

**Law n° 15/2011  
of 10 August**

It being necessary to establish a legal framework enabling, on the one hand, greater involvement of private partners and investors in the pursuit of investments in public-private partnerships, large-scale projects and business concessions and, on the other hand, greater efficiency, effectiveness and quality in the use of resources and other national property assets as well as the efficient provision of goods and services to society and the sharing, with equity, of the respective benefits, pursuant to paragraph 1 of Article 179 of the Constitution, the Assembly of the Republic determines:

**CHAPTER I  
General Provisions**

Article 1  
**(Definitions)**

The definitions of the terms used in this Law are set forth in the attached glossary, which shall be an integral part thereof.

Article 2  
**(Object)**

1. The purpose of this Law is to establish the guiding rules for the process of contracting, implementing and monitoring undertakings of public-private partnerships, large-scale projects and business concessions.
2. For the purposes of this Law [the terms below have the following meanings]:
  - a) public-private partnership, in abbreviation PPP, an undertaking in a public domain area, excluding that of mineral and petroleum resources or in an area of provision of public services, in which, under contract and with full or partial financing of the private partner, that partner undertakes, vis-à-vis the public partner, to accomplish the necessary investment and to operate the respective activity, for the efficient provision of services or goods the availability of which to users is the responsibility of the State to guarantee;
  - b) Large-Scale project, in abbreviation LSP, means the undertaking of an investment authorized or contracted by the Government, the value of which,

with reference to the date 1 January 2009, exceeds 12.500.000.000,00MT (twelve billion and five hundred million Meticaís);

- c) business Concession, in abbreviation BC, an undertaking the object of which is the prospecting, exploration, extraction and/or use of natural resources or other resources or national property assets, carried out under the terms of the respective contract or other means of creating title to the rights granted by the Government in the scope of that undertaking.
3. Non-transferable sovereignty functions may not be the object of public-private partnerships, large-scale projects and business concessions.

### Article 3 (**Scope of application**)

- 1. This law applies to all PPP, LSP and BC undertakings carried out in the Country, at the initiative or decision and control of public entities of either the central, provincial and district levels or of the Municipalities.
- 2. The following are excluded from the scope of application of this Law:
  - a) contracting for the simple provision of goods and services to State institutions, including the contracting of public works and consulting services by the State;
  - b) non-profit public-private partnerships of an altruistic, social, humanitarian, cultural, sporting nature or other similar nature.

### Article 4 (**Guiding principles**)

The contracting of PPP, LSP or BC undertakings is subject to conformity with the following guiding principles for each undertaking, concretely:

- a) its proper fit in the policy, strategy and development plans of its respective economic or social sector;
- b) its contribution to the development of the effective capacity for efficient and rational use and economic appreciation of national resources and goods;
- c) equity in the sharing of benefits arising from each undertaking, among the contracting parties, actors and concerned or affected parties;

- d) commitment to the prevention and mitigation of risks inherent in each specific undertaking;
- e) business freedom and competitiveness and removal of restrictions which may jeopardize the feasibility and economic appreciation in the pursuit of the undertakings;
- f) creation and maintenance of jobs and professionalization and transfer of know-how to Mozambican employees and managers;
- g) its contribution to the development of the national capital markets and the promotion of greater economic inclusion of Mozambicans in each undertaking;
- h) establishment of business partnerships between the PPP, LSP and BC undertakings and the micro, small and medium enterprises, as well as the transfer of technology and know-how;
- i) pursuit of programs, projects or actions of social responsibility and sustainability, and social development with the local communities.
- j) adjustment to existing legal frameworks;
- k) adjustment to procedures and measures for monitoring legality and compliance by the Administrative Court.

## CHAPTER II **Institutional Framework, Process and Processing**

### Article 5 **(Sectoral oversight)**

1. PPP, LSP and BC undertakings are subject to sectoral oversight conducted by the Government entity responsible for the area or sector in which each is located.
2. The functions and responsibilities of the sectoral oversight over PPP, LSP and BC undertakings are complemented by the duties and powers of the respective sector or subsector-specific regulatory authority.
3. In particular, it is the responsibility of the regulatory authority, in the respective sector or subsector-specific area, to ensure the economic-financial balance

between the contracting parties, the protection of the users' interests and the maintenance and sustainability of the undertaking.

Article 6  
**(Financial oversight)**

1. The financial oversight of PPP, LSP and BC undertakings is carried out by the Government entity that oversees the Finance area, which shall, for the purpose, define and establish mechanisms and procedures for permanent inter-institutional coordination with each entity responsible for sectoral oversight.
2. It is the responsibility of the Government to nominate and enable the entity responsible for the inter-sectoral coordination and centralization of the economic-financial analysis and evaluation of PPP, LSP and BC undertakings, as well as for monitoring the equitable sharing of benefits and the prevention of risks in the respective undertakings.

Article 7  
**(Entity implementing the undertaking)**

The implementing entity of the PPP, LSP and BC undertaking shall:

- a) take the form of a commercial company, under the terms of the applicable legislation;
- b) have as its purpose, clearly defined and capable of being monitored, the implementation of the respective undertaking;
- c) have a duration not less than the period of duration of the contract related to the undertaking.

