



ICLG

The International Comparative Legal Guide to: **Project Finance 2019**

8th edition

A practical cross-border insight into project finance

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General Chapters:

1	Why the World Needs Project Finance (and Project Finance Lawyers...) – John Dewar, Milbank LLP	1
2	Legal Issues of Cross-Border Project Finance Focusing on the Netherlands and Italy – Daphne Broerse & Matteo Trabacchin, IPFA	8
3	Common Structures and Market Trends in Holdco Financings in the US Power Industry – José A. Morán & Juan Carlos Gonzalez Novo, Baker McKenzie	13
4	Current Trends in LNG Development and Construction – Julia A. Czarniak & Gregory D. Howling, Skadden, Arps, Slate, Meagher & Flom LLP	16

Country Question and Answer Chapters:

5	Andorra	Cases & Lacambra: Miguel Cases & Marc Ambrós	22
6	Angola	Vieira de Almeida and RLA – Sociedade de Advogados, RL: Manuel Protásio & Vanusa Gomes	31
7	Brazil	Veirano Advogados: Ana Carolina Barretto & Amanda Leal Brasil	41
8	Canada	Cassels Brock & Blackwell LLP: Alison Manzer & Charles Newman	51
9	China	Global Law Office: Dr. Xin Zhang & Shuhui Luo	60
10	Colombia	Brigard Urrutia: Manuel Fernando Quinche & César Felipe Rodríguez	68
11	Denmark	Gorissen Federspiel: Morten Nybom Bethe & Tina Herbing	78
12	Ecuador	Flor & Hurtado: Mario Flor & Daisy Ramirez	87
13	Egypt	Zaki Hashem & Partners: Sameh Kamal	96
14	England & Wales	Milbank LLP: John Dewar & Munib Hussain	104
15	France	Bignon Lebray: Sébastien Pinot & Serge Rastorgoueff	122
16	Germany	Kantenwein: Marcus van Bevern & Sven Ceranowski	135
17	Ghana	N. Dowuona & Company: Nana Ama Botchway & Akosua Achiaa Akobour Debrah	143
18	Greece	Sardelas Petsa Law Firm: Panagiotis (Notis) Sardelas & Konstantina (Nantia) Kalogiannidi	151
19	India	Cyril Amarchand Mangaldas: Santosh Janakiram & Subhalakshmi Naskar	159
20	Iran	Sabeti & Khatami: Behnam Khatami & Hooman Sabeti	168
21	Ireland	Arthur Cox: Matt Dunn & Charlotte Upton	177
22	Italy	Grimaldi Studio Legale: Riccardo Sallustio & Giuseppe Buono	189
23	Japan	Anderson Mōri & Tomotsune: Kunihiro Yokoi & Wataru Higuchi	199
24	Kenya	Oraro & Company Advocates: Pamela Ager & James K. Kituku	207
25	Malaysia	Rahmat Lim & Partners: Dzuhairi bin Jaafar Thani & Syed Rashid bin Rahim Alsree	218
26	Mozambique	Vieira de Almeida and Guilherme Daniel & Associados: Teresa Empis Falcão & Guilherme Daniel	230
27	Nigeria	Abuka & Partners: Patrick C. Abuka & Sunday Edward, Esq.	240
28	Portugal	Vieira de Almeida: Teresa Empis Falcão & Ana Luís de Sousa	250
29	Serbia	Zajednička advokatska kancelarija Marić & Mujezinović in cooperation with Kinstellar: Tijana Arsenijević & Branislav Marić	260
30	Singapore	Allen & Gledhill LLP: Kok Chee Wai & Kelvin Wong	269
31	South Africa	TGR Attorneys: Phologo Pheko	278
32	Spain	Cuatrecasas: Héctor Bros & Javier Vivas	290
33	Switzerland	Prager Dreifuss Ltd.: Daniel Hayek & Mark Meili	301
34	Taiwan	Lee and Li, Attorneys-at-Law: Hsin-Lan Hsu & Pauline Wang	309
35	USA	Milbank LLP: Daniel J. Michalchuk & Richard M. Hillman	318

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Mozambique

Vieira de Almeida and
Guilherme Daniel & Associados

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1 Overview

1.1 What are the main trends/significant developments in the project finance market in your jurisdiction?

Mozambique expects to see the announcement of the final investment decision (FID) for one of the biggest gas projects in the Rovuma basin in the second quarter of 2019. The LNG project developed by the US oil company Anadarko will become the largest project finance carried out to date in Mozambique and one of the largest on the African continent.

Relevant changes were introduced to the legal framework related to the financing of projects with the enactment at the end of 2018 of Law no. 19/2018, of 28 December 2018, that establishes the legal framework for security over movables and creates the Central Registry for Security over Movables (Central Registry Office).

