

LEGAL ALERT

BRIEF NOTES ON THE NEW FOREIGN EXCHANGE LAW

Law no. 28/2022, of December 29, has recently been approved, revoking Law no. 11/2009, of March 11 (Previous Foreign Exchange Law), and approving the new Foreign Exchange Law.

The new Foreign Exchange Law came into force on January 30, 2023 and regulates the foreign exchange operations realized between residents and non-residents from which arise or may arise foreign payments or incomes, or that are simply by law classified as such.

We present a brief comparative note on the main differences between the previous and the new Foreign Exchange Law, in which we highlight the main novelties introduced by the legislator.

- I. In terms of form, the new Foreign Exchange Law regulates in a more complete and structured way the regime applicable to the Mozambican foreign exchange system, being divided into the following chapters, namely: Chapter I – General Provisions; Chapter II – Policy and Foreign Exchange Authority; Chapter III – Foreign Exchange Market; Chapter IV – Duties for the Realization of Foreign Exchange Operations; Chapter V – Foreign Exchange Trade; Chapter VI – Foreign Exchange Operations; Chapter VII – Special Foreign Exchange Regime; Chapter VIII – Penalty Regime; and Chapter IX – Transitional and Final Provisions.

II. Chapter I – General Provisions

Regarding its **objective incidence**, the new Foreign Exchange Law, now regulates, as well:

- The acts, businesses, transactions, and operations carried out in the country by virtue of a special foreign exchange regime or because it involves foreign currency (subparagraph b) of paragraph 1 of Article 1);
- The regime of entities authorized to carry out foreign exchange trade and the partial foreign exchange trade (subparagraph b) of paragraph 1 of Article 1, and Articles 23 to 26 of Chapter V).

Regarding its **subjective incidence**, the new Foreign Exchange Law is now also applicable to:

- Non-resident natural and legal persons, that realizes foreign exchange operations related to goods or money located abroad, and the rights over those assets, and activities carried out at the respective territory when they have connection with the Mozambican territory (subparagraph c), paragraph 1 of Article 2);
- The State and other legal entities governed by Public Law, which carry out foreign exchange operations regarding assets or values located in national territory or abroad and rights over those assets or values or activities performed in the respective territory (subparagraph d) of paragraph 1 of Article 2);
- Representation forms of resident and non-resident legal persons (paragraph 2 of Article 2);
- Concessionaires, special purpose vehicles and each main subcontractor, well as financiers, non-resident subcontractors and expatriate personnel, intervening as parties in the oil and gas sector operating in the Republic of Mozambique (paragraph 3 of Article 2).

The status of **foreign exchange resident** now covers: (Article 4):

- National natural persons with habitual residence in Mozambique whose stay abroad for a period of more than a year, is due to academic or health reasons (subparagraph b) of paragraph 1 of Article 4);
- National natural persons with habitual residence in Mozambique, that carry out non-occasional activities abroad, namely, border or seasonal workers and crews of ships,

- aircrafts or other mobile equipment operating totally or partly abroad (subparagraph c) of paragraph 1 of Article 4);
- The Mozambican State and local authorities (subparagraph f) of paragraph 1 of Article 4);
 - Diplomatic and consular representations of the Mozambican State abroad (subparagraph g) of paragraph 1 of Article 4);
 - Foreign natural persons with habitual residence (residence is presumed to be habitual after a year from its commencement) in Mozambique, excluding diplomats, consular representatives or equivalent, foreign military personnel carrying governmental functions in the country, including members of their household (subparagraph a) of paragraph 2 of Article 4);
 - Foreign natural persons with habitual residence (residence is presumed to be habitual after a year of its commencement) in Mozambique, who carry out a non-occasional activity abroad, namely, border or seasonal workers and crews of ships, aircrafts or other mobile equipment operating totally or partially abroad (subparagraph b) of paragraph 2 of Article 4).

The **Unique Bank Identification Number (NUIB)** is created, which comprises the unique numerical identification attributed by the Central Bank to natural and legal persons, for the performance of banking operations in general, including foreign exchange, which is attributed upon request by the credit institution or financial company and is of mandatory use in the realization of banking and foreign exchange operations (Article 5).

