



INVESTING IN SÃO TOMÉ AND PRÍNCIPE

I. BACKGROUND

The Democratic Republic of São Tomé and Príncipe (RDSTP) is an African island country in the Gulf of Guinea, 300 km from the coast of West Africa, crossed by the equator. São Tomé and Príncipe consists of two main islands - the island of São Tomé, with an area of 859 km², and the island of Príncipe, with an area of approximately 142 km² - and several islets, making a total area of 1001 km².

The country's strategic location is one of its main advantages with regard to foreign investment: São Tomé and Príncipe is the only point in the Gulf of Guinea region that is equidistant from each of the countries in the market of that sub-region (Angola, Cape Verde, Cameroon, Ghana, Gabon and Equatorial Guinea and Nigeria).

Its proximity and easy access to the West Africa market, together with a calm atmosphere, without conflicts, religious divisions or significant criminality, have drawn the attention of foreign investors to São Tomé and Príncipe and boosted the country's economic growth.

In the medium and long term, the Government of São Tomé and Príncipe seeks to achieve sustainable economic development for the country, adopting policies to develop the free trade area and the circulation of people, goods and services and to resolve restrictions associated with non-trade barriers. It also seeks to strengthen political, economic and social relations in order to take better advantage of the country's proximity to other countries in the region.

The country is thus expected to enter a new era with these new opportunities, taking advantage of all its natural, human and financial resources.

Foreign investment provides an essential contribution to growth in São Tomé and Príncipe and to the country's economic development.

With regard to existing business opportunities, some sectors are more favourable and a higher priority for investment in São Tomé and Príncipe, given their potential for development and profitability, such as agriculture, livestock, fisheries, industry, services, infrastructures and energy.

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II. LEGAL FRAMEWORK FOR FOREIGN INVESTMENT IN SÃO TOMÉ AND PRÍNCIPE

To promote private-sector growth and to improve the business environment in the country, São Tomé and Príncipe has implemented a series of legislative measures that establish favourable conditions for foreign investment.

The main measures adopted that are of particular interest to investors include approval of the new São Tomé and Príncipe Investment Code and the creation of a One-Stop Office for Start-Ups.

This summary of the legal framework for investment in São Tomé and Príncipe will therefore focus on seven essential aspects:

1. São Tomé and Príncipe Investment Code;
2. São Tomé and Príncipe Code of Tax Benefits;
3. Investment Vehicles – Setting Up and Registration of Commercial Companies in São Tomé and Príncipe;
4. Protection of Industrial Property Rights;
5. Labour Relations;
6. São Tomé and Príncipe Tax System;
7. Foreign Exchange Restrictions.

1. São Tomé and Príncipe Investment Code

Private investment is free and not subject to any authorisation or approval by the authorities of São Tomé and Príncipe. However, for investments in economic activities that may contribute to the development of São Tomé and Príncipe, of a value of EUR 50,000.00 or more, the Investor and the State may enter into an Administrative Investment Contract, regulated by the São Tomé and Príncipe Investment Code (Decree-Law 19/2016, of 17 November 2016), which defines the terms, conditions, forms, guarantees and incentives applicable to all investments made in São Tomé and Príncipe of total value of EUR 50,000.00 or more. According to the Investment Code, all private investment projects are subject to Administrative Investment Contracts, under a single competition procedure.

Only investments carried out under the Investment Code are eligible for the rights and guarantees set out in that Code and for the tax incentives set out in the Code of Tax Concessions and Incentives.

Depending on the value of the investment, with the aim of determine the application of tax concessions, the investment system may be simplified (applicable to investments of EUR 50,000.00 to EUR 249,999.00), general (applicable to investments of EUR 250,000 to EUR 4,999,999.00) or special (applicable to investments of EUR 5,000,000.00 or more).

This legal framework and the consequent signing of an Administrative Investment Contract¹, in accordance with the applicable legal procedure and requirements, have a number of advantages, including: protection for the investment, particularly with regard to compulsory purchases; guarantee of the right to transfer profits and dividends abroad; guarantee of the right to directly import goods from abroad and to export the products produced by investors; guarantee of non-interference by the State in the management of privately-owned enterprises; possibility of the provision of land necessary for development of the project; and the aforementioned possibility of granting tax and customs concessions.

2. São Tomé and Príncipe Code of Tax Benefits

By means of Decree-Law 15/2016, of 17 November 2016, the Government of São Tomé and Príncipe approved the Code of Tax Benefits that regulates benefits applicable to investments made by natural or legal persons (provided they are duly registered for tax purposes) in São Tomé and Príncipe.

