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INTERNATIONAL JOINT VENTURES

PORTUGAL AS AN INVESTMENT PLATFORM IN MOZAMBIQUE AND MACAO

Editorial

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As an important aspect of its strategy as a nation, Portugal has not lost its historic ties to the countries where Portuguese is spoken and these countries unite around 250 million people from across the globe.

Portugal's prime geographic location, in the far south west of Europe and on the Atlantic coast, provides easy access for travellers from the rest of Europe but also for those coming from the east coast of the Americas and from Africa.

Portugal has always made the most of its Presidencies of the European Union to promote dialogue between the EU and Africa and to make the European economy more dynamic and competitive in relation to the African continent. Indeed, in 1996 Portugal was a co-founder of the CPLP – Community of Portuguese Speaking Countries.

With the benefit of the synergies created by a common language, history and culture, PLMJ has developed an internationalisation project under which it has strengthened its presence in the CPLP countries by establishing formal partnerships with law firms in Portuguese speaking regions and countries including Mozambique and Macao.

PLMJ's international network of partnerships brings together several law

firms from Angola, Brazil, Mozambique, Macao and Central and Eastern Europe. This means that a client from any of the countries served by PLMJ's international network of partnerships can benefit from legal support provided by professionals from the country in question, who guarantee and share PLMJ's quality, principles, values and excellence in the provision of legal services.

PLMJ's partnerships with DSL in Macao and MGA in Mozambique have their roots in the convergence of shared values, principles, ability and professional practices that inform every aspect of the legal representation and consultancy services provided by these firms.

PLMJ, DSL and MGA share the highest standards of professionalism, quality of service, ability to respond and sense of service to the client and the three firms bring excellence, ethics and a sense of social responsibility to the legal services they provide to their clients.

Through this network of partnerships PLMJ, DSL and MGA wish to set themselves apart in the way they exercise their profession and provide legal services to investors who are increasingly aware of the synergies and opportunities developing in the markets of Portugal, Macao and Mozambique.

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PLMJ – Sociedade de Advogados (Portugal)

Founded over 40 years ago PLMJ is now one of Portugal's leading law firms. It has established itself as a reference in legal representation both in Portugal and internationally through its dedication to its clients, its dynamism, its capacity for innovation and the quality of its legal services.

PLMJ is a firm which prides itself on its high standards in ethics, its cohesive approach and its capacity to empathise. The firm is highly specialised and competitive in its ability to provide legal services which are second to none and has around 220 lawyers working in a broad range of practice areas.

PLMJ is internationally recognised as a highly prestigious law firm, regularly appearing in 1st place in the rankings for all practice areas in the leading international reference directories (Chambers, Legal 500, PLC Which Lawyer, Global Competition Review and International Tax Review). These honours show PLMJ's clear and solid lead over the competition.

The quality of the legal services provided by the many professionals at PLMJ is reflected in the innumerable prestigious international awards the firm has received and in its being named as "Law firm of

the Year (Portugal) by Who's Who Legal together with IFLR Awards; Tax Review Awards; Clients Choice Award 2008; Euromoney; and the Real Estate 2008 Award.

PLMJ also has the honour of having received the sought-after "Portuguese Law Firm of the Year- 2009" prize from Chambers Europe - Awards for Excellence 2009. Chamber is the leading international directory for law firms; a clear sign of the excellence and quality of services provided by PLMJ.



DSL Lawyers (Macao)

DSL Lawyers was founded in 2007 by a team of senior lawyers with over 15 years of experience as professionals in Macao. The firm was incorporated to better serve the interests of its local and international Clients and assist the implementation of their investments in Macao and greater China. Since then the firm has affirmed its credentials to become a landmark in Macao legal practice.

The firm is often quoted in international directories and has professional relationships with many firms in Asia Pacific. Through a number of associated firms in greater China (namely in Mainland China, Taiwan and Hong Kong) DSL Lawyers is able to address the interests of its Clients throughout the region.

Throughout its expansion, the firm remains committed to the principles that directed its creation, namely experience, knowledge of its Clients industries and international standards of practice.



In 2008 the firm became involved in the expansion of economic relationships between greater China and the Portuguese speaking countries. This led to the creation of a joint-venture with PLMJ which today enables DSL Lawyers to offer its Clients a network of professionals in several countries, particularly Portuguese speaking countries.

DSL Lawyers was founded in 2007 by a team of senior lawyers with over 15 years of experience as professionals in Macao.



Rigo 23
Detail
From the collection
of the PLMJ Foundation



MGA Advogados e Consultores (Mozambique)

MGA - Monteiro, Graça e Associados - Advogados e Consultores, Lda. boasts one of the largest and most highly respected teams of lawyers and consultants operating in the Mozambiquan market. The firm is universally seen as leader in the legal world in Mozambique and is internationally recognised as one of the most prestigious and reputable firms currently providing legal services in the country.

