

Mozambique



Paula Duarte Rocha
Henriques, Rocha & Associados,
Sociedade de Advogados



Tiago Arouca Mendes
Henriques, Rocha & Associados,
Sociedade de Advogados



Population:	29.2m (UN estimate – January 2017)
GDP per capita:	US\$1,200 (CIA Factbook – 2016)
Average GDP growth over previous [3] years:	Average 6.2% (CIA Factbook – 2014-2016)
Official languages:	Portuguese
Transparency International rating:	Ranked 142/176 (2016 Report)
Ease of doing business ranking:	Ranked 137/190 (2017 Report)

Type of legal system	Based on Portuguese civil law system, Islamic law and African customary law
Signatory to NY Convention	Yes (11 June 1998)
Signatory to ICSID Convention	Yes (4 April 1995)
Member of COMESA, OHADA, SADAQ, EAC	SADC
Signed up to OECD Transfer Pricing Guidelines	There is no comprehensive transfer pricing regime, but provisions in Mozambique's tax code require transactions between related parties to be entered into at arm's length
Bilateral investment treaties	Mozambique is a party to several BITs/TIPs including with China, the US and the EU

Paula Duarte Rocha and Tiago Arouca Mendes identify the key authorities that foreign investors should be aware of in order to ensure greater security over their investments in Mozambique.



Mozambique

Real Estate

1. Are there restrictions on foreign entities holding interests in land, and if so, how are they expressed?

According to Mozambican legislation, land is owned by the State and cannot be sold or otherwise disposed of or encumbered. Nevertheless, the law provides for a lesser real right known as the use and enjoyment of a land right (“*direito de uso e aproveitamento da terra*”/DUAT), which allows for the use of the land.

The DUAT may be held by Mozambican natural and corporate persons, as well as by foreigners, provided they have an approved investment project (following the established by the legislation under the Investment Act – see question 4 below) and meet the following conditions:

- (i) if natural persons, they have resided in Mozambique for at least five years; or
- (ii) if corporate persons, they are incorporated or registered in Mozambique.

Furthermore, according to investment legislation, the foreign investor must comply with the terms of the approved investment project, under penalty of cancellation of such investment project and consequently of the respective DUAT.

Employment

2. Are there any conditions placed on the hiring of a foreign worker (e.g. local minimum quotas which must first be met)?

The Mozambican labour law determines that the hiring of foreign workers may only take place through one of the following alternatives:

- a) hiring for short-term periods;
- b) hiring through the quota system (“*comunição de trabalho*”); or
- c) hiring through an authorisation procedure (“*autorização de trabalho*”).

Hiring for a short-term period allows the foreign worker to be in the country for up to 90 days, consecutive or non-consecutive, being only necessary to notify the labour authorities; no authorisation is required.

Under the quota system, a certain number of foreign workers may be hired depending on the total number of Mozambican workers the company employs:

- a) a small-sized company (up to 10 workers) may have up to 10% of its workforce as foreign workers, with a minimum of one foreign worker;
- b) a medium-sized company (ranging from 11 to 100 workers) may have up to 8% of its workforce as foreign workers; and
- c) a large-sized company (more than 100 workers), may have up to 5% of its workforce as foreign workers.

As for the authorisation procedure, it is commonly used by companies that have reached their quota and wish to hire foreign workers for periods longer than 90 days per year and, therefore, must justify to the labour authorities that such foreign worker holds technical qualifications that no other Mozambican worker may provide.

3. What are the restrictions on redundancies and any applicable compensation?

According to the Mozambican Labour Law, the dismissal of an employee can only take place under the following scenarios:

- (i) breach of labour-related duties by the employee. The process begins with a disciplinary proceeding brought against the employee. Following the accusation note, the employee has the right to present his defence, and only if the facts are proven and the circumstances demand for such penalty, the employer can dismiss the employee; or
- (ii) termination of the employment relationship due to structural, market and technological reasons that affect the employer’s business. In this case, the dismissal is a result of the employer’s inability to have such employee working, which must be duly justified to the labour authorities.

In both cases, the employee is entitled to compensation that varies according to the type of agreement, be it a fixed-term agreement or an indefinite term agreement. In the first case, the employee is entitled to all salaries that he would have received from the date of dismissal up until the termination date indicated in such agreement. In the second scenario, the compensation is determined taking into account the employee’s remuneration and seniority.

Investment and local content

4. Are there any general regulations on foreign investment, including any investment requirements for foreign companies to invest in conjunction with local entities or people, and if so, to what effect?

The Investment Act and its regulations establish the basic legal framework for domestic and foreign investments that wish to benefit from established guarantees and incentives.

