

# PROJECT FINANCE

## Mozambique



# Project Finance

Consulting editors


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Quick reference guide enabling side-by-side comparison of local insights into collateral and security packages; forex and withholding tax issues; remittances and repatriation of foreign earnings; foreign currency accounts; foreign investment issues, including investment, ownership, insurance, worker, equipment and nationalisation / expropriation restrictions and fiscal treatment; relevant government authorities; natural resource regulation; government approvals and filings; arbitration and governing law considerations; environmental, health and safety laws; project companies; public legislation, limitations and transactions; and recent trends.

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## CREATING COLLATERAL SECURITY PACKAGES

### Types of collateral

What types of collateral and security interests are available?

Various types of security and collateral may be given to secure loans, notably, mortgages on real estate and certain movable assets subject to registration (such as automobiles, ships and aircraft), and pledges on movable assets in general, including equipment, receivables, bank accounts, credits, deposits, quotas and shares (including new shares to be acquired).

*Law stated - 15 June 2022*

### Collateral perfecting

How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party? Is it necessary for the security agent and trustee to hold any licences to hold or enforce such security?

### Movable assets

It is possible to provide 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, which was further developed by Decree No. 7/2020, of 10 March 2020 (together, 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 or 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 the latter case, security only becomes effective when the security provider acquires rights over the relevant asset), 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 between the parties immediately upon being created. As for the effectiveness of security against third parties, the new framework sets forth three publication methods:

- by filing the security with the Movable Security Registration Central for personal property and rights subject to registration of title;
- through bailment or a document transferring possession of the movable to the creditor or a third party; or
- 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 Movables Security Registration Central, 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 Movables Security Registration Central started operations in June 2021

Note that, as ruled by Portuguese Decree-Law No. 29 833, of 17 August 1939 (included in the Mozambican legislation through Charter No. 9:811, of 7 June 1941, issued by the Ministry of the Colonies and still in force), in the case of commercial pledge granted as security of banking credit facilities, the physical possession of the pledged assets is not required for the pledge to be fully valid and effective.

## Real estate

Under Mozambican law, 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 1997) grants private persons the right to use and benefit from the land (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 the case of immovable assets) and pledged (movable assets), including any machinery or equipment.

Mortgage of real estate assets are granted by means of a public deed before a notary and must be registered with the competent registration office,

Even though the Mozambican Civil Code does not expressly provide for the possibility of the 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.

## Receivables

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, to ensure the 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 Movables Security Registration Central.

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.

## Bank accounts

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 with the depository bank will be required for it to be effective against third parties. Generally, the secured creditors will grant a mandate to the security provider for him or her to operate the relevant bank account in the absence of a default.

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

## Share capital

In a limited liability company by shares, 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 shares ledger 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 the delivery of the shares to the secured creditor. Security must be registered at the Central Securities Depository operating in the Stock Exchange and at the Movable Security Registration Central.

In a limited liability company by quotas, where the shareholding is not materialised in share certificates, security is created by means of a written agreement 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 Movable Security Registration Central.

## Fees and charges

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 per cent 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 varies as follows:

- 0.03 per cent for loans with a maturity of less than a year;
- 0.4 per cent for loans with a maturity of more than a year; and
- 0.5 per cent for loans with a maturity equivalent to or more than five years.

## Security agent

The concept of a 'trustee' 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.

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 with proper intercreditor arrangements in place (setting up the rules for action by individual creditors and for allocation of the proceeds of security enforcement).

*Law stated - 15 June 2022*

## Assuring absence of liens



## How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

The Movables Security Registration Central intends to consolidate the relevant information regarding security interests over most moveable assets. Encumbrances over share capital can also be confirmed with the Central Securities Depository Office in relation to shares and the Legal Entities Registration Office in relation to quotas.

Regarding real estate assets, creditors can consult the corresponding Real Estate Registry Certificate, to verify the status of any liens and encumbrances over real estate assets. As such, the referred registries allow creditors to obtain the most relevant information concerning all existing encumbrances, as well as their ranking and amount.

