



SASOL WORKSHOP
Johannesburg 13 May, 2014

**THE LEGAL ENVIRONMENT OF THE
MOZAMBICAN MARKET:
A FOREIGN INVESTMENT PERSPECTIVE**

PLMJ
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LEGAL NETWORK
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ADVOGADOS

Think Global, Act Local

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A. BUSINESS IMPLEMENTATION



BUSINESS IMPLEMENTATION

ESTABLISHMENT OF LEGAL ENTITIES IN MOZAMBIQUE

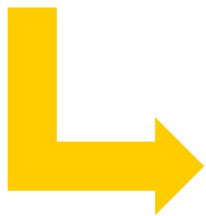
- Any entity that pursues an activity in Mozambique for a period of 1 (one) year, should implement a permanent establishment (Mozambican company or Rep Office);
- A foreign entity that carries out any activity for a period of more than 180 days shall be considered as resident and taxed accordingly;
- Generally speaking, it is not legally mandatory for a foreign investor to set up a Mozambican company entity in order to carry out its activities. Such activities can be carried out through a Rep. Office of a foreign entity instead.

BUSINESS IMPLEMENTATION

TYPES OF BUSINESS ENTITIES

- Commercial private companies (subsidiaries) and branches (Rep Offices) of foreign entities.

Private Companies



- “**Sociedade Anónima**” or “**SA**” (with registered capital represented by certificated shares, which may be compared to public limited liability companies or joint stock corporations)
- “**Sociedade por Quotas**” or “**LDA**” (with registered capital represented by un-certificated quotas, closer to private limited liability companies).

BUSINESS IMPLEMENTATION

MAIN DIFFERENCES BETWEEN A “S.A.” AND A “LDA.” COMPANY

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|---|---|
| 1 | Company’s members are known as Quota holders. | Company’s members are known as shareholders. |
| 2 | Minimum number of quota holders: two. | Minimum number of shareholders: three. If the State or a public entity is a shareholder, the minimum number of shareholders may be two. |
| 3 | Quota holders are liable up to the value of the quota held individually and are also jointly and severally liable for the total amount of the company’s registered share capital. | The limit of the shareholder’s liability is up to the value of the shares respectively held. |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|---|--|
| 4 | <p>The share capital of the company is represented and divided into quotas (each with the respective nominal value, which may vary pursuant to the respective quota holder’s share of the share capital ownership).</p> <p>The quotas are not physically represented in certificates and their respective ownership and share capital represented (held) amount is set forth in the notarized Articles of Association and registered at the Legal Entities Register Office. This means that information in relation to quota transfers is public.</p> | <p>The share capital of the company is divided into shares (each with the respective nominal value, the number of shares held by each shareholder varying pursuant to the respective ownership of the share capital). Shares are physically represented in share certificates which are issued by the Company and delivered to its shareholders.</p> <p>The shareholders names and the shareholding structure do not have to be stated in the Articles of Association but nominative shares are registered in the “Shares Registry Book” of the company.</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------------|---|--|
| 4 Cont. | Quotas may be encumbered and serve as guarantee for loans and other financial commitments. | <p>Transfer of shares is not subject to registry at the Legal Entities Register Office, but it is subject to registration in the Shares Registry Book.</p> <p>Shares may be encumbered and serve as guarantee for loans and other financial commitments.</p> |
| 5 | At incorporation each quota holder can only have one quota, the value of which depends on the contribution of the quota holder to the initial share capital; further acquisitions of capital are expressed by separate quotas, which shall be subsequently merged into one. | There is no legal limitation as to the number of shares each shareholder can hold – this is determined by the nominal value of the shares and the portion of the share capital owned by each shareholder. |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|--|---|
| 6 | <p>There is no minimum legally determined value for the nominal value of each quota. The number of votes of a quota holder is determined according to the percentage of the share capital represented by his respective quota.</p> | <p>There is no minimum legally determined value for the nominal value of each share. Each share corresponds to one vote, although it may be (as per the Company's by-laws) determined that a certain number of shares is required to hold one vote.</p> |
| 7 | <p>There is no minimum capital for a company but the company is required to be incorporated with a sufficient amount of share capital in light of its corporate purpose (as stated in the Articles of Association).</p> | <p>There is no minimum capital for a company by shares but the company is required to be incorporated with a sufficient amount of share capital in light of its corporate purpose (as stated in the Articles of Association).</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------------|---|--|
| 7 Cont. | Although there is no minimum share capital required by law, banks usually require a minimum of MZN 20.000,00 (approximately. USD 500,00) to open a company's bank account. | Although there is no minimum share capital required by law, banks usually require a minimum of MZN 20.000,00 (approximately. USD 500,00) to open a company's bank account. |
| 8 | The share capital is divided into quotas belonging to each quota holder and there are no distinctions between the different quotas in terms of rights and obligation besides the number of votes according to the percentage of the capital represented by the quota. | Through the Articles of Association it is possible to establish different types of shares with different rights and obligations and, in doing so, allocate special rights or privileges to certain shares, e.g. preferential dividend rights; etc. |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|---|--|
| 9 | <p>The organisational structure in this type of company is lighter, and comprises the following mandatory statutory governing bodies: (i) a General Assembly consisting of all the quota holders of the company and (ii) management to be exercised by one or two directors.</p> <p>The Board of Directors and the Audit Committee / Fiscal Council (internal auditing committee) are not imposed by Law (these bodies may exist should the quota holders so wish and, as such, establish it in the Articles of Association).</p> | <p>There is a more onerous organisational structure in this type of company.</p> <p>This type of company must mandatorily have: (i) a General Assembly consisting of all the shareholders of the company; (ii) a Board of Directors including all the directors of the company as members; and (iii) the Audit Committee / Fiscal Council (internal auditing committee).</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|---|---|
| 10 | <p>The powers of the General Assembly (as stated by law):</p> <ul style="list-style-type: none"> • Appointment and removal of the Directors of the company; • Approval of year-end accounts; • Application of profits and distribution of dividends; • Approval of shareholders loans; • Amendments to the articles of association; • Increase and reduction of share capital; • Mergers, de-mergers and transformation of the company; • Wound up and liquidation; and • Any other power which by law or as per the articles of association are not given to any other body of the company. | <p>The powers of the General Assembly (as stated by law):</p> <p>Same as for LDA companies.</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|--|---------------------------------------|
| 11 | <p>The constitutional quorum is composed by any number of shareholders which hold any shareholding participation, unless otherwise stated in the articles of association.</p> <p>The deliberation quorum is by simple majority of votes of those present.</p> | <p>The same as for LDA companies.</p> |
| 12 | <p>In terms of conflict of interests between the JV Company and its shareholders and/or its directors, as a general rule such shareholders or directors cannot vote in the decision making of a transaction which originates a conflict of interest between them and the JV Company. Further to the above, in case of acquisition or disposal of goods, from or to the shareholders, such goods must be evaluated by an independent evaluation firm, to confirm the real value of the goods.</p> | <p>The same as for LDA companies.</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|---|--|
| 13 | <p>The management of the Company shall be exercised by one or two directors or by a Board of Directors (minimum of three members). Members of the Board may be either individuals or legal entities (in this latter case, duly represented by a designated individual).</p> <p>We will provide separate advice as to the fiduciary duties of board members.</p> | <p>The management of the Company shall be exercised by a sole Director – without the need for a Board or a Board of Directors. Members of the Board may be either individuals or legal entities (in this later case, duly represented by a designated individual).</p> <p>We will provide separate advice as to the fiduciary duties of board members.</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|--|---|
| 14 | <p>The duration of the office of a director depends on the term of office determined in the Articles of Association or, in case of omission of the term of office, the duration of the term shall be four years.</p> <p>Note that, the mandate is revocable at any time by the General Assembly. A director may be re-elected for the subsequent term of office.</p> | <p>The duration of the office of a director depends on the term of office determined in the Articles of Association (up to a maximum of four years) or, in case of omission of the term of office, the duration of the term shall be four years.</p> <p>Note that, the mandate is revocable at any time by the General Assembly. A director can be re-elected if so allowed by the Articles of Association.</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|--|--|
| 15 | <p>The management may be appointed by quota holders or other third parties, i.e., individuals / entities and the directors may be appointed in the Articles of Association, upon incorporation, or elected thereafter by the General Assembly through a General Meeting recorded in minutes of the same.</p> | <p>The Board of Directors may have as members shareholders or other third parties, i.e., individuals / legal entities and the Directors may be appointed in the Articles of Association, upon incorporation, or elected by the General Assembly through a General Meeting recorded in minutes of the same.</p> |
| 16 | <p>General Assembly's meetings are convened by letter addressed to the quota holders fifteen calendar days prior to the date to which the meeting is scheduled unless otherwise stated in the Articles of Association.</p> | <p>General Assembly's meetings must be convened by notice published in the local newspaper at least thirty calendar days prior to the date to which the meeting is scheduled.</p> |

