

PANORAMIC

PROJECT FINANCE

Mozambique



LEXOLOGY

Project Finance

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CREATING COLLATERAL SECURITY PACKAGES

Types of collateral

What types of collateral and security interests are available?

Collateral and security interests may be created in the form of mortgages and pledges. Mortgages may be created over real estate and certain movable assets subject to registration (such as automobiles, vessels 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 - 12 July 2024

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

Security interest over movable assets and rights (movables) may be created 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), which was further developed by Decree No. 7/2020 of 10 March 2020, (which approves the Regulations on 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 and equitable charges, retention of title clauses and 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 movable, parts or ideal fractions of a movable or all movables owned by a security provider, either specific or generic, present or future (in this 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 it 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 as follows:

1. by filing the security with the Central Registry Office for personal property and rights subject to registration of title;
2. through bailment or a document transferring possession of the movable to the creditor or a third party; or
3. 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 started to operate back in June 2021 and is tasked with recording information in connection with the security over movables and centralising the information in connection with certain property and rights subject to registration.

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 (*penhor mercantil*) 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.

Mortgages of real estate assets (capable of being mortgaged) are granted by means of a public deed before a notary and must be registered with the competent registration office, the Land Law (Law No. 19/97 of 1 October 1997) grants private persons the right to use and benefit from the land (*Direito do Uso e Aproveitamento da Terra* or 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.

Even though the Mozambican Civil Code does not expressly provide for the possibility of creating factory mortgages, the Land Register Code references these mortgages 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 this agreement, the possession of the receivables must be transferred to the secured creditor to ensure the security's effectiveness against third parties. 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 collecting the receivables in the absence of a default and for the third-party debtor to continue making 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 them 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.

Shares and quotas

In a public limited company, 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 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 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 private limited company (**sociedade por 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 Central Registry Office.

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 - 12 July 2024

Assuring absence of liens

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

The Central Registry Office intends to unify the relevant information regarding security interest provided over most of the movable assets. Encumbrances over share capital can also be verified with the Central Securities Depository Office in relation to shares and the Legal Entities Register 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 rank and amount.

The Movables Security Law and Regulations further foresee the possibility of executing a control agreement in relation to security interest provided over balances outstanding for credit in bank accounts, with the registration in the Central Registry Office not being mandatory. In such cases, liens and encumbrances over balances in bank accounts will have to be verified directly with the depository bank.

Law stated - 12 July 2024

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 new 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 - 12 July 2024

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?

The Decree-Law No. 1/02013 of 4 July 2013 (which approves 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 Law No. 11/99 of 8 July 1999, which sets out the Arbitration, Conciliation and Mediation Regime. If the plan is approved by the creditors, a conciliation or mediation minute is deposited in a judicial court, constituting an enforcement title, subject to specific enforcement and grounds for declaring insolvency should the credits not be paid. It should be noted that once the plan has been signed by creditors representing more than three-fifths of the credits of their category, excluding labour and tax credits, its rules are imposed on all other creditors of the same category. This regime is applicable to foreign and local creditors, and no special procedures or restrictions apply to foreign creditors.

Under the Insolvency Law, once a debtor declares insolvency all existing debts shall be automatically triggered, thus, limiting the access of secured lenders and creditors to gain possession of the secured asset. Such declaration prohibits the debtor from disposing of 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 creditors; secured creditors; tax creditors; ordinary creditors; any penalties, including contractual and tax penalties; and subordinated creditors.

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 of whether the pledges and mortgages were created first.

The insolvency regime is applicable to all persons or legal entities, except those listed below, which are subject to specific insolvency rules and proceedings in the respective regimes:

1. public companies and entities;
2. credit institutions;
3. financial companies;
4. supplementary pension entities;
5. health care plan operating companies;
6. insurance companies; and
7. capitalisation companies.

Apart from the courts, no other processes are available to seize the assets of the project company in an enforcement, as this can only be achieved through the use of coercive power, which is exclusively held by the courts.

Law stated - 12 July 2024

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?

Mozambique foreign exchange framework was recently updated making it more friendly to investors. As a general rule, all transactions between resident and non-resident entities that result or may result in payments or receipts from abroad are subject to the exchange control legislation, which require registration with the Bank of Mozambique (BoM) and, may or may not require prior authorisation from this regulatory authority, depending on the nature of the relevant transaction.