Law No. 19/2018, of 28 December 2018, which was further developed by Decree No. 7/2020, of 10 March 2020 (together, the Movables Security Law) further foresees the possibility of executing a control agreement in relation to security interests provided over balances in bank accounts and registration in the Movables Security Registration Central not being mandatory. In such cases, pledges over balances in bank accounts will have to be verified directly with the depository bank.

*Law stated - 15 June 2022*

## Enforcing collateral rights

Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

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 Movables Security Law allows for appropriation or foreclosure of movables by the secured creditors. The price may be fixed in foreign currency, however, payments between resident entities shall be converted, automatically, into meticaís.

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.

*Law stated - 15 June 2022*

## Enforcing collateral rights following bankruptcy

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 collateral? Are there any preference periods, clawback rights or other preferential creditors' rights with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

Under the Insolvency Law, once insolvency is declared, all existing debts of the debtor shall become automatically due thus, limiting the secured lenders' or creditors' access to the secured asset. Such declaration prohibits the debtor from disposing its assets resulting in the unenforceability of some transactions in which the debtor is involved. Moreover, the creditors are paid with the proceeds of the sale in the following order:

- labour credits;
- secured credits;
- tax credits;
- ordinary credits;
- contractual and tax penalties; and
- subordinated credits.

When different security interests are granted over the same asset, the first (older or higher ranked) 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.

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 that are subject to specific insolvency rules and proceedings in the respective regimes.

The Insolvency Law also provides for the judicial and extrajudicial recovery processes.

The extrajudicial recovery is 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 the Arbitration, Conciliation and Mediation Regime (Law No. 11/99, of 8 July 1999).

If the plan is approved by creditors representing three-fifths 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. This regime is applicable to foreign and local creditors, and no special procedures or restrictions apply to foreign creditors.

*Law stated - 15 June 2022*

## FOREIGN EXCHANGE AND WITHHOLDING TAX ISSUES

### Restrictions, controls, fees and taxes

What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange and transfer?

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 that may or not require prior authorisation by, or registration with, the Bank of Mozambique (BoM), depending on the nature of the relevant transaction.

The transfer of foreign currency to a non-resident entity is classified as a capital transaction, and therefore is subject to prior authorisation by the BoM. To grant the authorisation, the BoM shall assess whether:

- all tax obligations related to the transaction have been complied with; and
- the transferor has registered its investment therein.

Mozambique has strict foreign exchange rules and regulations whereby foreign exchange (forex) transactions are classified as: current transactions and capital transactions.

Under the Forex Law (Law No. 11/ 2009, of 11 March 2009), all forex transactions classified as capital transactions thereunder require prior approval from the BoM. However, all capital inflows are free of the BoM prior authorisation. It

will be the responsibility of the BoM inspectorate to confirm whether such verification has been done, and to apply any corrective measures. Therefore, among others, the following capital transactions do not require the BoM's authorisation:

- investment through loan or credit from a related company. In the case of shareholder loans, these are classified as capital transactions, thus being subject to prior authorisation should the amount being lent exceed US\$5 million with an interest rate higher than zero per cent but below the base lending rate of the loans currency, a maturity higher than three years and free of commissions and charges; or a loan with an interest rate is equal to zero per cent and the maturity is equal to or above three years and free of commissions and charges;
- real estate investment by non-residents in the country should have the same treatment as foreign direct investment;
- guarantees related to current transactions and related to the circumstances provided under Notice No. 20/GBM/2017, of 27 December 2017; and
- opening and operating accounts with local financial institutions, in a foreign currency, by non-resident entities.

