



Banking Regulation

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Mozambique

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Introduction

Mozambique's banking sector is undergoing significant legislative reform. Events of the recent past, such as the Bank of Mozambique's intervention in *Moza Banco* in 2016 and the ongoing liquidation of *Nosso Banco*, amongst others, have exposed fragilities in the legal framework in force. As such, there have been noteworthy regulatory developments pushing for harmonisation with Basel core principles and addressing capitalisation and liquidity concerns in the banking sector, some of which are highlighted hereof.

The developments in place are already expected to impact the current players in the sector and yet additional measures of further development of the legislative reform of the past few years are still foreseeable, including, possibly, the introduction of more clear-cut proceedings for the liquidation of credit institutions.

The Mozambican banking system comprises 17 banks; however, most of the system's activity may be retraced to the three largest (and still operating) national banks and, since 2015, has been subject to a series of interventions by the Central Bank (the Bank of Mozambique – *Banco de Moçambique* – the “**BM**”) aimed at tightening the applicable policies regarding foreign exchange reserves, inflation and currency revalorisation, as well as own funds and structural liquidity and sustainability rules and regulations.

In terms of the capital markets, the Mozambique Stock Exchange (*Bolsa de Valores de Moçambique* – “**BMV**”), established as a public institution by Decrees 48/98 (Regulation of the Securities Market and on the Establishment of the Mozambique Stock Exchange) and 49/98 (the respective Internal Regulation), of 22 September, operates under the Ministry of Economy and Finance. At the moment, both corporate and government bonds are traded on the BMV; however, the secondary and derivative market remains to be developed up until this moment.

Regulatory architecture: Overview of banking regulators and key regulations

The Bank of Mozambique is the Mozambican central bank, responsible for banking supervision and regulatory authority. Its activity is mainly subject to the rules set out in Law No. 1/92, of 3 January. In all matters not expressly reserved to the Ministry in charge of the area of finance, the supervision, regulation and promotion of the securities market in Mozambique is within the competence of the BM. In addition, the BM is incumbent as the banker of the Mozambican State, as advisor to the Government in financial matters, counsel and manager of monetary and exchange policies and of foreign exchange reserves. It also acts as intermediary in international monetary relations and supervisor of financial institutions operating in the country.

Without prejudice to the above, it is worth noting that the activities of conducting securities investment services are entrusted to the supervision and regulation of the Exchange Commission (*Central de Valores Mobiliários* – the “CVM”). The Securities Market Code (*Código do Mercado de Valores Mobiliários* – the “CMVM”), approved by Decree Law No. 4/2009, of 24 July 2009, as amended from time to time, is the core legislation for securities, issuers, public offers, regulated markets, investment services in securities, as well as for related supervision and regulation.

Additionally, the supervisory function in Mozambique falls on to the Mozambique Insurance Supervision Institute (*Instituto de Supervisão de Seguros de Moçambique* – the “ISSM”), which has the duty to regulate and supervise insurance companies and other entities that are authorised to pursue insurance-related activities, such as insurance mediation, reinsurance and management of complementary pension funds.

The current banking system in Mozambique is underpinned by an institutional model of supervision, and it is the BM itself that issues prudential and conduct standards. The BM is also the regulatory and supervisory body overseeing the Mozambican Stock Exchange.

The establishment and exercise of the activities of credit institutions and financial entities in Mozambique is regulated by Law No. 15/99, of 1 November (the Legal Framework of Credit Institutions and Financial Entities), as amended from time to time, and further detailed by Decree 56/2004, of 25 December (Regulation of the Law Applicable to Credit Institutions and Financial Entities), last reviewed in 2014, by Decree 30/2014, of 25 December, which sets out the procedures and standards applicable to such entities as a whole, as well as the specific legal framework applicable to each type of entity. These legal instruments determine the general requirements for the incorporation of credit institutions and financial entities, as well as the procedure for their authorisation by the BM. Also, given that credit institutions in Mozambique are incorporated as public limited companies (*sociedades anónimas*), the rules established in the Commercial Code (*Código Comercial Moçambicano*) should also be taken into account. These are, therefore, the main sources of the regulatory framework that should be analysed in terms of regulation of banking and credit institutions in Mozambique. Nevertheless, and without prejudice to the points of focus set out in the following paragraphs, other regulations apply.

As for the foreign exchange market, it is regulated by Law No. 11/2009, of 11 March (Foreign Exchange Law), and by the recent Notice 20/GBM/2017, of 27 December, published by the BM in the exercise of its role as the Foreign Exchange Authority of the Republic of Mozambique. This law replaced the recently repealed Decree No. 83/2010, of 31 December (Regulation on the Foreign Exchange Law).

