

Mozambique

Law No.8 /2023 of 9 June (2023)

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Unofficial translation

Law No.8 /2023 of 9 June

As there is a need to promote the continuous improvement of the investment and business environment in the country, considering the profound changes that have occurred since the approval of Law No. 3/93, of 24 June, Investment Law, its adaptation to the current context and dynamics of the national, regional and world economy, under the provisions of paragraph 1 of article 178 of the Constitution of the Republic, The Assembly of the Republic determines:

CHAPTER I General Provisions

Article 1 - (Subject)

This Law establishes the legal regime, bases and general principles applicable to private investments in the Republic of Mozambique and eligible for the enjoyment of tax and non-tax guarantees and incentives.

Article 2 - (Scope)

1. This Law applies to all projects of an economic nature that take place in Mozambican territory that intend to benefit from guarantees and incentives of a fiscal or non-fiscal nature, applicable, under the terms of the law, namely:

- a) domestic and foreign investments;
- b) public-private partnerships, large-scale projects and business concessions.

2. This Law shall not apply to:

a) investments made or to be made under specific legislation, namely in the areas of prospecting, research and production of oil, gas and the extractive industry of mineral resources;

b) public investments financed by funds from the State Budget, as well as investments of an exclusively social or non-profit nature.

3. The provisions of paragraph 2 of this article shall be without prejudice to the application of this Law to such investments, in matters not regulated by the respective specific legislation, including processing, marketing and marketing activities.

and transportation of mining and/or petroleum products, when carried out by entities that are exclusively dedicated to their development.

Article 3 - (Settings)

The definition of the terms used in this Law is set out in the attached Glossary, which is an integral part of it.

CHAPTER II: Investment Policy

Article 4 - (General principles)

The investment policy enshrined in this Law shall comply with the following general principles:

- a) pursuit of national economic policy objectives;
- b) equal treatment and non-discrimination between national and foreign investors and workers in the exercise of their activities;
- c) respect for the right to property and other rights in rem, in accordance with the law;
- d) observance of the rules of the market economy;
- e) competition and ethics between economic agents;
- f) respect for the principle of free economic initiative, without prejudice to the provisions of Article 17 of this Law;

- g) ensuring investment safety and security;
- h) guarantee of the free movement of goods and capital, under the terms and within the legal limits;
- i) compliance with applicable international law.

Article 5 - (Investment objectives)

The objectives of investment in the national territory are actions which, individually or cumulatively, aim to:

- a) contribute to the creation or maintenance of a number of jobs in the national territory and the improvement of the professional qualification of workers, as well as the generation of income;
- b) promote adequate economic, environmental, social, territorial and energy sustainability;
- c) allow the installation of a productive base with relevant national incorporation, creating added value and providing services to support productive activity;
- d) produce tradable goods and services;
- e) promote a positive impact on the treasury and the trade balance, namely in the increase and diversification of exports or the reduction of imports;
- f) contribute to the introduction of innovative technological processes and to the improvement of the productivity and efficiency of Mozambican companies;
- g) contribute to the implementation, rehabilitation, expansion or modernization of economic infrastructures intended for the exploitation of productive economic activity or the provision of services indispensable to support the promotion of the country's development;
- h) promote the training, multiplication and development of the Mozambican business community and business partners;
- i) contribute to the improvement of the supply of the internal market and the satisfaction of the priority and indispensable needs of the population;
- j) protect and add value to natural resources.

CHAPTER III : Guarantees, Rights and Duties of the Investor

Article 6 - (Fair and non-discriminatory treatment)

1. The investor, employer and employee, regardless of nationality, enjoy the same rights and are subject to the same duties and obligations under the law.
2. The State guarantees:
 - a) fair and equitable treatment of investors and investments made in the national territory, in accordance with the principles of international law;
 - b) conditions necessary for the effective exercise of the right provided for in paragraph 2(a) of this Article.

3. Paragraphs 1 and 2 of this article shall not apply to the following cases:

- a) projects or activities of nationals which, by their nature or the size of their investments and undertakings, may merit special support and treatment from the State;
- b) differential treatment resulting from specific legislation.