BUSINESS IMPLEMENTATION

| Item | Private Limited Liability Company (LDA) | Public Limited Liability Company (SA) |
|------|---|---|
| 17 | <p>The dividends policy is established by the shareholders, as per provisions and rules of the articles of association and/or shareholders agreement or by a General Assembly resolution.</p> <p>20% of the company's profits shall be allocated to the statutory legal reserve (up to the maximum of 20% of the total share capital of the company), but other reserves may be created / approved by the shareholders.</p> | <p>This type of company is required to distribute at least 25% of its profits as dividends (compulsory divided). However, in some very specific situations the compulsory dividend may not be distributed to the shareholders.</p> <p>5% of the company's profits shall be allocated to the statutory legal reserve (up to the maximum of 20% of the total share capital of the company), but other reserves may be created / approved by the shareholders.</p> |

BUSINESS IMPLEMENTATION

TYPES OF BUSINESS ENTITIES

➤ **Criteria to decide which type to use:**

- The level of simplicity required
- Operation structure
- The amount of capital to be invested
- Issues of confidentiality as to the ownership of the capital

Branch of Foreign Corporations (Rep Offices)

A Rep Office is understood as the exercise of an economic activity within the Republic of Mozambique through a branch, commissionership, agency, business office or any other form of representation of a foreign domiciled entity, and is subject to licensing by the Ministry of Industry and Commerce.

BUSINESS IMPLEMENTATION

BUSINESS REGISTRATION

A. Commercial Companies:

- I. Approval of company Name by the Legal Entities Registrar Office (“CREL”);
- II. Incorporation of the Company by the local notary (execution of the public deed of incorporation and of the articles of association). Information required for the act:
 - ✓ Names of shareholders (whether companies or individuals);
 - ✓ Definition of the scope of activities / corporate purpose;
 - ✓ Composition of management (number of directors, with or without a board);
 - There are no legal impositions with regard to the nationality or residence status of the Directors - Advisable to have a Managing Director / General Manager residing in country - represent the company before public authorities.
 - The first members of the Board of Directors are compulsorily appointed in the articles of association. Subsequently they shall be appointed by a General Meeting resolution.

BUSINESS IMPLEMENTATION

BUSINESS REGISTRATION

- The company may be managed by: (i) one or two Directors (with equal powers); or (ii) by a Board of Directors composed of at least 3 members. There is no maximum number of Directors imposed by law.
- Directors have the power to bind the company within the powers granted to them by the shareholders. For any other decision which competence was not awarded to the Board within the articles of association and which matter is not determined by law as of the exclusive competence of the quota holders / shareholders and/or of the Directors, the *quotaholders* / shareholders shall have to formally resolve and approve upon by means of a General Meeting.
- ✓ Confirmation of the powers of the board; and
- ✓ Form of representation and binding of the company.

BUSINESS IMPLEMENTATION

BUSINESS REGISTRATION

Requirements – for submission to the local notary:

- ✓ Passports / IDs from individuals are required, as well as certificates of incorporation in case of corporate shareholders, if any; Draft articles of association (drafted in accordance with Mozambican Law);
- ✓ Board resolutions and powers of attorney from the shareholders evidencing approval of the incorporation and of the respective terms and conditions as well as formal powers of attorney – valid under Mozambican Law - to represent and bind the shareholders (in case of legal entities) for incorporation (and eventually for representation at an initial General Meeting of the newly incorporated company).

BUSINESS IMPLEMENTATION

BUSINESS REGISTRATION

- III. Commercial Registration of the Company at CREL;
- IV. Publication of the Articles of Association in the Official Gazette (“*Boletim da República*”) – a fee being paid for this purpose;
- V. Tax Registration for the purpose of obtaining a tax registration number (“*NUIT*”) - which requires a fiscal representative to act on behalf of the foreign shareholder, usually the accountant resident in Mozambique.
The appointed Directors, when non Mozambican citizens, shall have also to be enrolled before the Tax Department being also required the appointment of a tax representative for them
- VI. Business Licensing or “*Alvará*”: application to be made in accordance with the type of business licence required.

BUSINESS IMPLEMENTATION

BUSINESS REGISTRATION

All the official documents have to be translated into Portuguese by an official / sworn translator and then duly legalized before the Embassy / Consulate of Mozambique in the country where they are issued.

Usual timeline for the process of incorporation and complete registration of a JV Company - estimated between three to four months.

Notary and registration expenses vary, depending on the amount of share capital involved.

B. Rep Office:

- I. Request for a rep office licence (to the Ministry of Trade and Industry) – “*Licença de Representação Comercial Estrangeira*”

BUSINESS REGISTRATION

BUSINESS IMPLEMENTATION

Requirements:

- ✓ Certificate of incorporation and articles of association of the parent company;
- ✓ Board resolutions and powers of attorney from the parent company - Passport / ID of the Managing Director of the branch.

