
NEW LEGAL FRAMEWORK FOR FOREIGN EXCHANGE LAW

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Considering the need to provide the foreign exchange market with greater flexibility, in particular to carry out foreign exchange transactions, as well as to adjust to the operation of a free market for the circulation of persons, goods and services harmonized with the regional integration process, Law no. 11/2009 of March 11 ("Old Foreign Exchange Law") was repealed and Law no. 28/2022 of December 29, 2022 ("New Foreign Exchange Law") was approved. The New Foreign Exchange Law became effective 30 days after its publication, (on 28 January, 2023), and all entities and legal entities covered must comply with it within 90 days of its entry into force (by 28 April, 2023).

In terms of content, the New Foreign Exchange Law preserves the general rules of the Old Foreign Exchange Law, largely limiting itself to standardizing the law with other foreign exchange rules in force (e.g. Notice 20/GBM/2017). The following innovations are noteworthy:

1. General Aspects

Regarding the object, the New Foreign Exchange Law is more comprehensive, and it will also regulate acts, businesses, transactions and operations of all kinds that take place in the country by virtue of a special foreign exchange regime or that involve foreign currency (paragraph 1 (b) of article 1).

As to the scope of application, the New Foreign Exchange Law will apply to the State and other legal persons governed by public law that carry out foreign exchange transactions concerning goods or assets located in the national territory or abroad and rights over such goods or assets or activities carried out in the respective territory (paragraph 1 (d) of article 2).

The major innovation results from the introduction of the Unique Bank Identification Number (NUIB), which is the unique numeric identification number allocated by the Bank of Mozambique to individuals and legal persons for banking operations in general. The use of the NUIB is now compulsory for all foreign exchange transactions under the referred law (article 5).

2. Duties for the Performance of Foreign Exchange Transactions

In terms of duties, we highlight the duty to declare assets, where all residents must declare the values and rights generated, acquired or held abroad (article 19), as well as repatriate revenues from the export of goods and services and income from investments abroad (article 20).

3. Foreign Exchange Trade and Special Foreign Exchange Regimes

The New Foreign Exchange Law distinguishes between foreign exchange trading and partial foreign exchange trading regarding their subjects. Foreign exchange may be carried on by (i) banks, (ii) exchange bureaux and (iii) companies providing payment services (article 23) and partial exchange by (i) travel or tourism agencies, (ii) hotels and similar entities and (iii) other entities authorized by the Bank of Mozambique, in which case it is a secondary activity to the main one (article 24).

Compared to the Old Foreign Exchange Law, the New Foreign Exchange Law makes reference to new special foreign exchange regimes, already referred in including: (i) the Mozambique Stock Exchange, (ii) the Special Economic Zones and Industrial Free Zones, (iii) the extractive industry, (iv) the Liquefied Natural Gas Projects in Areas 1 and 4 of the Rovuma Basin and (v) the contracts signed with the Government of the Republic of Mozambique which contain a special foreign exchange regime and which predate the entry into force of this law.

The New Foreign Exchange Law has a new section (articles 33 to 45) on oil and gas operations and applies to concessionaires, special purpose entities and each main subcontractor, as well as financiers, non-resident subcontractors and expatriate personnel, as actors in the oil and gas sector operating in the Republic of Mozambique.

Under the New Foreign Exchange Law, the concessionaires have the following duties:

- Remit to the Bank of Mozambique all identification elements of bank accounts, 15 days after the date of their opening (article 42, paragraph 1);
- Report to the Bank of Mozambique on the movements of its accounts and send quarterly statements (Article 42.2.a)
- Bear the expenses related to audits (Article 42.2.b);

- Until the date on which oil production commences, to hold a bank account in a bank of its choice, provided that it is approved by the Bank of Mozambique; the account must bear interest and periodically deposit the funds to cover the estimated demobilization costs (Article 44).

4. Sanctionary Regime

Finally, regarding the sanctions regime, we highlight the penalty provided for the illegal foreign exchange trade which is imprisonment for 2 to 8 years (article 5) and fines ranging from 10 to 500 minimum wages for contraventions committed by individuals; 20 to 1500 minimum wages for legal persons and 50 to 2500 minimum wages for credit institutions and financial companies (article 60).