DOING BUSINESS

MOZAMBIQUE

MLGTS LEGAL CIRCLE

INTERNATIONAL TIES WITH THE PORTUGUESE-SPEAKING WORLD

Presentation

"Doing Business Mozambique" has been jointly prepared by **Morais Leitão, Galvão Teles, Soares da Silva & Associados, Sociedade de Advogados, RL (MLGTS)** and **Mozambique Legal Circle Advogados (MLC)** within the context of the MLGTS Legal Circle.

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MLGTS has an internal team of lawyers able to advise clients on international transactions, particularly in matters involving or relating to the jurisdictions of the Portuguese-speaking African countries, called "Africa Team", which works closely with the firms that are part of the **MLGTS Legal Circle**.

MLC, a member of the **MLGTS Legal Circle** in Mozambique, was founded by a group of Mozambican lawyers whose project and ambition was to become a centre of excellence and a leading law firm in Mozambique.

"Doing Business Mozambique" is intended for informational purposes only, seeking to provide a brief description of several aspects of Mozambican legislation that may be relevant to the clients of **MLGTS** and of **MLC** and other parties potentially interested in a preliminary contact with some areas of the Mozambican legal system. It does not therefore intend to be nor shall be construed as legal advice on any of the matters addressed.

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1. Facts and Figures regarding the Republic of Mozambique

Capital: City of Maputo.

Population: approximately 23 million.

Area and location: 799,380 km^2; eastern coast of Southern Africa, bordered by Tanzania to the north, Malawi and Zambia to the northwest, Zimbabwe to the west and Swaziland and South Africa to the south and west.

Provinces: Cabo Delgado, Gaza, Inhambane, Maputo, City of Maputo, Manica, Nampula, Niassa, Sofala, Tete and Zambézia.

Major cities: Maputo, Beira, Nampula, Nacala, Chimoio and Quelimane.

Major ports: Maputo, Nacala and Beira.

Major airports: Maputo, Beira, Nampula, Pemba and Vilanculos.

Languages: Portuguese (official language); Xitsonga, Xichope, Bitonga, Xisena, Xishona, Cinyungwe, Echuwabo, Emacua, Ekoti, Elomwe, Cinyanja, Ciyao, Ximaconde, among others.

Form and system of government: presidential republic.

Legal system: Roman-Germanic matrix.

International organisations: United Nations (UN), the Community of Portuguese Speaking Countries (CPLP), Portuguese-Speaking Countries of Africa (PALOP), Southern African Development Community (SADC), the Latin Union, the Islamic Conference Organisation and the International Monetary Fund (IMF), among others.

Currency: Metical (MZN); in October 2012, the reference exchange rate of the metical against the United States dollar was 28.91.

Time zone: CAT (UTC+2).

Public bodies and other entities having an Internet website:

Assembly of the Republic (*Assembleia da República*) – http://www.parlamento.org.mz/

Bank of Mozambique (*Banco de Moçambique*) – http://www.bancomoc.mz/

Centre for Investment Promotion (*Centro de Promoção de Investimentos*) – http://www.cpi.co.mz/

Citizen's Portal (*Portal do Cidadão*) – http://www.portaldocidadao-mz.com/

Export Promotion Institute (*Instituto para a Promoção de Exportações*) – http://www.ipex.gov.mz/

Government of Mozambique (*Governo de Moçambique*) – http://www.portaldogoverno.gov.mz/

Industrial Property Institute (*Instituto da Propriedade Industrial*) – http://www.ipi.gov.mz/

Ministry of Agriculture (*Ministério da Agricultura*) – http://www.minag.gov.mz

Ministry of Energy (*Ministério da Energia*) – http://www.me.gov.mz

Ministry of Environmental Action Co-ordination (*Ministério para a Coordenação da Acção Ambiental*) – http://www.micoa.gov.mz

Ministry of Finance (*Ministério das Finanças*) – http://www.mf.gov.mz/

Ministry of Fisheries (*Ministério das Pescas*) – http://www.mozpesca.gov.mz

Ministry of Foreign Affairs and Co-operation (*Ministério dos Negócios Estrangeiros e Cooperação*) – http://www.minec.gov.mz

Ministry of Industry and Trade (*Ministério da Indústria e Comércio*) – www.mic.gov.mz

Ministry of Labour (*Ministério do Trabalho*) – http://www.mitrab.gov.mz/

Ministry of Natural Resources (*Ministério dos Recursos Naturais*) – www.mireme.gov.mz

Ministry of Planning and Development (*Ministério da Planificação e Desenvolvimento*) – www.mpd.gov.mz/

Ministry of Tourism (*Ministério do Turismo*) – http://www.moztourism.gov.mz

Mozambique Customs (*Alfândegas de Moçambique*) – http://www.alfandegas.gov.mz/

Mozambique Stock Exchange (*Bolsa de Valores de Moçambique*) – http://www.bvm.co.mz/

National Petroleum Institute (*Instituto Nacional de Petróleo*) – http://www.inp.gove.mz/

National Social Security Institute (*Instituto Nacional de Segurança Social*) – http://www.inss.gov.mz/

Office for Accelerated Economic Development Zones (*Gabinete das Zonas Económicas de Desenvolvimento Acelerado*) – http://www.gazeda.gov.mz/

Tax Authority (*Autoridade Tributária*) – http://www.at.gov.mz

2. General Private Foreign Investment Legislation

The Investment Act ("*Lei de Investimentos*", Act 3/93 of June 24) establishes the basic legal framework for domestic and foreign investments that can benefit from the established guarantees and incentives. The investments covered under the Investment Act must contribute to the sustainable economic and social development of Mozambique, subordinated to the principles and objectives of the national economic policy.

This Act does not apply to investments in the areas of prospecting, research and production of oil and gas, mining of mineral resources or to public investments financed by funds from the General State Budget or investments of exclusively social nature.

Investments covered by the Investment Act are regulated by Decree 43/2009 of August 21 (Investment Act Regulation/"*Regulamento da Lei de Investimentos*").

2.1 Forms of foreign investment

Direct foreign investment may assume, either individually or cumulatively, any of the following forms (provided it is quantifiable in monetary terms): (*i*) freely exchangeable foreign currency, (*ii*) equipment and respective accessories, materials and other imported goods, and (*iii*) the assignment, under certain circumstances, of rights to use patented technologies and trademarks.

Indirect foreign investment, in turn, may assume, individually or cumulatively, any of the following forms: (*i*) loans; (*ii*) shareholder loans; (*iii*) supplementary capital contributions; (*iv*) patented technology; (*v*) technical processes; (vi) industrial secrets and designs; (*vii*) franchising; (*viii*) trademarks; and (*ix*) technical assistance and other forms of access to the use or transfer of technology or trademarks, whether on an exclusive basis or restricted licensing by geographical area and/or commercial areas of activity.

2.2 Conditions for eligibility and procedure

In order for the foreign investors, whether natural persons or enterprises, to benefit from the guarantees and incentives set out in the Investment Act (particularly the right to repatriate the invested capital and profits obtained, tax and customs incentives and the

State's guarantee of security and protection of the investments and private property) they must comply with certain requirements and procedure.

On one hand, for profits to be transferred out of county and for the invested capital to be re-exported, the minimum direct foreign investment, resulting from equity investment, is MZN 2.5 million (approximately USD 86,500).

The foreign investor who at least fulfils one of the requirements set out below may also benefit from the right to repatriate profits and the invested capital:

(i) generate an annual turnover of no less than MZN 7.5 million (approximately USD 259,500) from the third year of activity;

(ii) present annual exports of goods or services in the minimum amount of MZN 1.5 million (approximately USD 52,000);

(iii) create and maintain direct employment for at least 25 national employees, registered in the national social security system from the second year of activity.

On the other hand, the investment project or investment contract must be registered in the name of the implementing company or the company name that was reserved for such purpose.

The investment project proposal should be presented to the Center of Promotion for Investments (*Centro de Promoção de Investimentos*/CPI) or, those investments to be made in Special Economic Zones ("*Zonas Económicas Especiais*"/ZEE) or Free Industrial Zones ("*Zonas Francas Industriais*"/ZFI), should be presented to the Office for Accelerated Economic Development Zones (*Gabinete das Zonas Económicas de Desenvolvimento Acelerado*/GAZEDA). These applications should be submitted in the official forms, in either English or Portuguese and be accompanied by the required documents for its analysis: (*i*) copy of the applicants identification document, (*ii*) commercial register certificate or reservation of corporate name of the implementing enterprise, (*iii*) plant or drawing of the location where the project will be implemented, and (*iv*) copy of the commercial representation license (only when the project will imply a foreign commercial representation establishment).

After the presentation of the proposed investment project, the CPI or GAZEDA will notify the applicants of their decision. Such decisions on investment projects received by the CPI are entrusted to:

(i) the Governor of the Province, within three working days, with regard to national investment projects of a value not exceeding the equivalent of MZN 1.5 billion (approximately USD 52 million);

(ii) the General-Director of the CPI, within three working days, with regard to national and or foreign investment projects of a value not exceeding the equivalent of MZN 2.5 billion (approximately USD 86.5 million);

(iii) the minister who oversees the planning and development area, within three working days, as to national and or foreign investment projects where the total amount involved does not exceed the equivalent of MZN 13.5 billion (approximately USD 467 million);

(iv) the Council of Ministers, within 30 working days, as to investment projects whose value exceeds the equivalent of MZN 13.5 billion (approximately USD 467 million); investment projects that require extended land of an area greater than 10,000 hectares; investment projects requiring a forest concession of an area greater than 100,000 hectares; and any other projects having predictable implications of political, social, economic, financial or environmental nature.

With regard to GAZEDA, the decision regarding investment projects falling under the ZZE and ZFI legislation is entrusted to the General-Director of GAZEDA, who should issue the decision within three working days of the date of reception of the proposed investment project.

If the project is approved, its implementation must occur within 120 days (unless another deadline has been set in the authorisation), and the foreign investor must register the direct foreign investment with the Bank of Mozambique within 90 days of the date of authorisation by the relevant authority or of the actual entry of the amount of the investment.

For purposes of export of profits and re-export of the invested capital, the status of foreign investor will remain in force indefinitely (for as long as the terms and conditions that contributed to the award of this status remain unchanged), while the position of the investor can be transferred (by transfer or assignment of shares held by the respective investors) provided that the transfer occurs within Mozambican territory, is notified to the relevant deciding authority (and the consequent authorisation is obtained) and the fulfilment of certain legal obligations is demonstrated.

Authorisation granted for execution of a project may be revoked by the granting authority when any of the following circumstances occurs: (*i*) a justified request presented by the investors themselves; (*ii*) deadline set for the start of the implementation of the project has been exceeded; (*iii*) stoppage of the implementation or operation of the enterprise for a continuous period of more than three months without prior communication to the relevant authority; (*iv*) breach either of the Investment Act and of the Investment Act Regulation or of the conditions laid down in the respective authorisation or other applicable legal instruments.

2.3 Guarantees and incentives

The Investment Act enshrines a set of guarantees and incentives to promote investment in Mozambique, which can be classified in three large groups.

2.3.1 Protection of property rights

The Mozambican State guarantees the security and legal protection of the ownership of assets and rights, including industrial property rights forming part of the authorised investments and carried out in accordance with the Investment Act and its regulations. The nationalisation or expropriation of property and rights forming part of the authorised investment confers the right to fair and equitable compensation.

Claims lodged by investors that are not resolved by the State institutions and which cause the investor losses due to the immobilisation of the invested capital, also confer the right to fair and equitable compensation.

2.3.2 Transfer of funds abroad

Provided certain requirements are met, the Investment Act allows the investor to transfer abroad funds related to the following operations:

(i) exportable profits resulting from investments eligible for export of profits under the Investment Act Regulation;

(ii) royalties or other income on indirect investments associated with the assignment and transfer of technology;

(iii) amortisation and interest on loans taken out on the international financial market and applied in investment projects carried out in Mozambique;

(iv) product of compensation for nationalisation or expropriation of property and rights constituting authorised investment; and

(v) re-exportable foreign capital invested, irrespective of the eligibility of the respective project for export of profits in accordance with the regulations of the Investment Act.

2.3.3 Tax and customs incentives

The Tax Incentives Code ("*Código de Benefícios Fiscais*"/CBF), approved by Act 4/2009 of January 12, establishes a wide range of benefits for foreign investment in Mozambique, which can be grouped into two categories, generic benefits and specific benefits.

Generic benefits

The generic benefits provided for in the CBF are as follows:

(i) exemption from payment of Customs Duties and Value Added Tax on capital goods classified in class K of the Customs Tariff (during the first five years of implementation of the project);

(ii) tax credit for investment – possibility of the investment benefiting from a deduction of 5% or 10%, depending on whether the investment is in the City of Maputo or in the other provinces, on the total investment actually realised, from the Corporate Income Tax ("*Imposto sobre o Rendimento das Pessoas Colectiva*"/IRPC) assessment, up to a maximum of the assessment itself, in respect of the business carried within the framework of the project (during five tax years);

(iii) accelerated depreciation and amortisation – allows accelerated depreciation of new buildings used in pursuit of the investment project, which consists of a 50% increase of the normal rates legally established for the calculation of the depreciation and amortisation that may be considered as costs in determining the taxable income under Corporate Income Tax or Personal Income Tax (this benefit is also applicable to rehabilitated buildings and to machines and equipment for industrial and/or agro-industrial activities);

(iv) deductions from taxable income and from the assessment – possibility of deducting costs with (*i*) the modernisation and the introduction of new technologies and (*ii*) the training of Mozambican workers from the taxable income up to a ceiling of 10% or 5%, respectively (during the first five years);

(v) other expenses considered tax costs – eligible investments for the enjoyment of tax benefits under the CBF may also consider as costs in the determination of the taxable amount under Corporate Income Tax, the following limits:

- 110% (for investment in Maputo) and 120% (for investments in other provinces) of expenditures incurred with the construction and rehabilitation of highways and railways, airports, postal services, telecommunications, water supply, electricity, schools, hospitals and other works deemed to be of public utility (during five tax years), and

- 50% of expenditures incurred in the purchase, as own assets, of works considered works of art and other objects representative of the Mozambican culture, as well as activities that contribute to its development, under the Protection of Cultural Heritage Act ("*Lei de Defesa do Património Cultural*", Act 10/88 of December 22).