According to the Investment Act, a minimum direct foreign investment, resulting from equity investment, of MZN 2.5 million (approximately USD 35,000) must be invested into the country in order for profits to be transferred out of country and for the invested capital to be re-exported.

Other forms of foreign direct investment are:

- (i) freely convertible external currency;
- (ii) equipment and related accessories, materials and other imported goods; and
- (iii) the assignment, under certain circumstances, of rights to use patented technologies and trademarks.

Investment legislation does not apply to investments in the areas of oil and gas, mining of mineral resources or to public investments financed by funds from the general state budget, or to investments of an exclusively social nature.

As for local content, currently only a sectorial regulation exists. For example, in the oil and gas sector, the respective framework establishes that companies carrying out projects in such sector must have the national company responsible for such sector as a partner.

5. Are there any specific legislative requirements, and if so, what are they?

As mentioned above, in Mozambique, there is no specific law regulating local content in general or which determines the requirements that shall be complied with by foreign investors wishing to invest in Mozambique.

Also, in general, there are no requirements for share capital to be held exclusively by Mozambican nationals or companies having a registered office in Mozambique, except with regard to regulated sectors, such as private security or press.

6. Are there any restrictions on the importation of goods or raw materials into the country, including requirements that local produce is utilised rather than products bought outside the country?

In general, there is no restriction regarding the importation of goods or raw materials into the country.

Investment legislation allows for investors to

import goods necessary for them to carry out their activities, being as well subject to tax benefits.

Other than that, those wishing to import need to register as a foreign-trade operator and comply with the requirements set out in the import export regulations, which entail being subject to customs control and the respective customs clearance process.

Furthermore, the following do not need any previous authorisation from local entities:

- (i) importers who import goods worth less than USD 500;
- (ii) passengers bringing in personal property (as baggage or separately) of a value less than MZN 25,000 (approximately USD 670);
- (iii) diplomatic missions and officials when importing goods intended for personal representation or for personal use;
- (iv) foreign employees of international organisations, with regard to goods for personal use, under the relevant United Nations Convention;
- (v) United Nations agencies, when importing goods for their own use; and
- (vi) entities importing samples of no commercial value.

Finance

7. Are there any restrictions on the purposes for which money may be lent?

Mozambican law does not impose any restrictions on the purposes for which money can be lent, as long as it is not for any unlawful activity (Mozambique has recently approved a legal diploma that establishes the legal framework and the measures to prevent and punish the use of the financial system and non-financial entities for the purpose of money laundering and terrorism financing).

However, in the case of loans taking place between resident and non-resident entities and resulting or that may result in payments to or receipts from foreign countries, such loans are subject to foreign exchange legislation and, therefore, subject to the Central Bank supervision and authorisation.

When submitting such application to contract a loan with a non-resident entity, the Mozambican entity must identify the reasons of such debt and prove that it has the financial capacity to carry out its commitments towards the lender, through the presentation of financial statements and the repayment plan, amongst others documents.

8. How does the law work in relation to security interests in this jurisdiction, and over which classes of assets may security be granted? Does your jurisdiction recognise the concept of a trust and the role of a Security Trustee?

The Mozambican Civil Code rules provide for the types of collateral/security available to creditors, the most common forms being mortgages (over immovable assets or movable assets subject to registration) and pledges (over movable assets or rights such as corporate shares).

Securities are considered to bind the parties from the moment of signature of the constituent instrument; such agreement may be by a private document or public deed (depending on the case) and is usually subject to registration.

In Mozambique, unlike many countries, no security interest can be provided over land. As mentioned above, land is owned by the State and private individuals can only obtain a DUAT.

In Mozambique, the concept of acting as a security trustee exists; it is common under Mozambican law to appoint and have a single fiduciary or agent holding all of the local law securities in the name of and on behalf of the lenders. As the lenders' representative, the security trustee must be registered as the holder of such security at the relevant registries; however, the lenders must also be individually specified in each security instrument.

Procurement/PPPs

9. What laws, regulation and guidance are in place to manage the procurement and management of infrastructure projects (including PPPs) and is this regime overseen by a special unit, division or department (such as a PPP unit) within Government?

Mozambican legislation (Act 15/2011 of August 10, regulated by Decree 16/2012 of June 4) defines public-private partnerships (PPP) as undertakings in the area of the public domain (excluding petroleum and mineral resources) or in the area of public provision of services, in which, under contract and with the funding provided in whole or in part by a private partner, the latter undertakes to the public partner to make the necessary investment and to manage the activity for the efficient provision of the services or goods that the State is charged with providing to its users.

As a rule, the procedure for the contracting of PPP undertakings is by public tender. However, for reasons of public interest and provided the legal requirements for the purpose are met, a

limited call for tender by prior qualification or a two-stage tender procedure may be permitted. Exceptionally, contracting a PPP can take the form of negotiation and direct award.