The regulation of the financial system in Mozambique has been under development for the past years and a number of matters have, therefore, become subject to further (or first, in some cases) regulation, such as:

- (i) the prevention and combat of money laundering and financing of terrorism (implemented by Law No. 14/2013 and further developed within Decree No. 66/2014, of 29 October);
- (ii) the deposit guarantee mechanism, which has been established for the protection of depositors in commercial banks (as per Decree No. 49/2010, of 11 November);
- (iii) on microfinance matters, the incorporation and functioning of entities allowed to operate in the microfinance market, may be found in the Regulation of Microfinance, approved by Decree No. 57/2004, of 10 December; and lastly,

(iv) in terms of structural subjects, banking activities and credit institutions' regulations should also be noted, especially referring to minimum capital requirements and rules (as set out in Notice 07/GBM/2017) and bank card regulation (as per Notice 01/GBM/2015), which assume a special relevance in a developing market such as Mozambique's.

Similarly to the internationally spread practice, banks established and authorised in Mozambique are allowed to engage in a variety of financial activities – as permitted by law, such as: accepting deposits from the general public; entering into credit transactions, including the granting of guarantees, and payment transactions; undertaking the issuance and management of means of payment (such as credit cards, travellers' cheques and credit letters), as well as other transactions relating to money market instruments, financial instruments or foreign exchange instruments, whether for their own account or the account of others; activities related to the issue and placing of securities; safekeeping, administration and management services for securities portfolios; precious metal trading; and insurance marketing relations.

Banking or credit institutions that are established in Mozambique are also allowed to undertake analogous activities, insofar as they are not prohibited by law, such as finance leasing and factoring services, subject to prior authorisation by the BM.

Recent regulatory themes and key regulatory developments

In its capacity as regulator and supervisor of the Mozambican financial system, the BM has issued, from time to time, a number of Notices designed to address the specific needs of the Mozambican banking sector. To this end, various regulatory changes have been introduced, of which the following are of particular relevance: (i) changes to the rules and procedures relating to foreign exchange transactions; (ii) changes to the requirements and rules on the ratios and prudential limits of credit institutions; and (iii) changes to the rules relating to own funds of credit institutions subject to the BM's supervision.

Attention is also drawn to the introduction of new minimum capital requirements for credit institutions, financial entities and microfinance companies, as well as to the rules applicable to payment of overseas transactions via international bank cards, as referred to in the following paragraphs.

Relevant to mention is Notice No. 20/GBM/2017, which approved the standards and procedures for foreign exchange transactions, and attention is drawn to the changes made with respect to the registration and authorisation of such transactions, which underscore the growing liberalisation and digitisation of these transactions. The implementation of a framework specific to the mining sector must also be highlighted, as this sector was not previously covered.

As a result of this Notice, credit institutions are responsible for the registration of all foreign exchange transactions, and the requirement of prior authorisation for a considerably larger number of capital transactions has been liberalised, such that, subject to the fulfilment of certain criteria, these transactions may be undertaken without prior approval by the BM. This evidences the commitment to the simplification of, and the reduction in the bureaucracy related to, foreign exchange transactions and, more generally, increasing procedural speed.

With regard to the dispositions which determine the ratio and prudential limits of credit institutions, we also highlight that Notice No. 08/GBM/2017 increases the solvency ratio for banks (from 8% to 12%), which is a clear attempt to align with the Basel II recommendations, aiming to ensure adequate liquidity and solvency levels.

Also last year, Notice No. 07/GBM/2017 approved the minimum capital requirements for credit institutions, financial entities and operators; it affects commercial banks only and raises minimum capital requirements from 70,000,000.00 MT to 1,700,000,000.00 MT, so as to better address the risks inherent to their business, as well as current trends in the national economy. For overseas payments using international bank cards, such Notice has also introduced relevant regulation. Additionally, the BM has, restarted the process of liberalising the use of international bank cards for overseas payments, withdrawing the annual 700,000.00 MT limit for such transactions.

Prior to that, as a response to the 2008 crisis and in order to prevent and mitigate negative financial impacts and/or crises in the banking sector, the BM issued Notice No. 02/GBM/2013 in its attempt to promote financial stability and to safeguard depositors' interests, and the Mozambican banking system more generally.

Additional international relevance may be indicated in light of the following notice which was approved that year, Notice No. 03/GBM/2013, which regulates Emergency Liquidity Assistance and aims to ensure the proper operation of solvent commercial banks which continue to attract deposits but face temporary liquidity issues, as well as to mitigate any issues which could cause systemic problems in, and compromise the normal functioning of, the banking system.