Forex transactions are classified as follows:

1. current transactions;
2. capital operations; or
3. other capital operations.

Current transactions are essentially payments or receipts made in connection with import or export of goods and services transacted between residents and non-residents. Current transactions are not subject to authorisation but to mere registration, which is done through the commercial bank used to make the payment.

Current transactions are not subject to authorisation but to mere registration, which is done through the commercial bank used to make the payment.

Capital operations are the inflows and outflows of currency and assets (in case of investments made through imports of equipment, transfer of IP rights and others) in the form of foreign investment, bank loans, shareholder loans, dividends and others that are not classified as current transactions.

As a result of the update made to the foreign exchange framework, a number of capital operations are now exempt from the authorisation of the BoM, being only subject to the registration procedure. Among the liberalised capital operations, we highlight the following:

1. foreign direct investment;
2. investment abroad, up to the equivalent of US\$1 million per calendar year;
3. real estate investment in Mozambique;
4. guarantees related to current transactions and other guarantees under specific circumstances;
5. operations on certificates of participation in collective investment schemes;
6. credits related to the transaction of goods or provision of services;
7. guarantees relating to current transactions; and
8. export of invested capital in cases of partial or total divestment or liquidation.

Additionally, the following capital transactions are also pre-approved and, therefore, only subject to registration:

1. shareholders and intercompany loans made by non-residents to their resident subsidiaries or affiliates if:
 - they are interest-free, the repayment period is at the latest three years, they are not subject to the provision of a guarantee and no fees and other charges apply; or
 - they are interest-free and the rate is lower than the base lending rate for the relevant currency, the repayment period is at least three years, they are not subject to the provision of a guarantee, no fees and other charges apply and the loan amount is a maximum of US\$5 million for natural persons and US\$10 million for legal persons. Note that, in those cases, registration relates to each disbursement amount received by the entity in Mozambique and to each repayment of principal made thereunder. Payment of interests and fees or charges under or in connection with finance contracts qualify as current transactions and are only subject to registration;
2. opening and operating accounts with local financial institutions, in national or foreign currency, by non-residents.

Finally, other capital operations, which, not being classified as current transaction and capital operation, relate to operations which conditions for carrying out are defined under the foreign exchange regulations, to name a few, opening and operating accounts with financial institutions abroad; payments and receipts in foreign currency in domestic transactions; and contracting financial derivatives.

No fees are due for obtaining prior authorisation or registration with the BoM.

Law stated - 12 July 2024

| 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?

Prior authorisation, where applicable, and registration are the main conditions for the repatriation of investment returns. Additionally, remittance of capital and dividends is subject to compliance with all tax obligations and obtaining tax clearance from the Tax Authority.

Except where double taxation treaties apply, a 20 per cent withholding tax is charged on both interest and fees paid to non-resident lenders.

Law stated - 12 July 2024

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 (or 30 per cent) must be converted into Mozambican meticaais, except in the case of application of special foreign exchange regimes or specific exemptions granted by the BoM.

Law stated - 12 July 2024

Foreign earnings

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

Project companies may open and operate local bank accounts in foreign currency (provided that they have proven relationship with abroad or with a non-resident). The opening of foreign currency accounts in other jurisdictions is subject to prior authorisation by the BoM.

Law stated - 12 July 2024

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?

Investment related matters are regulated by Law No. 8/2023 of 9 June 2023, which approved the Private Investment Law (which repeals Law No. 3/93 of 24 June 1993, which had been in effect for 30 years) and the Decree No. 8/2024 of 7 March 2024, which approves the Regulations of the Private Investment Law.

The approval of the new Investment Law's primary objective is to facilitate the authorisation and registration of investments, both by nationals and by foreigners. The minimum amount of foreign direct investment to be carried out by the investor, resulting from its own capital, is set at equivalent to 6.5 million meticaís, for the specific purpose of transferring profits abroad and of the capital invested and re-exportable.

