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### MOZAMBIQUE

#### SECURITY OVER MOVABLES LEGAL FRAMEWORK AND CREATION OF THE CENTRAL REGISTRY FOR SECURITY OVER MOVABLES

Law 19/2018, of 28 December 2018, establishes the legal framework for security over movables and creates the Central Registry for Security over Movables (the “Law”) has just entered into force.

The Law is aimed at promoting access to financing through the institutionalization of a framework that clarifies and broadens the scope of security over movables assets and rights, on the one hand, and that improves legal safety and ensures a greater publicity of the information on such security, on the other hand.

The enactment of this Law in Mozambique’s current climate is a particularly important contribution towards improving project finance conditions, especially projects involving foreign investors and lenders. The legal solutions proposed are also more in line with those applicable in the most relevant jurisdictions of such investors and lenders.

The security interests contemplated in the Law include pledges, mortgages over vehicles subject to registration, assignments of credits by way of security, financial leases, conditional bills of sale/equitable charges, retention of title clauses and any other legal transactions tantamount to creating a security over movables located in the national territory by a guarantor also located in the national territory.

Under the new framework, specific or general, present or future (in this later case, security only becomes effective when the guarantor acquires rights over the movable or becomes entitled to dispose of it), tangible or intangible , provided that they can be disposed of for consideration at the time of the creation of the security, including

- (i) any type of movables;
- (ii) A part or ideal fraction of a movable;
- (iii) all movables owned by the guarantor.

The security interest in any given movable comprises its proceeds, products (derivatives), including those resulting from its incorporation into a mass of assets, its disposal or transformation, and any replacements thereof, regardless

of their number or sequence, their transformations or replacements, including any amounts paid by way of compensation for losses or damages caused to the movable given in security.

The legislator further clarifies that the Law also extends to security interests created over cash, agricultural products, debt securities, mineral and oil&gas resources, intellectual property rights, the stock of a commercial establishment and other rights and things not prohibited by law. Mineral and oil&gas resources to be extracted can also be charged by the holder of the mining rights or of rights relating to oil&gas operations, but solely for purposes of funding the relevant exploration or extraction.

The Law also creates the Central Registry for Security over Movables (“Central Registry”), which is tasked with recording the information in connection with the security over movables and centralizing the information in connection with the following personal property and rights subject to registration:

- (i) motor vehicles, railway vehicles, aircraft and vessels;
- (ii) shareholdings. The integration of the Central Registry and other existing registry services will be regulated in a specific statute to be enacted by the Council of Ministers.

The creation of the Central Registry enables interested parties to obtain relevant information on the security over movables. The certificates issued by the Central Registry for securities registered and created after the entry into force of this Law have the same legal force as the certificates for security interests registered with the relevant registry offices.

The security interests must be created by way of a written agreement between the guarantor and the secured creditor. No public deed is required. The security interests become effective immediately upon being created. Security interests may also be created verbally, when publicity is completed upon transfer of possession.

As for the effectiveness of the security before third parties, the new framework sets forth three publication methods:

- (i) by filing the security with the Central Registry for personal property and rights subject to registration of title;
- (ii) through bailment or a document fully transferring possession of the movable to the creditor or a third party;
- (iii) through a control agreement, if the security is created over a bank account, a securities and brokered financial assets account, as defined in a separate Regulation.

The Law also includes rules on the ranking and enforcement of any kind of security interests.

Regarding enforcement, note that the secured creditor can appropriate the movable given as security without having to appeal to court or any other entity, provided that the security agreement contains a clause allowing the secured creditor to appropriate the movable and the movable is valued at a fair market price or the parties agree on the value of the movable.

Also regarding the enforcement of the security, the secured creditor can dispose of the movable given as security, without having to appeal to court or any other entity, provided that it is authorized to do so under the agreement or by the pledgor and observes the procedures established in the Law.

Lastly, the Law stipulates that the pledge framework is as provided for herein, apparently indicating that the provisions of the Mozambican Civil Code on this security interest are deemed repealed.

The Council of Ministers must enact the relevant regulations within 90 days.