

Doing Business in Mozambique: Overview

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OVERVIEW

1. What is the general business, economic and cultural climate in your jurisdiction?

Economy

Mozambique is a presidential republic. Formerly a Portuguese colony, it became independent on 25 June 1975. The capital city is Maputo. Its GDP is approximately USD14.30 billion, which is less than 5% of Africa's total GDP, but is currently growing at around 2.3% per annum. The currency is the Metical (MZN).

Dominant Industries

The dominant industries in Mozambique are:

- Agriculture
- Mining.
- Utilities.
- Manufacturing.
- Construction.
- Transport.
- Storage.
- Communications.
- Hotels and tourism.

Population and Language

The population in 2019 was approximately 31 million. The most commonly spoken languages are Portuguese (the official national language) and the indigenous languages of Macua and Changana.

Business Culture

As a former colony and relatively recently independent country, Mozambique does have its business challenges and cultural differences. However, the country is open to foreign investors and has seen a significant increase in investments from around the world. Mozambique has also facilitated cross-border trade and improved the business environment by introducing:

- Broad reforms and improvements to the legal system.
- Anti-corruption measures.
- Compulsory independent audits.
- Environmental protection policies.

2. What are the key recent developments affecting doing business in your jurisdiction?

Key Business and Economic Events

The discovery of large natural gas reserves in the Rovuma Basin in the period 2010 to 2013 made Mozambique the third largest holder of liquid natural gas (LNG) reserves in Africa, with overall reserves of around 180 trillion cubic feet. The ongoing LNG projects are fostering and promoting the development of LNG infrastructure and other strategic sectors.

Political Events

Mozambique is a member of a number of international organisations, including the:

- United Nations
- World Trade Organization
- International Monetary Fund.
- World Bank.
- World Health Organization.
- International Labour Organization.
- United Nations Education, Scientific and Cultural Organisation.
- Community of Portuguese Speaking Countries.
- Portuguese-Speaking Countries of Africa.
- Southern African Development Community.

The President is Filipe Jacinto Nyusi (since 15 January 2015, and after re-election on 15 October 2019).

The two main political parties are the:

- Mozambique Liberation Front (FRELIMO), the sole legal political party until 1991 and the current leading party. It tends to be more popular in urban areas and in the north and south of the country.
- Opposition party RANAMO, which is stronger in the central and coastal provinces of Manica, Sofala, Zambezia and Nampula.

The Democratic Movement of Mozambique (MDM) is the third party represented in the Assembly of the Republic. In total, there are also 50 smaller parties active at regional or national level.

The next presidential and assembly elections will be in 2024.

New Legislation

Over recent years, the Mozambican government has introduced a broad range of reforms to the legal system, including in relation to:

- Customs and tax matters.
- Export licences.
- Strict anti-corruption measures.

- Compulsory independent audits.
- Environmental protection policies.

It has also set up an online "one-stop-shop" to register companies and publish corporate documents.

LEGAL SYSTEM

3. What is the general legal system in your jurisdiction?

Mozambique's legal system is based on civil law.

The courts are independent sovereign bodies that exercise judicial power in accordance with the principle of separation of powers under the Constitution. The courts set out under the Constitution include:

- The Supreme Court, which is the final appellate court as well as having primary jurisdiction in the most serious criminal cases. The judges (there is a minimum of seven) are appointed by the President.
- The Administrative Court, which has jurisdiction over cases relating to public administration and oversees public expenses.
- The judicial courts, which are the common courts in civil and criminal matters. They have default jurisdiction whenever it is not allocated elsewhere.

All courts have administrative autonomy.

The Judicial Organisation Law 24/2007 of 15 February, as amended, regulates the organisation, powers and functioning of the judicial courts. Jurisdiction is allocated based on the nature of the matter, court hierarchy and geography, and is organised as follows:

- The Supreme Court decides on serious criminal cases at first instance, including cases involving public office holders. It also decides appeal cases at second instance.
- The Courts of Appeal, which hear appeals from the Provincial Courts.
- The 19 Provincial Courts, which decide at first instance civil cases over a certain monetary value or criminal cases where the punishment is over a certain number of years of imprisonment. They also hear appeals from District Court decisions at second instance.
- District Courts. The District Courts hear all other cases at first instance that do not meet the thresholds to be heard in the Provincial Courts.

FOREIGN INVESTMENT

4. Are there any restrictions on foreign investment, ownership or control?

Government Authorisations

Investments in Mozambique are regulated by the:

- Investment Law (3/93, 24 June).
- Regulations of the Investment Law, approved by Decree 43/2009 of 21 August.
- Tax Benefits Code, approved by Law 4/2009 of 12 January.
- Regulations on the Tax Benefits Code, approved by Decree 56/2009 of 7 October.
- Customs Tariff Schedules, approved by Law 11/2016 of 30 December.

The Agency for the Promotion of Investment and Exportations (APIEX) is the regulatory body responsible for:

- Promoting investments.
- Reviewing and approving project applications.
- Monitoring the implementation of projects in various sectors.

Restrictions on Foreign Shareholders

As a rule, a company is deemed to be a foreign entity if it is either:

- Incorporated outside Mozambique.
- Incorporated in Mozambique but with 50% or more of its share capital held by foreigners.

Foreign investors have the same rights, duties and obligations as domestic investors. Subject to limited exceptions (*see below*), a foreign investor can own 100% of a Mozambican company.

Foreign investors do not have to register with the APIEX. However, registration provides investors with certain rights, including:

- Access to potential incentives (*see Question 7*).
- The right to transfer funds abroad. To transfer profits abroad and repatriate invested capital, the minimum amount for foreign direct investment is MZN2.5 million (*see Question 6*).
- Legal protection of property and rights.
- Assistance in implementing investment projects.
- Access to international arbitration and dispute resolution.
- Proof of registration of the foreign investment from the Central Bank of Mozambique (Central Bank).

