



# Chambers Global Practice Guides

Definitive global law guides offering  
comparative analysis from top-ranked lawyers

# Investing In... 2022

Mozambique: Law & Practice

Claudia Santos Cruz, André de Sousa Vieira,  
Ana Corrêa Cardoso and Tiago Arouca Mendes  
Morais Leitão, Galvão Teles, Soares da Silva &  
Associados

[practiceguides.chambers.com](https://practiceguides.chambers.com)

# MOZAMBIQUE

## Law and Practice

### Contributed by:

*Claudia Santos Cruz, André de Sousa Vieira,  
Ana Corrêa Cardoso and Tiago Arouca Mendes  
Morais Leitão, Galvão Teles, Soares da Silva &  
Associados see p.19*



## CONTENTS

<b>1. Legal System and Regulatory Framework</b>	<b>p.3</b>	<b>7. Foreign Investment/National Security</b>	<b>p.9</b>
1.1 Legal System	p.3	7.1 Applicable Regulator and Process Overview	p.9
1.2 Regulatory Framework for Foreign Direct Investment (FDI)	p.3	7.2 Criteria for Review	p.10
<b>2. Economic/Political/Business Climate</b>	<b>p.3</b>	7.3 Remedies and Commitments	p.11
2.1 Outlook and FDI Developments	p.3	7.4 Enforcement	p.11
<b>3. Mergers and Acquisitions</b>	<b>p.4</b>	<b>8. Other Review/Approvals</b>	<b>p.11</b>
3.1 Transaction Structures	p.4	8.1 Other Regimes	p.11
3.2 Regulation of Domestic M&A Transactions	p.5	<b>9. Tax</b>	<b>p.13</b>
<b>4. Corporate Governance and Disclosure/Reporting</b>	<b>p.5</b>	9.1 Taxation of Business Activities	p.13
4.1 Corporate Governance Framework	p.5	9.2 Withholding Taxes on Dividends, Interest, Etc	p.14
4.2 Relationship between Companies and Minority Investors	p.5	9.3 Tax Mitigation Strategies	p.14
4.3 Disclosure and Reporting Obligations	p.6	9.4 Tax on Sale or Other Dispositions of FDI	p.14
<b>5. Capital Markets</b>	<b>p.6</b>	9.5 Anti-evasion Regimes	p.15
5.1 Capital Markets	p.6	<b>10. Employment and Labour</b>	<b>p.16</b>
5.2 Securities Regulation	p.7	10.1 Employment and Labour Framework	p.16
5.3 Investment Funds	p.7	10.2 Employee Compensation	p.16
<b>6. Antitrust/Competition</b>	<b>p.8</b>	10.3 Employment Protection	p.17
6.1 Applicable Regulator and Process Overview	p.8	<b>11. Intellectual Property and Data Protection</b>	<b>p.17</b>
6.2 Criteria for Review	p.9	11.1 Intellectual Property Considerations for Approval of FDI	p.17
6.3 Remedies and Commitments	p.9	11.2 Intellectual Property Protections	p.17
6.4 Enforcement	p.9	11.3 Data Protection and Privacy Considerations	p.18

## 1. LEGAL SYSTEM AND REGULATORY FRAMEWORK

### 1.1 Legal System

Mozambique is a civil law jurisdiction and as such all economic sectors tend to be highly regulated.

The basis for contracting in Mozambique is the Civil Code, approved by Decree-Law No 47344, of 23 December 1967, as amended throughout the years, a statute which precedes Mozambican independence.

In Mozambique, the courts are sovereign and carry out their judicial power in line with the principle of separation of powers established in the Constitution of the Republic of Mozambique.

The government is headed by a prime minister, appointed pursuant to legislative elections, while the president of the republic is the head of state. The constitution of the republic includes the framework that governs the competences of the various bodies to legislate.

Carrying out business activities in Mozambique is heavily based on interacting with government authorities, from the registry authorities (for commercial and land purposes), to the tax authority, to the national directorates or services of the ministries overseeing the activity being pursued or the provincial/local authorities with such competences.

### 1.2 Regulatory Framework for Foreign Direct Investment (FDI)

Foreign direct investment (FDI) is governed by the Investment Law (Law No 3/93, of 24 June 1993) and its Regulation (Decree No 43/2009, of 21 August 2009, as amended).

Those who intend to invest in Mozambique and repatriate the profits abroad, must have their

projects approved by and registered with the Agency for the Promotion of Investments and Exports (APIEX), which operates under the oversight of the Ministry of Industry and Commerce.

This framework does not apply to investments in the areas of prospection, research and production of oil and gas or the extraction of mineral resources, nor does it apply to public investments financed by the state's budget or investments with exclusively non-profit purposes.

## 2. ECONOMIC/POLITICAL/BUSINESS CLIMATE

### 2.1 Outlook and FDI Developments Development of Natural Resources

As is well known, Mozambique holds the third-largest proven natural gas reserves in Africa, after Algeria and Nigeria (more than 100 trillion cubic feet). Apart from its natural gas reserves, Mozambique has other abundant natural resources, such as mineral resources, as well as access to the sea (unlike some of its neighbouring countries). The country has experienced a surge in FDI over the past few years evidently related to the development of the natural gas sector, particularly the offshore Rovuma Basin area. Several world-renowned companies, like Total and ExxonMobil, are already in the country. It is anticipated that the first floating LNG facility in Africa will be constructed in Mozambique in the next few years.

### Effects of COVID-19

Recently, the Bank of Mozambique (the central bank) intervened in order to ease bureaucracy applicable to foreign exchange regulations, a positive move for FDI. Pursuant to the COVID-19 pandemic, Mozambique, like many other countries, enacted state-of-emergency laws, lockdowns, minimum services, etc. The approved

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*

measures have been reviewed on a regular basis but in terms of FDI there is nothing noteworthy.