Under the terms of this law, the following tax and customs incentives are examples of tax benefits: deductions from taxable income, deductions from tax payable, fast-track amortisation and depreciation, tax credits, exemption and reduction of tax rates and contributions, deferred tax payments, as well as other exceptional tax and tax-related measures.

The right to incentives is irrevocable during the period in which they are granted.

¹ The parties to the Administrative Investment Contract will be the State of São Tomé and Príncipe, represented by *Direção do Património*, and the Private Investor.

3. Investment Vehicles – Setting Up and Registration of Commercial Companies in São Tomé and Príncipe

One of the main reforms of the legal system in São Tomé and Príncipe consisted of the creation of the One-Stop Office for Start-Ups (“GUE”), based in the city of São Tomé. This is a service offered by the Ministry of Justice, the Public Sector and Human Rights, intended to accelerate processes of setting up, altering or closing companies or related acts (Decree-Law 37/2009, of 13 October, as amended by Decree-Law 6/2010, of 8 June, and Decree 7/2010, of 8 June)².

Like the system in Portugal, the different forms of corporation available in São Tomé and Príncipe and which can be used as vehicles for investors to have a presence in the country, are: limited liability company (SARL³) and private (and single-member private) limited liability company; and limited partnerships and partnerships, as unlimited liability companies.

For SARLs, which are the appropriate company type for large companies with numerous shareholders, the minimum number of shareholders is 10, and for the other types of company the minimum number of shareholders is 2⁴. The shareholders can be natural or legal persons and their nationality or the location of the headquarters of legal persons are irrelevant.

The minimum share capital stipulated is STN 350,000.00 (approximately EUR 14,286.00) for SARLs; STN 150,000.00 (approximately EUR 6,123.00) for private limited liability companies; and STN 20,000.00 (approximately EUR 817.00) for single-member companies.

For companies operating in certain specific sectors of the economy, the minimum share capital is as follows: hydrocarbons and derivatives (STN 500,000.00, approximately EUR 20,409.00); finance companies, SGPS, pension fund managers, venture capital trading and management companies and collective investment undertakings that market their fund units (STN 500,000.00, approximately EUR 20,409.00); non-financial gambling and payment of gambling or lottery prize companies (STN 300,000.00, approximately EUR 12,245.00); and real estate agents (STN 200,000.00, approximately EUR 8,184.00).

² Contrasting with the situation before the creation of the GUE, the setting up of companies in São Tomé and Príncipe is now practical and fast and can be completed within 1 to 5 business days. Registration of the incorporation of companies has become automatic, using a single form for setting up and registering the company, with the obligation to submit the documents necessary for this purpose.

³ There is a requirement for an SARL to be set up in the case of financial institutions (with the exception of special credit institutions, credit cooperatives, or savings or mortgage companies or institutions); gambling companies; television operators; insurance companies; offshore companies; and offshore banks.

⁴ A private limited company has a simpler structure than an SARL.



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My sketches da série Drawing in Abstract Space, 2009 (detail)

Acrílico, carvão, pastel e
 tinta-da-china s/ papel
 (21) 42 x 29 cm

From the Collection of the PLMJ Foundation

The procedure for setting up a company and its registration is simple. After registration and if the company is to exercise an economic activity in which a permit or licence is mandatory (such as the areas of hotels and tourism, production and processing sector, construction, activities of financial institutions, banks, insurance companies, private security, pharmacy, telecommunications, among others), the corresponding permit must be applied for from the relevant department, which must respond within 15 (fifteen) business days⁵.

4. Protection of Industrial Property Rights

With regard to the protection of Industrial Property Rights in the legal system of São Tomé e Príncipe, the first Code of Industrial Property Rights of São Tomé and Príncipe (CPI-STP) was approved by Decree-Law 23/2016. São Tomé and Príncipe is also a party to the Harare Protocol on Patents and Industrial Designs and to the Banjú Protocol on Trademarks. São Tomé and Príncipe has also ratified the Patent Cooperation Treaty of 19 June 1970 (Washington Treaty).

5. Labour Relations

Industrial relations between employees and employers within the territory of the Democratic Republic of São Tomé and Príncipe are covered by the Legal Framework for Individual Working Conditions, approved by Law 6/92 of 11 June.