The sectoral supervision of the PPP undertaking is entrusted to the government entity responsible for the area or sector of activity of the PPP, while its financial supervision is entrusted to the Ministry of Economy and Finance.

Finally, one should also point out Decree 69/2013 of December 20, which regulates the contracting of PPP and business concessions whose investment does not exceed MZN 5 million (approximately USD 72,000) (small dimension ventures) and which is made through public tender and, exceptionally, by direct award.

Finance

10. Is there a merger control regime? If so, what are the thresholds for notification?

Competition rules in Mozambique determine that all agreements, decisions of associations and concerted practices between competing undertakings (horizontal practices), as well as agreements and practices between undertakings and their suppliers and customers (vertical practices), which have the object or effect of appreciably impeding, distorting or restricting competition in the market, are prohibited.

As mentioned below, concentrations between undertakings meeting the jurisdictional thresholds of the Competition Act are subject to prior mandatory notification to/authorisation by the Competition Regulatory Authority.

Such thresholds are:

- (i) the combined turnover of the undertakings concerned in Mozambique in the preceding year is equal to or exceeds MZN 900 million (approximately USD 12 million);
- (ii) the transaction results in the acquisition, creation or reinforcement of a share of or above 50% of the national market of a given good or service;
- (iii) the transaction results in the acquisition, creation or reinforcement of a share of or above 30% of the national market of a given good or service, as long as at least two of the undertakings concerned each achieved in the preceding year a turnover of at least MZN 100 million (approximately USD 1.5 million) in Mozambique.

11. Is there a competition/anti-trust law that prohibits items such as abuse of a dominant

position, cartel behaviour and exclusivity arrangements, and if so, how actively is it enforced?

The competition rules also prohibit the abuse of a dominant position by one or more undertakings. It is presumed that dominance exists when companies have (individually or jointly) a share above 50% of the relevant market. The abuse of economic dependence is prohibited in cases where a company is economically dependent on a supplier or client, and there is no an equivalent alternative.

Also, concentrations that create or reinforce a dominant position which may significantly impede competition in the relevant markets (i.e. cartel behaviour) are in principle prohibited, although such transactions may be justified under certain public interest reasons set forth in competition legislation.

The violation of provisions regarding prohibited practices, as well as the early implementation of a concentration subject to mandatory filing before clearance, subjects such each company involved to fines of up to 5% of its previous year's annual turnover.

Competition legislation also provides for periodic penalty payments, as well as ancillary sanctions with potentially serious consequences, such as exclusion from participating in public tenders for five years and even the possible break-up of the offending undertaking.

Note that the Mozambican Competition Regulatory Authority is not yet operational given that its members have not yet been appointed.

Intellectual Property

12. What protections does the local law provide for intellectual property rights?

In Mozambique, there is both an Industrial Property Code and a Copyright Act in force, as a result of the ratification of several international treaties.

The purpose of the Copyright Act is the protection of literary, artistic and scientific works and of their authors, performers, record and video producers, and the presenters of radio broadcasts.

Copyright covers rights of an economic and non-economic nature. Economic rights consist mainly of the exclusive right of economic exploitation of the work, reflected in the author's right to authorise its reproduction, translation, adaptation, import or export, having copies for sale to the public, as well as their right to perform any other type of transfer of ownership.

In turn, non-economic rights are of a personal nature and consist of the author's right to claim authorship of the work, to remain anonymous, or

to use a pseudonym, and to oppose any distortion, mutilation or modification of his work or any attack against it detrimental to its honour, reputation, integrity or authenticity.

As indicated above, the Investment Act also grants a protection over intellectual property given that the state guarantees the security and legal protection of property over assets and rights, including industrial property rights, within the scope of authorised investments in accordance with such legislation.

Tax and Foreign Exchange

13. What taxes are businesses subject to in this jurisdiction? Please include, for example, corporate tax, VAT, stamp duty, tax on share issues, etc. and the applicable rates. What transfer pricing rules apply, and are any withholding taxes in force in your jurisdiction?

In Mozambique, companies are subject to several taxes, such as:

- Corporate Income Tax – at a rate of 32% ;
- VAT – at a rate of 17%;
- stamp duty – percentage varies according to the operation (for example, purchase and sale, swap or assignment for consideration of real estate are taxed at a rate of 0.2% of the value; mortgages and other collateral are taxed at a rate of 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);
- economic activity fee (i.e. the municipality Tax) – the rate is determined by each municipality;
- social security – at a rate of 4% per employee; and
- SISA (Property Transfer Tax) – at a rate of 2%, among others.

