such legal person, which is not a company listed on a regulated market, subject to information requirements in line with international standards;

- natural persons who, in any other way, exercise control over the management of the legal person;

- in case of a legal entity that manages and distributes funds – a natural person benefiting from at least 10% of their assets, when the future beneficiaries have already been determined;

- a category of persons in whose main interest the legal person was incorporated or carries on its activity, when the future beneficiaries have not yet been determined; and

- natural persons who exercise control equal to or greater than 10% of the assets of the legal person.

Failure to comply with these duties by the financial institutions or the above-mentioned non-financial entities, constitutes a transgression punishable by a fine and accessory penalties, which vary from revocation or suspension of the authorization 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 representative, employee or freelance.

Specifically regarding the punishment of laundering actions, 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

The Mozambican economy is diversified, with agriculture, transport, energy, fisheries and tourism being the most important sectors.

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

Together, the services and industry sectors account for the largest share of GDP, followed by agriculture which, accounting for 26% of GDP, employs around 70% of the Mozambican population, according to the UN National Summary HABITAT (2023).

The main agricultural products are tobacco, sugar, cotton, rice, cashew nuts 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 the property of the State. The use and exploitation of mineral resources, including mineral water, are now governed by the Act 20/2014, of August 18 (Mining Act/*Lei das Minas*), amended by Decree no. 15/2022, of December 19, and by Decree no. 31/2015, of December 31 (Mining Act Regulation/*Regulamento da Lei das Minas*), amended by Decree no. 48/2022, of October 22, and Ministerial order 65/2022, of June 15.

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 safeguarding of the 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 application, but also on the most advantageous proposal to the State; *(ii)* reinforcement of local content rules and priority granted to local good and service providers; *(iii)* reinforcement of protection of 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 channeled to their development; *(iv)* the need for foreign service providers in association with Mozambican persons or entities; and *(v)* the participation of the State in mining enterprises and the progressive increase of such participation over time.

The Mining Act Regulations define the regulatory framework applicable to mining activity and further develop 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 the sub-sections below.

Permits to use and enjoy 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 authorized investments and used in a mining activity under a mining permit;

- that, once a prospecting license, mining concession or mining certificate has been granted for a recognized 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 an 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 that can be granted pursuant to this legal framework.

20.1.1. Prospecting and research license

A prospecting and research license may be attributed to legal entities created and registered according to Mozambican law and grants 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 quantities for laboratory testing purposes, together with 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 license must be submitted to the National Mining Institute and addressed to the Minister of Mineral Resources and Energy. The license request should contain various elements, in particular the indication of the mineral resources envisaged to be included in the license; the area envisaged and the licensing form, duly filled. The Minister has 90 days to decide on a request for a Prospecting and research license, counting from the date of its submission.

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

20.1.2. Mining concessions

A mining concession may be attributed to legal entities created and registered in accordance with Mozambican law for a period of 25 years, which may be renewed 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. It also entitles the holder 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 must be submitted to the National Mining Institute and addressed to the Minister of Mineral Resources and Energy. The concession request has to contain various elements, namely the data of the prospecting and research license (if applicable), indication of the mineral resources envisaged to be included in the Mining Concession, the area envisaged and the duration envisaged. The Minister has 180 days to decide on a request for a 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 must be addressed to the Minister of Mineral Resources and Energy; except for construction, in which case it has to be addressed to the Governor of the Province with jurisdiction over the area. The certificate request has to contain several elements, like the details of the prospecting and research license (if any); the mineral resources to be included in the mining certificate; the area envisaged and the duration envisaged. The deadline for a decision to be issued is 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. A mining pass may be attributed to a person of Mozambican nationality or to an entity held by Mozambicans for a period of up to five years, renewable for an equal period.

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

A mining pass request must be addressed to the Governor of the Province with jurisdiction over the area. The request for a mining pass should include, among other things, the location of the area; the mineral resources to be extracted from the area and the duration envisaged. The Governor of the Province has 30 days to decide on the request.

