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Mozambique

Morais Leitão, Galvão Teles, Soares da Silva & Associados

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Law and Practice

Morais Leitão, Galvão Teles, Soares da Silva & Associados

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Morais Leitão, Galvão Teles, Soares da Silva & Associados is a leading full-service international firm, with a solid background of decades of experience. In keeping with its broad strategy of growth and international presence, and addressing the increasing needs of clients throughout the world, Morais Leitão has created the Africa team, which assures legal support in jurisdictions of Portuguese-speaking African countries. The Africa team guarantees in close cooperation with the associated offices in Angola (ALC Advogados) and Mozambique (Henriques, Rocha & Associados), as well as the other member firms of the MLGTS Legal

Circle, personalised assistance to clients in those jurisdictions, ensuring the provision of legal services of the highest quality. The Africa team is a multidisciplinary team and is composed of lawyers covering several practice areas, such as banking and finance, corporate/commercial contracts, energy, insurance, labour, life sciences, litigation, oil and gas, private investment, public law, real estate and tax. The authors would like to thank the Morais Leitão Tax Team, in particular Bruno Santiago and João Miguel Fernandes, for contributing to the tax section of this chapter.

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Claudia Santos Cruz joined the firm as a senior consultant in 2015 assisting clients on the international and cross-border aspects of their investments in Portugal, Angola and Mozambique. She has close ties to Africa and England. Claudia was

born in Mozambique, grew up in South Africa and holds dual Portuguese and Mozambican nationality. She trained and practised as an English solicitor from 1994 to 2005 at DLA Piper and Watson Farley & Williams in the City of London. Claudia has been based in Lisbon since 2005 and is registered with the Portuguese Bar Association. Before joining Morais Leitão she was a partner at two Lisbon-based law firms with offices in Mozambique and Angola. In 2018 Claudia registered with the Mozambique Bar Association (Resolution 02/CN/2014). She is a specialist in areas such as energy and natural resources (oil and gas, and mining), the international aspects of foreign investment into Angola and Mozambique, corporate and shipping.



Ana Corrêa Cardoso joined the firm in October 2017, having been an associate at AVM. She has experience in international and cross-border transactions, and investments in the Portuguese, Angolan and Mozambican jurisdictions. Ana has

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Fabrícia de Almeida Henriques is a founding partner and the managing partner of HRA Advogados. Fabrícia is a member of the Mozambican and Portuguese Bar Associations, and assists private investment in all its features, with

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1. Legal System

1.1 Legal System and Judicial Order

Mozambique's legal system is based on civil law.

Courts are endowed with sovereignty, exercising the judicial power pursuant to the principle of separation of powers set out in the Constitution of the Republic of Mozambique. The judges are independent and impartial, and shall only obey the Constitution and the law.

The Constitution provides for the existence of the Supreme Court, the Administrative Court (*Tribunal Administrativo*, the Audit Court) and judicial courts.

According to the Constitution, judicial courts are common courts in civil and criminal matters, which exercise jurisdiction whenever it is not attributed to other jurisdictional orders. The Administrative Court supervises the legality of administrative acts and the execution of regulations of an administrative nature issued by the Public Administration, while also being responsible for overseeing the legality of public expenses and respective liability for financial infractions. All courts are endowed with administrative autonomy.

The organisation, competences and functioning of the courts are mainly regulated in the Judicial Organisation Law, approved by Law No 24/2007, of 15 February 2008 (*Lei da Organização Judiciária*), which was recently amended by Law No 11/2018, of October 3rd. Jurisdiction is divided by the courts in respect of the matter, the hierarchy and geographically. Under the Judicial Organisation Law, the judicial order is organised as follows: Supreme Court (*Tribunal Supremo*), with jurisdiction in the entire Territory; Higher Courts for Appeal (*Tribunais Superiores de Recurso*); Provincial Judicial Courts (*Tribunais Judiciais de Província*); and District Judicial Courts (*Tribunais Judiciais de Distrito*).

2. Restrictions to Foreign Investments

2.1 Approval of Foreign Investments

Approval of foreign investments is not mandatory under Mozambican law. However, in order for foreign investors (both individuals and corporate entities) to benefit from the guarantees and incentives set out in the Investment Law, approved by Law No 3/93, of 24 June 1993 (*Lei dos Investimentos*, or IL) (particularly the right to repatriate the invested capital and profits obtained, tax and customs incentives, and the State's guarantee of security and protection of the investments and private property), they must comply with the procedure as set out in **2.2 Procedure and Sanctions in Case of Non-Compliance**.

On one hand, for profits to be transferred out of the country and for the invested capital to be re-exported, the minimum

direct foreign investment, resulting from equity investment, is MZN2,500,000.00. Foreign investors that meet one of the scenarios referred to hereunder may also be granted with this right:

- generate an annual turnover of no less than MZN7,500,000.00 from the third year of activity;
- present annual exports of goods or services in the minimum amount of MZN1,500,000.00; or
- create and maintain direct employment for at least 25 national employees, who shall be registered in the national social security system from the second year of activity.

The investment project/investment contract must be registered in the name of the implementing company or of the company name that was reserved for such purpose.

The IL does not apply to investments in the areas of prospection, research and production of oil and gas, and mining of mineral resources. Public investments financed by funds from the General State Budget or investments that have an exclusively social nature also fall outside the scope of the IL.