In order to increase its level of supervision, it is worth mentioning that the BM introduced the requirement for banks to regularly disclose information relating to their solvency and liquidity levels, as well as introduce a system under which credit institutions and financial entities sanctioned for offences are also publicly disclosed, so as to deter non-compliance and foster stability.

For the future, the BM intends to reinforce its supervision of such entities in order to avoid potential risks, and to adopt measures designed to ensure that institutions, as a whole, align with international practice and comply fully with all standards and recommendations, so as to safeguard the financial health of financial institutions. In the context of market stability maintenance measures, regulatory reform aligned with Basel II is anticipated which will reinforce supervision of the cross-border activity of institutions. A reform of the Credit Institutions and Financial Entities Law to include a framework for the resolution of banks, tailored to the Mozambican financial sector, is also anticipated.

Bank governance and internal controls

Banking financial institutions must be incorporated using one of the legal forms established by Mozambican law, usually in the form of a joint stock company. Shares representing the relevant share capital are required to be nominative, thus disclosing the identity of the holder, and the share capital must be fully issued and paid-up at the time of the incorporation. These and other additional legal requirements, including the composition of the boards and senior management of banks, were implemented by Law No. 9/2004, of 21 July, which in turn amended the Legal Framework of Credit Institutions and Financial Entities, approved by Law no. 15/99.

The amendments introduced by the abovementioned Law No. 9/2004 include the requirement of adequate experience for the performance of the specific role of those holding positions of responsibility in credit institutions and financial entities, in particular the members of the board of directors and members of the audit committee. Experience is deemed adequate when the person in question has previously and competently held positions of responsibility in the financial sector, or has a recognised degree of competence in economic, legal or

management matters. The duration, responsibilities and nature of the prior experience must be commensurate with the nature and size of the financial institution in question.

The internal control structure applicable to credit institutions and financial entities has been primarily established by Notice No. 11/GBM/99. Risk management and compliance rules are then further developed by Notice No. 15/GBM/2013 which, in addition to the internal regulation of accounting practices, business risk and adequate organisational structuring policies, imposes the adoption of prudential limitations and ratios, including limits to the concentration of risks that ought to be duly observed by the banks. Furthermore, Notice No. 04/GBM/2013 is also a crucial piece of legislation, as it establishes the guidelines for risk management (*Directrizes de Gestão do Risco*) in order to guarantee the safe and robust operation of credit institutions in general, and for their risk-management systems in particular.

One of the most important roles of management is to create and maintain an effective control system, including adherence to reporting lines and the appropriate division of tasks such as between negotiation, custodial and back-office tasks. In effect, the appropriate division of tasks is an essential element to a robust, internal, risk-management control system. Shortcomings in the implementation and maintenance of an adequate system for the division of tasks could lead to substantial losses or in other ways compromise the financial health of the institution. The previously mentioned guidelines for management of such centralised services are, from time to time, reviewed by the BM.

In this sense and according to such guidelines, institutions must develop risk-management systems which should be reviewed at least once a year and should take into account the control and mitigation of the following risks: credit risk, liquidity risk, interest rate risk, foreign exchange rate risk, operational and strategic risks, and reputational, compliance and IT risks.

As influenced by European and American best practice, it is imperative that risk-management processes implemented by banking financial institutions in Mozambique should pursue the optimisation of the risk/return ratio with which such institutions are faced, and not risk minimisation as it is commonly understood, mainly by implementing four key processes:

- (i) *Identification*: banking financial institutions must be able to identify existing or foreseeable risks;
- (ii) *Measurement*: once identified, risks shall be measured in order to determine their impact on the returns or capital of the institution;
- (iii) *Control*: once measured, the institution must establish and disclose risk-mitigation policies, standards and procedures, which should define responsibilities and lines of authority and together control exposure to the various risks inherent to the institution's activities; and
- (iv) *Monitoring*: institutions are required to implement an information and management system which effectively monitors risk levels and facilitates the timely adjustment of risk positions and exceptions.

Bank capital requirements

Banks established in Mozambique, in line with other jurisdictions, notably in Europe, are required to comply with a number of requirements and rules to ensure an adequate level of liquidity and solvability. Previously mentioned Notice 04/GBM/2013 further develops the minimum levels of own funds, ratios and prudential limits, which have been developed in order to ensure the sustainability of banking activities.