20.1.5. Authorizations

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

20.2. Fisheries

Since Mozambique is a country with thousands of kilometers of coastline, the fishing industry is naturally of great importance to the national economy. Commercial fisheries are divided into 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, and using mechanical means of fishing involving technologically advanced methods and with the ability to fish in the 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 gillnet, trawling, siege and other fishing methods. Lastly, artisanal fishing is one which, in addition to essentially employing family labor, is usually practiced in daily fishing routines, using fishing gear such as purse seines, gillnets, single trawls, trawling and other methods, with or without fishing vessels, and with rowing or sailing boats or ones with engines with a 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 species caught, both by production volume and by production value, are shrimp, prawns, kapenta (freshwater sardines) and tuna. The last is caught by 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 tons. 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 in 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 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 import markets, particularly of 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 for fishing activities and activities complementary to fishing with a view to the 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, and by the Ministerial Diploma no. 100/2023, of July 25), 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 applies 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 comprise:

- the right to engage in fishing, including ownership of the catches and accompanying fauna and their commercialization;
- the right to allocate a fishing quota;
- access to fishing ports;
- 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 persons 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

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 on the Mozambican Government an obligation to adopt plans and regulations about 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 monitoring compliance with maritime statutes is the National Navy Institute (*Instituto Nacional da Marinha*/INAMAR), a governmental body under the responsibility of the Ministry of Transport and Communications.

20.3.1. Commercial shipping transportation and private shipping transportation

Commercial shipping transportation activities are defined as being the transportation of cargo and/or passengers for a commercial purpose, through the sea, ports and bays or lakes and rivers; whereas private shipping transportation activities are defined as being 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 the licensing requirements 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 long distance commercial shipping covering non-national ports.

The 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 by the Ministerial Order no. 218/2014, of December 29; and
- approval for use of foreign vessels (where applicable).

Pursuant to the Agency Regulations (*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 entering, staying and exiting of foreign vessels at domestic ports, together with payment of the relative fees.

20.3.2. Shipping recruitment

Decree no. 50/2014, of September 23, governs labor relations emerging out of employment agreements in respect of this sector (Maritime Labor Regulations/*Regulamento do Trabalho Marítimo*). It 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 an employee under the general regime of the Labor Act.

The Maritime Labor Regulations require that for the exercise of maritime labor, a seafarer must hold, in addition to the other requirements set out in the specific legislation, a valid medical certificate attesting that he is able to carry on such

activities, and a seaman's book, which is an essential document that allows him to exercise his activity on board or other activities that may be required.

The Regulations establish 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 Proficiency of Seafarers Regulations, enacted by Decree no. 63/2018, of October 25. As a result, seafarers on board Mozambican or foreign flagged vessels within Mozambican waters must hold the relevant certificate of proficiency. For the purposes of assessing compliance, the INAMAR is free to inspect any vessel within Mozambican waters. Violation of rules governing commercial shipping transport activity, together with the norms regulating agency activity and complementary services, is punishable with fines, or with suspension and revocation of licenses, depending on the seriousness of the case, while the violation of the provisions of the Maritime Labor Regulation is penalized in accordance with the Labor Act.

20.4. Electricity sector

A new legislative package for the energy sector was recently approved, which includes some important changes. Among the rules approved or repealed and other important rules for the sector are:

- Act no. 12/2022, of July 11 (Electricity Act/*Lei da Electricidade*), which revoked Act no. 21/97, of October 1;

- Decree no. 93/2021, of 10 November 2021, which approves the Regulations on Access to Energy in Off-Grid Areas (*Regulamento sobre o acesso à energia em zonas fora da rede*);

- Decree no. 60/2021, of August 18, which approves the Licensing of Electrical Facilities Regulations (*Regulamento de Licenças para Instalações Eléctricas*).

- Decree no. 8/2000, of April 20, which approves the Regulations establishing the Powers and Procedures Regarding the Attribution of Concessions

relating to Generation, Transmission, Distribution and Supply of Electricity, together with 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 Regulations establishing Rules regarding the National Electricity Transmission Network (*Regulamento que Estabelece Normas Referentes à Rede Nacional de Energia Eléctrica*); and

- Ministerial Diploma no. 184/2014, of 12 November 2014, which approved the National Electricity Grid Code (Código Nacional da Rede Eléctrica).

The generation, transmission, distribution, import, export and supply of electrical energy are regulated by Act no. 12/2022, of July 11 (Electricity Act/*Lei da Electricidade*).

