

Public-Private Partnerships, Large Scale Projects, and Business Concessions

The Mozambican guiding norms for the process of contracting, implementing and monitoring Public-Private Partnerships (“**PPP**”), Large Scale Projects (“**LSP**”) and Business Concessions (“**BC**”) are set out in Law 15/2011, of 10 August 2011 (the “**PPP’s, LSP’s and BC’s Law**”).

Pursuant to the provisions under the referenced legal framework, an undertaking in a public domain area, excluding that of mineral and petroleum resources or in an area of provision of public services, in which, under contract and with full or partial financing of the private partner, the latter undertakes vis-à-vis the public partner, to accomplish the necessary investment and to operate the respective activity, for the efficient provision of goods and services which availability falls under the responsibility of the State is defined as a PPP. A LSP is regarded as the undertaking of an investment authorized or contracted by the Government, the amount of which, with reference to 1 January 2009, exceeds MZM 12.500.000.000,00. Finally, the BC consists of an undertaking which object is the prospecting, exploration, extraction and/or use of natural resources or other resources or national property assets, carried out under the terms of the respective contract or other means of creating title to the rights granted by the Government in the scope of such undertaking.

PPP, LSP and BC ventures carried out in the Republic of Mozambique shall be governed by the “PPP’s, LSP’s and BC’s Law”, by specific legislation of the sector in which the PPP, PGD or CE is implemented, the applicable Investment Legislation, other applicable Mozambican legislation and international conventions or treaties signed and ratified by the Republic of Mozambique.

Contracts consigned under this legislation may be in the form of Concession, Assignment of Operation and Management. Other complementary contracts may be applicable when necessary for the implementation, operation and maintenance of the relevant venture.

The following types of Concession Contracts are foreseen under the PPP’s, LSP’s and BC’s Law:

- (a) Build, Operate and Transfer (BOT);
- (b) Design, Build, Operate and Transfer (DBOT);
- (c) Build, Own, Operate and Transfer (BOOT);

- (d) Design, Build, Own, Operate and Transfer (DBOOT);
- (e) Rehabilitate, Operate and Transfer (ROT); or
- (f) Rehabilitate, Own, Operate and Transfer (ROOT).

The contractual modality of awarding a LSP venture which does not involve the concession of the use of national resources may be in the form of an Investment Project Authorization, granted pursuant to the Investment Legislation.

Contracts periods may be agreed and established between 10 and 30 years.

The implementing entity of a PPP, LSP and BC venture shall take the form of a commercial company, under the terms of the applicable legislation, have as corporate purpose, clearly defined and being able to be monitored, the implementation of the respective venture and be incorporated for a duration not inferior than the period of duration of the contract related to the venture.

More “recently”, in June this year the Government of Mozambique has approved the Regulation to the PPP’s, LSP’s and BC’s Law, by way of Decree 16/2012, of 4 June.

Besides establishing the institutional framework and detailing ventures procedural stages and proceedings, this Regulation provides for an important clarification point for circumstances where some essential elements characterizing a PPP, a LSP and/or a BC venture overlap. In this context, it shall be excluded from the BC category the definition of a venture as a PPP in public domain areas (except in the mineral and petroleum resources areas); it being excluded from the PPP category the definition of a venture as a BC in the mineral and petroleum resources areas, as well as in areas not pertaining to public domain.

Both PPP and BC ventures may be upgraded to the LSP category if the respective investment amount exceed MZM 12.500.000.000,00 with reference to 1 January 2009.

PPP, LSP and BC contracts must be concluded by public deed and are subject to publication at the Government Official Gazette (Boletim da República), with the main contract terms including, amongst other relevant elements: (i) the complete parties identification; (ii) description of venture object, goals and authorized activities; (iii) duration; (iv) level of investment; (v) type of fiscal incentives granted, including eventual guarantees against non-commercial risks; (vi) type of financial guarantees; (vii) main obligations and rights of each party; (viii) rights over use and exploration of land and natural resources; (ix) benefit sharing, including the share reserved to ensure the Mozambican participation in the venture; (x) estimated fiscal contribution of the project; (xi) agreed commitments to favor communities’ development within the social responsibility obligations agreed.

Financial guarantees granted under ventures may be in the form of a bank guarantee, an insurance policy, a cash deposit or of any other trustworthy financial instrument equally actionable and irrevocable, payable to the contracting entity.

An important feature under this Regulation is the possibility of provision of financial facilities by the State or any other public entity, either in the form of a subsidy or participation in the contractor or implementing entity share capital or of financial guarantee as such, the facilitation of access to guarantees and funding from multilateral or government institutions, and subsidies or compensations for the difference between the real cost and the price or administrative tariffs set by the Government

for the services/sales provided by the venture. These financial facilities mechanisms may be alternate or combined.

It also worth stressing the provisions related to the need to ensure under each PPP, LSP and BC the reservation of stake between 5% and 20% in the contractor or implementing entity's share capital, or in the consortium's share capital, for sale via stock market, preferentially to Mozambican individuals.

Ventures procedural stages include, in general, the following:

- (a) Conception;
- (b) Definition of basic principles;
- (c) Elaboration of technical, environmental, economic and financial feasibility studies;
- (d) Promotion of the venture initiative and public tender launch;
- (e) Assessment and analysis of tenders;
- (f) Award;
- (g) Negotiation;
- (h) Approval of venture and respective investment project;
- (i) Conclusion of contract;
- (j) Taking possession of the venture;
- (k) Implementation;
- (l) Management, operation and maintenance;
- (m) Monitoring and evaluation;
- (n) Restitution.



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