

LICENSING OF INDUSTRIAL ACTIVITY

The conditions and procedures for licensing and carrying on industrial activities are set out in the Regulation of Licensing of Industrial Activity (*Regulamento do Licenciamento da Actividade Industrial - RLAI*), approved by Decree no. 22/2014 of 16 May¹.

Under the RLAI, industrial establishments are classified by size as large, medium small and micro establishments according to these criteria: (i) initial investment, (ii) installed power or power to be installed and (iii) number of workers. It is only necessary to meet two of the criteria set out in the table in article 4(1)² for an industrial establishment to be classified in one of the categories. When the parameters of the industrial establishment are spread between three different levels, the intermediate level applies.

In terms of location, the Regulation provides that large, medium and small industrial establishments must be located in predefined industrial zones, taking into account the risk of the activity³. Exceptionally, these establishments may be located outside industrial zones when there are no development plans or established industrial zones, and as long as there is a favourable opinion from the municipality or district in question.

Micro industrial establishments can be located in residential areas or buildings as long as there is a favourable opinion from the municipality to this effect. In this case, safety measures must be adopted and the industrial establishments must not engage in activities considered to be of risk under environmental legislation. In other words, they must not engage in activities that require an environmental impact study or a simplified environmental study.

¹ Repeals Decree no. 39/2003 of 26 November, the previous Industrial Licensing Regulation. It also repeals article 3(2)(c) and section C of the Table of Economic Activity Subject to Simplified Licensing which constitutes an annex 1, in the part relating to industrials, both of the Simplified Licensing Regulation, approved by Decree no. 5/2012 of 7 March.

² In compliance with the table inserted in article 4 of the RLAI, large industrial establishments must have an initial investment of at least MZN 300 million, installed power of at least 1000 kVA and more than 100 workers. In turn, medium establishments must have an initial investment of at least MZN 75 million, installed power of at least 500 kVA and 50 to 100 workers. Small establishments must have an initial investment of at least 750.000,00 MT, installed power of at least 10 kVA and 5 to 49 workers. Finally, micro establishments must have an initial investment below MZN 750,000, installed power below 10 kVA fewer than 5 workers.

³ Under the Regulation on The Process to Assess the Environmental Impact, approved by Decree no. 45/2008 of 29 September partially amended by Decree no. 42/2008 of 4 November, economic activities are categorised into A, B and C. The activities in category A, for example, the extractive industry, and production and manufacturing of metals, chemicals and rubber are considered to be activities with a risk to the environment and require an environmental impact study. Activities in category the B are activities that do not, in general, significantly affect the populations or environmentally sensitive areas. For this reason they are only subject to simplified environmental study. In turn, category C activities for do not normally require an environmental impact study (including a simplified study) because the negative impacts are insignificant or even non-existent.

SETTING UP AND CARRYING ON INDUSTRIAL ESTABLISHMENT ACTIVITIES

Application to set up an industrial establishment

Under the RLAI, the operation of any industrial establishment is subject to making an application to the local authority that is responsible for supervising the industry area. To do this, applicants must complete (i) a form accompanied by the (ii) industrial plan. When the applicant is a Mozambican individual, he or she must also file a copy of their identity card, passport, driving licence or voter's card. Foreign nationals must file a copy of their valid DIRE (foreign resident identification document) or temporary residence permit, which must allow them to carry on economic activity. In the case of companies or other legal entities, besides submitting the form and the industrial plan, they must also file their legal entity registration certificate (*Certidão Integral de Registo de Entidade Legal*).

Micro industrial establishments do not need authorisation to set up operations. This means they are exempt from filing the industrial plan and from the inspection. All they need to do is register in advance. However, when micro industrial establishments are engaged in the food, beverages, chemicals or pharmaceutical industry, and when their activities are subject to an environmental impact assessment, they are subject to an inspection before they can begin operations.

The decision on the authorisation to set up large, medium and small industrial establishments must be made and communicated to the applicant within 7 (seven) and 5 (five) business days, respectively, from the date of receipt of the application to set up the establishment.

The competent authority

The setting up of large industrial establishment is authorised by the Minister who supervises the area of industry, and the setting up of medium and small establishments is authorised by the Governor of the Province where the establishment is to be set up.

Micro industrial establishments do not need authorisation to be set up. The law only requires them to be registered with the local authorities and, if there are no such authorities, by the district-level entities that supervise the area of industry in question.

Dealing with applications and deadlines

The entity that supervises the area of industry on a central level has the power to deal with applications to set up large industrial establishments. However, this entity can delegate the power to deal with applications to the person responsible for the entity that supervises the industry on the provincial level. The Minister responsible for the area of industry in question has the power to authorise the setting up of the establishment and can delegate this power to the Provincial Governor.

Applications to set up medium and small industrial establishments are dealt with by the One-Stop Shops (*Balcões de Atendimento Único*). However, the executive director of the One-Stop Shop can delegate power to deal with applications to the person responsible for the entity that supervises the area of industry on the district level. The Provincial Governor for the area where the establishment is to be set up has the power to authorise the application and may delegate this power to the executive directors of the One-Stop Shops.

The company that has made the application must send all the necessary documentation to the entity that has power over the licensing decision within 10 (ten) business days at the conclusion of the inspection and within 3 (three) business days for industrial establishments not subject to inspection.