This law is aimed at promoting access to financing through the institutionalisation of a framework that clarifies and broadens the scope of security over movable 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 government also amended the Petroleum Operations Regulation to exempt international concessionaires from registering with the Mozambique Stock Exchange, this obligation applies only to national concessionaires and, in view of the devaluation of the metical (MT), updates the required value to equal to or higher than MT 40 million for the purposes of a public tender, with the required value for the execution of operations now amended to MT 80 million.

In general, similar to last year, Mozambique has not witnessed any other relevant developments in the project finance area. This was due to the IMF maintaining its position regarding the suspension of financial assistance to Mozambique, which has had a major impact on the economy, leading to the country being unable to initiate its recovery process. On a recent visit to Mozambique, the IMF said the suspension will continue for as long as there are no significant developments or at the conclusion of the investigation related to illegal debts. It is important to note that relevant progress was made by the Attorney General Office (“*Procuradoria Geral da República*”) in recent months with regard to the aforementioned investigations.

The Mozambican economy maintained its gradual recovery. Inflation declined rapidly, from a peak of 26% in November 2016 to about 6% in June 2018, reflecting the tight monetary policy, exchange rate stability and the slowdown in food price increases. In

terms of real GDP growth, in 2018, real GDP grew from about 3.5% to 4%; in 2019, the real GDP is expected to grow from about 4% to 4.5%. This recovery is expected to be supported by additional reductions in interest rates in the face of the favourable inflation scenario. Inflation is expected to decline to 5.5% in 2019 (inflation remained low at 6.5% in 2018). Moreover, the exchange rate is expected to remain stable in 2019, with the dollar costing between MT 58 and MT 60.

Unfortunately, this slow recovery is still not enough to attract foreign direct investment, which fell by 26% in 2017 to USD 2.3 billion. Thus, the country’s ability to attract new investments will be based almost exclusively on its capacity to explore its potential in natural resources.

1.2 What are the most significant project financings that have taken place in your jurisdiction in recent years?

The most significant project financings in Mozambique in recent years are the Nacala Corridor Railway and Port Project (the Nacala Project), the Coral South Floating LNG Project (the Coral Project) and the Moatize-Macuse Railway and Port Project (the Moatize Railway and Port Project).

The Nacala Project was signed in November 2017 by and between the Japanese Mizuho Bank, Ltd. alongside the Japan Bank for International Cooperation, the African Development Bank and nine other private financial institutions and the four project companies established in Mozambique and Malawi by Vale S.A. and Mitsui & Co, Ltd. in connection with project finance loans in the total amount of USD 2.73 billion. The project connects the Moatize coal mine developed by Vale S.A. and Mitsui & Co, Ltd. in the northern Mozambican province of Tete to the port of Nacala through a part of Malawi and will enable rail and ship transport of produced coal up to a volume of 18 million tonnes *per annum* (MTPA).

The Coral Project is the first project to reach the FID in the development of the gas resources discovered in the Rovuma basin. The USD 4.675 billion financing of the Coral South Floating Liquefied Natural Gas (FLNG) project in offshore Mozambique to be developed by Italian oil and gas firm Eni and its partners closed in May 2017. In this co-venture partnership, ExxonMobil owns a 35.7% interest in Eni East Africa S.p.A. (to be renamed Mozambique Rovuma Venture S.p.A.), which holds a 70% interest in Area 4, and is co-owned by Eni (35.7%) and CNPC (28.6%). The remaining interests in Area 4 are held by Empresa Nacional de Hidrocarbonetos E.P. (10%), Kogas (10%) and Galp Energia (10%). The FLNG unit will have a capacity of around 3.4 MTPA and will be the first FLNG in Africa. The construction of the FLNG facilities will be financed

under a project finance structure covering around 60% of its entire cost. The financing agreement has been subscribed by 15 major international banks and guaranteed by five export credit agencies.

The Moatize Railway and Port Project was awarded to Thai Moçambique Logística, a joint venture between Thailand-based Italian-Thai Development Company with a 60% share, the local State-owned ports and railways company Portos e Caminhos de Ferro de Moçambique (better known as CFM) with a 20% share and a local private-sector consortium Corredor do Desenvolvimento Integrado do Zambeze (Zambeze Integrated Development Corridor, generally known by the acronym CODIZA) with a 20% share. The project, which would originally connect Moatize and Macuse and would run for 500 kilometres, was amended in November 2017 to extend the railway for a further 120 kilometres west of Moatize to Chitima. The Macuse port will be designed to accommodate ships of up to 80,000 tonnes, and annual exports are expected to start at 25 MTPA, eventually increasing to 100 MTPA.