Article 8  
**(Undertaking process)**

1. The process of PPP, LSP and BC undertakings is comprised of the entire cycle, from the phase of identification and conception of each undertaking up to the term or extinguishment of the respective contract.
2. It is the responsibility of the Government to define all the phases of the undertaking process as well as the acts and elements that are part of each phase.

Article 9  
**(Processing)**

1. When defining the processing of PPP, LSP and BC undertaking proposals for the central, provincial, district and municipal levels, the Government shall ensure, among other matters, the following:
  - a) inter-institutional coordination and liaison;
  - b) confirmation, certification and monitoring of prevention and mitigation of risk and the sharing, with equity, of the benefits relating to each undertaking;
  - c) speed in decision-making, the preservation of commercial dynamism and the prevention of avoidable losses and damages for the contracting parties, the State and third parties.
2. For the purposes of the provision of clause b) of the preceding paragraph and without prejudice to protection of confidentiality of the undertaking's strategically commercial and competitive information, the entity implementing each PPP, LSP and BC undertaking shall organize and supply the information required by the responsible entities in the scope of the exercise of monitoring functions over the referred undertakings, under the terms of this Law.
3. In the course of processing projects the requirements indispensable for ensuring the quality in assembling projects, in all phases, from incubation to the closing of the transaction, shall be established and responsibilities of the Ministries involved shall be defined.

Article 10  
**(Guarantees and incentives to investment)**

1. Each PPP, LSP and BC undertaking is eligible, under the terms of sector-specific legislation on the matter, to enjoy guarantees and incentives applicable to investments carried out in the Country.
3. The tax or other incentives of a financial nature granted under the terms of the applicable legislation are subject to registration by the entity in charge of financial oversight and reported in the State General Account of the corresponding fiscal year.

## Article 11

### **(Access to guarantees against non commercial risks)**

In addition to contracting guarantees and insurance for covering commercial risks, a PPP, LSP and BC undertaking may have access, at its own expense, to guarantee facilities for covering non-commercial risks, under the terms and conditions also approved by the Government.

## CHAPTER III Specific Provisions

### SECTION I Public-Private Partnerships

## Article 12 **(Main Purpose)**

1. The main purpose of the PPP undertaking is to ensure the efficient, qualitative and quantitative provision of public goods and services to users and the economic appreciation of the property assets and other national resources integrated in that undertaking, including where applicable, the land resource assigned as the fundamental asset owned exclusively by the State to the referred undertaking via its respective Title of Use and Enjoyment of Land -DUAT.
2. In the pursuit, by the contracted party, of each PPP's purpose, in particular, the user-payer principle shall be observed, ensuring that the price paid for services provided, under the contractually agreed terms, compensates for the costs incurred and provides a profit margin.

## Article 13 **(Legal regime for contracting PPPs)**

1. The general legal regime for contracting PPP undertakings is the public tender, and the rules governing the public procurement shall apply on a subsidiary basis.
2. Considering the public interest and once the requirements legally provided are met, the contracting of a PPP may take the modality of tender with prior qualification or a two-stage tender.



3. In weighty situations and once duly justified, and as a last resort measure subject to prior express approval by the Government, the contracting of a PPP undertaking may exceptionally take the form of negotiation and direct award.
4. In the event that there are no bidders, or the winner declines to develop the public-private partnership, large-scale project or business concession, the contracting of the undertaking may, exceptionally, take the form of negotiation and direct award, under terms to be regulated.
5. Proposals of PPP undertakings at private initiative are subject to public tender intended to determine or ensure the technical and quality terms, the price and further conditions offered by the proponent, which shall benefit from the right and preference margin of 15% in the assessment of the technical and financial proposals resulting from such tender and without any right to compensation for costs incurred in the preparation of the proposal.
6. In any of the modalities of contracting PPPs, the principles of legality, finality, reasonableness, proportionality, pursuit of the public interest, transparency, publicity, equality, competition, impartiality, good faith, stability, motivation, integrity and reliability, good economic-financial management, promptness and further applicable principles of Public Law shall be observed.
7. All PPPs in the process of contracting as well as those awarded in each fiscal year, shall be annually listed in an annex to the draft of the State General Accounts, with an indication of the respective regime and contracting modality followed in each case.

#### Article 14

#### **(Maintenance of State ownership)**

The public domain property assets that are part of the PPP undertaking, including, where applicable, the land resource assigned to the undertaking, as the fundamental asset exclusively owned by the State, via its respective DUAT, remain the inalienable property of the State and cannot be given as security, without prejudice to the enjoyment of the right of use and usufruct contractually granted to the contracted party.