Having started in December 1996, MGA has come to provide specialised legal services in a wide variety of practice areas and has a team of professionals who bring together the experience necessary to provide solutions with depth and rigour to the issues raised by the full range of public and private undertakings that operate in Mozambique.

Over more than a decade of existence, what has stood out most of all is the specialised legal support given by MGA's lawyers and consultants to local

and international credit and financial institutions, concessionaires and other companies involved in natural resources and public and commercial services, to industrial companies, to non governmental organisations, foundations, companies in the tourism and nature conservation sectors, telecommunication companies, agro-industrial companies, the parliament, the government and its institutions and to local government.

MGA has been recommended as a "Leading Firm" by the international directory IFLR1000. It was also honoured by the Professional Management Review Africa, a South African magazine and search leader in southern Africa, for its contribution to the level of economic growth and development in Mozambique, where it was classified as "1st Overall Legal Firm" for two years running (2007 and 2008).

MGA is a member of the Africa Legal Alliance, a unique group in the area of legal services, in association with

Deneys Reitz Inc. and with an extensive network formed by law firms which are leaders in their markets in Angola, the Democratic Republic of Congo, Kenya, Mozambique, Namibia, Nigeria, South Africa, Tanzania, Uganda and Zimbabwe.

In the light of all the above, PLMJ, DSL and MGA are pleased to come together to present this newsletter which covers some of the themes which may be of interest to international investors who have an interest in entering the markets of Macao and Mozambique.

The coverage given to the themes in this newsletter is a general one and it is not intended to substitute the advice of a lawyer or legal consultant in the practical application of any of the issues it raises. Its objective is only to give its readers a better understanding of the legal systems and the opportunities for investment which are emerging in the markets of Macao and Mozambique.



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CEPA – New Business and Investment Opportunities in China

I. Introductory Note

THE PREFERENTIAL TREATMENT GRANTED UNDER CEPA TO MACAO COMPANIES INVESTING IN CHINA MAY FACILITATE THE ENTRY OF FOREIGN INVESTORS IN THE CHINESE MARKET

The objective of the Closer Economic Partnership Arrangement ("CEPA") concluded between the People's Republic of China and Special the

Administrative Region of Macao ("Macao SAR") is to strengthen the economic and trade co-operation, similar to a free-trade agreement, in a country with two autonomous customs territories, as well as promoting the prosperity and the development of Mainland China and Macao SAR.

For the purposes of CEPA and this article, "Mainland China" or simply "China" shall mean the People's Republic of China, except for the Special Administrative

Regions of Macao and Hong Kong.

Established on 1st January 2004, CEPA covers three main areas of cooperation, namely merchandise export to China with tariff exemption (trade in goods), preferential treatment to service providers in Macao (trade in services) and trade and investment facilitation.

II. Trade in Goods

In the field of free trade, all tariffs have

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been abolished on 237 items from the list of goods satisfying the Macao origin criteria at the time of entry in China since January of 2006.

The goods covered by the zero tariff regime under CEPA include products as diverse as foods and drinks, chemical, pharmaceutical and beauty products, textiles and clothes, jewellery, electronics machines and products, among others.

In order to benefit from such exemptions, Macao manufacturers have to comply with the criteria of origin in Macao established by CEPA and Annex 1 of respective Supplement II and obtain the respective certification of origin, proving the production (or substantial transformation) in Macao. Manufacturers may also request customs tariffs exemption for goods in which the rules of origins are not contemplated in CEPA.

In turn, Macao SAR shall also exempt customs tariffs and other restrictive measures on merchandise imported from Mainland China.

III. Trade in Services

The service area is also a point of entry for investors established in Macao SAR (local and foreign) in the Chinese market, overcoming the restrictions normally imposed on foreign investors.

Under the CEPA, Mainland China grants preferential treatment to service providers established in Macao SAR wishing to pursue the same activity in China, of which the following may be emphasized: legal, medical services, construction, tourism, computer science and connected services, telecommunications, insurance and banking activity, maritime, air and land transportation, among others, totalling 41 service sectors.

For any company or permanent resident of Macao SAR wishing to provide these services in the Mainland it is sufficient to apply for a Certificate of Macao Service Supplier (the "Certificate") with Macao Economic Services (DSE) and fulfil the requisites outlined in Annex 5 of the CEPA (for corporations): (i) to be duly registered under the terms of the law; (II) the services to be provided in China to be similar to the services provided in Macao; (III) to have a minimum of at least 3 or 5

years (depending on the industry sector) of commercial activity in Macao SAR; (IV) to own or lease adequate facilities to carry out the activity in Macao SAR; (v) at least 50% of its employees to have permanent resident status in Macao SAR.

By investing in the share capital of a company in Macao fulfilling those requisites, a foreign investor may, in a short period of time, enter the Chinese market. It should be noted that in Macao SAR there are no impediments or limitations to foreign investment; therefore, acquisition of equity in Macao SAR companies constitutes a relatively simple process from a bureaucratic perspective, not requiring any governmental authorisations.