2.2 Procedure and Sanctions in Case of Non-Compliance

The investment project proposal – be it for investments to be carried out in Special Economic Zones (*Zonas Económicas Especiais*, or ZEE), in Free Industrial Zones (*Zonas Francas Industriais*, or ZFI) or outside those areas – should be presented before the Agency for the Promotion of Investment and Exportations (*Agência de Promoção de Investimentos e Exportações*, or APIEX).

There are official forms (available in Portuguese and English) to be filled in by the applicant, who shall also present the following mandatory documents:

- a copy of the applicant's identification document;
- the commercial registry certificate or certificate of reservation of corporate name of the implementing company;
- the plan or drawing of the location where the project will be implemented; and
- a copy of the commercial representation licence (only when the project implies the establishment of a foreign commercial representation).

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

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

Failure to comply with this will result in an inability to repatriate invested capital or dividends.

2.3 Commitments Required from Foreign Investors

The mandatory requirement is that the investment complies with the minimum investment amount/other conditions, as indicated in 2.1 Approval of Foreign Investments.

2.4 Right to Appeal

Prior to resorting to courts, the investors have the opportunity to challenge the decision in accordance with administrative rules of procedures, both by means of a claim (to the entity responsible for the decision) and of a hierarchical appeal (to the hierarchical superior of the entity responsible for the decision). The investors will then, generally speaking, be able to resort to the civil and administrative courts.

Administrative procedures and court actions are extremely bureaucratic and time-consuming. Investors exercising their right to appeal should expect decisions to take months or even years (in the case of court decisions).

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entities

The Mozambican Commercial Code, approved by Decree-Law No 2/2005, of 27 December 2005, and subsequently amended (last amendment in 2018), regulates the types of legal entities.

There are three types of unlimited liability companies (partnerships, or *sociedades em nome colectivo*; limited partnerships, or *sociedades em comandita simples*; and partnerships by shares, or *sociedades em comandita por acções*) and three types of limited liability companies (capital and industry companies, or *sociedades de capital e indústria*; private limited companies, or *sociedades por quotas*; and public limited companies, or *sociedades anónimas*).

In practice, however, only private limited companies and public limited companies are numerically significant.

Private Limited Companies (SQ)

Traditionally, these are used as small investment vehicles (they often have a family structure). The most significant features of these companies are as follows.

- *Number of shareholders* – a minimum of two shareholders (except in the case of a single-shareholder company, necessarily incorporated by one individual).
- *Share capital* – there is no legal requirement as to the amount of share capital. It is freely set by the shareholders, although the amount must be appropriate for the

company to carry out its corporate purpose. Industry contributions are not allowed.

- *‘Quotas’* – the share capital is divided into shareholdings called ‘quotas’, whose par value is expressed in local currency. The identity of their holders must always be referred to in specific corporate documents such as the articles of association, company registration, etc.

Public Limited Companies (SA)

This type of vehicle is generally chosen for larger companies or when shareholders prefer to have their identity remain private (to the extent permitted by law). Despite involving a more complex structure than a private limited company, a public limited company allows greater flexibility to its shareholders, in particular in what refers to the transfer of shares.

Other features of this type of company are as follows.

- *Number of shareholders* – a minimum of three shareholders. Where the State is a shareholder, directly or through a State-owned company or any similar entity, the company may be incorporated with one shareholder.
- *Share capital* – no minimum share capital requirement. The amount of share capital must be appropriate to carry out the corporate purposes and must be expressed in local currency. Regarding the payment of the share capital, an SA may only be incorporated when the entire share capital has been subscribed and when at least 25% has been paid up.
- *Shares* – an SA’s share capital is divided into shares, which may be nominative or bearer shares, represented by certificates of shares. Nominative shares may also be classified as registered or book entry shares.

3.2 Incorporation Process

The process of incorporating a company in Mozambique consists mainly of the following formalities:

- application for a certificate of name reservation of the company at the Commercial Registry Office (*Conservatória do Registo das Entidades Legais*);
- preparation of the articles of association;
- deposit of the share capital in an account opened in the name of the company to be incorporated in a Mozambican bank (the share capital deposited may be used after the registration of the commencement of activity before the Tax Authority);
- incorporation of the company by private document signed by the shareholders, their signatures having to be certified by a notary in person; if a more solemn form is required for the transfer of the goods that the shareholders put up for the company (including real estate), the law requires the contract to be executed by public deed;
- registration of the incorporation of the company at the Commercial Registry Office (within 90 days), a certificate attesting its essential elements being subsequently issued;

- publication of the company's incorporation in the Mozambican Official Gazette (*Boletim da República*);
- registration of the company with the Tax Authority, by obtaining the Single Tax Identification Number (*Número Único de Identificação Tributária*, or NUIT);
- licensing of the company's business; and
- submission of the commencement of business declaration to the Labour Directorate (*Direcção do Trabalho*) and registration of the company and of each of its employees with the National Institute of Social Security (*Instituto Nacional de Segurança Social*).

The process of incorporation may take an average of 15 days (excluding the time required for licensing purposes).

3.3 Ongoing Reporting and Disclosure Obligations

Mozambican law establishes several reporting and disclosure obligations regarding the main features of commercial companies. According to the rules applicable to commercial registry, the following are subject to mandatory registration before the Commercial Registry Office: alterations to the articles of association and appointment, reappointment, exoneration and resignation of members of corporate bodies.