The Electricity Act defines, among other aspects, the founding principles of the supply of electricity in Mozambique, the main characteristics of concessions for the activities which make up the electricity sector value chain, and the main rights and obligations of concessionaires. It also typifies crimes and misdemeanors regarding the theft of electricity and damages caused to electrical facilities.

The generation, transmission, distribution, supply, import and export of electricity, and 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, if 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. Relevant Authorities

Ministry of Mineral Resources and Energy (MIREME): is the governmental entity responsible for proposing measures to adapt the legal framework to the current dynamics of the development of renewable energies, by increasing their contribution to the national energy matrix and to the preservation of the environment; promoting and encouraging the sustainable use of new and renewable energies for rural development; approving research and development projects for the exploitation and use of renewable energy; licensing new and renewable energy activities and infrastructure; and ensuring and keeping the mapping of renewable energy sources updated.

Energy Regulatory Authority (ARENE): is the public entity responsible for implementing the country's energy sector development policies and strategies; setting up and processing the public tender procedures for the award of concessions for the production, transmission, distribution and commercialization of electric energy; issuing opinions on these, together with requesting the transfer of concessions; establishing and approving regulated energy tariffs and prices in accordance with the law and ensuring their application; issuing opinions and recommendations on policy proposals and legislation concerning the energy sector, including any respective expansion plan; proposing the formulation, amendment or adjustment of policies and legislation on the energy sector; promoting free competition in the provision of energy services; promoting the development of energy infrastructures and ensuring, in the cases provided for in the applicable legislation, its sharing among operators; collecting, systematizing and ensuring relevant information to operators and energy service providers regarding the regulatory activity.

Energy Fund, FP. (FUNAE, FP.): is the public entity responsible for promoting the use of renewable energy through the implementation of photovoltaic, hydro, wind and mini-grid solutions, and monitoring the procurement processes of contractors, service providers and suppliers of goods; carrying out surveys to identify the potential for the use of renewable energies, particularly hydroelectric small-scale, hydro and solar; preparing the processes for the realisation of small-scale electrification projects and monitoring the procurement processes of contractors, service providers and suppliers of goods; implementing and managing electrification

projects based on renewable energy solutions and partnerships with the private sector; and implementing equipment certification.

Eletricidade de Moçambique, E.P. (EDM, E.P.): is the Mozambican public utility company, owned by the Mozambican State, responsible, among others, for the transformation, transportation, distribution and commercialization of electric energy in the national territory; and for the importing and exporting of electrical energy.

20.4.2. Granting of concessions

The entity granting concessions in the electricity sector differs according to the installed capacity of the electrical facility. Thus, in general terms:

- the Council of Ministers has the power to grant concessions for activities when an associated electrical facility possesses a nominal installed capacity equal to or higher than 100 megavolts-amperes (MVA);

- the minister responsible for the energy sector has the power to grant concessions for activities when an associated electrical facility has a nominal installed capacity between 1 MVA and 100 MVA; and

- 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. A concession grants the right to undertake the activity of generation, transmission, distribution or supply of electricity, as applicable, and subjects 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 for hydroelectric projects), renewable for additional periods, which must be consistent with the depreciation period of the additional investments made within the scope of the concession and with the need to make the resources used available for other purposes which may guarantee larger social and economic benefits.

The transfer of a concession or the assets which make up a concession is always subject to the prior authorization of the authority responsible.

20.4.3. Licensing of electrical facilities

Besides concessions 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. 60/2021, of August 18.

A license for establishing electrical facilities is obtained after approval of the respective request for licensing addressed to 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 decides if an operation license can 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)* if the electrical facility is not granted within the scope of a concession agreement, whenever its holder stops generating power or consents to an interruption or provides intermittent power supply in a way which affects the public interest, or abandons the electrical facility for a period over three months; or *(iv)* or in the event of the extinction of the Concession in which it is included.

The transfer of establishment licenses requires prior authorization from the Ministry of Mineral Resources and Energy. In turn, operation licenses may not be transferred: a change in ownership of facilities always involves the issue of a new

license, except for licenses paid for annually, which may be transmitted under conditions to be established by the Minister of Energy.

20.4.4. 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, importation, exportation and supply of electricity, and the management of the National Electricity Transmission Network (*Rede Nacional de Transporte de Energia Eléctrica*/RNT).