Restrictions on Acquisition of Shares

Subject to limited exceptions, a foreign investor can own 100% of a Mozambican company. However, non-industry specific authorisations may be required from the Central Bank:

- For a foreign entity to subscribe to equity share capital in a Mozambican company.
- For financing to be granted by a foreign investor.
- To transfer the investment amount into the target Mozambican company's bank account.

See Question 6.

Specific Industries

Private investments cannot be made in activities reserved for public sector initiatives, including production, distribution and storage of ammunition.

In certain sectors, such as game reserves, a certain percentage of the company's share capital must be held by a Mozambican.

In addition, certain economic activities (such as energy, mineral resources or construction) must be granted a general trading licence by the Ministry of Industry and Commerce.

5. Are there any restrictions or prohibitions on doing business with certain countries, jurisdictions, entities, organisations or individuals?

There are no restrictions on doing business with certain countries other than the general restrictions and prohibitions in relation to anti-bribery and corruption, *see Question 30*.

6. Are there any exchange control or currency regulations or any registration requirements under anti-money laundering laws?

The Central Bank controls all international transfers of direct investments and payments. The importation and exportation of MZN is prohibited. Foreign direct investment must be registered with the Central Bank within 90 days of the date of its authorisation or the transfer of the investment amount.

Foreign loan agreements, management services, and licensing and royalty agreements must be pre-approved and registered with the Central Bank.

The profits from a project approved by APIEX can only be transferred abroad where the direct foreign investment has a value of at least MZN2.5 million and has been registered with the Central Bank.

In all other cases, the transfer abroad can only be made through the local banking system and when an investment and tax clearance certificate from the Ministry of Finance is presented.

7. What grants or incentives are available to investors?

Grants

See below, *Incentives*.

Incentives

The investment incentives available in Mozambique include:

- **Tax and customs incentives.** The Tax Incentives Code (CBF), approved by Act 4/2009 of 12 January, establishes a wide range of benefits for foreign investment in Mozambique. These include:
 - exemptions from customs duties and value added tax (VAT) for imports of qualifying equipment;
 - certain deductions for investments in specialised equipment;
 - accelerated depreciation for investments in new or restored buildings and equipment; and
 - deferred payment of taxes.
- In addition, specific incentives are available for
 - developing infrastructure;
 - rural commerce and industry;
 - agriculture and fisheries;
 - hotel and tourism;
 - manufacturing;
 - science and technology;
 - large-scale investment projects;
 - rapid development zones, special economic zones and industrial free zones.
- **Protection of property rights.** The ownership of property and rights, including industrial property rights arising from authorised investments, is protected by the state and there is fair and equitable compensation for any nationalisation of these property and rights.

To receive the incentives, foreign investors must achieve at least seven of the following objectives:

- Supporting, promoting and developing economic activities by modernising, rehabilitating and expanding infrastructure.
- Expanding national productive capacity by providing support for productive activities.
- Training and developing entrepreneurship.
- Creating jobs for nationals and improving their professional skills.
- Promoting technological development and increasing business efficiency.
- Diversifying and increasing exports.
- Providing products and services generating foreign exchange.
- Reducing foreign dependency.
- Improving domestic market supply and prioritising the needs of the population.

Foreign Investors

Investors can transfer funds abroad in accordance with the Investment Act for:

- Profits resulting from eligible investments.
- Royalties.
- Other income on indirect investments in relation to the assignment and transfer of technology.
- Interest on loans used for financing projects from international financial institutions.
- Compensation for nationalisation of property.
- Re-exportable invested foreign capital.

BUSINESS VEHICLES

8. What are the most common forms of business vehicle used in your jurisdiction?

Main Business Vehicles

The most common most commonly used business vehicles in Mozambique are the:

- **Limited Liability Quota Company.** The equity capital of this type of company is represented by quotas corresponding to a fraction of the equity capital. It can have from two to 30 quotaholders, and each can hold only one quota. The Legal Entities Registry issues the commercial registration certificate confirming the ownership of the equity capital, which is also indicated in the articles of association.
- **Limited Liability Share Company.** The equity capital of this type of company is represented by shares and there must be a minimum of three shareholders. The amount of share capital is set by the shareholders according to the company's corporate purpose. Shareholders can hold any number of shares. Transferable share certificates reflect the ownership of the equity capital, according to the articles of association and the law.

The incorporation of companies is regulated by the Commercial Code (see *Question 9*).

Foreign Companies

Foreign entities wishing to conduct business in Mozambique can register a foreign commercial representation (branch). This is treated as an extension of the parent company, and the parent company is liable for the branch's activities. Branches are registered for a specific project for up to five years, with the possibility of renewal.

The incorporation of a foreign branch is regulated by the Commercial Activities Licensing Regulations.

9. What are the main formation, registration and reporting requirements for the most common corporate business vehicle used by foreign companies in your jurisdiction?

Registration and Formation

The incorporation process for any type of company is relatively fast and straightforward, and includes:

- Applying to the Legal Entities Registry to reserve the company name.
- Drafting and submitting the articles of association.
- Drafting a shareholder agreement (if applicable).

The company will be incorporated within 90 days, and this will be published in the official gazette *Boletim da República*. The company must then:

- Register with the tax authority to obtain a tax ID number.
- Obtain any licensing necessary for the company's business.
- Register the employees with the labour directorate and social security.

Reporting Requirements

Any changes to the articles of association or appointment, reappointment, removal or resignation of members of corporate bodies must be registered with the Legal Entities Registry.

In addition, companies subject to corporate income tax must file annual accounts approved by the shareholders with the Commercial Registry Office.

Share Capital

The law does not impose a minimum share capital amount. As a practical matter, this should reflect the business activity of the company.

Non-Cash Consideration

When paid up in cash, for public limited companies, the nominal value of shares can be deferred up to a maximum of 75% and for a maximum period of five years. For private limited companies, the nominal value of shares can be deferred up to a maximum of 50% and for a maximum period of three years.

