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EDITOR'S LETTER

Dear Reader:

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TECHNICAL INFORMATION

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BRIEF REMARKS ON THE LICENSING OF TELECOMMUNICATIONS SERVICES UNDER THE NEW TELECOMMUNICATIONS LEGISLATION

The new Telecommunications Law, Law n.º 4/2016, of 03 June (hereinafter "the Telecommunications Law"), which brought changes to the previous law that has been in force since 2004, as well as the respective Licensing Regulation of Telecommunications and Scarce Resources, approved by Decree n.º 26/2017 of 30 June (hereinafter "the Regulation") have recently been approved.

The communications regulatory authority in Mozambique is the National Communications Institute of Mozambique, abbreviated as "INCM", a public institution with legal personality, administrative, financial and patrimonial autonomy. This authority performs the functions of regulation, supervision, inspection, sanctioning and representation of the telecommunications sector.

The telecommunications legislation referred to above applies to the establishment, management and operation of telecommunications networks and services. In these terms, telecommunications are classified by law as (i) services and (ii) networks, both of which may be public or private.

In addition to services and networks, the Regulation also applies to the licensing of scarce resources, which according to the Glossary of the Regulation, refer to the spectrum of radio frequencies, telecommunications numbering and orbital positions.

This article aims to provide a brief analysis of the rules applicable to licensing in the telecommunications sector, focusing on the rules applicable to the telecommunications services.

Public telecommunications services are defined by law as those offered by the operator or provider of telecommunications services, for remuneration, which consists of sending and receiving signals (voice, data and images) through telecommunications networks. As was already the case under the previous regime, the establishment, management and operation of public telecommunications services is open to all, being only conditional in cases specifically provided by law, such as the availability of telecommunications numbering resources and for reasons of public safety and public order.

On the other hand, private telecommunications services are those which are wholly or mainly for private use or for a closed group of users, and which are not interconnected to a public telecommunications network. These services may be freely established and operated, provided that they do not involve numbering, spectrum or operation resources for commercial purposes.

It should be noted that, although there is a limitation to operate private telecommunications services for commercial purposes, the law allows the owner of the private network to resell the available capacity of its facilities or otherwise dispose of the rights of the same in favor of a telecommunications operator provided that an authorization from INCM is obtained for that purpose, and it does not call into question the privacy and confidentiality of clients' information and does not jeopardize security of the State.

With regard to licensing, it should be noted that unlike the previous legislation (where the operation of telecommunications services was subject to the issuance of a license or mere registration, depending on the services concerned), under the new legislation, the provision of services for public or private use is always subject to the issuance of a license, which may be unified or by class.

The licenses per class are divided into Class A, B or C, with Class A referring to telecommunications networks and Classes B and C referring to the provision of services. As an example, the installation, maintenance and import of telecommunications equipment and infrastructures is subject to the acquisition of a Class C license, while Internet access services (ISPs) are subject to a Class B license.

On the other hand, the unified license consists of the networks and services provided for in Classes A, B and C licenses.

For the acquisition of a license per class, the applicant must submit a communication to the INCM prior to commencement of the activity, containing the description of the service to be carried out, the date of commencement of activities and other elements enabling it to commence its activity, and must also attach the company's corporate documents and technical project. It should be noted that, according to the definition of "license by class" in the Regulation, this is an administrative permit which is not dependent on prior decision of INCM, but only on the referred communication to be made by the applicant to INCM, without prejudice to the application being rejected for lack or insufficiency of the requirements established by law.

INCM must issue the license per class within 30 days of receipt of the communication from the applicant, however, the applicant may provide the requested services immediately after submission of the communication, without prejudice to the need of obtaining the spectrum or numbering frequencies. However, it will be necessary to confirm after the start of implementation of this new legislation, the practical application that will be given to INCM in this regard.

The licensing is subject to the payment of a fee that varies according to the type of license, services and scope of activities (i.e. local, provincial, national or international), as defined in the Regulation of Telecommunications Regulatory Taxes, approved by Decree no. 68/2016, of 30 December.

It should be noted that for licensing purposes, the corporate purpose of the applicant should include the provision of telecommunications services.