Workers can be hired by means of:

- Employment contract of indefinite duration;
- Fixed-term employment contract, in the event of (i) exceptional and temporary increase in activity in the company; or (ii) restructuring or start-up giving rise to a high volume of employment;
- Contract of employment for an unspecified duration, in the event of (i) replacement of an employee temporarily unable to work or whose employment contract has been suspended (due to illness, for example); (ii) precisely defined and temporary services or projects; (iii) seasonal work.

The maximum duration of a fixed-term employment contract, including renewals, is 3 years.

The minimum wage in São Tomé and Príncipe is approximately STN 1,000 (approximately EUR 45.00).

An employment contract may only be terminated by: agreement between the parties; expiry; dismissal with just cause; dismissal for economic reasons; and termination by the employee⁶.

6. São Tomé and Príncipe Tax System

A company with a permanent establishment will be taxed in São Tomé and Príncipe.

Pursuant to the Corporation Tax Code (CIRC), approved by Law 16/2008, of 31 December, as amended by Law 19/2009, of 8 October, a permanent establishment is considered any fixed premises of a non-resident entity through which it exercises, in its entirety or in part, an activity involving trade, manufacturing, agriculture, forestry, animal husbandry, fishing, including the provision of services.

It is also considered that there is a permanent establishment when a person who is not an independent agent acts on the behalf of a company and has, and normally exercises, powers to broker and enter into contracts that are binding on the company, in connection with its activities.

Corporate Income Tax (IRC) applies to the income of entities that pursue an activity of a commercial, manufacturing or agricultural nature, even if it is accidental or temporary or not its main activity. The general rate of Corporate Income Tax is 25%, being 20% for some forms of income.

Taxable persons resident in São Tomé and Príncipe or non-resident with a permanent establishment are taxed on their worldwide profit (including income obtained outside the territory). However, non-resident taxable persons without a permanent establishment are taxed only on their income obtained in São Tomé and Príncipe.

⁵ Under Decree-Law 11/2011, of 18 May, certain activities are exempt from licences or permits. Despite these exemptions, all companies whose activities are exempt from the licensing process must pay an annual operating fee.

⁶ The termination of an employment contract for reasons of discrimination based on gender, race, social level or family situation, religious belief or political conviction is null and void, the employee being entitled to payments and to reintegration into the company to their position or job and with the length of service that they are due.

If the income is distributed to entities that are resident in or have a permanent establishment in São Tomé and Príncipe, they may be exempt from taxation if the company that is the beneficiary of the income has owned 20% of the capital for at least one year on the date of on which the dividends are made available. If this percentage or this length of ownership are not reached, the exclusion from taxation is only 50%.

Dividends paid to non-resident legal persons (without permanent establishment) are subject to withholding of tax at the rate of 20%, with the exception of dividends paid to Portuguese entities (due to the recent entry into force of the Double Taxation Agreement⁷ between São Tomé and Príncipe and Portugal).

Personal Income Tax (IRS) applies to the income earned by natural persons, in accordance with the following categories:

- Class A: income from dependent work and pensions;
- Class B: business and professional income;
- Class C: income from capital, including property income;
- Class D: capital gains.

Income Tax payable by natural persons resident in São Tomé and Príncipe is charged on the entirety of their income, including income obtained abroad. In the case of non-residents, Income Tax only applies to income obtained in São Tomé and Príncipe.

Tax rates vary between 0 and 25%, the maximum rate of 25% applicable to annual taxable income of more than EUR 9,796.00. Income from capital and income earned by non-residents are generally taxed at the rate of 15%.

7. Foreign Exchange Restrictions

The main foreign exchange operations are (i) imports; (ii) exports; (iii) invisible transfers or capital flows; (iv) the opening and operation of national accounts expressed in a currency that is a legal tender in a foreign country or in account units used in international payments.

The exchange rate regime in São Tomé and Príncipe is not very restrictive, when compared with other African countries and, within the terms of the law, foreign exchange operations are generally freely conducted, without requiring the prior consent of the Central Bank.

All foreign exchange operations are subject to common rules:

- Brokerage of commercial banks, foreign exchange bureaus and other institutions duly licensed by the Central Bank;
- Verification by these authorised entities, before the execution of the operations in which they intervene, of their veracity, nature and compliance with applicable legal and regulatory provisions;
- Submission by these authorised entities to the Central Bank, in accordance with technical instructions that they are issued and within the time limits established by the Central Bank, of statistical or other information that they are requested, namely for the purpose of drawing up the Country's balance of payments.

⁷ This Agreement was approved in June 2017 and is applicable from 1 January 2018.

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