Rights Attaching to Shares

Restrictions on Rights Attaching to Shares. There are no automatic restrictions attaching to shares. The share capital of a public limited company is represented by shares, all with the same nominal value. In a private limited company, the shareholdings are represented by quotas.

Automatic Rights Attaching to Shares. In a private limited company, unless otherwise stipulated in the company's articles of association, each share corresponds to one vote in the shareholders' meeting. In a public limited company, each MZN250 of the nominal value of each shareholding quota corresponds to one vote.

10. What is the standard management structure and key liability issues for the most common form of corporate business vehicle used by foreign companies in your jurisdiction?

Management Structure

Private limited companies. The governing bodies of private limited companies are the general meeting and management team. A supervisory board is optional. Supervisory boards are managed by one or more directors unrelated to the company who are appointed to hold the office for a four-year renewable term under the articles of association. If a board of directors is established under the articles of association, it must have at least three members.

Public limited companies. The governing bodies of public limited companies are the:

- General meeting.
- Board of directors.
- Supervisory board or statutory auditor.

The board of directors must have an odd number of directors that are unrelated to the company. These are appointed under the articles of association to hold office for a four-year renewable term. If the share capital is below MZN500,000, the company can have just one director.

Management Restrictions

There are no restrictions on foreign managers.

Directors' and Officers' Liability

Directors' remuneration is decided by the shareholders. Unless there is specific authorisation by the general meeting, directors cannot engage in any competing business on their own behalf or that of others.

If a director has acted in violation of the articles of association or the law, they can be liable to the:

- Company, unless the director acted without intentional fault.
- Creditors of the company, if the assets of the company become insufficient to pay its debts.
- Shareholders of the company or third parties that suffer losses due to the actions of the director.

Parent Company Liability

Shareholders of private limited companies are jointly and severally liable for their share capital contributions in full. One or more shareholders may also be liable (jointly with the company or separately) for the company's debts up to a certain amount, if this is provided for in the articles of association.

The liability of shareholders of public limited companies is limited to the value of the subscribed shares.

Creditor's claims are limited to the company's assets.

If the shareholders act with fault or malicious intent, the corporate veil may be lifted, and the shareholders can be held liable (*Article 87, Commercial Code*).

ENVIRONMENT

11. What are the main environmental regulations and considerations that a business must take into account when setting up and doing business in your jurisdiction?

Environmental issues in Mozambique are governed by the Environmental Law (20/97, 11 October) and the Environmental Impact Assessment Process Regulations (EIA Regulations), as well as other general and sector-specific instruments.

The Environmental Law applies to all activities (public or private) directly or indirectly affecting the environment and establishes the rules for the correct use and management of the environment for sustainable development. This law prohibits pollution and activities accelerating erosion, desertification, deforestation and any other form of environmental degradation, including importation of hazardous waste (except as permitted by law).

The EIA Regulations govern the environmental licensing process. Any activity that might cause environmental damage must have an environmental licence. These activities are assessed by the:

- Ministry for Land and Environment (at the central level).
- Provincial Directorates for Co-ordination of Environmental Action (at local level).

Permits for activities are valid for five years and are renewable for the same period.

EMPLOYMENT

Laws, Contracts and Permits

12. What are the main laws regulating employment relationships?

Foreign Employees

The Employment Law (23/2007, 1 August) governs labour relationships in Mozambique, as well as the entry, stay and exit of foreign citizens.

Authorisation by the Minister of Employment is necessary to employ foreign employees.

The legislation sets out the following limitations on foreign employees:

- Companies with more than 100 employees: 5%.
- Companies with 10 to 100 employees: 8%.
- Companies with under ten employees: one individual.

Professionals coming to work in Mozambique must have a work permit, visa or residence permit, depending on the duration of the employment (see Question 14). All employees seconded to Mozambique must be employed by a local company.

Employees Working Abroad

The Mozambican legal framework only applies to employment within Mozambique and does not apply employees working abroad.

Mandatory Rules of Law

Employment Law 23/2007 is mandatory and is applicable regardless of any choice of law in the employment contract.

13. Is a written contract of employment required?

Main Terms

The Employment Law requires employment contracts to:

- Be in writing.
- Be signed and dated by both parties.
- Contain essential information, including the:
 - scope of work;
 - workplace;
 - payment amount, form and timing;
 - term.

Employment contracts can be either:

- Fixed term.
- Unfixed term.
- Open-ended.

If there is no contract in writing, the employer becomes subject to all legal consequences and any fines imposed by the General Employment Inspectorate. Fixed-term employment contracts of under 90 days need not be in writing.

Collective Agreements

The law implies terms into the employment contract that allow greater protection to workers and contribute to their well-being, such as:

- Workers' right to privacy.
- Protection of personal data.
- Protection of paternity and maternity.
- Special rights of working women.
- Codes of good conduct.

Collective Agreements

The Constitution grants citizens the right to form or join employers' associations or trade unions to defend their rights and interests. Trade unions and associations actively participate in drafting employment legislation and employment-related policies and may also exercise the right to collective bargaining. Trade unions can enter into collective bargaining agreements with a single employer for one company or with several employers for various companies, as well as with or alongside other trade unions and employers' associations. These agreements aim to resolve labour disputes and establish collective labour relations by regulating equal rights and duties for employees. Collective agreements are binding on the parties.

14. Do foreign employees require work permits and/or residency permits?

Work Permits

Employees coming to Mozambique to work for more than 90 days a year require a two-year renewable work permit, work visa or residence permit. They must submit the following:

- An application form.
- Application letter.
- Letter of assumption of liability.

- Copy of the operating licence.
- Copy of passport of the employee.
- A criminal record report.
- Fee payment.

Employees coming to work for up to 90 days (or up to 180 days for the oil and gas and mining industries) must submit the following:

- A short-term work permit.
- An application letter.
- Invitation letter.
- Letter of assumption of liability.
- Copy of the operating licence.
- Copy of applicant's passport.
- Fee payment.