The new Investment Law exempts from prior approval, being subject only to a mere registration regime, which consists of the simple submission of an investment proposal for the purpose of registration and granting of incentives applicable to investments that do not fall into the following categories, which are still subject to approval:

1. large investment projects, as well as those involving economic activities with foreseeable economic, environmental, safety or public health implications;
2. public-private partnership projects and business concessions;
3. investment projects that require an extension of land of an area equal to or greater than 10 thousand hectares;
4. investment projects that require a forestry concession for an area greater than 100 thousand hectares; and
5. investment projects whose purpose is the industrial processing of mining or petroleum products.

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 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 Portugal, Mauritius, the United Arab Emirates, South Africa, India and others. It has also established bilateral investment treaties with Algeria, Angola, Belgium, Brazil, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Japan, Luxembourg, Mauritius, the Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, Turkey, the United Arab Emirates, the United Kingdom, the United States, Vietnam and Zimbabwe.

Law stated - 12 July 2024

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?

According to Mozambican insurance legislation, insurance contracts (on assets verified in Mozambique) may not be taken out by foreign insurers who are not established in the country

through branches; as a result, obligations arising from such insurance contracts are not legally enforceable in the Republic of Mozambique.

However, entities may obtain insurance with foreign insurers (not based in Mozambique) when duly requested by the supervisory body, the Instituto de Supervisão de Seguros de Moçambique (ISSM), upon presentation of proof of refusal to underwrite the risk by the insurers authorised to carry on business in Mozambique, and when present a more advantageous conditions offered by insurers based abroad. In effect, the entities must notify the ISSM, at least 15 days in advance, of their intention to conclude the insurance contract with an insurer not established in Mozambican territory, and when there are no grounds for opposition, the ISSM may set the period of validity of such contract.

Special rules apply for insurance 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 the interested parties to present 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 - 12 July 2024

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 which 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 for all workers in large companies, 8 per cent or all workers in medium-sized companies and 10 per cent for all workers in small companies. In all cases, prior notice to the Ministry of Labour within 15 days of the worker entering the country is required.

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

Law stated - 12 July 2024

Equipment restrictions

What restrictions exist on the importation of project equipment?

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

1. temporary exportation;

2. re-importation;
3. re-exportation;
4. customs transit;
5. storage;
6. maritime cabotage;
7. duty free stores;
8. special economic zones;
9. industrial-free zones; and
10. 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. For example, the importation of left-hand drive vehicles used for commercial purposes in Mozambique 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 - 12 July 2024

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)?

The Private Investment Law provides for the protection of property rights, prohibiting the expropriation, nationalisation and requisition of investors' rights or the adoption of any equivalent acts.

However, the prohibition of expropriation, nationalisation or requisition does not apply if:

1. the measure is based on necessity, utility or purposes of relevant public interest;
2. they are carried out in a non-discriminatory manner;
3. they give the investor the right to fair compensation; or
4. they comply with the applicable legal provisions.

According to the law, the compensation to be paid to the investor must correspond to the real market value of the assets covered, ascertained at the time the measure is declared to be in the public interest or at the time it is implemented, whichever comes first.

The law guarantees the investor's right to resort to dispute resolution in order to raise an assessment of the validity of the expropriation, nationalisation or requisition measure or to ensure that the value of the corresponding compensation is determined and/or its reimbursement.

Law stated - 12 July 2024

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 Private 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 - 12 July 2024

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 include the National Institute of Mining (INAMI); the National Institute of Petroleum

(INP); the Ministry of Land and Environment (MITA); the Agency for the Promotion of Investments and Exports (APIEX); and the Bank of Mozambique.

Law stated - 12 July 2024

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 or concession agreements, provided that such rights are exercised in accordance with the applicable laws and for the benefit of the national economy.

Besides customary obligations, such as compliance with environmental and technical regulations, both the mining law and the petroleum 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 PPP Law and the petroleum and mining laws contain provisions that seek to impose the participation of Mozambicans, either through the state or through 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 - 12 July 2024

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 from 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:

1. Mining Production Tax (IPM);

2. Surface Tax (ISS);
3. Tax on Income Deriving from Mineral Sources (IRRM); and
4. special rules to determine the taxable income under personal income tax and corporate income tax.

IPM tax rates vary: 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 meticaïs per hectare and 105,000 meticaïs 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 and exploration licence, research, mining concession or mining certificate).

