

投資指南
INVESTMENT GUIDE



大成律師事務所



莫桑比克
MOZAMBIQUE

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莫桑比克投资支持

MOZAMBICAN INVESTMENT SUPPORT ENTITIES

IPEX

IPEX - Institute for the Promotion of Exports

About the Institute:

The Mozambique Institute for the Promotion of Exports (IPEX) is a non-profit government organization established in 1990 with the purpose of boosting and coordinating the execution of policy measures towards the development of national exports.

Mission:

To develop and promote the export of Mozambican goods and services, harmonizing its activities with all institutions that deal with foreign trade.

Visão:

To assert itself as the national focal point for the development and promotion of Mozambique's exports.

Main Activities:

- *Influence foreign trade policies;*
- *Promote exports in coordination with the private sector;*
- *Develop exports, promoting the production and diversification of products, services and markets;*
- *Facilitate access to the Mozambican products overseas;*
- *Collect, treat and disseminate trade information; and*
- *Cooperation with the various national and international institutions linked to foreign trade.*

IPEX 出口贸易促进局

关于促进局:

莫桑比克出口贸易促进局是非营利性政府机构,该机构成立于1990年,职责是推动协调国家政策的执行以促进出口。

任务:

发展促进莫桑比克商品和服务出口,统一协调所有涉外机构的涉外贸易活动。

视野:

成为莫桑比克出口贸易发展促进的焦点。

主要活动:

- 影响外贸政策;
- 协调私人企业单位促进出口;
- 发展出口,促进商品、服务以及市场的生产和多样化
- 促进莫桑比克产品进入海外市场;
- 收集处理贸易信息;
- 与国内外涉外贸易机构展开合作。

CPI CPI - Investment Promotion Centre

CPI – Investment Promotion Centre – offers a package of services to assist national and foreign investors facilitating access to the incentives offered by the Government and the establishment of their businesses.

Mission

- To promote the attraction of national and foreign direct investment;
- To provide institutional assistance to investors in the approval and implementation of investment projects;
- To promote, receive and register investment projects;
- To guarantee the concession of fiscal and customs incentives to investors;
- To promote business linkages between national and foreign companies, SMEs – small and medium enterprises – and large undertakings;
- To identify potential financial and/or technological partners for joint ventures;
- To identify and disseminate investment opportunities;
- To promote programs of assistance to the development of businesses, particularly national businesses.

CPI 投资促进中心

CPI-投资贸易中心-为国内外投资者享受莫桑比克政府提供的投资优惠政策并开展营业活动提供全方位的服务

任务:

- 提升吸引国内外直接投资的吸引力;
- 为投资项目的批准和实行提供帮助;
- 负责投资项目的促进、接待和注册;
- 确保投资者享受到在会计财务和海关方面的优惠政策;
- 促进国内外公司的商业联系,中小企业和大公司之间;
- 鉴定潜在金融和技术合资经营伙伴;
- 鉴定和宣传投资商机;
- 促进商业辅助项目的发展,特别是国内商业。

GAZEDA - Office of Accelerated Development Economic Areas

The Office of Accelerated Development Economic Areas, abbreviated to GAZEDA, is an organisation within the framework of the Mozambican State apparatus which has administrative autonomy and is under the control of the Minister overseeing Planning and Development.

For its part, the Ministry of Planning and Development is the central body of the Mozambican State system which, in accordance with its principles, aims, and tasks established by the Government, directs and coordinates the planning process and provides cohesive and balanced guidance for the economic and social development of the country.

GAZEDA is authorised to promote and coordinate all actions relating to the creation, development, and management of Special Economic Areas (SEAs), including the Industrial Free Trade Zones (IFTZs).

In the exercise of its powers, GAZEDA is specifically responsible for:

- a) coordinating and developing actions to promote Mozambican and foreign investment initiatives for SEAs;
- b) proposing the creation of Special Economic Areas to the Council of Special Economic Areas;
- c) planning, promoting, coordinating, and supervising the land planning process in SEAs in coordination with local authorities and municipalities;
- d) promoting the establishment of infrastructures that are essential to the development of projects in SEAs;
- e) participating in the natural resources inventory process in SEAs and scheduling the rational and sustainable use of these resources;
- f) creating and preparing documentation, publications, and other necessary material to inform and be used by potential investors and to promote investment in SEAs, among other things;
- g) promoting and disseminating the image and economic potential of SEAs;
- h) receiving, verifying, recording and approving investment proposals to be implemented in SEAs;
- i) issuing, renewing or cancelling investment certificates / licences;
- j) guaranteeing compliance with deadlines fixed in the decision-making process regarding investment project proposals and other requests received from investors;
- k) guaranteeing inter-sector coordination with a view to creating practical conditions enabling the initial implementation and subsequent development of investment projects;

GAZEDA 促进经济领域发展办公室

促进经济领域发展办公室，简称GAZEDA，属于政府行政机构，隶属于国家规划发展部。

国家规划发展部是莫桑比克政府系统的中心机构，按照政府确定的原则、目标和任务，统筹协调并为全国的经济社会发展制定统一规划指导意见。

GAZEDA负责促进协调所有关于经济特区 (SEAs)，包括商业自由贸易区 (IFTZs) 的选定，发展和管理活动。

GAZEDA的职责包括：

- a) 协调发展提升国内外对经济特区的投资积极性的各种活动；
- b) 向经济特区委员会提交经济特区成立提议；
- c) 与当地政府协调规划、促进、统筹和监督经济特区的土地规划进程；
- d) 促进经济特区发展项目所需的基建建设；
- e) 参与经济特区自然资源的储存并制定资源规划表以合理使用；
- f) 除其他宣传工作外，专门准备宣传文件、出版物和其他宣传必需物品并告知有意投资者，以促进经济特区的投资；
- g) 提升并宣传经济特区的形象和发展潜力；
- h) 负责经济特区内投资计划的听取，验证，记录和批准；
- i) 颁发，延长或撤销投资许可证或资质；
- j) 保证按时处理并答复投资者的投资项目规划和其他要求；
- k) 保证产业间协调配合，为投资项目的启动和后续发展提供实践条件；
- l) 监督并核准已批准的投资项目的实施发展；
- m) 为投资者提供制度上的支持并督促落实各个阶段为投资者提供的的服务；
- n) 为已批准的和已完工的投资起草年度资产负债表；

- l) developing actions to monitor and verify the practical implementation and development processes of the authorised investment projects;
- m) providing institutional support and monitoring services to investors in the various investment phases;
- n) drafting the annual balance sheet for authorised and completed investments;
- o) identifying, studying, and proposing the adoption of economic, legal, administrative and financial measures with a view to promoting, encouraging, incentivising, and invigorating the Mozambican and foreign investment process in SEAs;
- p) when requested, collaborating with the competent authorities to develop programme proposals, strategies, and/or Mozambican development sector policies;
- q) joining Mozambican, regional and similar international associations and organisations in accordance with the law.

SEAs and IFTZs enjoy tax and non-tax benefits approved by law, with a view to promoting and incentivising the development of the country, namely through exemptions from customs duty and Value Added Tax (VAT) payments when importing equipment and materials intended for pursuing the licensed activity in SEAs and IFTZs.

Once the respective certificate has been issued, SEA companies benefit from the following IRPC (Corporate Income Tax) incentives:

- (i) Exemption in the first three tax years;
- (ii) 50% tax rebate from the 4th to 10th tax years;
- (iii) 25% tax rebate from the 11th to 15th tax years.

Once the respective certificate has been issued, IFTZ companies and operators benefit from the following IRPC (Corporate Income Tax) incentives:

- (i) Exemption in first ten tax years;
- (ii) 50% tax rebate from the 11th to 15th tax years;
- (iii) 25% tax rebate over the lifetime of the project.

Within the scope of its powers and competencies, GAZEDA can guarantee access to the aforementioned incentives.

Examples which clearly represent the work being done by GAZEDA include the Special Economic Area of Nacala and the Industrial Free Trade Zone - Parque Industrial de Beluluane.

o) 识别, 研究并提议采取包括经济、法律、行政、财政方面的措施以鼓励、刺激和振兴莫桑比克国内外在经济特区的投资;

p) 当其他有关机关请求时, 与其合作共同开发项目提议、战略以及莫桑比克产业发展政策;

q) 依法参加莫桑比克、区际和类似的国际协会和组织。

经济特区和工业自由贸易区依法享受税收和非税收优惠, 以促进国家发展。优惠政策主要有免除经济特区和自由贸易区内特许活动所需设备和材料的进口税和增值税。

当获得相关执照或证书后, 位于经济特区的公司可享受以下企业所得税的优惠:

- (1) 前三年免除企业所得税;
- (2) 第四年至第十年, 享受50%的退税;
- (3) 第十一年至第十五年, 享受25%的退税。

当获得相关执照或证书后, 位于工业自由贸易区的公司可享受以下企业所得税的优惠:

- (1) 前十年免除企业所得税;
- (2) 第十一年至第十五年, 享受50%的退税;
- (3) 第十五年开始, 该项目永久享受25%的退税。

促进经济发展办公室在其职权内, 保证投资者享受到上述各种优惠政策。

目前, 促进经济领域发展办公室负责设立管理的众多经济特区和工业自由贸易区中, 以纳卡拉 (Nacala) 经济特区和Parque Industrial de Beluluane工业自由贸易区为代表。



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投資指南 莫桑比克

MOZAMBIQUE INVESTMENT GUIDE

I. INTRODUCTION



Socio-economic overview

The Republic of Mozambique is situated on the east coast of southern Africa. It is bordered to the north by the Republic of Tanzania, to the northeast by Malawi and Zambia, to the west by Zimbabwe, to the south by Swaziland and to the south and west by South Africa. It is therefore very strategically located, providing a gateway to six other countries.

Mozambique has an area of approximately 799,380 km² with a population of around 19.4 million. The currency used is the Metical (MT).

Maputo City is the capital of Mozambique and the largest city with a population of around one million people. Situated in the south of the country on the western edge of Maputo Bay, the city is an administrative municipality with an elected government and also has provincial status. Other important Mozambican cities include Beira, Nampula, Chimoio, Nacala-Porto, Quelimane, Tete, Xai-Xai, Pemba and Inhambane.

Mozambique has a vast expanse of coastline, which includes the entire 2,470km-long eastern strip bathed by the Indian Ocean.

Mozambique is a presidential republic whose government is appointed by the political party with a parliamentary majority. Elections are held every five years.

The economy is precarious and relies on foreign investment. The soil is rich in gold, coal, salt, graphite and bauxite but is underexplored. Mozambique also has reserves of natural gas, marble, wood and oil. Most of the population lives off subsistence farming but the country exports sugar cane, cotton, sisal, tea and tobacco.

The main natural resources are hydroelectric energy, gas, coal, minerals, wood and agricultural land, while its main exports are prawns, cotton, cashew nuts, sugar, tea and copra.

The country has enormous tourism potential, with idyllic beaches and diving areas along its over 2,000 kilometres of coastline and nature reserves and parks in the interior.

一、簡介 社會經濟概要



莫桑比克共和國位於非洲南部東海岸，北接坦桑尼亞聯合共和國，東北接馬拉維和尚比亞，西界辛巴威，南鄰斯威士蘭，南部和西部與南非接壤。因此，它地理位置十分優越，是其他六個國家的門戶。

莫桑比克面積大約799380平方公里，人口約19,400,000，流通貨幣是美提卡。

馬布多市是莫桑比克的首都，也是莫桑比克最大城市，人口大約一百萬。它坐落在莫桑比克南端，馬布多灣的西部邊緣，是一個擁有民選政府的自治區並享有省級地位的城市。莫桑比克其他重要城市包括貝拉、楠普拉、希莫尤、納卡拉-波爾圖、克利馬內、太特、賽賽、彭巴和伊尼揚巴內。

莫桑比克擁有廣闊的海岸線，全長2470公里，東臨印度洋。

莫桑比克是一個總統制共和國，其政府由政黨通過議會中多數的方式委任。每五年舉行一次選舉。

莫桑比克經濟根基不是很牢固，依賴外國投資。莫桑比克含豐富黃金、煤炭、鹽、石墨和鋁土岩，但是尚待開發。莫桑比克亦擁有天然氣、大理石、木材和石油。大多數人口依賴農業生活，出口甘蔗、棉花、劍麻、茶葉和煙草。

主要自然資源是水力發電能源、天然氣、煤炭、礦物質、木材和農業用地，主要出口虎蝦、棉花、腰果、糖、茶葉和椰子乾。

該國旅遊資源豐富，沿着2000多公里海岸線，有田園般海灘和潛水區，國內亦擁有眾多自然保護區和公園。

II. INVESTING IN MOZAMBIQUE

Investment Incentives

Companies and individuals, whether domestic or foreign, that wish to invest in Mozambique using one of the many authorised alternatives ranging from investment with own capital or goods and equipment, rights, provisions and loans, among others, can make an application under the investment incentive system. This system covers projects as diverse as industry, services, tourism, transport and areas reserved to the public sector such as production of electric energy, supply of water, postal and telecommunication services and the production, distribution and sale of arms and munitions, etc.

However, activities in the area of wholesale and retail are excluded from these investment benefits unless they are carried out in new infra-structures. Nevertheless, it should be noted that these activities may benefit from the guarantee of exportation of profits and re-exportation of invested capital. Other areas such as exploration, research and production of oil and gas and the mineral extraction industry, agriculture and fisheries, trade and industry in rural areas, the hotel and tourism industry, rapid investment zones, industrial free zones, science and technology parks and telecommunications are subject to specific provisions contained in special legislation for each of these areas of investment.

The investment incentive system in Mozambique embraces four main components, namely: (i) tax incentives; (ii) customs incentives; (iii) incentives related to repatriation of capital invested and profits earned; and (iv) the guarantee of security and protection from the State of Mozambique for investments and private property.

To be eligible for the incentives referred to above, the minimum value of investment is 5 000 USD of own capital, in the case of domestic investment and 80 000 USD of own capital in the case of foreign investment. Additionally, a foreign investor whose activity meets the following requirements is also eligible: a) annual turnover of at least 255 000 USD from the third year of activity; b) annual exports of at least 50 000 USD; or c) the creation and maintenance of direct employment for at least 25 Mozambican workers.

The investment project or the investment contract requires the prior existence or the setting up of a company registered in Mozambique and operating from Mozambican territory called a "Project Implementation Company". An alternative to this is the prior existence or the setting up of a subsidiary, branch or agency of the foreign company which operates from Mozambican territory.

To benefit from these incentives companies or individuals can present an investment proposal for approval by the State of Mozambique represented by the Centre for the Promotion of Investments (CPI). In the case of Special Economic Zones and Industrial Free Zones, the State is represented by the Office for Economic Zone of Accelerated Development (Gazeda). The proposal is in the form of an Investment Project and in return for approval of the project, the investors must carry out the proposed investments and meet certain objectives as set out in the approved investment project.

二、投資莫桑比克

投資獎勵

旨在透過各種合法的方式在莫桑比克進行權益或貨物、機械、權利和貸款等方面投資的國內外公司和個人可就工業、服務、旅遊、交通、公營機構(例如,發電、供水、通信、武器及彈藥的製造、分銷和銷售)等各個領域的項目申請獎勵。

然而,投資優惠不適用於零售和批發業務(展開新基建項目的零售和批發業務除外)。但是,必須要注意此類業務能夠受益於利潤出口和投入資本再出口的保證。其他行業(例如,石油和天然氣勘探、研究、生產以及礦產資源開採、農業和漁業、農村地區的貿易和工業、酒店和旅遊業、快速投資區、工業免稅區、科技園區和電信)受各投資行業相關的特別法律所規定之特定條款的約束。

莫桑比克投資獎勵制度由四個主要部分構成:(i)稅收獎勵,(ii)關稅獎勵,(iii)資本和利潤調回的有關獎勵,以及(iv)莫桑比克向私有財產和私人投資提供的保護。

如要獲得以上投資獎勵的資格,在國民投資方面,最低要求五千美元的權益投資;對於外國投資,則最低要求為八萬美元的投資。此外,若外國投資者的投資項目符合下列要求,則也可視為符合獎勵資格:a)由第三年開始年營業額至少達二十五萬五千元;b)年出口至少達五萬美元;或c)創造和維持至少25名莫桑比克工人的直接就業。

投資項目或投資合約包含之前已經存在或成立的在莫桑比克註冊並在莫桑比克境外營運的公司(稱之為“實施項目公司”)或之前已經存在或設立的在莫桑比克境外營運的外國機構的附屬機構、分支機構或代理。

為了達到獲得以上投資獎勵的資格,公司或個人必須以投資項目的形式向莫桑比克投資促進中心(CPI)申請審批投資項目,而在特別經濟區和工業免稅區內的,則向莫桑比克快速發展經濟特區辦公室申請。並在獲得批准後實施所擬定的投資和達到經批准的投資項目所述的目標。

在提交所擬定的投資後,對項目進行評估並確定是否批准該項目。被拒絕的項目可能是由於缺少所擬定的投資的有關文件、資訊或詳細資料或投資者本身的問題(所述的文件、資訊或詳細資料是指投資促進中心在作出拒絕決定之前要求申請人提交的文件、資訊或詳細資料)或無法滿足適用於法律所規定的條件。

After presentation of the investment project and its evaluation, the project may be approved or rejected. Rejection may occur if documents, information or other items relating to the proposed investment or to the investors themselves are missing. The documents, information or other items are requested from the proposed investors by the CPI before the rejection decision is taken. The proposal may also be rejected because it does not meet the conditions set out in the applicable legislation.