## Article 15

### **(General principles on prevention and mitigation of risks)**

1. The prevention and mitigation of risks by the contracting parties constitutes their permanent obligation in the entire process of the PPP undertaking, through compliance with the following principles:
  - a) the risks inherent in or arising from the professional, technical, technological, commercial or management capacity, which when occurring, have a negative impact on the accomplishment of the purposes, activities, goals or benefits contractually agreed, are the responsibility of the private partner and the contracted party, which is responsible for their prevention and mitigation and assumption of the consequences, damage and losses which may arise from the occurrence of such risks;
  - b) the political and legislative risks and of conflicts of interest of an institutional nature and of land concession and public planning which, when occurring, entail effective damages or losses for the undertaking are the responsibility of the State, which is responsible for their prevention and mitigation and for the assumption of the consequences, damage and losses which may arise from the occurrence of such risks.
2. In any of the process phases of approval, implementation and management of the PPP undertaking and the respective contract, the occurrence of any type of risks referred to in articles 16 and 17 below shall be prohibited [sic] and the contracting parties, the Government and further responsible entities, in their respective areas of operation and responsibility, shall avoid and prohibit their occurrence.

## Article 16

### **(Responsibility for the mitigation of risks by the Government and the contracting party)**

1. The Government and the contracting party shall ensure the prevention and the mitigation of occurrence of the following risks:
  - a) political and legislative risks, arising from the unilateral adoption, by the Government or public institutions, of measures or the practice of acts with negative and adverse effects on the normal implementation, operation and management of the PPP undertaking or its competitiveness and economic and financial feasibility;



- b) conflict of interests of an institutional nature arising from the full or partial concentration or accumulation, in the same public entity, of the functions of regulatory authority and granting authority, as well as of quotaholder or shareholder of the contracted party;
  - c) related to the granting of land and public planning.
2. The Government shall further assume, as applicable, the implications arising from the granting or facilitation of access by the PPP undertakings to financial guarantees or facilities allowed under the terms of articles 10, 11 and 20 of this Law.

#### Article 17

#### **(Responsibility for the mitigation of risks by the private partner and the contracted party)**

1. The private partner and the contracted party are responsible for ensuring, in the PPP undertaking, the prevention and the mitigation of the occurrence of any of the following risks:
- a) Risks of conflict of interests, in which one or both of them are or have been a party responsible or complicit in the occurrence of such risks, namely those arising from:
    - (i) conflicts of business and political interests, arising from interference between the undertaking's interests or the private partner and the private interests of those vested with authority or political or governmental functions or other functions of authority;
    - (ii) conflicts of interests of a business nature, arising from interference between the undertaking's interests or those of the public partner and the interests, powers, functions or connections of quotaholders or shareholders or member of corporate, management or business management bodies.
  - b) economical-financial risks, namely:
    - (i) financial and exchange risks inherent to the undertaking;
    - (iii) fiduciary risks, arising from improper use of financial resources made available for application in the undertaking;

- (iii) risks of the unsustainability of the undertaking's debt;
  - (iv) tax risks, arising from tax evasion or the assumption and enjoyment of rights not provided in the applicable tax legislation in force.
- c) risks of defective conception, design, engineering and construction, related to the undertaking;
  - d) commercial, management and performance risks of the undertaking;
  - e) risks of fall of the market demand or supply, excluding contractually agreed exceptional situations;
  - f) risks of squandering of the residual value of the undertaking's assets; and
  - g) Environmental impact risks, arising from facts subsequent to assumption of control of the undertaking by the private partner or contracted party.
2. The procedure to be followed by the private partner and the contracted party for documenting and reporting the risks identified and the respective proposal for remediation [thereof] shall be clearly established, in terms to be regulated by the Council of Ministers.

#### Article 18

#### **(Responsibility for mitigation of force majeure events)**

The effects arising from force majeure events shall be the object of mitigation under fair terms for both parties, the contracting party and the contracted party, as well as for third parties affected, in accordance with the liability, obligations and rights contractually undertaken and applicable to each party.

#### Article 19

#### **(Financial guarantees of commitment and performance)**

1. The bidding entity and the contracted party in the PPP undertaking shall provide financial guarantees that ensure the full compliance with the obligations undertaken, namely:

- a) the good faith and seriousness of its participation in the tender, until the conclusion of the contract;
  - b) the correct and complete implementation of the undertaking; and
  - c) the reversion of the undertaking, at the end or on expiration of the contract, in good condition of conservation and operation.
2. The financial guarantee shall be calculated taking into consideration the dimension of the undertaking and the complexity of its purpose and may, upon mutual agreement between the contracted parties and the express consent by the entity responsible for the financial oversight, be replaced by a surety or guarantee issued by a reputable and financially capable entity or by the parent company.
  3. The provision of the preceding paragraph shall not apply to cases in respect of which sector-specific legislation provides for a similar guarantee requirement for the same purposes foreseen in this article.