Further, the following capital transactions require prior authorisation of the BoM:

- real estate investment;
- transactions involving participation units of collective investment undertakings;
- opening and using bank accounts with financial institutions abroad;
- credits related to the transaction of goods or provision of services;
- financial loans and credits, when all the requirements listed below are fulfilled;
- if those requirements are not fulfilled, they won't need previous authorisation;
- guarantees;
- transfers in execution of insurance contracts;
- transactions on securities and other instruments traded on the money and capital markets;
- physical import and export of monetary instruments; and
- personal loans.

Financing contracts entered into with foreign entities are subject to prior authorisation of the BoM.

An exception is made to finance contracts for amounts equivalent to or less than US\$5 million and which satisfy the following conditions:

- the interest rate is less than the base lending rate for the relevant currency;
- the sum of the relevant rate and margin is not more than the rate used in Mozambique; and
- 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:

- they are interest-free, the repayment period is at the latest three years and no fees and other charges apply; or
- 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 US\$5 million.

In the aforementioned 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.

Finally, no fees are due for obtaining prior authorisation, or registration with, the BoM.

*Law stated - 15 June 2022*

### **Investment returns**

What are the restrictions, controls, fees and taxes on remittances of investment returns (dividends and capital) or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions? Are any withholding taxes applicable to payments of interest or premiums on loans or bonds?

Approved foreign investment 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 per cent 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 per cent on the total income from services rendered for consideration in Mozambique.

*Law stated - 15 June 2022*

### **Foreign earnings**

Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

Mozambican residents must repatriate foreign earnings and, as a general rule, such earnings must be converted into Mozambican meticals.

*Law stated - 15 June 2022*

May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

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 BoM.

*Law stated - 15 June 2022*

## **FOREIGN INVESTMENT ISSUES**

### **Investment restrictions**

What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

The minimum value for foreign direct investment through the allocation of own capital is 7.5 million meticaais, and the minimum value for annual exports of goods or services is 4.5 million meticaais.

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

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

To relieve some of the restrictions, investors may elect to apply for an investment project to benefit from the incentives granted by the government. Such incentives include the hiring of a foreign workforce at a higher rate than the general regime, tax exemptions as well as capital incentives (loans or repatriation of invested capital).

*Law stated - 15 June 2022*

### **Insurance restrictions**

What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

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).

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.

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.

*Law stated - 15 June 2022*

### **Worker restrictions**

What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

The regimes for the employment of foreign workers in Mozambique that generally apply are:

- the quota regime;
- the work-permit regime; and
- the investment projects regime approved by the government.

Under the quota regime, the allowed quotas for foreign employees are:

- 5 per cent of all workers in large companies;
- 8 per cent of all workers in medium-sized companies; and
- 10 per cent of all workers in small companies.

In all cases, prior notice from the Ministry of Labour of 15 days is required. In the 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 if 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.

*Law stated - 15 June 2022*

## Equipment restrictions

### What restrictions exist on the importation of project equipment?

Goods entering Mozambique for use in the country must be cleared through the appropriate customs procedures such as:

- temporary importation;
- temporary exportation;
- re-importation;
- re-exportation;
- customs transit;
- storage;
- industrial free zones; and
- customs warehousing.

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 Southern African Development Community 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).

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 project under Decree-Law No. 2/2014, of 2 December 2014.

*Law stated - 15 June 2022*

## **Nationalisation laws**

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

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 the case of public necessity, utility and interest, and compensation shall be payable to the property owner.

Also, Land Law (Law No. 19/97, of 1 October 1997), establishes that the right to use and benefit from the land (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.

*Law stated - 15 June 2022*

## **FISCAL TREATMENT OF FOREIGN INVESTMENT**

### **Incentives**

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. Legislation provides 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.

*Law stated - 15 June 2022*

## GOVERNMENT AUTHORITIES

### Relevant authorities

16 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

The governmental agencies or departments with authority over projects depend 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 entities over projects are:

- the National Institute of Mining;
- the National Institute of Petroleum;
- the Ministry of Land Environment and Rural Development;
- the Agency for the Promotion of Investments and Exports; and
- the Bank of Mozambique.