Specific benefits

The CBF also provides for several specific benefits for investments in sectors of activity, projects and territorial areas directed at (*i*) creation of basic infrastructures, (*ii*) trade and industry in rural areas, (*iii*) manufacturing and assembly industries, (*iv*) agriculture and fishing, (*v*) hotel trade and tourism, (*vi*) science and technology parks, (*vii*) major projects, (*viii*) fast-development zones, (*ix*) industrial free zones, or (*x*) special economic zones.

2.4 Other investment incentives

To promote and strengthen investment relations between Mozambique and other countries, several agreements have been signed for the promotion and reciprocal protection of investments and agreements to avoid double taxation in the matter of income taxes and to prevent tax evasion.

3. Main Legal Forms of Commercial Establishment

3.1 Limited liability companies

3.1.1 Types, process of incorporation and registration

The legislation regulating the conduct of business in Mozambique is embodied in the Mozambican Companies Code ("*Código Comercial Moçambicano*"/CCM), enacted by Decree-Law 2/2005 of December 27 and amended by Decree 2/2009 of April 24, and by complementary legislation.

The CCM establishes three types of unlimited liability companies (general partnerships, limited partnerships and partnerships limited by shares) and three types of limited liability companies: capital and industry companies, "*sociedades por quotas*" (private limited companies), and "*sociedades anónimas*" (public limited companies). In practice, however, only private limited companies and public limited companies are numerically significant.

The choice of the type of company depends on the weighting of factors such as the greater or lesser simplicity of the structure and operation of the company, the amount of capital to invest, as well as confidentiality issues regarding ownership of the share capital.

Private limited companies (SQ)
Traditionally used as small investment vehicles, private limited companies often have a family structure.

Number of members: private limited companies must have a minimum of two shareholders (except in the case of a single-shareholder company, necessarily incorporated by a sole natural person).

Share capital: since 2009, there is no legal requirement as to the amount of share capital. It is freely set by the shareholders, although the amount must be appropriate for the company to carry out its corporate purpose. Industry contributions are not allowed.

"Quotas": the share capital is divided into participations called "*quotas*", whose par value is expressed in local currency. Quotas are always nominative (that is, the identity of their holders must always be stated in specific corporate documents such as the articles of association, company registration, etc.).

Transfer of "quotas": the transfer of quotas *inter vivos* requires the drafting of a written document signed by the parties and must be communicated in writing to the company and registered at the Commercial Registry Office (*Conservatória do Registo das Entidades Legais*). First the company and then the shareholders (proportionally to their holdings in the company) have pre-emptive rights in case of transfer of shares *inter vivos*, unless otherwise provided in the articles of association.

Where the Private Investment Act applies, the transfer of quotas may involve the assignment of the investor's contractual position in accordance with the terms of the Investment Project Authorisation, for which the prior authorisation of the Centre for Investment Promotion (*Centro de Promoção de Investimentos*/CPI) is required. It should also be noted that in some sectors (banking, insurance, telecommunications, among others), the CPI will only authorise this assignment after obtaining the opinion of the regulatory authority of the respective sector.

Asset liability: claims of creditors are limited to the assets of the company for its debts and each shareholder is jointly and severally liable with the other shareholders for the whole of the capital contributions. However, the law allows for the articles of association to stipulate that one or more shareholders are also liable for the company's debts up to a certain amount. In this case, this liability may be joint with that of the company or subsidiary in relation to it, but must be equal for all members that are under this obligation. In any case, this liability only binds the member while he/she is a shareholders and it is not transmitted on decease.

Governing bodies: general meeting (deliberative body) and board of directors (management body). The supervisory board, to which the legislation regulating public limited companies applies, is optional in this type of company.

All shareholders participate in the general meeting. Unless otherwise provided by the articles of association, resolutions are taken by simple majority of votes cast. Each MZN 250 (approximately USD 9) of the par value of the quota represents one vote.

The board of directors comprises one or more directors, who may be unrelated to the company, and are appointed in the articles of association or by resolution of the shareholders to hold office for re-eligible terms of four years (unless otherwise provided by the articles of association). As a rule, directors are entitled to receive a remuneration, the amount of which is to be fixed by shareholders' resolution.

Profits: distributable profits are allocated as decided by the shareholders. However, the articles of association may stipulate that a percentage no less than 25% or more than 75% of the distributable profits of each fiscal year shall mandatorily be distributed among the shareholders.

Legal reserve: at least 20% of the year's profits shall be retained by the company as a legal reserve, until the accumulated reserve amounts to one fifth of the share capital.

Public limited companies (SA)

This type of vehicle is generally chosen for larger companies. Despite involving a more complex structure than a private limited company, a public limited company allows greater flexibility to its shareholders, in particular in that the transfer of shares is not subject to any special form.

Shareholders resident or domiciled abroad shall communicate to the company the complete identity of the person to receive, on his behalf, the company's communications as well as notices and citations relating to administrative and judicial proceedings.

Number of shareholders: a SA must be incorporated with a minimum of three shareholders, who may be natural or corporate persons, nationals or foreigners. Where the State is a shareholder, directly or through a state-owned company or any entity alike, the company may be incorporated with one single shareholder.

Share capital: company law does not set a minimum capital requirement. The amount of share capital must be appropriate to carry out the corporate purposes and must be expressed in local currency. Regarding the payment of the share capital, a SA may only be incorporated when the entire share capital has been subscribed and when at least 25% has been paid up.

Shares: a SA's share capital is divided into shares. Although the law allows "registered or dematerialised" shares, in practice there are only certificated shares, which may materialize into nominative or bearer shares.

Transfer of shares: the transfer of shares is not subject to any special form and depends on the type of shares issued by the company. In the case of bearer shares, the transfer involves simple delivery of the certificates to the transferee; in the case of registered nominative shares, the transfer takes effect by means of a declaration of assignment in the nominative share register book or in any instrument that may replace it; in the case of nominative dematerialised shares, the transfer takes place by the depositary bank recording the transaction in its books or records to the debit of the transferor's share account and to the credit of the transferee's share account. The articles of association may provide for pre-emptive rights of the shareholders, as well as require the company's consent for the transfer of shares.

Asset liability: the liability of each shareholder is limited to the value of the shares subscribed. Furthermore, claims of creditors are limited to the assets of the company.

Governing bodies: general meeting (deliberative), board of directors (management body) and supervisory board or statutory auditor (supervisory body).

The general meeting involves the participation of all the shareholders and resolutions are passed by simple majority, except where the law requires qualified majorities (such as resolutions related to the merger, demerger, transformation or dissolution of the company) and in cases where the articles of association provide otherwise. Each share represents one vote, unless the articles of association determine otherwise.

The board of directors comprises an odd number of directors, who may be unrelated to the company appointed in the articles of association or by resolution of the shareholders to hold office for re-eligible terms of four years (unless otherwise provided by the articles of association). The company may have a sole director provided the share capital does not exceed MZN 500,000 (approximately USD 17,500). As a rule, the directors are entitled to receive remuneration, the amount of which is to be fixed by shareholders' resolution. Unless specifically authorized by the general meeting, directors may not carry on, on their own behalf or on behalf of others, any business competing with that of the company. The breach of such a duty entails the penalty of being removed for cause and becoming liable to pay an amount equal to the value of the unlawful act or contract.

Supervision of a SA is entrusted to a board of auditors (comprising three or five members) or to a statutory auditor, who must be an official auditor or a firm of auditors.

Mandatory dividend: shareholders are entitled to receive, as a mandatory dividend and on each fiscal year, the share of profits established in the articles of association or, if these are omissive, the amount determined by applying the following rules: (*i*) 25% of the net profit less the amounts allocated to the legal reserve; (*ii*) limited to the amount of the net profit of the achieved year. The mandatory dividend may only be less than 25% of the net profit when so stipulated in the articles of association or when so decided by the shareholders, on the board's proposal.

Legal reserve: of the net profit for the year, 5% shall be set aside as a fund for the filling of the legal reserve, which shall not exceed 20% of the share capital.

Capital and industry companies

Despite having similar characteristics to those of a SQ, a capital and industry company differs mainly in that it comprises two types of shareholders:

(i) shareholders who contribute to the constitution of the share capital with cash, credits or other material goods and limit their liability to the value of the contribution that they paid up (capitalist shareholders); and

(ii) shareholders who do not contribute to the share capital, merely participate in the company with their work and are exempt from any liability for the company's debts (industry shareholders).

Management: management is entrusted to one or more capitalist shareholders. Industry shareholders may have a seat on the management only if they post a bond, which is stipulated in advance in the articles of association, and the amount of which equals the amount of the share capital subscribed by the capitalist shareholders, unless otherwise provided by the articles of association.

Profits: industry shareholders share profits in the proportion stipulated in the articles of association. In case the articles of association are silent on the matter, the share shall be equal to that of the capitalist shareholders having the smallest holding in the share capital.

3.1.2 Common aspects

Regardless of the type of company, the process of incorporation of a company in Mozambique is fairly simple and fast, consisting mainly of the following formalities:

(i) application for certificate of name reservation of the company at the Commercial Registry Office (*Conservatória do Registo das Entidades Legais*);

(ii) drawing up of the articles of association, to include, among others, the following elements: the full identity of the founding shareholders, and, with regard to the company, its type, the company name, the corporate object, the registered office and the share capital, essential aspects relating to the running of the governing bodies, their structure and other matters considered relevant by the shareholders;

(iii) deposit of the share capital in account opened in the name of the company to be incorporated at a banking institution in Mozambique; the share capital deposited may be used after the company is licensed, provided that proof of such licensing is submitted to the banking institution;

(iv) incorporation of the company by private document signed by the shareholders, their signatures having to be certified by a notary in person; if a more solemn form is required for the transfer of the goods that the shareholders put up for the company (including real estate), the law requires the contract to be executed by public deed;

(v) registration of the incorporation of the company at the Commercial Registry Office (within 90 days), a certificate attesting its essential elements being subsequently issued;

(vi) publication of the company's incorporation in the "*Boletim da República*" (Official Gazette);

(vii) registration of the company with the tax authority, by obtaining the Single Tax Identification Number ("*Número Único de Identificação Tributária*"/NUIT);

(viii) licensing of the company's business (in the case of economic activities which, by their nature, have no negative impact on the environment, public health, safety and the economy in general, the issue in person of a permit to carry on such activities by the Single Service Offices (*Balcões de Atendimento Único*), district administrations and municipal councils is sufficient;

(ix) submission of the commencement of business declaration to the Labour Directorate (*Direcção do Trabalho*) and registration of the company and of each of its employees with the National Social Security Institute (*Instituto Nacional de Segurança Social*).

3.1.3 Time and cost of the processes

The fees payable to set up a company vary depending on the amount of its share capital and on its business. The process of incorporation may take an average of 15 days (excluding the time required for the issue of the final business-licensing permit).

3.2 Unlimited liability companies

The Mozambican Companies Code establishes the existence of three types of unlimited liability companies: general partnerships, limited partnerships and partnerships limited by shares. These types of companies have very little practical relevance, and are few in number.

3.3 Possibility of formation of joint ventures and respective requirements

Mozambican law allows for the creation of joint ventures involving companies of any of the types referred to above.

Company law allows shareholders' agreements to be entered into. In this regard, a specific provision regulates SAs, according to which shareholders' agreements shall be concluded in writing and cannot counter the interests of the company and legally applicable norms.

Provided these provisions are complied with, a shareholders' agreement may govern matters such as the transfer of shares, the appointment of directors, the exercise of control of the company or the investment and profit-distribution policies. It should be noted that shareholders' agreements are binding on their signatories, but do not bind the company (that is, the company incorporated to implement the joint venture). Acts by the company or of the shareholders towards the company based on such agreements cannot therefore be challenged.

3.4 Forms of local representation

Any foreign company intending to do business in Mozambique for a limited period (up to three years, renewable) or that creates a permanent establishment in Mozambique can register a commercial representation in the form of an affiliate, delegation, agency or any other form of representation, and for the purpose shall appoint a representative ordinarily resident in Mozambique.

Whatever the type of foreign commercial representation, it is an entity without legal personality whose representation is always referred to the parent company. Moreover, the articles of association and the name of the parent company apply to the foreign commercial representation.

In general, the licensing process for a foreign commercial representation is more complex and time consuming than the incorporation of a company. The foreign commercial representation is also subject to the requirement of submitting audited accounts (for companies registered locally, this obligation only arises in cases where they have received an Investment Authorisation or when notified to do so by the Tax Authorities).

The process of opening a foreign commercial representation and the process of incorporation of a company have some similarities, namely:

(i) registration at the Commercial Registry Office (*Conservatória do Registo das Entidades Legais*);

(ii) obtaining of a Single Tax Identification Number ("*Número Único de Identificação Tributária*"/NUIT);

(iii) obtaining of a license to operate (Representation Permit issued by the Ministry of Industry and Trade);

(iv) declaration of commencement of business for tax purposes; and

(v) registration of the commercial representation and its employees with Social Security.

The exercise of specific activities subject to specific licensing (civil construction, mining, oil and gas) through foreign representation in Mozambique is subject to the obtaining of prior opinion of the supervisory body of the respective industry.

The licensing process and the opening of a commercial representation can take about two months.

4. Foreign Exchange Legislation

Act 11/2009 of March 11 ("*Lei Cambial*"/Foreign Exchange Act) governs acts, deals, transactions and operations of all kinds (*i*) taking place between residents and non-residents and resulting or may result in payments to or receipts from foreign countries or (*ii*) that are classified as foreign-exchange transactions by law.

The Foreign Exchange Act applies:

(i) to currency transactions conducted by non-residents, provided they relate to goods or securities located in Mozambican territory and to rights to such goods or monetary instruments or refer to activities undertaken in Mozambique;

(ii) to currency operations performed by residents when they relate to goods, monetary instruments or rights acquired located or generated abroad which are subject to a legal obligation of repatriation; and

(iii) to goods and monetary instruments located in Mozambican territory or rights to such goods or monetary instruments.