The implementation of the project must occur within 120 days of the notification of the approval to the investors, failing which the approval may be revoked.

The tax benefits to be granted include tax credit per investment, amortisation and depreciation and accelerated depreciation, costs arising from modernisation and introduction of new technology professional training and other expenses considered to be tax expenses, exemption from income tax and a reduction in the tax payable on the transfer of real property.

In addition to all this, certain sectors of activity, projects and geographical areas benefit from specific incentives. This is the case for agriculture (which benefits from a substantial reduction in the income tax rate), the hotel and tourism industry, the mining industry, the oil industry, Rapid Development Zones and Industrial Free Zones. Also benefitting from specific incentives are large scale projects, that is those with a value greater than 500 million USD.

必須在項目審批 (項目獲批消息已通知投資者) 後120天內展開項目的有關工作 ; 否則可撤回項目投資的批准。

可能提供的稅收優惠包括針對投資、加速折舊和重建、由新技術的更新改造和引進以及職業培訓產生的費用以及被認為是稅收成本的其他費用的稅額減免和豁免印花稅以及下調不動產轉讓稅率。

值得注意的是一些行業、項目和地區 (例如 , 農業 (其適合於所得稅稅率大幅下調的情況)、酒店和旅遊、採礦、石油、快速開發的地區、免稅工業區以及大型工程項目 (超過五億美元的工程項目)) 適合特定的獎勵措施。

III. BUSINESS ENTERPRISE STRUCTURE IN MOZAMBIQUE

Investors may opt to set up enterprise structures which they themselves hold, such as limited liability companies or other types of representation, thus maintaining control over their investment.

From among the types of enterprise provided for in the Mozambican Commercial Code, enacted by Decree-Law 2/2005, of 27 December, the most significant are the limited liability companies - sociedade por quotas (“S.Q”) and sociedade anónima (“S.A.”). Which of these structures the foreign investor opts for depends on various factors, including the degree of simplicity of structure and operating, the amounts of capital to be invested and confidentiality issues as regards the ownership of the share capital.

Setting up a limited liability Company

Setting up a limited liability company today in Mozambique, whether it is an S.A or an S.Q., is a relatively simple and speedy process which involves the following formalities:

Approval of the company Name and Object - The company name must be approved by the Companies Registry (“CREL”) by means of an application to reserve the name in question.

Depositing the Share Capital – The share capital must be deposited in a bank in Mozambique which then issues documentary proof that the deposit was made.

The deposited share capital may be withdrawn after the company has been incorporated and documentary proof has been presented to the banking institution of the deed of incorporation, definitive commercial registry certificate, commercial licence and the Official Journal where the statutes of the company were published.

Setting up the Company – The company may be set up by means of a private document signed by the members - whose signatures must be duly certified by a notary or lawyer - unless a more formal instrument is required, for example, to transfer the assets the members bring into the company, in which case a deed of incorporation must be executed.

The company bodies are appointed and the statutes established during the incorporation process.

The statutes of the company must contain, among other things, the full names of the founding members, the objects of the company, the registered office and share capital, the main features of how its company bodies function, its structure and any other matters the members may see fit to include. Apart from the compulsory provisions and limitations set out in the Companies Code, the general rule is the contractual freedom of the parties.

Registration and Publication – After the company has been incorporated, it must be registered at the relevant Companies Registry within 90 days of the date of incorporation. The commercial registry then issues a certificate with the main details (name, registered office, members, form of binding the company and the members of the Board of Directors).

三、莫桑比克企業架構

投資者可選擇設立由其自行控制的企業架構例如有限責任公司或其他形式的企業，以保持對其投資的控制。

在2005年12月27日第2號法令頒佈的《莫桑比克商業法》所規定的各種形式企業中，大部分企業是有限責任公司 – 分為有限公司和股份公司，外國投資者所選擇的企業架構取決於各種因素（包括架構和營運的簡明程度、投資資本額以及股本所有權的保密問題）。

成立有限責任公司

如今在莫桑比克成立有限責任公司（不管是有限還是股份公司）的程序相對簡便及快速，需要辦理以下手續：

批准公司名稱和宗旨

必須向公司註冊處（CREL）申請批准保留所述的公司名稱。

繳付股本 – 必須向莫桑比克的一家銀行存入股本，銀行會提供存款的文件證明。

公司成立後，可向銀行機構出示公司成立契約、商業註冊證明書、商業執照和刊登公司章程的官方憲報等證明書，提取已存入的股本。

成立公司 – 可透過經由各成員簽署的私人文件（有關簽名經公證員或律師正式核實）成立公司，除非被要求提供正式的文件，例如，轉讓成員投入公司的資產的文件，在這種情況下，必須簽署公司成立契約。

在公司成立的過程中委任公司組成架構人員，制定公司章程。

公司章程必須包括創立成員的全名、公司宗旨、註冊地址和資本、公司組成架構人員履行職務的主要特徵、公司架構以及成員認為適合加入公司章程內的任何其他事項。除《公司法》所述的強制性規定和限制外，一般規則是各方可以自由簽訂合約。

註冊和公佈 – 公司成立後，必須在公司成立之日起90天內在相關的公司註冊處註冊。商業註冊處隨後會發出附有主要詳細資料的證書（資料包括：公司名稱、註冊辦事處、成員、約束公司和董事會成員的形式）。

Once the registration has been completed, application should be made to the Imprensa Nacional to have it published in the official state journal (*Boletim da República*).

Subsequent formalities – This process is followed by registration for tax purposes, licensing the activity (commercial/industrial/other) with the Ministry of Trade and the declaration of commencement of activity at the tax office for the area where the registered office is based.

The company and its workers must also be registered with the Provincial Employment Directorate (*Direcção Provincial de Trabalho*) and the National Social Security Institute (*Instituto Nacional de Seguranga Social*)

Average time and Costs of incorporation (Estimated)

Act	State body	Average time	Costs
Certificate reserving the company name	Companies Registry	45 min.	MT 75.00
Incorporation	Notarial Office	48 to 72 hours after all documents are submitted to the notary	Deed: minimum MT 1,300 Signature acknowledgement: MT 20
Commercial Registry	Companies Registry	24 hours	Minimum : MT 645
Publication in BR	Imprensa Nacional	30 days	Minimum: MT 1,500. N.B. Varies according to the number of pages.
Tax registration	Tax office	72 hours	N/A
Licensing / Permits	Ministry of Trade	5 days for the Licence Declaration. Up to 30 days for the definitive licence. Using the simplified regime: 72 hours	Depends on the activity
Registering the company and the workers for employment purposes	Employment Directorate	Around four days after the commencement of activity	N.A.
Registering the company and the workers for social security purposes	National Social Security Institute	Before the end of the first month following the Declaration of Commencement of Activity	N.A.
Declaration of commencement of activity	Tax office	Upon commencing activity	N.A.

* 1 Euro = 34 MT (Estimated)

完成註冊後，需要向全國新聞處申請在州政府的官方憲報上刊登公司的註冊狀況。

隨後的手續 – 接著需要進行稅務登記，在貿易部申請業務許可證（商業/工業/其他），在註冊所在地的稅務機構申報開始從事商業活動。

公司及員工必須向省政府的就業局和全國社會保障研究所登記。

公司成立的平均時間和費用 (估計)

手續	機構	平均時間	費用
保留公司名稱的證明書	公司註冊處	45分鐘	75MT
成立公司	公證處	向公證處提交所有文件後 48-72小時	契約：最少1300MT 簽名確認書：20MT
商業註冊	公司註冊處	24小時	最少：645MT
通過憲報公佈	全國新聞處	30天	最少1500MT 注意：頁數不同會出現差異
稅務登記	稅務機構	72小時	不適用
許可/執照	貿易部	許可申報：5天， 最終發放許可：30天， 採用簡化制度：72小時	取決於商業活動
公司和員工的就業登記	就業局	開始從事商業活動後大約4天	不適用
公司和員工的社會保障登記	全國社會保障研究所	申報開始從事商業活動後第一 個月月末	不適用
申報開始從事商業活動	稅務機構	從事商業活動後開始	不適用

* 1歐元 = 34 MT (估計)

FAQ:***Is it compulsory to have a national member?***

As a rule, under Mozambican commercial legislation it is not compulsory for a limited liability company to be incorporated with a national member.

When is a company considered to be a foreign equity company?

Under Mozambican legislation, a foreigner is any individual who does not hold Mozambican nationality or, in the case of a company, was originally set up in accordance with legislation other than that of Mozambique or which, although incorporated in the Republic of Mozambique, more than 50% (fifty percent) of the share capital is held by foreigners.

The Shares Companies - “Sociedade Anónima” (SA)

This type of company is governed by Articles 331 to 457 of the Commercial Code and is more complex than the sociedade por quotas.

The main features of the SA are as follows:

Number of Shareholders – *As a rule, the SA must have at least three shareholders who may be national or foreign individuals or companies. This does not include companies in which the state is a shareholder, whether directly or through a state or state-owned company or any other legally equivalent entity, as these may have a single shareholder.*

Share Capital – *The commercial legislation sets no minimum capital, but the amount must always be suitable for the pursuit of the company object and must always be expressed in the national currency - the Metical.*

The SA capital is divided into shares, which may be bearer, nominative or book-entry.

An SA may only be created when all of its share capital has been subscribed and at least twenty-five percent has been paid up. The law prohibits the issue of shares at a value below their nominal value and the statutes must establish the number of shares into which the capital is divided.

For the purposes of incorporation, the members must prove to the competent body that the amount of share capital has been paid up by submitting documentary proof that the shares are on deposit in a credit institution to the order of the company management.

As regards the paying up of capital in kind, the proof consists of a signed statement by the directors of the company certifying that the title to the goods has passed to the company and that these have already been delivered to the company, except in the case of deferred delivery. The goods with which the shares are paid up in kind must be identified, described and valued by means of an auditor’s report prepared by an auditor or an auditing firm and attached to the statutes.

常見問題：

公司是否規定要有本國成員？

根據莫桑比克商業法，不會強制有限公司在成立時一定要有本國成員。

在何種情況下公司會被認為是外國權益公司？

根據莫桑比克的法律，外國人是指沒有莫桑比克國籍的個人或公司在最初成立時是根據其他地方的法律設立的，或即使公司在莫桑比克成立，但是超過50%的股份為外國人所持有。

股份公司

這類公司受《商業法》第331-457條管轄，比起有限公司更為複雜。

股份公司主要特徵如下：

股東數目

一般來說，股份公司必須最少擁有一名股東（可以是國內外個人或公司）。其中不包括國家出任為股東的公司（不管是直接還是透過國家或國有公司或任何其他法律上相同的實體，因為這些公司可能只有一個股東）。

股本 – 商業法沒有規定最低資本，但是資本必須適用於實現公司宗旨並以美提卡貨幣來表示。

股份公司資本將被分為若干股份，可分為不記名、記名或賬面股份。

只有當所有股本被全數認購和至少25%實收股本才能設立股份公司。法律禁止以低於面值的方式發行股份，公司章程必須明確規定資本劃分後股份的數量。股份面值（可能以現金或實物繳付）必須是50美提卡的倍數。

以成立公司為目的，公司成員必須向主管機構提交在信貸機構向銀行存入股份的書面文件，證明股本已支付。

對於以實物繳付資本，證明文件包括經公司董事簽名證實實物所有權已經轉給公司，而且實物已經送達公司（延遲送達除外）的聲明。用作繳付股份的實物必須經過審計師或

Flexibility of Capital – The transfer of shares does not require any specific form and depends on the type of shares issued by the company. Bearer shares are transferred by the delivery of the share certificates to the purchaser while nominative shares are transferred by endorsing the share certificate in the name of the purchaser. The company must be informed for registration purposes. Book-entry shares are transferred by registration in the transferee's bank account.

The company statutes may establish pre-emption rights in favour of the shareholders as well as require the prior consent of the company for the transfer.

Liability – The liability of S.A. shareholders vis-à-vis third parties is limited to the amount of their shareholdings.

Internal Structure – as companies, the SA have company bodies to carry out the necessary functions: a deliberative body – the General Meeting – an executive or administrative body – the Board of Directors – and a supervisory body – the Supervisory Board or Sole Supervisor.

i) The General Meeting is the supreme body of the company and has the power to:

- Convene within three months of the end of the financial year to deliberate on the directors' report and the annual accounts;
- Deliberate on the proposed use of the company results;
- Carry out a general appraisal of the company management and supervisory boards, and
- Carry out any elections within its scope of competence.

The General Meeting is where the shareholders elect the bodies to administer the company and supervise the acts of the directors.

Resolutions are passed unanimously or as set out in the statutes. A General Meeting may be called without any prior formalities, provided that all the shareholders are present or represented and are willing for the meeting to be convened on a given matter, unless otherwise provided by law or by the company statutes.

As a rule, resolutions are generally passed by a majority of the votes cast by the shareholders present at the meeting and each share has one vote, unless otherwise stipulated by law or by the company statutes.

The law requires a qualified majority for certain resolutions, including those related to amendments of the statutes, merger, split, transformation and dissolution.

審計師事務所出示的審計報告加以驗明、描述和估值，審計報告必需附於公司章程。

資本的靈活性 – 轉讓股份時無須提供任何指定表格，股份轉讓取決於公司所發行股份的種類。轉讓不記名股份需要向股份購買方交付股份證書，而轉讓記名股份需以股份購買方名義在股份證書背面簽署。轉讓必須知會公司，以便進行相關登記。轉讓賬面股份時要在受讓人的銀行帳戶登記實現。

公司章程可規定有利於股東的優先購股權以及要求股份轉讓須經公司事先同意。

責任 – 股份公司股東對第三方的責任限於其持股的數量。

內部架構 – 作為公司，股份公司擁有公司法人資格，履行必要的職責：審議機關 – 股東大會 – 執行或行政機關 – 董事會 – 以及監督管理機關 – 監事會或唯一監事。

1) 股東大會是公司的最高機關，擁有以下權力：

- 在財政年度結束後三個月內召開會議，審議董事會報告和年度賬目；
 - 審議公司業績的擬定利用情況；
 - 對公司管理層和監事會進行總體評估，以及
- 在其能力範圍內進行選舉。

股東大會是股東選舉公司管理機關和監督董事行為的會議。

一致通過或以公司章程規定的形式通過大會決議。股東大會可不事先經過任何程序而召開，條件是所有股東出席或委派代表出席大會並同意就指定的事項召開大會，除非法律或公司章程另行規定。

一般來說，決議是由出席大會的股東以大多數投票通過，而每股擁有一票，除非法律或公司章程另行規定。

法律要求對於一些決議，其中包括修改公司章程、公司合併、公司分拆、公司轉換和解散的相關決議，需要達到指定的票數。

ii) The Board of Directors is responsible for company management and has full exclusive powers to represent the company.

According to the Commercial Code, this body is composed of an odd number of members, who need not be company shareholders, but must be individuals of full legal capacity. If the share capital of the company is less than five hundred thousand meticals, a sole director may be appointed. If a company is appointed as a director, it must appoint an individual to hold the position in its name.

iii) The company is supervised by:

- a) a Supervisory Board of 3 or 5 members, or
- b) a Sole Supervisor, who must be an auditor or an auditing firm.
- c) The company may also be supervised by means of an independent auditing firm.

The Quota Companies - “Sociedade por Quotas” (SQ)

The SQ are governed by Articles 283 to 330 of the Commercial Code and their main features are as follows:

Number of Members – as a rule, the SQ must have a minimum of two and a maximum of thirty members, all of whom must be equity partners.

It is possible for this type of company to have just one holder of the entire registered capital. These companies are called unipessoal and this term must be included in the name.

Registered Capital – it depends on the members to stipulate the adequate capital which is the sum of the nominal capital of the quotas. The capital must always be expressed in the national currency. The quotas are always nominative, in the sense that the names of those who hold them must be stated in the company statutes, as well as in any subsequent agreement or resolution by means of which they are transferred or the share capital increased, and also in the company’s commercial registry certificate.

Liability – The members are not liable to the creditors of the company, only to the company itself. Each member is liable for the payment of their own contributions and, on a subsidiary basis, is jointly liable with the others for the payment of the contributions of the other members.

Company Bodies – the SQ have company bodies to carry out the necessary functions: a deliberative body – the General Meeting, and an executive or administrative body – the Board of Directors. There may also be a Supervisory Board or Sole Supervisor, which is governed by the applicable S.A. provisions.