The projected cost of the project is around USD 2.7 billion (USD 810 million for the port and the remainder for the railway) and the financing package is expected to complete during the course of 2018.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

It is indeed possible to give security over movable assets and rights (movables) by means of a general security agreement.

The legal framework of security over movables changed considerably with the enactment of Law no. 19/2018, of 28 December 2018 (the Movables Security Law). The Movables Security Law applies to 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 to other legal transactions tantamount to creating security over movables located in Mozambique by a Mozambican security provider.

Under the Movables Security Law, any type of movables, parts or ideal fractions of a movable or all movables owned by a security provider, either specific or generic, present or future (in this later case, security only becomes effective when the security provider acquires rights over the relevant movable or becomes entitled to dispose of it), tangible or intangible, may be given in security, provided that they can be disposed of for consideration at the time of the creation of security.

The security interests must be created by means of a written agreement between the security provider and the secured creditor. No public deed is required. Security interests may also be created verbally, when publicity is completed upon transfer of possession. The security interests become effective as between the parties immediately upon being created. As for the effectiveness of security against 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; or (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.

Specific perfection requirements may apply depending on the type of movable at stake.

The Movables Security Law also creates the Central Registry Office, which is tasked with recording the information in connection with the security over movables and centralising the information in connection with certain property and rights subject to registration. The Central Registry Office has not yet started to operate.

Note that, as ruled by Decree-Law no. 29 833, of 17 August 1939, in the case of mercantile pledge (*penhor mercantil*) granted as security of banking credit facilities, the physical possession of the pledged goods is not required in order for the pledge to be fully valid and effective.

Real estate assets are subject to mortgages which need to be granted by public deed before a notary and must be registered with the competent registration office.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

Under the laws of Mozambique, land cannot be privately owned and, accordingly, cannot be mortgaged. Land and its associated resources are the property of the State.

The Land Law (Law no. 19/97 of 1 October), however, grants private persons the right to use and benefit from the land known as *Direito do Uso e Aproveitamento da Terra (DUAT)*. Although the land itself cannot be owned, all assets built on the land in association with the *DUAT* can be owned and consequently mortgaged (in case of immovable assets) and pledged (movable assets), including any machinery or equipment.

Even though the Mozambican Civil Code does not expressly provide for the possibility of creation of factory mortgages, reference to those mortgages is made in the Land Register Code and there are precedents of factory mortgages having been successfully created and registered in Mozambique, covering project facilities and all machinery, equipment and other movable property located therein.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

According to the Movables Security Law, security can be taken over current and future receivables by means of a written agreement between the security provider and the secured creditor under which, in order to ensure effectiveness of the security against third parties, the possession of the receivables must be transferred to the secured creditor. Security over receivables shall be registered with the Central Registry Office.

It is common for the secured creditor to authorise the security provider to continue to collect the receivables in the absence of a default and the third-party debtor to continue to carry out the relevant payments to the security provider until notice to the contrary.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Security can be taken over cash deposited in bank accounts by means of a written agreement between the security provider and the

secured creditor. The execution of a control agreement will be required in order for it to be effective against third parties. Generally, the secured creditors will grant a mandate to the security provider for him to operate the relevant bank account in the absence of a default.

Security over cash deposited in bank accounts shall be registered with the Central Registry Office. The bank records should also record the security interest and the mandate in favour of the security provider.

2.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

In a limited liability company by shares (*sociedade anónima*), the creation of security is made by written agreement between the parties and, where shares are represented by physical certificates, requires the endorsement of the share certificates by the security provider, the registration of the pledge in the company's share register book and the deposit of the share certificates with the financial intermediary used by the company to register itself and its shares. If the shares are bearer shares, the creation and perfection of security is made by delivery of the shares to the secured creditor. Security must be registered at the Central Securities Depository (*Central de Valores Mobiliários*) operating in the Stock Exchange and at the Central Registry Office.

In a limited liability company by quotas, where the shareholding is not materialised in share certificates (*sociedade por quotas*), security is created by means of a written agreement between the parties and prior consent of the company in which quotas are being given in security is required. Security must be registered at the Legal Entities Register Office and at the Central Registry Office.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The costs of public notary and registration fees, if and when applicable, vary according to the secured amount and number of pages of the deed or private document.

Stamp duty on security is charged at 0.3% of the total amount secured, unless those security interests are ancillary and created simultaneously with a loan, and the loan has already been subject to a similar taxation (no duplication of tax applies).

The stamp duty rate on loans vary, as follows: 0.03% for loans with a maturity of less than a year; 0.4% for loans with a maturity of more than a year; and 0.5% for loans with a maturity equivalent to or more than five years.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Filing, notification and registration procedures before the competent authorities normally do not take more than 20 days.