*Law stated - 15 June 2022*

## REGULATION OF NATURAL RESOURCES

### Titles

Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

Natural resources located in and beneath the soil, in interior waters, in the territorial sea, on the continental shelf and in the exclusive economic zone are the property of the state. Under certain conditions, the state may grant rights with respect to natural resources to private parties by means of licences and (or) concession agreements, provided that such rights are exercised in accordance with the applicable laws and for the benefit of the national economy. The rights granted by the state may include, among others, exploration, mining, treatment, processing and trade, or other forms of disposal of natural resources.

Besides customary obligations such as compliance with environmental and technical regulations, the mining law foresees obligations relating to the preservation of socio-cultural aspects of local communities as well as their adequate relocation.

There are no legal restrictions on the acquisition of natural resource exploration rights by foreigners. However, both the Public-Private Partnership (PPP) Law and the petroleum and mining laws contain provisions that seek to impose the participation of Mozambicans, either through the state or other public entities, or directly by Mozambican companies and individuals, in the structure of the project companies. Between 5 per cent and 20 per cent of the capital of the project company or consortium must be reserved for placement, on commercial terms, on the Mozambique Stock Exchange within five years of commencing the activity, for social inclusion.

*Law stated - 15 June 2022*



## Royalties and taxes

What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

The extraction or export of natural resources is 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.

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 per cent for oil and 6 per cent 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:

- the tax of mining production (IPM);
- surface tax (ISS);
- the tax in income deriving from mineral sources (IRRM); and
- special rules to determine the taxable income under the personal income tax corporate income tax.

IPM taxes rates vary between 8 per cent for diamonds, 6 per cent for precious metals, precious and semi-precious stones and heavy sands, 3 per cent for basic metals, charcoal, ornamental rocks, etc, and 1.5 per cent 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 17.50 meticais per hectare and 10,500 meticais per hectare, depending on 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 (prospecting licence, research, mining concession or mining certificate).

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

*Law stated - 15 June 2022*

## Export restrictions

What restrictions, fees or taxes exist on the export of natural resources?

Generally, the export of goods is exempt from taxes, duties and fees, and that applies to natural resources, however, the existing laws in the natural resources sector establish that at least 25 per cent of the country's oil and gas production should be reserved to the local market.

Further, from a foreign exchange perspective, all invested capital must be registered with the Bank of Mozambique, under the penalty of non-recognition of the right to export profits or dividends as well as the re-export of the invested capital.

*Law stated - 15 June 2022*

## GENERAL LEGAL ISSUES

## Government permission

What government approvals are required for typical project finance transactions? What fees and other charges apply?

With regard to the remittance of capital from a local company to foreign investors, the rules and procedures to be observed in carrying out forex operations provide that the foreign investors (shareholders) and lenders must register, before the commercial bank – acting as an intermediary of the Bank of Mozambique (BoM) – the import of capital within 90 days from the date of transfer of the funds, under the penalty of being filed an infringement proceeding. Further, without prejudice to the consequences foreseen as to the non-registration of forex transactions under the general terms, the non-registration of foreign direct investment after three years from the date of the effective inflow of the investment value determines the non-recognition of the right to export profits or dividends, as well as the re-export of the invested capital. The same applies to the disbursement of loans.

Other than the BoM, the Agency for Promotion of Investment and Exports (APIEX) is another relevant authority with respect to the implementation of an investment project. Depending on the investment amount the government or the APIEX are responsible for the authorisation, monitoring and supervision of investment projects. A fee of 0.1 per cent of the amount of the proposed investment is due for the authorisation of the investment project. With the issuance of the terms of authorisation of the investment project, project companies may benefit from tax, forex and labour incentives.

*Law stated - 15 June 2022*

## Registration of financing

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?

Besides the foreign exchange restrictions associated with cross-border financing structures and transfers of capital outside the jurisdiction, the Civil Code establishes that financing agreements of any amount must be notarised to be valid.