The RNT encompasses the following facilities:

- facilities for reception of high and very high voltage electricity;
- facilities for transmission of electricity within the scope of the public supply electricity system;
- facilities allocated to the Dispatch Centre;
- telecommunications, telemetry and remote control facilities allocated to the transmission of electricity; and
- facilities for the delivery of high voltage electricity to distributors, holders of concession titles, large consumers, including those which are exceptionally supplied at a very high voltage, and other private distributors which, for such purpose, have entered into an agreement with the RNT.

The purpose of the management of the RNT is the full administration, 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, together with those developed by private operators in their connections with RNT;

- reception of electricity from generation concessionaires in Mozambican territory;

- ensuring, in a non-discriminatory fashion, the supply of electricity to 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 from 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.

As regards 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. 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 make a connection to the RNT;

- provide the RNT manager with all data and economic and technical features regarding an RNT connection project;

- submit for the approval of the RNT manager the list of staff, who must be adequate and possess appropriate qualifications; and

- comply with the operational procedures 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 the consumers 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 and apply 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.

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 concessionaire to which its facilities are to be connected.

For each respective concessionaire, the generation activity also entails, *vis-à-vis* the regulatory authority (the Ministry of Mineral Resources and Energy) and the RNT manager, several ancillary obligations regarding generation and injection capacity. The concessionaire must therefore:

- 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 might lead to changes in the capacity of the transmission lines and substations with a potential significant negative impact on the services rendered to consumers;

- inform the Ministry of Mineral Resources and Energy and the RNT manager of any intention to partially or wholly reduce the capacity of its facilities, at least 12 months before such actions are undertaken.

ELECTRICITY DISTRIBUTION

As regards the distribution of electricity, the concessionaire of each respective network has, as its main obligation, the planning, building, holding, operating and maintaining of an electricity distribution infrastructure in order to secure demand for all consumers in the concession area, maintaining high standards of quality and reliability when 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 other State local body.

The distribution concessionaire must also supply electricity, in the concession area, to all consumers able to pay for their connection to the grid, and the former may only refuse to supply medium voltage or low voltage electricity 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 hectometer of line to be built. Additionally, where the supply of electricity is dependent on the construction of a

medium voltage or low voltage network 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 should 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 regarding 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 involving EDM (in its capacity as distributor and currently only supplier of electrical energy in Mozambique) and consumers was approved by Decree no. 80/2022, of December 30 (Regulation of the National Electricity Grid Tariff System/*Regulamento do Sistema Tarifário da Rede Eléctrica Nacional*). 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.

20.4.5. Tariffs

The Electricity Act establishes in Article 39 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. 80/2022, of December 30, which, as mentioned above, approves the tariff system for the sale of electricity to be applied by EDM to consumers (low voltage, including large low voltage consumers, medium voltage and high voltage).

Consumption tariffs may be amended due to exchange rate fluctuations and inflation, pursuant to the terms of Article 49 of the 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 the said facility, reflecting the load on the network, the length of the grid and 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 (for 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 FOR RENEWABLE GENERATION

The Regulations establishing 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 the eligibility requirements defined in the diploma. The minister responsible for the energy sector may, however, authorize the application of this remuneration regime to projects with an installed capacity greater than 10 MW, if they are close to the national grid, are not capable of obstructing the stability of the system and result in significant economies of scale.

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.

The Normative Resolution no. 1/ARENE-CA/2022 (*Regulamento Tarifário para Mini Redes nas Zonas Fora da Rede* /Tariff Regulations for Mini Grids in Off-Grid Zones), that approves this diploma sets out, among other aspects, the categories of customers and the methods of charging for the activity of supplying energy through mini-grids in off-grid areas.

20.5. Oil and gas

The Constitution stipulates that all natural resources (including petroleum) located in 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 as amended by Act no. 16/2022, of December 19 (the Petroleum Act/*Lei dos Petróleos*), which is regulated by Decree no. 34/2015, of December 31, as amended by Decree no. 34/2029, of May 2, and no. 48/2018, of August 6 (Petroleum Operations Regulations/*Regulamento das Operações Petrolíferas*).