2) 董事會負責管理公司並全權代表公司。

根據《商業法》，董事會由奇數成員組成，這些成員無需成為公司股東，但必須是具備完全法定資格的個人。假如公司股本少於50萬美提卡，則可委任唯一一名董事。假如某一公司被委任為董事，則其必須委任個人以公司名義擔任此職位。

3) 公司受以下機關或人士監督：

- a) 由三或五名成員組成的監事會，或
- b) 唯一監事（其必須為審計師或審計師事務所）；
- c) 獨立審計師事務所。

有限公司

有限公司受《商業法》第283-330條管轄，其主要特徵如下：

成員數量 – 通常有限公司必須至少有兩名成員，最多有30名成員，所有成員必須為權益合夥人。

這類型公司可能只有一名全部註冊資本的持有人。這些公司被稱為獨資公司，公司名稱必須包括有獨資字眼。

註冊資本 – 最低資本為兩千萬美提卡，這是配額名義資本的總和。資本必須以本國貨幣表示，各配額的價值必須為100的倍數並超過或等於50萬美提卡。配額採用記名形式，其持有人的名字必須在公司章程以及日後在轉讓配額或增加資本有關的任何協議或決議和公司商業註冊證書中註明。

責任 – 成員不需對公司的債權人負責，只對公司本身負責。各成員負責支付其出資款項，並以輔助形式，與其他成員對支付出資款項負有連帶責任。

公司法人 – 有限公司擁有公司法人資格，履行必要的職務：審議機關 – 股東大會，以及執行或性質機關 – 董事會。亦可設立監事會或獨任監事，受配額公司的規定管轄。

- i) All the members must take part in the General Meetings.** As a rule, resolutions are passed by a majority of the votes cast by the shareholders present at the meeting, unless otherwise stipulated by law or by the company statutes.
- ii) The company is managed** by one or more directors, who need not be members of the company. The statutes of the company may establish that all the members are responsible for the management of the company but this does not extend to those who become managers at a later date. The duties of the directors continue until terminated by removal or resignation, although the deed of incorporation may stipulate a certain term of office.

Legal Reserve – Commercial law requires the creation of a legal reserve. The company must retain a portion of not less than 20% of the financial year's profits, which must not be less than one fifth of the registered capital.

Commercial Licensing

The objective of commercial and industrial licensing is to comply with the legal obligation that requires state authorisation to pursue a business activity in Mozambique.

The licensing process culminates in the issue of the licence or permit, which provides documentary evidence of the holder's capacity to carry on the activity.

The licence to carry on the business activity may be granted to national or foreign individuals with a fixed residence in Mozambique and companies duly registered in the Republic of Mozambique.

The licence is usually granted within 30 days of application.

Types of Activity

Commercial activity – This includes agricultural sales agents, general trade, retail and wholesale trade, exports, imports, service provision and external traders.

Foreign commercial registration – This covers the activities carried on in the Republic of Mozambique through an affiliate, branch office, agency or other form of representation of a corporate body domiciled abroad.

1) 所有成員必須參加股東大會。一般來說，決議是由出席大會的股東以大多數投票通過，除非法律或公司章程另行規定。

2) 公司由一名或多名董事管理，這些董事無需成為公司的成員。公司章程可規定所有成員負責公司的管理，但其不對後來成為管理人的成員作出規定。董事將會繼續履行其責任直至被罷免或辭職為止，即使公司成立的契約會規定董事一定的任期。

法定儲備金 – 商業法要求設定法定儲備金。公司必須保留不少於財政年度利潤的20%資金、並不得少於註冊資本的五分之一。

商業牌照

商業牌照目的是履行在莫桑比克從事商業活動須獲得政府批准的法律義務。

在發放許可證或執照後隨即便可完成牌照申請過程，該許可證或執照是證明其持有人具備從事商業活動的資格的書面證明文件。

在莫桑比克擁有固定住所的國內或外國人仕以及在莫桑比克正式註冊的公司可獲審批從事商業活動的牌照。

一般在申請後30天內發出牌照。

商業活動類型

商業活動 – 這包括農業銷售代理、一般貿易、零售和批發、出口、進口、服務提供和對外貿易。

外國商業註冊 – 這包括透過莫桑比克境外法人團體的附屬機構、分支機構、代理機構或其他形式的機構在莫桑比克境內從事的活動。

IV. SOME INVESTMENT SECTORS

Rights over Land

The rights to use and profit from the land (the “DUAT”)

For any investor interested in investing in certain sectors in Mozambique, access to the land is fundamental.

In Mozambique, the land belongs to the state and cannot therefore be sold, transferred, mortgaged or charged.

The right to use and profit 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.

The Land Law sets out the terms under which the creation, exercise, alteration, transfer and extinguishment of the right to use and profit from the land operate. The Land Law Regulation applies to areas which are not covered by the areas under the jurisdiction of the Municipalities that hold the Municipal Records Services, with the exception of Article 45 of the Regulation which applies throughout the country. In turn, the Built-up Land Regulation applies to the legally existing city and town areas and to settlements or population clusters structured according to a plan of organisation.

With regard to individuals, only those who have resided in Mozambique for at least five years and have an approved investment project can hold DUAT rights.

Foreign companies can only hold DUAT rights if they have an investment project duly approved under the investment legislation, are incorporated and registered in Mozambique and have obtained the legally prescribed formal authorisation. A foreign company is considered any company or institution incorporated under Mozambican or foreign legislation (in the case of representation offices) more than 50% of whose share capital is held by foreign citizens, companies or institutions.

It should be noted that in public domain areas – those which are fully or partially protected – no DUAT rights can be acquired, only special licences for the pursuit of certain business activities. The special licences regime, by virtue of the absence of any specific regulation, follows the rules laid down for the DUAT, with all the necessary changes, as regards the duration periods and the competent bodies for the issue of such licences.

The creation, alteration, transfer and extinguishment of the DUAT must be registered at the Land Registry.

Finally, it should be noted that DUAT rights may also be acquired by possession by individuals and local communities, in line with customs and practices which do not breach the Constitution of the Republic of Mozambique and ii) by individual Mozambicans who have used the land, in good faith, for at least ten years. A failure to register the rights acquired by possession has no adverse impact on the rights themselves.

四、部分投資行業

土地權

使用土地並獲得收益的權利 (“DUAT”)

對於任何計劃在莫桑比克境內投資的投資者來說，首先必須獲得土地。

在莫桑比克，土地歸國家所有，因此不能進行銷售、轉讓、抵押或收費等行為。

土地使用權和土地收益 (Direito de Uso e Aproveitamento da Terra, 簡稱為 “DUAT”) 被解釋為本國或外國的個人、公司和當地團體在遵守土地法規定的要求和限制的前提下獲得土地的權利。

土地法包括一系列條款，在這些條款的限定下，投資者才能行使對土地使用權的產生、操作、更改、轉讓和廢除以及獲得土地經營收益。除了第45條適用於全國範圍外，其他所有的土地法例適用於未被市政當局審批、但持有市政檔案記錄的土地。反過來說，建成地法例適用於依據組織規劃建設並合法存在的城市、鄉鎮、定居點或人口密集地區的土地。

就個人而言，只有在莫桑比克至少居住5年並且投資得到政府審批的個人才能擁有土地使用權並從事土地經營業務。

外國公司只有當其投資計劃得到了投資法例的合理批准，被允許在莫桑比克境內成立並註冊且獲取正式的合法授權才可享受DUAT。外國公司的定義是由莫桑比克或外國的法律 (代表處) 批准成立，50%以上的股本由外國公民、公司或機構持有的所有公司或機構。

值得注意的是，在國有控股的領域 (即全部或部分受保護的行業)，投資者只能獲取部分商業活動的特殊許可證而非DUAT。特殊許可證沒有任何特定的規則，因此，它依照DUAT的規則而定，而且會作出持續時間的變動以及與此類許可證簽發機關的一切必要的變更。

DUAT的產生、更改、轉讓和廢除都必須在地政處註冊。

最後，需要注意的是，DUAT權利也可由1) 個人或當地團體以擁有權取得，但必須在關稅和業務方面不違反莫桑比克共和國的憲法；以及2) 由善意使用土地至少10年以上的莫桑比克公民個人獲得、以擁有權形式獲得的土地權即使註冊失敗也不會對該權利本身造成不利影響。

Duration of DUAT rights

The duration of DUAT rights under the Land Law and Land Law Regulation are as follows:

- *Provisional authorisation – granted to the applicant by the Geographical and Records Services for a period of two years for foreigners and five years for nationals.*
- *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. Once compliance with the exploration plan or the undertaking has been confirmed, the Geographical and Records Services will issue a full authorisation for a period of fifty years, renewable for the same period, after which time a new application must be made.*

It should be noted that with regard to built-up land, the Built-up Land Regulation provides that the national or foreign holder of DUAT rights has a period (provisional authorisation) of not more than two years to begin construction. This time limit may be extended for a period of not more than six months by means of a well-grounded application by the right holder to the competent body. The time limit for the use of the land must be set by the competent body upon the application of the right holder. This time limit should take into account the need to conclude work and obtain licences of use.

Transfer of the DUAT

The DUAT rights may be transferred in two ways i) an inter vivos transfer by means of the purchase and sale of infrastructures, buildings and improvements on the authorised land, ii) by inheritance.

It should also be remembered that 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.

Furthermore, the holders of DUAT rights are allowed to create mortgages over the properties and the duly authorised buildings they have erected on the land or over which they have legally acquired title.

DUAT權利的時限

在土地法和土地使用法例的規定下，DUAT權利的時限規定如下：

- 臨時審批—該授權歸屬於地理和記錄事務科的申請人。本國公民可獲審批5年；國外公民可獲審批2年。
- 完整審批—一旦超過臨時審批期限或在該期限內出現有興趣人士對土地提出要求，根據已批准的時間表，土地將被審查以確定所建議的責任已經被執行或已遵守勘查計劃。一經證實或企業已被確認，地理和記錄事務科將會發出長達50年的完整審批，並可續期50年，到期後申請人須重新申請。

需要注意的是，對於建成地來說，根據建成地法例規定，本國或國外DUAT權利者2年內（臨時審批期限）必須動工建設項目。如果權利者向主管機構提出了強而有力的申請，該期限可被延長至不超過六個月。土地使用時限必須由主管機構在收到權利者的申請之後設定，此時限應考慮到結束工作和獲取使用許可證的時間。

DUAT的轉讓

DUAT權可以透過以下兩種方式轉讓：1) 憑藉購買和銷售基礎設施、建築物和在建地之上建造房屋設施進行的生前轉讓；2) 以遺產方式進行的轉讓。

不要忘記，基礎設施、建築物以及在某塊土地上的建築物（與該土地相關的土壤、建築物在經濟上並不是獨立的，但它們是土地開發的配套內容和土地本身收入的來源）的購買和銷售並不同DUAT的自動轉讓，而是依據最初的同一審批方的審批。

就建成地（建築物建造於土壤和土壤周邊的土地之上，收入來源於土地上的建設項目而非土地本身的地皮）而言，DUAT權利可不必經過國家政府的事先審批而連同物權本身一起轉讓。

此外，DUAT權利者有權對物業進行抵押。這包括已經竣工並取得審批的建築物或對已獲取合法資格的建築物進行抵押。

Extinguishment of the DUAT

The DUAT may be extinguished in one of the following ways:

- i) The failure of the DUAT holder, without reasonable grounds, to comply with the exploration plan even if the tax obligations (annual duties) are being honoured. There are no requirements of form for the extinguishment of the DUAT rights, which extinguish automatically as soon as the time limit elapses.*
- ii) Revocation of the DUAT rights on public interest grounds, preceded by payment of a just compensation;*
- iii) Expiry of the time limit or the renewed time limit;*
- iv) Waiver by the right-holder.*

Tourism Law

Overview of the legal regime

Viewed as a vital sector for the development of the country owing to its natural, ecological and geographical diversity and wealth, the tourism sector has merited particular attention not only from the Mozambican government but also from foreign investors and multi-lateral co-operation agencies.

One of the sectors that has shown a higher growth rate in recent years – 17% in the last year almost 163 million US dollars in revenue – tourism in Mozambique is one of the most stable sectors as regards attracting foreign investment. In 2007 alone, projects in the region of 980 million US dollars were approved, making it the third largest investment sector in the country.

Within the development context, the tourism sector has a place in the Mozambican government's strategy for combating absolute poverty through the Action Plan for Reducing Absolute Poverty ("PARPA). In the first PARPA 2001–2005, tourism was one of the supplementary activities whose strategy and plan of action helped generate income and job opportunities.

In recent years therefore the Ministry of Tourism ("MITUR") has been reorganising the tourism sector, reforming and modernising tourism sector legislation which has until very recently been completely out of touch with the national, regional and international reality.

The Tourism Policy and Implementation Strategy approved by Resolution 14/2003, of 30 April, in itself bears living witness to the above. Conscious of the important role of tourism for economic growth in general and for generating revenue and creating jobs, the main aim of the Tourism Policy is the "promotion and development of tourism as a driving force for economic growth

DUAT的廢除：

DUAT可通過以下方式之一廢除：

- 1) 在沒有合理解釋的前提下，即使履行了稅收義務（年度稅收），權利者未能遵守勘查計劃的情形下。廢除DUAT無需要通過任何形式，一旦超過時限，DUAT便自動廢除。
- 2) 為着公共利益，在預付了正當補償之後，廢除DUAT權利。
- 3) 時限或更新時限過期
- 4) 權利者主動棄權

旅遊法

法律體系概要

作為該國具主要的發展行業之一，依賴本身豐富的自然環境、生態和地理差異及資源，旅遊業不單受到莫桑比克政府的重視，同時也被國外投資者和多邊合作機構所看好。

最近幾年，旅遊業表現出了高增長率趨勢，去年更是高達17%，創造了1.63億美元的收入。旅遊業在莫桑比克是最穩定的吸引外國投資者的行業。僅在2007年間，該地區已批准了高達9.8億美元的旅遊業投資項目，使得該行業成為該國的第三大投資領域。

從發展歷程看來，旅遊業在莫桑比克政府的發展策略中佔有一席重要地位，它是該國在《消除絕對貧困行動計劃》（PARPA）杜絕絕對貧困的籌碼之一。在PARPA實行之後的頭5年（2001至2005年），旅遊業的發展策略和計劃為當地創造了收入和實現了更多就業機會。旅遊業成為全國的輔助產業之一。

因此，最近幾年，國家旅遊局（“MITUR”）一直在重組旅遊業，改革並使現有的旅遊業法例更趨現代化。直至最近，旅遊行業的改革與完善措施幾乎與國家、區域和國際的現實情況接軌。

由2003年4月30日正式生效的第14號決議所通過的旅遊政策和實踐策略本身就證實了以上所述的情況。意識到旅遊業在促進整體經濟增長、增加財政收入以及創造就業方面所扮演的重要角色，莫桑比克政府將旅遊政策的目標定為透過“與各類合作夥伴（中央、省級或地區政府、私人企業、當地團體、國際的、地區的與國內的旅遊者、非政府組織、金融

and employment in the public and private sectors and communities in making the provision of services in this area a reality” through the “interaction and active commitment of a wide range of partners: the state and government at central, provincial and district levels, local government, the private sector, local communities, international, regional and national tourists, NGOs, financial institutions, international cooperation agencies, the press and the public”.

The Âncora Programme for Investment in Tourism in Mozambique

As regards the promotion of private sector investment, the Policy makes specific provision for attracting direct foreign investment by means of strategic partnerships with national investors and through the development of “Âncora projects”, which will act as catalysts.

In addition, the tourism sector in Mozambique currently has two primary mechanisms for investment and the promotion of foreign investment. One of these mechanisms – The Âncora Programme for Investment in Tourism in Mozambique, already approved by Resolution of the Council of Ministers - is the largest tourism investment initiative currently in place in Mozambique and aims to attract over one billion USD in foreign investment.

This investment programme is the result of an agreement concluded with the World Bank in 2007 for making the highest level investments in the tourism area in Mozambique. It is a joint initiative of the Ministry of Tourism (MITUR) and the International Financial Corporation (IFC) with a view to facilitating investment in tourism and converting the entire tourism potential of Mozambique into a tangible quality investment.

Using a pro-active approach, the Programme focuses on creating investment opportunities in specific “Âncora Locations”, and aims to improve the business background and environment and substantially reduce the administrative and regulatory obstacles and constraints on investment.

The Programme is managed and implemented by the Instituto Nacional de Turismo (the National Tourism Institute) (INATUR), the IFC, MITUR and other state bodies.

The programme will run for a period of three years and will be implemented in the following three stages:

- *Phase 1: Selection of the locations and preparation of a detailed programme plan;*
- *Phase 2: Development of the “Âncora Locations”, and*
- *Phase 3: Development of links with small and medium-sized companies (SMEs) and local communities.*

Time Sharing

Along with this project, MITUR has passed a number of legislative packages, including the recent approval of the Periodic Residence Rights Regulation (“RDHP”).