Pursuant to a 2018 amendment of the Commercial Code, commercial companies that are subject to corporate income tax and obliged to have organised accounts shall deposit the balance sheet and annual accounts approved by the shareholder meeting before the Commercial Registry Office every year.

3.4 Management Structures

Private Limited Companies (SQ)

In terms of governing bodies, these companies have a 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.

SQ 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 renewable 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 resolved upon by means of a shareholders' resolution.

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

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

Public Limited Companies (SA)

In terms of governing bodies, these companies have a general meeting (deliberative), board of directors (management body) and supervisory board or statutory auditor (supervisory body).

The board of directors comprises an odd number of directors, who may be unrelated to the company appointed in the articles of association or by resolution of the shareholders to hold office for re-eligible terms of four years (unless otherwise provided by the articles of association). The company may have a sole director provided that the share capital does not exceed MZN500,000.00.

Generally, the directors are entitled to receive remuneration, the amount of which is to be resolved upon by means of a shareholders' resolution. In addition, directors' liability should be guaranteed if so determined by the company's articles of association.

Among other limitations settled in the law, directors may not carry on, without specific authorisation 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.

3.5 Directors', Officers' and Shareholders' Liability

In terms of asset liability, shareholders of private limited companies (SQ) are jointly and severally liable for the whole of the share capital contributions. Claims of creditors are limited to the assets of the company for its debts.

The Commercial Code allows for the articles of association to establish that one or more shareholders are also liable for the company's debts up to a certain amount. In this case, this liability may be joint with the company's liability or may be subsidiary in relation to it, but must be equal for all shareholders falling under this obligation. In any case, this liability only binds the shareholder while he or she is a shareholder and it is not transmitted upon his death.

In terms of asset liability in public limited companies (SA), 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.

Article 87 of the Mozambican Commercial Code establishes a set of situations where the legal personality of the corporate entity shall be disregarded in order to make the shareholders liable. In all these cases, the shareholders shall act with

fault or malicious intent. The situations foreseen in the law include the following cases:

- the company is used as a means to commit fraud or misuse of economic power;
- where the violation of essential rights of consumers or the environment occurs;
- where the legal personality is used to harm the interests of the shareholder, of the employees of the company, of a third party, of the State and of the community where the company pursues its activity; and
- in certain cases of bankruptcy of the company that is part of a company group.

In terms of directors' liability, generally they are liable towards the company for the damages they cause pursuant to acts or omissions that were carried out in violation of legal provisions or provisions from the articles of association, except when they prove they acted without fault. The Commercial Code also establishes that directors are liable towards creditors of the company when, due to infringement of a legal provision or provisions of the articles of association that protected their rights, the assets of the company become insufficient to satisfy all credits. They are also liable towards the shareholders of the company or third parties with reference to the damages they directly cause them while exercising their functions, pursuant to the general terms of the law.

4. Employment Law

4.1 Nature of Applicable Regulations

Pursuant to the Labour Law, approved by Law No 23/2007, of 1 August 2007 (*Lei do Trabalho*, or LL), the following constitute sources of labour law:

- the Constitution of the Republic of Mozambique;
- normative acts from Parliament and government;
- international treaties and conventions; and
- collective bargaining agreements.

Practices and customs of each profession, sector of activity or a company that are not contrary to the LL and the principle of good faith are also deemed as a source of labour law (except if it is agreed that they do not apply). Although not deemed as a source of law, the Law allows for codes of conduct to be put in place.

In the case of a conflict between the various sources, the solution that appears most favourable to the employees shall apply, except if the provisions of a higher level are mandatory.

The LL does not govern employment contracts concluded before 31 October 2007, regarding the trial period, vacation, lapse of rights and procedures, as well as procedures for dis-

ciplinary action and termination of an employment contract, matters that regarding those contracts continue to be subject to previous legislation (Law No 8/98, of 20 July 1998).

4.2 Characteristics of Employment Contracts

The LL establishes that the employment contract is subject to written form, shall be dated and signed by both parties and shall include the following clauses:

- identification of the employer and of the employee;
- professional category; tasks or activities agreed;
- workplace;
- duration of the employment contract and conditions for its renewals;
- amount, form and timing of payment;
- date of effectiveness;
- indication of the duration and its underlying reason (if not for indefinite term); and
- date of execution and of term (if not for indefinite term).

Contracts for definite term that do not exceed 90 days are not required to be made in written form.

The lack of written form of the employment contract does not affect its validity nor the rights of the employee and non-compliance with this requirement is deemed as being attributable to the employer, which is automatically subject to all its legal consequences.

4.3 Working Time

As a rule, normal working hours shall not exceed eight hours per day and 48 hours each week. This is based on a six days-a-week model, but the daily maximum can be increased up to nine hours a day as long the employee is granted an extra half-day of rest per week. The mandatory weekly rest corresponds to at least 20 consecutive hours, usually on Sunday, except in those cases expressly provided for by law.

By means of a collective bargaining agreement, normal daily work may exceptionally be increased to 12 hours. This requires that the weekly duration does not exceed 56 hours, and the average duration of 48 hours of work per week is calculated with reference to maximum periods of six months. Certain industrial establishments that are not on shift work may have normal working hours of 45 hours per week, over a five-day week.

