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NEW EXCHANGE CONTROL REGULATIONS IN MOZAMBIQUE



GLM - Gabinete Legal Moçambique
Josina Correia
Lawyer
josina.correia@glm-advogados.com

On the 11th July 2011, came into force in Mozambique the new Exchange Control Law (Law 11/2009, of 11 March) and respective Regulation (Decree 83/2010, of 31 December), which now regulate Forex transactions carried out within Mozambican territory or between resident and non resident entities. The main purpose of this Law and its respective Regulation is to govern acts, businesses and transactions: (a) undertaken between residents and non residents and that may result in making or receiving payments from abroad; or (b) that are simply defined by law as forex operations.

The forex regulations specifically govern forex operations between nonresident individuals or corporate entities, whenever such operations relate to rights or transactions over goods or values located in national territory, or to activities carried out in national territory; forex operations carried out by residents with respect to goods, value or rights acquired abroad, over which there's an obligations to remit funds; and Forex operations carried out by residents with respect to goods or values located in national territory, or rights over such goods and values.

FOREX RESIDENCY

For purposes of the Forex Regulations the following are considered residents in national territory:

- (a) Mozambican nationals residing in Mozambique, or that are abroad for less than a year;
- (b) All foreign citizens residing in Mozambique for more than a year, except diplomats, consular representatives, foreign military personnel, as well as their family members;
- (c) Private corporate entities with head quarters in Mozambique;
- (d) Public entities;
- (e) National citizens who are diplomats, consular representatives, local military personnel with duties abroad, as well as their family members; and
- (f) Agencies, branches and commercial representations of non resident private corporate entities, duly registered in Mozambican territory.

FOREX OPERATIONS

Classification, Authorization and Registration Requirements

All forex operations are subject to registration, but not all are subject to approval, such as the case of those defined as current transactions, which do not require prior authorization from the Bank of Mozambique ("BoM").

The following forex operations require prior approval from the BoM:

- (a) Acquisition and disposal of gold and silver coins;
- (b) Exportation of gold, silver, platinum and other precious metals in bars or ingots, and other non crafted forms;
- (c) Opening and operation of local currency bank accounts by non residents when related to capital operations;
- (d) Opening and operation of foreign currency bank accounts by residents, or accounts used for purposes of international compensations or payments;
- (e) Granting of loans in foreign currency to residents, including those used in resource to suretyships even if payable in Meticaís when in such suretyships one of the parties is a non resident;
- (f) Acquisition and disposal of international bonds;
- (g) Operations expressed in foreign currency in accounts that may involve partial or total payments of capital transactions undertaken between residents and non residents;
- (h) Operations expressed in local currency in accounts that may involve partial or total payments of capital transactions undertaken by non residents;
- (i) Transfers and reception of funds from abroad;
- (j) Arbitration of forex rates (the right to establish forex rates in the business of acquisition and sale of foreign currency); and
- (k) Importation, exportation or re exportation of foreign currency or other means of payment, as well as surety deeds and international bonds.

Capital Transactions

The capital transactions that require prior approval from the BoM, include the following, (but not limited to):

- (a) Foreign direct investment;
- (b) Property investment;
- (c) Participation in investment corporate entities (i.e. funds and other similar);
- (d) Opening and operation of bank accounts held financial institutions abroad;
- (e) Credit facilities related to commodities and services;
- (f) Loans and other financial facilities;
- (g) Securities;
- (h) Transfers related to insurance contracts;
- (i) Capital/stock investment transactions held in financial and stock markets;
- (j) Importation and exportation of values;
- (k) Personal loans; and
- (l) Other that may be classified as such by law.

Current Transactions

Current transactions no longer require prior approval from the BoM. Nonetheless, it is subject to registration at the commercial banks. Current transactions include any remittance or reception from abroad of foreign currency that are not classified as capital transactions, which include in general transactions of foreign trade and remittance of money for family expenses.

Current transactions with respect to importation of goods and services specifically include the following payments:

- (a) Importation of Goods;
- (b) Importation for acquisition of specific foreign services;
- (c) provision of technical assistance services/management fees;
- (d) International insurance policies;
- (e) Transfers abroad of remuneration of non residents;
- (f) Other fees for provision of services (contractors, lawyers, medical assistance, artists, sports persons, or any other similar);
- (g) Use of trademarks, industrial or intellectual property;
- (h) Importation of stamps or similar items;
- (i) Magazine and newspaper subscriptions;
- (j) Foreign court procedure fees; and
- (k) Taxes, compensations and fines incurred abroad.

Current transactions with respect to exportation of goods and services

Current transactions no longer require prior approval from the BoM. Nonetheless, it is subject to registration at the commercial banks. Current transactions include any remittance or reception from abroad of foreign currency that are not classified as capital transactions, which include in general transactions of foreign trade and remittance of money for family expenses.

