



Foreign Exchange Legislation

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Law 11/2009

of 11 March

Because of the need to revise Law 3/96, of 4 January, the Foreign Exchange Law, so as to adapt it to the operating standards of market of freely circulating persons, goods and services, which is thus devoid of any restrictions on payments and transfers related to current international transactions and other related aspects, the Assembly of the Republic, in terms of the provisions of no. 1 of article 179 of the Constitution, decrees:

Article 1 (Object)

This Law has as its object the regulation of acts, business deals, transactions and operations of any kind which:

- a) are effected between residents and non-residents, and which result, or may result, in offshore payments or receipts;
- b) although not complying with the requirements listed in the previous line, are defined in law as foreign exchange operations.

Article 2 (Application)

1. This Law governs:
 - a) the performance of foreign exchange operations by individual or collective non-resident persons, when such operations relate to goods or monetary amounts situated in the national territory, and rights over these goods and monetary amounts, or relate to activities exercised in the same territory;
 - b) the performance, by residents, of foreign exchange operations relating to goods, monetary amounts or rights which are acquired, produced or situated offshore, and which must, by law, be repatriated;
 - c) the performance, by residents, of foreign exchange operations relating to goods or monetary amounts situated in the national territory, or rights over those goods or monetary amounts.
2. For the purposes of the provisions of the previous number, activities conducted in the national territory shall be deemed to include services performed, the transfer of rights, and goods encumbered or alienated, when situated, produced, utilised or employed in the country.

Article 3 (Residence for foreign exchange purposes)

1. For the purposes of this Law, the following persons shall be deemed to be resident in the national territory:
 - a) national citizens residing in Mozambique, or who have lived abroad for not more than one year;

- b) national citizens whose residence abroad for a period equal to or greater than one year was motivated by reasons of health or study;
 - c) all foreign citizens who have lived in Mozambique for more than one year, except for diplomats, consular or equivalent representatives, foreign military personnel exercising governmental functions in the country, as well as members of their respective families;
 - d) private collective persons, with head office in the national territory;
 - e) Mozambican public collective persons, as well as Mozambican public funds with administrative and financial autonomy;
 - f) national citizens who are diplomats, consular or similar representatives, or military personnel exercising governmental functions offshore, as well as members of their respective families;
 - g) subsidiaries, agencies, delegations, branches or other forms of representation of non-resident collective persons, legally represented in the national territory.
2. In terms of this article, in the case of doubt, it shall be presumed that the person concerned is resident, and that person shall bear the onus of rebutting this presumption.

Article 4
(General duty of verification and information)

- 1. Entities authorised to trade in foreign exchange shall, prior to the completion of operations in which they are involved, confirm their reality and nature, and that applicable legal provisions and regulations have been complied with.
- 2. For the purposes of the previous number, interested parties shall provide those forms of proof which are indispensable for the legal and economic characterisation of the requested operation, namely, those relating to the identification of subjects, object, monetary amount and dates on which payment became due.
- 3. The entities referred to in number 1 of this article shall submit information regarding completed foreign exchange operations to the Bank of Mozambique, on the terms determined by the Bank.

Article 5
(Foreign currency)

For the purposes of the provisions of this Law, "foreign currency" shall be understood, in respective regulatory diplomas and in complementary legislation, to mean those notes and metallic coins which are legal tender in their countries of issue, and any other foreign forms of payment, expressed in a currency or unit of account utilised in international remuneration or payment.

Article 6
(Foreign Exchange Operations)