Expenses vary in accordance with the value of the asset but, in any event, the amount is not significant.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

Generally, the creation of security over assets which are in the private domain does not require any regulatory or similar consent. Conversely, the creation of security over assets in the public domain is prohibited.

It should be noted that restrictions may be imposed regarding the creation of security over concession or regulated assets, notably through specific regulations or the relevant concession agreements.

3 Security Trustee

3.1 Regardless of whether your jurisdiction recognises the concept of a "trust", will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

The concept of a "trust" is not recognised in Mozambique. It is, however, common to have security granted to a security agent on behalf of the lenders; in which case, even if the relevant agreements expressly spell out that the security agent holds security for the benefit of a given lending syndicate, the security agent shall appear as the sole beneficiary of the security entitlements and shall be the sole entity with the authority to file enforcement procedures in respect thereof (unless all lenders are disclosed as holders thereof). Hence, in the context of the enforcement procedures, the security agent may be required to prove before a court that it holds title to the secured obligations.

3.2 If a security trust is not recognised in your jurisdiction, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

The only way to have all the lenders recognised as beneficiaries of a given security interest is to name them as holders of the secured obligations and corresponding security. However, this makes it necessary to amend the relevant agreement (or execute a new notarial deed) each time the lenders assign, buy or sell part of the loans, which may not be a practical solution. Alternatives may be put in place, as is the case where the security agent is made the registered beneficiary of the security and either benefits from a parallel debt or is made contractually bound to assign the secured obligations to all the lenders prior to enforcement of the security. Other alternatives include having the entire lending syndicate registered as secured creditors but with proper intercreditor arrangements in place (setting up the rules for action by individual creditors and for allocation of the proceeds of security enforcement).

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

The enforcement of a mortgage by the creditor can only be achieved through a judicial proceeding.

As for security over movables, the sale can be completed judicially or, if previously agreed by the parties, through a private sale. The new Movables Security Law allows for appropriation or foreclosure of movables by the secured creditors.

It is common practice to grant an irrevocable power of attorney to the creditor pursuant to which the creditor is authorised to sell the secured asset on behalf of the security provider and be paid from the proceeds of the referred sale.

Court procedures usually take several months or in certain cases more than a year. That period may be further extended if the complexity of the legal arguments at stake leads to court appeals.

Please refer to section 5 below for restrictions concerning insolvency/bankruptcy and restructuring proceedings.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

All transactions with and/or between Mozambican and non-Mozambican persons or legal entities is subject to either registration or prior authorisation with the Bank of Mozambique or both, depending on the transaction at stake. In case of foreclosure, the re-exportation of the invested capital is subject to authorisation by the Bank of Mozambique.

5 Bankruptcy and Restructuring Proceedings

5.1 How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the security?

The Insolvency Law (Decree-Law no. 1/2013, of 4 July) in Mozambique establishes a suspension regarding all ongoing claims against the debtor, following the opening of an insolvency proceeding. This means that all proceedings that were ongoing are suspended when the insolvency/judicial recovery is declared. In the case of judicial recovery, the law establishes a 180-day “stay period”, after which the right of creditors to start or continue their actions and executions, regardless of the court decision, is reinstated.

It is possible to file new claims against the debtor after the insolvency is declared and those must be notified to the judge in the insolvency proceedings by either the judge in the new proceedings or by the debtor himself. However, those new proceedings can never be other insolvency proceedings, because the law prohibits the filing of new insolvency proceedings against the same debtor.

5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

The declaration of insolvency results in all debts being accelerated and all assets being collected and sold to pay creditors. The creditors are paid with the proceeds of the sale in the following order: (i) labour credits; (ii) secured credits; (iii) tax credits; (iv) ordinary credits; (v) contractual and tax penalties; and (vi) subordinated credits.

When different security interests are granted over the same asset, the first (older or higher ranking) creditor shall be paid first, except in the case of the right of retention which entitles creditors to hold certain assets in their possession until their credit is paid. Credits with a right of retention have preference over common credits secured by pledges and mortgages regardless if the pledges and mortgages were created first.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

The insolvency regime is applicable to all persons or legal entities, except for public companies and entities, insurance companies, credit institutions, as well as financial corporations which are subject to specific insolvency rules and proceedings in the respective regimes.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

As referred to in the answer to question 5.2 above, a creditor may retain possession of the assets pertaining to a certain entity if it is in the possession of such assets and if the claim arises from expenses or damages caused by such assets.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

The Insolvency Law also provides for the judicial and extrajudicial recovery processes (Decree-Law no. 1/2013, of 4 July).