### Setbacks and Recovery

Mozambique has had its share of struggles in recent years. It is recovering from natural disasters, such as Cyclone Idai, which devastated the area of Beira. Politically, there has been military tension between FRELIMO (the party in power) and RENAMO. This is not novel but has escalated in the recent past and lingers on. There has also been violence with the presence of Daesh in the Cabo Delgado region (where the natural gas reserves are located). The State of Mozambique is seeking international co-operation to deal with this matter. Mozambique has also been involved in the so-called “hidden debts” scandal, where the state granted guarantees to state-owned companies only to have the validity of those guarantees challenged at home (in parliament and by public opinion) and abroad (causing it to be shunned by the IMF for a period of time). However, it is noteworthy that legislation has since been passed in order to lend more transparency and legal certainty to the procedure of granting state guarantees, in a clear signal to the international community that these events should not tarnish the country’s reputation. To conclude, it appears that Mozambique has been working to improve its overall image abroad and regain trust that it is a safe and interesting choice for FDI.

## 3. MERGERS AND ACQUISITIONS

### 3.1 Transaction Structures

#### M&A Transactions

M&A practice has been evolving in Mozambique over the last few decades. It is not an extremely sophisticated market and the most common M&A transactions are probably the following.

#### *Acquisition of shareholdings in commercial companies*

Shareholdings in commercial companies are most commonly acquired in private companies limited by quotas (*sociedade por quotas* or SQ) or public companies limited by shares (*sociedade anónima* or SA). This includes direct and indirect acquisitions.

#### *Acquisition of assets*

It is common, for example, to see the acquisition of businesses as a going concern (*trespasse*), an option where both assets and significant parts of the business are transferred as a whole.

Foreign investors should carefully consider the available options and use the one that best suits their intentions. It is quite common for foreign investors to consider acquisition of companies or acquisition of businesses as an alternative, and several factors usually bear weight on this decision, such as:

- what kind of consents are required (third-party consents; regulatory or government consents);
- restrictions on assignment under contracts and/or licences; and
- the impact of the choice on procedures applicable to the transfer of employees, etc.

#### *Corporate actions*

Corporate actions such as mergers (*fusões*) and demergers (*cisões*) are available but not commonly used.

Foreign investors are often advised in relation to the need to adjust their plans/expectations to the local practice/knowledge of public entities (such as registry services). Seeking to implement structures not often used in Mozambique more often causes delays and presents disadvantages in terms of efficiency.

## *Joint ventures and public acquisition offers*

Joint ventures and public acquisition offers may also be used.

In terms of structures that are preferred for the acquisition of public companies or business companies, different transactions are usually considered, namely, entering into concession contracts with the public authority, resorting to privatisation offers or, more recently, implementing public-private partnerships.

The fact that acquisitions have as an objective achieving a majority or minority in a business or company is not significant for the purpose of carrying out this selection.

## **3.2 Regulation of Domestic M&A Transactions**

Aside from the regulatory regime applicable to FDI, further described in **7. Foreign Investment/National Security**, there are two key regulatory reviews and approvals which may be applicable to M&A transactions – those related to competition and foreign exchange regulations, respectively dealt with in further detail in **6. Antitrust/Competition** and **8. Other Review/Approvals**.

## **4. CORPORATE GOVERNANCE AND DISCLOSURE/REPORTING**

### **4.1 Corporate Governance Framework**

Corporate governance is an area that is not yet very developed in Mozambique.

There are rules governing corporate governance, eg, for financial institutions, approved by the Bank of Mozambique, namely in Notice No 11/GGBM/99, of 13 December 2000, which approved internal control rules to be complied with by these entities.

As for commercial companies, there is an important rule in the Commercial Code for M&A transactions – a commercial company in Mozambique is not allowed to finance other companies or provide assets as a guarantee, except in cases where there is a direct interest in the transaction or if the borrower at issue is part of the same group of companies. The justified interest should be duly identified and grounded in the competent corporate approvals. The Commercial Code also includes limitations on the acquisition of own shares by companies.

In practice, two types of companies are usually used – private companies limited by quotas (“SQ”) or public companies limited by shares (“SA”). The selection between these corporate types is usually based on the following factors:

- the simplicity of the structure/operation of the company;
- the amount of capital to invest; and
- confidentiality matters pertaining to the share capital.

SQs are traditionally selected for lower investments and are often family-run businesses. On the other hand, SAs are preferable for a larger investment. They have a more complex structure but benefit from a more relaxed framework, eg, regarding the transfer of shareholdings.

### **4.2 Relationship between Companies and Minority Investors**

In 2018, the Commercial Code was amended, among other things, to grant protection to minority shareholders. A list of special rights, to be regulated in the articles of association, was created:

- the right to appoint members of corporate bodies;

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Moraes Leitão, Galvão Teles, Soares da Silva & Associados*

- the right to a preferential percentage of profits/a percentage different from the respective shareholding;
- veto rights on specific resolutions; and
- rights pertaining to accepting new shareholders.

However, minority shareholders also have a duty not to put their interests ahead of those of the company and must act in accordance with their duty of loyalty to the company. It is also important to note that the Commercial Code establishes that the abuse of minority rights which, for example, obstructs the approval of resolutions may, in certain cases, result in liability for such shareholders.

Where private parties acquire a shareholding in so-called participated companies (public companies wholly or in majority held by the state), the Law on the State's Corporate Sector (Law No 3/2018, of 19 June 2019) and its Regulation (Decree No 10/2019) refer the regulation of these companies to the same Commercial Code.