The IRRM tax rate is 20 per cent levied on the cash earnings accumulated during the year, determined according to specific rules. IRRM taxable persons are the holders of a mining concession or mining certificate.

Law stated - 12 July 2024

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, existing laws in the natural resources sector, specifically the petroleum law, establish that at least 25 per cent of a country's oil and gas production should be reserved for the local market.

Further, from a foreign exchange perspective, all invested capital must be registered with the Bank of Mozambique.

Law stated - 12 July 2024

GENERAL LEGAL ISSUES

Government permission

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

In Mozambique, project finance transactions, particularly those involving significant infrastructure or natural resource projects, typically require a series of government approvals. These approvals are necessary to ensure that the project complies with local laws and regulations, and they often involve various government bodies and regulatory agencies.

Key approvals required

1. Environmental licences: Before commencing any large-scale project, an environmental impact assessment (EIA) must be conducted, and an environmental license obtained from the Ministry of Land and Environment. This process ensures that the project adheres to environmental standards and mitigates any potential negative impacts.

Land concession rights: Projects often require the use of land. In Mozambique, land cannot be owned outright by private entities since it is the property of the state. Instead, the government grants land use rights (

2. Application fees: Fees for processing applications for environmental licences, DUATs, investment approvals, and construction permits.
3. Consultancy fees: If the project requires the hiring of consultants for the preparation of EIAs, legal due diligence, or other studies, these services will incur fees.
4. Registration, notary and legal fees: Costs associated with the notarisation of documents, registration of legal entities, contracts, real estate property, etc, and legal services.
5. Stamp duty.

Law stated - 12 July 2024

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?

In addition to 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 for them to be valid.

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

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; thus, apostilled documents are not valid and cannot be used to instruct notary acts in Mozambique and 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 that are to be used to instruct notary acts in Mozambique, and for them to be couriered to Mozambique for translation purposes.

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

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 - 12 July 2024

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 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 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 ICSID convention, 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 case of the exploration and production concession contracts for the Rovuma Basin under Decree-Law No. 2/2014 of 2 December 2014.

Law stated - 12 July 2024

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 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 into with public entities are typically governed by general laws and regulations of the Republic 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 to the exploration and production concession contracts for the Rovuma Basin under Decree-Law No. 2/2014 of 2 December 2014.

Law stated - 12 July 2024

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 a foreign jurisdiction and waiver 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 - 12 July 2024

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?

Investors in Mozambique are subject to anti-money laundering compliance checks and other rules, as per Law No. 14/2023 of 28 August 2023, which establishes a legal framework to prevent and combat money laundering, terrorism financing, and the proliferation of weapons of mass destruction. These rules apply to individuals and collective entities, including those without legal personality, non-profit organisations, financial institutions,

and non-financial entities with headquarters in national territory, as well as their branches, agencies, subsidiaries, or any other forms of representation.

Financial institutions include credit institutions, financial companies, and other microfinance operators, while non-financial entities include casinos, real estate agents, gem and precious metal dealers, vehicle sellers, travel agencies, hotels, lawyers, notaries, accountants, and independent auditors when involved in certain transactions. Investors in these sectors must comply with the obligations of identification, verification, and due diligence of clients, representatives, and beneficial owners for transactions equal to or exceeding 900,000 meticaís or for any suspicious transactions, regardless of the amount. They must also report suspicious transactions immediately to the Financial Information Office of Mozambique.

Additionally, investors must adhere to specific provisions for politically exposed persons, insurance sector, entities without legal personality, cross-border transportation of cash or bearer negotiable instruments, shell banks, and non-profit organisations, as detailed in the law. Non-compliance with the law may result in fines ranging from 600,000 to 10 million meticaís, depending on whether the infractor is an individual or a collective entity, and whether the entity is a financial or non-financial one. Additional measures such as revocation or suspension of authorisation, prohibition of activities, and dissolution may be applied as accessory penalties.

Law stated - 12 July 2024

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?

No laws or guidelines have been passed in Mozambique to ensure a standardised and harmonised approach to ESG matters. These are, however, scattered across the ancillary industry-specific legislation and general laws and regulations. ESG matters have become particularly relevant due to the country's rich natural resources, its socio-economic context, and the governance challenges it faces. The following are some of the key ESG issues across various project sectors.