The judicial recovery can only be initiated by the debtor by filing a petition with the court. If accepted by the court, the debtor must submit a recovery plan to the court showing evidence of the viability of the business, a detailed description of the recovery process and the proposed recovery measures. If the plan is accepted by the court and not challenged by any creditor, the plan is approved and the restructured claims of the company (i.e. new rights and obligations set out in the plan, after sale of assets, if applicable) shall be binding on the debtor and creditors. If, on the other hand, the plan is challenged, a general meeting of creditors must be convened and the plan approved by more than 50% of all creditors to bind all creditors.

The extrajudicial recovery is also initiated by the debtor. This procedure is a special mediation procedure in which the recovery plan is negotiated with the creditors, according to the rules of conciliation and mediation provided for in Law no. 11/99, of 8 July – the Arbitration, Conciliation and Mediation Regime. If the plan is

approved by creditors representing 3/5 or more of the total amount of credits, a recovery agreement is deposited in a judicial court and such agreement shall in effect constitute an enforcement order, subject to specific performance and grounds for declaring insolvency should the credits not be paid.

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in your jurisdiction.

Directors may remain in office, supervised by the insolvency administrator, whilst the insolvency proceedings are pending. They may, however, be dismissed where they have contributed to the worsening of the economic situation of the company.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

The Mozambican Commercial Code does not require companies to reserve a percentage of their shareholdings to local partners. However, for compliance purposes with the rules on local content in certain sectors such as oil and gas and mining regarding hiring nationals, only companies with most of the share capital held by Mozambican persons or legal entities (i.e. 51% or more of share capital) are considered Mozambican companies.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

Even though Mozambique is a party to several bilateral investment treaties with other nations (South Africa, Germany, Algeria, Belgium, China, Cuba, Denmark, Egypt, USA, Finland, France, Italy, Mauritius, the Netherlands, Portugal, Sweden, the United Kingdom, Vietnam, India, Switzerland, Spain and Zimbabwe), none of those treaties provide protection from foreign ownership restrictions imposed under sector-specific legislation.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Nationalisation is governed by Decree-Law no. 5/76, of 5 February 1976, which determines the reversion to the State of all income from buildings as well as those that were abandoned. With the implementation of this law, the Mozambican State began to provide housing to citizens for very low prices, as symbolic amounts. Even though this piece of legislation has not been revoked, it has only been applied immediately after national independence as it does not conform to the current reality in Mozambique.

The Constitution of Mozambique provides that any property right may be expropriated in case of public necessity, utility and interest, and compensation shall be payable to the property owner.

Also, the Land Law establishes that *DUAT* may be revoked on grounds of public interest, upon payment of a compensation to the *DUAT* holder. In those cases, all assets and improvements that exist on the land revert in favour of the State.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

The governmental agencies or departments with authority over projects depend mainly on the relevant sector of activity of a project. In general terms, the respective Ministries (energy, infrastructure, transport, health, etc., and, when applicable, environment) are responsible for the launch, licensing and major regulation of the projects, either directly or through their governmental departments. In this context, the most relevant authorities with authority over projects are: the National Institute of Mining (INAMI); the National Institute of Petroleum (INP); the Ministry of Land Environment and Rural Development (MITADER); the Agency for the Promotion of Investments and Exports (APIEX); and the Bank of Mozambique.

7.2 Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

Obligations set out in financing or project documents of a private nature are only enforceable before the courts after being authenticated or certified by a notary or by any competent authority. Financing contracts entered into with foreign entities are subject to prior authorisation of the Bank of Mozambique.

An exception is made to finance contracts for amounts equivalent or less than USD 5 million and which satisfy the following conditions: (i) the interest rate is less than the base lending rate for the relevant currency; (ii) the sum of the relevant rate and margin is not more than the rate used in Mozambique; and (iii) the repayment period is at least three years or more. Those financings are treated as pre-authorised and subject only to registration.

Shareholder and intercompany loans made by non-residents to their resident subsidiaries or affiliates will also be treated as pre-authorised and subject only to registration if: (i) they are interest-free, the repayment period is at the latest three years and no fees and other charges apply; or (ii) the interest rate is lower than the base lending rate for the relevant currency, the repayment period is at least three years and the loan amount is a maximum of USD 5 million. Note that, in those cases, registration relates to each disbursement amount received by the entity in Mozambique within the pre-authorised finance contract and to each repayment of principal made thereunder. Payments of interest and fees or charges under or in connection with finance contracts qualify as current transactions and are not subject to registration.

Financing or project documents executed by public entities may be subject to approval by the Administrative Court to become effective. Special rules apply in case of the exploration and production concession contracts in the Rovuma basin under Decree-Law no. 2/2014, of 2 December 2014.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

In general terms, the performance of economic activities in Mozambique is subject to licensing. Also, the granting of the right

of use of an asset in the public domain is admissible through a concession regime.