機構、國際合作機構、新聞出版社和普通民眾)展開互動交流和有力承諾,以“提升並發展旅遊業,使其成為促進經濟增長、提高國有和私人企業或團體就業率的驅動力,從而達成旅遊行業的服務目標”。

莫桑比克旅遊業投資的“Ancora”計劃

為了加大私人領域的投資,政策作出了具體的規定,通過與國內的投資者展開策略性合作和實行“Ancora項目”以吸引外國直接投資。“Ancora項目”具有良好的推動作用。

此外,莫桑比克目前的旅遊業主要有兩套吸引投資和促進國外投資的機制。一是“Ancora項目”,該項目旨在促進莫桑比克旅遊業本身的投資,並且已獲莫桑比克的部長理事會決議通過生效。“Ancora項目”是目前莫桑比克國內啟動的最大型的旅遊業投資計劃,其目標是吸引超過10億美元的外國投資。

該投資項目來自於莫桑比克與世界銀行於2007年締結的一份協議,內容是在莫桑比克的旅遊投入最高水平的投資。同時,也是莫桑比克旅遊局(MITUR)和國際金融集團(IFC)聯合努力的結果,目標是促進本國的旅遊業投資並將莫桑比克整體旅遊業的發展潛力轉換為有形資產的投資。

在正面積極的實施方案的協助下,該項目旨在特定的“Ancora地區”創造投資機會、積極改善這些地區的商業背景與環境、大幅降低針對新增投資的行政管制和束縛。

該項目由Instituto Nacional de Turismo(即國家旅遊協會)(INT),IFC, MITUR和其他政府部門管理。

該項目將會營運3年,分為以下3個階段:

第一階段:選擇合適的地區並準備詳細的項目方案;

第二階段:“Ancora地區”的發展;以及

第三階段:與中小企業(SMEs)和當地團體建立聯繫

This legislation regulates the concept of timesharing or right of periodic residence. Closely linked with the real estate sector, the philosophy underlying this right was developed in various schemes, but has taken on some more obvious common features such as the division of the periods of use of the properties normally included in tourist resort development into weeks, as these are easier to sell and use.

The RDHP sets out four types of rights:

- 1. Right of periodic residence – property right which allows its holder to use accommodation located on tourist resorts or real estate properties, in return for a price, for one or more stipulated or unstipulated periods each year for accommodation purposes.*
- 2. Tourist residence right – consists of the use of accommodation located on tourist resorts or real estate properties, in return for a price, for one or more periods – which are usually stipulated – each year for accommodation purposes.*
- 3. Right of shared residence – consists of the acquisition of a property right over a share of a given property located on a tourist or real estate resort along with the furniture and fittings thereon, as well as the premises and services associated with the common areas of use, subject to a schedule established in the contract and in the regulation on the use of the services.*
- 4. Residential tourism – tourism based on an investment of a real estate or tourist nature which aims to provide accommodation in tourist interest areas for certain or permanent periods.*

The common denominator of all of these rights is the accommodation unit, the legal regime for which varies according to the type of right in question.

The tourism or real estate investor who intends to develop any of these types individually or in conjunction will have to apply to the competent bodies for a licence. This process is divided into two stages: advance information and authorisation of the premises and the exploration licence.

The licensing process begins with the submission of the project and the intended type to the MITUR, accompanied by an informational document about the development and payment of the deposit. The MITUR then issues an accreditation certificate for the project which confirms the characteristics and capacities of the resort and the investor.

These rights may only be sold by the investors or, alternatively, duly-licensed tourism promoters.

分時使用居住權

為了與項目配套，MITUR還制定並通過一系列法律條例，包括最近才通過審議的“分時使用居住權益法案”（“RDHP”）

這項法令規定了時間共享的概念或定期居住者的權利。與房地產行業密切聯繫，該權利隱藏的哲學由多個方案提煉而來，但它們都有一些明顯的共同點；例如旅遊渡假村發展計劃對物業使用期限的劃分通常都是以星期為單位，這樣便於銷售和使用。

RDHP設定了4種不同類型的權利：

1. 定期居住的權利---物業權允許業主使用旅遊渡假村或房地產物業的住所。作為回報，業主在每年規定或規定以外的期間內住宿需繳納一定數量的租金。
2. 遊客居住權利---包括使用旅遊渡假村或房地產物業的住所權利組成。作為回報，在每年規定的一段或多段以上的期間使用住所的遊客都需繳納一定的租金。
3. 共用居所權利---由取得指定物業的部分物業權組成，指定的住所位於旅遊渡假村或房地產物業，並設有傢俱設備，以及提供連公眾面積的住宅及服務單位。所有的住宅配套設施和服務均服從合約規定的安排並遵守服務的具體細則。
4. 居住旅遊---以房地產投資為基礎或純粹的旅遊觀光性質的旅遊業。其目標是在旅遊目的地為客人提供長期或永久的居所。

上述權利的命名均為住宿單位，其代表的法律領域因權利類型的不同而異。

旅遊業或房地產投資者欲以個人或聯合名義發展以上類型權利，必須向有資格機構申請許可證。申請過程分為兩個階段：1.預先公佈資訊；2.授權經營物業和頒發勘查許可證。

許可證申請過程由提交項目和向MITUR提交打算發展類型開始，連同一份定金準備和支付的資料文件。之後，MITUR會向項目發出一份任命證書，確認渡假村和投資者的類型和能力。

這些權利僅可由投資者或取得合法許可證的旅遊業貢獻者出售。

V. INTELLECTUAL PROPERTY

Intellectual property in the Mozambican legal order has two main facets: industrial property -governed by the Industrial Property Code enacted by Decree 4/2006, of 12 April, and copyright - governed by the Copyright Law (Law 4/2001, of 27 February).

The Industrial Property Institute (IPI) was created by Decree 50/2003, of 24 December, and is responsible for administering industrial property, while the National Book and Disc Institute (INLD) – set up under Decree 4/91 of 3 April - is responsible for administering copyright.

Mozambique became a signatory to the following conventions and international agreements on intellectual property:

- *Convention establishing the World Intellectual Property Organisation (WIPO) by means of Resolution 12/96 of 18 June;*
- *Patent Co-operation Treaty (PCT of 19 June 1970, amended on 28 September 1979 and 3 February 1984) by means of Resolution 35/99 of 16 November;*
- *1981 Madrid Agreement and its 1989 Protocol on International Trademark Registration by means of Resolution 20/97 of 12 August;*
- *African Regional Industrial Property Organisation (ARIPO) by way of the Harare Protocol on Patents and Industrial Designs, signed at Harare on 10 December 1982 and revised on 28 November 1997 and 26 May 1998, by means of Resolution 34/99 of 16 November.*

Industrial Property

General regime

The Industrial Property Code (CPI) sets out a protective regime for industrial property rights and obligations. Industrial property covers commerce, services and industry (agriculture and cattle breeding, fishing, forestry, food, construction and mining as well as natural or manufactured products).

Industrial property rights are registered by the IPI. The registration process begins when the registration application is filed and may be followed by a challenge stage (where interested parties can make their claims and challenges). Finally the registration is granted or rejected (partially or wholly). Decisions on industrial property rights may be appealed, with suspensory effect, to the administrative courts.

The duration of intellectual property rights varies according to the type of right in question: 20 years for patents, 15 years for utility models, 5 years for industrial designs (renewable up to a maximum of 24 years), 10 years for trademarks, logotypes, business names and symbols (renewable), and unlimited for appellations of origin and geographic indications of source.

五、知識產權

知識產權在莫桑比克的法律秩序包含有兩個層面：1.工業產權—由2006年4月12日通過的第4號法令所制定的工業產權法管理；以及2.著作權—由著作權法（2001年2月27日通過的第4號法律）管理。

工業產權協會（IPI）基於2003年12月24日通過的第50號法令產生，負責並管理工業產權。而國家書籍和唱片協會（INLD）（於1991年4月2日通過的第4號法令的指導下成立）則負責管理版權事務。

莫桑比克是以下有關知識產權的國際協定和公約的簽署國：

- 依據1996年6月18日通過的正式協議所成立的世界知識產權組織（WIPO）；
- 依據1999年11月16日的35/99號決議而簽訂的專利合作條約（即於1970年6月19日簽署的PCT，1979年9月28日和1984年2月3日該條約曾被修訂）；
- 依據1997年8月12日的第20/97號決議簽訂的馬德里協議（1981年）與國際商標註冊協議（1989年）；
- 經由專利和工業設計的哈賴爾協定而成立的非洲地區工業產權組織（ARIPO）於1982年12月10日在哈賴爾簽署。根據1999年11月16日的第34/99號決議，該協議在1997年11月28日與1998年5月26日曾分別進行過修訂。

工業產權

總體範圍

工業產權法（CPI）為工業產權和責任闡明了保護性措施。工業產權涵蓋了商業、服務和各行各業（農業和家畜養殖、漁業、林業、食品業、建築和採礦業以及天然或人造商品）。

工業產權由IPI註冊。註冊過程由註冊申請的登記備案開始。此後，註冊申請可能會面臨挑戰（利益關係人士可在此階段提出要求或異議）。最後，註冊才得以通過或被（部分或完全）拒絕。工業產權的決議可以被上訴，其效力會暫時中止，直至等待行政法庭的裁決。

工業產權的期限因權利類型不同而有差異：

The law provides that the rights arising from patents, utility models, trademarks, industrial designs, business establishment symbols, business names, appellations of origin, geographic indications, logotypes and awards may be wholly or partially transferred for valuable consideration or otherwise, inter vivos or mortis causa. The same applies to the rights arising from the applications. An inter vivos transfer must be made in writing. These rights may also be the subject of an operating licence.

The principle of priority is therefore particularly important as registration is granted to whoever files the application first. The rights are created by registration, which means that it is only by registering that the holders can be granted the right of exclusive use.

The CPI provides a provisional protection regime whereby the applicant can provisionally enjoy the protection conferred by the right from the time the application is published in the Industrial Property Bulletin.

Industrial property rights can be terminated in four different ways: (i) invalidity; (ii) annulment; (iii) expiry and (iv) waiver.

Patents

In Mozambique, patents (or utility models) can be obtained for any invention in any field of technology, whether it is a product or a process, provided that: (i) the invention is new, (ii) implies some inventive activity and (iii) is capable of industrial application.

However, certain things may not be patented, including discoveries, scientific theories and mathematical methods, systems, plans, rules and methods of intellectual activities in terms of play or in the field of business activities, computer programmes as such, surgical, therapeutic or diagnostic treatment methods for humans or animals.

As a rule, the right to a patent belongs to the inventor or his successors. However, if the item is invented during the course of an employment contract which envisages inventions, then the right to the patent belongs to the employer.

Anyone who has incurred liability to another may be deprived of the patent while a patent may also be expropriated for public use. Compulsory licences may be granted in respect of a given patent on the grounds of (i) insufficient exploration of the patented invention, (ii) patent interdependency, or (iii) public interest reasons.

專利權為20年，實用模型為15年，工業設計為5年（可更新至最長24年）。商標、標識、商業名稱、標記（可更新）則為10年；而來源名稱和原產地標示可無限期使用。

為著價值之考慮，法律規定由專利、實用模型、商標、工業設計、商業用途標誌、商業名稱、來源名稱、產地標示、標識以及獎勵所產生之權利可以被全部或部分在生前或死後轉讓。轉讓同樣適用於由申請所帶來的權利。生存者之間的轉讓必須以書面形式進行。這些權利也可能成為經營許可證的對象。

由於註冊是先到先得，因此優先權顯得特別重要。要先註冊才能享有權利，這意味著產權持有人只可通過註冊的方式獲得屬於自己的產權。

CPI規定了一種臨時的保護機制。依靠此機制，申請人可得到臨時的保護。自申請於工業產權公告顯示之後，申請人就可享有這種由產權帶來的保護。

工業產權可通過以下4種方式終止：(1) 無效；(2) 撤銷；(3) 失效以及(4) 自動棄權。

專利

在莫桑比克，專利（或實用新型）可由科技領域內的任何發明（產品或工藝皆可）獲取，條件是：(1) 必須為新發明；(2) 必須包含一定程度的發明活動以及(3) 必須能在工業中使用。

即使如此，有些事物還是無法獲得專利，包括新的發現、科學理論、數學方法、系統、計劃、針對娛樂或商業活動的規則和思考方法、純粹的電腦程序、用於醫治人類或動物的外科、治療或診斷的醫學方案等。

在一般情況下，專利的所有權歸屬於發明者或其繼承人所有。但是，如果某項新發明在含有該發明構思的僱用合約期間誕生，那麼專利權應歸屬於僱主。

任何對他人負有責任的人士可能會被剝奪專利權。此外，專利權也可能因為公用而被政府沒收。指定的專利可能需要強制性的許可證方可獲得，情況包括：(1) 取得專利條件的發明的研究程度不足夠，(2) 專利間互相抄襲，或者(3) 公共利益原因。

Trademarks

A trademark is a sign that distinguishes a company's products or services. It may consist of a sign or set of signs capable of being represented graphically, that is to say, in words, including personal names, designs, letters, numerals, sounds or the shape of the product or its packaging, which are capable of distinguishing the products or services of one company from those of other companies. Advertising slogans may also be trademarks.

There are specific provisions for free trademarks, collective trademarks (association or certification), well-known trademarks and renowned trademarks. The same trademark destined for the same product or service may only be registered once. Only after the registration has been accepted and for the duration thereof can the holder of the trademark use the words "registered trademark", the initials TM or ®. Apart from minor changes that do not affect the identity of the trademark, the trademark must remain unchanged as any change will trigger the need for a new registration.

Every five years from the date of registration, a declaration of intention to use the trademark must be filed with the IPI. Any trademarks for which this declaration is not filed cannot be enforced against third parties and the IPI will declare the lapse of the registration, at the request of any interested party, or when rights are seen to be prejudiced at the time other registrations are granted. If the expiry of the registration has not been requested, it will again be considered fully enforceable if the holder files a declaration of intention to use the trademark and provides evidence of actual use of the trademark.

Unfair Competition and Trade Secrets

Under the CPI, unfair competition is any action that is contrary to the honest customs and uses of any field of business activity. The law also lists examples of typical unfair competition acts, which can be divided into four categories:

- (i) acts designed to create confusion,*
- (ii) acts designed for the purposes of discrediting,*
- (iii) acts designed to bring about an unfair gain, and*
- (iv) acts designed to deceive.*

A breach of trade secrets also constitutes unfair competition, that is to say, acquiring, disclosing or using a competitor's trade secrets without its consent in a manner that is contrary to honest business practices, provided that this information i) is secret in the sense that it is not generally known or easily accessible in its entirety or in its exact shape and setting to persons outside the circles who usually deal with such information, ii) is commercially valuable due to its secrecy, iii) has been the subject of reasonable precautions, in view of the circumstances, by the person that legally controls it to keep it secret.

商標

商標是分辨公司產品或服務的標誌。它可由單一或一組圖形表示的標誌構成。也就是說，商標包括個人姓名、設計、字母、數位、聲音或產品/包裝的形態等。所有這些都能將某公司的產品或服務與其他公司同類型的產品或服務區別開來。廣告標語亦可作為商標。

對不同的商標有不同的條文解釋。它們分別是：自由商標、集體商標（聯盟或證明商標）、馳名商標以及著名商標。為同一商品或服務設定的同種商標只能註冊一次。只有在註冊被接受後的一整段時期內商標持有人才能使用“註冊商標”、首字母縮寫TM或R等標識。除了可以做一些不影響商標特徵的小改動之外，商標必須保持不變，因為任何變更都需要重新註冊。

由註冊之日起的每五年，商標持有人必須向IPI遞交一份使用商標的意圖聲明書，該聲明書由IPI歸檔。任何未遞交此類聲明的商標將無法對第三方生效；同時，若任何有利害關係人士提出請求或當事人在其他註冊申請得到接受時感到受歧視，IPI會宣告其註冊失敗。若註冊過期之請求未被提出，如果持有人能出示商標使用意圖聲明書並提供足夠的證據證明自己商標的實際使用狀況，那麼該註冊依然被視為完全有效。

不正當競爭和商業機密

在工業產權法下(CPI)，不正當競爭乃任何違背商業活動領域中誠信慣例之行為。法律也明文規定了幾種典型的不正當競爭行為，主要分為四類：

- 1) 產生混淆的設計行為
- 2) 故意詆毀競爭者的行為
- 3) 為了獲取不正當利益而設計的行為，以及
- 4) 以欺騙為目的的行為。

破壞商業機密同樣構成不正當競爭。也就是說，以違反誠信的商業傳統並在未取得對方同意的條件下獲取、洩露或盜用競爭對手的商業機密的行為也屬於不正當競爭的範疇。被不正當利用的資訊分別為：(1) 秘密資訊。該資訊的具體形態和屬性不為熟知如何處理此類資訊之外的人士所廣泛瞭解，(2) 因為其秘密性而具有商業價值的資訊，(3) 由合法的控制和保密人士採取適當的防預措施以防資訊洩漏。

Infringements

In Mozambique, industrial property is afforded the guarantees that are available to property rights in general, as well as the protection specifically provided for in the CPI. This means that an interested party can resort to the protection against civil wrongs that is available under the civil law, more specifically under the law of tort. Recourse may also be had to the provisions of the CPI which penalise infringements with fines or penalty payments.