Regarding the rules pertaining to the **entrance and exit of foreign currency**, the new Foreign Exchange Law foresees the following measures:

- It maintains the provisions that: *i*) the entrance of foreign currency into the country, in cash or other payment means, is free up to the limit established by the Central Bank, and that the amounts must be declared whenever they exceed that limit (paragraph 1 of Article 6); and *ii*) the exit of foreign currency from the country, in cash or other payment means, is free for non-residents, provided it is up to the limit declared on entrance into the country (paragraph 3 of Article 6);
- It now establishes that the exit of foreign currency from the national territory, in cash or other means of payment is free for residents, up to the limit established by Central Bank (paragraph 2 of Article 6);

- In cases of an exit of foreign currency, in cash or other payment means above the limit established or declared at the entrance into the country, the holder of the foreign currency must present proof of its retention and possession legitimacy (paragraph 4 of Article 6);
- It foresees the regime of seizure of values above the established limits, determining that, without prejudice to situations that may constitute a crime, it is up to the customs and police authorities and other public entities depending on the circumstances, to seize the said values by filling the respective official record and communicating it to the Central Bank within 72 hours. The seized values remain in the custody of the Central Bank until a final decision or clarification of the situation. After one year without any justification or claim on the seized values, they revert to the State by order of the Governor of the Central Bank (paragraphs 6, 7 and 8 of Article 6).

III. Chapter II – Policy and Foreign Exchange Authority

The new Foreign Exchange Law foresees that the Central Bank is the foreign exchange authority of the Republic of Mozambique and is responsible for implementing the foreign exchange policy (Articles 7 and 8).

The powers of the Central Bank, without prejudice to the powers provided for in the Organic Law of the Central Bank and in another applicable legislation, are now foreseen in the new Foreign Exchange Law (Article 9).

The Central Bank Notices that comprise the exercise of its regulatory powers, shall be published in the Series I of the Official Gazette (Article 11).

IV. Chapter III – Foreign Exchange Trade

The Foreign Exchange Law foresees rules to safeguard the **integrity of the foreign exchange market**, with the Central Bank having the power to take safeguard measures against deviant conducts and without marked grounds, namely to (paragraph 1 and 2 of Article 12 and Article 13):

- Temporarily suspend from function or apply other preventive measures it deems appropriate to one or more members of the governing bodies and employees of credit institutions and financial companies;
- Suspend, provisionally, credit institutions and financial companies in particular, and natural and legal persons in general, from carrying out foreign exchange operations.

The suspension measures listed above observe the time period determined by the Central Bank and should not exceed an one year period (paragraph 3 of Article 13).

At the end of the suspension period, the entity that was subject to the measure must submit to the Central Bank a request to resume foreign exchange operations and the Central Bank must communicate, in writing, its decision, and may refuse, in cases where the indications or risks of deviant conduct prevail (paragraphs 4 and 5 of Article 13).

It is also foreseen that the Central Bank has the power to establish the terms and conditions for participation and operation of the **interbank market**, as well as to apply preventive and penalty measures (warning, suspension, and exclusion) (Article 14).

V. Chapter IV – Duties for the Realization of Foreign Exchange Operations

The new Foreign Exchange Law foresees that the realization of foreign Exchange operations is subject to the complying with the following duties:

- Principle of exclusive intermediation through the banking system (Article 15) – foreign exchange operations involving payments and receipts abroad must be carried out exclusively through banks and authorized payment services companies established for this purpose;
- Verification Duty (Article 16) – the entities authorized to engage in foreign exchange and partial foreign exchange trading must verify, before carrying out the transaction, its reality, nature, and compliance with the applicable legal and regulatory provisions. For this purpose, the interested parties must supply the indispensable evidence to qualify the operation requested, the effective beneficiary of the operation and, inter alia, those relative to the determination of the subjects, object, value and due dates (paragraphs 2 and 4 of Article 16).