Further, the regulations on the execution of civil construction works (Decree No. 94/2013, of 31 December 2013) impose the obligation of construction contracts being ruled by Mozambican law. Moreover, contractors are obliged to register with the ministry in charge of public works the construction agreements they enter into.

As far as enforceability is concerned, local law project documents must be executed in Portuguese or translated into Portuguese, by a sworn translator. Mozambique is not a signatory of the Hague Convention; therefore, apostilled documents are not valid and cannot be used to instruct notary acts in Mozambique – all official documents issued abroad can be required to be legalised should the notary or registrar doubt the authenticity of the document. Therefore, it is advisable to legalise before the public notary and Mozambican consulate in the country of origin all official documents, issued abroad, to be used to instruct notary acts in Mozambique, and to be couriered to Mozambique for translation purposes.

To ease enforcement, it is advised that all signatures in project documents are notarised by a public notary.

Financing or project documents executed by public entities may be subject to approval by the Administrative Court to become effective.

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

*Law stated - 15 June 2022*

## Arbitration awards

How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

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.

Mozambique is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards since 1998. The Constitution of Mozambique 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 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.

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

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

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

*Law stated - 15 June 2022*

## Law governing agreements

Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

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 accepted 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 Mozambique and by specific laws and regulations applicable to 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.

Financing agreements are typically governed by English 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.

Special rules apply in the case of the exploration and production concession contracts for the Rovuma basin under

Decree-Law No. 2/2014, of 2 December 2014.

*Law stated - 15 June 2022*

### **Submission to foreign jurisdiction**

Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable? Do local courts enforce judgments of foreign courts without re-examination of the merits of the case?

Submission to foreign jurisdictions and waivers of immunity are generally 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.

*Law stated - 15 June 2022*

### **Anti-money laundering rules**

Are investors in your jurisdiction subject to any anti-money laundering compliance checks or other rules? Are these required by all sectors or only certain regulated sectors?

Law No. 14/2013, of 12 August 2013, as amended, and related regulations provide upon certain entities the obligation to adopt and implement a compliance programme addressing money laundering/terrorist financing risks.

The investor status does not in itself trigger any anti-money laundering compliance checks or other compliance rules. Yet, while the relevant activity entails wiring money to the Mozambique financial and banking system, the investor may be subject to anti-money laundering (AML) checks. Moreover, should the relevant scope of business be related, notably, to financial, banking, insurance, legal, real estate, mining, automotive, import and export of goods and gaming sectors, the investor will be subject to AML checks from the relevant supervisory body and must implement a comprehensive AML compliance programme.

*Law stated - 15 June 2022*

## **ENVIRONMENTAL, SOCIAL AND GOVERNANCE**

### **Relevant ESG issues**

What environmental, social and governance (ESG) issues are relevant in typical project sectors? Are project companies in your jurisdiction subject to any ESG reporting requirements or other ESG laws or regulations?

Environmental challenges, including deforestation, declining fish stocks, and loss and degradation of wetlands and rivers, are always critical in typical project sectors and projects are subject to environmental laws and regulations, impact assessments and approvals (as applicable) as well as environmental monitoring.

Projects are facing higher scrutiny from communities and public opinion and social and governance issues are increasingly scrutinised. Companies are increasingly paying attention to gender diversity. The growing relevance of ESG issues is also reflected through the intended inclusion of ESG-related clauses in some agreements. Also, following the global pandemic, project companies are considering implementing carbon footprint control via hybrid working and digitalisation, with environmental benefits (reduced emission of CO<sub>2</sub>).

As part of the government's commitment to becoming an inclusive middle-income country by 2030, by using its resources rationally to preserve its ecosystems and sustainable and effective development, the Green Economy Action Plan was developed and approved by the Council of Ministers on 15 October 2013, although ambitious progress remains limited.

As far as reporting and disclosure is concerned, some project companies make voluntary disclosures and created environmental and social management and monitoring plans that assess and manage projects' impact and risks. Particularly, their main focus is to ensure that the projects' environmental and social plans align with the International Finance Corporations Performance Standards and the Equator Principles.