In this context, it is important to note that a foreign service provider may acquire capital of a Macao service provider (up to a limit of 50%) without having any impact on the Certificate.

On the other hand, by requesting the Certificate under CEPA, such company may establish its business in Mainland China without the need to comply with the conditions normally imposed by China to foreign investors, namely the requirement to have a local majority shareholder.

IV. Trade and Investment Facilitation

The other area covered by CEPA is the trade and investment facilitation through measures aimed at co-operation and simplification of the trade procedures between both parties on the following 9 sectors:

- Trade and investment promotion;
- Customs clearance facilitation;
- Commodity inspection, inspection and quarantine of animals and plants, food safety, sanitary control, certification and accreditation and standardisation of management;
- Electronic business;
- Transparency in laws and regulations;
- Co-operation between small and medium size companies;
- Industrial co-operation;
- Protection of intellectual property rights; and
- Co-operation in matters of trademarks.

CEPA also covers financial co-operation between China and Macao SAR, with the goal of stimulating the opening of branches or branch offices of Chinese banks in Macao SAR and vice versa.

V. Future perspectives

Supplement VI to CEPA which came into effect on 1st October 2009, contemplates three sectors: Trade in Services, Trade and Investment Facilitation and Mutual Recognition of Professional Qualifications.

Among the measures adopted, the following are highlighted:

Trade in Services: liberalization granted to conventions and exhibitions (MICE sector) to tourism and medical services.

Trade and Investment Facilitation: the two sides agree to adopt measures to enhance co-operation in the protection of intellectual property rights, strengthening the exchange of information and knowledge of the companies regarding trademark registration through seminars, conferences and information published and also through the development of co-operation in staff training.

Mutual Recognition of Professional Qualifications: the two sides agree to adopt measures with the goal of promoting mutual recognition of professional qualifications in the areas of accounting and printing services, namely the exemption of certain courses for qualification examinations for China Certified Public Accountant and Registered Auditor in Macao SAR.

On the other hand, by requesting the Certificate under CEPA, such company may establish its business in Mainland China without the need to comply with the conditions normally imposed by China to foreign investors, namely the requirement to have a local majority shareholder.



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Exploitation of Mineral Resources in Mozambique

I. Introductory Note

The Republic of Mozambique is rich in mineral resources, including oil, gold, mineral water, coal, natural gas, and marble, and even though exploitation of these resources is far below desired levels, the mining sector still contributes to just under 2% of the country's GDP.

The government has shown interest in encouraging national and foreign investment in this area by removing obstacles and by creating tax benefits and diversifying the legal mechanisms through which Mozambican and foreign investors can take part in mining operations in Mozambique.

II. Applicable Legislation

The legal framework currently in force in the Republic of Mozambique for this sector essentially seeks to regulate the various mining titles provided for under the law for exploiting mineral resources, the formalities for their concession and respective time periods, as well as the rights offered to investors who wish to work in this sector.

There are currently four essential pieces of legislation in force in this regard: Law no. 14/2002 of 26 June ("**Mining Law**") and Decree no. 62/2006, together with its appendixes, approving the "**Mining Law Regulations**", which in turn regulate the rights of investors and the requirements and formalities related to mining, along with Law no. 11/2007 and Law no. 13/2007 of 27 June, which have changed some important aspects of tax legislation and mining sector tax incentives.

a) Mining Titles and Permits

The exploitation of mineral resources requires granting of the right of usage and benefit through the issue of mining titles which grant a permit to engage in a particular type of mining.

The rights of reconnaissance, prospecting, research, and exploitation of mineral resources are thus granted through one of the following mining titles and permits:

- (i) Reconnaissance Licence
- (ii) Prospecting and Research Licence
- (iii) Mining Concession
- (iv) Mining Certificate
- (v) Mining Pass

(i) Reconnaissance Licence

The reconnaissance licence can be granted to any individual or legal person of Mozambican or foreign origin.

It is granted for a maximum non-extendable term of 2 years. During the validity period of the licence, its holder may relinquish it, subject to prior notice of at least 90 days addressed to the minister in charge of mining. The area for which the reconnaissance licence can be granted shall not exceed 100,000 hectares.

Under this licence the holder can acquire the right of access to the area, enter it or fly over it to undertake reconnaissance (without exclusivity), which means that other investors can also access the same area. The licence also entitles the holder to occupy the land and construct the necessary installations for undertaking reconnaissance, obtaining and removing samples, using water, wood and other materials necessary for reconnaissance. The reconnaissance licence is personal and non-transferable.

Applications for reconnaissance licences shall be addressed to the minister in charge of mining (currently the Minister of Mineral Resources) and must be submitted to the National Mining

Department or the Provincial Department of Mineral Resources with jurisdiction over the respective area. The applicant will be informed of the decision regarding the request within a maximum period of 10 days following a favourable order from the Minister of Mineral Resources.

(ii) Prospecting and Research Licence

The prospecting and research licence can be granted to any individual or legal person of Mozambican or foreign origin.

