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Mozambican Exchange Control Liberalisation - AVM

Mozambique has recently undertaken a complete overhaul of its exchange control regime with the objective of promoting the free movement of goods, capital, services, and people. Last year it enacted a new Foreign Exchange Law intended to reinforce the liberalisation of existing operations by eliminating the constraints applicable to payment transfers between residents and non-residents. The new Law is likely to provide foreign and local investors with more opportunities and flexibility in structuring cross-border transactions and investments. However, care is required to ensure compliance with income repatriation and conversion requirements as well as ensuring all prior authorisations needed for capital operations are in place.

In the last few years Mozambique has undertaken a complete overhaul of its exchange control regime with the objective of promoting the free movement of goods, capital, services, and people. On 11 March 2009 it enacted a new exchange control law (the "Foreign Exchange Law") regulating businesses, transactions and operations effected between residents and nonresidents which result or may result in payments or receipts from abroad.

Mozambique seeks through this exchange control framework to reinforce the liberalisation of existing operations by eliminating the constraints applicable to payments transfers between residents and nonresidents. Under the prior Exchange Control Law and Regulations the performance of any type of foreign exchange operation in Mozambique required authorization from the Bank of Mozambique. With the Foreign Exchange Law, currency transactions are divided into current operations (in particular, the import and export of goods and services) which are carried out without restrictions, and capital operations i.e. those connected with the movement of capital (in particular, investments and debts), which require registration and approval with the Bank of Mozambique.

Capital operations typically include, inter alia, foreign direct investment, real-estate investment, the opening and operation of accounts with financial institutions abroad, loans and shareholders loans, guarantees, transfers under insurance contracts, stock and other instruments traded on capital markets which all require an authorization from the Bank of Mozambique. Besides capital transactions, other activities are equally subject to approval such as (i) the purchase and sale of gold or silver in coins; (ii) the exportation of gold, silver, platinum, and other precious metals; (iii) the opening of bank accounts by non-residents in the local currency, meticais, when related to exchange control operations; (iv) loans in foreign currency; and (v) the transfer and receipt of amounts from abroad.

The regulations relating to the Foreign Exchange Law were recently approved in December 2010, although these have not yet been published yet. The proposed new regulations introduce substantial changes, particularly in how the foreign exchange transactions are undertaken and the statements on foreign currency entering and leaving the country. Briefly below we consider the (i) liberalisation of current accounts; (ii) exchange control operations subject to prior approval; (iii) repatriation of income from the export of goods, services, and foreign investment and compulsory conversion to the national currency.

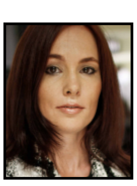
Regarding the liberalisation of current operations, and as established in the Foreign Exchange Law, any payments made in foreign currency, that do not involve transfers of capital, are subject only to registration but not to prior authorization. Therefore, all contracts or service agreements which result in payments to foreign entities must be registered with the Bank of Mozambique.

As to the capital operations listed above and carried out between residents and nonresidents, the proposed new regulation establishes the procedure for obtaining the authorizations, as well as the consequences of a failure to register within the prescribed time limit. In order to undertake capital operations such as foreign direct investment, contracting loans, etc. it is necessary to (i) obtain prior approval from the Bank of Mozambique, under the procedure established in the regulation; (ii) register the operation with the Bank of Mozambique.

In respect of foreign direct investment there are two practical implications arising from the Foreign Exchange Law and Regulation: (i) no foreign entity or individual may invest in Mozambique or provide finance to a Mozambican company without first registering the operation and seeking prior approval; (ii) failure by the resident entity to register may result in a refusal to repatriate funds and to re-export the original capital invested. Accordingly, although the investment legislation currently guarantees investors the right to remit all profits arising from an approved investment project, royalties, loans and interest as well as the capital invested in the case of a full or partial sale or liquidation funds, evidence of the authorization and registration of the investment is required to allow the repatriation of those funds. Additionally, it should also be noted that breaches of exchange control rules are subject to severe penalties.

Another change which the review proposes is the mandatory repatriation to Mozambique of income from the export of goods, services, and foreign investment and the conversion into national currency in order to strengthen the exchange rate stability of the country. These measures have been heavily criticized by the private sector, since exporters do not wish to see their revenues converted into national currency on the ground that since the metical is not a currency often used or recognised in international transactions national companies would be exposing themselves to unacceptable exchange rate risks. Notwithstanding this, the measure was approved which means that resident entities are now required to repatriate the income from exports and foreign investment and to convert this to the national currency. However, in order to mitigate the consequences of this, an exception was carved in to allow parties to maintain up to 50% of the revenue in foreign currency as long as the funds are held in a national bank account or used to repay foreign currency loans contracted with national banks.

The Foreign Exchange Law and proposed Regulation are likely to provide foreign and local investors with more opportunities and flexibility in structuring cross-border transactions and investments, however, care needs to be taken to ensure compliance with the income repatriation and conversion requirements as well ensuring all the prior authorisations needed to undertake capital operations are in place.



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