Considering the specificity of their functions, employees who hold leadership and management jobs or occupy positions of trust or of supervision or positions whose nature so warrants may be exempt from fixed working hours.

There is a possibility for reduction or increase of the maximum limits of normal working hours referred to, but it shall not cause economic loss for the employee or imply unfavourable changes to their working conditions.

The work schedule shall be determined by the employer, pursuant to consultation with the relevant trade union body. Pursuant to being endorsed by the managing body of the employer, it shall be posted in the workplace.

4.4 Termination of Employment Contracts

Mozambican labour legislation enshrines the right of employees to employment stability, prohibiting and punishing termination of employment contracts that are not grounded in the law.

There are three more common forms of termination of employment contracts pursuant to a decision by the employer:

- termination during the trial period;
- dismissal due to a disciplinary reason; and
- termination due to objective reasons.

During the trial period, either party may terminate the contract without it being necessary to invoke due cause and without right to compensation, provided that a minimum of seven days' notice is granted. The trial period duration varies in accordance with the type of employment contract at issue.

Disciplinary dismissal must be based on a disciplinary infraction – 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 work, provided it was preceded by training for the purpose;
- serious violation of the employee's duties with fault; and
- detention or imprisonment of the employee, unless subsequently acquitted or exempted from prosecution.

Under the LL, the employer is also allowed to terminate the employment contract with notice, provided that such decision is based on structural, technological or market reasons and is deemed to be essential to the competitiveness, economic recovery, administrative or productive reorganisation of the company, following compliance with the formal procedure required for the purpose. In this case, where more than ten employees are encompassed at the same time, the termination process at issue shall be deemed as a collective redundancy, with a specific and distinct procedure.

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

In the case of a permanent employment contract, the minimum amount of compensation payable may vary between three and 30 days of pay per year of service (depending on

the employee's wage salary and date of termination of his or her contract) or between 45 days of pay and three months of pay for every two years or part thereof (in those cases in which a previous legal framework applies).

All these types of termination must be preceded by lodging and complying with the respective legal procedure.

As indicated above, collective redundancies are very similar to individual dismissals due to objective reasons but have to apply to at least ten employees.

The employer shall inform the labour unions and the employees encompassed by the collective redundancy of the grounds invoked for the dismissal and of the number of employees at issue. The employer shall also communicate its intention to the ministry overseeing labour prior to initiating the negotiations with the labour union.

The consultation process between the employer and the labour union shall not last for more than 30 days and its object shall refer to the grounds being relied upon by the employer, the possibility to avoid or mitigate their effects, as well as the necessary measures to ease their consequences for the affected employees.

Compensation is the same as indicated above for termination due to objective reasons.

4.5 Employee Representations

Employees are granted the right, without any discrimination and without need for previous approval, to participate in the creation of a representative body or to join one.

Among others, employee representative bodies such as unions are competent for defending and promoting the rights and interests of the employees; representing employees in negotiation processes; and entering into agreements with other unions.

There are instances where the LL provides for mandatory consultation/a duty to inform the representative of the employees (eg, termination of employment contract procedures; when disciplinary measures are applied).

5. Tax Law

5.1 Taxes Applicable to Employees/Employers

As a rule, employment income is subject to personal income tax (*Imposto sobre o Rendimento das Pessoas Singulares*, or IRPS). 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 the income derives from sources located

in Mozambique. Residents are all persons who, in the year to which the income relates:

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

Employment income includes, along with the base salary, all the rights, benefits and advantages received by the employee within the scope of the employment relation and provided that the same qualify as an economic advantage (such as house allowances, travel allowances and the amount of meal allowance exceeding the minimum salary legally established).

Nevertheless, there are some parts of employment income excluded from IRPS, such as (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.

No specific deductions are available for employment income.

As a rule, employment remuneration is subject to IRPS withholdings (usually monthly), provided that the employer has organised accounting.

In the case of tax residents, the amount of withholding tax ranges between MZN0.00 and MZN28,375.00, and is determined taking into consideration the personal situation of the respective taxpayers (namely, factors such as marital status or the existence of dependants) and the amount of income earned. For non-resident taxpayers, the employment income is taxed at a withholding rate of 20%.

With reference to Social Security, employers' contributions amount to 4% and employees' contributions to 3% of the total gross remuneration. The notion of 'remuneration' for purposes of these contributions has several relevant exclusions, including a number of subsidies paid to employees.

5.2 Taxes Applicable to Businesses

A company doing business in Mozambique may be subject to several taxes, namely: (i) corporate income tax (*Imposto sobre o Rendimento das Pessoas Colectivas*, or IRPC) and (ii) value-added tax (VAT). Depending on the type of business activity of the taxpayer, it may also be subject to specific taxes, such as oil and/or mining taxes. Additionally, the acquisition of real estate property should trigger real estate

transfer tax (Sisa). Finally, some transactions, such as financing transactions or the rendering of guarantees, should be subject to stamp duty.

Corporate Income Tax (IRPC)

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 a permanent establishment in Mozambique and entities without a permanent establishment in this territory. Resident entities are all those having their registered office or effective management in Mozambique. Non-resident taxpayers are deemed to be entities that, having no tax residence or permanent establishment in Mozambique, earn income in this territory not taxed under IRPS.

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

The concept of PE laid down in the IRPC Code is very similar to the one established in the Organisation for Economic Co-operation and Development's Model Tax Convention on Income and on Capital.