Article 7 - (Right to Property)

The State recognizes and guarantees the right to property, namely:

- a) the legal protection of property rights and other rights of patrimonial content, including intellectual and industrial property rights, against any public or private measures, direct or indirect, which may harm them;
- b) the legal protection of the right to use and benefit from the land, in accordance with the law.

Article 8 - (Protection of the right to property)

1. Expropriation, nationalisation and requisition of investors' rights or the adoption of any acts having equivalent effect shall be prohibited, unless such measures:

- a) are based on necessity, utility or purposes of relevant public interest;
- b) are adopted in a non-discriminatory manner;
- c) give the investor the right to fair compensation;
- d) comply with applicable legal standards.

2. The fair compensation referred to in paragraph 1(c) of this Article shall be the actual market value of the assets concerned, as determined at the time of the declaration of public interest of the measure or at the time when the measure is implemented, whichever is earlier.

3. The fair compensation also compensates the investor for any devaluation of the asset that results from the public announcement of the measure at a time prior to its implementation.

4. The compensation shall be paid promptly and expeditiously and shall include default interest calculated at a commercially reasonable rate, taking into account unjustified or unreasonable delays in processing the compensation.

5. The compensation must be freely transferable abroad and convertible into foreign currency used in the main international markets, under the terms of article 10 of this Law, in the case of an enterprise involving foreign direct investment.

6. The investor may use all the means of dispute settlement provided for in Article 26 of this Law to raise the validity of the expropriation, nationalisation, requisition measure or to ensure the determination of the amount of the corresponding compensation and/or its compensation.

Article 9 - (Prevalence of International Law)

The guarantees and incentives provided for in this Law are without prejudice to the application of more favourable regimes established in international treaties or agreements to which the Republic of Mozambique is a signatory, under the terms of the Constitution and the law.

Article 10 - (Transfers of funds abroad)

1. In accordance with foreign exchange legislation, the State guarantees the transfer abroad:

- a) exportable profits resulting from investments and reinvestments eligible for the export of profits, under the terms of the foreign exchange legislation;
- b) royalties or other remuneration income from indirect investments associated with the transfer or transfer of technology;
- c) capital amortizations and interest on loans contracted abroad and applied in investment projects carried out in the country;
- d) the proceeds of compensation received pursuant to the provisions of Articles 7 and 8 of this Law and others that may be due;
- e) of foreign capital invested and re-exportable, regardless of whether or not the respective investment project is eligible for the export of profits, under the terms of foreign exchange legislation.

2. Under the terms of foreign exchange legislation, the Bank of Mozambique may determine the staggering of transfers abroad.

Article 11 - (Other Warranties)

The State also guarantees investors:

- a) respect for their industrial and intellectual property rights, in accordance with the law;
- b) freedom of administration of undertakings, with public interference in their management being prohibited, except in cases specifically provided for by law;
- c) the maintenance in force of the licences and authorisations obtained, without prejudice to the possibility of their revocation, cancellation, annulment or declaration of nullity, following administrative or judicial proceedings provided for by law;
- d) the right to import goods from abroad for the execution of their projects and to export goods, whether produced by them or not, without prejudice to the rules for the protection of the internal market, established by law.

Article 12 - (Duties of Investors)

1. Investors are generally required to respect and comply with the rules in force in the Republic of Mozambique, namely those arising from the Constitution, this Law and other applicable legislation.

2. The following are special duties of investors:

- a) pay the taxes, fees and other contributions due, in accordance with the law;
- b) respect and comply with current regulations relating to the environment, nature protection and waste management;
- c) respect and comply with current labor standards;
- d) respect and comply with the applicable accounting, foreign exchange and registration standards;
- e) Contracting, subscribing and keeping up to date the compulsory insurances, under the terms of the law.

3. In the exercise of their activity, depending on the size and characteristics of the project, investors must also contribute to the development of social responsibility policies in the area where the investment is implemented and respect the local traditions and customs of the region.

Article 13 - (Investor Social Responsibility)

1. In compliance with the provisions of paragraph 3 of article 12 of this Law, investors shall ensure that investment projects contribute to the development of one or more of the following areas:

- a) the promotion of active policies for the defence and protection of the environment and the promotion of gender equality;
- b) the promotion of social, cultural and health responsibility programs;
- c) the establishment of internal policies for the educational and training development of its workers.