Class A and B licenses are valid for 15 (fifteen) years, with Class C license being valid for five (5) years. It should be noted that licenses may be revoked at any time in case of any of the circumstances set forth in Article 38 of the Regulation, including non-use of licenses for a period of 6 consecutive months and non-payment of regulatory fees. In the event of revocation, the licensee shall lose the right to apply for a new license for a period of one (1) year from the date of notification of the revocation.

It should be noted that although new telecommunications legislation has been approved, licenses and registrations already obtained under the previous legislation remain in force. However, INCM should proceed with the adjustment of the licenses and / or registrations issued under Decree 33/2001 of 6 November, and for this purpose the holders of such licenses and registrations shall require INCM to issue a unified or class license, as the case may be. This is with the exception of operators and service providers with licenses for the use of frequencies and / or numbering, whose licenses will continue in force until their expiration. This adjustment shall be made by INCM at no additional cost to the holders. Although the law does not establish a deadline for this adjustment, we believe that it should be done as soon as possible.

As regards the fines applicable in the case of carrying out the activity without the proper license, it should be noted that the new legislation does not provide a specific provision, contrary to the previous Telecommunications Law, in which the establishment of a telecommunications network or service provision without the proper license was punishable with a fine of 7,000,000.00 MT (seven million Meticais), and the establishment could also be definitively closed, as an ancillary penalty. It should be noted, however, that the Regulation establishes other situations that may be subject to a fine, among which the very general provisions on non-compliance with INCM instructions and non-compliance with INCM directives, punishable by fines of 7,000,000, 00 MT (seven million Meticais) and 8,000,000.00 MT (eight million Meticais), respectively.

It is also important to note the ancillary measures which may be applied by INCM in the course of its supervision powers, such as seizure of the equipment being used by unlicensed operators.

In addition to the measures relating to administrative offenses, it should be noted that the Telecommunications Law also provides for situations involving criminal offenses. As an example, it should be noted that Article 56 of the Telecommunications Law establishes a sentence of imprisonment of 2 to 8 years and a fine of 300,000.00 MT (three hundred thousand Meticais) to 2,000,000.00 MT (two million Meticais) in case of installation and fraudulent use of the telecommunications systems with the intention of avoiding compliance with legal obligations or fraudulently obtaining control of the telecommunications service.

Finally, it is important to note that the telecommunications legislation establishes several obligations applicable to telecommunication operators and telecommunications service providers (for example, there is an obligation to have the draft agreement for provision of public telecommunication services approved by INCM). We also note increased protection of consumer rights both before the conclusion of the agreement and for the duration of the same.

Telecommunication operators and telecommunication service providers should familiarize themselves with these provisions in order to ensure compliance with all obligations established by law.

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MEANS OF CONSUMER PROTECTION AGAINST FAULTY FOOD PRODUCTS

In a social and economic context in which there has been a greater growth of commercial establishments and products available to consumers, it is possible to verify situations in which the food products supplied are faulty. This may be due to the fact that they are commercialized after the expiry date for consumption or due to the discrepancy between the information described in the container and the characteristics of the product itself, thus affecting the health of the consumer.

With the purpose of defending consumer's rights, since the above mentioned quality defects call into question public health, a Consumer Protection Law was created, approved by Law No. 22 of 28 September ("CPL"), and its Regulations, approved by Decree No. 27/2016 of 18 July ("RCPL") instrument, from which can be extracted, among other things, means of consumer protection against faulty food products. A Topic which will be under consideration in this article.

It should be noted that the Constitution of the Republic protects consumer rights by establishing in its article 92 (1) that "consumers have the right to quality of goods and services consumed, information, health protection, economic interests safety as well as compensation for damages". This protection is reinforced by Articles 5, 6, 7 and 14 of the CPL.

According to the CPL, a consumer is any person to whom goods, services are provided or any rights transferred, intended for non-professional use, by a person who carries out an economic activity aimed at obtaining benefits, on a professional basis. Also considered as consumers (equalized) are all those affected by the harmful event, even if they have not acquired them, provided that there is a causal link between the harmful event and the performance by the supplier (RCPL, Article 10).