#### Article 20

#### **(Financial guarantees grantable to undertakings)**

1. In the case of a strategic PPP undertaking or one of special social-economic interest for the Country, and which is not financially feasible by itself and to which the State should contribute for its economical-financial feasibility, the entity responsible for the financial oversight may, upon express consent of the Government:
  - a) participate in its financing or provide a financial guarantee in favor of the undertaking for the purpose, on due consideration;
  - b) facilitate access to guarantees for financing requested from multilateral or government institutions; or
  - c) grant a subsidy or compensation for the provision of its services or sale of products at prices or tariffs administratively fixed below or close to the actual cost of such services or products.
2. The Government shall, when drafting the Medium Term Fiscal Scenario and in each annual State Budget proposal:

- a) record the budgetary allocation destined to ensure its co-participation in the investments in PPP undertakings in which the State's direct action is deemed indispensable, relevant or strategically appropriate; and
- b) anticipate and budget, in disaggregated and global amounts, the liabilities assumed for compensation or subsidy by the State or granting of access to financial guarantees or facilities for PPP undertakings clearly indentified, taking them into consideration in the analysis of the sustainability of the public debt.

Article 21  
**(Contract)**

1. The award of the PPP undertaking takes the form of one of the following contractual modalities:
  - a) Concession contract;
  - b) Assignment of operation contract;
  - c) Management contract.
2. The concession contract may assume one of the following sub-modalities of concession:
  - a) Build, Operate and Transfer (BOT);
  - b) Design, Build, Operate and Transfer (DBOT);
  - c) Build, Own, Operate and Transfer (BOOT);
  - d) Design, Build, Own, Operate and Transfer (DBOOT);
  - e) Rehabilitate, Operate and Transfer (ROT); or
  - f) Rehabilitate, Own, Operate and Transfer (ROOT).
3. Without prejudice to compliance with other applicable legal provisions, it is the responsibility of the Government to define the essential and mandatory clauses that each main contract of the PPP undertaking shall contain.
4. The amendment or revision of the main contract follows the processing observed for the approval and conclusion of the initial contract.
5. In addition to the main contract, provided for under the terms of paragraphs 3 and 4 of this article, the contracted party may conclude complementary contracts

deemed required for the implementation, operation and maintenance of the undertaking.

6. The transfer of the contractual and statutory position of the private partner to a third party requires express consent, under the terms provided in the respective contract.

## Article 22

### **(Period of duration of the contract)**

1. The duration of the PPP undertaking contract is determined taking into consideration the economic-financial attractiveness, the time required for its implementation and the period of recovery of the capital invested, and shall, in no case, exceed the period of:
  - a) 30 years, for greenfields concession contract;
  - b) 20 years, for a concession contract and assignment of operation contract for an existing undertaking requiring rehabilitation or expansion; and
  - c) 10 years, for a management contract for an operational undertaking.
2. The duration provided in clause a) of the preceding paragraph may be extended up to 10 years in the case of large-scale greenfields projects and the long life and technological or biological requirements of the process of its implementation or gestation so require.
3. The Government may, by means of an addendum to the contract, authorize the extension of the time limit set forth in paragraph 1 for the time required for compensation of:
  - a) Additional investments carried out at the express request by the Government and agreed upon in an addendum to the contract approved by the responsible entity;
  - b) Practice of price or tariff administratively determined by the Government below the cost price and the agreed margin of profit;
  - c) Mitigation of effects of force majeure events that occurred.
4. Once the term has ended, there shall always be a public tender for a new contract, and the entity previously contracted shall benefit from the right and preference margin of 5% (five per cent) in case of equality in the assessment of technical and financial proposals, provided that it has shown good performance and results in the execution of the previous contract, but in no event shall the terms and



conditions of the contract to be concluded be less favorable for the Country in comparison with those of the initial contract.

Article 23  
**(Contract formalities)**

Without prejudice to protection of the confidentiality of the undertaking's strategic commercial and competitive information, the main PPP contract concluded is subject to issuance of the prior review administrative ruling (*visto*) by the entity legally responsible for that purpose as well as to publication of:

- a) the principal contract terms, namely, in the Official Gazette and the Government portal; and
- b) accounting balance sheet and reports related to the undertaking's activity.

Article 24  
**(Budgeting Framework)**

1. PPP's, LSP's and BC's shall be appropriately accounted for in the budgeting framework, due to their impact reflected in long-term, multi-year commitments, entailing financial exposure of the public treasury.
2. The State General Account shall report the execution and performance of Public-Private Partnerships at the end of each fiscal year.

Article 25  
**(Right of redemption of the contract)**

1. The contracting entity enjoys the right of redemption of the contract, on the grounds of weighty reasons of public interest duly justified under the terms of the law and the contractual provisions agreed on the matter.
2. The redemption, for reasons of defense of public interest, health, order and security, the causes of which are not attributable to the private partner or the contracted party, entitles such person to the right to indemnification calculated taking into account the time remaining for the recovery of the investments carried out and the undertaking's level of profitability, if no other criteria for the calculation thereof were contractually agreed.

Article 26  
**(Contractual Rescission)**

1. The contracting parties shall stipulate, in the contract, the causes for its rescission or termination and the respective mechanisms of indemnification, as applicable.
2. Without prejudice to the provision of the preceding paragraph, the following constitute causes for rescission of the contract related to the PPP undertaking:
  - a) serious breach of the contract, which affects the objectives and purposes of the undertaking;
  - b) abandonment of the execution of the contract or the implementation of its object or the undue suspension thereof;
  - c) transfer to a third party, by the contracted party, of its contractual position or the conclusion and operation of another business arrangement with the same objectives as those of the contract in force, whether temporarily or definitively, without the written approval or consent of the contracting party and the entities responsible for sectoral and for financial oversight;
  - d) lack of payment of fees or other consideration due under the terms of the contract;
  - e) breach in the provision of public goods or service, under the contractually agreed terms.