The Foreign Exchange Act also applies to foreign exchange transactions related to foreign investment.

For the purposes of the Foreign Exchange Act, services rendered, the transfer of rights and of goods encumbered or sold, when located, produced, used or operated in the country are deemed to be activities carried on in Mozambique.

In applying the Foreign Exchange Act, it is essential to make a distinction between forex residents and forex non-residents, and what foreign-currency transactions are allowed with in its scope. Thus, the following are considered resident Mozambique:

(i) Mozambicans residing in Mozambique or whose stay abroad does not exceed one year;

(ii) Mozambicans whose stay abroad for a period equal to or greater than one year is for health or study reasons;

(iii) all foreign nationals living in Mozambique for over a year, excluding diplomats, consular representatives or similar, foreign military personnel performing governmental duties in the country, as well as members of their families;

(iv) private-law corporate persons having their registered office in Mozambique;

(v) public-law corporate entities;

(vi) Mozambican citizens who are diplomats, consular representatives or similar, military personnel performing governmental duties abroad, as well as members of their families; and

(vii) the affiliates, agencies, delegations and commercial representations of non-resident private business entities, legally represented in Mozambique.

4.1 Foreign-exchange transactions

All foreign-exchange transactions are subject to registration, but not all require the prior authorisation of the Bank of Mozambique, as in the case of foreign-exchange transactions classified as current transactions.

The following foreign-exchange transactions require the prior approval of the Bank of Mozambique:

(i) acquisition and sale of gold and silver coin;

(ii) export of gold, silver, platinum and other precious metals in bar, ingot or in other not-worked form;

(iii) opening and using accounts by non-residents in domestic currency, when related with capital transactions;

(iv) opening and using accounts in foreign currency or in units of account used in international settlements or payments;

(v) granting credit to residents in foreign currency, including by means of discounting bills, promissory notes, invoice statements, expressed or payable in domestic or foreign currency, where one of the parties is a non-resident;

(vi) purchase and sale of foreign credit securities;

(vii) transactions denominated in foreign currency in units of account that involve or may involve total or partial settlement of capital transactions carried out between residents and non-residents;

(viii) transactions denominated in domestic currency in units of account that involve or may involve total or partial settlement of capital transactions carried out between residents and non-residents;

(ix) transfer to and receipt from abroad of monetary instruments or means of payment;

(x) exchange-rate arbitrage; and

(xi) import, export or re-export of foreign currency or other means of payment as well as bills of exchange, promissory notes and invoice statements, shares or bonds, whether domestic or foreign, or coupons and public debt securities.

4.2 Capital transactions

Capital transactions that require prior authorisation of the Bank of Mozambique include the following:

(i) foreign direct investment;

(ii) real-estate investment;

(iii) transactions involving participation units of collective investment undertakings;

(iv) opening and using bank accounts with financial institutions abroad;

(v) credits related to the transaction of goods or provision of services;

(vi) financial loans and credits;

(vii) guarantees;

(viii) transfers in execution of insurance contracts;

(ix) transactions on securities and other instruments traded on the money and capital markets;

(x) physical import and export of monetary instruments; and

(xi) personal loans.

4.3 Current transactions

Current transactions (not currently subject to prior authorisation by the Bank of Mozambique, but only to registration with commercial banks) include any payments or receipts in foreign currency that are not for the purpose of transfer of capital, including payments due in connection with foreign trade, remittances for family expenses and other current obligations, under the terms of the respective regulations:

The Bank of Mozambique establishes a table of classification of foreign-exchange transactions, as well as a detailed classification of current transactions.

According to the Foreign-Exchange Act Regulation ("*Regulamento da Lei Cambial*") the following are current transactions:

(i) payments for imports of goods and services;

(ii) revenues relating to export of goods and services or rental or use of industrial and intellectual property rights;

(iii) transfers abroad of the income generated by capital transactions previously approved by the Bank of Mozambique (including dividends from foreign direct investment, interest, dividends and other capital gains on portfolio investment, interest on loans, including shareholders' loans, income from other forms of capital investment); and

(iv) transfers made unilaterally, without any consideration, such as donations of money, alimony or family expenses.

For each current transaction to be made by entities authorised to conduct foreign-exchange business certain procedures must be followed and specific documents provided, the said entities being charged with the control of transactions of this type. Banks, exchange *bureaux*, travel agencies, hotels and similar establishments, and other entities that come to be defined by law are authorised to carry on foreign-exchange trade.

4.4 General principles and duties

The Foreign Exchange Act Regulation establishes the rules and procedures to be followed in carrying on foreign-exchange acts, deals, transactions and operations under the Foreign Exchange Act.

All foreign-exchange transactions (that is, capital operations and current transactions) are subject to registration (*i*) with the Bank of Mozambique, in the case of transactions subject to its prior authorisation, already approved, and (*ii*) with the credit institutions and

financial companies, for transactions they carry out that do not require prior approval of the Bank of Mozambique.

The foreign-exchange registration procedure includes (*i*) collecting all information about the foreign-exchange transaction, including the identity of the parties, the nature, amount, purpose and legitimacy of the transaction; (*ii*) electronic or manual processing of the information; (*iii*) the filing of copies of supporting documents; and (*iv*) the issue of the Foreign Exchange Registration Bulletin ("*Boletim de Registo Cambial*").

Resident entities are obliged to declare monetary instruments and rights acquired, generated or held abroad, and to remit to Mozambique the proceeds of the export of goods, services and foreign investment, under the terms and conditions set out the relevant regulations. The remittance of proceeds must be made by bank transfer and reflected in domestic currency in the beneficiary's account at the exchange rate, on the date of the actual remittance, of the bank that brokered the export operation. Part of the proceeds received (50%) may be maintained in foreign currency in the beneficiary's account or may be used directly to settle in foreign-currency loans granted by domestic banks.

On a case-by-case basis, the Bank of Mozambique may authorise that part of the proceeds received by exporters be kept in foreign bank accounts, for the following purposes:

(i) repayment of loans and payment of debts, such as taxes, abroad;

(ii) urgent payments to international carriers, under terms defined by the Bank of Mozambique;

(iii) payments for maintaining accounts and fulfilling immediate obligations abroad towards tourism companies; and

(iv) other cases duly authorised by the Bank of Mozambique.

Other amounts not held in foreign bank accounts are transferred to Mozambique and a monthly bank statement issued by such foreign banks is sent to the Bank of Mozambique.

4.5 Breaches

The conduct of foreign-exchange operations without the authorisation of or registration with the Bank of Mozambique is punished with a fine and the goods or monetary instruments used or obtained in the course of illegal foreign-exchange transactions are forfeit to the State, and other accessory penalties may also be applied.

5. Export and Import Regulations

The entry and exit of goods, persons and means of transport into or from customs territory is subject to Customs control and must take place at ports, airports and Customs houses duly empowered for the purpose.

The Mozambican customs system includes the following special customs mechanisms, defined as a set of specific customs procedures applicable to merchandise, means of transport and other goods by the Customs authority: (*i*) temporary import; (*ii*) temporary export; (*iii*) reimport; (*iv*) re-export; (*v*) customs transit; (*vi*) transfer; (*vii*) bonded warehouses; (*viii*) special economic zones; (*ix*) free zones; and (*x*) duty free shops.

The special customs mechanisms are governed by their own rules.

Within the context of the regional integration of Mozambique, some goods from the Southern African Development Community benefit from reduction of and/or exemption from Customs Duties, on presentation, at the time of import, of the certificate of origin.

The Government recently introduced the Single Electronic Window system ("*sistema de Janela Única Electrónica*") for the submission of the customs declaration and to provide other information regarding the customs clearance of goods.

Foreign-trade operators are registered with the Ministry of Industry and Trade (*Ministério da Indústria e Comércio*/MIC), which issues an identity card authorising foreign-trade operator activity, though those who only occasionally import or export are not barred from this activity.

The following do not need the MIC authorisation:

(i) importers who import goods worth less than USD 500;

(ii) passengers bringing in personal property (as baggage or separately) of a value less than MZN 25,000 (approximately USD 900);

(iii) diplomatic missions and officials when importing goods intended for the representations or for personal use;

(iv) foreign employees of international organisations, with regard to goods for personal use, under the United Nations Convention;

(v) United Nations agencies, when importing goods for their own use; and

(vi) entities importing samples of no commercial value.

Import or export licenses are issued according to the specific categories of products stipulated in the applicant's permit. Import permits are renewable annually and export permits every five years, the renovation following the same procedure as the initial application.

The customs clearance process for both imports and exports must be arranged by a Customs Broker duly authorised by the Directorate General of Customs (*Direcção Geral das Alfândegas*) hired by the importer/exporter.

The Customs declaration is required to authorise arrival in or departure of goods from the customs territory, which takes the form of Single Document ("*Documento Único*"/DU), Abbreviated Single Document ("*Documento Único Abreviado*"/DUA) or Simplified Document ("*Documento Simplificado*"/DS).

For imports, the base value is, as a rule, the CIF value (cost, insurance and freight). Exports are generally free of duty, subject to the over-valuation charge on a limited number of products.

Some imported goods are subject to pre-shipment inspection.

Besides Customs Duties, imported products are subject to payment of Value Added Tax and Specific Excise Duty.

6. Financial Market

6.1 Existing financial institutions

Act 15/99 of November 1 (Credit Institutions and Financial Companies Act/"*Lei das Instituições de Crédito e Sociedades Financeiras*"), as amended by Act 9/2004 of July 21, governs the process of establishment and the business of financial institutions and the supervision and control of financial institutions.

Financial institutions may be (*i*) credit institutions or (*ii*) financial companies. Credit institutions are banks, finance-lease companies, credit co-operatives, factoring companies, investment companies, micro-banks and electronic cash institutions. Financial companies are financial brokerage companies, brokerage firms, investment-fund management companies, asset-management companies, venture-capital companies, group-purchasing management companies, credit-card issuer or management companies, exchange *bureaux* and discount houses.

To carry on any of the activities governed by the Financial Institutions Act, the company will have to adopt one of the forms prescribed by law and obtain authorisation to carry on the business from the respective regulator.

The business of taking deposits or other repayable funds from the public for their own use and of acting as an intermediary in the settlement of payment transactions may only be carried on by banks.

6.2 Type of financial system

The mission of the Bank of Mozambique, as a central bank, is to preserve the value of the national currency by taking steps to maintain a low and stable inflation rate.

Mozambique has undergone significant growth of its financial system, increasing from five banks in 1997 to 18 in 2011. This evolution of the financial system has also been seen in the greater robustness of the system itself, in that the reduction of non-performing loans and the current solvency ratios are above the level defined by the Basel Committee. Despite this robustness, the financial system still has difficulties to overcome in terms of bank financing of the economy.

6.3 Structure of the banking system

Currently and according to the regulations in force, the national banking system consists of 18 banks, largely involving the four biggest.

Credit institutions and financial companies authorised to operate in Mozambique must be properly registered with the Bank of Mozambique. The list of authorised credit institutions and financial companies is available on the Bank of Mozambique website on the Internet.

6.4 Possibility of foreign investors obtaining bank loans

A foreign investor may obtain credit from the Mozambican banking system. However, since it is not a forex resident under the Foreign Exchange Act ("*Lei Cambial*"), it is subject to the restrictions and requirements of this Act and the related regulations mentioned above.

There are, however, restrictions on granting credit in foreign currency. Loans and associated guarantees are subject to registration with or authorisation by the Bank of Mozambique unless they are taken out under an investment project properly documented and approved.

7. Tax Legislation

7.1 Overview

The Mozambican tax system has undergone substantial changes in recent years, undertaken with a view to modernising, simplifying and attracting more foreign investment. Obvious examples are the introduction of Value Added Tax (VAT) in 2007 and the reform of direct taxation, also begun that year.

There are several State taxes in Mozambique. The direct taxes in force comprise the Corporate Income Tax ("*Imposto sobre o Rendimento das Pessoas Colectivas*"/IRPC) and the Personal Income Tax ("*Imposto sobre o Rendimento das Pessoas Singulares*"/IRPS) which are very comprehensive, taxing all concepts of income. In the field of indirect taxation, the tax system is formed by VAT, Excise Taxes and Stamp Tax. Wealth and its manifestations are taxed via the Property Transfer Tax ("*Sisa*") and the Gift and Inheritance Tax ("*Imposto sobre Sucessões e Doações*"). Municipalities also charge a number of local taxes

7.2 Corporation taxes

The structure of the IRPC is very similar to that of the contemporaneous corporate income taxes of the OECD countries, encompassing in a single tax all types of income obtainable by all persons and entities liable to it.

7.2.1 Who is taxed

Article 2 of the IRPC Code defines who are subject to this tax, making a distinction, firstly, between residents and non-residents, and for the latter, between entities having legal personality and entities having no legal personality. Non-resident taxpayers are deemed to be all entities that, though not resident entities, earn income from a Mozambican source not taxed under IRPS. Resident entities are all those having their registered office or effective management in Mozambique.

As regards corporate entities, the following are expressly considered corporation tax payers: (*i*) commercial companies, (*ii*) civil companies under a commercial form, (*iii*) co-operatives, and (*iv*) any public and private corporate persons having their registered office or effective management in Mozambique. However, some of these entities may qualify for subjective

exemptions, including public corporate persons and others that by law or decree of the Ministry of Finance may qualify for exemptions granted in view of their social purpose. This exemption also applies to legally-recognised social solidarity institutions, as well as to social welfare institutions and non-governmental organisations that, having met certain requirements, perform cultural, recreational, sports and other activities recognised by law.

Also subject to IRPC are estates in abeyance, irregularly-incorporated companies and associations having no legal personality.

Article 2 of the IRPC Code defines the subjective scope of the tax, distinguishing first between residents and non-residents, and then, within the former, between entities with and without legal personality. Non-residents are those entities which, though not falling into the corporate resident category derive Mozambican-source income outside the scope of the IRPS. In turn, resident entities are those that have their legal seat or place of effective management in Mozambique.

