
NEW LEGAL FRAMEWORK FOR COMMERCIAL CONTRACTS

Considering the need to regulate commercial contracts and that their dynamics transcend the normative provisions set forth in the Commercial Code approved by Decree-Law no. 2/2005 of December 27 and respective amendments, the Legal Framework of Commercial Contracts was approved in the context of an autonomous legal regime through Decree-Law no. 3/2022 of May 25, 2022 (hereinafter "RJCC"), which will come into force 120 days after publication, that is, on September 22, 2022.

The RJCC revokes Book III (articles 477 to 633) of the Commercial Code approved by Decree-Law no. 2/2005 of December 27 (hereinafter "Commercial Code"), concerning mercantile contracts and obligations. In terms of content, the RJCC preserves the general rules and contracts provided for in Book III of the Commercial Code and introduces the following innovations:

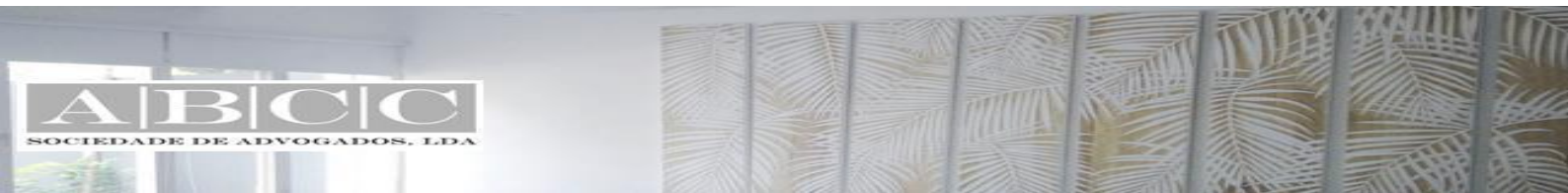
I. Regarding the general part

In addition to the freedom of form that already guided commercial contracts and to which RJCC alludes in article 5, it is also foreseen under article 42 the freedom of contract, guided by the principles of good faith, commercial loyalty and consistent compliance. As a consequence of the freedom of form and contractual freedom, witnesses are admitted to evidence these contracts, not being foreseen the specific content of the same, however, article 21 establishes as a limit for negotiations, the abusive clauses in a similar scope to that of article 471 of the Commercial Code.

The RJCC classifies commercial contracts into: contracts of free stipulation, adhesion contracts and consumer contracts, as seen in articles 24 et seq. and comprise two groups of modalities:

- a) As to the purpose: framework contract and application contract (article 31); and exchange contract and cooperation contract (article 36).
- b) As to genesis: electronic contract (article 38); and intelligent contract (article 40).

As for commercial interest, the Commercial Code provided, in article 463(1), that the commercial interest rate was the legal interest rate, i.e., 5% under article 559(1) of the Civil Code, a provision that has always been criticized for its rigidity and inflexibility in light of market changes. The RJCC brings more flexibility by fixing the criteria for determining compensatory commercial interest at the reference rate of the Prime Rate of the Mozambican Financial System ("PRFSM") and commercial



interest for late payment at two percentage points over the aforementioned rate, pursuant to article 13 of the RJCC.

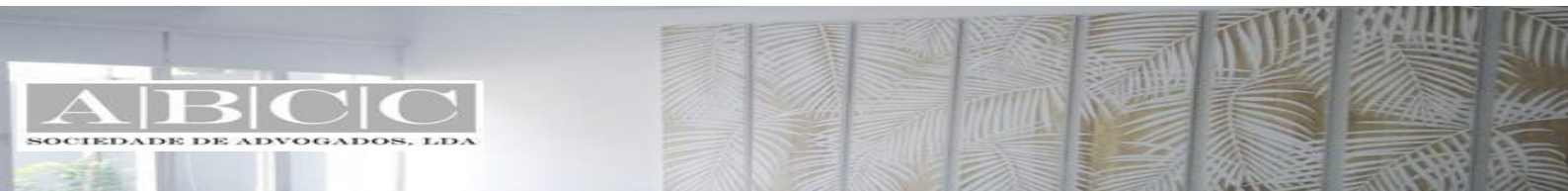
This legal regime also establishes (with a predominantly supplementary character), the rules applicable: to the determination of the place of business, to notices, to notifications, and to the counting of deadlines.

II. Regarding contracts in particular

The RJCC imported the contracts provided for in the Commercial Code and introduced new contracts, the contracts being divided into nine chapters, namely: Chapter I - Preparatory contracts; Chapter II - Contracts which generate the transfer of property; Chapter III - Contracts for the commercial enjoyment of goods; Chapter IV- Contracts for the provision of services; Chapter V- Distribution contracts; Chapter VI - Contracts of transport; Chapter VII - Commercial financing contracts; Chapter VIII - Commercial guarantee contracts and Chapter IX- Contracts for business collaboration.

Of the new contracts under this new regime, the following are worth mentioning:

- a) This new regime introduces, in Articles 137 to 145, the so-called preparatory contracts, that is, the contracts that precede the main contracts namely: the promissory contract, option contract and the preference contract.
- b) Commercial donation, provided for in articles 213 to 230 of the RJCC, is defined as the agreement whereby one party disposes of or assumes the obligation to dispose of the ownership of certain assets, free of charge and at its own expense, for the benefit of another party. It is also considered a commercial donation, the agreement by which one party undertakes to manufacture or produce goods free of charge for the benefit of another party, transferring the ownership of the same.
- c) The commercial lease provided for in articles 231 to 225 of the RJCC, was not provided for in the Commercial Code, and the provisions of the Civil Code in articles 1112 to 1118, concerning leasing for commerce, were applied. Since the RJCC provisions on commercial leasing bring issues not addressed by the Civil Code, commercial leasing contracts will now be governed by the provisions of this new regime as well as by the Civil Code, as subsidiary law.
- d) Commercial leasing is regulated by articles 256 to 267 of the RJCC. It is a contract under which the lessor grants the temporary right to use an asset against payment of a rent, and the purchase option, against a price. This regime does not apply to financial leasing, subject to the regime of credit institutions and financial companies.



- e) In the transport contract, the RJCC introduces provisions relating to maritime transport, provisions which answer many questions for which there was no solution in the Commercial Code.
- f) Prior to the approval of the RJCC, the general rules of the Civil Code applied to the mandate (articles 1157 and 262). RJCC institutes the commercial mandate contract in articles 291 to 328 and establishes that the rules applicable to service contracts that include a mandate are the rules of such contracts and secondarily, the rules of the service contract.
- g) Another contract introduced by the RJCC is the commercial loan or mutual loan contract, provided in articles 493 to 500. With respect to this contract it should be noted that the parties are free to stipulate the interest rates, having as limit: (i) the reference rate (base lending rate) of the currency of credit denomination and (ii) the reference rate of the prime rate of the Mozambican Financial System - PRSFM - as to the national rates. This regime does not apply to bank credit, which is subject to the regime for credit institutions and financial companies.
- h) The RJCC introduces commercial guarantee contracts in articles 511 to 548, establishing in subparagraph a) of article 544, that when the guarantee is the commercial pledge, the enforceability depends on the registration with the Central Office for Registries of Commercial Guarantees. Still regarding commercial guarantee contracts, it is important to note that the referred rules are not applicable to insurance contracts.

Avillez, Bacar, Duarte & Centeio – Sociedade de Advogados, Lda