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MOZAMBIQUE

NEWS

# New Private Investment Law

## Law 08/2023 of 9 June

Law 8/2023 of 9 June (the "Investment Law") has been published in the Official Gazette. This new law establishes the rules applicable to private investments eligible for certain tax and non-tax guarantees and incentives. It also repeals the 30-year-old rules established by Law 3/93 of 24 June. The Investment Law will enter into force on 8 September 2023, i.e., 90 days after its publication.

We will now highlight some of the features of this new law:

**Scope of application:** The new Investment Law continues to apply to both domestic and foreign investments, as the previous law did. However, its scope has been extended to potentially cover public-private partnerships, large-scale projects and business concessions. It may also cover investments in the areas of prospecting, research and production of oil, gas and mineral extraction, and public investments financed by State Budget funds in matters not regulated by specific legislation. This included the processing, trading and transport of mining and/or petroleum products, when carried out by entities dedicated exclusively to the undertaking of those activities.

**Forms of investment:** The Investment Law includes the classification of investments according to their origin (domestic, foreign or mixed) and their type (direct or indirect). Among other things, the forms of direct domestic investment have been expanded and they now include the general transfer of the Right of Use of Land (DUAT). This is in contrast to the previous law, which provided that this could only be done in specific cases and after proper validation by the competent authorities. The forms of investment will now also include the incorporation of technology and knowledge that can be valued in monetary terms, and the use of capital in Mozambique in the context of reinvestment, among other things.

The Investment Law also expands the possibilities for foreign direct investment. These include the incorporation of technology and knowledge that can be valued in monetary terms, the provision of specialised services from abroad for the benefit of economic projects, and the conversion of the value of Mozambican foreign debt relating to loans and financing registered with the competent authority.

In terms of the origin of the funds, the new Investment Law also provides for a new form called mixed investment, which allows the pooling of direct and/or indirect, domestic and/or foreign investments.

**The Investment Law will enter into force on 8 September 2023, i.e., 90 days after its publication.**

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**The new Investment Law still requires regulations, which are expected to be approved within 120 days of publication (by 7 October 2023). Until the approval of these new regulations, the regulations existing under the previous Investment Law will remain in force.**

**Investors' guarantees:** The Investment Law expressly establishes the principles of (i) equal treatment and non-discrimination between Mozambican and foreign investors and workers in engaging in their activities, (ii) respect for property rights and other real rights, in accordance with the law, (iii) free competition and ethics among economic operators. The Investment Law also guarantees security, the protection of investments and the free movement of goods and capital, under the conditions and within the limits established by law. In addition, the new law provides additional guarantees, including (i) the freedom to manage the companies, (ii) the right to maintain in force the licences and authorisations obtained (without prejudice to the possibility of their revocation, cancellation, annulment or declaration of nullity, following the administrative or judicial procedure provided for by law), and (iii) the right to import goods from abroad for the execution of the projects and to export goods, whether produced by them or not, without prejudice to the rules of protection of the internal market established by law.

**Investors' obligations and responsibilities:** The new Investment Law also provides for investor obligations, including an obligation to contribute to the development of social responsibility policies in the area where the investment is located.

**Offences and penalties:** The new Investment Law establishes a system of offences for the violation of mandatory rules and the corresponding penalties that can be applied.

**Tax incentives:** The possibility of granting tax incentives to investment projects is maintained under the conditions provided for in the Tax Benefits Code. In addition, the possibility of creating industrial parks, special economic zones and industrial free zones, in which special tax, customs, labour or exchange regulations apply, is expressly provided for.

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**Projects under consideration:** The provisions of the old law will apply to investment projects under consideration on the date of entry into force of this law, i.e. those that have been submitted and have not been the subject of a decision by 7 September 2023.

**Dispute resolution:** Investors may defend their rights and interests either before national courts or before international institutions, and alternative dispute resolution methods such as conciliation, mediation and arbitration may be used. In addition, there is wide freedom to designate such international institutions, as the law does not limit them to a specific institution or set of rules. ■