Regarding the transfer pricing regime, it is embodied in the Mozambican Corporate Income Tax Code and roughly consists of one single provision stating the arm's length principle and foreseeing the possibility of adjustments whenever that principle is not abided by, that is, whenever related parties (which, according to the law, are those which may exert a significant influence on others' decision process) deviate from what would be agreed by independent parties in similar transactions.

14. Are there any foreign exchange rules that control repatriation of funds out of this jurisdiction?

As referred to above, all transactions and



operations taking place between residents and non-residents and resulting or may result in payments to or receipts from foreign countries are governed by the Foreign Exchange Act and respective regulations. Such legislation establishes that all foreign-exchange transactions are subject to registration with the Central Bank, but not all require its prior authorisation, such as the transfer of funds resulting from foreign direct investment.

Furthermore, taking into account investment legislation, foreign investors who have investment projects approved have the right to transfer abroad the totality of the dividends that they are entitled to at the end of each financial year and re-export the invested capital.

To that end, a discharge document proving the conclusion of the investment, compliance with all tax obligations and that all the necessary measures have been taken to comply with the capital and interest payments related to loans that might have been contracted for the realisation of the investment must be presented to the Central Bank.

Dispute Resolution

15. What is the courts' approach to enforcement of foreign judgments or arbitral awards?

In order for foreign judgments to be effective in Mozambique, rulings on private rights issued by a foreign court must be reviewed and confirmed before the Supreme Court.

For confirmation of a foreign judgment, it is essential that the content of the decision does not lead to a result which is manifestly incompatible with the principles of public order of the Mozambican state, though the confirmation process does not assess the merits of the decision.

A ruling recognised by the Supreme Court has the effect of *res judicata* and is enforceable within national territory; judgments of foreign courts not reviewed may, however, be invoked in cases pending in Mozambican courts as simple means of evidence subject to appraisal by those judging the cause.

As for the enforcement of foreign arbitral awards, the law also admits its recognition and confirmation in cases heard at the Supreme Court. The rules of the New York Convention, dated 1958, to which Mozambique acceded, subject to reciprocity, apply to the review and confirmation of arbitral awards proffered by foreign courts or arbitrators.

16. Are the local courts generally supportive of arbitration proceedings (for example, in granting interim relief in support of such arbitrations)?

According to the Arbitration, Conciliation and

Mediation Law Act, the interested parties may explicitly submit the resolution of all or some of their disputes to arbitration, either in advance (through the provision of an arbitration clause in the contractual instruments), or subsequently (by entering into an arbitration agreement).

The arbitration award, provided that it is given in compliance with the law and provided that the arbitral tribunal is legally constituted, has the same value as a judgment rendered by a court of law.

Arbitral awards are final and enforceable and may be challenged in court only on the basis of formal order and procedural principles laid down in the law; in particular, in the case of patent disregard of procedures which has an impact on the exercise of the rights of defence.

General

17. In order for a foreign company to sign a document under local law are there any signing procedures that must be followed?

As a rule, when it comes to companies, under the articles of association and the commercial certificate, it is obligatory for the subscriber to have the power to bind the company.

The recognition of signatures can be by presence or by similarity, and for certain documents containing sensitive content, for example matters related to bank accounts, it is mandatory that the signature be done in the presence of a public notary.

18. Are there any current legislative or policy developments that companies investing in this jurisdiction should be aware of?

As a recommendation, it is important to reiterate the importance of obtaining an investment authorisation by those wishing to invest in Mozambique, given that an agreement with the Government always provides for a greater security when it comes to the investment itself.

Currently, a Local Content Act is being prepared by the Mozambican Parliament which may be approved this year and should be of great importance to all foreign investors. ■

Paula Duarte Rocha
Henriques, Rocha &
Associados, Sociedade de
Advogados



Paula Duarte Rocha is a partner with Henriques, Rocha & Associados, Sociedade de Advogados, Lda (HRA Advogados). Prior to this, Paula was managing partner and lawyer at Ferreira Rocha & Associados, Sociedade de Advogados. During this time, she was involved in all areas of practice: advising national and foreign private companies with respect to public sector laws, public tenders and contracts; as well as advising foreign entities on compliance with all Mozambican tax, labour and commercial obligations.

pdrocha@hrlegalcircle.com

Tiago Arouca Mendes
Henriques, Rocha &
Associados, Sociedade de
Advogados



Tiago Arouca Mendes joined the firm in 2014. Tiago began his career as a trainee lawyer at Miranda Correia Amendoeira & Associados in 2013. He participated in a secondment at Pimenta, Dionísio e Associados as a legal advisor in 2014.

tamendes@hrlegalcircle.com



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Rua dos Desportistas, 833, 6.º, fracção NN5
Maputo
Mozambique

+258 21 344000
<http://www.hrlegalcircle.com/en/>