1. All foreign exchange operations are subject to registration, on the terms set out in the respective regulations.
2. Without prejudice to the obligation of registration set out in the previous number, the performance of foreign exchange operations classified as current transactions shall not require authorisation.
3. Without prejudice to that set out in the previous number, the performance of the following foreign exchange operations shall require the authorisation of the foreign exchange authority, on the terms and conditions to be defined in specific regulations:
 - (a) the acquisition or alienation of minted gold or silver;
 - (b) the export of gold, silver, platinum and other precious metals in bars, ingots or in other non-worked form;
 - (c) the opening and transacting of non-resident accounts in national currency, when related to capital operations;
 - (d) the opening and transacting of resident accounts in foreign currency, or in units of account used in international remuneration or payments;
 - (e) the granting of credit to residents in foreign currency, including by the discounting of bills of exchange, promissory notes or invoices expressed or payable in foreign currency, expressed or payable in national currency, when these securities involve non-residents as drawers, acceptors, endorsers or guarantors, whether as subscribers or as issuers;
 - (f) the acquisition or alienation of foreign credit security coupons;
 - (g) operations expressed in foreign currency, in units of account which involve or may involve the total or partial liquidation of capital transactions concluded between residents and non-residents;
 - (h) operations expressed in national currency, in units of account which involve or may involve the total or partial liquidation of capital transactions concluded by non-residents;
 - (i) transfers, and the receipt from offshore, of any monetary values or other forms of payment, which do not fall within the scope of the previous number;
 - (j) exchange-rate arbitrage;
 - (k) the import, export or re-export, when undertaken by institutions authorised to trade in foreign exchange, of:
 - i. foreign notes or metallic coins in circulation, or other foreign forms of payment;
 - ii. bills of exchange, promissory notes and invoices, shares or bonds, whether national or foreign, or coupons, as well as public debt securities.
4. For the purposes of numbers 2 and 3 of this article, current transactions shall be deemed to mean any payments or receipts in foreign currency which are not for the purpose of the transfer of capital, namely, payments owed in connection with offshore trade, remittances of monetary amounts for family expenses, and other current obligations, on terms to be regulated.
5. Capital operations subject to the authorisation of the foreign exchange authority, on terms and conditions to be regulated, shall be deemed to be the following:
 - (a) direct foreign investment;
 - (b) fixed asset investment;

- (c) operations relating to certificates of participation in collective investment entities;
- (d) the opening and transaction of accounts with offshore financial institutions;
- (e) credit connected to the transaction of merchandise, or the performance of services;
- (f) loans and financial credit;
- (g) guarantees;
- (h) transfers, in execution of insurance contracts;
- (i) operations relating to securities and other instruments transacted on the monetary and capital market;
- (j) the physical import and export of monetary amounts;
- (k) loans of a personal nature;
- (l) other operations classified as capital operations, which come to be defined as such by law.

Article 7

(Entities authorised to trade in foreign exchange)

1. For the purposes of this Law, trading in foreign exchange shall be deemed to mean the habitual for-profit performance of foreign exchange operations, for one's own account, or for that of another.
2. The following shall be authorised to trade in foreign exchange:
 - a) banks;
 - b) foreign exchange bureaux;
 - c) travel or tourism agencies;
 - d) hotels and similar establishments;
 - e) other entities or institutions which come to be defined as such by law.
3. The Council of Ministers shall be responsible for defining the terms and conditions for the exercise of the activity referred to in number 1 of this Article.

Article 8

(Entry and exit of foreign currency)

1. Entry into the national territory of foreign currency and other forms of payment, from offshore, shall be freely permissible, and the respective monetary amounts shall be declared whenever they exceed the limits set out in the respective regulations.
2. The exit of foreign currency and other forms of payment shall be freely permissible for non-residents, up until the limit declared on entry to the country, in terms of the previous number.
3. The exit of foreign currency and other forms of payment shall be freely permissible for residents, on proof of legitimate retention and possession, issued by entities authorised to trade in foreign exchange, within the limits set out in the respective regulations.

Article 9

(Obligation to declare and remit foreign exchange assets)

1. Resident entities shall be obliged to declare acquired monetary amounts and rights generated or held abroad.
2. Without prejudice to that set out in the previous number, resident entities must remit, to the country, income from the export of goods, services and foreign investment.
3. The terms and conditions for the remittance of export income shall be contained in respective regulations.

Article 10
(Contraventions)

The following constitute foreign exchange contraventions, punishable by way of a fine, if the offender is an individual person, of ten thousand to one hundred thousand meticaïs, or, if the offender is a collective person, of forty to four hundred thousand meticaïs:

- a) the performance of any foreign exchange operation, without registering such operation on the terms set out in this Law, or in regulations;
- b) the performance of capital import, export or re-export operations, or their total or partial liquidation, without the authorisation of the competent authority, when this is legally required;
- c) the export of gold or silver which is minted, or in bars or ingots, or in any other unworked form, or of platinum and other precious metals, without the authorisation of the competent authority, when this is legally required;
- d) the import, export or re-export of foreign notes or metallic coins in circulation, and other external forms of payment, without the authorisation of the competent authority, when this is legally required;
- e) the opening and transaction of non-resident accounts in national currency, when related to capital operations, as well as the opening and transaction of resident accounts, in foreign currency, or in units of account utilised for international remuneration or payments, without complying with the provisions set out in this Law or in regulations;
- f) the granting of credit to residents in foreign currency, including by the discounting of bills of exchange, promissory notes and invoices expressed or payable in foreign currency, expressed or payable in national currency, when these securities involve non-residents, without the authorisation of the competent authority, when this is legally required;
- g) the omission of the duty to declare acquired monetary amounts and rights generated or held abroad on the part of resident entities, when legally required;
- h) the omission of the special duty to remit income from the export of goods, services and foreign investment to the country, on the part of resident entities, when legally required;
- i) the performance of transfers or the receipt, abroad, of any monetary amounts or forms of payment, without complying with the provisions set out in this Law, or in regulations;
- j) the violation of the imperative precepts of this Law and its regulations, not referred to in the previous lines.