With respect to entities with legal personality, the following are expressly subject to IRPC: (*i*) commercial companies, (*ii*) non-commercial companies with a civil form, (*iii*) cooperatives, and (*iv*) any other public or private corporate bodies. However, some of these entities may benefit from subjective exemptions, namely those that belong to the central and local government, and others that, by law or by decree from the Minister of Finance, may benefit from exemptions granted in respect of their altruistic social purpose. These comprise charities, welfare and social security institution, eligible non-governmental organizations carrying on cultural, recreational and sporting activities and other eligible entities.

Pending inheritances, invalid corporate entities, irregular companies and associations with no legal personality are also subject to IRC.

Nevertheless, provided certain conditions are met, some entities with legal personality may be taxed on a flow-through basis (that is, transparent), their income being attributed directly to their shareholders or partners and taxed in their respective spheres.

7.2.2 What is taxed

From a territorial standpoint, resident entities are taxed on their worldwide income. Non-resident entities, on the other hand, are only taxed according to their income sourced in the territory of Mozambique, except where they exercise their activities therein through a permanent establishment, in which case all income attributable to that permanent establishment will be liable to IRPC.

The concept of permanent establishment laid down in the IRPC Code is very similar to the one established in Article 5 of the OECD Model Tax Convention.

Taxable income

Computation of the taxable income for IRPC purposes may be based on the accounting profits, adjusted as foreseen in IRPC Code, or on the sum of the net income of each of the income categories, also modified according to the same rules. The first method applies to resident companies engaged in business activities and also to permanent establishments of foreign entities. The second method applies to resident entities not engaged in business activities and to non-residents with no permanent establishment in Mozambique which derive income of one or more categories.

In general, all sorts of gains and income contribute to the computation of the taxable profits, including gains from unlawful activities and also windfall gains like capital gains. Costs are deductible as long as they are necessary for generating taxable income or for maintaining the source thereof. The list of the types of deductible costs is long and comprises items such as depreciation, provisions and impairment charges, capital losses, bad debts, and also certain social responsibility expenses such as certain medical costs of the employees and costs related with kindergartens, libraries, canteens, etc.

Non-deductible expenses are mainly those which are not incurred or are deemed or presumed not to have been incurred in the interest of taxpayer. This group of expenses includes typical non-deductible expenses such as:

(i) IRPC payments and taxes due by third persons;

(ii) fines and penalty charges arising from tax infractions;

(iii) half of the amount of the allowances related with workers' travels in their own vehicles; and

(iv) expenses paid to residents of low-tax countries.

The taxable base corresponds not only to the adjusted profits computed as per the entity's financial statements for the year in question but also to any positive or negative changes in the equity, except where they arise from contributions or repayment of formal or informal capital to the shareholders.

Yearly taxable profits may also be determined through an indirect method whereby taxable profits may be computed via the use of certain express indices that reveal the normal profits of a taxpayer that fails to submit a tax return or whose financial statements are not available.

Losses may only be carried forward for five years. However, that will not be possible whenever the tax losses originate in activities that have benefited from partial exemptions or rate reductions when a substantial change in the activities of the entity with losses takes place.

In reorganizations, carry forward losses may be transferred if authorized by the Minister of Finance, but are not eligible for an extension of their utilization period.

The Government of Mozambique recently approved the Simplified Tax for Small Taxpayers ("*Imposto Simplificado para Pequenos Contribuintes*"/ISPC), which is levied on natural and corporate persons engaged in agricultural, commercial, industrial and provisions of services activities, whose annual turnover is less than or equal to MZN 2.5 million (approximately USD 86,500).

The creation of this tax was intended to allow taxpayers to opt for a simpler taxation, with very low rates, instead of the Personal Income Tax, IRPC and Value Added Tax.

The ISPC may be paid at a specific annual rate of MZN 75,000 (approximately USD 2,600). Alternatively, a rate of 3% is levied on the annual turnover.

Tax losses can only be carried forward up to the end of the fifth after the year in which they were incurred. However, tax losses cannot be carried forward if they were incurred by activities that benefited from partial exemptions or reductions of tax rates or where there is a substantial change of the economic activity carried on. Following corporate reorganisations, the period for carrying forward tax losses may be transferred between the companies involved if so authorised by the Minister of Finance, but with no extension of the time during which losses can be carried forward.

Main exemptions and deductions

Apart from the sectorial exemptions and deductions, the Tax Incentives Code ("*Código dos Benefícios Fiscais*", enacted through Act 4/2009 of January 12) provides for some general deductions and exemptions:

(i) accelerated depreciations (50%) for tangible assets subject to a higher than normal attrition, in case of new investments;

(ii) deduction of 110% (if situated in Maputo) or 120% in expenditure for the construction or rehabilitation of infrastructure or for public utility works for a period of five years;

(iii) expenditure in modernization and introduction of cutting-edge technology may be deducted when incurred but up to a limit of 10% of the taxable income of each tax year for a period of five years;

(iv) investment credit corresponding to 10% of the investments made within a five-year period (5% in Maputo) in new tangible assets (excluding light passenger vehicles, buildings, land, furniture, among others).

Professional training expenses incurred by companies for their personnel may benefit from tax a credit of 10% and 5%, respectively in relation to the use of new technologies and other recognized investment areas.

Mergers and divisions may benefit from a special neutrality scheme provided (*i*) the companies involved have their head-office or place of effective management, (*ii*) the accounting values of the assets transferred by virtue of the reorganization are rolled-over in the accounts of the beneficiary of the transfer and (*iii*) depreciation, impairment adjustments and provisions relating to the assets transferred are treated as if the latter remained with the transferor. Share-for-share exchanges also benefit from a similar neutrality regime.

Income: capital gains, dividends, interest and royalties

Intra-group dividends received by a parent company may be relieved from double taxation if certain conditions are met. Those conditions are: (*i*) a holding period of at least two years or less, if the consecutive two-year old period is completed subsequently and (*ii*) a minimum shareholding percentage of 20%. If the parent company is a pure holding company, risk capital company, an insurance company, or a consortium ("*associação em participação*"), there are no thresholds as regards holding percentages and periods.

Shareholdings not qualifying for this exemption will still benefit from a 60% credit in regard to the corporate tax underlying any dividends paid by resident companies.

Capital gains are generally taxable, but those that relate to tangible assets or to shares or other corporate rights may be adjusted to inflation via coefficients published by the Minister of Finance, but only when the assets have been held by the seller for more than two years.

The concept of "capital gain" is comprehensive, encompassing not only the positive result from a disposal of assets but also the result from an expropriation or damages compensation, and also from reorganizations and exchange of assets, in accordance with the market values of the assets received in exchange. There is no exemption for disposals of shareholdings, but capital losses are deductible to a company's taxable profits irrespective of their ordinary or capital nature.

Royalties and interest are taxable as ordinary income.

Corporation tax rates

The general flat rate of the IRPC is 32%. However, profits derived from farming and livestock activities are subject to tax at a flat rate of 10%.

It should be added that for undocumented and illicit expenses there is an autonomous taxation of 35%, and these expenses are not deductible from the taxable income for IRPC purposes.

Taxation of non-residents: retention rates and conventions to avoid double taxation

Foreign investors deriving income from investments made in Mozambique are, in general, taxed according to specific withholding tax rates, unless their activity is carried out through a permanent establishment situated therein.

Interest payments are subject to a final IRPC rate of 20%. However, the few tax treaties entered into by Mozambique stipulate much lower withholding tax rates on outbound interest payments, ranging from a 0% to 10%.

As regards dividend payments to non-residents, Mozambique also imposes a 20% flat final withholding rate charged on the gross amount of the dividends, unless the companies distributing the dividends are listed in the Mozambique Stock Exchange, in which case the rate is reduced to 10%.

Finally, the royalties' internal withholding tax rate is also 20%, but can be reduced in case the investor resides in a treaty country, varying between 5% to 10%.

Mozambique has, until this date, entered into tax treaties with the following jurisdictions: Portugal, the United Arab Emirates, South Africa, Italy, Mauritius, Macau, India, Botswana, and Vietnam (the latter two are not yet in force).

Anti-abuse provisions

The IRPC Code embodies a significant part of the anti-avoidance mechanisms which are currently present in the majority of the most developed countries.

(i) Transfer pricing

The transfer pricing regime roughly consists of one single provision stating the arm's length principle and foreseeing the possibility of adjustments whenever that principle is not abided by, that is, whenever two related parties deviate from what would be agreed by independent parties, in comparable transactions with the same conditions. The law does not, however, define the meaning of "related parties".

(ii) Thin capitalisation

Any situation of excessive indebtedness towards a non-resident related party may generate non-deductible interest in the proportion above which such excessive indebtedness is deemed to arise. Interest in those conditions will be excessive whenever the amounts lent by related non-resident entities exceed more than twice the value of the resident borrower's equity. The special relationship between lender and borrower will namely occur when the former owns, directly or indirectly more than 25% of the latter's share capital, exercises a significant influence over its management, or has the same parent company. However, excessive indebtedness

will not be presumed if the Mozambican borrower proves that, in the same conditions, it could have obtained the same level of indebtedness from an independent party, by presenting such proof with 30 days of the end of the tax year concerned.

(iii) CFC provisions

Mozambican controlled foreign companies (CFC), that is, overseas companies controlled by Mozambican persons or companies which are domiciled in low-tax jurisdictions may see their profits, distributed or not, being attributed to those persons or companies. Such attribution may take place when those Mozambican shareholders hold:

– directly or indirectly, 25% of the share capital of the CFC; or

– directly or indirectly, 10% of the share capital of the CFC, when it is owned in more than 50% by persons resident in Mozambique.

(iv) Payments to companies resident in tax havens

Payments made to any persons or companies resident in low-tax countries (that is, taxed at an effective rate of less than 60% of the IRPC rate of 32%) are not deductible, except where the resident payer is able to prove that those payments relate to real and effective transactions and the amounts thereof are not exaggerated.

Sectorial taxation and incentives schemes

According to the Investment Act ("*Lei de Investimentos*", Act 3/93 of June 24), tax incentives may be granted to investment or development projects in specific areas, by means of candidatures lodged through application to the effect submitted to the Center of Promotion for Investments (*Centro de Promoção de Investimentos*/CPI).

These tax incentives are granted to investments in the following sectors:

(i) creation of basic infrastructure – incentives to develop basic public infrastructure in order to attract investment in manufacturing and certain economic activities, such as construction and rehabilitation of highways, railways, airports, water supply, electricity, telecommunications, among others;

(ii) agriculture and fisheries – in this area, any kind of investment (provided it is conducted under the Investment Act), regardless of size and geographical location, can benefit from the exemptions and reduced rates provided for in the Tax Benefit Code;

(iii) hotels and tourism – this scheme applies to investment projects that promote the rehabilitation, construction, enlargement or modernisation of hotels and other infrastructure related to tourism and/or development of nature parks and reserves. However, the law specifically excludes restaurants, bars, nightclubs and similar activities, as well as car rentals and travel agencies;

(iv) commerce and industry in rural areas – this scheme is available for investment in construction and/or rehabilitation of infrastructure and industrial activities in rural areas;

(v) manufacturing and assembly – this scheme is available for investments in manufacturing and assembly with a turnover of less than MZN 3 million and (approximately USD 104,000) whose value added in the final product is at least 20%;

(vi) science and technology parks – this scheme is available for investments in the area of scientific research, technology development related to telecommunications and information as well as research and development in general;

(vii) major investment projects – this scheme is available for industrial investment projects involving investment of at least MZN 12.5 billion (approximately USD 433.5 million), or are related to public infrastructure considered relevant to Mozambique's economy;

(viii) Rapid Development Zones – Rapid Economic Development Zones are geographical areas having great potential in natural resources, but lack infrastructure and have little economic activity. The Rapid Development Zones are: the Zambeze valley, the Niassa province, the district of Nacala, Mozambique island and Ibo and others that may be qualified as such by resolution of the Council of Ministers. Among others, the following activities carried out in these areas of rapid economic development qualify for tax incentives: agriculture, forestry, livestock, aquaculture, water production and supply, housing construction, construction and management of hotels and their infrastructures, construction of commercial infrastructures, telecommunications, education, and health;

(ix) Industrial Free Zones – Industrial Free Zones ("*Zonas Francas Industriais*"/ZFI) are created by the Council of Ministers at the proposal of the Investment Commission. Proposals for the creation of ZFI may be submitted to the Office for Accelerated Economic Development Zones (*Gabinete de Zonas Económicas de Desenvolvimento Acelerado*/GAZEDA) by any potential investors;

(x) Special Economic Areas – The Government of Mozambique has also created the so-called Special Economic Areas ("*Áreas Económicas Especiais*"), among which are the regions of Nacala, and Manga-Beluluane Mungassa, opening up the

possibility of granting tax incentives to entities operating in these geographic areas. Depending on the investment area, tax incentives may take the nature of deductions from taxable income, tax deductions, exemptions, reductions of the tax rate and deferred payment of tax.

In parallel with the tax incentives already mentioned, Act 13/2007 of June 27 created tax incentives for the mining and petroleum industries, providing access to a system of exemption from income tax during five years (from the start of mining or from the approval of the oil development plan), exemption from customs duties on imports of equipment for exploration and exploitation, provided this equipment is not produced in Mozambique, and even exemption from VAT and Excise Duties on these imports.

7.3 Personal Income Tax

7.3.1 Who is taxed

Personal Income Tax ("*Imposto sobre o Rendimento das Pessoas Singulares*"/IRPS) is levied on income obtained by any person who has a personal or material connection with Mozambican territory, particularly when that person is deemed to be a tax resident therein or derives income from sources located in Mozambique. Residents are all persons who, in the year to which the income relates:

(i) are present in Mozambique, continuously or intermittently, for more than 180 days;

(ii) are present in Mozambique for less than 183 days, but maintain a permanent residence therein;

(iii) perform public duties in the service of the State of Mozambique abroad;

(iv) are crew members of ships and aircraft operated by companies having their registered office or effective management in Mozambique.