Residency Permits

Residency permits can be granted to foreigners who wish to settle in Mozambique. An extensive list of documents must be validated by the Mozambican authorities for a residency permit to be issued.

Termination and Redundancy

15. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as changes in control, redundancies and disposals)?

Trade union organisations can be structured as trade union or company committees, unions, federations and general confederations. For the protection of workers' rights, trade union organisations are empowered to represent the workers before employers. Employers must inform unions of certain circumstances, including:

- Termination of employment contracts.
- Disciplinary measures.
- Collective redundancies.

When a change of control occurs, under Article 77 of Law 23/2007 of 1 August, the transferor and transferee must inform the trade unions or the employees committee or representatives of the date and reasons for the transfer of the company.

16. How is the termination of an individual's employment regulated?

Termination

An employment agreement can be terminated by:

- Expiry of the employment agreement.
- Mutual agreement between the parties.
- Cancellation of the employment agreement by either party in accordance with its terms.
- Termination by either party on the basis of just cause, including disciplinary or objective reasons (see below, *Fair Dismissal*).

All terminations require compliance with the applicable legal procedure, including payment of the required severance pay, when applicable.

During the probation period (depending on the type of employment), the employment agreement can be terminated by either party without due cause or severance pay, provided a minimum of seven days' notice is given.

Fair Dismissal

The Employment Law allows the employer to unilaterally terminate the employment contract for just cause with prior notice and a severance payment.

Under the Employment Law, just cause for dismissal is a sufficiently serious material fact or circumstance that renders the existence of the employment contract morally or materially impossible. These grounds include:

- Manifest inaptitude of the employee for the job, discovered after the probationary period.
- Culpable conduct by the employee that is sufficiently serious to justify dismissal.
- Arrest or imprisonment of the employee if, due to the nature of the employee's tasks, this hinders the functioning of the employer.
- Unilateral termination with prior notice based on economic reasons, which may be technological, structural or market-related and essential to the competitiveness, economic recovery, administrative or productive reorganisation of the company. In this case, the law requires at least a 30 days' notice before the expected date of termination.

Statutory Minimum Notice. The minimum statutory notice for dismissal with just cause is 30 days.

Severance Payment. Under the Employment Law, the compensation payable for dismissal with just cause is determined by the employees:

- Contract (indefinite or fixed period).
- Salary (including any bonus), expressed as a multiple of national minimum salaries (SMs).
- Length of service.

The compensation payable to an employee on a fixed-term contract corresponds to the amount that would have been earned between the date of termination of the contract and the date on which it was due to terminate.

Compensation for employees that have a contract for an indefinite period is calculated under the Employment Law, as follows:

- One to seven SMs: 30 days' pay for each year of service.
- Eight to ten SMs: 15 days' pay for each year of service.
- 11 to 16 SMs: ten days' pay for each year of service.
- 16 SMs or more: three days' pay for each year of service.

Unfair Dismissal

Grounds for Unfair Dismissal. An unfair dismissal occurs where the dismissal is not justified by one the just causes for dismissal.

Remedies. Employees can object in court to the grounds alleged for their dismissal. Any objection disputing just cause for the termination must be raised within six months of the date of notice. If a court declares that the dismissal is unfair, the employee must be reinstated and is entitled to an amount equal to the remuneration payable between the dates of termination and effective reinstatement, capped at six months, less any compensation paid on dismissal. If reinstatement is impossible or the employee chooses compensation, the employer must pay compensation of either:

- 45 days for each year of service, for indefinite period contracts.

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- The outstanding remuneration until the date the contract would have terminated, for fixed-term contracts.

Class of Individuals

There are specific measures to protect the rights of pregnant women, and granting paternity and maternity leave.

17. Are redundancies and mass termination regulated?

Redundancies and Mass Termination

Collective redundancies are very similar to individual dismissals for objective reasons, but apply where there are at least ten employees. When more than ten employees are affected at the same time, the termination process is deemed to be a collective redundancy, with its own procedure.

Procedural Requirements

The employer must inform the trade unions and the employees affected of the grounds for the dismissal and of the number of employees involved. The employer must also communicate its intention to the Ministry of Employment before beginning the negotiations with the trade union.

TAX

Taxes on Employment

18. In what circumstances is an employee taxed in your jurisdiction?

Tax Residence

Individuals are subject to personal income tax in Mozambique if they either:

- Have a personal or material connection with Mozambique.
- Are deemed to be a "tax resident".
- Have income from sources in Mozambique.

The term "tax resident" includes any person who:

- Is present in Mozambique for more than 180 days (continuously or intermittently).
- Is present in Mozambique for less than 180 days, but maintains a permanent residence in Mozambique.
- Performs public duties in the service of the State of Mozambique abroad.
- Is a crew member of ships and aircraft operated by companies with their registered office or effective management in Mozambique.

Other Methods to Determine Residency

There are no other methods of determining tax residency.

19. What income tax, social security and other tax or contributions must be paid by the employee and the employer during the employment relationship?

Tax Resident Employees

Personal income tax is withheld from the individual's base salary and to all economic advantages received for the employment (such as accommodation, food or travel allowances). However, contributions by employers to compulsory social security schemes, social utility activities within companies and training expenses, are exempt from the tax, subject to certain conditions.

The amount of withholding tax for tax residents ranges between zero and MZN 28,375. Income earned and personal circumstances (marital status and number of dependants) are taken into account.

Non-Tax Resident Employees

The amount of withholding tax for a non-tax resident is 20%.

Employers

The social security contribution is 4% of the total gross remuneration for the employer, and 3% for the employee.

Business Vehicles

20. When is a business vehicle subject to tax in your jurisdiction?

Tax Resident Business

Any company doing business in Mozambique is subject to corporate income tax (IRPC) of 32%, subject to certain exceptions, and value-added tax (VAT) of 17%. Depending on the type of business activity, it may also be subject to specific taxes, such as:

- Oil or mining taxes.
- Real estate transfer tax.
- Stamp duty on financing transactions or the provision of guarantees.