Copyright

The Copyright Law (Lei dos Direitos de Autor, so-called “LDA”) provides protection for literary, artistic and scientific works and the rights of the authors, artists or performing artists, record and video producers and broadcasting organisations. It seeks to stimulate the creation and production of intellectual work in literature, article and science.

The personal and territorial scope of the LDA applies to:

- i) Works whose author or other copyright holder is Mozambican or a foreigner whose habitual residence or registered office is in Mozambique;*
- ii) Audio-visual works whose producer is Mozambican or a foreigner whose habitual residence or registered office is in Mozambique;*
- iii) Works published in Mozambique or works published for the first time abroad and subsequently in Mozambique;*
- iv) Architectural works erected in Mozambique;*
- v) Works protected under an international treaty to which Mozambique is a signatory.*

Copyright is a subjective right that confers upon its holder the power to use a work exclusively, in whole or in part, according to the types of use prescribed by law. Works are intellectual creations in the literary, scientific or artistic fields, expressed in any medium. What is protected is the form of expression of the work (an intangible asset), which may be reproduced in several formats. These formats are separate from copyright.

The right to copyright begins the moment the work is expressed and it is recognised irrespective of registration, deposit or any other formality. Copyright registration is therefore merely a declaration. The fundamental requirement for the existence of a work is its originality, whereas merit, for instance, is considered irrelevant, and ideas, processes, systems, operational methods, concepts or discoveries are not afforded copyright protection.

Copyright encompasses both economic and personal rights, the latter of which are known as moral rights. Moral rights cannot be assigned or encumbered.

侵權

在莫桑比克，工業產權被給予了同樣適用於物業產權的保證條款和只在CPI中提供的特殊保護。這意味著當事人在遇到適用於民法（特別是民事侵權法）的民事過失行為時可尋求此類保護。當事人可利用CPI的條款保護自己。條款規定了對侵權的罰金或罰款的數額。

著作權

著作權法（Lei dos Direitos de Autor，即所謂的“LDA”）為文學、藝術和科普類著作以及作者、藝術家或表演藝術家、唱片、音像製作人、廣播機構的權利提供保護。著作權法的目的是鼓勵文學、藝術和科學的創作和生產。

LDA適用的保護對象和領土範圍如下：

- 1) 作者或其他著作權持有者為莫桑比克人或在莫桑比克有註冊辦公地點或慣常居住此地的外國人的作品。
- 2) 作者或其他著作權持有者為莫桑比克人或在莫桑比克有註冊辦公地點或慣常居住此地的外國人的視聽產品。
- 3) 在莫桑比克出版的作品；或者曾在外國出版，跟著又在莫桑比克出版的作品。
- 4) 在莫桑比克境內建造的建築作品
- v) 受國際公約（莫桑比克必須為公約簽署國）保護的作品。

著作權是一種主觀權利。它授予其持有者根據法律規定的使用類型，專門（完整或部分地）使用某項作品的權力。作品乃在任何媒介中都能得以表現的文學、科學或藝術領域內以智力創造的結晶。受保護的乃是作品的形式或表達方式（一種無形資產），這些內容可以多種形式複製。這些複製後的形式與著作權有著根本的區別。

作品被公開之後，著作權的權利開始生效；且其不受註冊、定金或任何其他形式的制束。因此，著作權註冊只是一種聲明。作品存在的基本條件是它的原創性，而其優點等要素可不予以考慮。此外，作品的概念、創作過程、系統、操作方法、理念或其中的發現都不在版權保護的範圍之內。

The LDA also provides for the protection of neighbouring rights, which are those of artists or performing artists, record and video producers and broadcasting organisations. These neighbouring rights are separate from copyright but the copyright regime applies to such rights on a supplementary basis.

As a rule, copyright lapses 70 years after the death of the intellectual creator of the work when, with the exception of the safeguarding of moral rights, the work enters the public domain.

In principle, copyright belongs to the intellectual creator of the work but there are some special regimes. For example, copyright on a work done to order or on behalf of another, whether under a duty or an employment contract, is determined according to the agreement of the parties. There are also specific provisions covering multiple authorship, such as those connected with collaborative, composite or collective works.

The owner of the work and his or her successors or assignees are entitled to: (i) authorise the use of the work by a third party; or (ii) transfer or encumber, wholly or partially, the financial component of the copyright over the work.

An infringement of copyright law may give rise to liability in tort as well as for criminal offences such as usurpation, counterfeiting and infringement of moral rights, all of which are punishable with a term of imprisonment.

著作權包括經濟權和個人權，後者又被稱為精神權利。精神權利無法通過指定的方法賦予，且其不能成為產權負擔。

LDA同樣為著作權的鄰接權提供保護。鄰接權乃藝術家或表演藝術家、唱片和音響製品創作人以及廣播組織的權利。這些鄰接權與版權不同，但著作權法例作為補充可同樣適用於這些權利。

一般來說，在藝術家去世70年之後，著作權消失。但由於精神權利的保護，作品會被沒收為公有。

原則上，著作權屬於作品的創作者，但依然會有些特殊的條款。例如，定制或代表另一方所完成的作品（無論是義務或受僱用合同約束）的著作權則需根據多方協商來決定。同樣，還存在一些針對多個作者（合作、綜合或集體創作）的作品的版權保護條例。

作品的擁有着者以及其繼承人或受讓人被賦予以下權利：（1）可由第三方授權使用作品；或（2）可完全或部分轉讓或保留作品版權的經濟組成部分。

著作權之侵權可能引發侵權責任以及刑事罪行；例如非法使用、偽造和侵犯精神權利，所有此類行為都可能導致監禁的處罰。

VI. TAX SYSTEM

The Mozambican tax system has the following taxes:

National taxes:

(i) Direct taxation (on income):

- Personal Income Tax (*Imposto sobre o Rendimento das Pessoas Singulares*, so-called “IRPS”);
- Corporate Income Tax (*Imposto sobre o Rendimento das Pessoas Colectivas*, so-called “IRPC”);
- Inheritance and Gift Tax; and
- Special Gambling Tax.

(ii) Indirect taxation (on spending):

- Value-Added Tax (*Imposto sobre o Valor Acrescentado*, so-called “IVA”);
- Customs;
- Specific consumption tax (*Imposto sobre Consumos Específicos*, so-called “ICE”);
- Tax on property transfer and title (so-called “SISA”);
- Stamp Duty

Local government taxes:

- Local Government Personal Tax (*Imposto Pessoal Autárquico*, so called “IPA”);
- Local Government Land Tax (*Imposto Predial Autárquico*, so called “IPRA”); and
- Business Activities Charge (*Taxa de Actividades Económicas*, so called “TAE”).

Corporate Income Tax (“IRPC”)

Scope and incidence

This direct tax is levied on the revenue (profit) of companies even if it derives from unlawful acts.

IRPC is levied on the entire revenue, including revenue from abroad, of companies and other entities whose registered office or management and effective control is based in Mozambique, while those which do not have a registered office or effective control in Mozambique are only liable for IRPC on any income obtained in Mozambique.

There are no exemptions from IRPC except for the state itself, municipalities, federations of municipalities, social security institutions and associations deemed as being of public interest (with some exceptions).

六、稅收體系

莫桑比克稅收體系包括以下稅項：

國家稅：

(1) 直接稅收(收入所得稅)：

- 個人所得稅 (Imposto sobre o Rendimento das Pessoas Singulares,即所謂的“IRPS”)
- 公司所得稅 (Imposto sobre o Rendimento das Pessoas Colectivas,即所謂的“IRPC”)
- 遺產稅和饋贈稅；以及
- 特別博彩稅

(2) 間接稅收(支出稅)：

- 增值稅(Imposto sobre o Valor Acrescentado, 即所謂的“IVA”)
- 關稅
- 特別消費稅 (Imposto sobre Consumos Especificos,即所謂的“ICE”)
- 物業轉讓和物業財產稅 (即所謂的“SISA”)；
- 印花稅

地方政府稅收：

- 地方政府的個人稅 (Imposto Pessoal Autarquico,即所謂的“IPA”)
- 地方政府的土地稅 (Imposto Predial Autarquico, 即所謂的“IPRA”)；以及
- 商業活動稅 (Taxa de Actividades Economicas,即所謂的“TAE”)。

公司所得稅 (“IRPC”)

範圍和徵收率

此乃針對公司的營業收入/利潤 (即使是非法所得) 所徵收的稅

IRPC對整個收入徵稅,包括註冊辦公地點或管理層與有效控制機構在莫桑比克境內的公司和其他實體在國外經營的收入。對於那些在莫桑比克境內無註冊辦公地點或有效控制機構不設在莫桑比克境內的公司,其IRPC徵稅範圍僅限於該公司在莫桑比克境內的所有營業收入。

Taxable profit

The taxable profit is computed from the sum of the net financial year result and the positive and negative asset variations in the same tax period, with the necessary corrections in accordance with the law.

The normal tax year runs concurrently with the calendar year, however, it is possible to obtain authorisation to use a different tax period, by means of an application to the Ministry of Finance, which will imply that tax obligations need be complied with at different times.

The taxable profits attributable to the permanent establishment (branch branch / foreign business representation office) are calculated as if it were a company governed by Mozambican law, with all the necessary changes.

The taxable profit attributable to non-residents is calculated by applying the withholding rates (between 10% and 20%) or the different types of income liable to Personal Income Tax (IRPS), as the case may be.

The law sets down certain rules on transfer pricing and thin capitalisation which confers broad powers upon the tax authority to adjust and correct the taxable income.

IRPC Rates

- General rate	32%
- Agriculture and cattle breeding until 31 December 2010	10%
- Agrarian cooperative, cultural and crafts	10%
- Undocumented expenses and confidential or unlawful expenses	35%
- Income subject to withholding tax	10% - 20%

As a rule, the income paid to non-resident bodies is taxed at 20%, except for income deriving from the provision of international transport and telecommunications services and income from the assembly and installation of equipment by such bodies, which is taxed at 10%.

For instance, services agreements entered into with non-resident bodies and individuals and interest owed on loans and dividends paid to non-resident shareholders are taxed at 20%.

除了國家本身和非盈利組織之外，其他公司或企業都必須徵收IRPC (公司所得稅)。

可徵稅利潤

可徵稅利潤由年度淨收入和同一稅收結算期的正面或負面資產變化量來計算，必要時可根據法律作出適當的修正。

正常的納稅年度與日曆年是同步的。但是，納稅人可以使用其他形式的納稅期限來獲取授權。為此，納稅人需向財政部提交申請，表示自己能在不同的納稅時段承擔不同的繳稅義務。

永久設立點 (分支辦公室) 的可徵稅利潤是按照接受莫桑比克法律管轄的公司的徵稅標準進行計算的，有必要時該利潤會變動。

根據不同情況，非本國居民的可徵稅利潤以預繳稅率 (通常在10%至20%之間) 或個人所得稅 (IRPS) 的不同類型為標準進行計算。

法律對轉讓定價和資本弱化有專門的規定。這些規定對稅務部門調整和糾正應課稅收入時會授予強大力量。

IRPC稅率 (個人所得稅率)

- 整體稅率	32%
- 2010年12月31日前的農業和家畜養殖業稅率	10%
- 農業合作、文化和工藝稅率	10%
- 未公開的開支和保密或非法開支的稅率	35%
- 預繳稅收入的稅率	10% - 20%

因此，針對非本國居民收入的徵稅稅率為20%。以下收入只徵收10%的稅率：國際運輸和通信服務收入、與通信行業或國際運輸有關的設備的裝配收入。

例如，針對由非駐本國實體和個人引入的服務協定和支付非本國股東的貸款或分紅的利息的徵稅稅率為20%。

Carrying forward Tax Losses

Tax losses may be deducted against taxable profits up to the fifth financial year after they were computed.

International Double Taxation

The lower of i) the income tax paid abroad and ii) the portion of the IRPC taxable income prior to deductions which is equivalent to the taxable income in the country in question can be deducted from the amount of IRPC due.

If the country has a tax treaty with Mozambique, the deduction described above cannot exceed the tax paid abroad under the treaty.

The payment of IRPC

IRPC is paid on account (in three annual instalments) and corrected at the end of the tax year upon the filing of the annual return, if necessary.

Companies that make no profit during the financial year are obliged to make a special payment on account (in three annual instalments), calculated on the turnover of the previous year and subject to a minimum of 30,000 MT (\$1,200) and a maximum of 100,000 MT (\$4,000).

Value-Added Tax (VAT)

Scope and incidence

VAT is charged on paid transfers of goods and provisions of services in Mozambique and on imports.

Exemptions

Generally speaking, there are no exemptions from VAT, with the exception of the state and state companies - when they carry on activities for the public good, even if these activities are paid for -and taxable persons neither obliged to keep organised accounts nor involved in import and export transactions provided they have not reached in the previous year a turnover of over 750,000 MT (\$30,000) in the previous year.

There are, however, some objectively applicable exemptions to the transfer of some goods and certain service provisions, including i) primary goods, ii) banking and financial operations, and (iii) lease of property for residential, commercial or industrial purposes in rural areas.

There are also some VAT exemptions on the import of goods used for certain activities, such as oil and mining activities.

結轉稅務損失

直至第5個財政年度，稅務損失才可在計算後於可徵稅利潤中扣除。

國際雙重徵稅

以下2類稅收可從應繳IRPC稅裏扣除：(1) 在國外支付的收入所得稅的較低部分；(2) 在扣除之前，與所涉及國家的應稅收入相等的IRPC應稅收入部分的較低部分。

如果涉及國家與莫桑比克簽有稅收條約，以上描述的扣除量不得超過該條約規定的國外繳稅額。

IRPC的支付

IRPC以分期的方式(分3年攤還)支付；如有需要，可以徵稅年度的年尾根據每年的回報進行調整。

在財政年度沒有盈利的公司有義務分期支付(根據成交量計算的)一筆特殊的費用(分3年攤還)；以營業額計算，最低為30,000MT，最高為100,000MT(4,000美元)。

增值稅(IVA)

範圍和徵收率

IVA是針對莫桑比克境內的貨物運輸和服務以及進口貨物徵收的稅項。

豁免

一般情況下，IVA乃必徵稅收，但以下政府/國有企業享有IVA豁免權；(1) 為公眾利益(甚至需要收費)進行商業活動的政府或國有企業；(2) 既無存帳責任也不從事進或出口貿易，去年營業額不超過750,000MT(30,000美元)的納稅人。

Rate and payment

The VAT rate is 17%.

In order to calculate the amount of tax due monthly to the state, the taxpayer must deduct the amount paid on purchases legally deductible from the amount charged on sales.

Sisa

Sisa is levied on paid transfers of property title or similar rights over real property. The general rate is 2% but if the transferee is resident in a country with a more favourable tax regime than the Mozambican regime, the rate is 10%.

Stamp Duty

Stamp Duty is charged on all documents, contracts, books, papers and acts as set out in the General Table of the Stamp Duty Code.

The rates are prescribed in meticals for each act/document and in percentages on the acts/documents.

Double Tax Treaties

Mozambique currently has treaties with Portugal, Italy, Mauritius, the United Arab Emirates, Macao and the Republic of South Africa.

Tax Benefits and Special Tax Regimes

Mozambican law establishes some special tax regimes such as for mining and oil activities as well as various tax benefits granted under the Investment Law.

儘管如此，部分商品或服務的交換依然可享受客觀申請的豁免權；它們包括：1) 初級產品，2) 銀行業和金融業務，以及(3) 在農村地區以居住、商業或工業為目的的物業租賃。

同樣，部分特殊用途的進口商品(石油和採礦相關的商品等)也可減免IVA。

稅率和支付

IVA稅率為17%。

為了方便計算國家徵收的每月稅收，納稅人必須從銷售收入中扣除購買的支付費用。

物業轉移稅 (Sisa)

Sisa針對物業項目或類似的真實物業權的支付轉讓進行徵稅。一般稅率為2%；但如果受讓人所在的國家比莫桑比克具有更優惠的稅收體制，該稅率則上調至10%。

印花稅

印花稅的徵收物件為所有的文件、合約、書籍、報紙和印花稅法的稅務表中所列明的所有行為。

每種行為/每份文件的稅率規定以美提卡貨幣徵收，而所有行為/文件規定以百分比表示徵收。

雙重稅收條約

莫桑比克目前與葡萄牙、義大利、毛里求斯、阿拉伯聯合酋長國和澳門分別簽署了該條約。

稅收優惠和特別稅制

莫桑比克法律規定了針對採礦和石油貿易等的特殊稅制並提供了投資法允許的各類稅收優惠。

VII. LABOUR RELATIONSHIPS

The current employment legislation introduced at the end of 2007, mainly by Law 23/2007, of 1 August – the Employment Law – aims to facilitate employer investment and development, and is therefore protective of businesspeople and more open to the trade union movement. It has been hailed as a more wide-ranging, liberal and flexible law than its predecessor.

The following are some of the main features and principles of Mozambican employment legislation, with particular emphasis on the following:

- Terms and conditions of work.
- Discipline in the workplace.
- Social security.

Terms and Conditions of Work

Employment contracts

The following types of employment contract are possible:

- i) fixed-term employment contract.
- ii) non fixed-term employment contract.
- iii) permanent employment contract.