2. The inclusion of specific investments in the areas referred to in paragraph 1 of this article shall be a factor in the enhancement of investment projects subject to the authorisation procedure, through the following actions:

- a) development of resettlement programs for the population to be affected by the project;
- b) creation or development of infrastructures in the areas of education, health, transport and roads, electricity, water and sanitation, preferably in the geographical area of intervention of the project;
- c) collaboration with local educational institutions;
- d) hiring local labor, goods and services;
- e) Contribution to the business development of small and medium-sized Mozambican enterprises, through business and technological links between the project and these companies.

CHAPTER IV- Investment Operations

Article 14 - (Origins and types of investment)

Investments can be:

- a) as to origin: national, foreign or mixed;
- b) As for the type: direct or indirect.

Article 15 - (Forms of national direct investment)

National direct investment may, individually or cumulatively, take any of the following forms, provided that they are capable of being assessed in pecuniary terms:

- a) cash, including the investment of own funds, credits and other assets that can be used as investments;
- b) infrastructure, equipment and related accessories, materials and other goods;

- c) assignment of exploitation of rights over concessions, licenses and other rights of an economic, commercial or technological nature;
- d) assignment of the right to use and benefit from the land;
- e) transfer of patented technologies and registered trademarks, the remuneration of which is limited to participation in the distribution of the company's profits, resulting from the activities in which such technologies or trademarks have been or are applied, under the terms determined by the competent authorities;
- f) incorporation of technologies and knowledge that can be assessed in terms of money;
- g) investment of capital in the national territory within the scope of reinvestment.

Article 16 - (Forms of foreign direct investment)

Foreign direct investment may, individually or cumulatively, take any of the following forms, provided that they are capable of being assessed in pecuniary terms:

- a) cash;
- b) imported equipment and accessories, materials and other goods;
- c) assignment of rights of use of patented technologies and trademarks, the remuneration of which is limited to participation in the distribution of the company's profits, resulting from the activities in which such technologies or brands have been or are applied, under the terms determined by the competent authorities;
- d) incorporation of technologies and knowledge that can be assessed in terms of money;
- e) provision of specialized services from abroad for the benefit of economic projects in the country;
- f) investment of capital in the national territory within the scope of reinvestment;
- g) Conversion of the value of the Mozambican external debt, related to loans and financing registered with the competent authority, under the terms of the applicable legislation.

Article 17 - (Forms of indirect investment)

Without prejudice to the provisions of subparagraphs b) and c), respectively, of articles 15 and 16 of this Law, indirect investment, whether national or foreign, may take, individually or cumulatively, the forms of loans, supplies, additional capital contributions, patented technology, technical processes, industrial secrets and models, franchising, registered trademarks, technical assistance and other forms of access to the use or transfer of technology and trademarks to which access is applicable under an exclusivity or licensing regime restricted by geographical areas or areas of industrial and/or commercial activity.

Article 18 - (Freedom to invest)

1. Investors are free to invest in all areas of economic activity, within the limits of the law.
2. Paragraph 1 of this article does not apply to investments in activities reserved to the exclusive ownership or operation of the State, as well as investments in sectors or activities restricted by nationality, in accordance with the provisions of specific legislation.

Article 19 - (Tax Incentives)

1. In addition to the guarantees of ownership and transfers of funds abroad enshrined in this Law, the State guarantees the granting of tax and customs incentives defined in the Code of Tax Benefits for investments made in accordance with this Law and its regulations, provided that the legal requirements for this purpose are met.

2. The right to enjoy tax incentives granted pursuant to paragraph 1 of this article shall be irrevocable for the duration of the respective term, provided that the conditions on which they were granted are not altered.

Article 20 - (Development hubs)

Industrial parks, special economic zones, industrial free zones and rapid development zones may be established in the national territory, in which special regimes apply, namely in tax, customs, labour or foreign exchange matters, under the terms to be regulated in a specific diploma, approved by the Council of Ministers.

CHAPTER V : Procedures

Article 21 - (Procedural principles)

1. The administrative procedures established in this Law shall be governed by the principles of action of the Public Administration, under the terms provided for in the law that establishes the rules for the protection of the rights and interests of individuals.

2. The State shall promote the optional and progressive adoption of means of providing public services by electronic means, through the practice of certain acts by e-mail or through specific platforms created for this purpose, under terms to be approved by the Council of Ministers.