Computation of the 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 according to the same rules. The first method applies to resident companies engaged in business activities and to PEs of foreign entities. The second method applies to resident entities not engaged in business activities and to non-residents with no PE in Mozambique that derive income in one or more categories. With reference to the first method, losses may be carried forward for five years.

The general flat rate of the IRPC is 32%.

It should be added that for undocumented and illicit expenses there is an autonomous taxation of 35% and these expenses are not deductible from the taxable income for IRPC purposes. A withholding tax of 20% is also applied to the income paid to companies with their 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.

As regards non-residents, income arising from investments made in Mozambique is, in general, taxed according to specific withholding tax rates, unless their activity is carried out

through a permanent establishment situated therein (in this last scenario, the permanent establishment should be taxed in accordance with the rules applicable to resident entities).

As a general rule, the withholding tax rate is 20%. Nevertheless, certain services rendered in Mozambique are subject to a final 10% (ten percent) IRPC rate, namely income derived from (i) telecommunications and international transport services (as well as from the assembling and installation of equipment related to those services); (ii) services related to the construction, rehabilitation and production of infrastructures, or to the transport and distribution of electricity in rural areas, in the context of public projects; and (iii) securities listed on the Mozambique Stock Exchange, except the interests on treasury bills and debt securities listed on a stock exchange.

Taxation of dividends, capital gains, interest and royalties

Residents

Intra-group dividends distributed by a resident participated company and received by a resident parent company may be relieved from double taxation if certain conditions are met, which are: (i) a holding period of at least two years, or less if the consecutive two-year old period is completed subsequently, and (ii) a minimum shareholding percentage of 20%. If the parent company is a pure holding company, risk capital company, an insurance company, or a consortium (*associação em participação*), there are no thresholds as regards holding percentages and periods.

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

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

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

The concept of 'capital gain' is comprehensive, encompassing not only the positive result from a disposal of assets but also the result from an expropriation or damages compensation, and from reorganisations 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.

As a general rule, interest paid to resident entities should be subject to withholding tax at the rate of 20%. Notwithstand-

ing, interest made available to resident holding companies may be exempt from withholding tax, provided that some requirements are met (namely, provided that the interest arises from a shareholder's loan and that the holding company holds a participation of at least 10% in the participated entity for at least one year prior to the payment of the interest).

Royalties should also be subject to withholding tax at the rate of 20%.

Non-residents

Interest payments are subject to a final IRPC rate of 20%.

As regards dividend payments to non-residents, Mozambique also imposes a 20% flat final withholding rate charged on the gross amount of the dividends, unless the companies distributing the dividends are listed on the Mozambique Stock Exchange, in which case the rate is reduced to 10%.

Capital gains made by non-resident entities should be declared and subject to IRPC at the general rate of 32%. With reference to capital gains made with the transfer of shares or real estate property, the relevant tax return should be submitted within the 30 days following the transfer.

Finally, the royalties' internal withholding tax rate is also 20%. The withholding tax rates on dividends, interest and royalties can be reduced if the investor resides in a treaty country, varying between 0 and 15%.

Value-added Tax

VAT was introduced in Mozambique in 2007. It is mainly inspired by the EU VAT and, as such, works on the basis of an assessment of tax at every stage of the economic chain and a deduction of the same amount of tax by all agents involved, except for the final consumer.

There is no express overarching concept of taxable person for VAT purposes in Mozambique, but it can be said that the typical taxable person is the one who carries on, in a habitual and independent manner, a business activity, be it commercial, industrial or agricultural.

Nevertheless, there are many other situations where a person or company that does not fit in the aforesaid definition is, 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
- the 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; and warehousing, port or airport services. These bodies are not subject to VAT in respect of those activities or transactions in which they engage within their *jus imperii*.

VAT is levied on the provision of goods and services as well as on the import of goods. It is chargeable when the goods are made available to the purchaser or where services are provided. 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.

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

There is a single VAT rate of 17%.

The Mozambican VAT regime establishes certain exemptions, which may be full (or 'zero-rate') or partial. Full exemptions allow the economic agent to recover in full the VAT on goods and services already acquired, while they exempt from VAT goods sold or services provided by that economic agent. This group includes exports of goods and services related therewith, the import and sale of ships and aircraft for use in international trade, and other services related to transportation and distribution. The law also provides for the possibility of an economic agent setting up a storage depot, allowing him to store and handle goods under the full-exemption mechanism.

A broad range of operations may qualify for partial exemptions, such as financial services, insurance, education, health and commercial or residential leases and the acquisition of services related to the drilling, research and construction of infrastructures in the context of mining and oil activities that are in a prospecting and research phase.

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

VAT taxable persons should deliver, on a monthly basis, a VAT periodic return with reference to the transactions concluded during the preceding month and proceed to the respective payment of the amount of tax due.

Stamp Duty (SD)

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

- financial transactions, including the purchase of public debt securities (1% of the par value), loans with a term of less than one year (0.03% per month), loans with a term of between one year and five years (0.4% per year), and loans with a term of five or more years (0.5% per year);
- mortgages and other collateral (0.02% per month or 0.2% and 0.3% per annum for guarantees less than one year, between one and five years or more than five years);
- interest, commissions and consideration for financial services, in particular resulting from discounts of bills of exchange and public debt securities, loans, credit accounts and credits pending settlement (2% of their value);
- transfers of shareholdings (0.4% of the par value); and
- purchase and sale, swap, assignment for consideration of real estate (0.2% of the value).