The fixed-term contract may only be used for short-term tasks and for the period strictly necessary for the purpose, such as:

- to substitute a worker who is temporarily unable to work;
- in response to an unusual increase in production and for seasonal activities;
- to carry out a certain or temporary project or other activity.

Fixed-term contracts may only be used for a maximum period of two years and are limited to a maximum of two renewals.

The non fixed-term contract is allowed last, particularly in civil construction, public works and other works contracts.

The permanent contract has no stipulated term and is designed for hiring workers for permanent positions at the company.

七、勞資關係

於2007年底由第23號法律(2007年8月1日通過)-勞工法所引入的現行勞工法令的實施目的是為僱主投資開發更便捷的管道以及發展商機;因此該勞工法令為商務人士提供了保障,也為商業聯盟的發展提供了更廣闊的空間。與之前的勞工法相比,該法律得到更高的評價,被認為範圍更廣泛、自由度更高和更加靈活的莫桑比克勞工法條例。

以下乃莫桑比克勞工法令的主要特徵和準則,特別是以下幾點需指出:

- 工作條款
- 工作培訓
- 社會安全

工作條款

僱用合約

大多數分為以下的僱用合約:

- 1) 定期僱用合約
- 2) 非定期僱用合約
- 3) 永久僱用合約

定期僱用合約只適用於嚴格按照工作要求而定的短期的工作任務,例如:

- 替換一個暫時無法工作的員工
- 因產量激增或季節變更而增加的任務
- 為了執行某項暫時性工程或其他活動

定期合同的期限上限為2年,且期間最多只能更新2次。

非定期僱用合約為 *allo ill last*. 特別適用於市政建設、公共服務以及其他工務合同。

All these contracts must:

- Be written and signed by the parties.
- State the names of the contracting parties.
- Indicate the duties and responsibilities of the parties.
- State the date on which the employment contract comes into effect.
- State the amount of pay and payment intervals.

The employment contracts must also stipulate:

- The place of work.
- The length of holiday leave.
- The daily and weekly working hours,
- Restrictive covenants such as exclusivity and non-competition clauses.
- The circumstances and formal requirements for amending the employment contract.
- The governing law.

Trial period

The law provides that workers may be required to undergo an initial trial period designed for the parties to adapt and get to know each other in order to decide whether or not to continue the employment contract.

The length of the trial periods are as follows:

<i>Permanent contracts</i>	
<i>90 days</i>	<i>General period</i>
<i>180 days</i>	<i>Duration for mid and upper-level workers hired as managers and directors</i>
<i>Fixed-term contracts</i>	
<i>90 days</i>	<i>Contracts with a term of over 1 (one) year</i>
<i>30 days</i>	<i>Contracts with a term of less than 1 (one) year and more than 6 (six) months</i>
<i>15 days</i>	<i>Contracts with a term of less than 6 months</i>
<i>Non fixed-term contracts</i>	
<i>15 (fifteen) days</i>	<i>Contracts of an estimated duration of 90 days or more</i>

永久僱用合約沒有規定的時限，適用於公司招募永久職位的員工的情形。

所有這些合約必須：

- 由雙方以書面形式簽署
- 寫明合同雙方的姓名
- 列出雙方的義務與責任
- 陳述僱用合約具體的生效日期
- 陳述工資額和支付時間

僱用合約必須規定：

- 工作地點
- 假期
- 每日和每週的工作時間
- 限制性契約，例如唯一性或非競爭性條款
- 修訂僱用合約的情況和正式要求
- 適用法律

試用期

法律指出，工人可能需要通過由僱主所設定的試用期以適應環境並認識同事，從而決定是否繼續履行僱用合約。

試用期的長短規定如下：

永久性僱用合約	
90天	整體試用期
180天	被招聘為經理或主管中高層員工的試用期限

The contract can be terminated by either party during the trial period without just cause by providing 7 days' written notice.

Hiring Foreign Workers

The employment law has established specific provisions on the hiring of foreign nationals who come to work for a company in Mozambique, even if on an unpaid basis.

These rules apply to those who enter into employment contracts or provide services, including directors, and agents of foreign companies who carry out non-subordinate work in a company in Mozambique.

The following two situations, however, should be considered:

i) Hiring a foreign worker within the quota: *the employment law sets quotas for foreign workers where admission is automatic on the basis of the size of the recruiting company and must be communicated to the Employment Directorate in the area where the company is located.*

The quotas are as follows:

- *5% of the entire workforce of large companies (those which employ over 100 employees).*
- *8% of the entire workforce of medium-sized companies (those which employ between 10 and 100 employees).*
- *10% of the entire workforce of small companies (those which employ less than 10 employees).*

After the hiring of the foreign national is communicated and the relevant declaration is issued by the Employment Directorate, the foreign national will obtain a residence visa which is stamped on his or her passport. The visa is issued by the Mozambican consulates and the foreign national should have the visa before entering Mozambique.

ii) Authorising work outside the quota: *once the company has reached its quota for recruiting foreign workers automatically, it may apply for authorisation to contract more foreign workers. However, in this case, admission is at the discretion of the Minister of Labour.*

The application must be accompanied with the academic and professional qualifications of the worker and the contracting company must provide evidence that no national worker has the same qualifications. This is the only way to justify contracting a foreign national.

定期僱用合約	
90天	工作期超過1年的僱用合約
30天	工作期超過6個月但低於1年的僱用合約
15天	工作期低於6個月的僱用合約
非定期僱用合約	
15天	工作期大約為90天(或更長)的僱用合約

試用期內,在沒有正當理由(發出7天的書面通知)的情況下,雙方都有權終止合同。

勞工法針對莫桑比克境內的公司僱用外地勞工(即使無酬勞)制定了相關的特殊條例。

這些規則適用於那些已簽定僱用合約或提供服務的人士;包括董事、在莫桑比克境內公司從事非下屬的外國公司代理人。

儘管如此,以下兩種情況仍需考慮:

- 1) 限定僱用外地勞工人數: 勞工法為外地勞工設定了人數限制。以公司的規模為基礎而定,若申請在配額人數之內,申請便會自動通過,同時必須與公司所在地的勞工局取得聯繫。

配額規定如下:

- 大型企業(僱用員工人數超過100人) 整體勞動力的5%
- 中型企業(僱用員工人數介於10人至100人之間) 整體勞動力的8%
- 小型企業(僱用員工人數少於10人) 整體勞動力的10%。

在辦理僱用外地勞工的手續以及勞工局簽發了相關的聲明之後,外地勞工會收到居留簽證;該簽證會印在勞工的護照上。簽證由莫桑比克領事館簽發,外地勞工須持此簽證才能進入莫桑比克。

Working time

The normal working period may not exceed forty-eight (48) hours a week and eight (8) hours a day.

Industrial establishments, with the exception of those which work shifts, may use a normal working time of forty-five (45) hours a week over five (5) days.

Holiday leave

Holiday leave is paid and calculated as follows:

Length of service	Holiday leave
During the first year	1 day for each month worked
During the second year	2 days for each month worked
From the third year on	30 days for each year worked

Termination of the employment contract

By law, contracts may be terminated on one of the following grounds:

- a) Expiry:
 - i) Once the term of the contract has expired.
 - ii) If it is impossible to work or receive work.
 - iii) Retirement.
- b) Revocation by agreement
- c) Unilateral termination with just cause:
 - i) On disciplinary grounds.
 - ii) Due to the worker's inability to adapt, after the trial period.
 - iii) Arrest or imprisonment if, due to the nature of the worker's duties, this would adversely affect normal operating.
 - iv) On economic grounds.

- 2) 配額以外的授權工作：一旦公司所僱用的外地勞工人數自動達到配額，可申請授權僱用更多的外地勞工。但是，在這種情況下，申請須由勞工部長審批決定。

申請表格必須連同外地勞工的學術和專業資格證書進行申請；簽約公司也必須提供證據證明本國的員工不具備相同的資格。這也是與外國勞工簽定僱用合約的唯一正當理由。

工作時間

正常工作時間不得超過每星期48小時及每天8小時。

對於工業企業來說，除了那些採用輪班制的企業之外，其餘的企業可採用正常工作時間制，即每星期45小時，一星期5天的工作時間。

有薪假期

有薪假期按以下方法計算：

服務年期	假期
第一年內	每工作月1天
第二年內	每工作月2天
從第三年開始	每工作年30天

僱用合約的終止

根據法律，在以下其中一種情況發生時，僱用合約可被終止：

a) 失效：

- 1) 僱用合約的條款失效
- 2) 員工無法繼續工作或承擔新的工作責任
- 3) 員工退休

d) *Unilateral termination with notice*

i) **Termination by the worker**, without needing to plead just cause, provided that the decision is communicated in writing in accordance with the following periods of notice:

Type of contract	Notice period	
Fixed-term contracts	30 days' prior notice	
Permanent contracts	If the length of service is greater than 6 months and less than 3 years	15 days' notice
	If the length of service is greater than 3 years	30 days' notice

ii) **Termination by the employer**, provided that it is based on structural, technological or market grounds.

The worker, the trade union committee and the Employment Directorate must be notified in writing at least 30 days in advance.

In this case, the worker is entitled to the following:

Length of service	Severance pay
Between 3 and 6 months	45 days' pay
Between 6 months and 3 years	90 days' pay
Over 3 years	90 days' pay for every two years or fraction thereof

iii) **Redundancies**: employers who implement a redundancy process (that is to say, terminate the employment contracts of 10 or more workers at the same time) must inform the trade unions and the affected workers as well as the Employment Directorate before beginning the negotiation process. This information must include the grounds for the redundancy, the number of affected workers and the measures proposed by the employer to mitigate the consequences of the redundancy for the workers.

b) 協議取消

c) 基於正當理由的單方面終止合同：

- 1) 出於紀律考慮
- 2) 試用期後員工無法適應工作
- 3) 根據員工工作的性質，如果員工曾遭逮捕或監禁，這會為正常工作帶來不利影響
- 4) 基於經濟原因考慮

d) 單方面終止合約通知：

1) 員工自己解除合約，無需解釋正當理由。員工必須以書面形式通知僱主，同時按照以下通知期：

合約類型	通知期限	
定期合約	提前30天通知	
永久合約	工作時間超過6個月但低於3年	15天的通知
	工作時間超過3年	30天的通知

2) 僱主解除合約；但必須是出於結構、技術或市場因素考慮而解除合約。

員工、貿易聯盟以及勞工局必須在事先至少30天內收到書面通知。

在這種情況下，員工能獲得以下薪酬：

服務時間	解僱金
3 至6個月之間	45天的工資
6 個月至3年之間	90天的工資
3 年以上	每兩年或中途間隔支付90天的工資

3) 裁員：僱主如果實行裁員（也就是說，同時終止與10個或10個以上的員工簽定的僱用合約），則在協商開始前，必須通知貿易聯盟、遭解僱的員工和勞工局。通知的內容必須包括裁員的理由、被裁員工的數目以及僱主為了減輕裁員的負面影響而採取的措施。

Discipline in the workplace

Disciplinary Procedure

No disciplinary sanction can be imposed without the worker having being previously informed of all the relevant facts and given the opportunity to present his or her defence. The following stages and time limits apply for the purposes of the disciplinary procedure:

Stages of the procedure	Initial investigation and allegation			Defence		Appraisal, decision and enforcement
Procedural documents	Inquiry (optional)	Initial investigation and statement of misconduct	Communication of the intention to dismiss	Reply to the statement of misconduct	Trade union opinion	Final decision
Time limits	May not exceed 90 days after the suspected infringement	30 days from the date on which the infringement became known*	At the beginning of the disciplinary procedure	15 days after notice of the statement of misconduct	5 days after notice	30 days after the receipt of the trade union committee opinion

* From the conclusion of the investigation, if any. Only facts which took place up to 6 months before the date of notice of the statement of misconduct may be taken into account. Once these time limits have elapsed, the time limit on the right of the employer to discipline the employee expires.

* The employer may suspend the worker, without loss of pay, at the time notice of the statement of misconduct is served.

* A challenge to the just cause of the termination must be filed within 6 (six) months of the date of notice.

Disciplinary Sanctions

The employer may impose the following disciplinary sanctions:

- Verbal warning.
- Written reprimand .
- Suspension without pay for up to a maximum of 10 (ten) days for each infringement and 30 (thirty) days per calendar year.
- Fine of up to 20 (twenty) days' pay.
- Demotion to the job category below for a period of not more than one year.
- Dismissal.

Severance Pay

As regards the calculation of severance pay in respect of employment relationships, provision is made for a transition period between Law 9/98 of 20 July (the old Employment Law) and the new law and, depending on the level of pay of the worker, the old law will continue to apply for the purposes of calculating severance pay for the first thirty months, five years, ten years and fifteen years of the new law being in force.

(1) No disciplinary procedure required.

紀律處分程序

紀律程序

在員工未瞭解所有與工作相關的事實以及未做好防禦措施之前，僱主不得給予員工任何形式的紀律處分。以下階段和時間限制適用於訓練程序：

程序階段	初步調查和聲明			防禦性措施		評估、決定和強制執行
程序文件	調查 (非必需的)	初步調查和發出不當行為聲明	解僱意圖說明	回應不當行為聲明	尋求貿易聯盟意見	最終決定
時間限制	不可在違規嫌疑後 超過90天	得知違規事實之日起 的30天之內*	在紀律程序之始	在通知處理不當行為 聲明後的15天之 內	通知後的5天之 內	在接到貿易聯盟委員 會後的30天

*由調查結束時開始(如有)。只考慮發生於在發出不當行為聲明的通知前的6個月內所發生的事實。一旦超過這些時間限制，僱主對員工的紀律調查的時限也到期。

*僱主可能會在發出不當行為聲明通知後拖延員工，但同時要向他們支付薪金。

*對解除合約的正當理由提出的抗議必須要在通知發出後的6個月內以檔案的形式備案。

紀律處分

僱主可實行以下紀律處分：

- 口頭警告
- 書面批評
- 對於每項員工的違規行為，僱主可停薪最多10天及每年最多停薪30天
- 最多20天的工資作為罰款
- 降職 (不得超過1年)
- 解僱

解僱金

至於與勞務關係有關的解僱金的計算，法律在1998年7月20日的第9號法令 (舊勞動法) 和新勞動法之間規定了一個過渡時期；此外，依據員工的工資水平，舊勞動法依然能適用於新法令所規定的頭30個月、首5年和首15年的解僱金計算標準。

(1) 不需要紀律程序

Social Security

Social security is compulsory and covers employees and the self-employed, nationals or foreigners resident in national territory and their employers. It also includes part-time workers, workers on trial period and those on paid traineeships.

The law also considers the following as workers for social security purposes:

- a) Directors and members of company bodies with an employment contract, including unipessoal companies.*
- b) Individual traders with employees working for them;*
- c) Stevedores contracted by a stevedore company or private employment agency;*
- d) Professionals working for transporters;*
- e) Workers in state or local government institutions and state company workers not covered by the General Civil Servants Statutes;*
- f) Seasonal workers;*
- g) Political party and trade union workers, non-governmental organisation and association workers.*

Except in the case of self-employed workers, the employer is responsible for registering the workers.

Foreign resident workers are not obliged to register for social security provided that they are covered by a social security system in another country.

Compulsory social security contributions are divided between the employer and the worker at 4% and 3% respectively of the monthly salary, and the employer is responsible for depositing the contributions to the order of the National Social Security Institute.

The national social security system covers the following situations:

- a) Illness - sick pay and hospitalisation allowance;*
- b) Maternity – maternity allowance;*
- c) Disability – disability allowance;*
- d) Old age – senior citizen’s allowance;*
- e) Death – death benefit, funeral allowance and survivor’s pension.*

社會保障

社會保障具有強制性。保障範圍涵蓋了員工、個體工商戶、本國公民或在本國領土居住的外國居民以及他們的僱用員工。兼職員工、試用期員工和有薪見習員工也在社會保障的範圍之內。

基於社會安全考慮，法律也規定以下人員屬於員工：

- a) 簽有僱用合約的董事和公司實體的成員；包括只有一人的公司。
- b) 僱有員工的個體經營戶
- c) 由搬運公司或私人勞工機構簽約僱用的搬運工人
- d) 運輸工具從業人員
- e) 未在一般公務員條例範圍之內的國家或地方政府機構和國有企業的員工
- f) 臨時工
- g) 政治團體和貿易聯盟的員工；僱主有責任為此類員工註冊。

除了個體經營的人員以外，僱主都有責任為其屬下的員工註冊。

除了受其他社會保障體系保護的外地勞工之外，其他外地勞工不能註冊本國的社會保障。

強制社會保障款項由僱主和員工自己從每月收入中分擔。僱主分擔每月收入的4%，員工本人分擔每月收入的3%；此外，僱主有責任將款項按照國家社會保障體系的要求存入指定帳戶。

國家社會保障系統覆蓋以下情況：

- a) 疾病—病假工資和住院津貼
- b) 生育—生育津貼
- c) 殘疾—殘疾津貼
- d) 老齡—高齡市民津貼
- e) 死亡—死亡思恤金、殉葬津貼和親屬撫恤金。

VIII. DISPUTE RESOLUTION IN THE FOREIGN INVESTMENT FRAMEWORK IN MOZAMBIQUE

Overview of the dispute resolution mechanisms

Arbitration

The possibility of settling disputes by arbitration, subject to the legally prescribed limits, came into force in Mozambique in the latter half of 1999 with the Arbitration, Conciliation and Mediation Law (Law 11/99 of 8 July), adding this new modern means of settling disputes to the usual ways of settling disputes via the judicial or administrative courts under the civil procedure law in force in Mozambique (1966 Civil Procedure Code and the many amendments it has undergone over the years).