Article 22 - (Investment schemes)

1. In order to benefit from the guarantees and incentives provided for in this Law, investment projects are subject to the application of one of the following regimes:

a) mere registration regime, which consists of the simple submission of an investment proposal for the purposes of registration and allocation of the applicable incentives;

b) authorisation scheme, which applies to:

i. large-scale investment projects as well as those involving economic activities with foreseeable economic, environmental, safety or public health implications;

ii. public-private partnerships and business concessions;

iii. investment projects that require an extension of land with an area equal to or greater than 10 thousand hectares;

iv. investment projects that require a forest concession of an area of more than 100 thousand hectares;

v. investment projects having as their object the industrial processing of mining and/or petroleum products.

2. Projects not subject to the authorisation regime in accordance with paragraph 1 of this Article shall be subject to the mere registration regime.

3. Without prejudice to the need for articulation with other competent public entities, the procedures for the application of the regimes provided for in the previous paragraphs are processed by the entity that, under the terms of the law, coordinates the process of authorisation of private investments.

4. It is up to the Council of Ministers to define the levels of competence and the competent entities for decision-making on investment projects.

Article 23 - (Obligation to state reasons, prior hearing and decision)

1. The express decisions taken by the entities referred to in paragraph 4 of article 22 and the procedures provided for in this Law shall be duly reasoned, and the investors shall be notified so that they may comment on them within a maximum period of 10 working days.

2. After analysing the pronouncement or the expiry of the period referred to in paragraph 1 of this article, the respective entity referred to in paragraph 4 of article 22 of this Law shall take a final decision on the case, notifying the investors within five days.

Article 24 - (Assignment of position or investor rights)

1. The investor may assign, in whole or in part, his position or rights over an investment or his participation in the respective capital, upon an express and duly reasoned request addressed to the entity referred to in paragraph 3 of article 22 of this Law.

2. The transferor shall indicate in his application, in addition to identifying the transferee, any conditions agreed in connection with the assignment of the position or rights in question.

3. If the transferor of all or part of its position in the investment or share capital is a foreign investor, it may request the transfer abroad of the proceeds of such disposal, provided that any tax obligations levied on capital gains and others that take place in the sale operation are satisfied.

4. The transferee may only enjoy the guarantees and incentives provided for in this Law if the assignment has been authorized, carried out and registered during the term of the authorization of the respective enterprise.

5. The assignment may be refused only on duly established grounds of economic security and where the transferee does not assume the obligations on terms equivalent to those assumed by the transferor.

CHAPTER VI: Dispute Resolution

Article 25 - (Complaint and appeal)

1. Complaints may be lodged against the acts of entities with decision-making powers on investment projects.

2. The acts referred to in paragraph 1 of this article may also be subject to hierarchical appeal, improper hierarchical appeal or guardianship appeal, as applicable.

3. The processing of the means of challenge provided for in paragraphs 1 and 2 of this article shall follow the provisions of the law that establishes the rules for the protection of the rights and interests of individuals.

Article 26- (Means of dispute resolution)

1. The State guarantees all private investors access to national courts for the defence of their legally protected rights and interests.
2. Any disputes relating to the interpretation and application of this Law that affect the rights and guarantees of the investor provided for therein in international investment treaties or agreements in force shall be notified in writing by the investor to the opposing party.
3. The parties should give priority to the settlement of disputes amicably or in negotiations.
4. If disputes cannot be settled amicably or in negotiation, they may be settled by means of out-of-court dispute resolution at national or international level, such as mediation, conciliation and arbitration, provided that by special law or agreement they are not exclusively subject to the competent national courts, to necessary arbitration or to another specific means of dispute resolution.

CHAPTER VII : Offences and Sanctioning Regime

Article 27 - (Infringements)

The following are offences for the purposes of this Law:

- a) non-compliance with the terms and conditions defined at the time of project approval;
- b) the performance of activities other than those foreseen in the object of the project, provided that these have a significant impact on the development of the project and/or imply a change in its nature;
- c) failure to comply with the general and specific duties of investors as defined in Article 12 of this Law;
- d) the use of funds and resources from abroad intended for the implementation of the investment for purposes other than those defined at the time of approval of the project;
- e) the non-implementation of the project within the period established at the time of approval of the investment, except in duly substantiated and proven cases, namely in situations of unforeseeable circumstances or force majeure;
- f) the stoppage of the implementation or effective operation of the project without prior communication to the entity referred to in paragraph 3 of article 22 of this Law;
- g) the provision of false statements or refusal to send information requested by the entity referred to in paragraph 3 of article 22 of this Law, in the context of monitoring and monitoring the project.

