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## LAW NO. 15/2011

### PUBLIC-PRIVATE PARTNERSHIPS, LARGE SCALE PROJECTS AND BUSINESS CONCESSIONS IN MOZAMBIQUE



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Law no. 15/2011, which came into force on 10 August, establishes the guidelines for the process of contracting, implementation and supervision of public-private partnership (“PPP”) projects, large scale projects (LSPs) and business concessions (BCs).

This Law is intended, on the one hand, to foster greater involvement of private partners and investors in carrying out PPPs, LSPs and BCs and, on the other hand, to bring greater effectiveness and quality to the exploitation of resources and other national assets, as well as the efficient provision of goods and services to society and to the fair sharing of the respective benefits.

The Law applies to all PPPs, LSPs and BCs carried out in the country under the initiative of or decided on and controlled by government bodies on a central, provincial and district level, or by local government. Falling outside the scope of application of this Law are: (i) Simple agreements for the supply of goods and services to state institutions including agreements for public works and consultancy services; and (ii) non-profit PPPs of an altruistic, social, humanitarian, cultural, sporting or similar nature.

#### PPP, LSP AND BC CONCEPTS

For the purposes of the Law, PPPs, LSPs and BCs are considered to be:

- (i) PPPs - all projects that involve an agreement between the public administration and private entities

under which the latter gives an undertaking to the public partner to implement and manage these public interest projects, services and activities in an efficient manner, while bearing all or part of the financing and the risk involved;

- (ii) LSPs - all investment projects authorised or contracted by the Government, the value of which exceeds, with reference to the date 1 January 2009, the amount of 12 500 000 000.00 MT (twelve thousand five hundred million meticals);

- (iii) BCs - all projects carried out under the terms of a contract, the object of which is prospecting, exploration, extraction and or the exploitation of natural resources or other resources or assets that make up the property of the State.

#### INSTITUTIONAL FRAMEWORK

PPPs, LSPs and BCs are come under two authorities: by sector and financial. Authority over the sector is exercised by the Government entity responsible for the area or sector into which the project falls. Financial authority is exercised by the Government entity that supervises the financial area. The functions and powers of the entity with authority over the sector are complemented by the jurisdiction and powers of the respective regulatory authority that deals with the sector or sub-sector.

This Law does not establish the phases of the process for the PPP project nor the acts and elements that make up each phase. It is for the Government to deal with these issues and it has the period of one hundred and eighty days from the date the Law comes into force to approve the general and specific regulations.

### PPP CONTRACTING LEGISLATION

Under this Law the system for contracting PPP projects is, as a general rule, the public invitation to tender, with the rules that govern public procurement applying on a subsidiary level (Decree 15/2010 of 24 May - Regulations on Contracting of Public Works Projects, Supply of Goods and Provision of Services to the State). To respond to the public interest, and if the applicable legal requirements are met, the contracting of the PPP may take the form of a tender with pre-qualification or a two-stage tender. In important situations where there are proper grounds, and as a last resort subject to the prior authorisation of the Government, the contracting of the PPP project may, exceptionally, take the form of negotiation and private treaty.

### RISK MANAGEMENT IN PPPS

The Government and the other entities with authority over the respective areas of activity and responsibility must prevent and control the occurrence of the risks provided for in article 16 of the Law (for example, measures or acts with effects that are negative and adverse to the normal operation and management of the PPP project or to its competitiveness and economic and financial viability). In turn, the private partner and the contracting authority are also responsible for the prevention and mitigation of the risks provided for in article 17 of the Law (for example, financial and exchange rate risks inherent to the project and commercial, management and performance risks of the project).

### FINANCIAL GUARANTEES

The bidder and the contracting authority must give financial guarantees that ensure full compliance with the obligations they have taken on. The guarantee must be calculated in accordance with the size of the

project and the complexity of its aim. The guarantee may be substituted by collateral or a guarantee issued by an entity of recognised reputation and financial capacity or by the parent company, through an agreement between the contracting parties and authorisation of the entity with financial authority over the transaction. In PPP projects that are strategic or of special socio-economic interest to the country which are not financially viable in themselves and the State must make a financial contribution to make such projects economically and financially viable, the entity with financial authority may, when authorised by the Government, among other measures, contribute to the financing of the project or provide a financial guarantee for it.

### CONTRACT – TYPES, DURATION AND FORMALITIES

The types of contracts are: (i) concession, the maximum duration of which is thirty years; (ii) assignment of operation, with the maximum duration of twenty years; and (iii) management, with the maximum duration of ten years. Other complementary contracts may be made which are deemed necessary for the implementation, operation and maintenance of the project. The contract is subject to the prior issue of a permit by the Administrative Court and to publication (only the main terms of the contract) in the *Boletim da República* - Mozambique's official gazette.

### PROCESS AND LEGAL PROCEDURES

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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.