Section II  
**For Large-Scale Projects**

Article 27  
**(Main purpose of the LSPs)**

LSP undertakings have as their main purpose to develop, in the Country, national capacity for efficient operation and use of resources and other national or imported goods and factors of production, with a view towards the provision of goods or services for the fulfillment of internal or external market need, enabling the generation or saving of financial and foreign exchange resources for the Country.

## Article 28

### **(Free initiative of business and LSPs' contractual modality)**

1. Potential investors and concessionaires enjoy the right to free private initiative in carrying out LSP undertakings, except in cases expressly reserved to the ownership or exclusive operation of the State or the investment initiative of the public sector and those in respect of which the law requires the conduct of a public tender.
2. The contractual modality of awarding an LSP undertaking which does not involve the concession of the use of national resources takes, under the terms of specific legislation on investment, the form of the Investment Project Authorization, granted pursuant to the referred legislation.
3. All LSPs in process of contracting as well as those already awarded in each financial year shall be recorded annually, in an annex to the draft of the State General Budget, with indication of the respective regime and contracting modality followed in each undertaking.

## **Section III**

### For Business Concessions

## Article 29

### **(Main purpose of the BCs)**

The BC undertakings have as their main purpose to develop, in the Country, national capacity for the efficient operation and use of natural and labor resources and other national property assets, with a view towards the provision of goods or services to meet internal or external market needs and enabling the generation or saving of financial and foreign exchange resources for the Country.

## Article 30

### **(Legal regimes and modalities for contracting BCs)**

1. The contracting of BC undertakings is subject to compliance with the rules and contracting modalities provided in the sector-specific legislation as well as the general principles applicable to public contracts.
2. The contracting of aBC undertaking, which includes LSPs involving concession of the use of natural resources, takes one of the following contractual modalities:
  - a) concession contract, under one of the following sub-modalities of concession:



- (i) Build, Operate and Transfer (BOT);
    - (ii) Design Build, Operate and Transfer (DBOT);
    - (iii) Build, Own and Operate (BOO);
    - (iv) Design, Build, Own and Operate (DBOO);
    - (v) Rehabilitate, Operate and Transfer (ROT); or
    - (vi) Rehabilitate, Operate and Own (ROO).
  - b) assignment of operation contract, in the modality of assignment of operation of rights and obligations which are the object of the contract;
  - c) management contract of the undertaking, infra-structure and property assets of the State or other public entity;
  - d) any other form of title of rights granted by the Government for prospecting, exploration and extraction or use of natural resources or other national property assets.
3. All the BCs in process of contracting as well as those already awarded in each financial year shall be recorded annually, in an annex of the draft of the State General Budget, with indication of the respective regime and contracting modality followed in each case.

#### Article 31 (Formalities)

Without prejudice to protection of confidentiality of the undertaking's strategic commercial and competitive information, the main BC contract concluded is subject to the prior review administrative ruling (*visto*) by the entity legally responsible for such purpose and to publication of the principal contract terms in the *Official Gazette*.

### CHAPTER IV Sharing of Benefits

#### Article 32 (Types and sharing of benefits)

1. The benefits applicable, taking into account the particularities of each PPP, LSP and BC undertaking, include financial benefits and socio-economic benefits.

2. The sharing, with equity, of financial and socio-economic benefits is conducted by assessment and establishment, in the relevant contract, of their dimension and distribution between the contracting parties, taking into due consideration the protection of the rights inherent to the funders, the State, the national economy and Mozambican society, in particular:
  - a) the quantity and quality of the resources made available by each party and the respective opportunity cost;
  - b) the degree of responsibility of each party in enabling and implementing the various phases of the undertaking;
  - c) the degree of risk, objectively assessable, incurred by each party, associated with the guarantee of returns and profitability of the resources invested;
  - d) the protection of the Country's economic competitiveness and of a business environment favorable to attract national and foreign investment; and
  - e) the need to preserve benefits for current and future generations.

Article 33  
(**Financial benefits**)

1. The financial benefits for the Country from each PPP, LSP and BC undertaking shall be expressly referred to in the contract to be concluded between the contracting party and the contracted party, namely:
  - a) the participation reserved for sale, via the stock market in favor of the economic inclusion on commercial market terms, preferably of Mozambican natural persons, in the share capital of the undertaking or in the joint venture equity, whether or not foreign investment is involved, guaranteed by:
    - (i) the State or other public entity appointed thereby, in a percentage not less than 5% nor greater than 20% of the referred capital; or
    - (ii) the entity implementing the undertaking, of the same level of participation, for unconditional sale, under the same terms and conditions provided in clause (i), above.