Main environmental issues include the following:

1. biodiversity and ecosystems: Mozambique is home to a variety of ecosystems, including forests, wetlands, and marine areas. Projects, especially in mining, agriculture, and infrastructure, can lead to habitat destruction and biodiversity loss; and
2. climate change and carbon emissions: Projects need to consider their carbon footprint, as Mozambique is vulnerable to climate change impacts such as extreme weather events and rising sea levels.

Social issues include the following:

1. Community engagement and impact: Projects must consider the impact on local communities, including displacement, access to services, and cultural heritage.
2. Labour standards and working conditions: Ensuring fair labour practices and safe working conditions is essential, particularly in sectors such as mining and construction.
3. Health and safety: Projects must address health risks, including those related to occupational hazards and the spread of diseases.
4. Education and capacity building: Investing in education and training can help in addressing the skills gap and improving employment opportunities for the local population.

Governance issues include the following:

1. Corruption and bribery: With Mozambique's history of corruption, projects must have robust measures to prevent bribery and ensure transparency.
2. Regulatory compliance: Companies must adhere to local and international laws and standards, including those related to environmental protection and labour laws.
3. Political stability: The political context can affect project viability and security, and companies must navigate this landscape carefully.

ESG reporting requirements and regulations

Mozambique's legal framework for ESG issues is evolving, and while there may not be relevant ESG reporting requirements, there are various laws and regulations that touch on aspects of ESG as follows:

1. Environmental laws: Mozambique has a framework for environmental protection, including the requirement for environmental impact assessments (EIA) for certain projects.
2. Labour laws: The country has regulations to protect workers' rights and ensure fair labour practices.
3. Anti-corruption laws: There are laws in place aimed at combating corruption and bribery, which companies must comply with.

While specific ESG reporting per se may not be mandated, companies operating in Mozambique, especially those in extractive industries or receiving international financing, may be subject to ESG-related reporting requirements by their investors or through international standards such as the Equator Principles, the Extractive Industries Transparency Initiative, or the Global Reporting Initiative. Companies are also increasingly recognising the importance of ESG factors in their operations and may voluntarily adopt ESG reporting practices to enhance their reputation, manage risks, and attract investment. It is also worth noting that as global attention on ESG issues intensifies, Mozambique may develop more stringent ESG reporting requirements and regulations in the future.

Given the complexity of ESG issues and the evolving nature of related laws and regulations, companies operating in Mozambique must stay informed and proactive in managing their ESG responsibilities. While the specifics of ESG reporting requirements can be complex and may require specialised knowledge of local and international regulations, it is clear that ESG considerations are increasingly important for project sectors in Mozambique.

Law stated - 12 July 2024

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 recently enacted commercial code, approved by Decree-Law No. 1/2022 of 25 May 2022, provides for four types of business structures:

1. general partnership with limited liability;
2. private limited company;
3. public limited company; and
4. simplified company by shares.

Hence, despite the introduction of the two new business structures, private limited liability companies by quotas and private limited liability companies by shares remain the two commonly used types of business structures.

Meanwhile, the most significant change introduced by the new Commercial Code regarding companies in general is the admissibility of single shareholders or quota holders. This update is highly relevant because it simplifies the corporate structure of project companies and eliminates the need to include partners of convenience, as was often the case.

Although shareholders are generally free to choose the company's form and structure, the state requires entities created to implement projects under the PPP law to adopt the form of public limited companies.

The principal sources of financing available to project companies in Mozambique are equity, debt and hybrid instruments. Equity financing can be provided by the shareholders of the project company or by external investors, such as private equity funds, development finance institutions or strategic partners. Debt financing can be obtained from local or foreign banks, multilateral agencies or bond markets, depending on the size, risk and duration of the project. Hybrid instruments, such as mezzanine debt, convertible bonds or preferred shares, can also be used to bridge the gap between equity and debt financing and to align the interests of different stakeholders.

Law stated - 12 July 2024

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?

The PPP framework in Mozambique is established at the national level. The primary legislation governing PPPs in Mozambique is the PPP Law (Law No. 15/2011 of 10 August 2011). This law provides the general framework for the implementation of PPP projects in the country. It outlines the procedures for the initiation, preparation, contracting, and supervision of PPP projects. The law is designed to create a conducive environment for private investment in various sectors while ensuring that the interests of the public are safeguarded.