### 4.3 Disclosure and Reporting Obligations

In relation to foreign investors themselves, disclosure/reporting obligations are linked to the registration of foreign investment before the APIEX and also, in the case of acquisition of shareholdings in private companies limited by quotas, to disclose their identity for commercial registration purposes. There is also an obligation to register themselves before the Bank of Mozambique, in order to carry out foreign exchange operations. For this purpose, foreign investors must provide details connected with the FDI registration procedure. These are all fairly simple procedures.

Where FDI refers to specific economic sectors (eg, mining and oil and gas; the financial sector), foreign investors are required to provide more

detailed information and documentation in order to prove financial capacity, technical skills, reputation, etc. This is analysed on a case-by-case scenario.

In relation to companies, the Commercial Code includes several reporting/disclosure obligations with reference to several features of commercial companies. Among others, the following have to be registered with the Legal Entities Registry Office (*Conservatória do Registo de Entidades Legais*) – alterations to the by-laws; the appointment, reappointment, exoneration and resignation of members of corporate bodies; the transfer of shareholdings and registration of encumbrances (in private companies limited by quotas).

Since 2018, companies subject to corporate income tax are obliged to have organised accounts and to submit, annually, duly approved accounting documents (balance sheet/annual accounts) to the registry entity indicated above.

## 5. CAPITAL MARKETS

### 5.1 Capital Markets

The capital markets in Mozambique include:

- a primary market (for new issues of securities); and
- a secondary market (trading market for previously issued securities between third parties).

There is also the stock market and the over-the-counter market. The over-the-counter market is a market where supply and demand are handled outside the stock market and where there is the intervention of financial intermediaries. Reference must also be made to public subscription companies, which have all or part of their share capital transferred to the public. This may occur pursuant to:

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*

- incorporation with subscription by the public;
- having shares admitted to trading on the stock market or subject to a public offer; and
- resorting to public subscription in the context of an increase in share capital.

In terms of primary sources of funding/financing for companies, resorting to bank financing is far more common than accessing capital markets.

## The Mozambique Stock Exchange

The Mozambique Stock Exchange (*Bolsa de Valores de Moçambique* or BVM) was established in the late 1990s. The stock market provides registration, clearing and settlement services as well as information on transactions undertaken. Whenever financial intermediation activities are to be carried out, the entities that take on such rules must be duly licensed (eg, securities brokers or securities dealers). Only the intermediaries that have been incorporated as stock market operators are allowed to trade directly on the stock market.

It is very important to note that the regulator in Mozambique is the Bank of Mozambique and not a commission created for such purpose as is the norm in many other jurisdictions.

The third market service was launched in the recent past with the intention of strengthening the currently weak participation in the BVM, as well as to overcome hurdles that have been experienced, namely, with the registration process before the stock exchange.

## 5.2 Securities Regulation

The fundamental statute governing securities laws and regulation is the Securities Code or SC (*Código do Mercado de Valores Mobiliários*), approved by Decree-Law No 4/2009, of 2 June 2009. The SC revoked the previous framework from the late 1990s.

As indicated in **5.1 Capital Markets**, the Bank of Mozambique is the regulatory authority. It has passed several regulations governing securities including, among others, the following pieces of legislation:

- Notice No 4/GGBM/99, of 25 February 1999, approves the mechanism applicable to the registering of public offerings for subscription or for sale of securities and also approves the form/content of the underlying advertising;
- Regulation No 1/GPCABVM/2010, of 27 May 2010, which approves the framework for the preparation, procedure and decisions regarding applications for listing of securities and also governs the content of the prospectus; and
- Regulation No 2/GPCABVM/2010, of 28 May 2010, approving the conditions for the admission of securities to being and remaining listed in the secondary market.

Finally, Notice No 6/GGBM/2003, of 30 September 2003, governs the procedures applicable to investments, transfers of capital, interest, dividends and other income pertaining to dealings in securities that may be traded on the BVM and which involve non-resident entities.

## 5.3 Investment Funds

Although this should be reviewed on a case-by-case basis, foreign investors structured as investment funds may potentially incur licensing obligations in Mozambique, further to the rules applicable to the financial sector.

Financial institutions are governed by the recently approved Law No 20/2020, of 31 December 2020, which revokes Law No 15/99, of 1 November 1999.

## 6. ANTITRUST/ COMPETITION

### 6.1 Applicable Regulator and Process Overview

#### Definition of Concentration of Companies

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

There is a duty to communicate concentration operations to the Regulatory Authority for Competition (RAC) if one of these situations is met:

- the combined turnover of the undertakings concerned in the country in the previous year was MZN900 million or more;
- concluding the transaction will result in an acquisition, creation or reinforcement of a share of 50% or more of the national market regarding a particular good/service; or
- concluding the transaction will result in acquiring, creating or reinforcing a share of 30% or more of the national market regarding a specific good/service – in so far as each of at least two of the undertakings concerned have achieved a turnover in the country of at least MZN100 million in the previous year.

#### Role of the RAC

When one of the situations referred to above is taking place, the concentration operation must be notified immediately to the RAC. Specifically, the communication is to occur within seven business days of the conclusion of the agreement/merger project.

Up to five business days following such submission, the RAC must publish in two national newspapers the main elements of the operation at issue (expenses are charged to the authors). Interested third parties have a deadline of 15 days to submit observations.

The RAC is to provide its opinion within 30 days – failure to do so may result in a tacit approval taking place. It is possible for this deadline to be suspended in cases where the applicant is required to provide further information or documentation, or to correct/amend submitted information or documentation. The RAC has the right to request all the information or documentation it deems important or necessary from other public or private authorities.

Failure to comply with the obligation reviewed in this response corresponds to an infraction under the Competition Law and may result in a fine of no more than 1% of the company's turnover in the preceding year being applied.

