

GENERAL INFORMATION

Capital: Maputo	Population: 32 457 145 Million (2021)	GDP (USD): 14,021 Billion (2021)
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LEGAL AND INSTITUTIONAL FRAMEWORK
PPP Law and other applicable texts

- Law No. 15/2011 of 10 August, which establishes the guiding rules for contracting, implementing, and monitoring public-private partnership (“PPPs”) for large-scale projects (“LSPs”) and business concessions (“BCs”) – hereinafter the “PPP Law”
- Decree No. 16/2012 of 4 June, which approves the Regulation of Law No.15/2011, of 10 August (“PPP Regulation”), and establishes the procedures applicable to the contracting implementation and monitoring of PPPs, LSPs, and BCs
- Decree No. 69/2013 of 20 December, which approves the Regulation on Small-scale PPPs and Business Concessions

Other applicable sectoral laws

- Law No. 5/2016 of 8 March, which approves the Regulation on the Award of Public Contracts
- Decree No. 47 043, of 7 June 1966, which approves the Regulation for the Supervision, Police, and Operation of Railways
- Law No. 21/97 of 7 October 1997 - Energy Law. However, the PPP Law repealed Article 12 (paragraphs 2 and 3) regarding the term of the concession and the requirements for its renewal, and Article 27 regarding the payment of the concession fee and the respective payment criterion
- Presidential Decree No. 13/2020 of 15 May, which redefines the attributions and competencies of the Ministry of Public Works, Housing, and Water Resources
- Law No. 2/2006 of 22 March, establishing the general principles and norms of the Mozambican tax legal system and applicable to national and municipal taxes (“General Tax Law”)
- Decree-Law No. 1/2006, of 3 May, which approves the Regulations of the registration of legal entities
- Decree-Law No. 2/2005 of 27 December with subsequent amendments, which approves the Mozambican Commercial Code

- Law No. 3/93 of 24 June 1993, which approves the Investment Law
- Decree No. 43/2009 of 21 August 2009, amended by Decree No. 48 / 2013 of 13 September 2013 – Investment Law Regulation

PPP Unit

(Articles 5 and 6 of the PPP Law)

- There is no PPP Unit
- PPPs are implemented by the sectoral Minister under the financial supervision of the Ministry of Economy and Finance (“MEF”). MEF is responsible for the inter-sectoral coordination and centralisation of the economic and financial analysis and evaluation of PPPs, LSPs and BCs, as well as for the majority of equitable benefit sharing and risk prevention in such undertakings

Definition

(Article 2 (2a) PPP Law)

- “Public-private partnership” means the undertaking in areas of public domain, excluding mineral and oil resources, or in areas of provision of public services, in which, through a contract and under financing, in whole or in part, of the private partner, the latter undertakes, before the public partner, to make the necessary investment and explore the respective activity, for the efficient provision of services or goods that are the responsibility of the State to guarantee their availability to users

General Principles

(Article 4, 13 (6) and PPP Law)

The contracting of PPPs is subject to the observance of the following guiding principles :

- The suitability of the PPP in terms of fitting the policy, strategy, and development plans of the respective economic or social sector;
- Efficient and rational exploration and economic valorisation of national assets and resources;
- Equity in the sharing of the benefits resulting from each enterprise;
- Business freedom and competitiveness;
- Creation and maintenance of jobs and the professionalisation and transference of "know-how" and technologies to Mozambican employees, managers, and local small and medium enterprises (“SMEs”);
- Contribution to the development of the national capital market and to the promotion of greater economic inclusion of Mozambicans in each enterprise;

- Principles of legality, purpose, reasonableness, proportionality, pursuit of public interest, transparency, publicity, equality, competition, impartiality, good faith, stability, motivation, integrity and suitability, accountability, good economic and financial management, celerity;
- General principles on risk prevention and mitigation by the parties during all project cycles.