We are faced with a faulty food product when there is a quality and quantity defect which renders the food product improper or inappropriate for the intended use, or which reduces its value, or when there is a disparity between the information in the container or the advertising message in relation to the product (CPL, Article 15 (1) and (4) and Article 11 (1) of the RCPL).

We are faced with a defect when due to the quality or quantity defect which renders the product inappropriate or inadequate for consumption, the consumer eventually suffers damages of a patrimonial and / or moral nature, under article 7 of the RCPL in conjunction with article 14 of the CPL.

Article 15 of the CPL, in conjunction with Article 11 of the RCPL, provides that suppliers of consumer goods are jointly and severally liable for quality and quantity defects of the product, and the consumer may require the replacement of the faulty parts. If the defect is not remedied within 30 days, the consumer may, alternatively, demand: (i) the replacement of the good by one of the same type; (ii) repayment of the amount paid; and / or, (iii) the proportional reduction of the price. The consumer can make immediate use of the last alternatives if, due to the extent of the defect, the replacement of the faulty parts compromises the product, in terms of article 15 of the CPL, in conjunction with paragraph 4 of article 11 of the RCPL.

In the event of a product defect, manufacturers, traders, sellers, producers and importers will be held liable regardless of fault for the faulty products they place on the market. The trader shall be the only one held liable when he has not properly preserved the foodstuffs, or provided them without identifying the producer, and the consumer has the right to compensation for the damages resulting therefrom (CPL, Article 7 and Article 14 (4) Article 8 (1) of the RCPL).

In practical terms, the accountability of offenders is routed through the consumer protection supervision. These can be exercised through extrajudicial means, with the public and private entities with relevant competences depending on the matter, such as the Ministry of Industry and Commerce; the National Inspection of Economic Activities *(INAE)*; the competent local authorities; the Mozambican Consumer Protection Association *(ADECOM)*; the Ombudsman; the National Institute of Standardization and Quality *(INNOQ)*; and also through judicial means, with particular emphasis on injunctions, which according to Article 12 of the CPL is intended to prevent, correct or terminate practices that are detrimental to consumer rights.

According to the criterion of protected interests, the injunction is a collective action and may also be filed individually. According to the criterion of the end/aim, it is a declaratory action of condemnation (since it presupposes the violation of a right), of provision of a negative fact (abstention from harmful practice), or positive fact (cessation, correction) of practices detrimental to consumer rights. And as for the form, this is a summary process, being the jurisdiction of the First Class District Court and free of costs, as per articles 12, 13, 17 of the CPL, paragraph 2 of article 18 of the RCPL, and Article 4 of the Civil Procedure Code.

The injunction is similar to the precautionary measures contained in the Civil Procedure Code, but unlike precautionary measures, it will not only ensure the effectiveness of the final decision, but also anticipate the effects of this decision without collateral. The injunction must be brought by the injured party with an unequivocal proof of the injury (receipt of purchase of the product, expert evidence, among others), and the consumer (natural or legal person directly injured), the Public Prosecutor and consumer associations are legitimized, in accordance with Article 17 of the LCD.

Therefore, in the event of faulty food, consumers have the prerogative of using the necessary mechanisms to safeguard their rights, through the competent institutions and courts.

Bearing aware that with the mass production of foodstuffs, the negative effects related to faulty food products affect a large number of people, it is relevant to raise consumer awareness of their rights, the possibility of their protection, and the means available to that end, towards a society that is more attentive to health and safety issues, as well as professional ethics.

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CURRENT CHALLENGES TO THE IMPLEMENTATION OF THE LEGAL REGIME OF INSOLVENCY AND RECOVERY OF COMMERCIAL ENTREPRENEURS

The current Legal Regime of Insolvency and Recovery of Commercial Entrepreneurs ("LRIRCE") entered into force in October 2013, through Decree-Law No. 1/2013, of 4 July. With its approval, numerous expectations were created regarding the possibility of safeguarding the interests of the commercial entrepreneur as a production unit and, consequently, the preservation of other credit interests adjacent to it.