By way of introduction, the Mozambican financial system adopted the Basel II *core principles*, in the terms incorporated by Notice No. 03/GBM/2012 (fully applicable since 2014), aiming to implement in the Mozambican financial and banking sector more sophisticated risk-assessment techniques, particularly with regard to credit, market and operational risks. Such internationally harmonised principles have already been developed, in a primary form, by the Mozambican legislation, namely regarding minimum capital requirements and limitations; having adopted the Basel II principles, it is foreseeable that, in the future, the Regulator will focus on developing risk-assessment matters, especially regarding credit, operational and market risks, as well as market discipline rules, in line with the principles established in the abovementioned BM's Notice.

Through Notice No. 04/GBM/2013, the BM began implementing prudential rules aligned with the Basel II principles. It established a set of guidelines, based on international best practice, regarding the categories of risk inherent to the most relevant banking activities in Mozambique, namely: credit, liquidity, interest rate, foreign exchange rate, operational, strategic, reputational, compliance and IT risks.

Notice 4/GGBM/2005 established the minimum capital requirement of 70,000,000.00 MT, which was further increased by Notice 07/GBM/2017 to 1,700,000,000.00 MT. This increase is a clear result of Basel II and, in short, seeks to implement a set of reforms designed to increase the quantity and quality of capital, to reduce leverage and pro-cyclicality, and to improve liquidity management. The understanding is that, together, these measures will achieve increased transparency of the financial system, an improved loss-absorption capacity and a significant reduction in the assumption of risk, which will result in a stronger, more resistant banking system in the face of adverse conditions, thus promoting the necessary confidence to foster sustainable economic growth.

Regulatory capital and liquidity requirements in Mozambique are derived from international standards, as the abovementioned Basel II rules, which should be understood as the new international accord on capital adequacy. Like its predecessor, this new regulatory framework defines its scope in three distinct pillars: Pillar 1 – Capital Requirements (capital, risk cover and leverage control); Pillar 2 – Risk Management and Supervision; and Pillar 3 – Marked Discipline.

This being the case, Basel II encompasses a set of reforms conducive to the overall strengthening of capital, which are principally reflected in the composition of financial institutions' capital, not only through the increase to minimum requirements in terms of own funds, but also through the creation of capital standards, as envisaged by this new regulatory framework. In the same vein, the introduction of a leverage ratio with the aforementioned characteristics, together with the guidelines regarding counterparty credit risk and systemic risk, share the same objective.

Rules governing banks' relationships with their customers and other third parties

Despite there being no specific legal framework which specifically addresses the relationship between a bank and its customers in Mozambique, the rules applicable are equivalent to the general norms that regulate a contractual relationship. The Credit Institutions and Financial Entities Law does, however, contain a number of general duties banks must comply with regarding the relationship with their customers.

Banking institutions in Mozambique are required to provide customers in each line of business with high level of technical competence through the necessary human resources and materials for the provision of services with an appropriate standard of quality and efficiency.

Their actions must be organised in the light of principles of diligence, independency, loyalty, discretion and respect for the interests of clients and of the bank itself, with which they are entrusted, as well as be compliant with applicable disclosure requirements relating to, among others, rates applicable to lending and borrowing transactions and the cost of services rendered.

In this regard, the Mozambican Association of Banks (*Associação Moçambicana dos Bancos* – the “**AMB**”), a non-profit organisation which pursues the development of technical, economic and social activities of banks operating and authorised in Mozambique, and of which all such banking institutions are members, published in 2006 the Banking Code of Conduct (*Código de Conduta Bancária*) which sought to govern the relationship between AMB credit institutions, as well as the relationship of those institutions with their customers.

Although it is not legally enforceable, banks are required to comply with the rules laid out in the Banking Code of Conduct. As such, in their relationships with their customers, banking financial institutions in Mozambique are expressly required to follow a number of orientations, which reflect on the practical way the policies and day-to-day activities are conducted. By means of reference, the following should be mentioned:

- (i) act loyally and in accordance with the principles, customs and best practices of the banking sector;
- (ii) provide information regarding transactions and products in clear language, and provide customers with assistance in matters that are not clear to them;
- (iii) support customers in choosing services and products to best meet their needs;
- (iv) assist customers in understanding how their accounts work;
- (v) make available means of payment which are safe and credible;
- (vi) correct errors and respond to customers’ complaints promptly; and
- (vii) guarantee that loan terms and the terms of products and services are based on, and applied pursuant to, commercial principles and criteria, and that there is no discrimination based on colour, race, civil status, sex, place of birth, ethnicity, social standing, physical disability, culture, language, level of education, profession or political views.

On a more technical note, the Mozambican banking sector includes a variety of credit institutions, each with its own scope of activity (such as financial leasing companies, credit cooperatives, investment companies, etc.). Banking financial institutions are also specifically authorised to undertake all activities within the scope of other credit institutions, as well as accepting deposits, credit and payment transactions, money market transactions, financial and foreign exchange transactions, and investment services.