#### Temporary exemptions

The Competition Law establishes temporary exemptions from forbidden antitrust practices that are not deemed as an abuse of economic dependency. Exemptions may be granted pursuant to an application and preliminary assessment by the RAC. For an exemption to be granted, the practice must be limited in time and it must cumulatively meet the following requirements:

- the purpose of the practice must be beneficial to public interest or allow for more efficiency (economic progress/efficient allocation of resources);
- it may not result in the elimination of competition; and
- if it imposes restriction on competition, this is only as absolutely needed in order to attain its purpose.



*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*

## 6.2 Criteria for Review

The Competition Law includes a list of enquiries and investigative powers granted to the RAC, which include:

- the authority to question legal representatives of the companies involved, requesting information/documentation/other elements deemed convenient or necessary to clarify the facts;
- the authority to question legal representatives of other companies/groups of companies/ persons whose statements are considered pertinent and the authority to request information/other elements;
- the authority to secure a court warrant to carry out searches, examine, collect and apprehend copies/documents, wherever this is deemed necessary to obtain proof;
- the authority to require co-operation from other public authorities.

There are no specific provisions on criteria for review by the RAC.

## 6.3 Remedies and Commitments

The RAC may require the applicant to provide further information or documentation, or to correct/amend submitted information or documentation.

## 6.4 Enforcement

The RAC's intervention in relation to FDI is not direct and as such there are no particular provisions in the law governing this aspect.

However, the RAC has powers regarding infractions and may, among other things:

- declare the existence of a practice that restricts competition and, if necessary, notify the offender to adopt actions that are necessary to conclude said practice;
- formally admonish the offender;

- apply penalties and other sanctions;
- authorise an agreement, imposing terms and conditions.

The failure to comply with the obligation to notify a concentration operation subject to previous notification is an offence which may be punished with a penalty for each of the involved companies, which may not exceed 1% of the annual turnover of the previous year. The same penalty may be applicable when an entity has provided false, inaccurate or incomplete provisions to the RAC, or has obstructed the exercise of the RAC's functions.

Despite the competition framework having been approved in 2013, competition policy and practice are still something of a novelty in Mozambique.

Prior to resorting to court intervention, entities may challenge the decisions of the RAC pursuant to the general administrative rules of procedures.

## 7. FOREIGN INVESTMENT / NATIONAL SECURITY

### 7.1 Applicable Regulator and Process Overview

As indicated in **1.2 Regulatory Framework for Foreign Direct Investment (FDI)**, those who intend to invest in Mozambique and be able to repatriate profits abroad, must have their projects approved by and registered with the APIEX, which operates under the oversight of the Ministry of Industry and Commerce.

There is a general requirement for profits that are to be repatriated/invested capital that is to be re-exported: the minimum FDI threshold is MZN2.5 million. However, foreign investors in one of the

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Moraes Leitão, Galvão Teles, Soares da Silva & Associados*

following situations are also able to repatriate funds and profits abroad:

- the implementing company has generated an annual turnover of no less than MZN7.5 million in the third year of activity;
- the implementing company shows annual exports of goods or services in the minimum amount of MZN1.5 million;
- the implementing company is responsible for creating (and maintaining) at least 25 job posts for Mozambican nationals (duly registered with the National Institute for Social Security) from the second year of activity onwards.

Foreign investors are required to submit an investment project proposal to the APIEX on an official form provided by the APIEX (Portuguese and English versions available). The location of the investment may be in Special Economic Zones (*Zonas Económicas Especiais* or ZEE), in Free Industrial Zones (*Zonas Francas Industriais* or ZFI) or outside those areas. Along with the duly completed form, applicants must provide a number of mandatory documents, eg:

- a copy of an identification document;
- a commercial registry certificate or certificate of reservation in the implementing company's chosen name;
- the layout of the project's location.

The next step is for the APIEX to assess the proposal, make a decision and notify the applicants. This is a fairly simple procedure and if the applicant complies with the rules set forth in the investment law, it is unlikely to be refused approval of the project.

In the case of approval, foreign investors have up to 120 days, unless another deadline has been set in the authorisation terms (*termos de autori-*

*zação*). The investment project is registered in the name of the implementing company.

Failure to comply with this procedure and timeline will prevent foreign investors from repatriating funds or profits abroad. No currency should be taken into Mozambique prior to the investment procedure being finalised.

See **8. Other Review/Approvals** for additional information.

## 7.2 Criteria for Review

There is no specific list of criteria, considerations and analysis to be carried out by the APIEX. However, there is a list of purposes FDI may pursue, which will be considered by the APIEX in the approval process. These include:

- implementing, rehabilitating, expanding or modernising infrastructures necessary for the exploration of productive activities/provisions of services that are necessary for the development of Mozambique;
- expanding and improving the national production capacity or the ancillary provision of services;
- contributing to vocational training and development and increasing the number of Mozambican entrepreneurs and partnerships with Mozambican companies;
- creation of job posts for national employees and increasing the technical and knowledge skills of this workforce;
- promotion of technological development; and
- the increase and diversification of exports/the reduction and substitution of imports.

The APIEX's review for this purpose does not vary according to the type of business structure chosen by the foreign investors (eg, non-controlling minority investments, JVs, etc).

## 7.3 Remedies and Commitments

The RAC may require the applicant to provide further information or documentation, or to correct/amend submitted information or documentation.

Additionally, in the terms of authorisation of the investment project, the foreign investor assumes a number of binding commitments towards the APIEX in relation to fulfilment of the project, including:

- the number of employees (national and foreign) to be hired;
- the deadline and conditions for implementation of the project; and
- other specific conditions underlying the project that should be established therein.

## 7.4 Enforcement

The investment framework is not designed in such a way that the APIEX (the authority governing the approval of FDI) is granted the ability to block or challenge FDI before it is made. Failure to comply with FDI procedures results in an actual inability to repatriate funds and profits abroad and, as such, this inability is automatic and does not require the intervention of the APIEX.