It shall be granted for a period of 5 years, renewable for an equal period of time and the respective application shall be addressed to the minister in charge of mining, in addition to being submitted to the National Mining Department or the Provincial Department of Mineral Resources with jurisdiction over the intended area for registration and processing. The area for which the prospecting and research licence can be granted shall not exceed 25,000 hectares.

The applicant will be informed of the decision in the request within a maximum period of 10 days after being adopted. In the event of overlapping requests for the same area, the prospecting and research licence shall be awarded via public tender and the National Mining Department shall be responsible for conducting the process, establishing the rules, time periods and other terms and conditions applicable to the public invitation to tender.

The exploitation of mineral resources requires granting of the right of usage and benefit through the issue of mining titles which grant a permit to engage in a particular type of mining.

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The holder of the mining concession may not initiate his activities before obtaining an environmental licence and a land usage and benefit permit; such licence and permit must be obtained within three years of the date of issue of the mining concession.

Under the prospecting and research licence the investor acquires the sole right to research the mineral resources covered by the licence and undertake the necessary work for achieving this objective; to collect, remove and export examples and samples; under authorisation, to sell examples and samples obtained for prospecting and research, as well as to occupy the land and construct the temporary installations necessary for prospecting and research. The prospecting and research licence is transferable under the provisions of applicable legislation.

Subject to prior authorisation, this title can be transferred to a Mozambican individual or legal person domiciled in Mozambique, and the transfer request must be addressed to the minister in charge of mining and submitted to the National Mining Department. A decision will be reached regarding the application within a period of 90 days from the date of its submission.

(iii) Mining Concession

The mining concession may only be granted to legal persons registered in Mozambique. This means that an investor who wishes to acquire a mining concession shall be obliged to establish and register a company in the Republic of Mozambique.

The mining concession application shall be addressed to the minister in charge of mining and submitted to the National Mining Department or the Provincial Department with jurisdiction over the intended area for registration and processing. The decision on the request shall be communicated to the applicant within a maximum period of 10 days after the issued order.

The requested mining concession shall be granted immediately when the application

ensues as a result of a prospecting and research licence and the respective holder has fulfilled his obligations.

The mining concession shall be granted for a period that is based on the economic lifespan of the mine or the mining operations, but may not exceed 25 years, and is subject to renewal for an equal period. The intended area may not exceed the area necessary for mining operations.

The holder of the mining concession may not initiate his activities before obtaining an environmental licence and a land usage and benefit permit; such licence and permit must be obtained within three years of the date of issue of the mining concession.

The mining concession grants the holder the right to use and occupy the land and, on an exclusive basis, to exploit the mineral resources identified in the research phase and undertake the necessary works; to sell or otherwise dispose of the mineral products resulting from mining operations. The holder of the mining concession shall also be entitled to request and be granted the title of usage and benefit of the land in accordance with applicable land law legislation.

This title is transferable under the same terms as the prospecting and research licence.

(iv) Mining Certificate

The mining certificate may be granted to any individual or legal person domiciled in Mozambique, including both Mozambican nationals and foreigners, having legal capacity, as well as any cooperative or family capable of undertaking operations authorised under this mining title.

It shall be granted for a maximum period of 2 years, extendable for successive periods of no more than two years, provided that the mining operation underway justifies this and within an area that does not exceed 500 (five hundred) hectares.

The mining certificate request shall be addressed to the National Mining Department for registration and processing or to the respective Provincial Department responsible for the intended area, according to each particular case. The decision shall be communicated to the applicant within a maximum period of 15 days. The mining certificate shall be transferable under the law.

The mining certificate shall grant the respective holder the right to the following within the certificate area: to occupy, use the land and undertake small scale mining operations, on an exclusive basis; to sell or otherwise dispose of the products resulting from mining operations; to apply for a mining concession.

(v) Mining Pass

This title can only be granted to individual persons of Mozambican nationality with legal capacity enabling them to undertake the operations permitted by this title.

Under this mining pass the holder acquires the right to undertake small-scale mining activities.

The mining pass is non-transferable.

b) Mining Contract

Mozambique law stipulates that in exceptional circumstances the Mozambican government may sign a mining contract with a holder of a prospecting and research licence or mining concession in accordance with the scale of the project in question.

c) Abstraction of Mineral Water

The abstraction of mineral water, an abundant resource in the Republic of Mozambique, is carried out under a prospecting and research licence and mining concession within an area that does not exceed 80 hectares for a period of 1 year, extendable by no more than 1 year.

The mineral water concession application may be submitted by any legal person established and registered in Mozambique, regardless of whether or not the request ensues from a prospecting and research licence.

The mining certificate request shall be addressed to the National Mining Department for registration and processing or to the respective Provincial Department responsible for the intended area, according to each particular case.