Property Transfer Tax (Sisa)

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

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

5.3 Available Tax Credits/Incentives

According to Law No 3/93, of 24 June 1993 (*Lei dos Investimentos*), tax incentives may be granted to investment or development projects in specific areas, by means of candidatures lodged through application to the effect submitted to the 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.
- *Agriculture and fisheries* – in this area, any kind of investment (provided it is conducted under the Investment Act), regardless of size and geographical location, can benefit from the exemptions and reduced rates provided for in the Tax Benefit Code.
- *Hotels and tourism* – this scheme applies to investment projects that promote the rehabilitation, construction, enlargement or modernisation of hotels and other infrastructure related to tourism and/or development of nature parks and reserves. However, the law specifically excludes restaurants, bars, nightclubs and similar activities, as well as car rentals and travel agencies.
- *Commerce and industry in rural areas* – this scheme is available for investment in construction and/or rehabilitation of infrastructure and industrial activities in rural areas.
- *Manufacturing and assembly* – this scheme is available for investments in manufacturing and assembly with a turnover of less than MZN3 million and whose value added in the final product is at least 20%.
- *Science and technology parks* – this scheme is available for investments in the area of scientific research, technology development related to telecommunications and information as well as R&D in general.
- *Major investment projects* – this scheme is available for industrial investment projects involving investment of at least MZN12.5 billion or that are related to public infrastructure considered relevant to Mozambique's economy.
- *Rapid Development Zones* – Rapid Economic Development Zones (*Zonas de Rápido Desenvolvimento*) are geographical areas having great potential in natural resources, but lack infrastructure and have little economic activity. 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*, or ZFI) are created by the Council of Ministers.
- *Special Economic Areas* – the government of Mozambique has also created so-called Special Economic Areas (*Áreas Económicas Especiais*), opening up the possibility of granting tax incentives to entities operating in these geographic areas. Depending on the investment area, tax incentives may take the nature of deductions from taxable income, tax deductions, exemptions, reductions of the tax rate and deferred payment of tax.

In parallel with the tax incentives already mentioned, Laws No 27/2014 and 28/2014, both of 23 September 2014, 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.

Additionally, the Mozambican Tax Benefits Law also establishes several tax benefits.

Tax Credit for investment

Investments in new fixed tangible assets used in the activity of a company in the Mozambican territory may benefit from an investment tax credit equal to 5% to 10% of the total investment made. This investment tax credit is deducted to the amount of CIT due, up to the total amount of the tax assessment. This tax benefit does not apply to investments in tangible fixed assets with reference to the construction, acquisition, restoration, or extension of real estate properties and passenger vehicles among other assets not directly related to the company's activity.

Increase of Deductible Costs

During a period of five years as of the date of the beginning of activities approved under an authorised investment project, the amount of some deductible expenditures may be increased for purposes of CIT.

If the taxpayer carries out its business activity in Maputo, 110% of the value of expenditures for the construction and rehabilitation of roads, railways, airports, telecommunications, water supply, electric energy and other works of public utility is deductible for tax purposes.

In the case of activities carried out in the rest of the provinces, the amount mentioned above is increased to 120%.

Technology Tax Benefit

The amount invested in specialised equipment that qualifies as advanced technology during the first five years as of the date of the beginning of activity may be deducted from taxable income up to a maximum of 10% of the taxable income.

5.4 Tax Consolidation

Tax consolidation is not available.

5.5 Thin Capitalisation Rules and Other Limitations

Any situation of excessive indebtedness towards a non-resident related party may generate non-deductible interest in the proportion above which such excessive indebtedness is deemed to arise.

Interest in those conditions will be excessive whenever the amounts lent by related non-resident entities exceed more than twice the value of a resident borrower's equity.

The special relationship between the lender and borrower will occur when the former owns, directly or indirectly, more than 25% of the latter's share capital, exercises a significant influence over its management, or has the same parent company. However, excessive indebtedness will not be presumed if a Mozambican borrower proves that, in the same conditions, it could have obtained the same level of indebtedness from an independent party, by presenting such proof within 30 days of the end of the tax year concerned.

5.6 Transfer Pricing

The transfer pricing regime of Mozambique, in force since 1 January 2018, was approved by Decree No 70/2017, of 6 December 2017, and applies 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 they are residents or non-residents for tax purposes.

In order for there to be related parties, one entity/individual shall:

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

The applicable transfer pricing methods, 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 price, cost-plus method, profit split method, transitional net margin, or any 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 between corporate groups, such as (i) cost sharing arrangements and (ii) intra-group services agreements.

Lastly, entities that in the previous financial year have obtained an amount of net sales and other revenues of at least MZN2,500,000.00 will have to prepare a transfer pricing file.

5.7 Anti-evasion & Anti-avoidance Rules

Besides the above-mentioned thin capitalisation rules and transfer pricing regime, the Mozambique tax law establishes some additional anti-evasion rules.