However, throughout the life of an approved FDI project, the APIEX has oversight powers as well as the power to revoke the investment approval in the following cases:

- in response to a reasoned request presented by the investors themselves;
- non-compliance with the deadline set for the start of implementation of the project;
- implementation or operation of the enterprise has been stopped for a period exceeding three months and there was no prior communication to the APIEX in this regard; or

- violation of the Investment Law/Regulation or of the terms and conditions established in the authorisation terms.

## 8. OTHER REVIEW / APPROVALS

### 8.1 Other Regimes

#### Foreign Exchange Matters

Along with FDI approval by the APIEX as reviewed in more detail in **7.2 Criteria for Review**, it is mandatory for the foreign investment (and the foreign investor) to be registered with the Bank of Mozambique within 90 days of the authorisation or from the receipt of the investment amount in Mozambique.

Generally, it is worth mentioning that all foreign exchange transactions where foreign or national currency enters or exits Mozambican territory are subject to some form of licensing or registration with the central bank.

#### Real Estate Considerations

Pursuant to the Land Law, Law No 19/97, of 1 October 1997, land is owned by the state and may not generally be sold/disposed of/encumbered. Notwithstanding this general principle, a right which is less strong than a property right is commonly used in Mozambique – the use and enjoyment of land right (*direito de uso e aproveitamento da terra* or DUAT).

Other than Mozambican individuals and corporate entities, foreign individuals may hold DUATs if they have an approved investment project and meet the following conditions: (i) in the case of individuals, they have resided in Mozambique for at least five years; and (ii) in the case of corporate entities, they are incorporated/registered in Mozambique.

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*

When application is made for a DUAT in order to pursue economic activities, it is necessary to submit a business plan, after which, provisional authorisation may be granted for a period of two years (in the case of foreigners). Upon compliance with this plan, a definitive authorisation will then be granted for a period of no more than 50 years (with possibility to renew).

Acquisition, modification, transfer or extinction of DUATs is subject to registration with the Land Registry Office that has territorial competence over the area where the project is located. Note that obtaining authorisation to pursue activities under a DUAT is not the same as being effectively licensed to carry out such activities (see commercial licensing matters, below). Foreign investors may also opt for commercial leases. Generally speaking, leases are governed by (i) the Tenancy Law (Decree No 43525, of 7 March 1961, as amended); (ii) the Civil Code (some provisions); and (iii) the law governing rentals for housing, industry, commerce and services (Law No 8/79, of 3 July 1979), although the latter applies to leases where the state acts as landlord.

**Commercial or Industrial Licensing – General**  
General commercial licensing (*alvará*) must be sought for virtually every economic activity pursued in Mozambique, both commercial activities and industrial activities.

There are three main statutes to be considered for this purpose:

- the Simplified Licensing framework, approved by Decree No 39/2017, of 28 July 2017;
- the Regulation for the Licensing of Commercial Activities, approved by Decree No 34/2013, of 2 August 2013; and
- the Regulation for the Licensing of Industrial Activities (Decree No 22/2014, of 16 May 2014).

All these frameworks involve similar procedures – if the activity to be pursued falls within their scope, the applicant must submit a request for licensing and present the necessary documentation, which will be assessed by the relevant authorities. In some cases, a mandatory inspection of the premises will occur prior to the issuance of the commercial or industrial licence granting the applicant company the right to pursue the activities it has applied for.

**Commercial or Industrial Licensing – Sectoral**  
Companies carrying out economic activities in Mozambique will, in many cases, apply for sectoral licensing. These procedures are usually dealt with by the ministry overseeing the economic area within which the project falls (eg, Fisheries, Mineral Resources and Energy, Tourism, etc).

In this more specific type of licensing, assessment of several matters, such as technical and financial capability, and reputation, occurs. In many cases a licence is issued but in other cases, applicants must enter into concession agreements with a public entity. This depends on the specificities of the activities to be pursued and should be reviewed on a case-by-case basis. The authorisation to pursue an activity is granted for a specific period of time (with the possibility to renew being established in different terms across the economic areas) and in all cases, it may be revoked by the licensing authority if the licence holder does not comply with the legal or negotiated and agreed requirements.

#### **Environmental Licensing**

Further to the more general framework approved by the Environment Law, approved by Law No 20/97, of 1 October 1997, which includes a chapter governing prevention of environmental damages, Decree No 54/2015, of 31 December 2015, as amended, approved the Environmental Assessment Regulation.

Such procedure encompasses an assessment of the environmental impact of the activity which is going to be pursued and in principle precedes the issuance of other legally required licences.

There are four categories of activities indicated in the Environmental Assessment Regulation, which differ in terms of the potential environmental impact involved:

- category A+ (a mandatory environmental impact study plus supervision by independent expert reviewers with proven experience);
- category A activities (a mandatory environmental impact study);
- category B activities (a mandatory simplified environmental study); and
- category C activities (a mandatory submission of “good practices” procedures with reference to environmental management for approval by the competent authority).

This response is not exhaustive and all applicable licensing requirements for a given FDI project must be reviewed on a case-by-case basis.

## 9. TAX

### 9.1 Taxation of Business Activities

There are a number of taxes that may apply to companies doing business in Mozambique, which include: (i) corporate income tax (*Imposto sobre o Rendimento das Pessoas Colectivas* or IRPC); and (ii) value added tax (VAT). There are also more specific taxes directly related to the type of activity being pursued, such as oil and/or mining taxes.

Acquiring real estate is also subject to a real estate transfer tax (Sisa).

Stamp duty is also applicable on a number of transactions and contracts including, among

many others, the granting of guarantees or entering into loan agreements.

### Corporate Income Tax (IRPC)

The IRPC Code defines taxable persons and distinguishes between residents and non-residents. In the case of non-residents, it further distinguishes between those having a permanent establishment (PE) in Mozambique and entities without a PE. Resident entities are defined as those having their registered office or effective management in the country.