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I. Introductory Note

Exploitation of forest resources plays an important role in Mozambique's economy. In fact, Mozambique has some 57 million hectares of native forests, 36% of which show great potential for the wood industry, while the remainder has great social and ecological value, supplying food, medicinal products and building and energy materials.

Some 80% of Mozambique's population lives in rural areas and works almost exclusively in agriculture, livestock farming and use of forest resources for various purposes (medicinal, cultural, economic, and others). As such, there is a very close relationship between the population and the country's natural resources, which makes the agricultural sector one of the most important to the national economy and development.

Keeping in mind the value and economic potential of Mozambique's forest resources, current conservation areas include parks, reserves, and game parks, totalling some 10 million hectares, which is 12% of Mozambique's national territory. The productive forest, i.e. the woodlands with potential for industrial logging, accounts for 19 million hectares, while multiple use forests total some 35 million hectares.

Under the constitution, flora and fauna resources are government property and the government controls them, authorising their appropriation or privatisation by private interests that include both individual and legal persons, as well as local communities.

Exploitation of Forest Resources in Mozambique

II. Frameworks for Exploitation of Forest Resources in Mozambique

The Forest and Wild Fauna Law approved via Law no. 10/99 of 7 July and the Forest and Wild Fauna Law Regulations approved via Decree no. 12/2002 of 6 June enforce one of the following frameworks for the sustainable exploitation of forest resources or forest heritage: (i) Simple Licence Exploitation or (ii) Forest Exploitation: Contract Exploitation.

Forest exploitation under the Simple Licence Exploitation Framework may only be exercised by Mozambican individual persons or legal persons and by local communities in the productive forests and the multiple use forests for commercial, industrial and energy purposes, limited to an annual logging volume of 500 m³ per licence and for limited time periods.

The application for a simple licence shall be addressed to the Provincial Governor with jurisdiction over the intended exploitation area and submitted to the Forest and Wild Fauna Provincial Services responsible for undertaking the process and issuing the licence after approval from the Governor.

The forest exploitation licence can be renewed at the request of the holder, subject to an application addressed to the Provincial Governor with jurisdiction over the exploitation area, at least 30 days prior to its expiration.

The simple licence shall be transferable *mortis causa*.

Exploitation under the Forest Concession Exploitation Framework shall apply to the supply of the manufacturing industry and shall be permitted to any individual or legal person, Mozambican or foreign, as well as local communities that fulfil the following requirements: (i) having an available operating plan approved

by the sector; (ii) having in place and guaranteeing technical capacity for industrial processing. Exploitation is licensed for a maximum term of 50 years, renewable for equal periods.

The forest concession applications shall be addressed to different entities in accordance with the size of the area to which the application relates:

- (i) Up to 20,000 hectares, to the Provincial Governor;
- (ii) From 20,000 to 100,000 hectares, to the Agriculture Minister;
- (iii) Over 100,000, to the Council of Ministers.

The contract shall be signed by the Provincial Governor, representing the State.

The forest concession can be renewed at the request of the holder, subject to an application addressed to the relevant authority with jurisdiction over the exploitation area, at least 12 days prior to its expiration date.

Any individual or legal person, Mozambican or foreign, as well as local communities can own forestry plantations and exploit them, subject to approval from the Forest and Wild Fauna Provincial Services. Exploitation of these resources also presupposes that the interested party obtains the right to use and benefit from the land (DUAT) in the area that is the object of the plantation, in

The forest concession can be renewed at the request of the holder, subject to an application addressed to the relevant authority with jurisdiction over the exploitation area, at least 12 days prior to its expiration date.

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accordance with the Land Law, approved via Decree number 19/97 of 1 October.

III. Participation of Local Communities

In the process of granting exploitation rights via forest concession or simple licence, the local government shall consult the local communities covered by these areas. The hearing shall take place in the presence of the applicant or his representative and the consultation expenses paid by the applicant.

The local government shall call a meeting of the local community, expressly stating the objective of the meeting via an invitation to be delivered at least 15 days in advance.

The consultation shall be presided over by the District Administrator or the Head of the Administrative Post as delegated by the District Administrator. All interested parties, including the NGOs that work in the area, may attend the consultation as observers. In consulting the members

of the community a consensus must be reached and the result of the discussion between the community members shall be documented, requiring the signature of at least ten members of the respective community for consensus.

IV. General Closed Period

There shall be a general closed period from 1 January to 31 March of each year. During this period it will be forbidden to undertake exploitation with a licence or forest concession contract. It will also be forbidden to cut down, drag and transport forest products from the cutting zone to the main border. The Regulations of the Forest and Wild Fauna Law stipulate a fine of 30,000.00 MT for exploiting the forest in the closed period.

V. Exploitation Charges

The amounts of the exploitation charges vary according to the type and volume of the forest resources that are exploited, ranging (i) between 100.00 MT and

2,000.00 MT per m³, depending on the value of the wood species in the 1st, 2nd, 3rd and 4th classes and precious; (ii) Between 100.00 MT and 150.00 MT per stère for building materials with a diameter of less than 20 cm, 3rd and 4th class species; (iii) 10.000 MT per stère of wood; and (iv) 100.00 MT per tonne of bark, gums, resins, leaves, fruits, seeds and other woodland products.