- b) the opportunity for Mozambican public or private corporate persons to participate in the share capital of the undertaking or the equity of the joint venture, under terms to be negotiated and agreed by the parties, without prejudice to the provisions of (i) and (ii) of the preceding clause a).
  - c) the generation of positive exchange effects on the balance of payments, whether by means of generation of exchange resources or savings for the Country;
  - d) the generation of tax revenues and positive contribution to the public treasury;
  - e) the generation and distribution of profits or dividends, under the terms resolved by the corporate bodies of the undertaking's company; and
  - f) the equitable sharing of the extraordinary direct benefits, protecting the Country's economic competitiveness and under the contractually agreed terms and in any one or a combination of the following forms:
    - (i) carrying out of reinvestment in the national territory;
    - (ii) constitution of a reserve for carrying out additional investments or to cover extraordinary losses of the undertaking;
    - (iii) financial applications carried out and maintained in the Country.
2. Additionally to the benefits provided in paragraph 1 of this article, every PPP or BC undertaking which includes the concession for use of national resources, shall also provide the following benefits:
- a) payment of an award fee or signing bonus, if any, on whatever basis was provided in the respective tender, payable at the moment of signature of the contract and with a value of not less than 0.5% and not more than 5% of the fair value of the assets contractually assigned by the State or other public partner for the undertaking;
  - b) payment of the concession or assignment of operation fee, monthly, quarterly, semi-annually or annually, as agreed between the contracting parties, divided in components of:
    - (i) the fixed concession fee, with a value of not less than 2% nor more than 5% of the fair value of the assets contractually assigned to the undertaking;
    - (ii) the variable concession fee, levied on the gross revenue net of indirect taxes related to the periodic monthly, quarterly, semi-annual or annual invoicing of

the operation of the activity which is the object of the undertaking and which amount shall correspond to:

- a) 2% to 5% of the referred revenue, in case of a founding PPP [lit., *PPP estruturante*] undertaking which is a producer and supplier of inputs to other undertakings in the Country, during the period of repayment of loans contracted for financing its implementation phase;
  - b) 5% to 10% of the referred revenue, in all other undertakings, as well as in those referred to in the preceding paragraph once the repayment of loans contracted for financing their implementation phase is concluded.
3. The provision of sub-clause (ii) of clause b) of the preceding paragraph does not apply to LSP and BC undertakings subject to Mining or Petroleum Royalties, under the terms of the applicable specific legislation.
  4. The 5% and 10% maximum limit for fixed and variable fees, respectively, provided in sub-clauses (i) and (ii) of clause b) of paragraph 2, does not apply in cases in which the best concession fee or assignment of operation fee constitutes the criterion to select the winning bidder for awarding the BC undertaking.

#### Article 34

#### **(Socio-economic benefits)**

The PPP, LSP and BC undertaking concession contract shall also contain clauses expressly specifying the socio-economic benefits to be provided by each undertaking, at its own expense, for the national economy and Mozambican society, namely, the benefits related to:

- a) creation, rehabilitation or expansion of infrastructure for production or provision of services, in connection or associated with the undertaking;
- b) offer of work posts and professional training programs for Mozambican employees;
- c) programs and actions of technical-professional training and transfer of technology and know-how to the Country;
- d) increase and maintenance of the production and export capacity and of the capacity to supply internal market needs;

- e) contribution to the development of Mozambican small and medium enterprises, via business and technological linkages between the undertaking and such enterprises;
- f) carrying out programs of activities or social responsibility projects, development and social sustainability projects with the local communities, for the account of the undertaking.

## **CHAPTER V**

### **Irregularities and their Administrative Treatment**

#### Article 35 **(Irregularities)**

The following constitute irregularities to the provisions [sic] of this Law, in PPP, LSP and BC undertakings:

- a) in the pre-contractual period, the failure to define, in an explicit manner, the applicable benefits expected from the undertaking, under the terms provided in this Law and, also, in the particular case of PPPs, the lack of clauses related to prevention and mitigation of risks under the terms provided in Articles 15 to 18 of this Law;
- b) in the contractual period, any non-compliance with the provisions of this Law applicable to the undertaking, which occur in any of the phases of execution of the contract; and
- c) in the post-contractual period, any post-contractual fact or effect arising from an act or omission attributable to the undertaking, which causes or from which arise damage or losses to its former employees, the State and third parties, without prejudice to the prescription period provided under the terms of the law.

#### Article 36 **(Administrative treatment)**

1. The irregularities foreseen in the preceding paragraph which are not resolved by mutual agreement, may have the following administrative treatment and effects:

- a) in the pre-contractual period, the application of suspension or cancellation of the course of analysis, assessment or negotiation of the proposed undertaking or contract, in accordance with the phase in which the irregularity occurs;
  - b) in the contractual period, the application of dispute resolution rules agreed in the respective contract in force; and
  - c) in the post-contractual period, the indemnification or compensation, by the party that committed the irregularity to the party or parties injured as a direct consequence of the fact or effect proven to have arisen from the act or omission, inherent to the undertaking, of an action indispensable to have avoided the occurrence of harmful or damaging effects to third parties.
2. The administrative treatment provided in the preceding paragraph does not release the party that committed the irregularity from civil or criminal liability due for both costs incurred and damages and losses caused to third parties, under the terms of the law.
  3. The parties shall establish contractually the mechanisms to delimit the scope and duration of post-contractual liability, in conformity with the legal principles applicable in the matter.