In terms of specific authorised activities towards customers, similarly to other jurisdictions, including European, deposit-taking is an activity which only four kinds of credit institutions may undertake: banks, micro-finance institutions, credit cooperatives and credit and savings organisations. Among them, only banks and small-scale banks are authorised to take deposits from the general public, whilst credit cooperatives and credits and savings organisations may only take deposits from their members. As well as banks, investment companies, small-scale banks, credit cooperatives and microfinance operators can also undertake credit transactions.

Banks and brokerage firms are the only entities which may undertake money-market transactions for their own account. There is no banking ombudsman in Mozambique, nor does the concept of a class action exist.

The Banking Code of Conduct does set out a framework for the handling of customer complaints against banks. Once a complaint is received, the bank in question must undertake the necessary investigations in order to provide the customer with the necessary clarifications as to their situation. This must be done in the shortest possible timeframe, and measures to redress any irregularities must be put in place.

Customers may also submit their complaints to the AMB. The AMB's Ethics Committee redirects the complaint to the relevant bank. Customers may also make recourse to arbitral tribunals, pursuant to Act No. 11/99, of 8 July, which governs arbitration, conciliation and mediation, as alternate means of dispute resolution, and/or they may initiate judicial proceedings.

Also, the Mozambican banking system has in place a Deposit Guarantee Fund (*Fundo de Garantia de Depósitos* – the “**FGD**”), as established by Decree No. 4/2010, of 11 March, the objective of which is to refund deposits made in credit institutions who cannot make such refunds, whether for reasons directly related to their financial situation or because their licence has been revoked. This fund is financed through periodic contributions made by credit institutions. The FGD currently guarantees up to 20,000.00 MT per depositor per credit institution.

Finally, due to the frequency with which money laundering activities are undertaken through cross-border bank transfers, the applicable legislation expressly requires that banks: (i) identify and verify the identity of the correspondent bank; (ii) gather sufficient information pertaining to the correspondent bank in order to understand the nature of its business and determine, in light of publicly available information, its reputation and the nature of its supervision; (iii) obtain necessary approvals from correspondent bank's management in order to establish the correspondent relationship, and document in writing the responsibilities of the correspondent and client bank; (iv) ensure that the client bank verifies the identity of, and applies all continuous monitoring measures regarding, clients with direct access to accounts in the correspondent bank; and (v) ensure that that bank is authorised to disclose the necessary identification details of its customers.

Law No. 14/2013, of 12 August (which approves the Anti-Money Laundering Law) establishes the legal framework and preventative and suppression measures with regard to the use of the financial system and non-financial entities for the purpose of money laundering and financing terrorism. In essence, the Law establishes certain duties on financial institutions, such as the duty to identify and verify the identity of their customers, to notify the Mozambican Financial Information Office (*Gabinete de Informação Financeira de Moçambique* – the “**GIFiM**”) of any suspicious transactions, to abstain from effecting transactions in the event there are grounds to suspect a crime, and to cooperate with the legal authorities, among others. Additionally, Decree No. 66/2014, of 29 October (Regulation on the Anti-Money Laundering Law) establishes the procedures to implement the prevention and suppression measures laid down in the Money Laundering Law. In this regard, the BM issued Notice No. 04/GBM/2015, which establishes the guidelines for, and steers financial institutions in regard to, the prevention of these types of crime.

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Nuno previously worked in London for eight years in the International Capital Markets department of Allen & Overy LLP, where he focused on financing transactions (equity and debt), including debt programmes, issuances of Senior Notes, Regulatory Capital, and Asset-Backed Securities. Nuno was also involved in liability management transactions, and advised on banking regulatory issues.

Between 2000 and 2006, Nuno worked at VdA's Banking & Finance department, where he was involved in domestic and cross-border banking and capital markets transactions.

Before 2000, Nuno worked in the Structured Finance Unit of the Portuguese branch of ABN Amro Bank and in a Brazilian law firm in Sao Paulo, Brazil.

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Professional experience (VdA): Joined Vieira de Almeida in 2016 as associate at the Banking & Finance area of practice.

Before joining the firm she worked at the Banking and Finance Department of Abreu Advogados law firm, as trainee lawyer. Admitted to the Portuguese Bar Association. Languages: English, Russian, Ukrainian.

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Guilherme Daniel was the Founder of Guilherme Daniel & Associados in 2016. In such capacity, he is actively involved in several matters mainly in Corporate, Energy and Natural Resources (particularly, Oil & Gas) and Infrastructure.

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