CFC Provisions

Mozambican controlled foreign companies (CFC), which are overseas companies domiciled in low-tax jurisdictions and controlled by Mozambican persons or companies, may see their profits, distributed or not, being attributed to those persons or companies. Such attribution may take place when those Mozambican shareholders hold (i) directly or indirectly, 25% of the share capital of the CFC; or (ii) 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 individuals or companies resident in low-tax countries (that is, taxed at an effective rate of less than 60% of the IRPC rate of 32%) are not deductible, except where the resident payer is able to prove that those payments relate to real and effective transactions, and the amounts thereof are not exaggerated.

Anti-treaty Abuse Rule

The Mozambican Tax System Law foresees an anti-treaty abuse rule, pursuant to which the benefits established by international double tax treaties (DTT) are not granted to an entity having its tax residence in a contracting state when the relevant DTT is used by a third party, not resident of the said contracting state, for the purpose of obtaining the relevant tax benefits nor in any other situation of treaty abuse.

6. Competition Law

6.1 Merger Control Notification

The Competition Law (*Lei da Concorrência*), approved by Law No 10/13, of 11 April 2013, defines the concentration of companies as an act that consists of the merger of two or more previously independent companies, in the acquisition of a part of one or more companies or the creation or acquisition of a common company that pursues in a lasting manner the functions of an autonomous economic entity.

The concentration operations shall be communicated to the Regulatory Authority for Competition (RAC) when they meet one of the following conditions:

- the combined turnover of the undertakings concerned in Mozambique in the preceding year is equal to or exceeds MZN900,000,000.00;
- the transaction results in the acquisition, creation or reinforcement of a share of 50%, or above, of the national market of a given good or service; or

- the transaction results in the acquisition, creation or reinforcement of a share of 30%, or above, of the national market of a given good or service, as long as each of at least two of the undertakings concerned achieved in the preceding year a turnover of at least MZN100,000,000.00 in Mozambique.

The Competition Law establishes that non-compliance with the obligation to communicate the act of concentration is an infraction punishable with a fine that may not be more than 1% of the company's turnover of the previous year.

6.2 Merger Control Procedure

When any of the conditions referred to in **6.1 Merger Control Notification** is met, the concentration operations are subject to previous notification to the RAC. The communication shall take place within seven business days pursuant to the conclusion of the agreement or merger project.

Within five business days from the submission referred to in the previous paragraph, the RAC shall promote the publication in two national newspapers of the essential elements of the operation (the costs shall be borne by the authors). Any interested person may submit their observations within 15 days. The RAC shall provide its opinion with a maximum deadline of 30 days under penalty of a tacit approval occurring. This deadline will be suspended if the RAC requires further information or documents to be provided, or requests the correction of any of the provided elements. Throughout this period, the RAC may require any information it deems relevant for its decision from any public or private authorities.

6.3 Cartels

The Competition Law prohibits agreements, decisions of association and concerted practices between competing undertakings (horizontal practices), as well as agreements and practices between undertakings and their suppliers and customers (vertical practices) that impede, distort or restrict competition in the market. For each of these, the Law provides extensive insight on which practices shall fall within these categories.

The abuse of dominant position by one or more undertakings is also forbidden. It is assumed that such an abuse occurs when companies hold (whether individually or jointly) a share above 50% of the relevant market. The abuse of economic dependence is also forbidden in cases where a company is economically dependent on a supplier or client through not having an equivalent alternative.

Prohibited agreements and abuses of dominant position may nevertheless be exempted if they lead to economic efficiencies or promote the public interests set forth in the Law (such as the promotion of competitiveness of SMEs 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 RAC.

The legal framework focuses completely on the Mozambican national market.

6.4 Abuse of Dominant Position

The Competition Law establishes that the abuse of dominant position by one or more company or companies is forbidden.

For the purpose of the Mozambican framework, there shall be a dominant position with reference to the market of a given good or service (i) when a company acts in a market where it does not experience significant competition or where it assumes preponderance in relation to its competitors, or (ii) when two or more companies concertedly act in a market where they do not experience significant competition or where they assume a preponderant role in relation to third parties.

The Competition Law includes a non-exhaustive list of situations/behaviours deemed as abusive, which includes, for example, breaking a commercial relation, whether partially or in whole, in an unjustified manner or unjustifiably selling merchandise below market price.

Abuse of economic dependence by one or more companies is also forbidden. A supplier or client of one or more companies is in economic dependence when it does not have an equivalent alternative. Abuse of economic dependence shall occur when there is an unlawful use of the situation referred to above, namely in the following cases:

- subordinate the execution of contracts to the acceptance by the counterparties of ancillary provisions that, according to their nature or agreement with normal commercial practice, have no connection with the object of such contract;
- condition the sale of a good to the acquisition of another one, or to the use of a service or subordinate the provision of a service to the use of another one, or to acquisition of a good; and
- apply systematically or on occasion discriminatory conditions on prices.

7. Intellectual Property

7.1 Patents

The Industrial Property Code (*Código de Propriedade Industrial*, or CPI), approved by Decree No 47/2015, of 31 December 2015, establishes the industrial property rights framework and defines the rights and obligations that arise from their granting and registration, including supervision mechanisms, in order to promote innovation, transfer and dissemination of technology and consumer protection.

Industrial property encompasses all commerce, services and industry (namely the agriculture industry, the fisheries industry, the forest industry, the food industry, and the construction and extraction industry, including all natural or manufactured products).

The Copyright Code (*Código dos Direitos de Autor*) was in turn approved by Law No 4/2001, of 27 February 2001, and has as its object the protection of literary, artistic and scientific work, and the respective rights of the authors, interpreters or persons that execute them, and it intends to stimulate the creation and production of intellectual work in these areas.