II. Commercial Registration of the branch at CREL;

III. Tax Registration to obtain a tax registration number (“*NUIT*”) - which requires a fiscal representative to act on behalf of the foreign company usually assured by the accountant, residing in Mozambique;

The appointed Managing Director of the branch, when a non-Mozambican citizen, shall have also to be enrolled before the Tax Department being also required the appointment of a tax representative for him;

IV. Licensing: further licences may be required depending on the type of business and commercial activity.

BUSINESS IMPLEMENTATION

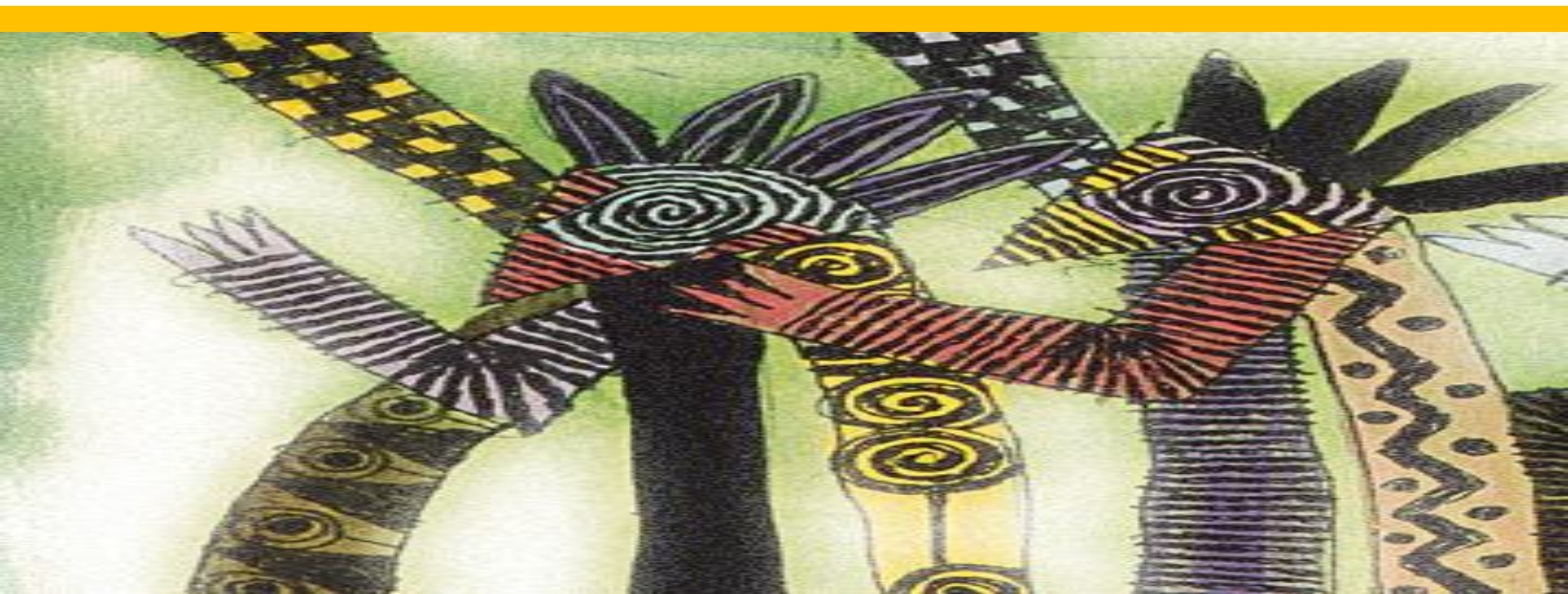
BUSINESS REGISTRATION

All the official documents have to be translated into Portuguese by an official / sworn translator and then duly legalized before the Embassy / Consulate of Mozambique in the country where they are issued.


The usual timeline for the process of establishment of a Rep Office is estimated to be between three to four months.

Costs involved are estimated to be between USD 2.000,00 and USD 3.000,00.

B. REGULATORY APPROVALS AND LOCAL CONTENT REQUIREMENTS APPLICABLE TO LEGAL ENTITIES DULY REGISTERED IN MOZAMBIQUE



REGULATORY APPROVALS AND LOCAL CONTENT



Regulatory Approvals and Local Content Requirements applicable to Legal Entities Duly Registered in Mozambique:

1. Investment Authorisation for purposes of obtaining tax and custom incentives;
2. Labour: work and residence permits for expatriates;
3. Licensing (ex. commercial, transportation, industrial, importers licencing, etc.);
4. Foreign exchange: exchange control regulations applicable to specific forex transactions;
5. Local content requirements (as per applicable for example under the Petroleum Operations Legislation);
6. Environmental requirements.
7. *Oil & Gas regulatory;*
8. Petrochemical sector;
9. State participation / reservation rights;
10. *Case studies (GTL – Gas to Liquid; Pipelines).*

REGULATORY APPROVALS AND LOCAL CONTENT

INVESTMENT AUTHORISATION FOR PURPOSES OF OBTAINING TAX AND CUSTOM INCENTIVES

Purpose: Be granted with tax and custom incentives and apply for a DUAT.

Eligibility: National or foreign entities and individuals.

Exception: Retail and wholesale trade activities except when these are carried out in newly built infrastructures.

Oil and gas exploration and production and mining - specific legislation governing each of these investment sectors.

Minimum FDI: 2.500.000,00 MT (USD 84.000,00)

REGULATORY APPROVALS AND LOCAL CONTENT

INVESTMENT AUTHORISATION FOR PURPOSES OF OBTAINING TAX AND CUSTOM INCENTIVES

Possible tax benefits:

- tax credit for investment
- accelerated amortisation and reintegration
- deduction of costs arising from modernisation and introduction of new technologies and vocational training
- exemption from custom duties and VAT upon importation of goods and equipment classified as Class K.

REGULATORY APPROVALS AND LOCAL CONTENT

LABOUR: WORK AND RESIDENCE PERMITS FOR EXPATRIATES

Maximum contractual timeframe: 2 years (renewable)

Work Permits

➤ The Quota Regime

- 5% of the entire workforce when in large companies (companies with over 100 employees);
- 8% of the entire workforce in medium companies (companies with over 10 employees); and
- 10% of the entire workforce in small companies (companies with up to 10 employees).

REGULATORY APPROVALS AND LOCAL CONTENT

LABOUR: WORK AND RESIDENCE PERMITS FOR EXPATRIATES

➤ Investment Projects / Concession Contracts

In case the company wishing to hire foreign workforce has been granted an Investment Authorization or has executed a Concession Contract with the Government :

➤ Short Term Employment (special oil & gas regime)

Deemed as the rendering of labour by an expatriate for a period that does not exceed 90 days *p.a.* (renewable up to 180 days) - no work permit is required.

REGULATORY APPROVALS AND LOCAL CONTENT

LABOUR: WORK AND RESIDENCE PERMITS FOR EXPATRIATES

➤ **Work Permit (outside the quota)**

To obtain a work permit, when the legal quota is not complied with, there must be no nationals with the qualifications required to perform the envisaged duties and such qualifications are to be evidenced before the competent authority.

Overall procedure: Obtain work permit prior to start working

- Request work visa in Mozambican Embassy (in country of origin/residence)
- Enter country within 30 days and apply for residence permit

REGULATORY APPROVALS AND LOCAL CONTENT

LICENSING

Application for a General Business (trading) Licence (“Alvará Comercial”) and Importers Licence

The application for a general trading licence (for a JV Company or a rep office) is lodged at the Government’s One-Stop Shop - “*Balcão Único – BAU* – and the following requirements apply:

- ✓ Constitutional documentation of the company (deed of incorporation, registration certification, tax number);
- ✓ Lease Agreement or property registration certificate of the premises and location where the business will be operated from; and
- ✓ Drawings and plant of the referred premises.

REGULATORY APPROVALS AND LOCAL CONTENT

LICENSING

After issuance of the company's *Alvará*, a new application shall be lodged at the *BAU* for issuance of the Importers Licence and the only documentation to be submitted along with the application is a copy of the *Alvará*.

Further licences may be required depending on the type of business and commercial activity (for example, transportation permit, if applicable).