VI. Wood Export

Export of wood pertaining to first class species shall only be permitted after it has been processed.

The first class includes such wood as chanfuta, mecrusse, umbila and jambire. Processed wood is wood that is transformed from logs into boards, planks, girders, beams, parquet strips and veneer.

Wood from precious species of other classes can be exported in the form of logs without prior processing.



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I. Introductory Note

The Mozambican Public Procurement legal framework is regulated by Decree no. 54/2005 of 13/12, which approved the Regulations for Public Works Contracts and Supply of Goods and Services to the State (henceforth referred to as the "Regulations").

Approval of these Regulations by the Mozambican government seeks to address the most important issues related to Public Procurement in a unitary and

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systematic manner and is essentially a clear effort to make Public Procurement rules more suited to Public Procurement market demands, both in Mozambique and abroad.

II. Scope and Principles

The Regulations define the main rules and principles applicable to public works contracts and the supply of goods and services to the State, including consulting services and granting of concessions.

The Regulations enshrine the traditional principles of Public and Administrative Law that govern Public Administration, which should always comply with principles of legality, finality, reasonableness, proportionality, pursuit of the public interest, transparency, equality and publicity.

The Regulations apply to all State bodies and institutions and are extendible to lower

levels that have to execute a budgetary schedule, including Municipalities and Public Companies (all of those in which the State holds a 100% stake).

In formal terms, all documents related to procurement must be drafted in Portuguese; however, the Awarding Entity may decide to simultaneously draft them in another language. In this situation, the Portuguese version will always prevail.

Procurement that simultaneously involves a public works contract, supply of goods and services and leasing shall be subject to the Regulations that are in force in relation to the part of the subject of the contract that is more economically significant.

III. Legal Frameworks of Public Procurement

The Regulations provide for three separate legal frameworks for procurement,

namely: the General Framework, the Special Framework and the Exceptional Framework.

(i) General Framework:

The General Framework for public works contracts and supply of goods and services to the State is the Public Tender.

The Public Tender is the procurement method via which any interested party can participate, providing it satisfies the requirements established in the Tender Documents.

The Public Tender unfolds according to a logical set of steps. The process comprises the following phases: (i) Preparation; (ii) Launch; (iii) Submission and opening of the proposals and qualification documents; (iv) Assessment of the proposals and qualification documents; (v) Curative actions; (vi) Classification; (vii) Selection Board Recommendation; (viii) Decision; (ix) Complaints and recourse; (x) Awarding of the contract.

The Tender Documents may require the pledging of guarantees as a condition of acceptability of the proposal. These guarantees can be permanent or temporary and the maximum limit of their values is stipulated in the Regulations. The following forms of guarantee shall normally be accepted by the Awarding Entity: (i) bank guarantee; (ii) cash bond; (iii) certified cheque; (iv) public debt securities; and (v) insurance-guarantee. However, the Tender Documents can provide for other forms of guarantee.

The price proposal shall be submitted in Mozambican currency, namely the Metical, except in cases stipulated in the Tender Documents.

(ii) Special Framework:

In contrast to the General Framework (Public Tender) there is the Special Framework, which allows the Awarding Entity to adopt criteria that are different from those defined by the Regulations.

The special criteria shall be listed in the Tender Advertisement and Tender Documents and shall be admissible in cases where the Awarding Entity wishes to:

- Undertake procurement by virtue of a treaty or international agreement between Mozambique and another State

or international organisation requiring adoption of a special framework, or;

- Undertake procurement within the scope of financed projects with resources originating from an official foreign cooperation agency or multilateral financial body, whenever the adoption of distinct criteria is a condition of the respective agreement or contract.

iii) Exceptional Framework:

Lastly, there is an Exceptional Framework that on the basis of "Public Interest" allows the Public Awarding Entity to select any one of the following pre-contractual procedures:

- Tender with Prior Qualification;
- Limited Tender;
- Tender with Two Stages;
- Tender according to Segments; and
- Direct Agreement.

It should be pointed out that procurement conducted under the Exceptional Framework shall be subsidiarily governed by the Public Tender criteria stipulated in the Regulations.

IV. Bidders

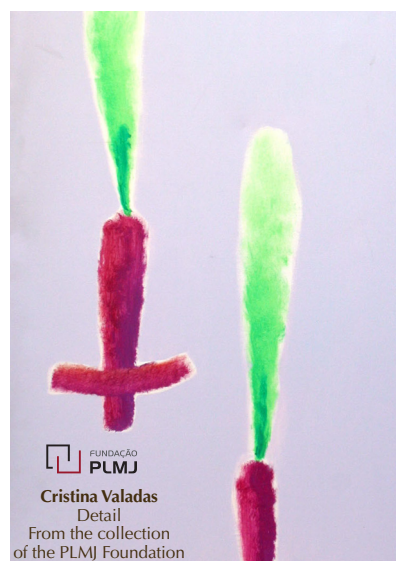
All individual or legal persons, from Mozambique or abroad, are eligible to bid for public works contracts or supply of goods and services to the Mozambican State providing they demonstrate that they are legally, economically-financially and technically qualified and their tax situation is in good standing.