The IRPC Code distinguishes between resident and non-resident taxpaying entities and between entities with and without a permanent establishment in Mozambique.

Resident entities are entities that have their registered office, or effective management, in Mozambique. Their total income is subject to Mozambican taxation, with some exceptions.

Capital gains relating to tangible assets, shares or other corporate rights held by the seller for over two years may be adjusted to inflation as published by the Minister of Finance. Capital gains from the sale of tangible assets benefit from rollover relief, subject to the full reinvestment of the proceeds.

There is no exemption for disposals of shareholdings, but capital losses are deductible from a company's taxable profits.

Non-Tax Resident Business

Non-resident taxpayers are those that do not have tax residence or a permanent establishment in Mozambique. Income from investments made in Mozambique by a non-resident is, in general, taxed according to specific withholding tax rates, unless the investment is made through a permanent establishment, in which case the establishment is taxed under the rules applicable to residents.

Capital gains of non-resident entities are subject to IRPC at 32%. The tax return must be submitted within 30 days of the transfer of shares or real estate.

21. What are the main taxes that potentially apply to a business vehicle subject to tax in your jurisdiction?

In addition to IRPC and VAT, a withholding tax rate of 20% applies to corporate income generally. However, the withholding tax is 10% for income from certain sectors, such as:

- Securities listed on the Mozambican Stock Exchange (subject to limited exceptions).
- Telecoms and international transportation.
- Construction, land rehabilitation and infrastructure.

- Chartering fishing vessels.

Dividends, Interest and IP Royalties

22. How are the following taxed:

- **Dividends paid to foreign corporate shareholders?**
- **Dividends received from foreign companies?**
- **Interest paid to foreign corporate shareholders?**
- **Intellectual property (IP) royalties paid to foreign corporate shareholders?**

Dividends Paid

Intra-group dividends distributed by a resident company and received by a resident parent company will not be subject to double taxation when parent company is a holding company, risk capital company, insurance company or consortium. However, if not, the relief may still be available if the parent company both:

- Owns at least 20% of the subsidiary.
- Holds shares for at least two years, or less if the consecutive two-year old period is completed subsequently.

If it still does not meet these conditions, the shareholder may still benefit from a 60% credit on the corporate tax paid by the resident company on the underlying dividends.

The withholding tax rates for non-residents on dividends, interest and royalties is 20%, but may be reduced to between zero and 15% if the investor resides in a treaty country. Withholding tax on dividends may also be reduced to 10% if the company distributing the dividends is listed on the Mozambique Stock Exchange.

Dividends Received

See above, *Dividends Paid*.

Interest Paid

Interest paid to residents is subject to withholding tax of 20%, unless paid to resident holding companies, provided certain requirements are met, including that the interest is received from a shareholder loan and the holding company owns at least 10% in company held for at least one year before payment of the interest.

IP Royalties Paid

Royalties are subject to withholding tax at 20%.

Groups, Affiliates and Related parties

23. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)?

Where there is excessive indebtedness towards a non-resident "related party" (that is, a party with at least 25% shared ownership, significant influence over management, or the same parent company) interest above that excessive indebtedness may be non-deductible.

Interest is deemed to be excessive if the amount lent by a related non-resident entity is more than twice of the value of a resident borrower's equity. However, excessive indebtedness will not be presumed if the Mozambican borrower proves that it could have obtained the same level of indebtedness from an independent party under the same conditions, within 30 days of the end of the tax year.

24. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

An overseas company that is controlled by a Mozambican shareholder domiciled in a low-tax jurisdiction can attribute profits to those persons or companies, including when the Mozambican shareholder holds (directly or indirectly) 25% of the share capital of the foreign company or, if majority owned by a Mozambican resident, 10% of the share capital of the foreign company.

25. Are there any transfer pricing rules?

The Mozambican transfer pricing rules approved by Decree 70/2017 of 6 December apply to tax residents (including permanent establishments) subject to Mozambican personal or corporate income tax in transactions with "related parties" (tax residents or non-residents).

"Related parties" includes persons (legal or natural) who:

- Have direct or indirect control over another entity, or a close family member of such an individual.
- Have an interest of significant influence in another entity.
- Are associated in a joint venture in which the other entity is an investor, or a close family member of such an individual.
- Are a member of the key management personnel of the entity or its holding company.

Under the arm's length principle, the following transfer pricing methods are applied:

- Comparable uncontrolled price.
- Resale sale price.
- Cost-plus.
- Profit-split.
- Transitional net margin.
- Any other suitable method taking into account the specific transaction.

In addition, cost-sharing arrangements and intra-group services agreements are also considered.

Companies with net sales and other revenues of at least MZN2.5 million in the previous financial year must prepare a transfer pricing file.

Customs Duties

26. How are imports and exports taxed?

VAT is levied on the provision and import of goods and services. The standard VAT rate is 17%. VAT applies to, among others:

- Any person (resident or non-resident) independently carrying out a transaction subject to corporate income tax.
- Importers of goods.
- Any person or entity incorrectly charging vat on an invoice or equivalent document.

Certain full or partial exemptions from VAT are available. Fully exempt activities include:

- The importation and sale of ships and aircraft for use in international trade.
- Other services relating to transportation and distribution.

Services that may be partially exempt from VAT include:

- Financial services
- Insurance.
- Education.
- Health.
- Leasing.
- Services relating to the drilling, research and construction of infrastructures in mining and oil operations at the prospecting and research stage.

VAT taxable entities must file a monthly VAT return indicating the transactions concluded and paying the tax due.

Double Tax Treaties

27. Is there a wide network of double tax treaties?

Mozambique has entered into nine double taxation treaties (DTTs) with Portugal, the UAE, Italy, Mauritius, Macao, Botswana, Vietnam, India and South Africa.

However, the Tax System Law contains an anti-treaty abuse rule providing that the benefits established by the DTTs are not available when an entity is using a third party to obtain the tax benefits.

