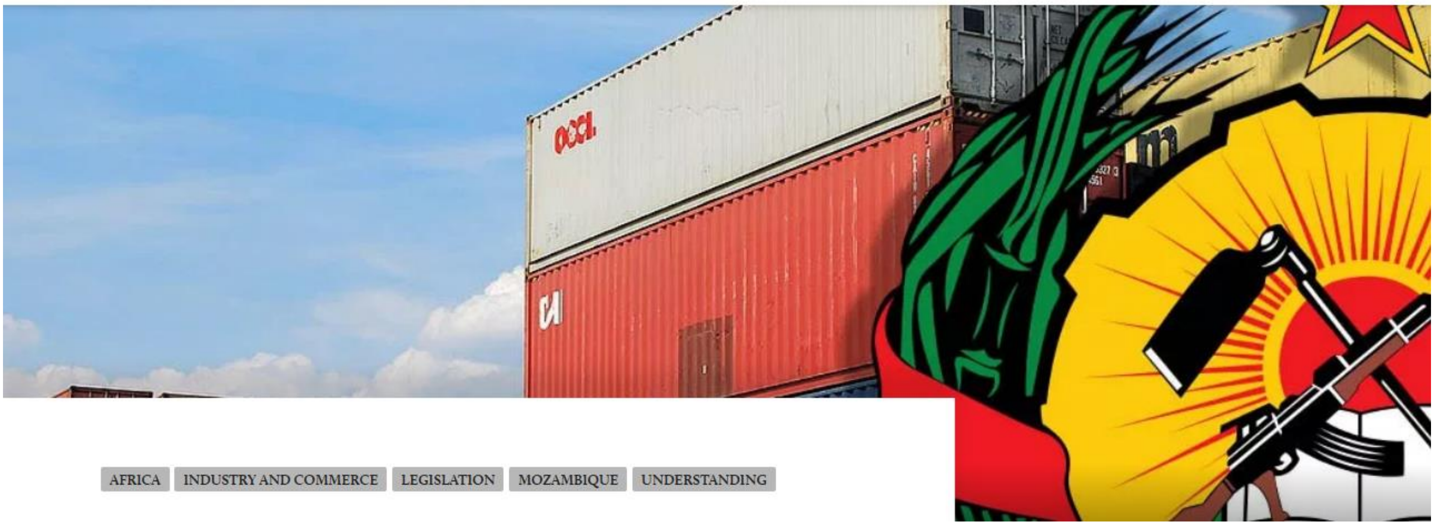

Understanding: Mozambican commercial code new amendments

BY FURTHERAFRICA
June 25, 2018

Leave a Comment

FURTHER AFRICA Understanding

The amendments implemented by Decree Law nº 1/2018 of 4 May to the Mozambican Commercial Code, aim not only to improve the bureaucratic system, but also to streamline services and make procedures less complex.

MC&A ADVOGADOS

We summarize below our analysis to the changes which, in our opinion, are relevant to the general corporate acts of commercial companies (namely the incorporation of companies and the simplification of procedures) and the regime of the private limited companies:

a) It will be henceforth mandatory to incorporate a company by means of a private document, being no longer possible to enter into any contract by a public deed, except in the cases legally established (for instance, in the transfer of immovable assets to a company);

b) The signatures of the parties affixed to any company contract will no longer need to be legalized before the notary, as they may be recognized by resemblance, i.e., the signature is recognized by simple comparison with the signature affixed to the respective identity card or equivalent document, which provides greater flexibility in the registration process of a commercial company;

c) Likewise, the signatures affixed to the minutes of any General Assembly will no longer need to be legalized;

d) Another very relevant change concerns the companies subject to Corporate Income Tax (IRPC) with organized accounting, as the balance sheets and annual accounts must be deposited with the Registry of Legal Entities within 90 days following the General Meeting that approves them. Such documents shall be available to any interested party whenever requested;

e) The Registry of Legal Entities will henceforth make the publication related to the incorporation of any company by means of a simple certificate stating some mandatory data on the company. Any interested party may request a copy of such publication;

f) As to the rights of the shareholders, new provisions have been added, and according to which such rights must be expressly described. Penalties are also provided for the shareholders who misuse them;

g) Regarding the special rights of the shareholders: (i) the right to elect one or more members of the administration, (ii) the right to a preferential percentage of profits or to a different social participation; (iii) the right to reject any social decision; (iv) the right to vote for or against the admission of new members, these rights may only be removed or modified with the consent of the respective holder;

h) As to the right to information available to any shareholder, it will henceforth be possible to limit such right, as any shareholder shall be able to establish a minimum percentage for the exercise of the right to written information on the company management;

i) Concerning the bodies of the company, namely, the board of the general meeting, some dispersed competences are gathered together, such as: (i) calling for loans of capital (ii) the supplementary and ancillary capital contributions (iii) setting of the remuneration of the corporate bodies. A new competence is also added, for the implementation and removal of the special rights of the shareholders;

j) The rules regarding the votes and the majority-voting system in the General Meetings of private limited companies (SQ) and joint-stock companies (SA) are also amended;

k) The duties of the administrators are also changed and, therefore, the exercise of any competition activity by any director is now subject to the prior consent of the shareholders, unless such director already is developing the activity prior to his appointment to the functions.

l) Finally, it is also defined that only the assets of the company (which are not owned by the shareholders) serve to cover the company's debts towards its creditors.

We hope that the implementation of these measures will in fact contribute to reducing bureaucracy, as well as to making procedures more flexible and simpler, thus helping to boost the Mozambican business field.

Article by Aurea Guinda

Aurea Guinda

Aurea Guinda is senior associate at CF&A, a Mozambican law firm in association with the Portuguese MC&A. She is a very experienced Mozambican lawyer, who have dealt with several investments and corporate projects, including regulation and recommendations for new legislations and also conflict resolution and litigation. Her experience covers advice to international and national clients in Mozambique, on the implementation of large and small scale investments, in several sectors. Aurea is graduated in Law from Eduardo Mondlane University – Maputo Law School and she is a Member of the Mozambican Bar Association.