The Petroleum Act aims to ensure increased competitiveness and transparency, safeguard national interests and enhance the State's intervention in this sector. The role and participation of the State in the oil sector have been reinforced, with 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 do it in association 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 on 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 channeled 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 affiliated 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 by 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 from a public tender; however, in exceptional circumstances, when certain conditions are met, the contracts may also arise from 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, with at least 51% of its share capital belonging to Mozambican citizens or private or public Mozambican companies or institutions), enjoy preferential rights 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, paleontological, geological and topographic surveys.

This contract is entered into for a maximum, non-renewable period of two years and allows for drilling up to a depth of 100 meters below the surface or seabed.

Unless otherwise agreed, the data acquired under this contract remain 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 in the concession area and the non-exclusive right to build and operate oil and gas pipeline systems from it, 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 rights can reserve the exclusive right to complete the work of assessing the commercial value of the discovery. As for the exclusive right to develop and produce any oil, this can also be reserved by the holder, in accordance with the approved development plan, and may be renewed for equal or shorter periods, as deemed most convenient for the national interest.

20.5.3. Oil or gas pipeline concession contract

An 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 this. If the capacity of an oil or gas pipeline system is insufficient, concessionaires are obliged to increase it so that third party requests for transportation of oil and gas are met on commercially acceptable terms, provided that such increase does not endanger the technical soundness or 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 infrastructures related to the production of petroleum, such as processing and conversion facilities, not covered by a development plan in another exploration and production concession contract.

In this respect, the Petroleum Operations Regulations provide 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; or *(iii)* the need to combine adjacent areas with a concession on technical and economic grounds.

The award of appraisal, exploration and production, construction and operation of a pipeline and 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 the contracting of 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 Regulations provide 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 oversees the procedure. Further to the Regulations, a copy of the list of bidders selected by the concessionaire is to be sent to the NPI, and, if the NPI deems correct procedures have not observed, it may order the concessionaire to reconsider its awarding decision.

When acquiring goods or services, 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, concessionaires are 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 foreign ones. Local goods and services are defined as those which are, in substance or in relation to their added value, predominantly produced, built or carried out 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, subject of the contract, provided it has fulfilled the stipulated minimum work and expenditure obligations, except in the case of a development and production area. When commercial production has begun, the holder of an exploration and production right may only surrender the development and production area by a notice served at least one years in advance.

Concession contracts may be terminated by the Government in the case of a breach by 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 righted the breach, paid the required compensation, or initiated the applicable judicial or arbitral proceeding. If the last, the contract does not terminate before a final and non-appealable decision or award.

Abandonment occurs when, without due cause and for 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 any contractual provision to the contrary.

20.5.7. Documentation and samples

Petroleum operation operators shall provide the PNI with any documentation or samples gathered during their 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 a concession contract, the original documentation and the collections of samples must be handed over to the PNI.

20.5.8. Local content

Besides the 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 for in the respective concession contract, namely:

- contribute to the training of the national workforce and to the training and building of the skills of public servants and governmental authorities;
- employ nationals, with the required qualifications, in all levels of their organization; and
- develop social investment programs.

20.5.9. Performance guarantee

A concessionaire must provide the following performance guarantees: (*i*) a bank guarantee for 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, granted in favor 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 its Statute approved by Resolution no. 13/2020, of 11 May, inspect the sites, buildings and infrastructures where petroleum operations are conducted. Furthermore, and upon notice, the General Inspection Authority may also observe the conducting of petroleum operations and 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 Regulations, 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 Regulations and the appraisal, exploration and production, oil or gas pipeline and infrastructure concession contracts that cannot be settled by the parties through negotiation 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 in Areas 1 and 4 of the Rovuma Basin benefits from a special legal and contractual regime provided for 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 labor regime, and 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; an operational stage, which started in 2015 with the consolidation of the biofuel industry and achievement of a 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 regulations on biofuels and their blends with fossil fuels (*Regulamento de Biocombustíveis*/Biofuels Regulations), which define the production, processing, marketing and distribution of biofuels and their blends.

In accordance with the Biofuels Regulations, these activities must be undertaken in compliance with the respective license. A license 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 liters per years, and to the minister who oversees the energy area for production up to 12 million liters per years. The production of up to 5,000 liters per years for own use does not require a license. Any licenses issued are valid indefinitely and licensed activities must begin within two years of the date of issue of the license. Licenses 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 licenses 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 license.