COMPETITION

28. Are restrictive agreements and practices regulated by competition law? Is unilateral (or single-firm) conduct regulated by competition law?

Restrictive Agreements and Practices

The main competition laws are the:

- Competition Law 10/2013 of 11 April.
- Competition Regulation.
- Statute of the Competition Regulatory Authority.

The legislation:

- Governs anti-competitive practices in economic activities.
- Establishes various mechanisms to control business concentrations.
- Provides an extensive non-exhaustive list of prohibited practices.

The body responsible for overseeing restrictive competition practices is the Competition Regulatory Authority (ARC), which has administrative, financial and technical autonomy and wide regulatory, supervisory and sanctioning powers. Being independent and impartial, the ARC has exclusive power to investigate and decide on sanctioning procedures.

Failure to comply with the competition legislation can result in fines, criminal liability and administrative measures. Additional penalties may be imposed, taking into account the public interest and the seriousness of the breach.

The Competition Law prohibits both horizontal practices (between competing undertakings) and vertical practices (between undertakings and their suppliers and customers), when such

practices are intended to or have the effect of substantially obstructing, distorting or restricting market competition.

Unilateral Conduct

The abuse of a dominant position is prohibited where one or more undertakings has a majority share of a market. The abuse of economic dependence is also prohibited where a company is economically dependent on a supplier or client due to the lack of an alternative.

However, under the Competition Law, if the use of dominant position or an otherwise prohibited agreement is intended to and results in economic efficiencies or promotes the public interest, including the competitiveness of small and medium enterprises or the consolidation of national companies, the activities may be exempted, following approval by the ARC.

29. Are mergers and acquisitions subject to merger control?

Transactions Subject to Merger Control

The Competition Law prohibits acquisitions of control over undertakings that create a dominant position and that might significantly obstruct competition, subject to limited exemptions.

Transactions meeting the following thresholds are subject to mandatory filing with the ARC:

- The aggregated turnover of the undertakings concerned is at least MZN900 million in the preceding year.
- The transaction results in the acquisition, creation or reinforcement of at least a 50% share of the national market of a given good or service.
- The transaction results in the acquisition, creation or reinforcement of at least a 30% share of the national market of a given good or service, and at least two of the undertakings concerned achieved a turnover of at least MZN100 million in Mozambique in the preceding year.

Notifiable transactions cannot take place before clearance by the ARC. The undertakings must notify the ARC within seven business days of the execution of the agreements for the acquisition project. The ARC then assesses the effects of the concentrations in the relevant markets.

Foreign-to-Foreign Acquisitions

Foreign-to-foreign acquisitions are subject to the merger control laws and there are no foreign exemptions.

Specific Industries

All oil resources in Mozambique are property of the state, which reserves the right to participate in oil operations at any stage. Oil operations activities can only be carried out under a concession resulting from a public tender. Any merger, acquisition or similar transaction would therefore involve simultaneous or direct negotiations with the state in relation to national interests involving defence, navigation, research and conservation of marine resources and the environment.

ANTI-BRIBERY AND CORRUPTION

30. Are there any anti-bribery or corruption regulations affecting business in your jurisdiction?

The key anti-bribery and corruption legislation is the Anti-Corruption Law (6/2004, 17 June), as further amended by Public Probity Law (16/2012, 14 August) and the Criminal Code (35/2014, 31 December).

These provisions prohibit bribery and corruption by public officials and define the criminal sanctions applicable to crimes of corruption.

In addition, Mozambique has ratified various international treaties relating to corruption, including the:

- SADC Protocol Against Corruption (in 2004).
- African Union Convention on Preventing and Combating Corruption (in 2006).
- UN Convention against Corruption (in 2006).
- UN Convention against Transnational Organized Crime.

The bodies responsible for preventing and fighting corruption are the Office of the Attorney General and its local divisions, in coordination with the Central Office for the Fight Against Corruption.

Anti-money laundering measures are regulated by the Anti-Money Laundering Law (14/2013, 12 August) and its Regulation. The Anti-Money Laundering Law establishes the rules and measures intended to prevent and eliminate the use of the financial system for laundering the proceeds of criminal activities and terrorist financing.

Under the Anti-Money Laundering Law, financial institutions and certain non-financial institutions have a special duty of care to collect and verify certain information about their clients (including identifying beneficial owners, the sources of funds and the purposes of transactions).

The body responsible for ensuring timely implementation and effective application of the Anti-Money Laundering Law is the Financial Intelligence Office of Mozambique.

INTELLECTUAL PROPERTY

31. What are the main IP rights that are recognised in your jurisdiction?

All forms of intellectual property such as patents, trade marks, industrial design, utility models, logos, trade names, trade secrets and emblems are regulated by the Industrial Property Code of 2015 (CPI). The aim of the CPI is to promote innovation, transfer and disseminate technology, and protect consumers.

Patents

Definition and Legal Requirements. A patent is a right granted to protect an invention, giving the owner exclusive rights to exploit the invention. For an invention to be patentable, it must:

- Be new.
- Represent an inventive step.
- Have an industrial application

Registration. The authority responsible for registration of patents is the Industrial Property Institute (www.ipi.gov.mz). The application for a patent must be made in Portuguese using the official form provided on the website. This application must include the name of the holder of the invention, their nationality and successors, and the invention title. It must be presented in triplicate together with the applicable fee. The applicant must disclose information about any patent requested abroad.

Enforcement and Remedies. The Industrial Property Institute is charged with protecting industrial property. Any violation of rights conferred by the patent is punishable with a fine of 89 minimum wages for individuals and 200 minimum wages for legal entities.

Length of Protection. The patent is protected for 20 years from the approval of the application.

Trade Marks

Definition and Legal Requirements. The CPI defines a "trade mark" as a distinctive sign that is manifestly visible, heard or smelt, and is capable of graphic representation, that allows products or services of a given entity to be distinguished from the products and services of another entity. It can be made up of letters, numbers, words, names, drawings, and the shape of the product or of its packaging.