From a geographical standpoint, resident entities are taxed on their worldwide income. On the other hand, non-resident entities (that do not have a PE in Mozambique) are only taxed pursuant to income received in Mozambique. When activities are carried out by means of a PE, all income attributable to that PE will be subject to this tax.

The Mozambican legal concept of a PE is reminiscent of the one laid out in the OECD’s Model Tax Convention on Income and on Capital.

### Calculation of taxable income

The calculation of taxable income may be based on the accounting profits, adjusted as foreseen in the legislation, or on the sum of the net income of each of the categories of income (as adjusted pursuant to the same rules). The first method is applicable to resident companies carrying out business activities and to PEs of foreign entities. The second method is applicable to resident entities that do not carry out business activities and to non-resident entities that have no PE in Mozambique but generate 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%.

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*

### **Withholding tax**

In the case of undocumented/illicit expenses, the taxation rate is autonomous and corresponds to 35%. Additionally, such expenses may not be deducted. A withholding tax of 20% is also applied to the income paid to companies that have their registered office/effective management in the country, arising from (i) interest on treasury bills and debt securities listed on a stock exchange; and (ii) interest on liquidity swaps between banks (be it secured or unsecured).

Income that arises from investments made by non-resident entities in Mozambique is generally taxed pursuant to specific withholding rates. Once again, exception is made when the activities are carried out via a PE; in this case, the taxation occurs pursuant to the rules applicable to resident entities.

Despite the general withholding tax rate being 20%, there are services provided in the country which are subject to a final 10% IRPC. These include services related to telecoms, construction, rehabilitation and production of infrastructures, and chartering of vessels to carry out fishing and cabotage activities, among others duly indicated in the applicable legal framework.

### **9.2 Withholding Taxes on Dividends, Interest, Etc**

Dividend payments carried out by Mozambican companies to non-resident shareholders are taxed pursuant to a 20% flat final withholding rate. This rate is applied over the gross amount of the dividends. The only exception refers to the distribution of dividends from companies listed on the Mozambican Stock Exchange, where the rate is lower. Interest payments are also subject to a final IRPC rate of 20%.

The withholding tax rates on dividends, interest and royalties can be reduced if the investor

resides in a treaty country, varying between zero and 15%.

### **9.3 Tax Mitigation Strategies**

The reinvestment of profits in the business activity is often seen and used as a mitigation strategy by foreign investors.

The Tax Benefits Code establishes a number of interesting deductions and benefits (not linked to any particular sector), which include:

- deduction of 110% (if located in Maputo) or 120% in expenses for the construction/rehabilitation of infrastructures or for public utility works for a period of five years; and
- expenses in modernising or introducing new technology may be deducted from the taxable income of a company for a period of five years when they represent an amount of up to 10% of taxable income.

The approval of Decree No 23/2020, of 27 April 2020, put in place several measures to support taxpayers and businesses in order to mitigate the impact of the COVID-19 pandemic. These included, among others, a faster procedure for the import of goods and certain releases or postponements of tax payments.

### **9.4 Tax on Sale or Other Dispositions of FDI**

#### **Capital Gains**

In Mozambique, capital gains include not only a positive result deriving from a transfer/disposal, but also others arising from, for example, expropriation or damages compensation.

Capital gains are generally taxable. Specifically, capital gains made by non-resident entities should be declared in Mozambique and are subject to IRPC at the general rate of 32%. In the case of capital gains made pursuant to the transfer of shares/real estate, the relevant tax

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Moraes Leitão, Galvão Teles, Soares da Silva & Associados*

return is to be submitted within 30 days of such transfer.

A rollover relief is available for capital gains which are generated pursuant to the sale of tangible assets and which are used in the business activity, providing the totality of the proceeds is reinvested.

## Benefits/Incentives

The Investment Law establishes that incentives may be granted in relation to FDI projects by means of an application to the APIEX. Such benefits/incentives may be granted to projects which are located in or carry out certain activities, eg, creation of basic infrastructure; manufacturing and assembly; science and technology parks; major investment projects; rapid development zones; industrial free zones; and special economic areas.

The Mozambican Tax Benefits Code, approved by Law No 4/2009, of 12 February 2009, also establishes several tax benefits. The granting of tax incentives or benefits to an FDI project are reviewed on a case-by-case basis.

No specific tax benefits are available for foreign investors who invest in Mozambique through a “blocker” corporation or other tax-preferred vehicle.

## 9.5 Anti-evasion Regimes

Mozambique approved a transfer pricing regime (TPR) by means of Decree No 70/2017, of 6 December 2017, which came into force at the beginning of 2018.

The TPR applies to tax residents (including PEs) that are subject to Mozambican IRPC or personal income tax, and with reference to dealings with related parties, whether tax residents or tax non-residents.

To establish whether parties are related, one of the entities or individuals must, for example:

- have direct or indirect control over another entity;
- have an interest in another entity, which amounts to significant influence; or
- be associated in a JV where the other entity is an investor.

The transfer pricing methods applicable to each case are determined in line with what is deemed most appropriate to achieve the maximum effect of the arm’s length principle and include, among others:

- resale sale price;
- cost-plus method;
- profit-split method; or
- other methods that are considered appropriate to ensure respect for such principle.

The TPR also includes provisions that specifically regulate agreements/arrangements that typically take place in corporate groups, such as (i) cost-sharing arrangements; and (ii) intra-group provision of services contracts.

There is a mandatory obligation for companies which have had net sales and other revenues in an amount of at least MZN2.5 million to prepare a transfer pricing file in the following year.

In Mozambique, there are also thin-capitalisation rules and other anti-evasion rules include, for example, the infraction foreseen in the Competition Law reviewed in **6. Antitrust/Competition** and applicable in the case of non-compliance with the duty to communicate concentration operations.