Should the head of the household reside in Mozambique, all members of the household are also considered resident in Mozambique. Any change of residence must be notified to the Mozambican Tax Authority.

As noted above, non-residents are taxed only on income obtained from sources located in Mozambique.

7.3.2 Main exemptions or deductions

The following, among others, are excluded from the taxable income under IRPS: contributions by employers to compulsory social security schemes to cover retirement, disability or surviving-relative benefits, social-utility activities within companies or expenses incurred with training, subject to certain conditions.

The law provides exemptions for income from annuities or surviving-relative or disability pensions, including those of a private nature.

On the other hand, first-category income (employment income), second-category income (self-employment income) and fourth-category income (property income) may be subject to specific deductions that, in the first case are basically restricted to union dues and compensation for termination of employment, and in the fourth, maintenance costs and other expenses with income-generating properties. With regard to the second category, only costs related with assets and liabilities related with the taxpayer's business are deductible, with certain limitations. With regard to the third and fifth categories (other gains from games of chance and net-worth increases not duly justified) there are no specific deductions.

However, losses incurred in the second and third income categories, and 50% of losses arising on sale of real-estate, intellectual and industrial property and derivative financial instruments may be carried forward for five years, and are deductible from income of the same category.

7.3.3 Rates

Employment remuneration is subject to IRPS withholdings (usually monthly), the rates of which are determined on the basis of the personal situation of the respective taxpayers (that is, factors such as marital status or whether or not there are dependants are considered), ranging from 0% to 29.9%. However, other types of income may be subject to special fixed rates ranging between 10% and 20% (this is the case, for example, of payments of dividends and interest).

Determination of the tax attributable to the total net income of taxpayers not subject to the application of these special rates is done by application of tax brackets and progressive rates ranging from 10% to 32%.

Lastly, as noted, taxpayers who are domiciled for tax purposes in Mozambique and pursue industrial, commercial or agricultural activities may, as long as their turnover does not exceed MZN 2.5 million (approximately USD 86,500), opt for a simplified taxation mechanism, whereby they will pay a lump sum of MZN 75,000 (approximately USD 2,600) by way of IRPS, or alternatively, tax amounting to 3% of that turnover.

7.3.4 Social Security contributions

The employers' contribution amounts to 4% and that of employees to 3% of the total gross remuneration. The notion of "remuneration" for purposes of these contributions has several relevant exclusions, including a number of different subsidies paid to employees.

7.4 Value Added Tax

Value Added Tax (VAT) was introduced in Mozambique in 2007 (Act 32/2007 of December 31 and Decree 7/2008 of April 16) and has been subject to some important changes in 2012. It is mainly inspired in the EU VAT Directives, and, as such, works on the basis of an assessment of tax at every stage of the economic chain and a deduction of the same tax by all the agents involved, except for the final consumer.

7.4.1 Who is taxed

There is no express overarching concept of taxable person for VAT purposes in Mozambique, but it can be said that the typical taxable person is the one who carries on, in a habitual and independent manner, a business activity, be it commercial, industrial or agricultural.

Nevertheless, there are many other situations where a person or company that do not fit in the aforesaid definition, are, nonetheless, liable to VAT:

(i) a person, resident or non-resident even if without a permanent establishment in Mozambique carrying out, in an independent fashion, a transaction subject to corporate income tax;

(ii) an importer of goods;

(iii) a person or entity incorrectly charging VAT on an invoice or equivalent document;

(iv) a person bound to an obligation to refrain from an act, or to tolerate an act or situation;

(v) Government and other public bodies, when engaged in certain listed activities, such as radio/television broadcasting, telecommunication, distribution of water, gas and electricity, transportation of goods and passengers, warehousing, port or airport services, etc. These bodies are not subject to VAT in respect of those activities or transactions in which they engage within their *jus imperii*.

7.4.2 What is taxed and where

VAT is levied on the provision of goods and services as well as on the import of goods. According to the principle of territoriality, the transfer of goods is taxed in Mozambique provided that:

(i) the transport of goods begins in Mozambique;

(ii) if there is no transport, the goods are made available to the acquirer in Mozambique;

(iii) the importer or successive purchasers, or ship or transport the goods from a third country, before being imported.

As a rule, only services provided by entities resident in Mozambique will be subject to VAT. However, this general rule has a number of exceptions, notably where what is involved are immovables located outside Mozambique and artistic, scientific, sports, recreational or educational services that occur outside Mozambique. However, all these services will be taxed in Mozambique if they occur in Mozambican territory, even if the person or entity that provides them is not resident in Mozambique.

This "residence of the provider" rule has a further exception where the purchaser of the goods or services is a person resident in Mozambique, registered for VAT purposes, who acquires one of the following services: copyrights, patents, licences, trademarks and similar rights, engineering and consultancy services, lawyers, accountants, economists, and consultants in any area of economic activity, including organisation, marketing and development, advertising, telecommunications, databases and provision of information, banking and financial activities, insurance and reinsurance, and personnel services, among others.

7.4.3 Taxable event and enforceability

VAT is chargeable when the goods are made available to the purchaser (supply of goods) or where services are provided (provision of services). As far as imports are concerned, VAT is due when the respective number is assigned to the import document (Single Document) or when the imported good is transferred. All payments received prior to the issue of the invoice give rise to payment of VAT on the respective amounts.

The VAT tax base is the value of the supply irrespective of its nature. There are a number of specific rules for certain types of transactions, for example, gratuitous transfers, auctions, supplies by public entities, fuels and electricity supply.

7.4.4 VAT rates

There is a single VAT rate of 17%.

7.4.5 Exemptions

VAT exemptions may be: full (or "zero-rate") or partial. Full exemptions allow the economic agent to recover in full the VAT on goods and services already acquired, while they exempt from VAT goods sold or services provided by that economic agent. This group includes exports of goods and services related therewith, the import and sale of ships and aircraft for use in international trade and other services related to transportation and distribution. The law also provides for the possibility of an economic agent setting up a storage depot, allowing him to store and handle goods under the full-exemption mechanism.

A broad range of operations may qualify for partial exemptions, such as financial services, insurance, education, health and commercial or residential leases.

7.4.6 Methods of deduction

If the taxpayer carries out supplies of services and goods part of which do not confer the right to deduct VAT, the whole input VAT will be deductible *pro rata temporis* of the total turnover of the operations conferring the right to deduct VAT. However, the taxpayer may choose to exercise the right of deduction through the real allocation of the taxable inputs to related taxable outputs, and this method may even be imposed by the Tax Administration of Mozambique whenever the taxpayer exercises distinct economic activities and the application of the *pro-rata* method generates relevant distortions.

7.5 Taxation of property

7.5.1 Tax on transfers for consideration ("*Sisa*")

Property transfer tax levies the consideration paid for any transfers of a full property right or a limited right like an usufruct or a similar right, and also includes other operations which do not consist, from a legal point of view, in transfers of rights, but that are economically equivalent, such as (*i*) long-term leases with a clause of mandatory transfer of the leased property on the final payment of the lease agreement and (*ii*) leases or sub-leases of urban buildings with a term longer than 20 years;

The applicable rate is 2% for resident or non-resident persons or entities and 10% for persons or entities domiciled in territories with a clearly more favorable tax regime. The taxable value is the higher of the declared value or the registered value for tax purposes. However, if the value for tax purposes is distorted when compared with the market value, the latter will prevail.

7.5.2 Inheritance and Gift Tax ("*Imposto sobre Sucessões e Doações*")

This tax is payable on gratuitous transfers of movable or immovable property, including inheritances or legacies, gifts or legal settlements. The tax rates are as follows:

(i) descendants, spouses and ascendants – 2%;

(ii) brothers and other relatives (with limitations) – 5%;

(iii) other beneficiaries – 10%.

7.5.3 Stamp Duty

Stamp Duty is payable on any act, document or operation, as set out in the Schedule to the Stamp Duty Code. The list of operations subject to stamp duty includes, among others:

(i) financial transactions, including the purchase of public-debt securities (1% of the par value), loans with a term of less than one year (0.03% per month), loans with a term of between one year and five years (0.4% per year), loans with a term of five or more years (0.5% per year);

(ii) mortgages and other collateral (0.02% per month or 0.2% and 0.3% per annum for guarantees less than one year, between one and five years or more than five years);

(iii) interest, commissions and consideration for financial services, in particular resulting from discounts of bills of exchange and public debt securities, loans, credit accounts and credits pending settlement – 2% of their value;

(iv) transfer of shareholdings – 0.4% of the par value;

(v) purchase and sale, swap, assignment for consideration of real estate – 0.2% of the value.

There are also a number of relevant exemptions, such as those enjoyed by finance-lease transactions and related guarantees, intra-group loans (under certain conditions), life insurance policies, transfers of shares in companies listed on the Mozambique Stock Exchange and public debt securities and the interest thereon, and also the initial subscriptions or share capital increases of commercial companies resident in Mozambique.

7.6 Customs Duties and Excise Duties

Customs Duties are levied on the import of goods in accordance with the following rates:

(i) raw materials – 2.5%;

(ii) consumer goods – 5% to 7.5%;

(iii) luxury goods –20%.

Additionally, importers have to pay a customs fee in the sum of USD 50.

Excise Duty ("*Imposto sobre Consumos Específicos*") is levied on the production and import of certain products or goods such as alcoholic beverages, tobacco, cosmetic products, jewellery and gems, motor vehicles and aircraft, among others. The tax base is broad and includes not only the selling price (for imported products, the base is the customs value), but also any legal charges that may be imposed on such goods, including levies and taxes.

8. Real Estate Investment

8.1 Right to use and enjoyment of land

In accordance with Mozambican legislation (Act 19/97 of October 1), land is owned by the State and cannot be sold or otherwise disposed of or encumbered. Nevertheless, the law provides for a lesser real right known as the use and enjoyment of land right ("*direito de uso e aproveitamento da terra*"/DUAT), which allows use of the land.

The DUAT may be held by Mozambican natural and corporate persons, as well as by local communities (groups of families and individuals living in a village or territorial constituency smaller than a village, which aims to safeguard common interests through the protection of residential areas, agricultural areas, sites of cultural importance, pastures, water sources and expansion areas). The DUAT acquired by the local community is governed by joint-ownership principles.

Foreigners may also be DUAT holders provided they have an approved investment project and meet the following conditions: (*i*) if natural persons, they have resided at least five years in Mozambique; (*ii*) if corporate persons, they are incorporated or registered in Mozambique.

Acquisition of the DUAT can take place in three ways:

(i) occupation by natural persons and local communities, according to customary norms and practices, provided they do not contravene the Constitution;

(ii) occupation by Mozambican natural persons who, in good faith, have been using the land for at least 10 years; or

(iii) authorisation of an application lodged by natural or corporate persons.

In urbanised areas, acquisition of the DUAT may also take place in the following ways (Decree 60/2006 of December 26):

(i) draw – of plots or parcels located in areas of basic urbanisation (this method is for Mozambicans only);

(ii) public auction – of plots or parcels located in fully or intermediately urbanised areas intended for the construction of residential, commercial and services buildings; the opening bid cannot be lower than the value of the urbanisation charge;

(iii) private negotiation – negotiation between local State and local government authorities and those submitting projects related setting up industrial and agro-livestock facilities and supermarkets, construction of housing at the initiative of co-operatives or associations, as well as residential construction associated with major investment projects.

Acquisition of the DUAT is proven through a title deed. The title-deed procedure includes the opinion of the local administrative authorities, preceded by a hearing of the respective communities for the purpose of confirming that the area is free. Besides the title deed, acquisition of the DUAT can also be proved by witnesses presented by local community members or by specialists.

DUAT holders may transfer it *inter vivos* or by legacy. This transfer includes infrastructures, buildings and improvements thereon and is done by public deed, with prior authorisation of the proper State authorities. In the case of urban properties, the DUAT of the land is transferred together with the property and permission does not have to be requested. It should also be noted that holder of the right may place a mortgage on the real property and improvements thereto, and that the DUAT acquired for the home of its holder is not subject to term.

Regarding the DUAT for economic activities, a business plan must be presented, and provisional authorisation is granted to pursue the business, with a maximum duration of five years for Mozambican persons and of two years for foreign persons. If the said business plan is complied with during the period of provisional authorisation, definitive authorisation of the respective deed is granted, for a maximum term of 50 years, renewable for a like period at the request of the interested party.

Causes of extinction of the DUAT include:

(i) failure to comply with the business plan or investment project without due cause, within the calendar set out in the approval of the request, even if tax obligations are being met;

(ii) revocation of the DUAT for reasons of public interest, preceded by payment of fair indemnity and/or compensation;

(iii) on expiry of the term or its renewal;

(iv) termination by the holder.

All acts relating to the DUAT (including acquisition, modification, transfer and termination) are subject to registration. Registration must take place at the Land Registry of the area where the properties are located within 15 days, in the order of their presentation, except in cases of urgency, where registration must take place within five days. Registration is proved by certificate.

Obtaining authorisation under the DUAT does not waive the need to license the exercise of the planned economic activity in accordance with the legislation applicable to the sector. DUAT holders are also subject to payment of an authorisation fee and an annual charge of a value that depends on whether the investor is Mozambican or foreign, the location of the land, its size and the purpose of the use of the land.

8.2 Rental

Rental is governed essentially by several items of legislation: the Tenancy Act ("*Lei do Inquilinato*", Decree 43525 of March 7, 1961, as amended by Decree 24/2006 of August 23), without prejudice to the provisions of the Civil Code relating rentals that do not conflict with it, and rental for housing, industry, commerce and services act (Act 8/79 of July 3). The former applies to the legal relationship between individuals and the latter to the legal relationship between the State, as landlord, and the tenants as individuals.

8.2.1 Tenancy Act

The Tenancy Act covers rental of urban properties (that is, both the buildings put up on the land and the ground that forms its yard or garden) and rental of rustic properties other than for production purposes or on which commercial establishments operate with the consent of the landlord. Leases may be concluded for residential, commercial or industrial purposes, for the exercise of liberal professions or for any other lawful purpose.

Currently, all leases must be in writing with notarial, presential authentication of the signatures of landlord and tenant.