## **CHAPTER VI**

### **Final Provisions**

#### *Article 37*

#### **(Undertakings awarded)**

1. The validity and maintenance of the contracts of PPP, LSP and BC undertakings already executed at the effective date of this Law are hereby recognized, in the terms under which they were concluded.
2. Without prejudice to the protection of the equitable economic-financial balance contractually agreed in PPP, LSP or BC undertakings already executed at the effective date of this Law and by means of mutual agreement between the contracting parties, the renegotiation of certain contractual clauses deemed relevant for such purpose and with a view towards the adjustment of the prevention and mitigation of risks and the sharing, with equity, of benefits related to the undertaking, in conformity with the provisions of this Law, is permitted.

3. When the period of its validity is ended, and for the purpose of its eventual renovation, the PPP, PGD and CE undertaking contract already executed on the date this Law comes into effect that does not contemplate, in an express manner, the prevention and mitigation of risks and the equitable sharing of benefits foreseen in this Law and applicable to the undertaking, shall be the object of adjustment so as to conform to the relevant provisions of this Law.

Article 38  
**(Supplementary legislation)**

1. PPP, LSC and BC undertakings carried out in the territory of the Republic of Mozambique shall be governed by this Law and by:
  - a) specific legislation of the sector in which the PPP, LSC or BC is located;
  - b) the applicable investment legislation;
  - c) further applicable Mozambican legislation;
  - d) international conventions or treaties signed and ratified under the terms of the law by the Republic of Mozambique.
2. In respect of the contracting regime, of the equitable sharing of benefits expected from each undertaking, and the respective inspection, monitoring and provision of information necessary and relevant for such purpose, as well as, for the PPPs, in respect of the prevention and mitigation of risks and in instances in which such matters are not addressed under the other legislation referred to in the preceding paragraph, the relevant provisions of this Law shall prevail; in all other matters, the provisions of the sector-specific legislation and further applicable legislation shall prevail.

Article 39  
**(Dispute resolution)**

1. The resolution of disputes arising in any phase of the PPP, LSP and BC undertaking is processed under the terms contractually defined between the contracting parties, complying with the applicable legislation in force on the matter.
2. In order to enable greater speed in the resolution of disputes and preserve the dynamism of business economic life, especially to meet collective needs, the PPP,



LSP and BC contract may prioritize the resolution of disputes arising therefrom via mediation and arbitration, under the terms of the law.

Article 40  
**(Regulations)**

The Council of Ministers is responsible to approve the general and specific regulations of this Law, within 180 days from the date of its publication.

Article 41  
**(Repeal)**

All the provisions contrary to the provisions of this Law are repealed, as well as paragraphs n.º 1 and 2 of article 12 and paragraph n.º 1 of article 27 of Law n.º 21/97 of 1 October, Electricity Law.

Article 42  
**(Entry into force)**

This Law shall enter into force on the date of its publication.

Approved by the Assembly of the Republic, on 19 May 2011.

The President of the Assembly of the Republic, *Verónica Nataniel Macamo Dhlovo*

Promulgated on 12 July 2011

Let it be published.

The President of the Republic, ARMANDO EMÍLIO GUEBUZA

## GLOSSARY

**For the purposes of this Law,** [the terms below have the following meanings]:<sup>1</sup>

### A

**Economic activity** - the process of carrying out investments and subsequent production and sale of goods or provision of services, whatsoever their nature, carried out in the scope of a PPP, LSP or BC undertaking, in one or more sectors of the national economy with the main purpose of meeting the users' collective needs and generate income and financial resources which, in general, cover and surpass the capital invested or applied in that undertaking.

**Social activity** - the process of carrying out of investments and subsequent operation of the activity of provision of services or goods to the users in the scope of a PPP, LSP and BC undertaking and on the basis of the user-pays principle to ensure recovery and remuneration of capital invested or applied in the respective undertaking.

**Public domain area**- every area of natural resources or of economic activity or of potential or activity the ownership of which is reserved, exclusively, to the State, under the terms of the Constitution of the Republic, namely the natural resources areas existing in the soil, subsoil, internal waters, territorial sea, continental maritime shelf, exclusive economic zones as well as roads, bridges, railways, ports and airports, energy and hydraulic potential, airspace and the telecommunications spectrum and further assets classified as such by the law, in the territory of the Republic of Mozambique.

**Public service area** - the area of economic or social activity the provision of services or goods [in] which is the responsibility of the State to supply or ensure the provision thereof to the users.

**Municipality** -public law legal person created by the State and comprised of the territory specifically defined and its respective population, under the terms of the applicable specific legislation.

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<sup>1</sup>Translator's note: the order in which the terms in the Glossary are presented corresponds to the order in the original Portuguese.