Protection. The authority responsible for trade mark registration is the Industrial Property Institute. Applications must:

- Be made in Portuguese using the form provided on the website.
- Include a reproduction of the trade mark and list of relevant products or services.
- Be accompanied by proof of licensing for the activity in question.
- Include the application fee.

Enforcement and remedies. The Industrial Property Institute is charged with protecting trade marks. Illegal use of trade marks is punishable with a fine of 112 minimum wages for individuals and 224 minimum wages for legal entities.

Length of Protection and Renewability. Trade marks are protected for ten years and can be renewed for consecutive ten-year periods indefinitely.

Registered Designs

Definition. The CPI defines an "industrial design" as any set of lines, colours or forms in three dimensions that provides a new and original visual look to a product or part of it that may be used as a prototype for its industrial production or manufacturing.

Registration. The authority responsible for registration of patents is the Industrial Property Institute. Industrial design applications must:

- Be made in Portuguese using the official form provided on the website.
- Include drawings, pictures or other graphic representations, and a copy of the object that incorporates the industrial design.
- Include the application fee.

Enforcement and Remedies. The Industrial Property Institute is charged with protecting industrial designs. Illegal use of industrial designs is punishable with a fine of 33 minimum wages for individuals and 112 minimum wages for legal entities.

Length of Protection and Renewability. An industrial design is protected for five years from the date of approval of the application, and can be renewed for a consecutive five-year periods up to a maximum of 25 years.

Copyright

Definition and Legal Requirements. Copyright applies to literary, artistic and scientific original creations, including, among other things, written works (including computer programs), musical works, drama, choreographics, audio-visual work and works of art and any derivatives of such works. Copyright is regulated by the:

- Copyright Code, which protects literary, artistic and scientific work.
- Decree 45/2018 of 30 July approving the Regulations on Licensing, Sale and Affixing the Seal on Works of Art and Crafts.

Protection. A copyright must be registered to receive protection. The following are subject to registration:

- Literary or artistic name.
- Title of the work and the author.

- Acts that constitute, transmit, change or extinguish copyright.
- Encumbrance of copyrights.
- Seizure over copyrights.

The registration certificate has full evidential value and can only be limited in certain circumstances

Enforcement and Remedies. Infringement of copyright is subject to civil and criminal liability.

Length of Protection and Renewability. Copyright is protected throughout the author's life and for 70 years after the author's death. The rights to remain anonymous and to use a pseudonym are timeless.

MARKETING AGREEMENTS

32. Are marketing agreements regulated?

Marketing agreements are regulated by the:

- Civil Code.
- Consumer Law (22/2009, 28 September).
- Advertising Code. The Advertising Code contains rules on:
 - limitations on and liability for advertising;
 - authorisations for advertising and the licensing authority;
 - advertising contracts;
 - penalties for non-compliance.

Marketing agreements must be certified before a public notary in Mozambique.

Agency

Agency agreements are governed by Articles 522 to 556 of the Commercial Code. Under an agency agreement, the agent acts as an intermediary and marketing agent of the principal to sell products or services, for commission or a fee. The agent is not able to enter into agreements on behalf of the principal with resident third parties, unless authorised in writing. Agency relationships may imply exclusivity, either for the agent or the principal. Exclusivity is usually geographically limited.

An agency agreement may also establish a non-competition clause for a maximum of two years from the termination of the agreement. This gives the agent the right to compensation. Article 533 of the Commercial Code also gives the agent the right to "clientele compensation" after termination of the agency agreement under its terms and conditions. For the agent to claim this compensation, following requirements must be met:

- The agent has brought new clients to the company or has significantly increased the volume of operations with the pre-existing clients.
- The agent's previous work continues to produce substantial advantages for the company after termination of the agreement.
- The compensation is equitable due to the existence of clauses restricting competition, commissions lost by the agent or other circumstances.

The agent can only claim compensation for loss and damage in the case of a permanent agreement that has been terminated unilaterally by the company.

Distribution

Mozambique has no specific legislation regarding distribution contracts. In general, Mozambican private law recognises the

principle of contractual freedom and autonomy of the parties, and a distribution contract can be freely executed under the general rules of the Civil Code.

Franchising

Mozambique has no specific legislation regarding franchising contracts. In general, Mozambican private law recognises the principle of contractual freedom and the autonomy of the parties, and a franchising contract can be freely executed under the general rules of the Civil Code.

E-COMMERCE

33. Are there any laws regulating e-commerce?

To date, no specific laws have been enacted to regulate e-commerce. The most relevant laws are the Electronic Transaction Law and the Advertising Code, which establish the rules on advertising activity. Article 34 of the Advertising Code sets out general requirements for information that must be included in the advertising of products. See *Question 35* and *Question 37*.

34. Are online platforms regulated in relation to their use for marketing/sales purposes?

See *Question 35*.

ADVERTISING

35. How is advertising regulated in your jurisdiction?

The Constitution and the Consumer Protection Regulations grant consumers rights to:

- Life, health and physical safety in relation to the quality of goods and services.
- Receive information and be protected against misleading and abusive advertising.

Digital Advertising

- Digital advertising is regulated by:
 - The Advertising Code, which sets out requirements for digital advertising in relation to:
 - the nature of the message;
 - the target public;
 - marketing promotions;
 - prizes, games and bonuses;
 - terms and conditions.
 - The Electronic Transactions Law, in particular, Article 40 (see *Question 37*).
 - Articles 14, 15 and 16 of the Regulation on the Advertising of Financial Products and Services, which provide the minimum information requirements that credit institutions, financial companies and other institutions under the supervision of the Central Bank must comply with to advertise financial products and services.

Direct Marketing

Direct marketing is regulated by Articles 47 and 48 of the Advertising Code and Article 40 of the Electronic Transactions Law.

36. How are sales promotions regulated in your jurisdiction?

Article 34 of the Advertising Code regulates sales promotions.