Within the scope of this "qualification" there is the need for the proposals to include the following documents, among others: (i) certificate of commercial registration and updated articles of association; (ii) statement signed by the bidders indicating that they do not exhibit any of the various common "impediments" (cf. Art. 19 of the Regulations); (iii) consortium project or consortium establishment agreement (in the case of corporate groupings); (iv) periodic income statement and annual statement of accounting and tax information; (v) certificate attesting to registration or enrolment in a professional activity compatible with the object of the procurement in question, permit or equivalent document issued by the relevant authority (in the case of activities subject to such documents).

The documents referred to above (necessary for proper legal, economic-financial and technical qualification) can be dispensed with, fully or partially, when dealing with a works contract or supply of goods or services on a small scale.

Mozambican Bidder vs. Foreign Bidder

For the purpose of the Regulations, a Mozambican bidder is defined as follows: (i) an individual person with Mozambican citizenship; and (ii) a legal person that has been established under Mozambican law, whose shareholder capital is more than 50% held by an individual Mozambican person or legal person whose shareholder capital is more than 50% held by an individual Mozambican person.



INTERNATIONAL JOINT VENTURES

The Awarding Entity may restrict the Tender to Mozambican bidders, whenever the value of the procurement is less than 5,250,000,000.00 Metical for public works contracts and 2,625,000,000.00 Metical in the case of acquisition of goods and services.

It should also be pointed out that the Awarding Entity may establish “national preference margins” (10% of the value of the contract, before tax, for works; and 15% of the value of the contract, before tax, for goods and services), as well as minimum margins for “incorporating national factors” (30% of the factory door price of the finished product, the Finance Minister being allowed to adjust this percentage).

Foreign bidders shall satisfy the criteria established by the Regulations, specific legislation and the tender documents, subject to submission of documents equivalent to those required from Mozambican bidders.

Foreign bidders (whether or not they are authorised to exercise their activity in Mozambique) shall also comply with the following: (i) have a proxy residing and domiciled in Mozambique with special powers to receive summons, legal notices and to respond administratively and judicially for their acts, requiring submission of the applicable proxy instrument together with the documents stipulated in the Regulations; (ii) provide evidence of their legal, economic-financial, technical and taxation good standing in their country of origin; (iii) provide evidence no bankruptcy claim or certificate exists either in Mozambique or in the country of origin and lastly; (iv) submit documents drafted in Portuguese.

Bidders that are part of consortiums or associations are always permitted to participate in tenders.

Members of a consortium or association may not participate – individually or within a consortium or association – in the same tender.

V. Publication

It shall be obligatory to publish the Tender Advertisement in the press or head office of the Awarding Entity and in the case of an “International Tender” it shall be disclosed via the Government Gazette and/or Internet site.

As a general rule, all documents included in the administrative procedure of the procurement are open to public consultation, barring the exceptions provided for in the Regulations.

VI. Assessment Criteria and Decision on the Proposals

As regards the assessment criteria, i.e. awarding criteria, it should be pointed out that the guiding criterion is that of the “lowest price.” As such, in general, the proposal offering the lowest price is the one chosen for awarding of the contract. In the event of a tie, the final classification of the Proposals shall be determined by a “lottery.”

The Regulations also stipulate that, exceptionally, the awarding criterion can be a “combined criterion,” i.e. a criterion that takes into account the technical assessment of the proposal and respective price, requiring, however, due justification. If there is tie in assessing the Proposals, the best technical proposal shall win. If the tie in the classification of the Proposals persists, a “lottery” shall take place during a public session.

VII. Decision Criteria for Concession Tender

The decision of the tender for concession of works or supply of public services can be taken by complying with the following criteria, individually or jointly:

- Best price offer for the concession;
- Lowest rate or price to be applied in relation to users;
- Best quality of services or goods made available to the public; and
- Best service and satisfaction of demand.

VIII. On Contracts – Applicable Rules

The contracts governed by the Regulations are of an administrative nature with all the ensuing legal implications. That is to say, execution of contracts for public works and supply of goods and services signed by State bodies and institutions is governed by Section IX of the Regulations, by the clauses of said contracts and by the general criteria of Public and Administrative Law, subject to the principles of the general theory of contracts and additionally to the provisions of private law.

The contracts provided for under the

Regulations shall be formulated in writing and shall follow the formats indicated in the Tender Documents. The contracts must also be submitted to the Administrative Court for prior inspection within 5 days of being signed.