The timeline for issuance of the *Alvará* and Importers Licence is estimated to be 45 days, which timing is already included in the 3-4 months period established in a) above.

REGULATORY APPROVALS AND LOCAL CONTENT

FOREIGN EXCHANGE: EXCHANGE CONTROL REGULATIONS APPLICABLE TO SPECIFIC FOREX TRANSACTIONS

Main purpose: to govern acts, businesses and transactions:

- (a) undertaken between residents and non-residents and that may result in payments to or payments received from abroad; or
- (b) which are legally defined as capital transactions and current transaction under the referred legislation (“Forex Operations”).

REGULATORY APPROVALS AND LOCAL CONTENT

FOREIGN EXCHANGE

Incidence rules:

- Forex Operations between non-resident individuals or corporate entities, related to rights or transactions over goods or values located in country, or to activities carried out in country;
- Forex Operations carried out by residents with respect to goods, value or rights acquired abroad, over which there is an obligation to remit funds;
- Forex Operations carried out by residents with respect to goods or values located in country, or rights over such goods or values.

REGULATORY APPROVALS AND LOCAL CONTENT

FOREIGN EXCHANGE

Liberalization Principles

- All current transactions, classified by law as such, have been released from the obligation of prior approval from the Bank of Mozambique (the “**BoM**”).
- Control over such transactions now lies with the Commercial Banks – no longer with the BoM.

Registration of the Project’s Implementation Company and Foreign Investors

- BoM to issue a reference number for each party (such reference number is to be used on all forex operations).
- Usual timeframe: 2 to 3 weeks.

REGULATORY APPROVALS AND LOCAL CONTENT

FOREIGN EXCHANGE

Classification, Authorization and Registration Requirements

- Forex Operations defined as current transactions, do not require prior authorisation from the BoM.
- Those that are subject to prior approval from the BoM, are defined by law as capital transactions, which include (but not limited to):
 - a) FDI (other than equity/share capital) ();
 - b) Opening and operation of bank accounts held in foreign financial institutions;
 - c) Credit facilities related to commodities and services;
 - d) Loans and other financial facilities;
 - e) Securities;
 - f) Transfers related to insurance contracts.

REGULATORY APPROVALS AND LOCAL CONTENT

LOCAL CONTENT REQUIREMENTS (UNDER THE PETROLEUM OPERATIONS LEGISLATION)

Principles:

Public Tender (involving the Oil & Gas Regulator - INP)

Preference to local goods and services (with positive variation of up to 10%, including tax, compared to foreign supplies)

Main tender requirements:

- Access - invitations for pre-qualification sent to a reasonable number of suppliers. Selected suppliers shall receive the same tender specifications

REGULATORY APPROVALS AND LOCAL CONTENT

LOCAL CONTENT REQUIREMENTS (UNDER THE PETROLEUM OPERATIONS LEGISLATION)

- Terms and conditions – the tender specifications, timeframes and delays, proposal type (e.g. with variant or single proposal) and submission terms shall be provided to the interested parties and must not be drafted so as to unduly exclude competitive suppliers
- INP must be informed of the pre-qualified bidders
- INP must be notified of the Operator's decision prior to the award of major contracts (if tender procedures were not duly complied with, it may request the Operator to reconsider its position)

Principles are in line with the provisions of the Joint Operation Agreements currently in force .

REGULATORY APPROVALS AND LOCAL CONTENT

ENVIRONMENTAL REQUIREMENTS

The Law establishes specific classification criteria to determine the activities that may be subject to environmental impact assessment – either **Environmental Impact Assessment (“EIA”)** or a **Simplified Environmental Impact Assessment (“SEIA”)**.

Type A Activities: those operations capable of causing significant environmental impact due to their characteristics and, also, considering the area where the Project is located.

Such Type A activities require an EIA.

REGULATORY APPROVALS AND LOCAL CONTENT

ENVIRONMENTAL REQUIREMENTS

Type B Activities include those that are not classified as Type A or Type C (which are exempt from EIA or SEIA) and which may cause some impact to the environment. Type B activities require a SEIA to be carried out. These activities are, generally, activities that do not significantly affect human population or environmentally sensitive areas. Impacts of such activities are deemed to allow definition and application of mitigation measures relatively easily, and thus only require the SEIA.

Type C Activities are those specifically listed by Law as exempt from any type of environmental assessment, though always subject to rules of good environmental management.

REGULATORY APPROVALS AND LOCAL CONTENT

ENVIRONMENTAL REQUIREMENTS

Information required to be included in the Preliminary Environmental Assessment For:

- ✓ Type of activity;
- ✓ Description of the location of activity;
- ✓ Description of the activity – including specifics of the main and accessory activities - (and technology, raw materials and chemicals to be used, infrastructures to be built, source and amount of water and electricity to be used);
- ✓ Brief information on the land rights (or possession by local communities) and environmental aspects of the location of the activity.

REGULATORY APPROVALS AND LOCAL CONTENT

ENVIRONMENTAL REQUIREMENTS

The preliminary assessment made and issued by the MICOA will result in either:

- rejection of implementation of the Project;
- classification of the activity as Type A (EIA) or B (SEIA);
- exemption from an EIA or SEIA.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY (UPSTREAM)

- The Mozambican petroleum legal framework is mainly governed by the:
 - **Mozambican Petroleum Act** (Law 3/2001, of 21 February), approved by the Parliament
 - the **Petroleum Operations Regulation** (Decree 24/2004, of 20 August), approved by the Government

which specifically governs the terms and conditions of contracts, health and environment protection, as well as other matters related to rights and duties of the Operators.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Exception: »»» oil refinery, its industrial use, and distribution and commercialization of oil products.

Note: The draft of the new Petroleum Act will also include foreign flagged movable infrastructures located in Mozambique with the purpose of conducting and assisting with Petroleum Operations.

Such infrastructure being defined as “installations, including platforms, installations for the liquefaction of natural gas, or vessels and other equipment intended for the conduct of petroleum operations, excluding support vessels which transport petroleum in bulk. Unless otherwise defined, infrastructure also includes cables, or oil and gas pipelines.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

| | | |
|------------------------------|------|--|
| Concession Contracts: | »»»» | Prospection, exploration, development and production of oil activities |
| Procedure: | »»»» | Public tender, simultaneous negotiation or direct negotiation. |

Note: The draft of the new Petroleum Act establishes that such concessions shall be a result only of a public tender. Simultaneous negotiation or direct negotiation will no longer be acceptable.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

- Simultaneous or direct negotiations may take place in respect to areas that have been already declared “available”, as a result of:
 - Previous public tender (concession not awarded)
 - Rescission, waiver and abandonment of the contract area
 - Need to attach adjacent area to the same concession

- Petroleum resources, being natural resources, located in the soil, subsoil, interior waters, territorial sea, in the continental platform and in the Exclusive Economic Zone is property of the State of the Republic of Mozambique.

- The State (ENH) reserves the right to participate in any phase of the Petroleum Operations

- »»» terms and conditions established by Concession Contracts

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Eligibility: »»» Mozambican and foreign persons, whether natural or collective

Preference right: »»» Joint ventures with Mozambican entities

Note: The draft of the new Act establishes that only legal persons, whether Mozambicans or foreigners, duly registered in Mozambique will be allowed to tender for a Concession Contract.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

The Mozambican Petroleum Act establishes the following types of Concession Contracts:

Reconnaissance/Recognition

- »»» grants the exclusive right to conduct preliminary research work and assessment operations in the area of the contract through air-borne, terrestrial and other surveys including geophysical, geo-chemical, paleontological, geological and topographical studies.