While the PPP Law provides a general framework, it is not industry-specific. However, certain sectors may have additional specific regulations that complement the PPP Law. For example, the mining and energy sectors might have additional legal and regulatory frameworks that govern how PPPs are to be conducted within those specific industries. These sector-specific regulations are designed to address the unique challenges and requirements of each sector.

The implementation of PPPs in Mozambique is overseen by various government bodies, depending on the nature and scope of the project. The Ministry of Economy and Finance (MEF) plays a central role in the financial aspects and overall coordination of PPP projects. Additionally, sector-specific ministries and regulatory agencies are involved in the oversight of PPPs within their respective domains.

Law stated - 12 July 2024

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.

Law stated - 12 July 2024

PPP – TRANSACTIONS

Significant transactions

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

There is no record of significant projects implemented since the enactment of the PPP Law in 2011. Nevertheless, although they do not meet the criteria set out by the PPP legislation, important project finance transactions have recently been launched or completed in the energy sector.

In 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 liquefied natural gas (LNG) project led by Total Energies and located at the offshore Area 1 of the Rovuma Basin. It encompasses more than 75 trillion cubic feet of gas reserves which 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 output expected to reach 12 million tonnes per year. The sponsors also include co-venturers from Mozambique (including the state-owned Empresa Nacional de Hidrocarbonetos), Japan, Thailand and India.

In April 2021, due to an escalation of Islamic State-linked violent insurgency in the area, including a March attack by militants near the project's main camp, Total Energies suspended the project indefinitely. However, with security conditions improving recently, the resumption of the project is expected to be announced in the current year.

Still in the Rovuma Basin, Eni, as the delegated operator of the Coral South project on behalf of its Area 4 Partners (ExxonMobil, CNPC, GALP, KOGAS, and ENH), announced in November 2022 that the first shipment of liquefied natural gas (LNG) produced from the US\$4.675 billion financing of the Coral South Floating LNG (FLNG) project in offshore Mozambique had departed from the Coral Sul FLNG facility. Since then, the project has been exporting LNG to Europe.

More recently, in May 2023, the Ministry of Mineral Resources and Energy, through the Mphanda Nkuwa Hydropower Project Implementation Office, announced the consortium led by Electricity of France, which includes Total Energies, Sumitomo Corporation and Kansai, as the preferred bidder in the tender for selecting the strategic partner for Mphanda Nkuwa Project development.

With an estimated cost of US\$4.5 billion, the Mphanda Nkuwa Hydropower project includes the development of a run-of-river dam located 61 km downstream of Cahora Bassa, on the Zambezi River, in Tete province. It is a hydropower plant with an installed power generation capacity of up to 1,500 MW and a high-voltage power transmission line from Tete to Maputo of approximately 1,300 kilometres.

Finally, in May 2024, the government of Mozambique, represented by the Ministry of Mineral Resources and Energy, entered into five exploration and production concession contracts (EPPCs) with China National Offshore Oil Corporation (CNOOC) and ENH, for a total of five blocks in Mozambique, all located offshore. The total area is approximately 29,000 square kilometres, with water depths from 500 to 2,500 metres.

Law stated - 12 July 2024

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?

Although not specifically related to project finance, the effort being made by the state to create conditions that provide investors with a better business environment and facilitate project implementation is already remarkable and will likely mirror Mozambique's growth in the key sectors, namely energy, oil and gas and mining, and contribute to economic diversification and social development. In addition to the visa exemptions granted for citizens from 28 countries, among which are some of the most relevant in terms of foreign investment in Mozambique, the changes introduced to the foreign exchange framework make foreign exchange operations more flexible, eliminate barriers to foreign direct investment and promote overall appreciation to the foreign exchange market. These changes are, in fact, the result of the Economic Acceleration Measures Programme launched by the government back in August 2022 and are part of the package of 20 reform measures aimed at resuming the country's economic growth.

Despite the government's strong signals with a view to making Mozambique a more attractive destination for investors and investments, there is still some improvement required in infrastructure, particularly roads and railways, which impacts directly on the flow of products within the country.

Law stated - 12 July 2024