The CPI defines patent as the legal title granted to protect an invention. Invention is an idea that allows, in practice, the solution of a specific problem in the technical domain, which can be a product, a process, or both.

An invention patent request shall be made in an application in Portuguese, by using the applicable official form. The request shall include the name of the holder of the invention, the nationality and other information pertaining to the applicant (successors, proxies), and the invention title. The following elements shall also be lodged: (i) descriptive report, (ii) one or several claims, (iii) drawings (if any) and (iv) the summary of the invention. The request shall be presented in three copies and a fee is due for its presentation.

The applicant is also obliged to provide the date and number of any patent request lodged abroad and shall also present several other elements as indicated in the CPI (eg, copy of the patent/other protection titles granted pursuant to such request(s)).

The patent invention shall be in place for 20 years, counted from the date of deposit of the application.

The violation of rights conferred by the patent is punishable with a fine of 89 minimum wages in the case of individuals and 200 minimum wages in the case of a public entity, all of the legal sector.

7.2 Trade Marks

Trade marks are defined in the CPI as a distinctive signal, which is manifestly visible, which can be heard or smelt, susceptible of graphic representation, that allows products or services of a given entity to be distinguished from the products and services of another entity, made up of words, including people's names, drawings, letters, numbers, shape of the product or of its packaging.

A trade mark request shall be made in an application in Portuguese, in the duly approved form, accompanied by proof of payment of the administrative cost, a reproduction of the trade mark and the list of products or services for which the

registration of the trade mark is being requested. There is an extensive list of documents that shall be lodged with the request that includes (i) proof of licensing for the exercise of activity (applicable to Mozambican persons), (ii) power of attorney granted before a notary to an official industrial property agent (for foreign applicants) and (iii) authorisation from the holder of a previous registration and of the holder of an exclusive licence (if applicable).

The registration shall have the duration of ten years, counted from the date of deposit of the application. The registration may be renewed for indefinite consecutive ten-year periods.

Illegal use of trade marks is punishable with a fine of 112 minimum wages in the case of individuals and 224 minimum wages in the case of a public entity, all of the legal sector.

7.3 Industrial Design

Industrial design is defined in the CPI as any set of lines, colours or forms in three dimensions that provides a new and original visual look to a product, to a part thereof, and that may be used as a prototype for its industrial production or manufacturing.

An industrial design request shall be made in an application in Portuguese, in duly approved form, and be accompanied by drawings, pictures or other graphic representations that are adequate to the object that the industrial design incorporates. It may also include a copy of the object that incorporates the industrial design. A fee is due for the submission of the request.

The CPI provides for provisional protection; the registration of an industrial design shall have the duration of five years, counting from the date of deposit of the registration request. The registration may be renewed for consecutive five-year periods up to a maximum of 25 years.

The violation of exclusive rights granted to industrial designs is punishable with a fine of 33 minimum wages in the case of individuals and 112 minimum wages in the case of a public entity, all of the legal sector.

7.4 Copyright

Copyrights apply to literary, artistic and scientific original creations; namely, written works (including computer programs), musical works (whether accompanied by text or not), drama and musical drama works, choreographic pieces/pantomimes, audiovisual work and works of art (drawings, paintings, sculptures, etc), among others. It may also apply to derivative works, such as compilations and translations.

The rights of an author, interpreter, person that executes or producers are acquired pursuant to the creation of a work by contract or licence. The registration makes the work and

the protected rights public. The following are subject to registration: acts that constitute, transmit, change or extinguish copyright; the encumbrance of copyrights; the literary or artistic name; the title of the work and the author; and the seizure over copyrights. The registration certificate has full evidential value and may only be limited in cases foreseen in the law.

As a general rule, copyright and related rights are maintained throughout the author's life and for 70 years pursuant to his or her death. Certain rights (*direitos não patrimoniais*), including the right to remain anonymous and the right to use a pseudonym, are unlimited in time.

Infringement of copyright is subject to civil and criminal liability.

7.5 Others

The CPI, other than the matters indicated above, also includes rules governing registration procedures, protection rights and infractions applicable to utility models, appellations of origin and geographical indications, commercial names, establishment names and insignia names, logotypes and rewards.

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8. Data Protection

8.1 Applicable Regulations

The Constitution of the Republic of Mozambique grants people the right to privacy and data protection, deeming these rights as fundamental rights. However, for these rights to be effective, a legal framework governing them in depth is necessary.

Despite the reference in the Constitution to “computerised means”, it is accepted that the need to protect political, philosophical or ideological, religious faith, party affiliation and private life-related data encompasses the handling of this data through other means.

There is as yet no law that specifically governs data protection in Mozambique. The most significant statute is, as an alternative, Law No 3/2017, of 9 January 2017 (*Lei das Transacções Electrónicas*), which establishes the legal framework for electronic transactions, electronic commerce and electronic governance. This Law aims at regulating data protection, but does so in a limited manner, as it aims to grant protection to those who use information and communication technology.

Consequently, while having an important role in granting these individuals with legal certainty, it does not include the exhaustive and all-sector-encompassing regulation that is needed in the data protection field.

8.2 Role and Authority of the Data Protection Agency

There is no agency in charge of enforcing data protection rules.