- »»» maximum period of two years, and, allows the drilling of wells up to a depth of one hundred meters below the surface or the bottom of the sea.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Exploration and Production

- »»» It grants an exclusive right to conduct Petroleum Explorations and Production as well as the non-exclusive right to construct and operate Oil or Gas Pipelines for the purposes of transporting Crude Oil or Natural Gas produced from the Contract Area, except where access to an existing Oil or Gas Pipeline System is available on reasonable commercial terms.

- »»» maximum period: eight years, except if additional time is required to complete the assessment operation of a Discovery.

Note: The draft of the new Petroleum Act establish that this exclusive right shall not exceed ten years instead of the previous eight.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Oil and Gas Pipeline

- »»» It grants the right to construct and operate an Oil or Gas Pipeline for purposes of transporting Crude Oil or Natural Gas in those cases that such are not covered by an Exploration and Production Concession Contract.

Note: The draft new Act sets forth one new type of Concession contract - Concession Contract to Construct and Operate Infrastructures.

A Concession Contract for the Construction and Operation of Petroleum Infrastructure confers a right to construct and operate infrastructure for petroleum operations, such as processing and conversion (LNG).

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Contractual Validity:»»» 30 years from the date of approval of the Development Plan

➤ **Termination of a Concession Contract (causes)**

Total relinquishment of the Contract Area

»»» Waiver of rights by the titleholder (before initiation of commercial production) subject to a request for relinquishment submitted to the Regulator at least three months prior to the expiry term of the Concession Contract.

Or

»»» in case of commercial production, request must be submitted at least one year prior to the date of relinquishment.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Termination

- »»» By titleholder and subject to prior notice submitted to the Regulator. The Minister shall then issue the declaration of termination.

- »»» By the State:
 - i. Deviation from the object of the concession;
 - ii. Bankruptcy of the concession holder;
 - iii. Non-compliance with laws and regulations applicable to Petroleum Operations
 - iv. Serious violation of contractual provisions and faulty violation of the duties of the Operator;
 - v. Long interruption of the operations for motives imputable to the Operator; and
 - vi. Other reasons established in the Concession Contracts.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Abandonment of the Contract Area

- »»»» Whenever the titleholder stops carrying out Petroleum Operations without justification, for a minimum period of three months
- ❖ In case of termination of a Concession Contract, all assets allocated to the operations shall revert to the State free of charge.

Concurrence of Rights

The granting of rights to conduct Survey, Exploration and Production activities, construction and operations of Oil or Gas Pipelines is not, as a general rule, incompatible with prior or subsequent granting of rights concerning other natural resources. However, should there be any incompatibility taking place, the ministers responsible over such conflicting activities will jointly decide upon which right shall prevail in accordance with the national interest.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

➤ *Unitization of Rights*

If a Petroleum Deposit is partially located in one Contract Area and partially in another Contract Area, the approval of the Development Plan of such Petroleum Deposit will be subject to the execution of a “Unitization Agreement” by and between the Operators.

➤ *Requirements and Obligations of an Operator*

❖ **General requirements**

- ✓ Adequate skills and experience in Petroleum Operations;
- ✓ Technical and operating skills supported by research and development capability;
- ✓ Proven development and project management experience; and
- ✓ Efficient organizational structure.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

The general duties

- ✓ Establish safety objectives and acceptable criteria for risk assessment;
- ✓ Keep the INP informed on the status of the operations;
- ✓ Involve its personnel in the development and update of the Management System of the operation;
- ✓ Pay compensation for damages, servitudes and exploration rights;
- ✓ Comply with all applicable regulations to Petroleum Operations; and
- ✓ Pay the required fees to the INP.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Specific duties (concerning planning and evaluations)

- »»»» Plans to be submitted to the Minister of Mineral Resources
- ✓ Exploration Activities Plan to be drafted in liaison with the INP and to be submitted at least five weeks prior to the date of initiation of each activity.
 - ✓ Notification of a discovery to INP, within twenty four hours, of any discovery and keep it informed on the results and tests carried out for its assessment - Evaluation Report.
 - ✓ Commercial Declaration submitted to the Minister of Mineral Resources within a year of presenting the Evaluation Report, if the oil wells which covered part of the discovery may be commercially developed.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

- ✓ Development Plan shall be submitted to the Minister of Mineral Resources within two years, counting from date of submission of the Commercial Declaration.
- ✓ Oil or Gas Pipeline Development Plan shall accompany the respective Concession Contract to be approved by the Government of Mozambique.
- ✓ Decommissioning Plan to be drafted in liaison with the INP and to be submitted at least two years prior to the date of termination of production operations.

REGULATORY APPROVALS AND LOCAL CONTENT

OIL & GAS REGULATORY

Insurance Matters

The Operator shall procure to be covered with adequate insurance policies according to the Mozambican legislation and such policies shall provide coverage for the following risks:

- ✓ Damage to facilities;
- ✓ Damage caused by pollution;
- ✓ Third party liability;
- ✓ Removal of scrap and clean up after accidents;
- ✓ Labor insurance for the Operator's employees involved in the operations.

REGULATORY APPROVALS AND LOCAL CONTENT

PETROCHEMICAL SECTOR

Sector governed by recent and specific regulations (from 2012).

Petrochemical plant »»»

Production Licence:

Manufacture process of oil products, including oil refinery and re-processing of petroleum products for commercial purposes

Licensing (Production Licence) of Plants and Activity:

Large scale – with capacity of at least 10m m³ per year

Small scale – with capacity of up to 10m m³ per year

Company may hold other types of licences (i.e. distribution, storage).

Exception: Holders of distribution licence cannot operate in the retail market.

REGULATORY APPROVALS AND LOCAL CONTENT

PETROCHEMICAL SECTOR

Requirements:

- ✓ Company registered under Mozambican Law
- ✓ Company was not sanctioned by the State for lack of compliance with the rules in force for the sector (preceding 5 years)
- ✓ Company has filed or been declared bankruptcy / insolvency
- ✓ Company's constitutional and tax registration document
- ✓ Identification document of Company's legal representative
- ✓ Detailed description of the production process
- ✓ Designation of products and respective production capacity
- ✓ Drawings of the location of the plant.

REGULATORY APPROVALS AND LOCAL CONTENT

PETROCHEMICAL SECTOR

Denial of the application may occur in the following scenarios:

- Lack of compliance with the legal requirements (above stated)
- Applicant has provided false statements and/or has omitted relevant info
- If granting of the licence may:
 - i. Affect or impair the existence of a fair and competitive market of petroleum products trade
 - ii. Imply, allow or reinforce a dominant position of the applicant in the market place, prejudicing the public interests (i.e. market share above 30%)

REGULATORY APPROVALS AND LOCAL CONTENT

PETROCHEMICAL SECTOR

Validity: »»» unlimited

Transfers: »»» subject to approval from the Regulator

Exception: »»» distribution licence

Commencement of activity: »»» within 2 years and subject to:

- Prior inspection of installations and equipment and registration thereof
- Compliance with environmental regulations
- Vehicles used in transportation of petroleum products are also subject to inspection and registration by the Regulator.