The setting up of medium and small industrial establishments is exempt from approval of the industrial plan. However, to alter or increase the size of these establishments, it is necessary to obtain approval of the industrial plan from the entity with power to grant the licence. This entity must make its decision within 12 (twelve) business days.

The decision on the authorisation to set up large, medium and small industrial establishments must be made and communicated to the applicant within 7 (seven) and 5 (five) business days, respectively, from the date of receipt of the application to set up the establishment.

In the case of large industrial establishments, the licensing entity must complete the analysis of the project, including the opinion of the inter-sector committee, within 14 (fourteen) business days of the date of authorisation, including notification to the applicant. However, this deadline can be extended for projects that, because of their specific nature or complexity, require additional steps to be taken for them to be approved. Any such extension must be mentioned in the communication to the applicant.

Setting up and inspection

Once the decision to authorise or approve an industrial project has been communicated, the applicant must begin to set up the industrial establishment within a maximum of 180 days. This period can be extended for a further 90 days upon the request of the applicant. To do this, the applicant must present the reasons for the delay and the updated plan to set up the industrial establishment. Failure to comply with these deadlines without first notifying licensing entity means the authorisation to set up industrial establishment will expire and the application process will be closed.

After concluding the setup, including the functional capacity, of large or medium industrial establishments (i) in the food, beverages, chemical or pharmaceutical industry or (ii) that engage in activities subject to an environmental impact assessment under the applicable legislation, the applicant must make a written application to the licensing entity for an inspection to take place. Industrial establishments not in either of these situations are exempt from this inspection, but they are subject to subsequent supervision.

The entity responsible for dealing with the application must, in conjunction with the inter-sector committee, manage the inspection process and ensure it is carried out within six working days of the application being made.

Once it is confirmed that the industrial establishment has been set up in accordance with the terms and conditions contained in article 17(2) of the RLAI⁴, the inspection report must be drawn up within four working days of the date of the inspection. This report must be signed by the majority of the representatives of the institutions that take part in the inter-sector committee and be approved by the licensing entity responsible for the matter. Notice of the issuance of the licence must also be given to the applicant.

Licence

Operations may only begin after the licence, which is valid for an indefinite period of time, has been issued. This licence must be issued within no more than 2 (two) of the issuance of the inspection report.

Any changes to the conditions that have been established in the licence must be communicated in advance and with proper justification to the licensing entity. The decision on the application must be communicated to the applicant within 3 (three) working days. The same rule applies to micro establishments.

The licence can be cancelled if operations have not started within 90 (ninety) days of the date the licence is issued. This period can be extended for a further 60 (sixty) days at the request of the applicant who must present the reasons for the delay in starting operations. However, the start of operations can be subject to a condition if any defect is noted in the inspection report, although one that does not affect public health and does not call into question the safety of the workers, the environment and the specific final product.

⁴ Under the terms of that legislation, the aim of the inspection is to establish the technical-functional conditions of each activity and the health and safety aspects of workplaces, as well as hygiene, comfort, public safety and safety of workers.

In these cases, the condition will be that the identified defect must be remedied within a maximum period of 90 (ninety) days, or some other shorter period to be fixed in the inspection report. The licence holder can propose a different period in cases in which it concludes it is not in a position to comply with the period established in the report. If the defect persists beyond the agreed period, the licensing entity must order whatever steps it sees fit, including the suspension of operations.

Even if the plans and the inspection of the industrial establishment are approved, if there are legal and regulatory alterations that affect the area of industry, the inspection and supervision entities may impose new requirements aimed at eliminating any problems that may have been identified. These requirements may include new processes to protect workers or the surrounding area. In these cases, the licensing entity must give a period of notice to the licence holder to negotiate adapting to the new conditions and it must also take into consideration the need to ensure that businesses affected can continue to operate profitably.

TRANSFER, TERMINATION AND SUSPENSION OF OPERATIONS IN INDUSTRIAL ESTABLISHMENTS

The transfer, suspension and termination of industrial establishments, regardless of their size, must be communicated to the licensing entity. In the case of transfer, the deadline is within 15 (fifteen) days of the transfer, by letter. In the case of a suspension expected to last more than 60 (sixty) days, the minimum prior notice period is 10 (ten) days, with an indication of the number of days of suspension and the reasons for that suspension. In the case of termination, the notice period is at least 15 (fifteen) days before the end of operations and the respective licence must be sent with communication.

When it comes to termination, there are specific requirements for micro-establishments. In this case, the communication must be sent to the entity responsible for the registration 15 (15) days before the end of operations and the communication must be accompanied by proof of the entry that qualifies it carry on industrial activity.

CONCLUSION

The RLAI establishes faster timeframes to deal with applications to set up industrial establishments. Most, if not all, of the deadlines are not absolute. It also establishes mechanisms to delegate powers to authorise industrial establishments taking into account the legal conditions. In addition, it creates inter-ministerial committees to operate at the Ministry responsible for the area of industry and in the local entities that have power over licensing. Their role is to consider applications for licensing, to analyse and approve industrial plans and cooperate with the institutions involved in any inspections.

A further important point is that there is no need for copies to be authenticated and applicants need only present the originals for the purpose of authentication.

The RLAI also expressly establishes that the licence cannot be transferred, on any basis, independently from the industrial establishment which it relates.

This newsletter was prepared by a multidisciplinary team made up of lawyers from TTA - Sociedade de Advogados and 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. This Newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this Newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please send an email to tta.geral@ttaadvogados.com.

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