

MOZAMBIQUE: New Law on PPP, Large Scale Projects and Concessions

On August 10, the new Law on Public-Private Partnerships (PPP), Large Scale Projects (LSP) and Company Concessions (CC) was published in Mozambique. Aiming at attracting investment and economic and social development to the country, this Law establishes the guidelines of the awarding process, the implementation and the monitoring of these three modalities of involvement of the private sector in the promotion of development. In what refers to the distinctive elements of each of the referred investment modalities we would point out the following:

PPP is the venture carried out in the public domain or public service supply area, in which, by contract and under total or partial financing of the private party, the latter undertakes to carry out the needed investment and to exploit the respective activity – the provision of goods and services the availability of which is a State's responsibility. According to this definition, the essential characterization element is, more than the risk assumption, the venture financing by the private party.

LSP is the investment venture authorized or contracted by the Government whose value exceeds, with reference to the date of 1.1.2009, the amount of MZN 12.500.000.000 (approximately USD 490.000.000).

CC is the venture which scope is the prospecting, research, extraction and/or exploitation of natural resources or other resources or national assets.

Excluded from the Law's scope are:

- a) PPP related to mineral and oil resources;
- b) simple goods and services supply contracts awarded to State institutions, including public works and consultancy services contracts (the Law does not set forth any requirement concerning the degree of dependence *vis-a-vis* the public contractor or the absence of competition in the market); and
- c) PPP of altruistic, social, humanitarian, cultural, sportive or similar non-profit nature.

The awarding procedure of the PPP is, generally, the public tender. In the event of PPP proposals of private initiative, the bidder enjoys a margin of preference of 15% in the evaluation of proposals resulting from the bidding process. Regarding the LSP, the principle of free private initiative prevails, the projects that do not imply

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the concession of exploitation of national resources being in general subject to Authorization. Finally, the contracting of CC is submitted, not only to the sector legislation, but also to the general principles applicable to public procurement. The contracting of CC, including LSP that imply the concession of exploitation of national resources, assumes the form of contract – concession, exploitation management, venture management – or any other form of securitization of rights granted by the Government for the prospecting, research and extraction or exploitation of natural resources or other national assets.

In what specifically regards the regime of PPP, the following principles should also be highlighted:

- a) User payer principle – compensation of costs incurred and profit margin;
- b) Maintenance of the State Property;
- c) Risk sharing – the risks imputable to the private party and to the State are identified, the following risks (among others) being the responsibility of the private party and of the contracted partner: (i) risk of political and corporate conflicts of interest (among other), (ii) financial and exchange rate risk, (iii) risk of fall of the demand or of the supply in the market (excluding exceptional situations contractually agreed), (iv) risk of depletion of the venture's residual value, or (v) environmental impact risk;
- d) Share of financial and socio-economical benefits (also applicable to LSP and CC);
- e) In strategic or special socio-economical interest PPP ventures, co-participation in the financing, provision of financial guarantees or concession of subsidies or compensations by the State are admitted.

In case of renewal of current PPP, LSP or CC contracts, subsequently to the enactment of the Law, amendment of said contracts is imposed in order to adapt the respective contents to the rules concerning risk and benefit sharing set forth in the Law.

The Law entered into force on the date of the respective publication – 10th of August. Within a 90 days period after publication there should follow the respective regulation by the Council of Ministers. It is expected that this Regulation will bring news with great practical impact in the current and future PPP, LSP and CC projects.

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