REGULATORY APPROVALS AND LOCAL CONTENT

STATE PARTICIPATION / RESERVATION RIGHTS

Under the terms and conditions to be established by contract, according to the Petroleum: Law

- ✓ the State reserves the right to participate in petroleum operations in which it is involved any legal entity, and the participation of the State can occur at any stage of the petroleum operations or in the construction and operation of oil pipeline or gas pipeline.

In accordance with PPP, PGD & CE:

- ✓ the financial benefits of PPP ventures, PGD and CE must ensure a participation reserved for disposal in the share capital of the venture or consortium, of the State or another public entity, expressed as a percentage of not less than 5% and not more than 20% of the capital.

C. PUBLIC RELATIONS MANAGEMENT / LOBBYING – TRANSPARENCY AND CORRUPTION ISSUES



PUBLIC RELATIONS MANAGEMENT

PUBLIC RELATIONS

Relevant aspects:

- Know the market;
- Know the local players;
- Institutional relations with: public entities, embassies; commercial and international organisations; Confederação das Associações Económicas de **Mozambique (CTA)**;
- The importance of having a local partner;
- Local representative based in Mozambique (if possible);
- The importance of being advised and assisted by a local law firm;
- The corruption problem.

PUBLIC RELATIONS MANAGEMENT

CORRUPTION

Various forms - certain behaviour of fact or its simple promise or an omission whose specificity is crime in light of the relevant legislation. To occur it is necessary that one of the parties involved is a public employee or public agent and that its form of action consists in receiving benefits (by themselves or through an intermediary), with their consent, to commit an act that fits within their functions.

a) **Constituent elements of the Crime of Corruption**

- action or omission;
- licit or illicit act;
- pursued by and employee or agent of the State;
- while acting in that quality;
- motivated by a compensation for their own or third party.

PUBLIC RELATIONS MANAGEMENT

CORRUPTION

b) Types of corruption

- i. **Passive corruption for unlawful act:** represents the situation where an employee or agent of the State requests or accepts, for himself or through an intermediary, patrimonial advantage or the promise of granting patrimonial or non-patrimonial advantage, for himself or for third party to perform any act or omit their practice, since such action would be contrary to the duties of his Office.

Punished with a penalty of 2 to 8 years imprisonment and a fine corresponding to 1 year if the act committed is unfair; and suspension of 1 to 3 years if the unjust act does not occur.

PUBLIC RELATIONS MANAGEMENT

CORRUPTION

- ii. **Passive corruption for lawful act:** employee or agent of the State requests or accepts, for himself or through an intermediary, patrimonial advantage or the promise of pecuniary and non-pecuniary advantage, for himself or for third parties, for any act or omission not contrary to the duties of the position. Is punishable by imprisonment up to 1 year and a fine up to 2 months, in accordance with article 8 of the anti-corruption Law.

- ii. **Active corruption:** the situation in which any person, which by themselves or through an intermediary, gives or promises the employee, or the third, with the knowledge that, patrimonial or non-patrimonial advantage that this is not due, whether for the practice of a licit or illicit act. Is punished with a penalty of 2 to 8 years of prison in attention to article 318 of the Penal Code; prison until 1 year in accordance with article 9 of the anti-corruption Law and fine up to 2 months in attention to article 8 of the same law.

PUBLIC RELATIONS MANAGEMENT

CORRUPTION

c) Anti-corruption Clause

In accordance with article 6 of the anti-corruption Law, in cases where a party, weather the State, local authorities or other legal persons governed by public law, it is mandatory to include an anti-corruption clause in which the parties undertake not to provide, directly or indirectly, benefits to third parties, nor request, promise or accept for their own benefit or for hire or reward, offers with the purpose of obtaining a favourable judgment on the services to be provided.

The omission of the anti-corruption clause makes the contract void and of no legal effect.

PUBLIC RELATIONS MANAGEMENT

CORRUPTION

d) Central Office for fighting corruption (GCCC)

Public institution created within the Office of Attorney-General of the Republic and subordinated to the Prosecutor-General of the Republic, whose powers are to: conduct inquiries and investigations into complaints, where indications of crimes of corruption; promote preparatory instruction and request documents, information, extracts from accounts, records and other data of suspicious person; order the detention of persons indicted; promote the conduct of searches and diligence; enjoy free access to the institutions of public administration.

PUBLIC RELATIONS MANAGEMENT

CORRUPTION

(e) International Rules against Corruption applicable in Mozambique

The International Treaties or Conventions against Corruption applicable in Mozambique are:

- (i) UN Convention against Corruption from 2004, ratified by the Republic of Mozambique on April 26th, 2006, under Resolution n.º 31/2006 of 26th December;
- (ii) The AU Convention on Preventing and Combating Corruption from 2003, ratified by the Republic of Mozambique on April 26th, 2006, under Resolution n.º 30/2006 of 2nd August;
- (iii) SADC Protocol against Corruption from 2001, ratified by the Republic of Mozambique on June 30th, 2004, under Resolution n.º 33/2004 of 9th July; (iv) Agreement on the establishment of the International Anti-Corruption Academy as an International Organization signed in Viena in 2010, ratified by the Republic of Mozambique on February 19th, 2013, under Resolution n.º 64/2013 of 7th August.

D. TAX OBLIGATIONS



TAX OBLIGATIONS

SUMMARIZED SYSTEM

D. Tax Obligations:

1. Tax matters: from a Corporate Tax Perspective;
2. Tax Incentives under the current oil & gas tax regulations;
3. Taxation of capital gains;
4. DTA between Mozambique and South Africa.

TAX OBLIGATIONS

SUMMARIZED SYSTEM

National Taxes:

Direct:

1. *Corporate Income Tax:*
 - Rates:
 - ✓ Normal: 32%
 - ✓ Non documented, confidential or illicit expenses: 35%
 - ✓ Withholding tax: 20% (DTA's apply)

2. *Individual Income Tax:*
 - Rates: ranging from 10% to 32%

TAX OBLIGATIONS

SUMMARIZED SYSTEM

Indirect:

1. *VAT:*
 - Rate: 17%
2. *Custom Duties:*
 - Rates: according to the Customs Tariff Book
3. *Excise Tax:*
 - Rates: according to the schedule approved by law
4. *Stamp Duty:*
 - Rates: according to schedule approved by law (varies according to the transaction and/or documents involved)

TAX OBLIGATIONS

SUMMARIZED SYSTEM

Municipal:

- a) *Personal Municipal Tax (IPA):*
 - Rates: established on a yearly basis by each Municipality

- b) *Real Estate Municipal Tax:*
 - Rates: established on a yearly basis by each Municipality (vary between 0.4% and 7%)

- c) *Economic Activity Levy:*
 - Rates: established on a yearly basis by each Municipality (cannot exceed twenty times the minimum wage)

TAX OBLIGATIONS

SUMMARIZED SYSTEM

Municipal:

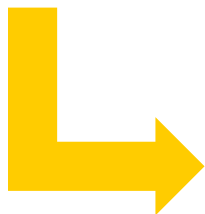
- d) *Vehicles Municipal Tax:*
 - Rates: established by Law (vary according to the type of vehicle, fuel used and year of production)

- e) *Property Transfer Tax (SISA):*
 - Rate: 2% upon the value of the sale value

TAX OBLIGATIONS

TAX MATTERS: FROM A CORPORATE TAX PERSPECTIVE

Rates:



- General: 32%
- Additional: 35%
- WHT: 10% - 20%

TAX OBLIGATIONS

TAX INCENTIVES UNDER THE CURRENT OIL & GAS TAX REGULATIONS

- **Exemption from import duties** related to the importation of equipment for use in Petroleum Operations classified as Class K of the Tariff Book and some other specific equipment established by law;
- **Exemption of VAT and excise duties** on such imports.

