



LEGAL ALERT

NEW FOREIGN EXCHANGE REGULATIONS

The new Regulation of the Foreign Exchange Law was approved by Order No. 20/GBM/2017, which repeals the regime established by Decree No. 83/2010 of 31 December.

The first great innovation is that the approval of the regulatory rules of foreign exchange transactions is now made through an order from the Bank of Mozambique, contrary to the previous reality, in which these rules were approved by Decree, by the Council of Ministers.

This change aims at allowing a greater flexibility in the updating of these rules, in order to keep up with the vicissitudes and constant challenges in the foreign exchange market, but it also jeopardizes the legal certainty of the recipients of these rules, since its amendment will not follow the rigorous formalities and procedures that are observed in the approval of a Decree.

Another innovation of the Regulation concerns the involvement of the commercial banks in several of the procedures previously carried out directly between the applicant and the Bank of Mozambique.

For example, the request for the import or export of capital will now be sent to the commercial bank and the latter will forward it to the Bank of Mozambique for approval within 5 (five) days. The request may only be submitted directly to the Bank of Mozambique in cases in which it is not possible to resort to the commercial bank.

The registration of foreign direct investment is also carried out with the commercial intermediary bank, obeying the same 90-day period as from the date of entry of the investment funds. Registration is carried out directly at the Bank of Mozambique only in the case of investment made *(i)* through the importation of equipment, machinery or other material goods or *(ii)* through the right to use patented technologies and trademarks.

The Regulation maintains the general principle of the liberalization of current transactions, where only capital transactions being subject to the approval of the Bank of Mozambique.



However, these have undergone some changes in order to facilitate the process of entry of foreign capital into Mozambique, as mentioned below.

Regarding financial loans, prior authorization by the Bank of Mozambique is not required, provided that the amount does not exceed USD 5,000,000.00 (five million United States dollars) and provided that:

- a) The interest rate is not higher than the base lending rate of the currency of credit denomination, plus four basis points;
- b) The sum of the reference rate and the margin does not exceed the interest rate of credit practiced in the national banking system; and
- c) Has a maturity of 3 (three) years or more.

These transactions shall be registered with the intermediary commercial bank.

In case of loans whose value exceeds the limit of USD 5,000,000.00 (five million United States dollars), the application for authorization must be submitted to the intermediary commercial bank, which should send it to the Bank of Mozambique within 5 (five) days.

With regard to shareholder loans, they are also pre-authorized, without requiring the prior approval by the Bank of Mozambique, provided that:

- a) They have an interest rate of 0%, with maturity equal to or greater than 3 (three) years and free of commissions and other charges; or
- b) They are contracted at an interest rate of more than 0%, but lower than the base lending rate of the currency of credit denomination, with a maturity of more than 3 (three) years, free of commissions and other charges, up to the amount equivalent of USD 5,000,000.00 (five million United States dollars).

Regarding the opening of accounts by residents in foreign currency, it also does not require prior authorization of the Bank of Mozambique in cases where the applicant has a proven relationship with any entity abroad or with non-resident entities, namely:

- a) Exporters;
- b) Companies or organizations;
- c) Workers or employees of international companies or organizations;
- d) Other entities managing or receiving foreign exchange.

In addition to the aforementioned changes, the Regulation also regulates the foreign



exchange operations carried out by entities with a specific purpose and other entities related to the concessionaires of oil and gas projects.

Due to the above, it is clear that this Regulation introduces changes aiming to reduce bureaucracy in foreign exchange transactions, allowing investors to freely carry out relatively low-value transactions without the authorization of the Central Bank.

Another aspect to be taken into account is the role that commercial banks will play since they should now mediate the authorization procedures for capital transactions subject to prior authorization. One of the risks of this measure is the slowness that can result from having to deal with an intermediary bank, which should strictly comply with the legal deadlines for sending the applications to the Bank of Mozambique.

Nevertheless, the new Regulation will surely contribute to improve the business environment and attracting foreign direct investment to Mozambique.

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