It should be noted that certain activities in sectors such as oil and gas and mining are kept to companies in which the majority of the share capital is held by Mozambican persons or legal entities (i.e. 51% or more of the capital).

Please note that there is no private ownership of land in Mozambique.

7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

The extraction or export of natural resources are subject to the payment of Corporate Income Tax, Value-Added Tax and other taxes levied under the tax regime applicable to mining and oil and gas activities, as applicable.

Petroleum Production Tax is levied on oil and gas produced in each concession area and is due by corporate entities performing petroleum operations under a concession agreement. The tax rate is 10% for oil and 6% for gas and is levied on the value of the oil and gas produced and may be paid in cash or in kind.

The following rules and taxes apply to mining activities: (i) Tax of Mining Production (IPM); (ii) Surface Tax (ISS); (iii) Tax in Income Deriving from Mineral Sources (IRRM); and (iv) special rules to determine the taxable income under Personal Income Tax Corporate Income Tax. IPM taxes rates vary between 8% for diamonds, 6% for precious metals, precious and semi-precious stones and heavy sands, 3% for basic metals, charcoal, ornamental rocks, etc. and 1.5% for sand and stone, and are levied on the value of the extracted mineral product after treatment. ISS is due annually and is levied on the mining area of exploration. The rate varies between MT 17.50/ha (MT per hectare) and MT 105,00.00/ha, depending on the whether they relate to the first year of prospecting and research or the sixth year onwards of the mining concession, respectively, and are levied on the number of hectares of the area subject to a mining title (prospering licence, research, mining concession or mining certificate).

The IRRM tax rate is 20% on the cash earnings accumulated during the year, determined according to specific rules.

7.5 Are there any restrictions, controls, fees and/or taxes on foreign currency exchange?

All transactions between resident and non-resident entities in Mozambique, which result or may result in payments or receipts from abroad, are subject to the exchange control legislation which may or not require prior authorisation of the Bank of Mozambique depending on the nature of the relevant transaction.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

Approved foreign investments projects can remit and repatriate investment returns. Such remittances are concluded through the local banking system and upon obtaining tax clearance from the Ministry of Finance.

A 20% withholding tax is charged on both interest and fees paid to non-resident lenders. Where applicable, Value-Added Tax is also due at the rate of 17% on the total income from services rendered for consideration in Mozambique.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

The opening and operation of onshore foreign currency and offshore bank accounts is authorised for exporters, companies or organisations, employees of international companies or organisations and all entities that generate or receive foreign currency. The opening of bank accounts by any other legal entities requires prior authorisation by the Bank of Mozambique.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in your jurisdiction or abroad?

Dividend payments are subject to a 20% withholding tax, unless said dividends concern shares listed on the Mozambique Stock Exchange, in which case the withholding tax is 10%. These tax rates may be reduced by the application of a tax treaty and are not applied in case of dividends paid to a Mozambican company that has held 25% or more of the share capital in an associated company in Mozambique for at least two years. Mozambique has tax treaties with Portugal, Mauritius, the United Arab Emirates, South Africa, India and others.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

Pursuant to Decree 54/2015, of 31 December 2015, any activity which may affect the environment is subject to an evaluation of the potential impact (an environmental impact assessment) to determine its environmental feasibility, which concludes with the issuance of an Environmental Licence.

Occupational health and safety in Mozambique is governed, in general terms, by the Constitution and the Labour Law. Special legislation may apply to specific activities, e.g. Legislative Diploma 120/71, of 13 November 1971 (for Civil Engineering), Legislative Diploma 48773, of 5 July 1973, Provincial Decree 61/ 73, of 20 November 1973 (for Industrial Establishments), Decree 61/2006, of 26 December 2006 (for geological and mining activities), Decree 13/2015, of 3 July 2015 (for mining activities), and Decree 28/2016, of 18 July 2016 (for production, transportation and commercialisation of cement).

7.10 Is there any specific legal/statutory framework for procurement by project companies?

Mozambique's general procurement terms from the Regulation on the Contracting of Public Works, and Procurement of Goods and Services by the State (Decree 5/2016, of 8 March 2016), are applicable to all State bodies and institutions, including local government and companies owned by the State. The Regulation includes a general mechanism (public tender) and an exceptional contracting mechanism (limited call for tenders by prior qualification, limited call for tenders, two-stage tender, tender by auction, small tender, tender by means of quotes and direct award).

Sector-specific legislation (mainly in natural resources) and the mega-projects legislation also include procurement rules and

principles of mandatory application, generally accommodating similar procurement rules or contracting methods (public tender, restricted tender, two-stage tender and direct award).