In the absence of stipulation to the contrary, leases remain in force for a period of six months. The maximum term may be no more than 30 years.

The rent must be paid in local currency, and clauses fixing the rent in foreign currency are null. However, such invalidity does not determine the invalidity of the other terms and conditions of the contract.

The law further provides that the landlord can increase the rent at the end of each five-year period of the lease. This provision does not prevent another period being agreed by the parties in the lease contract itself.

Also underscored with regard to payment of rent is that the rent is owed by the tenant even after termination of the contract, until such time as the leased property it's actually handed back. On the other hand, the contract cannot stipulate more than one month's rent paid in advance, and only a personal guaranty ("*fiança*") is accepted as collateral for the obligation.

The tenant answers for the maintenance of the property and for handing it back in the condition in which it was received, fair wear and tear excepted.

Subleasing is lawful only if authorised by law, by the contract or with the subsequent consent of the landlord. The sublease expires on termination of the lease, without prejudice to the sub-lessor's liability towards the subtenant where the grounds for the termination are attributable to it.

At end of the contract, it is successively extended until the tenant terminates it, that is, opposes the extension of the lease, giving the notice and meeting the formalities set out in law or the contract, but not less than that provided for in the Civil Code, namely: (*i*) six months, if the term is equal to or greater than six years; (*ii*) 60 days, if the term is one to six years; (*iii*) 30 days, if the term is three months to one year; and (*iv*) one third of the term if less than three months. Where the term of the extension has not been agreed, it shall be equal to the period for which the contract was concluded, unless the period is longer than one year.

The landlord may, through the courts, terminate the lease at the end of its term if the property is needed as his own residence or to set up an economic activity undertaken by himself on a professional basis, or also to enlarge the building or replace it with a new one.

Termination of the rental agreement may also occur by revocation, rescission and expiry.

Revocation is termination of the lease by agreement of the parties. As a rule, this agreement must be in the same form as the contract. However, if the agreement is not subject to registration, revocation is valid, regardless of form, provided that the tenant return the use of the property to the landlord and the latter accepts it. In case of doubt, the agreement shall be presumed revoked if, during its life, the property is returned and accepted, as stated.

Rescission is a form of unilateral termination to which either party may have recourse in the event of contractual breach by the other party. Rescission by the landlord must be declared judicially by means of an eviction action, which may have, *inter alia*, the following grounds: (*i*) non-payment of rent, (*ii*) use of the property for other than the intended purpose, or (*iii*) closure for more than a straight year of a property leased for trade or industry, unless the closure occurs as a result of *force majeure* or forced absence of tenant.

Rescission by the tenant may take place, regardless of the responsibility of the landlord, when for some reason foreign to his own person or to his relatives, the tenant is deprived of enjoyment of the property, even if temporarily, or if the property has a defect that puts his health or that of his relatives or subordinates in serious danger.

Lastly, expiry is a form of termination which occurs automatically where certain legal requirements are met. Thus, the rental agreement shall expire:

(i) when the right or legal powers of administration under which it was concluded cease;

(ii) on the decease of the tenant (other than in connection with rentals for trade or industry) or by its extinction, if a corporate person;

(iii) in the event of loss of the property, its demolition by order of the local authority or expropriation for public utility (unless, in the latter case, the purpose of the expropriation allows the rental to subsist);

(iv) if the property is subject, by administrative or police imposition, to consolidation works incompatible with the continuation of the tenant in the premises.

Even if the lease expires as set out above, the law provides for the possibility of its renewal if, once the lease is revoked, rescinded or expires, the tenant or his successor remain in the enjoyment of the property during one year without opposition of the other party, in which case the lease is considered in force once again, as if it had not expired.

The Tenancy Act also stipulates special provisions for residential rentals and leases for commerce or industry.

With regard to the special provisions for commercial or industrial leases, it should be noted that they do not lapse on the death of the tenant, his position being transferred to his legal heirs if, within 30 days, they do not communicate their renunciation of the lease to the landlord. Where the lease may be legally terminated by reason of expiry or when it comes to an end, by decision of the landlord, the lessee is entitled to compensation if, because of an act of his, by virtue of the clientele built up, the rent of the leased property is greater than it was worth at the time the lease was entered into, even though it does not come to be leased again. The tenant may also transmit its legal position, without consent of the landlord, in the case of transfer of business ("*trespasse*"); the landlord has, however, right of preference and the lease must take the form of a public deed.

8.2.2 Lease of State property act

The law governing the rental of property for housing, commerce and services, in which the landlord is the State (Act 8/79 of July 3), contains provisions totally different from

those established in the Tenancy Act. This mechanism applies only to contractual relations in which the State is the landlord.

Residential contracts are concluded for an indefinite period and the rent is payable at the place and by the deadlines fixed in the contract, under penalty of punishment by a fine and termination of the contract. If the lessor is also the employer, the rent is deducted from the earnings of the tenant. The tenant may take in paying guests if it obtains the prior consent of the landlord. In this type of lease, sublease of real estate is prohibited.

The contract may be extinguished (*i*) on the decease or incapacity of the tenant, (*ii*) if the tenant moves or changes residence, (*iii*) by decision of the tenant, and (*iv*) by decision of the landlord.

These rules also apply to leases for industry, commerce and services, which however can only be concluded by tenants duly authorised to carry on the respective activities.

The following aspects must be taken into account in concluding lease contracts both for housing and also for industry, commerce and services:

(i) lease applications are submitted by means of an appropriate form;

(ii) the contract is drawn up in proper form and signed in three copies (one for the landlord, one for the tenant and the third for the department charged with receiving the rents);

(iii) an inspection document must form part of the contract;

(iv) should the tenant not sign the contract within 15 days of the date of the landlord's communication he loses the right to the lease;

(v) late payment of the rent is liable to a fine calculated on the amount of debt (50% in the first month, 100% in the second month and 200% in the third month) and implies termination of the contract when overdue by more than three months;

(vi) the tenant may terminate the contract at any time provided it so gives the landlord at least 30 days' notice;

(vii) in the event of any cause for termination of the contract, the landlord may give written notice of its decision to terminate the contract;

(viii) the State, as landlord, has the right to inspect the properties to verify their use, inspections to be notified in advance.

8.3 Land registry

Land registry is intended to give publicity to the ownership of rights over immovables. The principal effects of registration are the presumption that the registered right exists and belongs to the person in whose name it is registered (and thus enforceable against third parties), as well as the principle of priority (that is, the record entered in the first place takes precedence over those that follow in respect of the same good, even if the record is initially a provisional one, insofar as it has since been converted into definitive).

Thus, the legal facts that determine the formation, recognition, acquisition or modification of rights are subject to registration, among others.

The parties to the legal relationship and, in general, all persons having an interest therein are entitled to request a registration act.

8.4 Tourism

Tourism is recognised by the Mozambican State as an industry that promotes employment and generates foreign exchange, and sundry legislation specifies and complements the main legislation. The following should be underscored in this connection: (*i*) obtaining the DUAT for tourism purposes; (*ii*) the categories of tourism enterprises; (*iii*) requirements for their licensing; and (*iv*) areas of interest to tourism.

8.4.1 Obtaining the DUAT for tourism purposes

The construction of a tourism undertaking involves acquisition of the DUAT through an authorisation granted at the request of the interested parties. The process of acquisition of the DUAT through this authorisation requires the following documents:

(i) identity of the applicant, if a natural person, and the articles of association, if a corporate person;

(ii) map of the location of the land;

(iii) indication of the nature and size of the undertaking that the applicant intends to carry out;

(iv) opinion of the district administrator, which must be preceded by a hearing of the local community; and

(v) proof of payment of provisional authorisation charge.

DUAT holders may also transfer existing infrastructure and buildings, by public deed, to parties that want to acquire them, the transfer of necessity being preceded by State authorisation.

Transfer of the DUAT may only occur in respect of urban properties and their yards or gardens (that is, buildings put up on the land), provided the income is mainly derived from the existing constructions. With regard to rustic properties whose income derives mainly from the land, the purchase and sale of infrastructure, buildings and improvements thereto do not imply automatic transfer of the DUAT, which is subject to approval by the entity that authorised the request.

Therefore, if the intention is to build a tourism undertaking from scratch, a DUAT must be obtained, fulfilling the requirements listed above. However, the DUAT may also be obtained by public deed, provided that it refers to an urban property whose income derives mainly from the existing buildings.

8.4.2 Categories of tourism undertakings

The Tourism Regulation stipulates a number of categories that are sub-divided according to the type of service they provide. For each type of category and sub-category, minimum service and comfort requirements must be met.

There are therefore the following categories of tourism undertakings:

(i) hotels – from five-star luxury to one star;

(ii) resort hotels – from five-star luxury to three star;

(iii) lodges – from five star to one star;

(iv) service flats – from four star to one star;

(v) residential hotels – from four star to one star;

(vi) boarding houses – from four star to one star;

(vii) residential boarding houses – from four star to one star;

(viii) inns – from five star to two star;

(ix) motels – from three star to two star;

(x) holiday villages;

(xi) campsites – from four star to one star;

(xii) guest houses;

(xiii) private accommodation;

(xiv) room rental;

(xv) farms for tourism purposes; and

(xvi) resorts.

8.5 Common requirements for licensing of tourism undertakings

The application for licensing tourism undertakings is done through a signed application that must be authenticated and addressed to the minister responsible for tourism, stating:

(i) the identity of the applicant or developer (name, nationality and address in the case of a natural person, or articles of association, registered office and representative, if a corporate person);

(ii) where the undertaking is located or is to be located;

(iii) opinions of authorities and/or local authorities of the respective area;

(iv) environmental-impact assessment;

(v) DUAT for tourism purposes.

After submission of application one must apply for approval of the location, which, if granted, allows the applicant 180 days as from the notification of the decision to present the working plans. The working plans comprise several documents that specify in detail the composition of the tourism undertaking. However, the items to be submitted differ depending on whether the undertakings are to be located in buildings to be built or in existing buildings. The elements for approval of the location, of the preliminary plans and of the working plans may be submitted at the same time.

As from the date of reception by the applicant of written notice of approval of the working plans by the licensing authority, construction must begin within (*i*) one year for green-field projects, or (*ii*) 180 days for projects in existing buildings.

Upon completion of construction, the applicant must request an inspection. This request is made in writing to the licensing authority, together with a likewise written request for the issue of a manager certificate and for approval of the price list proposed for the undertaking. In parallel, the applicant must submit an application for classification of the undertaking by the proper classification authority.

Should the inspection be favourable to the opening the undertaking, the respective permit is issued. However, since this issue is not swift, the applicant may request a certificate from the licensing authority stating that it is awaiting the issue of the permit, which it can then present to other governmental entities. The permit is valid indefinitely. It should also be noted that the licensing is subject to payment of a fee.

The transfer of business of the undertaking, the assignment of its management, the suspension or closure of the activity and the revocation/lapse or amendment of the permit is subject to registration.

8.5.1 Zones of Interest to Tourism

The legislation on Zones of Interest to Tourism ("*Zonas de Interesse Turístico*"/ZIT) was enacted by Decree 77/2009 of December 15, and is intended primarily to favour regions that have relevant features, including natural and historical and cultural resources able to attract domestic and foreign tourists, or areas having potential for the development of integrated projects. The advantage of obtaining a ZIT declaration has to do with the adoption of fast, priority procedures and priorities for the implementation of tourism undertakings, as well as the total or partial suspension of spatial planning instruments.

9. Capital Market

9.1 Applicable regulations and principles

The fundamental legislation in this regard is the Mozambican Securities Code ("*Código dos Valores Mobiliários Moçambicano*"/CVMM), enacted by Decree-Law 4/2009 of June 2, which repealed Securities Regulation ("*Regulamento dos Valores Mobiliários*", enacted by Decree 48/98 of September 22), among other pieces of legislation.

The capital market in Mozambique comprises a primary market (market for new issues of securities) and a secondary market (trading market for previously-issued securities between third parties). On the other hand, a distinction must also be made between the stock market and over-the-counter market, the latter being a market in which supply and demand are dealt with outside the stock markets, with the involvement of authorised financial intermediaries.

Equally important are the public-subscription companies, which have part or all of their share capital dispersed among the public, by virtue of (*i*) having been incorporated with subscription by the public, (*ii*) having resorted to public subscription in a share capital increase, or (*iii*) their shares are or were admitted to trading on a stock market or have been the subject of a public offer for sale or exchange.

Circular 2/GPCDBVM/99 of September 15 determines the rules to be observed governing the preparation, procedure and decision on applications for listing of securities, as well as laying down the content of the prospectus to be published at the time of admission (Article 1).

In turn, Notice 4/GGBM/99 lays down the mechanism applicable to the registration with the Bank of Mozambique of public offerings for subscription and public offerings for sale of securities, as well as the form and content of advertising these offerings" (Article 1).

The following legislation must also be taken into account:

(i) Decree-Law 25/2006 of August 23, which establishes the principles and fundamental provisions governing the nature, organisation, management and working of the Central Securities; and

(ii) Notice 06/GGBM/2003 of September 30, governing the procedures for investments, transfers of capital, interest, dividends and other income related to transactions in securities admitted to trading on the Mozambique Stock Exchange, involving non-resident entities.

Within the competence of the Bank of Mozambique, the legislator establishes that, as the regulatory authority, it must exercise its powers with a view to the security, efficiency, modernisation and development of the securities market, fundamental objectives of the Mozambican capital market, importance also being given to the growing reduction of the formalities of the system, particularly with regard to its support and transfer of securities. It should also be noted that the CVMM establishes numerous duties of information, both by issuers and financial intermediaries and also by investors themselves.

Other principles stem from or are an instrumental part of these principles, as under:

(i) efficiency and proper working of the securities market;

(ii) transparency and information;

(iii) control of information;

(iv) prevention of systemic risks;

(v) prevention and repression of activities contrary to the law; and

(vi) independence of the subjects of the market.

With regard to public offerings, the common mechanism is still underdeveloped, limited to defining the terms of their acceptance and implementation, as well as the responsibilities and powers of the Bank of Mozambique. Moreover, financial intermediation is required for takeover bids, but not for public offerings and public exchange offers.