*Law stated - 15 June 2022*

## PROJECT COMPANIES

### Principal business structures

What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

The commercial code enriches two commonly used types of business structures: private limited liability company by quotas and private limited liability company by shares. Although, in general, the shareholders are free to choose the form and structure of the company, the state requires entities created for the implementation of projects under the Public-Private Partnership Law to adopt the form of public limited companies.

In addition to funding from shareholders, either through capital contributions or shareholder loans, companies investing in Mozambique are financed almost exclusively through bank financing. There are no known examples of project companies in Mozambique that have financed themselves through the issuance of bonds, commercial paper or shares through the stock market capital. Sovereign financing – through subsidies or guarantees – is not readily available as a credit enhancement mechanism.

*Law stated - 15 June 2022*

## PUBLIC-PRIVATE PARTNERSHIP LEGISLATION

### Applicable legislation

Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

Mozambique enacted PPP enabling legislation in 2011, establishing the legal framework for the process of contracting and implementing large-scale projects and business concessions. Pursuant to the PPP Law, a PPP is defined as an undertaking in the public sector (excluding mineral and petroleum resources) or in areas of the provision of public services, in which under contract and with full or partial financing of the private partner, that partner undertakes to provide the necessary investment and perform the corresponding activity for the efficient provision of services or goods, whose availability to users is the responsibility of the state to guarantee.

Further, under the PPP Law, the supply of goods and provision of services to the state, including public works and consultancy in public works are excluded from the PPP Law as well as non-profit activities. Additionally, the PPP Law does not apply to natural resources ventures including the oil and gas sector and the mining sector.

*Law stated - 15 June 2022*

## PPP – LIMITATIONS

### Legal limitations

What, if any, are the practical and legal limitations on PPP transactions?

One of the most relevant legal limitations is related to the local content obligations foreseen in the law. In addition to the more 'traditional' local content measures, the PPP Law includes an obligation to sell equity interests in a PPP company in a regulated market as a means of fostering the capacities of the Mozambican capital market, as well as the creation of fixed or variable charges to be paid by the private partner in relation to the value of the PPP project or the revenues obtained, in the context of projects involving the use of natural resources. The appropriateness of these measures has been questioned in the light of the current size of the PPPs on which they are imposed – in the case of the requirement for the PPP companies to float on the capital markets – or simply because they were considered particularly onerous – in the case of the fixed and variable charges provided for in the law.

The hiring of foreign employees is limited and subject to government authorisation. Companies are required to create conditions for the integration of Mozambican employees in jobs of greater technical complexity and management and administration positions in the company. The hiring of foreigners may be done through:

- the quota system (10 per cent, 8 per cent and 5 per cent respectively for small, medium and large companies as defined in law);
- investment projects approved by the government;
- short-term hiring; and
- hiring with authorisation (outside the quota).

Although the legal timeframes for obtaining the above-mentioned registrations and authorisations are relatively short, in practice, these processes can stretch for longer periods.

Capital inflows and outflows are subject to forex control by the Bank of Mozambique.

*Law stated - 15 June 2022*

## PPP – TRANSACTIONS

### Significant transactions

What have been the most significant PPP transactions completed to date in your jurisdiction?

Although the PPP core legislation was enacted in 2011, no PPP projects are currently in place. There was a direct awarding of a PPP structure for water supply, however, the project has not yet commenced.

Nevertheless, and although they do not meet the criteria set out by the PPP legislation, recently, important project finance transactions have been launched or completed.

In H2 2020, the largest project finance structure in African history – which includes public and private partners – reached its financial closing, amounting to around US\$24 billion. It corresponds to the Mozambique liquified natural gas (LNG) project led by TotalEnergies and located at the offshore Area 1 of the Rovuma Basin. It encompasses more than 75 trillion cubic feet of gas reserves that has the potential to transform Mozambique into one of the world's top LNG producers. The first phase of the project involves the construction of two LNG trains that turn gas into liquid for transport, with an output expected to reach 12 million tonnes per year. The sponsors also include co-ventures from Mozambique (including the state-owned Empresa Nacional de Hidrocarbonetos EP), India, Japan and Thailand.