Thus, after almost four (4) years have elapsed since its entry into force and given the current situation of the country (exchange rate devaluation, inflation rate increase, discrepancy in the ratio of the public debt to Gross Domestic Product (GDP), reduction of production capacity in certain export sectors, among others), a scenario of greater adherence to the implementation of LRIRCE by companies in a poor financial situation would be expected and, therefore, there would be gains in our socio-economic context, with the possibility of an increasing number of cases of recovery of commercial entrepreneurs considered "recoverable" and withdrawal from the market of commercial entrepreneurs whose activity or administration are considered to be inadequate, i.e. "non-recoverable".

Unfortunately, the contours of reality have defrauded a great part of the expectations generated, since, at present, there have been many commercial entrepreneurs who, being in a difficult economic situation, choose to withdraw from the market irregularly, without leaning on the safety of the means legally established for this purpose, with special focus on the means provided by LRIRCE.

It is certain that this situation has largely made it impossible for the commercial entrepreneur to maintain his/her potential by continuing his/her economic and social function, materialized in the generation and preservation of jobs, income, tax payments, wealth production and propulsion of socio-economic development, which, inevitably, refers to a brief analysis and consideration of the set of factors behind the low rate of insolvency and recovery processes (judicial and extrajudicial) currently conducted in the country.

Firstly and overall, it can be said that one of the reasons for the weak adherence to the LRIRCE is that it is poorly disseminated within the country's business community, which, because of lack of knowledge of the existence, benefits and protection arising from the application of the regime, resort to the irregular and illegal closure of their commercial activities, without deigning to be guided by the mechanisms legally established for this purpose, either through the means of LRIRCE, or through closure (temporary or permanent of the commercial establishment) or the suspension of activities provided for in the Commercial Code and the Commercial Activities Licensing Regulation.

In addition to this, there is the disbelief of those who have legitimacy to require insolvency proceedings and recovery (in the light of Articles 47 and 93 of LRIRCE) on the efficiency of the judicial system, with regard to the conducting of the process and the safeguarding of other credit interests connected to it.

Another factor, not less relevant and which is a real challenge to the effective implementation of the LRIRCE, has been the lack of training measures carried out for the implementers of the regime (judges, public prosecutors, court officials, insolvency administrators, among others).

However, it cannot be denied that efforts have been made to carry out some training around the LRIRCE, even though the regularity and comprehensiveness, regarding the quality of the subjects and jurisdiction to which they are attached, reveal that much is still to be done with a view to enabling and making them capable of contributing to a greater speed, dynamics and effectiveness of the process.

As this is a relatively new and unknown reality in our legal system, and since we are still in a "disaffection" phase with regard to the bankruptcy regime that has remained entrenched for almost half a century, it would be necessary that the training actions be carried out more regularly and covered enforcers from all provinces of the country, not only some, as has happened.

In addition, it was also on the basis of this spirit that the Mozambican Association of Insolvency Administrators *(AMAIN)* was created in July 2016, which expressly stated that one of its objectives was to promote the training of insolvency administrators and other staff specialized in insolvency and recovery of companies, as provided for in Article 3 (d) of the Statutes of the Association.

Certainly, the commitment to the professionalization of the function of insolvency administrator, besides contributing to the operationalization of the legislation, will offer greater dynamics for the speed of this type of process through the technical and deontological training of those professionals and will raise the previous rates of time and recoverability from five (5) years and fifteen (15) cents for each dollar of declared assets to at least ten (10) months and eighty (80) cents per dollar for each declared dollar, as aimed.

Taking into account the legislative effort made to reform the former bankruptcy system and approval of the new insolvency regime, since its entry into force, Mozambique has had a positive rating in the "Doing Business" ranking and is now in position sixty-five (65) with respect to the classification relating to the insolvency resolution, notwithstanding the fact that for that assessment it was considered only the legislative reform carried out and not necessarily the results of the implementation of the regime.

In sum, the factors referred to above, namely the lack of disclosure of the regime, the disbelief in the judicial system, the lack of training of the stakeholders and the low rate of recoverability of credits in a short time have undoubtedly been real challenges to the implementation of LRIRCE in our legal system, creating a chain reaction to the stability and socio-economic development of the country, whose negative effects can only be solved through joint action and association of efforts between the State and the other stakeholders, aimed mainly at preventing the loss of credits and the downtime of production units, whose operationalization contributes to the generation of income.

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