## B

**Extraordinary direct benefits**— the unforeseen gains or profits, with recurring character occurring throughout a minimum of three successive financial years, arising from market factors external to the company and its management capacity and which annual average of which in each three year-period exceeds, by a contractually agreed percentage, the also agreed levels of return of the investment made.

## C

**Assignment of operation**, the PPP or BC modality consisting of the legal regime of assignment (by means of an assignment of operation contract) of rights to rehabilitate, use, operate, manage and fully maintain infrastructures and property assets of the State or other public entity that are the object of assignment of operation.

**Assignment of management** -the PPP or BC modality consisting of the legal regime of assignment (by means of management contract) of the rights of management and current maintenance of infrastructures and property assets of the State or other public entity that are the object of assignment of management.

**Contracted Party** - the natural or legal person with which the public partner concludes the contract related to the PPP, LSP or BC undertaking whereby the former acquires from the public partner, for the medium or long term and partially or totally in accordance with the contractual modality adopted, the rights of design, creation, rehabilitation, development, use, operation, management and maintenance, on a commercial basis, of infrastructure or other property assets or resources belonging to the State or any public entity.

**Contracting Party** - the State or the public entity which concludes with the private partner the contract related to the PPP or BC undertaking, by means of which it assigns to the private partner, for the medium or long term and partially or totally in accordance with the contractual modality adopted, the rights of design, creation, rehabilitation, development, use, operation, management and maintenance, on a commercial basis, of infrastructure or other property assets or resources belonging to the State or any public entity.

**Contract** -the legal instrument by means of which the contracting party and the contracted party formalize the total or partial contractual assignment, according to the contractual modality adopted, the rights of design, creation, rehabilitation, development, use, operation, management and maintenance, on a commercial

basis, of infrastructures and property assets belonging to the State or other public entity.

## D

**DUAT** - the title of concession of Rights to Use and Enjoy Land assigned to the PPP undertaking as the fundamental asset exclusively owned by the State, issued by the responsible State entity, under the terms of the Land Law and its respective regulations.

## E

**Undertaking** - the totality of every process or cycle of a PPP, LSP or BC and its respective economic or social activity aimed at production and provision or supply of goods or services to meet collective needs and which is the object of a contract between the contracting party and the contracted party, in one of the contractual modalities provided in this Law.

**Implementing Entity of the undertaking** -the legal person, existing or specially created, responsible for the implementation and pursuit of the PPP, LSP or BC undertaking.

**State** - the State of the Republic of Mozambique.

## F

**Funder** -entity which, in the capacity of lender, makes available part or all of the financial resources or the guarantees enabling access to obtain such resources, required for the carrying out of the investments and development of the activities of the PPP, LSP or BC undertaking.

## G

**Government** - the Government of the Republic of Mozambique or the Council of Ministers, under the terms of Article 200 of the Constitution of the Republic.

## I

**Investor** - the legal or natural person and quotaholder or shareholder in the concessionary company and which applies its capital or other assets in carrying out

an LSP, LSP or BC undertaking, observing the relevant provisions of this Law, sector-specific legislation and further applicable legislation in force.

## J

**Fair value of assets assigned**– the value of the market cost of the property assets, studies, maps and further documentation or material and findings of surveys, exploration and prospecting assigned to the undertaking or the contracted party, under the terms and conditions agreed in the relevant contract, including, if applicable, the DUAT that represents the land assigned to the PPP undertaking as a fundamental asset exclusively owned by the State.

## P

**Private partner** - the legal or natural person who is an economic agent of the private sector and contracted by the State or other public partner, taking responsibility for ensuring the carrying out, operation, management and maintenance of the PPP or BC undertaking, under the terms and conditions of the respective contract.

**Public partner**- the State or other public entity or Municipality which is the contracting party in the PPP undertaking contract.

**Contracting parties**- the contracting party and the contracted party.

**Extraordinary Losses** - the losses or damages of recurring nature occurring during a minimum of three successive financial years, arising from market factors external to the company and its management capacity and the annual average of which, in each three-year period reduces, in contractually agreed percentages, the also agreed levels of return of investment carried out.

## R

**Risk** - the possibility of occurrence of one or more events with adverse or negative impact on the economic-financial projections foreseen and which results in financial and/or economic losses for the undertaking or for one or more contracting parties, involved or acting in that undertaking.



## S

**Know-how** - the technical-professional or business capacity knowledge of techniques and ability to carry out, with efficiency and professionalism, acts or production operations of a certain good or the provision of a certain service.

## T

**Concession award fee or signing bonus** - the remuneration paid by the contracted party to the contracting party as consideration for the assignment, by the latter to the former, of the property assets, studies, maps and further documentation or material and findings of surveys, exploration and prospecting already existing and assigned for its integration in the PPP or BC undertaking which is the object of the contract, under the terms and conditions agreed in the respective contract; and

**Concession fee or fee for assignment of operation** - the remuneration paid by the contracted party to the contracting party as consideration for the assignment, by the latter to the former, of the rights of operation of the economic activity of the respective undertaking, under the terms and conditions agreed in the relevant contract.