(receipt of revenue from abroad) specifically include the following receivables:

- (a) Exportation of services provided by non resident to residents;
- (b) Exportation of stamps;
- (c) Exportation of coins and notes for exhibition purposes; and
- (d) Use of trademarks, industrial or intellectual property services.

Remittance abroad of income generated from capital transactions that have been approved by the BoM, are also considered current transactions and those shall include the following:

- (a) Dividends resulting from foreign direct investment;
- (b) interest, dividends and other capital gains resulting from capital investment/stock investment (investment in shares/stock/quotas and bonds);
- (c) Interests from loans, including shareholders loans; and
- (d) Income from other forms of investment capital.

The following current transfers undertaken unilaterally without receiving any consideration, are also considered current transactions and do not require prior approval from the BoM:

- (a) Money donations;
- (b) Alimony;
- (c) Family expenses; and
- (d) Other similar.

Principles and General Duties (General Compliance Rules by Residents)

All current transactions, classified by law as such (and above mentioned), have been released from the obligation of prior approval. However, in order for each type of current transaction to be realized by the Commercial Bank, procedures have to be followed and

specific documents have to be provided. The control over such transactions now lay with the Commercial Banks.

All forex operations and capital transactions require prior approval from the BoM. Also, all forex transactions (forex operations, capital transactions and current transactions) are subject to registration at: (a) the BoM, in case of transactions subject to prior approval and already approved; and (b) the commercial banks to all other transactions that do not require prior approval from the BoM.

The forex registration procedure includes gathering of all information pertaining to the relevant transaction, namely identification of the parties, nature of the operation, amount, purpose and eligibility criteria; electronic or manual processing of the operation; filing of supporting documentation; and issue of the relevant Forex Registration Bulletin.

Residents are required to declare to the BoM all values/amounts and rights acquired, generated or held abroad. This statement is done on proper form to be made available by the BoM. The information provided to the BoM shall be updated on an annual basis, or whenever changes to it occur.

Income from Exportation of Goods and Services and Investment Abroad

Residents that undertake exportation activities (of goods, services) and those that hold investments abroad, which generate revenue, are required to remit such funds to Mozambique. The remittance of such funds into Mozambican territory shall be done within a period of 90 days, counting from the date: (a) in which the goods where shipped abroad; (b) in which such funds where received by the entity providing the services; and (c) in which the income from investment abroad was received.

The funds shall be transferred into the Mozambican bank in which the resident holds its accounts, and such funds shall automatically be converted to Meticaís at the exchange rate of the commercial bank that received the funds. Part of the income received

may be kept in foreign currency in the account of the beneficiary (up to 50%), or it can be used directly to repay foreign currency loans granted by Mozambican banks.

The BoM may authorize, on a case by case basis, the retention of part of the income received by exporters, in foreign bank accounts, for the following purposes:

- (a) Repayment of loans and payment of taxes abroad, although proof has to be provided to the BoM;
- (b) Urgent payment to be made to international transportation companies, within the terms set by the BoM;
- (c) Payments abroad by tourism entities; and
- (d) Other cases approved by the BoM.

The remaining amounts not held in foreign bank accounts shall be transferred to Mozambique and a monthly bank statement issued by such foreign banks shall be submitted to the BoM.

Opening and Operation of Bank accounts

The opening and operation of local currency bank accounts by non residents is subject to prior approval from the BoM. The request shall be made simultaneously with the request for approval of a forex or capital operation. The request requires the following documents: Identification of the parties; description of the Forex Operation it relates to; operation details and purpose.

Residents that undertake exportation activities (of goods, services) and those that hold investments abroad, which generate revenue, are required to remit such funds to Mozambique.

The withdrawal of foreign currency funds is limited to the maximum amount of USD 5.000,00 per transaction, and for undertaking of travel arrangements. Amounts up to 10.000,00 MT or USD 5.000,00 (in bills) are not required to be declared when entering or exiting the country.

For residents, the opening and operation of foreign currency bank accounts is also subject to prior approval from the BoM. An application form shall be completed and submitted either directly to the BoM or through the commercial bank. With respect to the foreign currency accounts already opened at the time of enactment of the new regulations, those will continue to be operational.

Foreign currency accounts shall have, as sources of income:

- (a) In the case of individuals:
 - (i) Deposits of bills or cheques;
 - (ii) Wire transfers;

(iii) Funds from foreign loans.

(b) In the case of corporate entities:

- (i) Funds from foreign loans or destined to repay loans;
- (ii) Funds from revenue derived from exportation of goods and services, or derived from investments made abroad, up to the limit of 50% retention in foreign currency.

The withdrawal of foreign currency funds is limited to the maximum amount of USD 5.000,00 per transaction, and for undertaking of travel arrangements. Amounts up to 10.000,00 MT or USD 5.000,00 (in bills) are not required to be declared when entering or exiting the country.

This newsletter was prepared by a multidisciplinary team made up of mozambican lawyers from GLM – Gabinete Legal Moçambique and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.
