



GLM
Global Vision, Local Experience
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MOZAMBIQUE - THE DIFFERENT FORMS OF BUSINESS ESTABLISHMENT

Decree-Law 2/2005 of 27 December, which approved the Mozambican Commercial Code, makes it possible for Mozambican or foreign individuals or clients to set up business in Mozambique in one of six different ways: (i) general partnership (*Sociedade em Nome Colectivo*); (ii) limited partnership (*Sociedade em Comandita*); (iii) capital and industry partnership (*Sociedade de Capital e Indústria*); (iv) quota company (*Sociedade por Quotas*); (v) single person quota company (*Sociedade Unipessoal por Quotas*) and (vi) share company (*Sociedade Anónima*).

Foreign investors that wish to carry on a commercial activity in Mozambique may choose between a range of commercial vehicles such as the company types listed above and other forms of commercial representation including branches in the form of agencies or delegations.

As a general rule, investors tend of to establish their business by setting up a 'quota company' (*Sociedade por Quotas*) or a 'share company' (*Sociedade Anónima*), or by registering one of the types of foreign commercial representation listed above.

QUOTA COMPANIES

Limited liability quota companies (*Sociedades por Quotas de Responsabilidade Limitada*) – which are similar in nature to UK private

limited companies – must be held by a minimum of two quota holders and a maximum of thirty. The only exception to this is the single person quota company (*Sociedade Unipessoal por Quotas*) which may be set up by a single quota holder who must be a private individual.

The name of the quota company must be composed of the name of some or all of the quota holders, by a specific name or by a combination of both. In any case it must be followed by the word *Limitada* (Limited) and this word may appear in full or as the abbreviation *Lda*.

The quota holders may set the capital at a level that is adequate for the company to carry on its activity as the law does not establish a minimum. The capital must correspond to the sum of the nominal values of the each of the quotas and must be expressed in the Mozambican currency (the Metical/ MZN).

The names of the quota holders in this type of company must expressly appear in the articles of association, in the commercial certificate and in any subsequent agreement made or resolution passed.

In this type of company the liability of the quota holders is limited to the value to which each of them has subscribed and the liability of the company towards its creditors is limited to the assets of the company alone.



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Detail
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The corporate bodies of the quota company are the general assembly (the decision-making body) and the board of directors (the management body). The quota holders may also establish an audit committee or appoint a sole auditor and, if it does so, it must observe the requirements laid down in the rules for share companies (*Sociedades Anónimas*).

All the quota holders must attend the general meetings and, as a general rule and in the absence of any provision to the contrary, resolutions are by a simple majority of the votes cast by the quota holders present at the meeting.

The company is managed by one or more directors who may be from outside the company. The duties of the directors come to an end upon dismissal or resignation without prejudice to the provisions of the articles of association or the provisions of the appointment of the director.

SHARE COMPANIES

The share company (*Sociedade Anónima*) (SA), – which is similar in nature to the UK public limited company – is the form that is usually adopted

by larger companies. Its essential characteristic is a more complex organic structure and that fact that dealing with the share capital is more flexible because there are no special formalities for the transfer of shares.

Share companies must have at least three shareholders who may be Mozambican or foreign individuals or legal entities. There is an exception when the State, directly or through a state company or legally equivalent entity, is a shareholder, in which case these entities may be the sole shareholder. The liability of shareholders towards third parties is limited by the value of the shares to which they have subscribed.

Companies that wish to set up in Mozambique must bear in mind that the value of the share capital must always be adequate to achieving the corporate object and must always be expressed in the Mozambican currency. Commercial law does not establish a minimum for the share capital.

In this type of company, the capital is represented by nominative or bearer shares and the nominative shares may be book-entry or registered. The share company will only be incorporated when the whole of its share capital has

been subscribed and at least 25% has been paid up.

The corporate bodies of share companies are the general assembly, the board of directors and a supervisory body/person – an audit committee or a sole auditor.

Management is done by one or more directors who may be from outside the company. If the share capital of the company does not exceed MZN 500 000 (approximately USD 17 000 at 11.01.2013) the company may appoint a

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sole director. If a legal entity is appointed to the position of director, this entity must appoint an individual to exercise the duties of director in their own name.

As to supervision, this is done by an audit committee with 3 or 5 members or by a sole auditor that must be a registered auditor or audit company.

PROCEDURE TO SET UP A COMPANY

Regardless of the type, commercial companies must meet a set of requirements before beginning their activity, including:

- a) Approval of the name of the company and indication of the company type to be adopted. To be approved by the Mozambican Legal Entities Registry Office (*Conservatória do Registo da Entidades Legais/CREL*), upon an application being made to reserve the name;
- b) Identification document or commercial certificate for an individual or legal entity respectively, of the quota holders or shareholders that will compose the corporate structure of the company. In the case of foreign companies, the documents mentioned above must be legalised at the Mozambican Consulate in the country of origin;
- c) Resolutions approving the incorporation of the company formally passed by shareholders that are legal entities;
- d) Powers of attorney stating the name of the company to be incorporated if the future shareholders cannot travel to Mozambique to sign the documentation necessary to the process of incorporating the company;
- e) The articles of association setting out the rules that will govern the operation of the company. These must include the name of the members of the first board of directors and the audit committee (if applicable);

- f) Execution of the deed of incorporation, commercial registration and publication of the articles of association of the company;
- g) Tax registration (obtaining the single tax identification number (*Número Único de Identificação Fiscal – NUIT*));
- h) Licence for the specific activity of the company. The application for this must be filed together with a plan and detailed description of the property where the company will carry on business, as well as the respective tenancy agreement and/or assignment of the space that gives the right to occupation or the registration ownership;
- i) Declaration of Commencement of Activity (*Declaração de Início de Actividade*) which may be made at any time after receiving the business licence.

COMMERCIAL REPRESENTATION/ BRANCH

Foreign entities that wish to carry on activity of an economic nature in Mozambique through commercial representation must make an application to the «Ministério da Indústria e do Comércio» for the licencing of their branches, subsidiaries, delegations, agencies or other forms of representation that are legally established in Mozambique. The representations are authorised to carry on activity in Mozambique subject to certain time limits. For example, agencies may operate for the duration of the respective agency agreement but delegations may carry on activity for a period of three years that is renewable.

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This newsletter was prepared by a multidisciplinary team made up of mozambican lawyers from GLM – Gabinete Legal Moçambique and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.