The disputes that arise from legal commercial relationships in the broad sense, including those arising from investment can, as a rule, be settled by arbitration. The parties (individual businesspeople or companies) to these conflicting relationships can opt for arbitration in accordance with the Arbitration, Conciliation and Mediation Law, either in advance by means of an arbitration clause in the contract or subsequently by means of an arbitration agreement, which should be drawn up expressly.

Arbitration in commercial relationships can be either domestic or international. Domestic arbitration is designed to settle disputes about commercial relationships that fall under Mozambican jurisdiction. The creation and operation of the arbitration tribunal and the arbitration award are governed by the Arbitration, Conciliation and Mediation Law.

International arbitration is designed to settle disputes involving international commercial relationships, in other words, disputes that arise from legal business relationships connected with more than one national jurisdiction in terms of nationality, residence, registered office or establishment of the parties, the place of contract or performance of the obligation and the place where the fact or the damage takes place.

International institutional commercial arbitration may be used particularly in the case of conflicts in foreign investment relationships. In investment relationships between a foreign investor and the Mozambican state, if there is no agreement between them or there are compulsory legislative provisions to the contrary, the Investment Law (Law 3/93, of 24 June) expressly allows for any disputes arising from this relationship to be settled, based on a prior agreement, in accordance with the international commercial arbitration rules below:

- (a) the Washington Convention, of 15 March 1965, on the Settlement of Investment Disputes between States and Nationals of Other States and the International Center for the Settlement of Investment Disputes between States and Nationals of Other States (ICSID),
- (b) The Additional Facility Rules approved on 27 September 1978 by the Administrative Council of the ICSID if the foreign company does not fulfil the nationality conditions set out in Article 25 of the Washington Convention; or
- (c) the International Chamber of Commerce based in Paris.

八、外國投資框架中的 糾紛解決

糾紛解決機制概要

仲裁

隨著莫桑比克於1999年下半年制定《仲裁、調解和調停法 (1999年7月8日第11/99號法律)》，在法律規定的範圍內使用仲裁來解決糾紛成為了可能，而這一法律的頒佈在現有的借助司法或行政法庭依據莫桑比克現行民事訴訟法來解決糾紛的常規途徑之基礎上增添了新的現代手段。

作為上述法律的一項規定，所有廣義上的法律商業關係所導致的糾紛，包括投資糾紛均可使用仲裁解決。發生糾紛的雙方 (個體商人或公司) 可以選擇依據《仲裁、調解和調停法》訴諸仲裁，這可通過事先在合約中加入仲裁條款，或隨後簽訂一份明確制訂的仲裁協定來實行。

商業關係方面的仲裁可以是國內仲裁或是國際仲裁。國內仲裁用以解決處於莫桑比克管轄範圍內的商業關係糾紛。仲裁法庭的建立和運行以及仲裁判決均受《仲裁、調解和調停法》管轄。

國際仲裁用於解決涉及國際商業關係的，換言之，也就是因涉及多個國家管轄範圍 (在國籍、公司註冊地、雙方的註冊辦事處或經營機構、締約地或合約義務履行地、以及糾紛事實或侵權發生地等方面) 的法律商業關係所引起的糾紛。

發生外國投資關係糾紛時，特別適合採取國際商事仲裁的手段。對於外國投資者與莫桑比克國家之間的投資關係，若雙方不存在協議或存在與之相反的強制性法律規定，則《投資法 (1993年6月24日第3/93號法律)》明確允許根據事前協議按下文所示的國際商事仲裁規則來解決糾紛：

(a) 《華盛頓公約 (1965年3月15日) -關於國家與其他國家國民間投資糾紛的解決以及國際投資糾紛解決中心》

(b) 若涉及糾紛的外國公司不符合華盛頓公約第25條所規定的國籍條件，則可採取“國際投資糾紛解決中心”之管理理事會於1978年9月27日通過的《融通資金追加條例》；

(c) 訴諸位於巴黎的國際商會。

眾所周知，很少投資關係糾紛是通過國際仲裁來解決的，而很多這類糾紛是通過協商解決的。

It is known that very few disputes in investment relationships are resolved by recourse to international arbitration, and it is likely that many of these disputes have been settled by negotiations.

It is becoming increasingly frequent to include a national or domestic arbitration clause in contracts, which will foster the growth and consolidation of arbitration in Mozambique in the short term.

These clauses opt for the ad hoc arbitration tribunal (that is to say, expressly created for the purpose of settling a dispute) and also institutional arbitration, which means creating arbitration tribunals from a panel of arbitrators run by an arbitration institution whose rules are applied to the arbitration process. At this time, there is only one commercial arbitration institution in Mozambique - the Maputo-based Arbitration, Conciliation and Mediation Centre.

Arbitral awards are final and enforceable and may only be appealed to a court on the points of form or procedure established by law, which essentially mean a failure to comply with the formalities, thereby affecting the exercise of the rights of defence, particularly the right to be heard.

In the event that the losing party does not comply voluntarily with the arbitral award, the injured party may apply to a court to have the decision enforced under civil procedure law.

It should be noted that an investment is not limited to the investment relationship in the strict sense of relationships governed by the legislation that applies to national and foreign investments. Investments form part of a much wider range of relationships, and such relationships may fall within the different spheres of legal relationships governed by specific legislation.

This is the case, for example, in relationships between private individuals and the state in which the latter is vested with state prerogatives or jus imperi or which are governed by administrative law.

In such cases, particularly as regards administrative contracts, including concession contracts, the law only allows recourse to the special state form of administrative arbitration, presided over by an administrative court judge and governed by administrative law.

There are cases where the law allows the state to participate in terms that bring in under the umbrella of the private law regime, such as in oil contracts for example.

Another example is the case of employment relationships, with regard to alienable employment rights, where disputes arising from collective agreements and individual employment contracts can be settled by means of labour arbitration based on the provisions of the Employment Law.

The innovative though general reference to the tax contract in the 2006 tax legislation (Law 2/2006 of 22 March) must be mentioned, even though it does not express legally the possibility of recourse to arbitration for settling the disputes arising from such contracts.

現在人們越來越經常在合約中加入國際或國內仲裁條款，而這將在短期內推動莫桑比克國內仲裁的發展和鞏固。

上述合約條款選擇的是特別仲裁法庭（亦即專門為解決糾紛而成立的仲裁法庭）以及機構仲裁，後者指成立一個由仲裁員小組組成的仲裁法庭，該仲裁庭由仲裁機構管理，並在仲裁過程適用該機構的規則。目前，在莫桑比克國內只有一所商事仲裁機構-亦即“馬布多仲裁、調節和調停中心”。

仲裁判決為最終判決，具有執行力且只能通過法律所制定的形式或程序提出上訴，這本質上意味著如未能履行上訴的法定手續，將影響抗辯權（特別是獲審理的權利）的行使。

若敗訴方未能自願遵守仲裁決定，則受侵權一方可以向法庭提出按民事訴訟法強制執行裁決。

要注意的是：一項投資並不只局限於由法律（適用於國內和外國投資的法律）所管轄的嚴格意義上的投資關係。投資構成範圍更為廣泛的關係的一部分，而這些關係可能屬於法律關係的不同領域（由特定的法律管轄）。

例如：就民間個人和國家之間的關係而言，後者享受國家特權或國家權力或受行政法管轄。

在這種情況下，特別是對於行政合約（包括特許經營權合約），法律只允許追索方求助於特殊國家形式的行政仲裁，這種仲裁是由行政法院法官主持並由行政法規管轄。

在某些情況下，法律允許國家在受私法制度庇護之情況下參與締約，例如石油合約。

另一個例子是勞資關係，就不可分割的僱用權利而言，因勞資協議和個人僱用合約而產生的糾紛可以通過勞動仲裁按照《僱用法》規定得到解決。

在這裏必須提到《2006年稅法（2006年3月22日第2/2006號法律）》對稅務合約的創新但一般性的參考。雖然這一參考並未從法律角度上表示人們可以通過仲裁來解決因上述合約導致的糾紛。

Litigation

For disputes where the parties have not agreed to go to arbitration or the law itself requires otherwise, as is the case with inalienable rights, the procedure stipulated by the procedural law to apply in state courts is reserved for the use of the state courts.

The courts have the exclusive jurisdiction to settle disputes by judicial means and according to the principle of the separation of powers are classified as sovereign bodies under the Constitution of the Republic (Article 133 in conjunction with Articles 70 and 212). The law differentiates between judicial courts, administrative courts and other special courts set up by law.

The judicial courts include the Supreme Court, the Supreme Appeal Courts, the Provincial Courts and the District Courts (Law 24/07 of 20 August – The Judicature Law).

The provincial courts are divided into specialised jurisdiction courts and sections such as the family court and the civil, commercial, labour or criminal courts, while the district courts have general jurisdiction.

The administrative court has special jurisdiction since it hears claims arising from disputes in legal administrative relationships, litigation appeals lodged against the decisions of state bodies and agents and appeals lodged against tax and customs court decisions.

Efficiency of the Mozambican judicial system

The periods indicated below are only estimates and vary according to the procedural requirements and complexity of each case. However, experience shows that in the Mozambican court system disputes are settled on average within the following periods:

At first instance;

- (a) Civil cases take around 1 to 3 years for the decision;*
- (b) Commercial cases, because of the sections that have been created recently, are decided on average within one year;*
- (c) Employment cases usually take around one to 3 years for the decision.*

At second instance:

If a decision is appealed to the Supreme Court, the ruling takes around 4 to 5 years on average.

訴訟

對於雙方未能就是否訴諸仲裁而達成一致的糾紛，或者法律另有規定（由於涉及不容剝奪的權利）的糾紛，程序法所規定的適用於國家法院的訴訟程序只能由國家法院行使。

法院擁有唯一司法權，可通過司法手段並按照莫桑比克共和國憲法中的分權原則解決糾紛（憲法第133條連同70及212條）。法庭可區分為司法法庭、行政法庭和其他特殊法庭。

司法法庭，包括最高法院、最高上訴法院、省法院和地區法院（8月20日24/07號法律-《裁判法》）。

省法院分為專門管轄法院，分別有家事法庭、民事法庭、商事法庭、勞資爭議法庭或刑事法庭，而地區法庭則具有一般管轄權。

行政法庭擁有特別管轄權，這是因為該法庭負責審理法律行政關係糾紛所引致的訴訟，及審理針對國家機關和機構的決定而提出的上訴，及針對稅務和海關法庭之決定而提出的上訴。

莫桑比克司法系統的效率

以下所示的時期僅為估計數字，並因訴訟要求和每個案件不同的複雜性而有差別。但經驗說明在莫桑比克的法院，糾紛一般是在以下期限內得到解決：

初審的情況下：

- (a) 民事案件需要約1-3年才能得出判決；
- (b) 由於商業法庭是新成立，因此商業案件的判決是在一年內得出；
- (c) 勞資糾紛案件通常需要1-3年才能得出判決。

二審的情況：

如敗訴方就審判結果向最高法院上訴，則最高法院的判決通常要大約4-5年時間。

Recognition of foreign judgments

In Mozambique, foreign judgments are recognised and confirmed in the Supreme Court, after which they may be enforced in Mozambique.

The rules of the New York Convention, date of 1956, on the recognition and execution of foreign arbitral decisions (adopted by Mozambique on 10 July, 1998, with reciprocity reserve) are fully applicable to the revision and confirmation of Arbitral awards decided by foreign arbitration courts or arbitrators.

承認外國的判決

在莫桑比克，外國判決是由最高法院承認和批准，在獲得承認和批准後，可以在莫桑比克境內實施。

紐約公約 (1956年) 中“關於外國仲裁決定之認可和執行的規定” (於1998年7月10日為莫桑比克所帶“互惠保留”通過) 完全適用於外國仲裁法庭 (或仲裁員) 所作仲裁判決的修改和批准。

IX. PUBLIC PROCUREMENT IN THE REPUBLIC OF MOZAMBIQUE

I. Framework

The legal framework for public procurement in Mozambique is currently laid down in Decree 15/2010, of 24 de May¹, which approved the new “Regulations for Public Works Contracting, Supply of Goods and Provision of Services to the State” (the “Regulations”).

Even from a brief analysis of this piece of legislation, its importance in the context of contracts with the State in the broad sense is clear to see.

Also by way of an introduction, it is important to emphasise that we are dealing with legislation that takes what we can say is a successful unitary approach to the issues most relevant to the area of public procurement, including the system for the most important administrative contracts. In a word, it can be said that the Regulations under analysis are a very useful codification of this (always) complex theme.

II. Subjective scope of application, core principles and rules of public procurement

1. The Regulations under analysis apply to all State bodies and institutions, including local government and State companies².

2. The Regulations enshrine traditional guiding principles for the activities of public authorities from among which we would highlight the principles of legality, proportionality, transparency, equality and good faith.

However, it should also be pointed out that, alongside these fundamental principles which should guide the conduct of the State in the sense already referred to, express provision is also made for other specific principles on issues of adjudication, such as, *inter alia*, the principles of stability, competition and sound financial management.

We must also stress that, under article 4 of the Regulations³, there is an express reference to the “other principles of public law”, which means we should not lose sight, in the application of the said Regulations, of the provisions of articles 4 to 14 of Decree 30/2001 of 15 October, which establish the “Rules for Operation of Public Administration Services”.

3. The usual rules that shape public works contracting and the acquisition of goods and services are those of public tender procedure (see article 7).

By contrast with the “general system” (of public tender), we have what is called the “special system”. This system requires the application of rules different to those set out in the Regulations for specific public procurement cases in which a treaty or other type of international agreement determines the adoption of distinct procedural rules. We also have what is called the “exceptional

(1) This Decree repealed Decree 54/2005, of 13 December.

(2) For the purposes of the Regulations, all companies in which the State holds 100% of the respective share capital are considered to be “State” companies.

(3) Where there is no express indication or other legislative source, all legal provisions should be understood to be provisions of the Regulations approved by Decree 15/2010, to which we have been referring.

九、莫桑比克政府采购法

一、法律框架

莫桑比克政府采购制度主要由2010年5月24日第15/2010号法令¹“关于国家公共建设合同、物资和服务供应规章”(以下简称“规章”或“法令”)进行规范。

即使只是对该法令进行简要解读,也可以看出它在莫桑比克政府采购制度中举足轻重的地位。

同时,通过本文的简要介绍,可以让读者知道该政府采购法统一规定了政府采购程序中的几个主要方面的问题,包括最为重要的行政合同。总之,解读该法令对理解莫桑比克的政府采购制度非常重要。

二、政府采购的适用范围和主要原则

1. 该规章适用于所有国家机关和事业单位,以及地方政府和国有公司²。

2. 该规章遵循传统的行政法原则,包括合法性原则,确定性原则,合理性原则,比例原则,行政公开原则,公平公开原则。

同时,该规章除了明确上述传统行政法原则外,对裁决问题还适用特别原则,比如特别适用的稳定性原则,保持竞争和良好经济管理原则。

另外,该规章第四条³中出现的“其他行政法原则”,需要结合2001年10月15日第30/2001号法令中第四条至第十四条的内容(公共行政服务原则)来理解。

3. 政府公开招标作为一般原则适用于政府公共工程合同与物资和服务供应(见第七条)。

除一般原则(即公开招标)外,我们还有特别机制。特别机制的规则不同于一般机制,主要由国际公约或其他形式的国际协定来决定其特殊的程序规则。此外,我们还有例外程序,当基于对公共利益考虑,采购方可采取以下合同前程序确定采购合作对象:预选招标;限制性投标;两段式招标;命令招标(tender by bidding);小型招标⁴和私人协定⁵。

4. 莫桑比克国内外的个人或公司,只需要满足规章第20条至第30条关于投标人法律资格、经济和技术资质以及良好的纳税纪录等方面的要求,就是合格的投标主体。

(1) 该法令取代了2005年12月13日第54/2005号法令。

(2) 该规章中的国有公司指的是所有由国家100%控股的公司。

(3) 除非另有说明,本文出现的法条指引都是来自上述第15/2010号法令。

(4) 规章确立的小型招标制度是一大创新,它将第54/2005号法令中的零散规定进行整合并加以完善。同时它还吸收了很多适用于此类招标的特别规定,使得莫桑比克采购法更为便捷和有效。仅限个人、微型和小型公司企业(具体标准由规章规定)具备参与该类招标制度的资格。

(5) 规章第113条明确规定了该类招标制度适用的情况,例如订立中出现紧急情况,先前的公开招标被废止,涉及军事机密的合同或交易,租赁合同等等。规章还详细规定了该类招标的决标程序。

system". Where the proper "public interest" grounds exist, this system allows the contracting public entity to choose one of the following pre-contractual procedures: tender with prior qualification, limited tender, two-stage tender, tender by bidding, small-scale tender⁴ and private treaty⁵).