Special rules apply for activities and services under the exploration and production concession contracts in the Rovuma basin in accordance with Decree-Law no. 2/2014, of 2 December 2014.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

Mozambican law generally requires insurance to be provided by local insurers. Because of the small local insurance market, entities can obtain insurance with foreign insurers where it is not possible to insure with local insurance companies and provided that prior notice is given to the regulator – *Instituto de Supervisão de Seguros de Moçambique* (ISSM).

Special rules apply for insurances in connection with the exploration and production concession contracts in the Rovuma basin under Decree-Law no. 2/2014, of 2 December 2014.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Payment of insurance policies contracted offshore by the insured person requires presentation, by the interested parties, of evidence that the necessary approval has been obtained from the competent authority in the country in which the insurance has been taken out, in accordance with applicable legislation.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

The regimes for the employment of foreign workers in Mozambique which generally apply are (i) the quota regime, (ii) the work permit regime, and (iii) the investment projects regime approved by the government.

Under the quota regime, the allowed quotas for foreign employees are 5% for all workers in large companies, 8% off all workers in medium-sized companies, and 10% of all workers in small companies. In all cases, prior notice from the Ministry of Labour of 15 days is required. Please note that in case of the exploration and production concession contracts for the Rovuma basin under Decree-Law no. 2/2014, of 2 December 2014, the quota is the one established in the workforce plan.

The work permit regime (out of quota) will only apply if there are no Mozambican workers who have the necessary academic or professional qualifications, or there are qualified but insufficient Mozambican workers.

In the case of investment projects approved by the government, the quota allowed for foreign workers is that approved for the project. The work permit is not required, and notice given within 15 days of the date of entry of the foreign workers in the country is sufficient.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

Goods entering into Mozambique for use in the country must be cleared through the appropriate customs procedures such as (i) temporary importation, (ii) temporary exportation, (iii) re-importation, (iv) re-exportation, (v) customs transit, (vi) storage, (vii) industrial free zones, and (viii) customs warehousing.

Certain products are excluded from entry under some of these regimes. This is the case for the importation of left-hand drive vehicles used for commercial purposes in Mozambique which is prohibited.

Other prohibitions and import restrictions apply based on health and moral grounds and in compliance with international conventions to which Mozambique is a party, including prohibitions under the multilateral environmental agreements to which Mozambique is a party.

Special rules apply for imports in connection with the exploration and production concession contracts for the Rovuma basin under Decree-Law no. 2/2014, of 2 December 2014.

10.2 If so, what import duties are payable and are exceptions available?

All goods imported into Mozambican territory are subject to the payment of customs duties set forth in the Customs Tariff Book, which include *ad valorem* charges, service charges, Specific Consumption Tax and Value-Added Tax. Specific rules can be applied to SADC countries. Authorised investment projects and activities under certain sector-specific legislation may benefit from import duties on the importation of capital assets (equipment and machinery).

Goods imported under the temporary importation regime benefit from a grace period payment of the relevant customs duties and other import charges and require the delivery of a bond (the amount varies depending on the amount of the customs duties and charges suspended).

11 Force Majeure

11.1 Are force majeure exclusions available and enforceable?

Even though there is no specific legal provision on the issue, *force majeure* is accepted and enforceable in Mozambique under the Civil Code. In general, project contracts provide for detailed provisions in relation to *force majeure* events and terms under which the parties have agreed to mitigate the effects of *force majeure*, and exclude liability for breach of contract resulting from a *force majeure* event. The terms agreed between the parties in this respect are generally accepted and enforceable in Mozambique.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

There are no specific rules which apply to corruption and bribery

activities in the projects sector. Nevertheless, entities are subject to general criminal law.

According to the Mozambican Criminal Code and Law no. 6/2004, extortion, attempted corruption and bribery are prohibited.

The penalties for bribery and corruption are: imprisonment for up to eight years; and payment of pecuniary fines.

13 Applicable Law

13.1 What law typically governs project agreements?

The Mozambican Civil Code establishes that contracts are governed by the law elected by the parties, if such election has a connection with the contract or is supported by an interest in good faith of the parties.

If a foreign law is elected in accordance with those rules it will not be acceptable if it violates the fundamental principles of Mozambican public policy, and certain Mozambican principles and rules that are mandatory for the projects sector.

Concession contracts and other project agreements entered with public entities are typically governed by general laws and regulations of the Republic of Mozambique and by specific laws and regulations applicable for the sector where the project will be implemented. Construction contracts relating to works to be carried out in Mozambique must always be governed by Mozambican law.

Special rules apply in case of the exploration and production concession contracts for the Rovuma basin under Decree-Law no. 2/2014, of 2 December 2014.

13.2 What law typically governs financing agreements?

Financing agreements are typically governed by English law.

