

GLM  
Global Vision, Local Experience  
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## THE REAL ESTATE AND CONSTRUCTION SECTORS IN MOZAMBIQUE



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The real estate sector is among the most important in Mozambique and enjoys incentives from the State.

Access to land is crucial to investment in this sector. As land in Mozambique is the property of the State and, for this reason, cannot be sold, mortgaged or charged, besides occupation, the only vehicles the law provides for access to land are the right to use and benefit from land - Direito de Uso and Aproveitamento da Terra (“DUAT”) or Special Licences. The latter are only granted for certain economic activities in areas in the public domain (with partial or full protection). The DUAT is granted, outside areas in the public domain, to domestic<sup>1</sup> and foreign<sup>2</sup> individuals and companies, taking into account the social or economic objective.

In granting the DUAT, the State recognises and protects the rights acquired through inheritance or occupation, except where there is a legal reservation or the land has been legally allocated to another person.

The establishment, alteration, transfer and cancellation of the DUAT are subject to registration at the national land registry<sup>3</sup>

<sup>1</sup> Mozambican individuals or companies may obtain the DUAT, individually or together with other individuals or companies as co-holders of the licence.

<sup>2</sup> Foreign individuals or companies may hold the DUAT as long as they have a duly approved investment and comply with the following conditions: if they are individuals, they must have been resident in Mozambique for at least five years; if they are companies, as long as they were incorporated or are registered in Mozambique. Foreign companies are those companies or other institutions with a share capital of which more than 50% is held by foreign citizens, companies or institutions.

and definitive authorisation is granted for a period of 50 years. This may be renewed for a further 50-year period once the provisional authorisation period and/or the land use plan and the request of the interested party have been complied with.

It is under this law that people can qualify to develop real estate projects in Mozambique for a full range of uses.

Although we have witnessed an increase in the development of real estate projects, the shortage of adequate housing is a problem in Mozambique. This is due to a number of factors such as the lack of plots with infrastructures or even the lack of land that has been subdivided, which lead to disorganised and insecure occupation. The shortage also results from the high cost of construction for adequate housing and the low income of most Mozambican families which makes access to housing credit difficult.

The Constitution of the Republic enshrines the right to adequate housing as a constitutional right of all citizens, and it is the responsibility of the State to create the institutional, regulatory and infrastructure conditions to ensure that citizens enjoy this right. It also falls to the State to promote and support the initiatives of communities, local authorities and their citizens, in order to stimulate private and cooperative construction as well as access to their own home. It was in this context that the housing policy and strategy was approved as an important tool to boost the housing construction industry.

<sup>3</sup> *Conservatória do Registo Predial e do Cadastro Nacional de Terras* 50% is held by foreign citizens, companies or institutions.

Citizens may build their housing with their own resources or by means of bank financing although the conditions for access to housing credit remain unsatisfactory for the majority of Mozambican citizens whose incomes are limited to the minimum salary. Besides construction, it is possible to have access to housing by buying existing buildings that belong to the private sector or to the State.

The buildings that form part of the State's real estate assets were rented out to Mozambican citizens and to foreigners and have come to be transferred only to Mozambican citizens in a legal contractual situation, with only tenants of the State benefitting. Other citizens have to turn to construction to deal with their housing problems.

The construction sector has recently seen updates to the applicable legislation. However, important pieces of legislation remain in force that date back to colonial times, as is the case with the general law on urban building (*Regime Geral das Edificações Urbanas*) and the regulations of reinforced concrete structures (*Regulamento de Estruturas de Betão Armado*).

In accordance with the legislation currently in force, the activity of public works contracting and civil construction contracting requires a licence authorised by the Ministry of Public Works and Housing and issued by the Commission for Registration and Licensing of Contractors. Public works contractors are licensed to carry works construction, rebuilding, large-scale repairs or adaptation of buildings for the State, while civil construction contractors carry out works for private entities.

Public works contractors may also carry out private work but the reverse is not always possible.

The conditions for granting the licence depend on whether it is a Mozambican<sup>4</sup> or foreign<sup>5</sup> contractor. Foreign contractors must meet the following requirements: (i) operate in Mozambique with authorisation to carry out public works; and (ii) have been operating legally in Mozambique as a civil construction contractor for at least 10 years as a company incorporated in Mozambique or a branch or subsidiary of a foreign civil construction contractor.

The licence or temporary exercise of public works will only be granted to foreign contractors to whom a public works project has been awarded through an international process or under reciprocal government agreements in the area of civil construction contracting, or even to contractors authorised abroad that come to operate in Mozambique as the sub-contractors of a contractor licensed in Mozambique.

In addition to those requirements, there are others such as reputation technical capacity (permanent technical staff, track record of the company and its technical staff authorised to work in Mozambique) and economic and financial capacity - (value of share capital for companies / assets for firms in the name of an individual).

In light of the current social and political stability of the country, it is clear that private investment plays and will play a crucial role in the development of the Mozambican economy over coming years and partnership with Mozambican entrepreneurs is one of the most efficient ways of making the investment.

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This newsletter was prepared with the collaboration of a multidisciplinary team made up of Mozambican lawyers from GLM – Gabinete Legal Moçambique and Portuguese lawyers from PLMJ, under an international cooperation agreement and as members of PLMJ International Legal Network, working in strict compliance with applicable rules of professional ethics.

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<sup>4</sup> Individual/company in the name of an individual belonging to a Mozambican citizen / Company under Mozambican law with registered office in Mozambique in which at least 50% of the share capital is held by a Mozambican individual or company

<sup>5</sup> Company in the name of an individual not belonging to a Mozambican citizen / Companies or commercial representations that have been set up abroad / Companies under Mozambican law in which more than 50% of the share capital is held by foreigners.