Because of the administrative nature of the Contracts in question, the Regulations consider certain clauses to be essential, namely (i) identification of the parties; (ii) Object of the contract; (iii) Start and end dates; (iv) Guarantees; (v) terms and conditions of payment; (vi) Estimate of total charges; (vii) Applicable sanctions; (viii) Legal venue or other venue for settling disputes; (ix) Anti-corruption clause; and (x) Other conditions that the parties consider essential to proper execution of the contract.

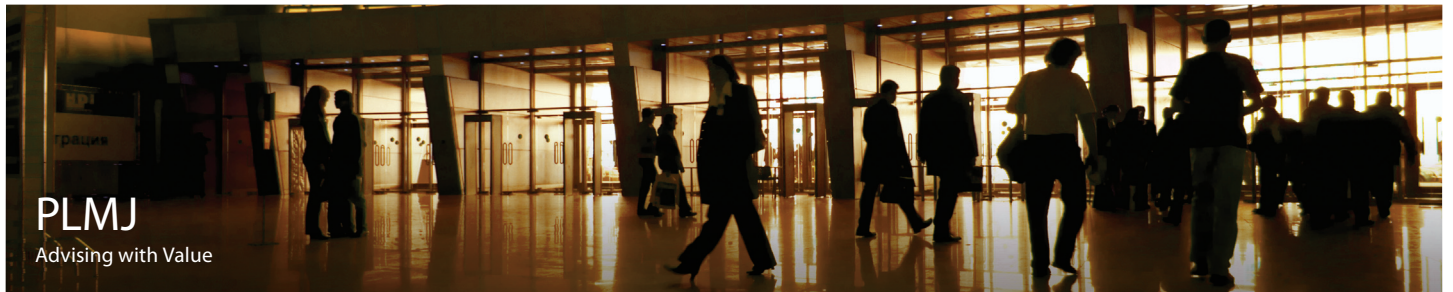
Important from the point of view of the foreign investor/bidder is inclusion of a clause that provides for independent arbitration to resolve conflicts resulting from the interpretation and execution of the contract, which is to take place in Mozambique and in the Portuguese language (in compliance with specific legislation on this matter).

When provided for in the Tender Documents, the Awarding Entity shall require that the Contractor provide a permanent guarantee suited to proper and timely compliance with its obligations, and its submission shall be a pre-requisite for signing the contract, payment of advances shall not be permitted without pledging a guarantee in the same amount, excepting rare situations provided for by the Regulations and subject to certain pre-requisites on admissibility.

IX. Amendment and Termination of Contracts

Contracts governed by the Regulations can only be amended or changed on the appropriate grounds via postscript when changes must be introduced to (i) the project or specifications; (ii) the contractual value; (iii) the framework for executing the works or supplying the service or the method of supplying the goods; (iv) the terms of payment.

Mozambican law provides for unilateral amendments or modifications of initial contract conditions (cf. art. 52). As such, the Awarding Entity shall be obliged to accept, under the same contractual conditions, any additions or deletions made to the works, goods or services,



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Generally speaking, these are the main characteristics of the Public Procurement framework of Mozambique, a country with great potential and rapidly evolving economic development that has grown and will continue to grow significantly in terms of Public Procurement.

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up to 25% of the initial value of the contract.

The Regulations also establish (cf. art. 54) the reasons for which the Awarding Entity and the Contractor may freely cancel the contract unilaterally. The party who wishes to unilaterally cancel the contract (on one or more grounds) shall notify the other party of its intention to cancel, precisely indicating the causes and respective grounds. The notified party – within a period not exceeding thirty days – shall remedy the causes attributed to it and after said period the notifying party may unilaterally cancel the contract on the grounds set out in the notification.

The Regulations clearly and precisely establish the consequences of unilateral cancellation from the point of view of the Awarding Entity and the Contractor (cf. art. 55).

One last note regarding the obligation to submit these contracts to the Administrative Court visa.

Indeed, Law no. 5/92, of May 6th 1992, sets forth, in Article 30, paragraph 2, that under the supervision of public expenditure of the State, the Chamber of Audit of the Public Expenditure and

of the Visa of the Administrative Court is the responsible entity for verifying the compliance of the contract' laws in force, regardless of their nature, when entered into by the entities subject to the jurisdiction of the Court. There are subjected to trial of public expenditure, according to Article 32, paragraph a), the central bodies of State and Public services, custom or not, with administrative and financial autonomy, including autonomous funds. Moreover, the only exemptions from the visa are those set forth in Article 31, paragraph 1, a), b) and c), ie, the legal statutes of appointments issued by the President of the Republic, the legal statutes related to elective posts and any other legal statutes, orders or contracts especially foreseen by law. In addition, the law sets forth, in paragraph 2, that despite the exceptions, it is necessary to note down, where the law requires.

Generally speaking, these are the main characteristics of the Public Procurement framework of Mozambique, a country with great potential and rapidly evolving economic development that has grown and will continue to grow significantly in terms of Public Procurement, particularly public mega projects, involving energy, infrastructure construction, exploration of natural and rail resources.