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Moraes Leitão, Galvão Teles, Soares da Silva & Associados*

## 10. EMPLOYMENT AND LABOUR

### 10.1 Employment and Labour Framework

The most important statute in Mozambique is the Labour Law (LL), approved by Law No 23/2007, of 1 August 2007 (*Lei do Trabalho*). However, all the following are deemed as sources of labour law:

- the Constitution of the Republic of Mozambique;
- normative acts from parliament and the executive branch;
- international conventions and treaties; and
- collective bargaining agreements.

Practices and customs that are typical of a given professional activity or economic area – that do not violate the LL and the principle of good faith – may also be deemed as a source. The LL also allows for codes of conduct to be established. Whenever there are conflicts between the various sources, the criterion to solve the conflict is generally to confirm which source appears most favourable to the workers.

An important framework to be considered by foreign investors is the one governing the hiring of foreign employees in Mozambique, mainly Decree No 37/2016, of 31 August 2016. Employing foreign workers is interconnected with rules governing the approval of the investment project, and entry and stay of foreign nationals in Mozambique (migratory rules).

In terms of the representation of workers in Mozambique, workers have the right to participate in the establishment of a representative body or to join one. For this no previous approval is needed and the LL establishes that such employees shall not be subject to discrimination.

Representation structures such as unions are created to defend and promote the rights and interests of employees, which include forming partnerships with other unions, and being present in negotiation processes or in disciplinary actions taken against their members (in some cases the presence of the representative body is mandatory under the LL).

### 10.2 Employee Compensation

In Mozambique, employee compensation includes the salary (basic wage) and any and all periodic regular benefits. These are to be paid in cash or in kind. When payments occur in kind, they can only represent up to 25% of the overall remuneration of an employee.

The compensation may be:

- compensation in time (considering the actual time incurred doing the work);
- compensation pursuant to performance (which may vary); or
- a mixed form.

Compensation directly linked to performance is calculated pursuant to the results effectively achieved and is established considering factors such as the nature, quantity and quality of the provided work. It applies only in cases where the work activity at issue and customs/local practice have previously allowed for this assessment.

The instrument regulating the employment relationship (contract; collective bargaining agreement) may foresee the payment of benefits, which include among others, meal allowance, night work, shift work, travel costs and expenses, bonuses pertaining to seniority level/productivity, and stock options. These additional benefits may be temporary or permanent.

In relation to the transfer of employees pursuant to an M&A transaction, the LL includes provi-



sions, namely Articles 76 and 77, which govern all matters, including compensation in these cases. See **10.3 Employment Protection** for more information.

### 10.3 Employment Protection

As indicated in **10.2 Employee Compensation**, the LL includes provisions, namely Articles 76 and 77, which govern all matters pertaining to the transfer of employees pursuant to M&A transactions.

These articles establish a specific procedure in the cases of transfer of undertaking and transfer of a company. In the case of transfer of a business, the transferee company is assigned the legal position of employer in the employment agreements of the employees wholly or mainly assigned to that business. The transfer takes place automatically, by legal imposition of the law, which means the transferee cannot refuse to take any or all such employees. Additionally, the employees' consent is not required for the transfer to become valid and effective. This regime applies to a wide range of deals: total or partial transfer of a business as a going concern (*trespasse*), mergers, demergers, assignments of operation of an establishment (*cessão de exploração*), etc. There are cases where an employee may recuse himself or herself from being included in the transfer and these are legally foreseen.

In the case of termination of an employment contract on the grounds of confirmed serious loss or detriment arising from the change of ownership of the company or establishment, the employees shall be entitled to compensation.

Employment agreements are transferred with all existing rights and conditions emerging therefrom and/or out of the applicable collective bargaining agreement, should it exist (eg, years of service, professional category, remuneration).

In terms of responsibility for labour debts, the transferee company is jointly and severally liable with the transferor company for the debts that became due in the year prior to the transfer, even concerning employees whose employment agreements terminated prior to the transfer.

In the case of a restructuring of the local entity's share capital (change of control), the legal entity, in itself, remains unchanged.

## 11. INTELLECTUAL PROPERTY AND DATA PROTECTION

### 11.1 Intellectual Property Considerations for Approval of FDI

Intellectual property is not a particularly important aspect in screening FDI in Mozambique. However, the FDI legal framework establishes that the State of Mozambique must ensure the safety and legal protection of property over assets and rights, including industrial property rights, encompassed by the duly authorised investments.

### 11.2 Intellectual Property Protections

Mozambique has evolved significantly regarding intellectual property protection over the past few years.

#### International Treaties

The turning point was when Mozambique acceded to the World Trade Organisation (and to the TRIPS agreement), the World Intellectual Property Organisation (WIPO) and the 1981 Madrid Agreement and its 1989 Protocol relating to International Registration of Marks administered by WIPO, the Patent Co-operation Treaty and the African Regional Intellectual Property Organisation (ARIPO).

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*

### Local Decrees and Regulations

In order to implement these international treaties, the Industrial Property Code of 1999 was approved by Decree No 4/99, of 4 May 1999. In the same year, the regulation governing the role of the industrial property official agent was also approved. In the beginning of the 2000s, the Mozambican Association of Authors was created and the Law of Author's Rights and of the Related Rights (Law No 4/2001, of 27 February 2001, was approved). A second Industrial Property Code was approved in 2006, by means of Decree No 4/2006, of 12 May 2006, and later, in 2015, by means of Decree No 47/2015, of 31 December 2015, a third (and current) Industrial Property Code was approved. It was intended to codify the provisions scattered in several statutes.

The approval of the Electronic Transactions Law (Law No 3/2017, of 9 January 2017) is also demonstrative of the effort made by Mozambique to ensure a stronger degree of protection in relation to IP rights in general, with the focus on industrial property rights.