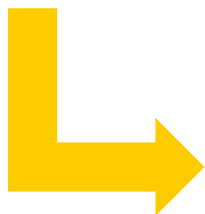
Conditions to qualify:

- Be holder of a Concession Contract;
- Have organized accounts;
- Be properly registered for tax purposes; and
- Have not incurred in any tax violations.

TAX OBLIGATIONS

TAXATION OF CAPITAL GAINS

Incidence:



Income received by non-resident entities imputable to entities with fiscal residence in Mozambique (i.e. transfer of equity or shareholding participations of entities registered in Mozambique).


The **capital gain** = balance between the realization value and the acquisition value of the shareholding participations;

TAX OBLIGATIONS

TAXATION OF CAPITAL GAINS

Where:

- a) the realization value is the consideration paid by the purchaser for such acquisition; and
- b) the acquisition value is the consideration paid by the seller when it first acquired such participation from a previous third party.

Balance  only considered in between **75% and 30%** (depending on period equity was held)

Capital gain taxed at **32%**.

TAX OBLIGATIONS

DTA BETWEEN MOZAMBIQUE AND SOUTH AFRICA (AND OTHER JURISDICTIONS)

| Jurisdiction / Rates | Dividends | Interests | Royalties | Consultancy Fees | Profits | Capital Gains |
|----------------------|---|-----------|-----------|------------------|----------------------|----------------------|
| Mauritius | 8% if beneficiary holds less than 25% of equity | 8% | 5% | NA | In country of origin | In country of origin |
| | 10% if beneficiary holds at least 25% of equity | | | | | |
| | 15% in all other cases | | | | | |
| Italy | 15% | 10% | 10% | NA | In country of origin | In country of origin |

TAX OBLIGATIONS

| Jurisdiction / Rates | Dividends | Interests | Royalties | Consultancy Fees | Profits | Capital Gains |
|----------------------|--|--|-----------|------------------|----------------------|----------------------|
| UAE | In country to which dividends are paid | In country to which interests are paid | 5% | NA | In country of origin | In country of origin |
| Portugal | 10% | 10% | 10% | NA | In country of origin | In country of origin |
| Macau | 10% | 10% | 10% | 10% | In country of origin | In country of origin |
| South Africa | 8% if beneficiary holds at least 25% of equity 15% in all other cases | 8% | 5% | NA | In country of origin | In country of origin |

TAX OBLIGATIONS

| Jurisdiction / Rates | Dividends | Interests | Royalties | Consultancy Fees | Profits | Capital Gains |
|----------------------|--|-----------|-----------|------------------|----------------------|----------------------|
| India | 7,5% | 10% | 10% | NA | In country of origin | In country of origin |
| Botswana | 0% if beneficiary holds at least 25% of equity 12% in all other cases | 10% | 10% | NA | In country of origin | In country of origin |
| Vietnam | 10% | 10% | 10% | 10% | In country of origin | In country of origin |

E. LAND RIGHTS



LAND RIGHTS

LAND RIGHTS

E. Land Rights:

1. Acquisition of Land Rights (DUAT) and Property Matters;
2. Distinction between Ownership of Buildings (property) and Land Rights (DUAT);
3. Third party access rights for related infrastructure

LAND RIGHTS

LEGAL FRAMEWORK OF THE RIGHT OF USE AND BENEFIT OF LAND

The **Mozambique Constitution of the Republic** establishes the ownership of land by the State and establishes the need to determine the conditions of use and exploitation of land by individuals and legal entities.

The **Land Law** defines the terms to establish, use, alter, transfer and extinguish the right of use and benefit of land.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

a) Ownership of Land

Land is owned by the State and this right is exclusive, restricting all ownership rights over land.

The land cannot therefore be sold, transferred, mortgaged or charged.

The right to use and benefit from the land (“*Direito de Uso e Aproveitamento da Terra*”, so-called “DUAT”) is understood as the right that national or foreign individuals and companies and local communities acquire over the land subject to the demands and restrictions imposed by land legislation.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

Foreign individuals can hold DUAT rights:

- ✓ if they have resided in Mozambique for at least five years;
- ✓ if they have an approved investment project by CPI/GAZEDA.

Foreign companies also can hold DUAT rights:

- ✓ if they have an investment project duly approved by CPI/GAZEDA
- ✓ if they are incorporated or registered in Mozambique.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

b) Establishment of the DUAT

The DUAT can be acquired in one of the following ways:

(i) Occupation:

- ✓ *Is the mechanism for the acquisition of the DUAT by **Mozambican individuals and local communities under customary rules and practices**, insofar as they do not go against the Constitution of the Republic of Mozambique, and by **Mozambican individuals who have been using the land in good faith for at least 10 years.***

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

(ii) Authorisation:

- ✓ The means of acquisition of the DUAT by Mozambican individuals and legal entities (that do not meet the requirements to acquire the DUAT by occupation) and also by foreign individuals and legal entities, taking into account the social or economic objective of land use.

The DUAT is:

- ✓ Granted outside areas in the public domain.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

The Special Licenses:

- ✓ are granted for certain economic activities in areas in the public domain, located in total or partial protection zones. The DUAT cannot be acquired in partial or total protection zones.

The Total protection zones are areas intended for nature conservation or preservation activities and areas for State defence and security.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

c) DUAT Authorization Process

The process of granting the DUAT follows these steps:

i. Provisional authorization:

- ✓ Upon submission of a request for use and benefit of the land a provisional authorization is issued for a period of **5 years for Mozambican entities** and of **2 years to foreign entities**.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

During the provisional period the DUAT may be terminated:

- ✓ by failure to fulfil the exploration plan or investment project without justifiable reasons within the time limits established in the application approval, even if tax obligations are being complied with;
- ✓ by revocation of the right of use and benefit of land for reasons of public interest, preceded by payment of fair indemnification and/or compensation;
- ✓ by waiver of title holder.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

ii. *Full Authorisation:*

- ✓ Once the provisional authorisation period has elapsed or even before if the interested party requests it, the land will be inspected to confirm that the proposed undertaking has been carried out or for compliance with the exploration plan, according to the approved schedule.

The DUAT may come to an end as a result of:

- ✓ Revocation of the DUAT for public interest reasons, preceded by payment of a fair indemnity and/or compensation;
- ✓ The end of its initial or renovation period;
- ✓ Waiver by the holder.

It should be noted that, if the DUAT is terminated, any non-removable improvements on the land revert to the State.

LAND RIGHTS

ACQUISITION OF LAND RIGHTS (“DUAT”) AND PROPERTY MATTERS

d) Duration of DUAT rights:

- The right of use and benefit of land for economic activities is granted for a maximum term of 50 years.
- The period is renewable after 50 years for an equal period and a new application must be made for the DUAT to be granted. It should be noted that the application for the renewal of the DUAT must be presented at least 12 months before the end of the period established in the DUAT definitive authorisation document. If the application is presented outside this period, the applicant will have to pay a fine.