9.2 Market structures

The Mozambique Stock Exchange (*Bolsa de Valores de Moçambique*/BVM), established by Decrees 48/98 and 49/98, both of September 22, deal with the creation and maintenance of the place and of the systems provided with the means required to operate a free and open market for the purchase and sale of securities. The stock market also provides registration, clearing and settlement services, and sufficient and timely disclosure of information on transactions undertaken.

Financial intermediation activities to be undertaken at the BVM may be carried on by firms of brokers and dealers, as well as by credit institutions (Act 15/99 of November 1). However, of these, only financial intermediaries that have been formed as stock-market operators may trade directly on the stock market.

Contrary to what happens in other countries, in Mozambique the regulator is not a commission (or other entity) having its own duties and powers and differentiated from other regulators, and these duties are entrusted to the Bank of Mozambique. In addition to other powers conferred upon it by law (for example, oversight of takeovers, public offerings or public exchange offers), the following fall within the remit of the Bank of Mozambique:

(i) monitoring the evolution of the securities markets;

(ii) monitoring and, where it deems necessary, supervising or inspecting the activities of the stock market, of the market operators and financial intermediaries in general, and of the issuers and investors as part of its intervention in the securities market;

(iii) ensuring compliance with the requirements of informing the public imposed on issuers of securities, and with the information requirements imposed on investors or other entities legally obliged to provide information;

(iv) determining the admission to listing of securities;

(v) registering public offerings for subscription, public offerings for sale and public exchange offers;

(vi) authorising or prohibiting takeover bids;

(vii) taking steps to allow determination of responsibilities and the institution of disciplinary proceedings within its jurisdiction, as well as informing the proper judicial authorities of irregularities subject to criminal proceedings in the working of the securities market;

(viii) applying the fines to which the CVMM and complementary legislation refers; and

(ix) exercising such other powers as may be assigned to it by legislation or regulations governing the securities market seen to be necessary for the effective discharge of its duties.

10. Public Procurement

The legislation governing public procurement stems from the Regulation on Contracting Public Works, and Procurement of Goods and Services by the State ("*Regulamento de Contratação de Empreitada de Obras Públicas, Fornecimento de Bens e Prestação de Serviços ao Estado*", Decree 15/2010 of May 24, as amended by Decree 45/2011 of September 21), applicable to all State bodies and institutions, including local government and State-owned companies (that is, those in which the State owns all the share capital).

Covered by the Regulation are public-works contracts and the supply of goods and services to the State, including leasing, consulting and concession contracts.

The Regulation includes a general mechanism (public tender) and an exceptional contracting mechanism (limited call for tenders by prior qualification, limited call for tenders, two-stage tender, tender by auction, small tender and direct award):

(i) public tender – the general mechanism for entering into public-works contracts, and for the supply of goods and provision of services to the State. This is a procedure in which any interested party may take part, provided it meets the requirements set out in the tender documents. It begins with the publication of a notice in the press and at the headquarters of the procuring entity and, in the case of an international competition, in the "*Boletim da República*" (Official Gazette) and/or Internet website;

(ii) limited call for tenders by prior qualification – specific and restricted contracting mechanism, involving bidders who have been qualified to tender in a preliminary stage. It is adopted when competitiveness through public tender may be restricted in view of the complexity of eligibility requirements and the cost of preparing the tenders. It begins with publication of a notice under the terms defined for public tenders;

(iii) limited call for tenders – contract mechanism that can be used when the estimated contract value does not exceed MZN 3.5 million (approximately USD 121,500) in the case of construction contracts, or MZN 1.75 million (approximately USD 61,000) in cases of supply of goods and provision of services. It targets natural persons, micro, small and medium enterprises registered in the single register maintained by the contracting entities. It begins with publication of a notice under the terms defined for public tenders;

(iv) two-stage tender – mechanism in two stages in which the bidders submit, in the first stage, the initial technical proposal and, in the next stage, the final technical proposal and the price. It may be used when the nature of the works, goods or services do not allow the procuring entity to accurately define the technical specifications in advance or where the public interest can be satisfied in several ways. It begins with publication of a notice under the terms defined for public tenders;

(v) tender by auction – type of procurement that can be used to purchase commonly--available goods and services, in which interested parties submit bids successively at public acts. It begins with publication of a notice under the terms defined for public tenders;

(vi) small tender – procurement mechanism for situations where the estimated price is less than MZN 525,000 (approximately USD 18,500) in the case of construction contracts, or MZN 262,500 (approximately USD 9,100), for the supply of goods and services. It begins with publication of a notice under the terms defined for public tenders;

(vii) direct award – procurement mechanism applicable in certain situations listed in the Regulation (such as emergency situations or where the contract may be executed only by a particular contractor, supplier or service provider) or where the estimated value of the contract to be awarded is less than MZN 175,000 (approximately USD 6,100) in the case of works contracts, or MZN 87,500 (approximately USD 3,100) in the case of supply of goods and services (at least three bids must be obtained to ensure the reasonableness of price, and the selection of the contractor, supplier or service provider). Unlike other types, publication of a notice is not required.

There is a special procurement mechanism in which the procuring entity may, with the prior authorisation of the Minister of Finance, implement rules different from those defined in Regulation:

(i) procurement stemming from a treaty or other form of international agreement between Mozambique and other State or international organisation, which requires the adoption of a specific mechanism;

(ii) procurement within the scope of projects funded wholly or substantially by resources provided by donations or funded by official foreign co-operation agencies or multilateral financial bodies, where the adoption of distinct rules is expressly stated as a condition of the respective agreement or contract.

Regarding the tender evaluation criteria, the general criterion is that of the lowest price, except in public works or services concessions. Exceptionally, if it is not feasible to decide based on this criterion, the procurement entity may adopt a combined criterion that takes into account the technical evaluation and price, and it must provide grounds for its selection.

The Regulation includes measures favouring domestic bidders, which are defined as (*i*) natural persons of Mozambican nationality or (*ii*) corporate persons that have been incorporated under Mozambican legislation and more than 50% of whose share capital is held by a Mozambican natural person or a Mozambican corporate person the majority of whose share capital is owned by Mozambican natural persons. The measures involve:

(i) the possibility that the procurement entity restrict the participation of foreign bidders where the estimated contract value is equal to or less than MZN 10.5 million (approximately USD 363,500) in the case of construction contracts, or MZN 5.25 million (approximately USD 182,000) in cases of supply of goods and provision of services. For this purpose, prior and substantiated authorisation must be obtained from the relevant Minister, or,

(ii) should the previous measure not be applied, establishment of margins of domestic--bidder preference in the order of 10% of the contract value, excluding tax, for construction works, and 15% of the contract value, excluding tax, for goods.

Foreign bidders must have an attorney resident and domiciled in the country, with special powers to receive summons and subpoenas and to answer administratively and judicially for their acts, appending the power-of-attorney during the public tender or applicable procedure.

The Functional Procurement Oversight Unit (*Unidade Funcional de Supervisão das Aquisições*, the body responsible for co-ordinating and supervising all activities related to public procurement) maintains a register of contractors, suppliers of goods and service providers eligible for or prevented from taking part in tenders.

When the estimated contract value exceeds MZN 3.5 million (approximately USD 121,500), in the case of construction works, or MZN 1.75 million (approximately USD 61,000), in case of supply of goods and provision of services, the procurement entities shall require bidders to submit a provisional bond together with the submission of their proposals, of a maximum 1.25% of the estimated value of the contract, to ensure that the bids will be maintained until expiry of their validity (which is at least 21 days and no more than 120 days, as stipulated in the tender documents). On the other hand, to ensure proper execution of the contract, the successful bidder must provide a performance bond that may be as much as 10% of the total value of successful bid.

The price of the bid shall be submitted in Mozambican currency, the Metical, save in exceptional, reasoned cases provided for in the tender documents.

The law does not exclude the possibility of advance payments by the procurement entity, provided the contractor provides a bond in the same amount.

The Regulation also contains rules on the material regime of contracts for public works, supply of goods and provision of services, regulating, *inter alia*, the execution and release of the bonds, provisional and final acceptance, deficient performance, supply or provision, amendment and termination of contracts.

It is also important to highlight Act 26/2009 of September 29, which subjects contracts of any nature related to personnel, public works, loans, concessions supplies and provisions of services concluded by the State and other public entities, including departments and agencies within central, provincial and local Public Administration, public institutes and other entities determined by law to preventive supervision by the Administrative Court through the grant or refusal of prior approval.

Exempted from preventive supervision by the Administrative Court are contracts of a value less than that established by the law enacting the State Budget, provided they are concluded with entities listed in the single register of contractors, suppliers of goods and service providers.

Contracts are considered tacitly approved if the grant of approval is not refused within 45 days of the date of their reception by the Court. Approval by the Administrative Court is a *sine qua non* condition for a contract to produce effects and, as such, contract execution may only start after such approval is obtained.

11. Spatial Planning and Urban Design

The legislation on spatial planning is enshrined in Act 19/2007 of July 18. This act stipulates that spatial planning comprises the following levels of intervention:

(i) national (the spatial planning instruments include national territorial development plans and special territorial spatial plans);

(ii) provincial (the spatial planning instruments are the provincial territorial development plans);

(iii) district (the spatial planning instruments are the district land-use plans); and

(iv) local authority (the spatial planning instruments include the urban-structure plan, the general town-planning plan, the partial town-planning plan, and the detailed plan).

Spatial-planning instruments keep a vertical hierarchy to ensure compatibility of intervention across the territory. Compatibility of the various spatial-planning instruments is essential to their validity, and plans approved in violation of any spatial-planning instruments with which they ought to be compatible are null and void. In turn, the compatibility of acts committed in relation to spatial-planning instruments in force is a *sine qua non* condition for their validity and acts performed in breach thereof are therefore null and void.

Preparation of any spatial-planning referred to above does not depend on the existence of a hierarchically superior instrument. However, the elaboration of spatial-planning instruments at district and municipal level is mandatory.

The effectiveness of the spatial-planning instruments depends on their publication in the "*Boletim da República*" (Official Gazette).

In the matter of urban design, the General Urban Buildings Regime ("*Regime Geral das Edificações Urbanas*", Decree 1976 of May 10, 1960) establishes, as a general rule, the need to obtain a licence granted by the administrative bodies for the construction of new buildings, their alteration, enlargement or demolition. However, this licence may be waived on request, in cases of simple maintenance works and other works not governed by the General Urban Buildings Regime.

Licensing applications for construction works must always be accompanied by the respective plans and elements that justify the concept of the work, being also necessary to show the processes and materials adopted, as is an indication of the conditions under which it will be undertaken.

Use of a new, reconstructed, enlarged or altered building (provided the result is a substantial change of its characteristics) also requires a permit.

The General Urban Buildings Regime also enacted several administrative provisions to which buildings are subject, so as to ensure the minimum safety, health, comfort and aesthetic conditions.

12. Environmental Licensing

In what concerns the Environment Act ("*Lei do Ambiente*"), enacted by Act 20/97 of October 1, attention is drawn to the chapter on prevention of environmental damage through the environmental impact assessment procedure and environmental licensing.

The issue of the environmental licence is based on an assessment of the environmental impact of the activity and it precedes the issuance of any other licences legally required in each case.

The Environmental Impact Assessment Regulation ("*Regulamento sobre o Procedimento de Avaliação Ambiental*") is set out in Decree 45/2004 of September 29, as amended by Decree 42/2008 of November 4 Environmental impact studies for activities involving prospecting, research and production of oil and gas and mining mineral resources are governed by special legislation.

For the definition of the type of environmental impact assessment to be conducted, the activities described in the Regulation fall within three categories: category A activities (subject to an environmental impact study); category B activities (subject to a simplified environmental study); and category C activities (subject to observance of the rules set out in specific good environmental management directives). Activities not listed in Schedules I and III of the Regulation that may cause an environmental impact must first be assessed by the Ministry for Environmental Co-ordination (*Ministério para a Coordenação Ambiental*/MICOA).

Competence in the matter of environmental impact assessment is shared between the Environmental Impact Assessment Authority (MICOA, through the National Environmental Impact Assessment Directorate/*Direcção Nacional de Avaliação de Impacte Ambiental*) and the Provincial Directorates for Co-ordination of Environmental Action (*Direcções Provinciais para a Coordenação da Acção Ambiental*).

To begin the environmental impact assessment process, interested parties must submit to the Environmental Impact Assessment Authority, at central level, or to the respective Provincial Directorate for Co-ordination of Environmental Action, at local level, an application accompanied by the documentation stipulated in the Regulation.

It should be mentioned that activities classified as category A are subject to an environmental pre-viability and definition of scope study (EDPA) to define the scope of the environmental

impact study (EIS), through the selection of the environmental components that might be affected by the activity under review and to be targeted by the EIS.

Before preparing the environmental impact study (EIS) in the case of category A activities, or the simplified environmental study (SES) in the case of category B activities, the terms of reference (ToR) must also be prepared and submitted for approval; they constitute the guidelines for the undertaking of the said studies, the minimum content of which is also set out in the Regulation.

The EIS and the SES are governed by the approved ToR, their content defined in the Regulation. Environmental studies may only be performed by specialists registered in the register of environmental impact assessment consultants referred to in Article 21 of the Regulation.

There is public participation in the process of environmental impact assessment.

The Technical Assessment Committees set up under the Regulation review the EIS reports for category A activities and the SES reports for category B activities, issuing a final assessment statement that will constitute the grounds of the decision regarding the licensing of the proposed activity and must form an integral part of the environmental licensing process.

When the environmental viability of the activity has been demonstrated, the body responsible at central or local level notifies the applicant and the supervisory entities and issues the respective environmental permit within eight business days after the payment of the fees due.

When the analysis of the environmental viability of the activity leads to its partial rejection, environmental licensing may be subject to alterations to and/or reformulation of the activity, which is then subject to a new assessment and subsequent decision.

An environmental permit in respect of which the activity is not actually started within two years of its grant shall be deemed to have expired. Should the applicant still be interested in the implementation of the licensed activity, it must apply to the MICOA for an extension of the respective environmental permit licence within 90 days of its expiry.