4. Individuals and companies, both Mozambican and foreign, that meet the legal, financial/ economic and technical requirements and have their tax situation in order in accordance with the Regulations (see articles 20 to 30) are considered to be "eligible" for tenders for public works and the supply of goods and services.

In the context of this "qualification", we highlight the need for the proposals to be accompanied by the commercial registration and the public deed or other equivalent document, a declaration signed by the bidders that they do not have any of the various applicable "impediments" (see article 21), the consortium project or agreement for establishment of a consortium (in cases of groups of companies), the periodic declaration of income and annual declaration of accounting and tax information, asset situation and accounting information for the latest financial year presented in accordance with the law, a declaration that there are no applications for insolvency against the entity (and that it has not requested any arrangement with its creditors), a certificate proving registration or enrolment in a professional activity compatible with the subject matter of the contract in question, a licence or equivalent document issued by the appropriate body in the case of activities subject to such requirements.

In this respect it is important to point out that "foreign bidders" have the option of presenting documents "equivalent" to the ones required from "domestic bidders".

On the same point, the Regulations provide that "foreign bidders" should be able to demonstrate their legal, economic/financial and technical qualifications as well as their tax situation in their respective country of origin in order.

However, they must have a "proxy" resident and domiciled in Mozambique with special powers to accept service of summonses and subpoenas, and answer administratively and legally for their acts. (The relevant power of attorney or other official appointment document must be filed with the proposal to be submitted in the public tender or other type of pre-contractual procedure).

An this point, something that is worthy of particular attention is the fact that contracting public entities may restrict the participation of "foreign bidders" in significant adjudication processes, that is processes of a value of less than ten million five hundred thousand meticals in the case of public works contracts and five million two hundred and fifty thousand meticals in the case of acquisition of goods and (see articles 26 and 90^{6/7}).

In any case, this type of limitation is dependent on the prior and well-grounded authorisation of the relevant Minister.

(4) The enshrinement of the small-scale tender process represents one of the innovations introduced by the Regulations which have grouped together and established a system for a set of scattered references that the old Decree 54/2005 contained in relation to small-scale tender processes. It also established a collection of rules that are specifically applicable to this type of tender and through these provisions it seeks to make the legal framework for public procurement in Mozambique faster and more efficient. It should be noted that only individuals, micro and small companies (as defined by the Regulations) may take part in these small-scale tender procedures.

(5) Turning our attention to the relevance of the private treaty procedure (see article 113), we would like to make it clear that this "mechanism" may be used, for example in cases of "emergency", rectius, urgency in contracting, in cases in which a prior public tender was abandoned, in cases that involve "secret" military contracting or acquisitions, in case of rental contracts. It should be noted that all the said adjudication procedures are sufficiently regulated in the Decree we have referred to.

(6) The value of the limits applicable to these adjudication processes that can be restricted to "domestic bidders" was increased considerably by the new Decree, making this option even more significant.

(7) Naturally, this is a case of a legal option and, as a consequence, it may or may not be adopted. However, it should be noted that if the contracting public entities do not opt to apply this significant restriction, they are obliged to observe "margins of preference to Mozambicans" capable of benefitting domestic bidders – whether in the case of public works or that of the acquisition of goods and services. In the latter case, proof must be offered of the incorporation of domestic factors in the goods to be acquired, the value of which must correspond to at least twenty per cent (see article 26 nos. 3, 4 and 5).

关于资质要求,需要投标人出示工商营业执照和公证文书(或其他等效文件),并书面声明自己不存在规章第21条所述的任何障碍,出示合法的定期收入声明、年度审计报表和缴税信息,资产状况,上年度审计报告,一份无人申请投标人破产(投标人与债权人之间也无任何协议或安排)的声明,具备从事招标工程项目资质的注册证书和有关机关颁发的许可证或其他等效文件,是集团公司的要出示必要的(财团投资项目)说明或组成财团投资项目的协议。

对外国投标人而言,要求其递交的各种文件与本国投标人相同。

具体而言,包括递交法律资格,经济/财务和科技资质,在其本国的纳税情况等文件。

但这些外国投标人必须在莫桑比克境内有代理人,且具备接受传唤,法律文书通知,承担行政和司法责任的能力(相应的代理委托书或正式任命文件应当在公开招标程序或其他合同前程序中与投标书一同递交)。

另需特别注意的是某种程度上限制外国投标人参与投标的情况:合同价值低于一千零五十万梅蒂尔卡的公共建设合同,合同价值低于525万梅蒂尔卡的物资和服务供给合同(见第26条和第90条^{6/7})。

该类限制需获得相关部委的提前批准(且该批准有理有据),方能适用。

5.评标和定标——即定标标准——采用“最低竞价”⁸标准为基本原则。

即最低报价的投标人就是最后的中标人。如果出现相同最低报价,则通过“抽签”的方式确定最终中标人。

规章同时规定,在合理的情况下⁹定标标准可采取“综合标准”,即综合考虑各投标书的技术评估和价格。

出现平局时,选用技术最好的投标书。如果投标方案各方面依然不相上下,则通过公开“抽签”决定¹⁰。

(6) 仅限国内投标人的招标项目的限制标准较第54/2005号法令有了较大改变,为更多的外国投标人提供参与到政府采购招标项目的机会。

(7) 从性质上而言,这是一种可选择限制,即在合同价值满足文中标准的情况下,可以选择适用,也可以不适用。但当政府招标方决定不限制外国投标人参与竞标时,即允许外国投标人竞标。政府招标方有义务为国内投标人提供“竞价优惠”——无论是公共建设合同还是物资和服务供应的招投标。在物资和服务采购中,国内投标人需证明其物资具备国内性,即至少其价值的20%来源于国内(见第26条3、4、5款)。

(8) 需要注意的是,与其他国家的一般立法规则不同,对于投标人异常低价的情况,规章不要求评标小组一定要投标人就低价进行说明。

(9) 作为规章的众多创新之一就是定标的综合标准,即综合考虑技术评估和价格,以及使用“莫桑比克制造”或“莫桑比克骄傲”标语的证书。规章对该类标语的使用进行了规定,并鼓励国内投标人使用(见第37条第4款和第39条第1款)。

(10) 涉及公共建设项目和服务的特许证的决议过程可能还要参考其他标准,比如考虑申请许可证的最高报价,对公共服务使用人而言的最低价格,提供的公共物资和产品的最好质量以及公众满意度。这些标准可以单独作为考量标准也可以综合考量。而在能源领域,特别是电力和石油产业,对特许证有特别规定。

5. In relation to the evaluation and decision criteria – that is, the adjudication criteria – it is important to mention that the overriding criterion is the “lowest price”⁸.

Consequently, in general, the proposal with the lowest price is the proposal chosen for the purposes of adjudication. In the event of a tie, the final classification of the bids is established by a “draw” (see article 38).

Exceptionally under the Regulations, the adjudication criterion may be a “combined criterion”, which means a criterion that takes into consideration the technical evaluation of the proposal and the respective price. Naturally, there must be sufficient grounds to take this approach⁹.

In situations where there is a tie in the evaluation of proposals, the best technical proposal will prevail. If the tie in the classification of proposals persists, there will be a “draw” in the context of the public session¹⁰.

(8) We would like to point out that, contrary to usual practice in other legislation of the same type, there is no legal rule that determines that an abnormally low priced proposal should be the subject of clarification to be requested from the bidder by the tender jury.

(9) One of the innovative measures introduced by the new Regulations consists of the inclusion among the factors to be included in the technical evaluation, which together with the price, makes up the combined criterion that may govern the adjudication, of the possession of a valid certificate with seal of the right to use the slogan “Orgulho Moçambicano” – Made in Mozambique” [“Mozambican Pride”]. The right to use this slogan arises from various provisions in the Regulations and seeks to encourage domestic bidders to adopt it (see articles 37 (4) and 39(1)).

(10) We stress that the adjudication of concessions for public works or services is done with recourse to the other types of adjudication criteria, that is, the greatest offer of price for the attribution of the concession, the lowest rate or price to be applied to the users of the public service, the best quality of services or goods to be made available to the public and the best handling and satisfaction of demand. These criteria may be considered independently or jointly. It is clear that there is legislation specific to the attribution of concessions in the energy sector, specifically in the areas of electricity and oil.

(11) We now limit ourselves to this brief note on public works contracts as they are the most relevant, although the considerations set out here are, generically, applicable to contracts for the supply of goods and acquisition of services, specifically as to the legal nature of all these contracts as administrative contracts and, in the same way, in respect of the powers of compliance on the part of the contracting public entity.

(12) As the Regulations state, this contractual type is also subject to the “general theory of contracts and, only on a secondary level, to the provisions of private law (see article 40 (2)).

(13) The provision of a definitive guarantee may be dispensed with in the case of small-scale contracts for works, the supply of goods and the provision of services. This may also happen in the event of the selection of individuals for the provision of consultancy services, an issue also regulated by this legislation.

III. Public works contracts

1. Public works contracts are considered to be administrative contracts by legal definition (see article 40 (1))¹¹.

Two corollaries immediately result from this: on the substantive level, these contracts are subject to the system of administrative law¹²; on the procedural level, these contracts are subject to the jurisdiction of the administrative courts. On this latter issue, it is important to point out that the Regulations allow for the existence of dispute resolution clauses in these contracts. However, the arbitration must take place in Mozambique and in Portuguese.

2. A performance bond must be provided as a condition precedent to the making of a public works contract¹³.

Contrary to what happened when the old Decree 54/2005 was in force, this obligation does not have to be expressly included in the tender documents.

3. In general, we can say that these Regulations are sparse in their regulation of public works contracts and surprising in the absence of rules (which are very common in other comparable legislation) on the formalities for the consignment of works, the rules for evaluating works, the reasons for suspension of works, cases of accidents or force majeure, particularly difficult circumstances, financial equilibrium and changes in circumstances – the substitution of Decree 54/2005 by the new Decree not having remedied the fragilities mentioned above.

Having made this observation, the problems of which may as quickly as they were announced be resolved by recourse to the civil law, we must, however, underline the existence of rules on the supervision of the works, the provisional and definitive acceptance of the works, the prerogatives

三、公共建设合同

1.公共建设合同的法律性质属于行政合同(见第40条(1)所述)¹¹。

由此可得知:从实体法角度,该类合同属于行政法范畴¹²,而从程序法角度,行政法院有管辖权。而后者,规章允许合同中由双方当事人约定争议解决条款,可选择在莫桑比克境内用葡语进行仲裁。

2.履约保证书是公共建设合同的先决条件¹³。

在此点上,规章与第54/2005号法令不同,无需再要求政府采购方在招标书中对投标人的提供履约保证书予以明确。

3.总体而言,该规章中规定公共建设合同的内容比较少,也缺少一些他国立法中常见的规则,比如对工程委托的形式规定,工程评定规则,停工原因的规定,意外事件或不可抗力,特别是困难情形,财政平衡和情势变更——作为第54/2005号法令的替代者,规章在这些不足上没有相关改善。

在此认识基础上,这些问题应当遵照现行的工程监督规则,临时和最终工程验收规则,合同中政府方享有的特权,限制修改合同条款,终止合同的理由及其各种结果,按民法原则予以处理。

工程保证期为5年,从工程完工时起算¹⁴。

根据规章第二条,各公共建设项目都由财政部、工业与贸易部、公共建设住房部和教育卫生部以联合文书的形式分别发布政府招标书。也就是说,许多规章中没有规定的事项,可由招标书加以具体规定,所以不同的招标书在某些方面可能有截然相反的规定。

4.另外不得不提规章中关于“招投标登记注册”的规定(见第58条)。

简言之,规章允许在公共建设合同,物资和服务供给中存在“单一投标人登记注册”的情况。

这里的“登记注册”没有时间限制,而且对已登记注册的投标人而言,拥有很大的便利——无需再向招标方出示上文所列的各种资质证明文件¹⁵。

5.最后值得注意的是,依据规章可以对政府招标方对招标项目的分类提出异议。而依据之前的第54/2005号法令,仅可对定标决议申请异议。

(11) 本文主要内容是围绕公共建设合同,但其中很多内容也同样适用于物资和服务采购合同,特别是这两者的法律性质,都属于行政合同,在对政府招标方的权力方面,有许多共通之处。

(12) 如规章所述,一般原则是适用行政合同的原则,其次才是由私法原则予以补充(见第40条第2款)。

(13) 在小型招标合同中无需履约担保书,无论是公共建设合同还是物资和服务采购合同。聘用个人顾问时,依法也不需要履约担保书。

(14) 规章第50条规定,工程保证期也可以少于5年,但不得低于1年。

(15) 规章规定,公共工程承包商的正式登记注册取决于与许可证(由土木建设承包商许可证委员会颁发)有利害关系的人的陈述(见第60条第2款)。

of authority of the contracting public entity (the developer), the limited cases for alteration of the contractual provisions, the grounds for termination of the contract and the respective consequences.

The maximum guarantee period for the works is five years form the date those works are concluded¹⁴.

On this point it should also be noted that under article 2 of Decree 15/2010, it falls to the ministers of finance, industry and trade, public works and housing, and health and education to approve, under joint legislative instruments, the specific tender documents for each State tender process. This means that there is nothing to prevent, and quite the contrary, some of the issues not covered in the Regulations under consideration being regulated in the said tender documents (for each specific case).

4. A final word is needed to draw attention to the provisions of the Regulations in relation to what is called the “register” (see article 58).

For the sake of brevity, it is important not to disregard the existence of a “single register” of contractors for public works, and supplies of goods and services, that are eligible to take part in adjudication proceedings.

The said register is permanently open to entities that want to register and offers the advantage – which we must emphasis is extremely significant – of removing the need for duly registered entities to present the items described above that are required for them to qualify¹⁵.

5. The final point that merits attention is that complaints may be made to the contracting public entity about that the acts of classification and de-classification provided for in the Regulations. The possibility of appeal to the appropriate authorities also exists. Under the previous system only the act of adjudication was subject to such measures.

There will always be the possibility of appeal to the courts against a rejection decision made in the context of an appeal to a higher authority¹⁶.

On this issue, it should be noted that, at only three business days, the time limits to make a complaint or to lodge and appeal to a higher authority are clearly very short.

In conclusion, it can be said that we are facing a piece of legislation which is essential reading for anyone who might be interested in entering into a contract with the Republic of Mozambique.

(14) Article 50 of the Regulations allows for the term of the guarantee for the works to be shorter than five years but never shorter than one year.

(15) It should be noted that the new Regulations now makes the official registration of public works contractors depend on the presentation by the interested party of the licence issued by the Civil Construction Contractors Licensing Commission (see article 60 (2)).

(16) For us the, an appeal to a higher authority means a necessary appeal to a higher authority. In other words, to appeal to a court, it is a pre-requisite that there has already been an appeal to a higher authority.

如果向上级主管机关提出的异议被驳回，那么申请人可以提起行政诉讼¹⁶。

但申请人提出异议或向上级主管机关申请异议的时间期限只有三个工作日，这个时间显得非常紧迫。

最后，我们想说，这是一部值得每一位有意与莫桑比克政府订立采购合同的个人或公司去了解的法令。

(16) 此处的向上级主管机关申请异议是提起行政诉讼的前提。



MOZAMBIQUE

Technical File

The information contained on this Guide does not pretend to be exhaustive, nor excludes the support and assistance of a Lawyer or Legal Consultant for its practical use on a case to case basis, being solely intended to allow its readers to have a better understanding on Mozambique legal system and background.

技術文件

本指南資訊存在未盡之處，亦有賴於律師或法律顧問以具體情形具體分析加以在實踐中運用，資訊僅供讀者對莫桑比克的法律體系以及背景有更多理解。

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Gabinete das Zonas Económicas
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PLMJ

Lisboa (Sede / Head Office)

Edifício Eurolex

Av. da Liberdade, 224

1250-148 Lisboa, Portugal

Tel. + (351) 21 319 73 00 / Fax + (351) 21 319 74 00

www.plmj.com

Gazeda

Maputo (Sede / Head Office)

Prédio do INSS

Avenida 24 de Julho, nº3549, 3ºandar

Maputo, Moçambique

Tel. + (258) 214 006 32 / Fax + (258) 214 006 32

www.mpd.gov.mz

CPI

Maputo (Sede / Head Office)

Rua da Imprensa, 332, R/c

Maputo, Moçambique

Tel. (+ 258) 213 133 10/ Fax. (+ 258) 213 133 25

www.cpi.co.mz

PEX

Maputo (Sede / Head Office)

Av. 25 de Setembro, nº 1008 – 2º andar

Maputo, Moçambique

Tel. (+ 258) 1 30 72 57 / Fax. (+ 258) 1 30 72 56

www.ipex.gov.mz