Article 11
(Especially serious contraventions)

1. The simultaneous commission of more than one foreign exchange offence constitutes an especially serious contravention, punishable by way of a fine of from twenty thousand to two hundred thousand meticaïs, if the offender is an individual person, or from one hundred thousand to one million meticaïs, if the offender is a collective person.
2. A person committing a foreign exchange offence shall be subject to the aggravated penalty set out in the previous number, if the offence results in the payment, receipt or any other form of patrimonial gain, in an amount equal to or greater than the equivalent of six hundred thousand meticaïs.

Article 12
(Accessory penalties)

1. Goods or monetary amounts utilised in the illegal performance of foreign exchange operations, shall always be declared to be forfeited to the State.
2. The following accessory penalties shall also be applicable, depending on the severity of the foreign exchange offence:
 - a) total or partial suspension of authorisations to trade in foreign exchange, with or without closure of the establishment;
 - b) prohibition of the performance of foreign exchange operations, with or without suspension of the economic activity, for a period which does not exceed that of the prohibition.
3. Suspensions, restraints, closures or temporary prohibitions shall be implemented for a minimum of six months and a maximum of one year.

Article 13
(False declarations)

False declarations made with a view to obtaining authorisations necessary for the performance of foreign exchange operations, shall be punished by the imposition of the same penalty which would have been imposed for the completed offence.

Article 14
(Liability of collective persons, companies and individual agents)

1. Singular and collective persons, even if irregularly constituted, and associations without legal personality, may be held liable, jointly or otherwise, for the commission of offences to which this Law refers.
2. Liability of the collective entity shall not absolve the members of the respective bodies which perform management functions, or those who legally or voluntarily represent it, from individual liability, including criminal liability.
3. Liability of individual representative agents is not removed by virtue of the fact that the legal definition of the illegal act includes specific personal requirements which are only met by the represented party, or that it requires that the agent performs the act in his own interest, if the representative has in fact acted in the interest of the represented party.
4. The collective persons and companies referred to in the previous number shall be jointly responsible for the payment of fines to which their representatives or employees are sentenced, unless it is proven that these representatives or employees acted contrary to the orders or instructions of the represented or employing entity.

Article 15
(Legal presumption of liability)

It shall be presumed that those who act in the name of, and for the account of, another, act in compliance with instructions received, irrespective of the individual liability to which their actions may give rise.

Article 16
(Liability of directors and functionaries)

The provisions of articles 313, 314, 317, 318 and 322 of the criminal Code shall be applicable to directors, functionaries or employees of institutions which require the granting of authorisations for the performance of foreign exchange operations, with the necessary adaptations.

Article 17
(Active and passive corruption)

A person who, within the scope of this Law, performs acts of active or passive corruption, in terms of criminal legislation, shall be sentenced to the most serious penalty to which the crime may give rise, in terms of the said legislation.

Article 18
(Prescription of contraventions)

1. Foreign exchange law contraventions shall prescribe three years after the commission of the offence.
2. Fines and accessory sanctions shall prescribe within the same period, counting from the date of the definitive finding of guilt.

Article 19
(Preliminary investigation and deciding of matters subject to the responsibility of the Bank of Mozambique)

1. The preliminary investigation and deciding of foreign exchange control contraventions committed by institutions under its supervision, or by means of these, shall be the responsibility of the Bank of Mozambique.
2. Once the matter has been preliminarily investigated, the accused shall be notified, so as to be able, if he wishes, to present his defence in writing, within a period of ten days.
3. The notification referred to in the previous number shall be made by registered letter, with proof of receipt.
4. The police and public service authorities shall provide all of the assistance necessary for a

correct enquiry into, and preliminary investigation of, matters under the responsibility of the Bank of Mozambique.