Other relevant transactions 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 financing 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 SA and Mitsui & Co, Ltd in connection with project finance loans totalling some US\$2.73 billion. The project connects the Moatize coal mine developed by Vale SA 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 US\$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 per cent interest in Eni East Africa SpA (to be renamed Mozambique Rovuma Venture SpA), which holds a 70 per cent interest in Area 4, and is co-owned by Eni (35.7 per cent) and CNPC (28.6 per cent). The remaining interests in Area 4 are held by Empresa Nacional de Hidrocarbonetos EP (10 per cent), Kogas (10 per cent) and Galp Energia (10 per cent). 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 per cent of its entire cost. The financing agreement has been subscribed to 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 per cent share, the local state-owned ports and railways company with a 20 per cent share and the local private-sector consortium Zambeze Integrated Development Corridor (generally known by the acronym CODIZA), with a 20 per cent 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 US\$2.7 billion (US\$810 million for the port and the remainder for the railway).

*Law stated - 15 June 2022*

## UPDATE AND TRENDS

### Key developments of the past year

In addition to the above, are there any emerging trends or 'hot topics' in project finance in your jurisdiction?

The government recently 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, updates the required value to equal to or higher than 40 million meticaais for the purposes of a public tender, with the required value for the execution of operations now amended to 80 million meticaais.

During the last five years, Mozambique has not witnessed any relevant developments in the project finance area. This was due to the International Monetary Fund (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.

However, on 9 May 2022, the Executive Board of the IMF concluded a consultation and approved a 36-month extended credit facility for an amount equivalent to 340.8 million special drawing rights (about US\$456 million) for Mozambique.

The Board's discussion was based on a staff report prepared by a staff team of the IMF, following discussions with Mozambiquan officials on economic developments and policies underpinning the extended credit facility. This outcome may represent a ratification of the IMF's confidence in the Mozambican economy.

The Mozambican economy maintained a gradual recovery, even after the covid-19 pandemic. Inflation declined from a peak of 26 per cent in November 2016 to about 7.9 per cent in April 2022, reflecting the tight monetary policy and exchange rate stability. In terms of real gross domestic product (GDP) growth, in 2020, real GDP variation amounted to a negative 1.23 per cent; whereas the projected real GDP for 2022 amounts to a positive 3.8 per cent. Inflation is expected to reach 8.5 per cent in 2022 (inflation remained at 5.6 per cent in 2021). Nevertheless, these forecasts will certainly be revised upwards given the significant impact of higher fuel and other essential commodities prices resulting mainly from the war in Ukraine. Moreover, the exchange rate is expected to remain stable in 2023, with one US dollar costing between 63 meticaïs and 65 meticaïs.












A review of the Electricity Law has been underway for a couple of years and is expected to have a significant impact on the implementation of projects in the energy sector. It is expected that the Electricity Law will still be approved and will enter into force in 2022 or early 2023.

\* The authors wish to thank Mónica Levy for her assistance in the preparation of this chapter.

*Law stated - 15 June 2022*



## Jurisdictions

	<b>Australia</b>	Allens
	<b>India</b>	Cyril Amarchand Mangaldas
	<b>Italy</b>	Legance - Avvocati Associati
	<b>Mozambique</b>	VdA
	<b>Portugal</b>	VdA
	<b>South Korea</b>	Shin & Kim
	<b>Switzerland</b>	Walder Wyss Ltd
	<b>Taiwan</b>	Lee and Li Attorneys at Law
	<b>Thailand</b>	Chandler MHM Limited
	<b>USA</b>	Morgan, Lewis & Bockius LLP
	<b>Vietnam</b>	Chandler MHM Limited