Article 28 - (Sanctions)

1. Without prejudice to others provided for in specific legislation, the offences referred to in Article 27 of this Law are subject to the following sanctions:
 - a) a written warning against the investor, setting a time limit for remedying the infringement;
 - b) the loss of the right to tax incentives and other facilities granted to the project by specific legislation;
 - c) the revocation of authorisation or cancellation of the investment register.

2. The penalty is determined on the basis of the seriousness of the infringement, the culpability, the economic situation of the investor and the economic benefit which he has derived from the infringement.

3. The application of penalties provided for in this article shall be preceded by notification and hearing of the investor or his representative for the exercise of the respective adversarial procedure.

CHAPTER VIII: Transitional and Final Provisions

Article 29 - (Regulation)

1. It is incumbent upon the Council of Ministers to approve the general and specific regulations of this Law, within 120 days from its publication.

2. Except as otherwise provided for in this Law, until the approval of the respective regulations, the regulation shall remain in force until the date of its entry into force.

Article 30 - (Transitional provision)

The provisions of Law No. 3/93 of 24 June and its regulations shall apply to investment projects under consideration on the date of entry into force of this Law.

Article 31 - (Repeal)

Law no. 3/93, of 24 June, and other legislation are hereby repealed that contravenes this Law.

Article 32 - (Entry into force)

This Law shall enter into force 90 days after its publication.

Approved by the Assembly of the Republic on 17 May of 2023.

The President of the Assembly of the Republic, Esperança Laurinda Francisco Nhiuane Bias.

Promulgated on June 5, 2023. Publish yourself.

The President of the Republic, Filipe JAcinto nyusi.

Attachment Glossary

A

Economic activity – production and marketing of goods or provision of services of any nature, carried out in any sector of the national economy.

C

Foreign capital – contribution subject to pecuniary valuation from abroad and intended for the execution of an investment project in Mozambican territory.

Invested capital – the amount actually paid up and invested in a national or foreign direct investment project, in accordance with articles 15 and 16.

D

Right to use and benefit from land – the right that natural or legal persons and local communities acquire over land, with the requirements and limitations provided for in the Land Law and its Regulations.

And

Enterprise – activity of an economic nature duly registered or authorized, under the terms of this Law. Company – entity that carries out an economic activity, in an organized and continuous manner, responsible for the implementation of an investment project and the subsequent exploitation of the activity or activities.

I

Investment – the application of capital in the form of tangible or intangible assets, with a view to creating, modernising or expanding an economic activity.

F

Franchising or franchising – a type of commercial contract through which the holder (licensor or franchisor) of a given knowledge or experience (know-how), trademark, acronym or commercial symbol assigns them, in whole or in part, to others and on an exclusive basis, with or without the guarantee of the respective technical assistance and marketing services, with the licensee (or franchisee) being obliged to make the necessary investments, the payment of periodic remuneration and the acceptance of the licensor's control over its commercial activity.

I

Foreign investor – a natural or legal person who has brought from abroad, to Mozambique, their own capital and resources or under their own account and risk, with a view to making any foreign direct investment, under the terms of the concept of foreign direct investment in this glossary, in a project previously registered or authorized under the terms of this Law.

National investor – a natural or legal person who has made available its own capital and resources or under its own account and risk, intended for the realization of any national direct investment, under the terms provided for in the concept of national direct investment of this glossary, in a project previously registered or authorized under the terms of this Law. Foreign direct investment – any form of contribution of foreign capital subject to pecuniary valuation, which constitutes capital or own resources or resources or under the account and risk of the foreign investor, coming from abroad, in foreign currency and intended for its incorporation into the investment for the realization of an economic activity project, through a company or in the form of representation duly registered in Mozambique with legal entities Competent and operating from the national territory.