- It covers the duty of verification of identification, due diligence, and others provided for in the legislation on preventing and combating money laundering, financing terrorism, and financing the proliferation of weapons of mass destruction (paragraph 3 of Article 16).
- Information Duty (Article 17) – entities authorized to engage in foreign exchange and partial foreign exchange trading must send to the Central Bank information regarding the foreign exchange transactions carried out. The Central Bank may request information on foreign exchange transactions from any natural or legal person, public, or private entities, which shall be made available within a maximum period of 15 days or within a period determined by the Central Bank. Failure to comply with the deadline or to make the requested information available constitutes disobedience under the terms of the law, without prejudice to the corresponding contravention;
- Conservation Duty (Article 18) – the entities authorized to engage in foreign exchange trading and partial foreign exchange trading must retain the necessary elements to verify the nature and authenticity of their operations;
- Assets Declaration Duty (Article 19) – all foreign exchange residents must declare the values and rights generated, acquired, or held abroad. The declaration of assets is subject to a secrecy duty. Failure to declare assets within the period determined by the Central Bank constitutes a crime of disobedience punishable under criminal law, as well as misdemeanor liability;
- Duty to Repatriate Revenues (Article 20) – all residents must repatriate revenues from the export of goods and services and income from investment abroad. The repatriation must be made in foreign currency through a bank authorized to operate in Mozambique;
- Payments and Receipts in foreign currency (Article 21) – payments and receipts in foreign currency must be restricted to the holder's transactions abroad or with non-residents. It is forbidden, between residents and in national territory, to pay and receive in foreign currency;
- Foreign Payments and Receipts (Article 22) – foreign payments related to the import of goods and services must correspond to the actual entrance of goods and services into the national customs territory. Receipts from abroad shall occur exclusively in foreign currency, except in situations provided for or authorized by the Central Bank. The mechanism of meeting accounts or compensation in the receipt abroad and in the repatriation of revenues are prohibited.

VI. Chapter V – Foreign Exchange Trade

The new Foreign Exchange Law now foresees the regime of entities authorized to carry out foreign exchange and partial foreign exchange trading (subparagraph b) of paragraph 1 of Articles 1 and 23 to 26).

In this regard, the former Foreign Exchange Law only defined the activity of foreign exchange trading, indicated the entities authorized to carry out such activity and referred to the Council of Ministers the power to define the terms and conditions for the exercise of such activity.

The new Foreign Exchange Law foresees that foreign exchange trading will be divided into two “sub-types”:

- Foreign exchange trading – habitual professional activity for profit, on one’s own account or on behalf of a third party of foreign exchange transactions.
The following are authorized to carry out this “sub-type”: *i)* banks; *ii)* exchange houses; and *iii)* companies providing payment services;
- Partial exchange trading – carrying out, on a professional basis, foreign exchange buying and selling operations, strictly related to the main non-financial activity, under the terms authorized by Central Bank.

The following are authorized to carry out this “sub-type”: *i)* travel or tourism agencies, *ii)* hotels and similar, and *iii)* other entities authorized by the Central Bank or institutions established in specific legislation.

The Central Bank is the competent authority to assess and to grant/refuse applications for partial exchange trading (Article 26).

Entities authorized to engage in foreign exchange trading and partial foreign exchange trading shall comply with the following duties: *i)* Verification Duty (Article 16); *ii)* Information Duty (Article 17); and *iii)* Conservation Duty (Article 18).

Entities authorized to engage in foreign exchange and partial foreign exchange trading are responsible for recording foreign exchange transactions (paragraph 2 of Article 29).

VII. Chapter VI – Foreign Exchange Operations

With respect to the rules governing foreign exchange operations, the principles set forth in the previous Foreign Exchange Law are maintained, namely:

- Foreign exchange transactions are classified as:
 - i. Current transactions – any payments or receipts in foreign currency other than for the purposes of capital transfers, inter alia, those related to foreign trade, remittances of values and other current obligations, under the terms established by the Central Bank (subparagraph a) of paragraph 1 and paragraph 2, both of Article 28).
The new definition removed the operation of remittance of amounts for family expenses from the definition of current transaction. However, the Glossary attached to the new Foreign Exchange Law foresees that current transactions comprise those transactions made abroad unilaterally, in other words, without any consideration, such as donations, food allowance, family assistance, inheritances and legacies, and other current obligations;
 - ii. Capital transactions – any payments or receipts in foreign currency that are for the purpose of transferring capital, maintaining those foreseen in the previous Foreign Exchange Law, with the following situation having been added (subparagraph a) of paragraph 3 of Article 28): **investment abroad;**
 - iii. Other foreign exchange transactions – those that, not being classified as current transactions or capital transactions, include, inter alia, those foreseen in the previous Foreign Exchange Law, having been added the following (subparagraphs d), e) and g), paragraph 4 of Article 28): **opening and operation of accounts with financial institutions abroad; contracting of financial derivatives; and payments and receipts in foreign currency in domestic transactions;**
- In terms of Central Bank authorization for foreign exchange operations:
 - i. Operations classified as current transactions are not subject to Central Bank authorization (paragraph 1 of Article 27);

- ii. The conditions of authorization for capital transactions and other foreign exchange transactions are established by the Central Bank. For such purpose, the Central Bank shall take into consideration the macroeconomic and financial situation of the country, namely, the balance of payments situation and the foreign exchange, financial and monetary market conditions (paragraphs 2 and 3 of Article 27);
- All foreign exchange transactions are subject to registration and the Central Bank is competent to regulate the terms and procedures for exchange registration (paragraphs 1 and 3 of Article 29).

It also foresees rules regarding the opening and operation of bank accounts in foreign currency, the conditions of which are regulated by the Central Bank, namely (paragraphs 1 and 4 of Article 30):

- Residents are allowed to open bank accounts in foreign currency in Mozambique, provided that they have a proven relationship with a foreign or non-resident and if this relationship results in the flow of foreign currency;
- Non-residents may hold foreign currency accounts in Mozambique.

The movement of accounts in foreign currency in Mozambique is made by conversion into the national currency, except in situations established by the Central Bank or in specific legislation (paragraph 3 of Article 30).

VIII. Chapter VII – Special Foreign Exchange Rates Regimes

One of the new Foreign Exchange Law updates is that it foresees the foreign exchange regulations applicable to special regimes which will be subject to regulation by the Central Bank and some of which were already referred to in the previous Foreign Exchange Law as cases that were subject to special treatment and are foreseen in Notice no. 20/GBM/2017, of December 11, approved by the Central Bank, which regulates the previous Foreign Exchange Law by virtue of Decree no. 49/2017, of September 11.

Therefore, Article 32 provides that the following are subject to specific foreign exchange regulations:

- Remittances from Mozambican emigrants;
- Exchanges in border areas;
- Transfer abroad of winnings resulting from the practice of games of chance or amusement or social entertainment by non-resident players, in venues authorized by the competent authority;
- Mozambique Stock Exchange;
- Special Economic Zones and Industrial Free Zones;
- Extractive Industry;
- Decree-Law no. 2/2014, of December 2 (Establishes the Special and Applicable Legal and Contractual Regime for Liquefied Natural Gas Projects in Areas 1 and 4 of the Rovuma Basin);
- Contracts signed with the Mozambican Government containing a special foreign exchange regime and entered into prior to the entry into force of the new Foreign Exchange Law;
- Others determined by the Central Bank.

IX. Chapter VIII – Penalty Regime

The new Foreign Exchange Law now regulates offences and misdemeanor procedures (including preliminary proceedings and precautionary measures) in foreign exchange matters and, subsidiarily, the Credit Institutions and Financial Companies Law applies, as well as the criminal and procedural law (Article 48).

It is also applicable to acts committed abroad if there is a connection with Mozambican territory (Article 49).

The following now constitutes currency exchange contraventions (Article 58):

- The performance of foreign exchange transactions without authorization, when such authorization is required;
- Carrying out any foreign exchange transaction without compliance with the verification duty;
- Carrying out foreign exchange transactions without the respective registration;

- Carrying out foreign exchange transactions without the insertion of the UBIN;
- The entrance and exit of foreign currency in cash without compliance with the provisions of the Law;
- Unduly classified foreign exchange operations;
- Failure to keep the information under the terms foreseen in the Law;
- The non-effective entrance of any goods into the national customs territory, paid from a bank authorized to operate in Mozambique, on the grounds of importing goods, except in duly justified and proven cases;
- Making transfers abroad and receiving from abroad any values or payment means, without complying with the provisions of the law or applicable legislation;
- Failure to provide information to the Central Bank by any entity carrying out foreign exchange transactions, when requested or when required by law or other legislation;
- Payment in foreign currency in transactions within the national territory in which none of the parties is a non-resident entity;
- Violation of the mandatory precepts of the Law and its regulations.