5. Without prejudice to that set out in no. 1 of this Article, if the Bank of Mozambique becomes aware of criminal activity during the preliminary investigation of a matter, it shall advise the Public Ministry, for the purposes of the institution of relevant criminal proceedings.

Article 20

(Preliminary investigation and deciding of other matters)

1. The investigation of matters not covered by number 1 of the previous article, shall be the responsibility of the police authorities.
2. If an offence is indicated, the police authority shall issue the relevant charge sheet, which shall be drafted and delivered according to general criminal procedure.

Article 21

(Special sentencing regime)

1. Without prejudice to the provisions of articles 19 and 20, whenever the applicable fine does not exceed one fifth of the maximum monetary amounts indicated in the range of fines contained in the body of article 10, the investigating entity may waive the prior laying of a formal charge against the accused.
2. When it makes use of the facility created by the previous number, the investigating entity shall notify the offender, so that the offender can pay a fine within a period of ten days, or, if it wishes, appeal to the investigating entity in writing, within the same time period, by presenting proof of a bank deposit of the security amount, or of the amount of the fine, within the said time period.
3. In case of a complaint, the complaint shall, for all legal purposes, equal a defence, and the decision regarding the same may be appealed against, in terms of number 2 of article 23 and 24 of this Law, and in general terms of criminal procedure.

Article 22

(Seizure of monetary amounts)

1. Notes and coins, cheques and other securities, or monetary amounts which constitute the object of the offence, may be seized, against documentary proof, when such seizure is necessary for investigation, or in cases in which there are indications that the offence may give rise, as an accessory penalty, to the forfeiture of goods in favour of the State.
2. Amounts which are seized shall be deposited with a banking institution in the name of the investigating entity, so as to guarantee the payment of the fine and procedural costs.

Article 23

(Decision subject to the responsibility of the judicial courts)

1. Judicial courts shall be responsible for deciding on infractions set out in this Law, except when, in terms of no. 1 of article 19, these are the responsibility of the Bank of Mozambique.
2. Appeal may be made against the decisions taken in terms of the previous number, on the general terms of criminal procedure.

Article 24

(Appeal against decisions subject to the responsibility of the Bank of Mozambique)

1. Appeal may be made, in general terms, against findings of guilt made by the Bank of Mozambique, and shall be submitted, within a period of fifteen days following notification of the decision of guilt, to the Provincial Judicial Tribunal which verified the offence.
2. The appeal shall have suspensive effect when the accused deposits, before the fact, and at a banking institution, to the order of the Bank of Mozambique, an amount equal to the fine levied, except if seized monetary amounts are sufficient for this purpose.

Article 25

(Forced collection, destination and updating of fines)

1. The fines set out in this Law, when not voluntarily paid within the legally set time frames, shall be the object of legal proceedings for forced collection of State debt.
2. The Council of Ministers shall, by Decree, update the amounts of the fines set out in this Law.
3. The fines collected in terms of this Law shall constitute State income.

Article 26

(Subsidiary criminal regime)

The provisions contained in this Law, and, subsidiarily, the general criminal law, are applicable to the offences set out in this Law.

Article 27

(Foreign investment)

This Law is applicable to foreign exchange operations related to foreign investment, as a complement to that which is expressly set out in legislation specific to the matter.

Article 28

(Special cases)

The following benefit from special treatment:

- a) remittances from Mozambican emigrants;
- b) foreign exchange in border zones;
- c) offshore transfers of gains resulting from games of chance or luck, or from social entertainment, by non-resident participants, at social venues authorised by the competent entity, in terms of the law;
- d) the stock exchange;
- e) free zones;
- f) other situations defined in special legislation.

Article 29
(Regulations)

The Council of Ministers shall be responsible for passing regulations regarding the matters contained in this Law, within a period of one hundred and eighty days following its publication.

Article 30
(Transitional Provisions)

Except where contrary to the provisions of this Law, the regulations which are currently in force shall remain in force until the approval of the regulations referred to in article 29.

Article 31
(Repeal)

Law 3/96, of 4 January, and all other legislation contrary to this Law, is repealed.

Article 32
(Entry into Force)

This Law enters into force on the date of its publication.

Approved by the Assembly of the Republic on 31 October 2008.

The President of the Assembly of the Republic, *Eduardo Joaquim Mulémbwè*.

Promulgated on 23 January 2009.

Let it be published.

The President of the Republic, ARMANDO EMÍLIO GUEBUZA.