National direct investment – any form of national capital contribution subject to pecuniary valuation, which constitutes capital or own resources or at the risk of the national investor, intended for the execution of an authorized investment project, with a view to the exploitation of the respective economic activity through a company registered in Mozambique and operating with its base in Mozambican territory.

Indirect investment – any type of investment whose remuneration and/or reimbursement does not consist exclusively in the direct participation of its contributors in the distribution of the final profits resulting from the exploitation of project activities in which specific forms of investment carried out, provided for in article 17, have been applied.

Mixed investment – one that integrates both domestic and foreign investment operations.

L

Exportable profit – the part of the profits or dividends, net of all operating expenses, resulting from the activity of a project involving foreign direct investment eligible for the export of profits under the terms of the Regulation referred to in article 29, which the investor may send abroad on his own initiative, after all applicable tax and legal obligations have been fulfilled.

P

Industrial park – a territorially delimited space and infrastructure in which industrial or business activities are carried out in an integrated or independent manner, and which can include common services, such as the supply of electricity, water, or telecommunications, sanitation and wastewater treatment services, security, surveillance, or intermodal transport systems, among others.

Foreign person – any natural person whose nationality is not Mozambican, or, in the case of a business company, the respective share capital is held in more than 50% (fifty percent) by foreign persons. National person – citizen of Mozambican nationality, or, in the case of a business company, the respective share capital is held in more than 50% (fifty percent) by nationals.

Project – an undertaking of economic activity that is the object of investment, under the terms of this Law.

Large-scale project – investment undertaking authorized or contracted by the Government, whose value exceeds, with reference to the date of January 1, 2009, the amount of 12,500,000,000.00 MT (twelve thousand five hundred million Meticaís).

R

Reinvestment – investment, in whole or in part, of the profits resulting from the exploitation of the activities of a national or foreign direct investment project, either in the enterprise that produced them, or in other enterprises carried out in the country.

Income – any amounts generated in a given period of exercise and operation of the activity of an investment project, such as profits, dividends, royalties and other possible forms of remuneration associated with the transfer of rights of access and use of technologies and trademarks, as well as interest and other forms of remuneration for direct and indirect investments based on the operating results of the respective activity project.

Social responsibility - a set of actions and initiatives carried out by investors in the areas of creation and development of infrastructures in the areas of education, health, transport and roads, electricity, water and sanitation, population resettlement programmes, environment, business and technological links and other related links, for the benefit of the local community and the geographical area of intervention of the project, under the terms and conditions previously approved by the Government.

Royalty – remuneration of any kind, paid for the use or concession of use of a copyright over a literary, artistic, scientific work, including films, recordings or discs for radio or television transmission of a patent, trademark of a design, a computer program, a plan, a formula or a secret process, or for the use or right to use industrial, commercial or scientific equipment or information relating to experience acquired in the industrial, commercial or scientific sector.

Z

Special economic zone – area of economic activity in general, geographically delimited and governed by a special customs regime on the basis of which all goods that enter, meet, circulate, industrially transform or leave the national territory are totally exempt from any related customs, tax and parafiscal impositions, enjoying, additionally, a free exchange regime and off-shore operations and tax, labour and migration regimes specifically instituted and appropriate for the quick and efficient entry into operation of enterprises and investors who intend to operate or are already operating or residing there, particularly in their relationship and fulfilment of their commercial and financial obligations abroad, ensuring, in return, the promotion of regional development and the generation of economic benefits in general and, in particular, to increase the productive, commercial, tax capacity and the generation of jobs and foreign exchange for the Republic of Mozambique.

"industrial free zone " means an area or unit or series of units of industrial activity, geographically delimited and regulated by a specific customs procedure on the basis of which goods found or moved therein, intended exclusively for the production of export articles, as well as the resulting export articles themselves, are exempt from all customs charges, and related parafiscal regimes, benefiting, in addition, from exchange, tax and labor regimes specially instituted and appropriate to the nature and efficient functioning of the enterprises that operate there, particularly in their relationship and fulfilment of their commercial and financial obligations abroad, ensuring, in return, the promotion of regional development and the generation of economic benefits in general and, in particular, to increase the productive, commercial, tax capacity and the generation of jobs and foreign currency for the country.

Rapid development area – geographical area of the - It is a national territory characterized by great potential in natural resources, but lacks infrastructure and a low level of economic activity.

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