LAND RIGHTS

DISTINCTION BETWEEN OWNERSHIP OF BUILDINGS (PROPERTY) AND LAND RIGHTS (“DUAT”)

- The land belongs to the state;
- The titleholder of the right of land use and benefit is owner of the infrastructures, structures and improvements existing on said land;
- The titleholder of the right of land use and benefit may:
 - constitute mortgages over the immovable assets and improvements, as long as such have been dully authorized or over which the ownership right was legally acquired;
 - transfer the immovable assets existing on said land by mean sale and purchase public deed.

DISTINCTION BETWEEN OWNERSHIP OF BUILDINGS (PROPERTY) AND LAND RIGHTS (“DUAT”)

LAND RIGHTS

The DUAT rights may be transferred in two ways:

- ✓ transfer by means of the purchase and sale of infrastructures, buildings and improvements on the authorised land.
- ✓ by inheritance.

The purchase and sale of infrastructures, buildings and improvements on parcels of land (the soil and buildings thereon are not economically independent but function as a support for exploiting the earth and the source of income derives mainly from the earth itself) does not imply an automatic transfer of the DUAT, which is dependent on the authorisation of the same body which authorised it initially.

In the case of built-up land (a building is affixed to the soil and the land around it and the source of income derives mainly from the existing constructions and not from the land itself), the DUAT rights are transferred with the transfer of the property itself and do not require the prior authorisation of the state

LAND RIGHTS

THIRD PARTY ACCESS RIGHTS FOR RELATED INFRASTRUCTURE

The third party may access:

- ✓ immovable assets existing on said land;
- ✓ right of land use and benefit of the respective land (transfer of the immovable property includes the transfer of the right of land use and benefit of the respective land).


F. PROJECT FINANCE / RELEVANT FINANCING ASPECTS



PROJECT FINANCE / RELEVANT FINANCING ASPECTS

FINANCE ASPECTS


Project Finance / Relevant Financing Aspects:

- 
- Security not allowed over land and/or natural resources (property of the State)
 - Old and outdated laws pertaining registration of assets »»» consequential to registration of securities
 - Lengthy process for registration of assets and any securities constituted upon them
 - Debt to equity ratio
 - Shareholders loans interest free (preferably)
 - Ability to contract foreign loans and insurance

PROJECT FINANCE / RELEVANT FINANCING ASPECTS




FINANCE ASPECTS

Project Finance / Relevant Financing Aspects (cont.):

- 
- Ability to subject loan agreements to foreign laws and foreign courts
 - Securities/guarantees located in national territory subject to Mozambican laws
 - Judicial system efficient in enforcing security over assets located in Mozambique
 - Judicial system not efficient when dealing with foreign rulings (except from countries who have adopted the New York Convention of 10 June 1958 on the Recognition and Enforcement of Foreign Arbitral Awards)

FINANCE ASPECTS

PROJECT FINANCE / RELEVANT FINANCING ASPECTS

- Cure and step-in-rights:
 - Not foreseen under Mozambican laws
 - Usually seen in foreign contracts
 - Not usually seen in local contracts
 - Expected restriction to its application in terms of assets object of a concession contract.
- Knowledge and compliance with – strict - exchange controls regulations
Prior approval  Registration  Forex transactions
- Knowledge and compliance with the tax laws (inter-connected with the exchange controls)
DTAs existing with 9 jurisdictions  Non-direct implementation of the DTAs

G. GENERAL: GOVERNING LAW REQUIREMENTS - INT. ARBITRATION



GENERAL

GOVERNING LAW REQUIREMENTS

- Possibility for the parties to choose a foreign law to regulate the matters of the contract as well as the dispute submitted to arbitration.
- Limitation »»»» imposed by the Arbitration Law regarding the respect for morality and public order of Mozambique, »»»» the parties may freely choose the rules of law that shall apply to the arbitration, provided that there is no violation of morality and the principles of public order of Mozambique.
- Parties are allowed to choose ICC arbitration outside Mozambique with applicable law not being the law of Mozambique.

GENERAL

ARBITRATION

Arbitration »»»» one of the alternative forms of dispute resolution in Mozambique.

Upon prior agreement between the parties, the dispute may be dealt with under :

- i. the rules of the Washington Convention of 15 March 1965 (which establishes the rules on the resolution of disputes over investments between states and national of other states) or
- ii. the Additional Facility Rules approved on 27 September 1978 by the board of the International Centre for the Settlement of Investment Disputes, if the foreign entity does not meet the nationality requirements set out under article 25 of the Washington Convention, or
- iii. the arbitration rules of the International Chamber of Commerce.

ARBITRATION

GENERAL

a) Arbitration Agreements

Parties in contracts are authorized to include arbitration agreements where, in relation to matters specifically, the law does not prohibit arbitration.

b) Arbitrators

Individuals, older than 21 years and with full legal capacity. Parties may choose a single arbitrator or an arbitral committee with more than one arbitrator. In case of multiple arbitrators, they shall be in an odd number.

GENERAL

ARBITRATION

c) Procedure

Begins with the submission of the request to the arbitrator or arbitral committee. The parties may freely choose the rules of arbitration and the place of arbitration. If the parties do not choose the place and rules of the arbitration, the arbitrators will make this choice.

d) Evidence

The parties may also stipulate the value to be attributed to the evidence presented and produced during the arbitration proceeding. The evidence admitted in civil proceedings is also admitted in the arbitration (witnesses, documents, third parties experts and inspection).

ARBITRATION

e) Confidentiality

Arbitrators are subject to duties of confidentiality regarding all aspects related to the arbitration proceeding in which they are assigned.

f) Courts and Arbitration

The judicial courts enforce the arbitration decisions at the request of the interested party through the fulfilment of certain formalities such as deposit of the final sentence of the arbitration committee in the judicial court of the place of arbitration, after the arbitration decision is made. Judicial courts do not interfere in the work of the arbitrators.

GENERAL

ARBITRATION

g) Remedies

The decision is made according to the law that has been chosen by the parties, on condition that no violation of principles of morality and public order of Mozambican law derives from the choice of the parties. The decision must be fulfilled as if it was a public court decision.

h) Appeals

The decisions of arbitral committees can be objected by appeal to the judicial courts. The appeals may only be submitted in case that one of the parties intends to attain the annulment of the judgment. The appeals suspend the enforcement of the decision.

GENERAL

ARBITRATION

i) Costs

The costs of the arbitration, including the remuneration of the arbitrators shall be fixed by the parties. The costs include the fees and expenses of the arbitrators, the administrative costs and the cost of production of evidence. The administrative costs as well as the costs of production of evidence shall be determined by their actual cost.

j) Enforcement

The arbitration decision has the same effect that the decision of the judicial courts. However, to allow the enforcement, the arbitral sentence must be deposited in the judicial court of the place of arbitration unless the parties have agreed in writing to renounce the deposit.

ARBITRATION

k) Main Arbitration Organizations

The Maputo Centre for Arbitration, Conciliation and Mediation for legal and commercial issues in general, and the Commission for Employment Mediation and Arbitration for issues of employment law.

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