### Criminalisation of Acts Violating IP Rights

On the criminal side, significant evolution occurred in 2014, with the Penal Code including crimes related to the violation of rights licensed by creators. Thereafter, a new Penal Code was approved in 2019 (Law No 24/2019, of 24 December 2019, as amended), approving a more modern framework regarding the criminalisation of acts that violate IP rights in general and industrial property rights specifically.

According to the 2020 International Property Rights Index, Mozambique is 107 in the global ranking and 15 (out of 28) in the regional ranking (Africa).

### Lack of Protection

Given the lack of sophistication still experienced in practice, however, difficulties are still experienced across the board when it comes to obtaining IP protection, despite the constant evolution and efforts of the country in this area.

### 11.3 Data Protection and Privacy Considerations

The constitution provides people with the right to privacy and data protection, which are considered fundamental rights.

Despite the reference in the Paramount Law to "computerised means", there is wide consent regarding the need to protect philosophical, political, ideological, religious and other private data, and this includes the handling of such data through various means.

There is currently, however, no law in Mozambique that regulates data protection specifically. Law No 3/2017, of 9 January 2017 (*Lei das Transacções Electrónicas*), establishes the legal framework for electronic transactions, commerce and governance and attempts to regulate data protection but this only applies to users of information and communication technology.

Since it plays a significant part in providing a degree of legal certainty to individuals, there is a need for exhaustive, detailed and wide-range legislation to be approved as it pertains to data protection. There is, as such, currently no information on the extraterritorial scope of legislation and there is evidently no strong enforcement of penalties pertaining to data protection.

# MOZAMBIQUE LAW AND PRACTICE

*Contributed by: Claudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*

**Morais Leitão, Galvão Teles, Soares da Silva & Associados** – in conjunction with its integrated network of law firms in Angola (ALC Advogados), Mozambique (MDR Advogados) and Cabo Verde (VPQ Advogados), and through the Morais Leitão Legal Circle, a team based in Portugal dealing with Lusophone transactions – ensures a seamless service to international clients investing in Lusophone Africa. The team advises clients on both cross-border inbound and outbound investments into Lusophone Africa, very often in respect of large-scale project

finance deals, and is jointly led by André de Sousa Vieira and Claudia Santos Cruz, together qualified in four different jurisdictions. The team combines international experience of best practice backed up with expert local knowledge and the support of the whole network, enabling each firm to maximise the resources available to its clients. The members of the team are qualified in civil and common law jurisdictions and have advised on some of the most complex and large-scale deals in Portugal, Lusophone Africa and Lusophone Asia.

## AUTHORS



**Claudia Santos Cruz** joined Morais Leitão as a senior consultant in 2015, assisting clients on the international aspects of their investments in Portugal, Angola and

Mozambique. She is an English solicitor, having worked at DLA Piper and Watson Farley & Williams in London. Claudia is based in Lisbon and is registered with the Portuguese Bar Association and the Mozambique Bar Association. She is a specialist in areas such as energy and oil and gas/mining, foreign investment into Angola and Mozambique, corporate matters and shipping. Claudia jointly leads the ML team which advises clients on cross-border inbound and outbound investments into Lusophone Africa, co-ordinates the international oil and gas team and shipping practice, and is also a member of the international banking and finance department.



**André de Sousa Vieira** joined Morais Leitão in 2020 as a partner. He is co-responsible for a banking and finance team, and integrating the international committee of the firm. He is a

finance lawyer admitted in England & Wales, Portugal and Spain, having worked at Clifford Chance LLP in London between 2011 and 2020. André has focused on the Lusophone markets, with strong connections to the main international financial markets. He is recognised for advising international project finance transactions in the energy, natural resources and infrastructure sectors, having represented lenders (DFIs, ECAs and commercial banks), sponsors and governments. André jointly leads the ML team advising clients on cross-border inbound and outbound investments into Lusophone Africa, often in respect of large-scale project finance deals.

*Contributed by: Cláudia Santos Cruz, André de Sousa Vieira, Ana Corrêa Cardoso and Tiago Arouca Mendes, Morais Leitão, Galvão Teles, Soares da Silva & Associados*



**Ana Corrêa Cardoso** joined Morais Leitão in October 2017. She has experience in international and cross-border transactions, as well as investments in the Portuguese,

Angolan and Mozambican jurisdictions. Ana has assisted several international companies and groups seeking to invest and establish themselves in these jurisdictions and has advised on a wide range of practice areas, including foreign private investment, corporate, commercial contracts, oil and gas, mining, foreign exchange aspects and employment. She has also assisted on a number of cross-border financing transactions.



**Tiago Arouca Mendes** joined Morais Leitão in 2014, and immediately started work at HRA Advogados (later MDR Advogados) in Maputo, where he is currently the managing

partner. He is the international consultant at Morais Leitão for all matters related to Mozambique. He advises clients (mainly foreign) on restructuring processes, mergers, demergers, acquisition of interests and financing operations in Mozambique. He assists clients throughout the complete business life cycle, from the approval of foreign investment projects, to corporate and winding-up and/or insolvency procedures. Tiago advises across different sectors including banking, energy, the extractive industry, insurance, real estate, construction, retail, etc. He has authored articles for international publications on oil and gas, mining, infrastructure/PPP and foreign investment.

---

**Morais Leitão, Galvão Teles,  
Soares da Silva & Associados**

Rua Castilho, 165  
1070-050 Lisboa  
Portugal

Tel: +351 213 817 400  
Fax: +351 213 817 499  
Email: [mlgtslisboa@mlgts.pt](mailto:mlgtslisboa@mlgts.pt)  
Web: [www.mlgts.pt](http://www.mlgts.pt)