The following now constitute severe foreign exchange contraventions (Article 59):

- Obtaining authorization to carry out foreign exchange operation by resorting to false statements;
- The commission of the contraventions described in subparagraphs a) and b) of Article 58 when the amount involved exceeds the equivalent to the annual maximum limit with exemption from Central Bank's authorization for abroad investment;
- The commission of the contraventions described in subparagraphs a) and b) of Article 58, when the cumulative amount of the transfers made, even if in different credit institutions or financial companies, exceeds the annual maximum amount exempt from authorization by the Central Bank for abroad investment;
- The execution of partial exchange trades without payment of the established fees;
- Arbitrage of the exchange rate without complying with the laws or regulations of the Central Bank;
- Failure to declare values and rights generated, acquired or held abroad by residents;

- Failure by residents to repatriate revenues from the export of goods, services and investment abroad;
- The holding of foreign currency auctions without complying with the provisions of the Law;
- Failure to pay for goods and services rendered to resident or non-resident entities, through banks authorized to operate in Mozambique;
- Failure to sell foreign currency at the Central Bank, under the terms of Articles 37 and 47;
- The opening and operation of accounts with financial institutions in the Republic of Mozambique for purposes that are not permitted or authorized under Article 38;
- The opening and operation of accounts with financial institutions abroad, for purposes not permitted or authorized under Article 39;
- Obtaining financing or contracting credit for operations without the authorization of the Central Bank;
- Failure to register with the Central Bank the credit contracted under the terms of paragraph 2 of Article 40 (credit for financing concessionaires);
- Failure of the concessionaires to remit within the time limit the projection of revenue from export earnings, expenses and tax revenues for the following year, under the terms of paragraph 1 of Article 41;
- Failure of the concessionaires to provide to the Central Bank all the identification elements of the bank accounts within the time limit, in accordance with paragraph 1 of Article 42;
- Failure of the concessionaires to send to the Central Bank, on a quarterly basis, the detailed list of contracts signed with non-resident entities supplying goods and services, including copies of those contracts;
- The impediment of the concessionaire to visit its installations and operational areas of the project by the Central Bank, as well as the lack of collaboration that may prove necessary;
- The withholding abroad of receipts necessary for the settlement of goods and services supplied by non-resident entities, as well as foreign currency for the settlement in local currency of goods and services supplied by resident entities.

The contraventions committed by natural persons are punishable by fines between 10 and 500 minimum wages, and contraventions committed by legal persons are punishable by fines between 20 and 1500 minimum wages. Contraventions committed by credit institutions and financial companies are punishable by fines between 50 and 2500 minimum wages (Article 60). For

determining the amount of the fines, the minimum wage applicable is the one of the banking sector (Article 62).

Other sanctions, which may be applied in conjunction with fines, include the following (Article 61):

- Suspension, in whole or in part, of the authorization to carry out foreign exchange trade or partial foreign exchange trade, with or without closure of the establishment;
- Prohibition to carry out total or partial foreign exchange transactions, with or without suspension of economic activity;
- Forfeiture of assets or values referring to or resulting from the contravention, in favor of the State;
- Publication by the Central Bank of the sanction in the country's most widely circulated newspapers, at the expense of the convicted party.

The new Foreign Exchange Law foresees that it is up to the Government to regulate it within 180 days, with the exception of matters whose competence is attributed to the Central Bank. But it also provides that the law should be regulated within 90 days of its publication. It is not clear how long the Government and the Central Bank will have to issue the respective regulations for the new Foreign Exchange Law, although it is certain that they must be issued within 180 days.

Until new regulations are approved, the existing regulations will remain applicable in all matters that is not contrary to the new Foreign Exchange Law (Article 73).

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