DATA PROTECTION

37. Are there specific data protection laws? If not, are there laws providing equivalent protection?

Data Protection Laws

The rights to individual privacy and protection of personal data are fundamental rights granted and protected by the Constitution.

Although no specific laws have been enacted to regulate data protection, the Electronic Transaction Law (3/2017, 9 January) establishes the legal framework for electronic transactions, commerce and governance to regulate data protection for those using information and communication technology.

The Constitution and the Electronic Transaction Law prohibit the:

- Recording and processing of any personal information on political, philosophical, ideological or religious beliefs or affiliation to any political party or trade union.
- Accessing of databases or digital archives, files or records to obtain personal information of third parties.
- Transfer of any personal data from one computerised file to one that belongs to a distinct service or institution (except as permitted by law or court order).

Mozambique has ratified the African Union Convention on Cybersecurity and Personal Data Protection through Resolution 5/2019 of 20 June.

Consumer Privacy Laws

Consumer privacy is governed under the Consumer Law.

PRODUCT LIABILITY

38. How is product liability and product safety regulated?

The Consumer Law regulates product liability and product safety. It establishes consumers' rights to consume quality products and services, and the responsibilities of the providers of services and products. The Advertising Code also sets out certain rules regarding limits on advertising that relates to food, medical treatment, alcoholic beverages and tobacco, among other things. Certain sector-specific legislation also establishes specific rules, for example, regarding the:

- Production of food.
- Conservation of natural products.
- Health of people dealing with food.
- Safety rules to be observed in industrial factories.

Public entities that also deal with the quality of products include the:

- National Laboratory for Food and Water Hygiene.
- Ministry of Health.
- National Institute for Standards and Quality.

REGULATORY AUTHORITIES

39. What are some of the key regulatory authorities relevant to doing business in your jurisdiction?

Competition

Competition Regulatory Authority (ARC)

Main Activities. The ARC is responsible for:

- Remedying anti-competitive conduct such as collusion.
- Controlling the ability of dominant market players to restrict competition.
- Protecting consumers from anti-competitive practices.

Environment

Ministry of Land and Environment

Main Activities. Ministry of Land and Environment is responsible for:

- Regulating major industries in relation to waste.
- The treatment of contaminated land.
- Water quality and the conservation and ecology of water resources, fisheries, inland river, estuary and harbour navigations.
- Approving environmental impact assessments and monitoring their enforcement in protected or designated areas.

W www.mta.gov.mz

Financial Services

Central Bank of Mozambique

Main Activities. The Central Bank is responsible for:

- Advising the government on financial matters, including monetary policies and foreign exchange reserves.
- Regulating commercial banks in Mozambique.
- Supervising the insurance system in Mozambique by overseeing and regulating insurance companies.
- Issuing currency notes and coins.
- Exchange regulation through government-imposed limitations on the purchase and sales of foreign currencies, to enable the country to better stabilise the national economy by controlling inward and outward flows of currency.

W www.bancomoc.mz

Mozambican Stock Exchange

Main Activities. The Mozambican Stock Exchange is responsible for the structuring, management and operation of the securities registration and monitoring system.

W www.bvm.co.mz

Mozambique Insurance Supervision Institute

Main Activities. The Mozambique Insurance Supervision Institute is responsible for the supervision and monitoring of entities performing insurance activities in Mozambique.

W www.issm.gov.mz

Employment and Social Security

Ministry of Employment and Social Security

Main Activities. The Ministry of Employment and Social Security is responsible for management, planning, study, monitoring and

control of the government administration of employment and social security.

W <http://mitess.gov.mz>

General Employment Inspectorate

Main Activities. The General Employment Inspectorate is responsible for monitoring compliance with the rules on working conditions, professional risk prevention, mandatory social security, placement, employment and hiring of foreign employees.

National Migration Service

Main Activities. The National Migration Service is the public department responsible for migration.

W www.senami.gov.mz

Tax

Ministry of Economy and Finance

Main Activities. The Ministry of Economy and Finance is responsible for the design, execution and evaluation of public policies and development strategies oriented towards the growth and inclusive development of the national economy. It steers the process of planning and supervises public finance management.

W www.mef.gov.mz

Mozambican Tax Authority

Main Activities. The Mozambican Tax Authority is responsible for the administration and collection of domestic taxes and external commerce.

W www.at.gov.mz

IP-related

Industrial Property Institute

Main Activities. The Industrial Property Institute is responsible for the administration of the industrial property in Mozambique.

W www.ipi.gov.mz

Foreign Investment

Ministry of Foreign Affairs and Co-operation

Main Activities. The Ministry of Foreign Affairs and Co-operation is responsible for the planning, conduct and coordination of the implementation and execution of external and international co-operation policies.

W www.minec.gov.mz

Agency for the Promotion of Investment and Exports (APEIX)

Main Activities. The APEIX develops and implements actions aiming to promote and manage investments and exports. It also promotes and co-ordinates activities relating to the establishment, development and management of special economic zones.

W www.apiex.gov.mz

OTHER CONSIDERATIONS

40. Is there anything else that is important relating to doing business in your jurisdiction?

There are no further important issues.

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Recent transactions/activities

- Advising on the re-financing of the largest solar power project under development in the Algarve region, with a valued of about EUR 72 million (ongoing).
- Advising on establishment of a partnership with Sonae Financial Services regarding the Universo credit card. The aim of this partnership was for Banco CTT to fund the credit line associated with Sonae Group's (Portugal's largest retailer) credit card, with a value of about EUR500 million (2021).
- Dragon Finance no 1: Increase to EUR150 million of the securitisation of TV Rights receivables arising under the contract between FCP – Futebol SAD and Altice (2020).

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Publications

- *Mozambique – The Country of Untapped Investment Potential*, Africa Active 2019.
- *The Democratic Republic of the Congo*, *The Oil and Gas Law Review 2019* (co-author with Dr. Olivier Bustin).

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