

Exchange procedures for investments in Mozambique by foreign entities

Pedro Couto, Célia Francisco and Erna Guetsa of Couto Graça & Associados in Maputo look at issues surrounding exchange procedures

The theme that we propose to cover is inspired by foreign entities growing interest in investing in Mozambique.

We do not intend to develop this subject exhaustively because it is not our purpose to present a dissertation on the subject, but only expose the basic lines that will serve the foreign entities at the time of investing in Mozambique and proceeding with analysis of the procedures and what constitutes the foreign Exchange rules and regulations.

As such, it is important to consider that the investments made by foreign entities in Mozambique are regulated by Exchange Law- Law nº 11/2009 of March 11 and the Regulation of this law approved by Decree 83/2010 of December 31.

In those legal documents the concepts are set out that have to be taken into account before making any investments in Mozambique that would count as exchange control matters, before making any progress in this area it is necessary to have in mind that any act, business or transaction between residents and non-residents, which results or may result in payment or receipt of any amount in Mozambique or abroad is considered an exchange operation.

In this definition there is a concept that raises many questions, which is the concept of **resident or non-resident entities**.

To this effect, article 3 of the Exchange Law establishes that a Mozambican resident is defined as the following:

- Mozambican nationals;
- Foreigners residing in Mozambique for more than one year (except diplomats and similar entities and their families);
- Mozambican nationals that stay abroad for more than a year, either for health reasons or study;
- Corporate bodies registered in Mozambique;
- Public entities as well as Mozambican public funds with financial and administrative autonomy;
- Mozambican diplomats and similar entities residing abroad;
- Branches, representations, and other forms of other companies incorporated abroad, registered in Mozambique.

The exchange operations are classified by the law as **current transactions**, **capital transactions**.

Current transactions consist of any payments or receipts in foreign currency, that are not for the purposes of transfer of capital, namely those for the payment or receipt of money in connection with



foreign trade, while capital transactions are those that the law expressly defines as such under article 6 of the Exchange Law.

As such, the biggest difference between the two in terms of procedures is that those transactions classified as capital transactions are subject to prior approval by the Central Bank before being implemented, followed by a registration at the same entity, while the current transactions are not subject to prior authorization before being executed, they can be entered, and the registration is done by the commercial banks used for the transaction.

It is important to have in mind that independent of the exchange operation implemented it is established by law the obligation that, in cases of payment or receipt of values from/to outside the country, they shall be executed exclusively through banks authorised to operate in Mozambique.

In order to request authorisation for a capital transaction, the parties shall submit to the Central Bank all the necessary elements or prove the complete characterisation of the operation, the identification of the parties involved, determination of the operation value and the form of fulfillment of the obligations, and the Central Bank can, on its analysis, request more information or documents.

Regarding the documents to be submitted to the Central Bank, it is necessary to bear in mind that documents issued outside of Mozambique, in order for them to be valid in Mozambique, have to be legalised and if issued in a different language, they must be translated into Portuguese by a sworn translator.

In light of the above and in order to give a practical example of this, we will now describe proceedings inherent to the performance of the foreign direct investment in Mozambique.

Foreign direct investment in Mozambique is defined by law as, any form of contribution of foreign capital susceptible to pecuniary evaluation, that constitutes capital or resource that is invested by a foreign investor from outside of Mozambique at their own risk for the realization of a project of economic activity, or for the acquisition of a lasting interest in companies that operate outside of the investor economy at a company registered and operating in Mozambique.

This figure is established in the exchange law as a capital transaction, and as we have referred above, is subject to authorisation and registration that has to be made within 90 days from the day of the issuance of the authorisation or from the day of the effective entrance of the amount of the investment.

In order to make this registration, it is necessary to delivery to Central Bank the application form duly filled in, identification documents and a copy of the bank *borderaux* that proves the reception of the foreign currency when applicable. To confirm the registration, the Central Bank will issue a Private Capital Import Bulletin "BICP" (*Boletim de Importação de Capitais Privados*).

The absence of the referred registration in the established time determines the non-recognition of the right to re-export the profits or dividends as well as the re-export of the invested capital.

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Pedro Couto, graduated in law at the University of Eduardo Mondlane, in 1995. Achieved a post-graduate in corporate law, in the Faculty of Law at the University of Lisbon, in 1996. Achieved a post-



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Presently he is Chairman and is head of the Department of Energy, Natural Resources and Infrastructures at Couto Graça & Associados (CGA).

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