13.3 What matters are typically governed by domestic law?

The Mozambican conflict-of-laws rules regulate that rights regarding possession, ownership and other related rights over movable or immovable assets are governed by the law of where the property is located. This includes the creation of security over those assets.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

Submission to a foreign jurisdiction and waiver of immunity are valid and enforceable in Mozambique to the extent permitted by law. Submission to a foreign jurisdiction is prohibited, regardless of contractual provisions, if, in accordance with the Mozambican mandatory procedural rules, the Mozambican courts have jurisdiction to decide on a certain matter.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Arbitral awards are recognised by local courts subject to the

requirements and procedures for enforcement of arbitration awards stated in the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and provided that they are issued in the territory of another contracting State.

15.2 Is your jurisdiction a contracting state to the New York Convention or other prominent dispute resolution conventions?

Mozambique is a contracting State to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1998. The Constitution states that international conventions are recognised in the internal judicial system and have the same force as internal legislation. Also, the Arbitration Law states that the international conventions do prevail over the Law and other internal provisions.

Mozambique is also a contracting State to the Washington Convention regarding the Settlement of Investment Disputes between States and Nationals of Other States and the International Centre for the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), as well as to the Additional Facility Rules of ICSID approved on 27 September 1978 and is a member of the International Chamber of Commerce.

15.3 Are any types of disputes not arbitrable under local law?

Mozambican law establishes that all disputes are arbitrable, except disputes of a personal nature (e.g. family matters) or disputes that are expressly subject to the exclusive jurisdiction of a judicial court.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

Disputes about labour rights and disputes arising out of or in connection with administrative agreements are subject to domestic arbitration.

Special rules apply in case of the exploration and production concession contracts for the Rovuma basin under Decree-Law no. 2/2014, of 2 December 2014.

16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

While direct agreements with the government (in its capacity as grantor in a concession contract) are common, those agreements do not offer any particular political risk protections.

Change-in-law risk is normally addressed by contract in the standard terms for international project finance deals.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

A 20% withholding tax is levied on both interest and fees paid to

non-resident lenders, except where there is a double taxation treaty in force between Mozambique and the lender's home country. The enforcement of security, in general terms, does not trigger any taxes. However, this must be analysed on a case-by-case basis (e.g. the enforcement of a mortgage, with the subsequent transfer of ownership over real estate property may trigger a 2% Property Transfer Tax – SISA).

17.2 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

Mozambique has an attractive regime for foreign investors established in the Mozambican Investment Law, its regulation and the Tax Benefits Code. These laws provide a wide range of tax incentives to attract foreign investment to the country and for which foreign investors may be eligible, such as deductions from the amount of tax assessed, accelerated depreciation, tax credits, exemption from tax and the reduction in tax rate and other tax payments, the deferment of the payment of taxes and other special tax measures.

For the costs and taxes to create any type of securities, please see question 2.6 above.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in your jurisdiction?

We believe that the most relevant issues have been addressed.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

The capital market in Mozambique covers a primary market (the market for new issues of securities) and a secondary market (the trading market for previously issued securities between third

parties). Other concepts within this framework include the stock market and over-the-counter market, the latter being a market in which supply and demand are dealt with outside the stock market, with the involvement of authorised financial intermediaries.

A limited liability company by shares (*sociedades anónimas*) may issue bonds (designated as corporate bonds) up to the value of their share capital inscribed in the most recent balance sheet and income statement, subject to authorisation by general meeting or the board of directors, as stipulated in the articles of association.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in your jurisdiction.

To the best of our knowledge, there is no experience of Islamic project finance in Mozambique, nor are there any finance instruments structured in accordance with Islamic law.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

See question 19.1 above.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in your jurisdiction? If so, what steps could be taken to mitigate this risk?

The inclusion of interest payment obligations in a loan agreement is valid and enforceable in Mozambique.

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Before joining VdA in 2008, Teresa was an Associate with the project department at Allen & Overy (London) where she acquired expertise in the financing of projects in various jurisdictions. Teresa is a Partner in VdA's Infrastructures & Mobility practice and from 2011 to 2014 acquired reputation as deputy at the Cabinet of the Secretary of State for Infrastructure, Transports and Communications, being responsible for drafting and reviewing legislation concerning these sectors as well as leading negotiation teams in the context of the infrastructure PPP review requested by the bail-out arrangements applying in Portugal between 2011–2014. Teresa is frequently sought for leading-edge national and international transactions on project finance transactions and capital markets, mainly focused on the infrastructure and energy sectors, due to her high expertise. She has extensive experience in overseas markets, particularly in Portuguese-speaking African countries, namely Mozambique.

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Provided support to the Ministry of Energy, participated in the drafting of key legal instruments in the downstream petroleum sector regulation since 2006.

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