20.7. Telecommunications

The main legal framework applicable to electronic communications was approved by Law no. 4/2016, of June 3, according to which telecommunications consist in the broadcasting, transmission or reception of signals or sets of signals representing symbols, writing, images, data, sounds or other information, by wire, radio, optical or other electromagnetic means, excluding content production services.

The telecommunications sector is regulated by the National Telecom Institute of Mozambique (INCM), a public institution with legal personality, and administrative, financial and patrimonial autonomy, which carries out the functions of regulation, supervision, inspection, sanctioning and representation of the telecommunications sector.

Pursuant to Law no. 4/2016, telecommunications are divided into two categories:

- services, which can be either a public service offered by a service provider to the public in general in return for a fee, or a private service intended wholly or mainly for own use or for a closed group of users and which is not interconnected to a public telecom grid; or

- networks, which can also be public or private: a public network is a fully interconnected and integrated system consisting of various transmission

> and switching facilities used to provide telecommunications services to the public in general; while a private network is a system for providing services to a person or entity for their exclusive use and not interconnected to a public telecommunications network.

The establishment, management and operation of telecommunications services and networks are subject to licensing by the INCM. The award of licenses when involving the use of radio frequencies, numbering or other scarce resources is subject to public tender or auction, and such procedures are regulated by Decree no. 26/2017, of June 30.

There are two types of license for telecommunications activities, namely: *(i)* unified license; and *(ii)* license by classes, which can be Class A (telecommunications networks), Class B (telecommunications services) or Class C (installation, maintenance, import, distribution and selling of telecommunications equipment).

The unified license is granted through a prior decision by the INCM and authorizes its beneficiary to provide any telecommunications service, regardless of the supporting technology, without prejudice to the need to obtain spectrum or numbering frequencies. On the other hand, class licenses are not dependent on a prior decision of the INCM but only on a communication from the applicant before the commencement of the activity.

In addition to the licensing requirements, the applicable framework also establishes registration obligations, particularly for radio equipment.

Failure to comply with the above provisions is subject to fines ranging from MZN 500,000 to MZN 10,000,000, which can be increased to double in cases of repeat offenses. In addition, noncompliance can also result in the revocation of the respective license.

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; to the east, the section of the Indian Ocean known as the Mozambique Channel.

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, Gitonga, Xisena, Xishona, Cinyungwe, Echuwabo, Emakhaa, Ekoti, Elomwe, Cinyanja, Ciyao, Ximaconde, Xironga, and Xitsa, among others.

Form and system of government: presidential republic.

Legal system: Roman-Germanic type.

International organizations: 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 Organization and the International Monetary Fund (IMF), among others.

Currency: Metical (MZN); in October 2023, the reference exchange rate of the Metical against the United States Dollar (USD) was 63.25.

Time zone: CAT (UTC+2).

Public bodies and other entities having an Internet website:

Bank of Mozambique (*Banco de Moçambique*)
http://www.bancomoc.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.ipi.gov.mz

Ministry of Agriculture and Food Safety (*Ministério da Agricultura e Segurança Social*)
http://www.agricultura.gov.mz/

Ministry of Economy and Finance (*Ministério da Economia e Finanças*)
http://www.mef.gov.mz/

Ministry of Land, Environmental and Rural Development (*Ministério da Terra, Ambiente e Desenvolvimento Rural*)
http://www.mta.gov.mz/

Ministry of Sea, Interior Waters and Fisheries (*Ministério do Mar, Águas Interiores e Pescas*)
http://www.mimaip.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.gov.mz

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 Legal Circle

Morais Leitão Legal Circle was created by Morais Leitão, Galvão Teles, Soares da Silva & Associados, 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, Cape Verde, Mozambique and Singapore.

Working in close cooperation, the member firms of the Morais Leitão Legal Circle combine their local knowledge with the international experience and support of the whole network, which enables each firm to maximize the resources available to its clients.

The purpose of the network is to facilitate the access of investors to these markets by helping them understand these diverse business and legal environments with specific practices and standards.

The experience of the members of Morais Leitão Legal Circle provides a unique and integrated insight into these jurisdictions and guarantees investors timely and adequate strategic planning and support in structuring investments.

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