Tendering and Contracting procedures/Choice of the private partnership

(Article 13 PPP Law and Article 6 Decree 69/2013)

- The general legal regime for contracting PPPs is that of a public tender, applying, subsidiarily, the rules governing public contracts. The public tender comprises the following stages: (i) launching and publication of the tender; (ii) presentation of the tender stages; (iii) analysis and hearing of the proposals; (iv) award; and (v) conclusion of the contract
- In view of the public interest and provided that the legal requirements are met, the PPP contracting may take the form of a public tender with pre-qualification or a two-stage tender
- In certain duly justified situations and as a measure of last resort subject to the prior express authorization of the Government, the contracting of the PPP undertaking may, exceptionally, take the form of negotiation and direct award
- Unsolicited proposals are subject to public bidding aimed at the assessment or adequacy of technical terms and quality, price, and other conditions offered by the bidder, enjoying the right and margin of preference of 15% in the evaluation of technical and financial proposals resulting from this request and without the right to compensation for costs incurred in preparing the proposal

Project Evaluation

(Articles 5 and 6 Decree 16/2012, and Articles 3 and 4 Decree 69/2013)

- Before any PPP is launched, it is compulsory to undertake the respective technical, environmental, and economic-financial feasibility studies, including the analysis and monitoring of the sharing of benefits and the assumption and prevention of risks

Negotiation and Signature of PPP Contracts

(Articles 13, 19 and 21 Decree 16/2012)

- The analysis and evaluation, as well as the negotiation of the bidders' proposals, is carried out by a jury appointed by the entity responsible for the sector, which must include representatives from the Ministry of Economy and Finance, the Ministries for the Coordination of Environmental Action and Labour, and the Bank of Mozambique
- Approval of the PPP, as well as the respective contract, shall take due account of the analysis, conclusions, and recommendations contained in the report drawn up by the jury and shall be decided by the competent body

Rights and Obligations of the public partner	<ul style="list-style-type: none"> - No specific provision in the law regarding the signature - The public partner retains property rights over the public domain assets that comprise the PPP, including the land resource
(Article 14, 15 (1) 25 PPP Law, Article 43 Decree 16/2012)	<ul style="list-style-type: none"> - Obligation to prevent and mitigate political and legislative risks, conflicts of interest of an institutional and land concession, and planning nature - Right to redeem the contract based on ponderous reasons of public interest, defence of public interest, health, order, and security, duly founded in the terms of the law and of the contract
Rights and Obligations of the private partner	<ul style="list-style-type: none"> - Obligation to prevent and mitigate risks inherent/deriving from professional, technical, technological, commercial, or management capacity
(Articles 15(1) 21 (6) and 25 (2) PPP Law, Article 43 (5) Decree 16/2012)	<ul style="list-style-type: none"> - The private partner in cases of transfer of its contractual and statutory position to another party requires express consent - The private partner has the right to compensation in cases of termination of the contract for reasons of defence of public interest, health, order, and security, for which it is not responsible
Obligations of both public and private partners	<ul style="list-style-type: none"> - Both the private and the public partner may be required to compensate the other party for damages and losses resulting from the termination of a PPP contract
(Article 44 Decree 16/2012)	<ul style="list-style-type: none"> - In the event of termination of the contract for reasons attributable to the private party, the private partner will forfeit the guarantee previously provided to ensure the proper performance of the obligations undertaken under the PPP, without prejudice to the compensation owed to the public partner for losses and damages resulting from such forced termination of the contract - In the event of termination of the contract for reasons attributable to the public partner, the public partner shall compensate the private partner under the general terms of the law, if no other specific criteria have been fixed by the parties in the contract, in addition to the obligation to return the guarantee in force provided by the private partner
Applicable Law/Dispute Resolution	<ul style="list-style-type: none"> - The dispute resolution is processed under the terms contractually defined between the contracting parties, observing the legislation in force. The PPP contract may privilege the resolution of emerging conflicts via mediation and arbitration.
(Article 39 PPP Law)	

EXAMPLES OF PROJECTS STRUCTURED AS PPP

Transport	N4 Toll Road Mozambique- South Africa; Malawi-Mozambique Nacala Corridor
Power	Namaacha Wind Farm; Ressano Garcia Gas Fired Plant; Mocuba Solar Plant
Ports	Maputo Port