All environmental permits for activities in operation are valid for a period of five years, renewable for a like period, upon request addressed to MICOA. The updating of permits is subject to presentation of an environmental management plan (for categories A and B activities) and of the environmental performance report in accordance with the conditions laid down in the authorisation (for category C activities). The application for renewal must be submitted to MICOA no later than 180 days before the expiry of the validity of the permit.

13. Public-Private Partnerships

Mozambican legislation (Act 15/2011 of August 10, regulated by Decree 16/2012 of June 4) defines public-private partnerships (PPP) undertakings in an area of the public domain (excluding petroleum and mineral resources) or in an area of public provision of services, in which, under contract and with the funding provided in whole or in part by the private partner, the latter undertakes before the public partner to undertake the necessary investment and manage the activity for the efficient provision of the services or goods that the State is charged with providing to its users.

There are two distinct types of PPP governed by this legislation:

(i) major projects – investment undertakings authorised or contracted by the Government, whose value exceeds, as of January 1, 2009, the sum of MZN 12.5 billion (approximately USD 433.5 million);

(ii) business concessions – undertakings involving prospecting, researching, extracting and/or exploiting natural resources or other resources or national assets, carried out under the respective contract or other means whereby the Government grants the rights within the scope of the undertaking.

As a rule, the procedure for the contracting of PPP undertakings is the public tender, being subsidiarily applicable the legislation governing public procurement. However, for reasons of public interest and provided the legal requirements for the purpose are met, PPP contracting may be preceded by a limited call for tender by prior qualification or two-stage tender. Exceptionally, in duly reasoned situations and as a last resort subject to government permission, contracting a PPP can take the form of negotiation and direct award.

The entity implementing the PPP undertaking must be a commercial company having as its clearly-demarcated, verifiable corporate object the implementation of the undertaking and having a duration not less than the life of the contract relating to the undertaking.

The grant of a PPP undertaking takes one of the following contractual forms: (*i*) concession contract; (*ii*) operating contract; and (*iii*) management contract.

The legislation also sets out the set of clauses that each PPP project contract must contain.

The PPP contract is subject to prior approval of the Administrative Court, as well as publication of the main terms of the contract in the "*Boletim da República*" (Official Gazette) and on the Government Portal, and publication of the reports and accounts of the business carried on by the undertaking.

The sectorial supervision of the PPP undertaking is entrusted to the Government entity responsible for the area or sector of activity of the PPP, while its financial supervision is entrusted to the Government entity that oversees the finance area.

The life of the PPP undertaking contract must be adequate to the time needed for its implementation and amortisation of the investment, and the law stipulates a maximum duration depending on whether the undertaking is in full operation, already exists but requires rehabilitation or enlargement, or is to be implemented from the start (the maximum period amounting, respectively, to 10, 20 and 30 years, and situations in which such deadlines may be extended are contemplated).

In each PPP the user-payer principle must be observed, and the price paid for the services rendered, under the contractually-agreed terms, must cover the costs incurred and provide a profit margin.

In the matter of risk-sharing, the law determines, among other things, that:

(i) the private partner is responsible for the prevention and mitigation of economic and financial, business and management risks and for risks involving the performance of the undertaking, risks of declining demand or market supply, design and construction risks and environmental-impact risks resulting from events subsequent to the taking-over of the undertaking by the private partner or contractor;

(ii) the public partner is responsible for the prevention and mitigation of political and legislative risks arising from unilateral measures taken by the Government or public institutions having negative or adverse effects on the normal implementation, operation and management of the PPP undertaking, risks of conflicts of interest of an institutional nature, as well as risks relating to the grant of land and public planning.

Events stemming from *force majeure* shall be subject to mitigation in fair terms to both parties.

Each PPP undertaking is eligible for the enjoyment of guarantees and incentives applicable to investments made in the country.

In the case of a PPP considered strategic or of special socio-economic interest to Mozambique that is not of itself financially viable in respect of which the State should contribute to its viability, financial guarantees may be granted to the undertaking by the entity responsible for financial supervision (co-financing or providing financial guarantees, facilitating access to funding guarantees, grant of subsidies or compensation for providing services or selling products below their actual cost).

In terms of termination of the contract, the procurement entity may redeem the contract for public interest, the contractor being entitled to compensation taking into account the time still remaining for the recovery of the investments made and the profitability of the undertaking, should no other criterion have been contractually agreed.

14. Labour Relations

14.1 Legal framework

Current labour legislation, notably Act 23/2007 of August 1 (Labour Act), is directed at facilitating investment and business development, and it is seen to more ample, liberal and flexible than the previous legislation, although it meets, among others, the principles of right to work, stability in employment and at the workplace, and non-discrimination.

The Labour Act ("*Lei do Trabalho*"/LT) applies to the legal labour relations established between employers and employees, domestic and foreign, of every branch of activity and whose activity is carried on in the country, as well as to those constituted between public-law legal entities and their employees, except those whose relationship is governed by specific legislation (State employees and persons employed by municipalities).

LT does not govern employment contracts concluded before October 31, 2007, regarding the trial period, vacation, lapse of rights and procedures, as well as procedures for disciplinary action and termination of the employment contract, matters that continue to be subject to the previous legislation (Act 8/98 of July 20).

LT defines the employment contract in broad terms, considering it one whereby the employee undertakes, for remuneration, to provide his activity to the employer, under the management and authority of the latter, and it is presumed to exist whenever a person carries on an activity that is remunerated and does so without the express opposition of the beneficiary thereof or when the employee is economically dependent on the beneficiary. On the other hand, a provision of services contract that, though conducted with autonomy, puts the provider in a position of subordination to the beneficiary of the economic activity is considered to be an employment contract.

Lastly, application of the LT legislation depends, in some matters, on the classification of the employer as (*i*) large enterprise, if it employs more than 100 employees, (*ii*) medium enterprise, if it employs between 10 and 100 employees, or (*iii*) small enterprise, if it employs up to 10 employees.

For this purpose, the number of employees corresponds to the existing average number during the preceding calendar year and, in the first year of activity, the number as of the date of its commencement is taken into account.

14.2 Types of employment contract

Essentially, the types of employment contract are as follows:

(i) permanent employment contract;

(ii) fixed-term employment contract;

(iii) unfixed-term employment contract.

The first is the rule and the last two are to exceptional situations, subject to fulfilling the respective legal requirements.

Term contracts are only allowed to carry out temporary tasks and during the time strictly required for the purpose, namely to (*i*) replacement of an employee who, for whatever reason, is temporarily unable to perform his activity; (*ii*) performance of tasks required by an exceptional or abnormal increase of production, as well as to carry out seasonal activity; (*iii*) performance of activities that do not relate meeting the employer's permanent needs; (*iv*) performance of construction work, a project or other specific, temporary activity, including execution, management and supervision of civil construction works, public works and industrial repairs, under a contract; and (*v*) provision of services complementing the latter, in particular subcontracting and outsourcing services.

Fixed-term contracts may be concluded for a period not exceeding two years, and may be renewed twice by agreement of the parties and for the time they have established in the contract itself (in the absence of contractual provision, it will be renewed for the same period as the original).

Small and medium enterprises enjoy special arrangements allowing them, for the first 10 years of their activity, to freely enter into fixed-term contracts without regard for the limitation on renewals.

As regards the conclusion of unfixed-term employment contracts is only admissible in cases in which it is not possible to predict with certainty the date of termination of the temporary reason that justifies it.

Having exceeded the duration or number of renewals limits, the fixed-term contract is converted into a permanent employment contract, though the parties may opt, as an alternative to conversion, for payment of compensation equivalent to 45 days wages for each year of service, thus terminating the employment tie.

The unfixed-term employment contract is converted into a permanent employment contract if, once verified the termination of the fact that led to his employment, the employee

remains in service after being given notice of termination or, in the absence thereof, after seven days following the return of the replaced employee or completion of the activity, service, construction work or project for which he had been hired.

Lastly, although the law stipulates that all types of employment contract shall be reduced in writing (with the exception of the employment contract concluded for instantaneously execution tasks of a duration not exceeding 90 days), non-compliance therewith shall affect neither the validity of the contract nor the employee's rights, absence thereof being assumed to be attributable to the employer, who is thus subject to all the consequences resulting therefrom.

14.3 Hiring foreign citizens

LT expressly provides for the possibility of hiring foreign employees, governed by the principle of equal treatment and opportunities. This principle does not preclude, however, the duty imposed on employers, domestic and foreign, to create conditions for the integration of Mozambican employees in jobs of greater technical complexity and management and administration positions in the company, and the possibility that, for weighty reasons including public interest, the Mozambican State may reserve certain functions or activities solely for Mozambicans.

The exercise of gainful employment in Mozambique by the foreign employee is subject to the prior grant of an appropriate entry visa for that purpose.

General rules on hiring foreigners are set out in Decree 55/2008 of December 30, under which the employment contract concluded with a foreign citizen must comply with the following rules:

(i) it must be reduced in writing;

(ii) it must always be concluded for a fixed-term and for a period not exceeding two years, renewable by submitting a new application;

(iii) it does not become a permanent employment contract, regardless of the number of renewals;

(iv) in the event of termination for any reason, the employer must give notice of the fact to the entity that oversees the employment area and migration services of the province of the place of work within 15 days of the date of termination.

Under these general rules, hiring foreigners may involve one of four types:

(i) hiring under the quota system;

(ii) hiring under investment projects approved by the Government;

(iii) short-duration hiring;

(iv) hiring with authorisation (outside the quota).

In the first type, the hiring in question is undertaken within the available quota applicable to the employer: (*i*) in large enterprises, 5% of all employees; (*ii*) in medium enterprises, 8% of all employees; and (*iii*) in small enterprises, 10% of all employees, with the minimum limit of one employee.

Although the law is not clear, the understanding of the local authorities for this purpose has been to consider "all employees" as being the domestic employees only.

The admission of foreign employees under the quota system does not require ministerial authorisation, but only communication to the minister who oversees the employment area or the entity on whom he delegates, accompanied by all documents required by law.

In investment projects approved by the Government in which foreign employees are planned to be hired in greater or lesser percentages than the above mentioned quotas, work permits are also waived, and an identical communication to the minister who oversees the employment area or the entity on whom he delegates is sufficient.

Also hiring foreign employees for short-term employment (not exceeding 30 consecutive or interpolated days) does not require ministerial authorisation, being sufficient the communication of legally-required elements to the proper provincial entity, while the term may be extended, provided that relevant authorisation is obtained and its total duration does not exceed 90 days.

Besides the three types mentioned, the employer may also hire foreign employees provided that, having submitted an application accompanied by all documents required by law, it obtains the necessary authorisation from the minister who oversees the employment area or the entity on whom he delegates.

In the latter case, hiring foreign employees is only permissible when they have the necessary professional or academic qualifications and there are no domestic citizens having such qualifications or, if there are, their number is insufficient and means that they are not available in the labour market. The application must be submitted to the proper provincial employment directorate and addressed to the minister for employment, the law stipulating 15 working days as from its reception for the respective order to be issued.

Hiring foreign employees to provide service in the industrial free zones and specific sectors of activity, such as civil service and the oil and mining industries, is governed by special legislation.

With regard to mining and oil industries, the hiring of foreign employees does not differ essentially from the general mechanism described above (Decree 63/2011 of December 7), with the exception of the qualification of short-duration work as not exceeding 180 consecutive or interpolated days, during a calendar year, even if the foreigner is bound by contract to a company, concessionaire, operator, subcontractor or their principals having their registered office in another country.

Lastly, hiring foreign employees is subject to payment of the legally-established fees, and failure to comply with the respective legal rules subjects the employer to sundry penalties, such as suspension and fine.

14.4 Working hours

As a rule, normal working hours shall not exceed eight hours per day and 48 hours per week, spread over six week days, but may however be extended up to nine hours a day, provided the employee is granted an extra half-day of rest per week.

By means of collective bargaining agreement, normal daily work may exceptionally be extended up to 12 hours, provided that the weekly duration does not exceed 56 hours, and the average duration of 48 hours' work per week is calculated by reference to maximum periods of six months.

On the other hand, establishments engaged in industrial activities, except those on shift work, may have normal working hours of 45 hours per week, over a five-day week.

In special cases, reduction or increase of the maximum limits of normal working hours is allowed, provided that it does not cause economic loss for the employees or unfavourable changes to their working conditions.

Determination of work schedule is entrusted to the employer after consultation with the relevant trade union body, and it must be endorsed by the employment administration and posted in the workplace.

Employees who hold leadership and management jobs or occupy positions of trust or of supervision or positions whose nature so warrants may be exempt from fixed working hours.

Unless a longer period is provided for in collective bargaining agreements and special shift-work and continuous working-hour mechanisms, employees are entitled to a daily rest interval not less than 30 minutes nor more than two hours.

Lastly, the compulsory weekly rest corresponds to, at least, 20 consecutive hours, as a rule on Sunday, except in those cases expressly stipulated by law.

14.5 Vacations, holidays and absences

Employees are entitled to paid vacation of a duration based on the following criteria:

(i) fixed-term employment contract of a duration greater than three months and less than one year – one day of vacation for each month of active service;

(ii) during the first year of work – one day of vacation for each month of actual work;

(iii) during the second year of work – two days of vacation for each month of actual work;

(iv) from the third year – 30 days of vacation each year of actual work.

For the purpose, actual work is deemed to be the time during which the employee provides actual work to the employer or is at the disposal of the employer, plus public holidays, weekly rest days, vacations and justified absences.

By agreement, employer and employee may exceptionally substitute holidays by additional remuneration, provided that a vacation of at least six working days can be taken.

Lastly, should the nature and organisation of the work, and production conditions so require or permit, the employer may, after consulting the relevant trade-union body, establish that all employees of the company take their vacation at the same time.

Public holidays are just those defined by law, and employment contract or collective bargaining agreement clauses determining holidays other than those legally enshrined are null. Suspension of work is deferred to the next day whenever the public holiday falls on a Sunday (except in cases of work that, for its nature, cannot be interrupted).

Absence from work may be justified or unjustified, depending on whether or not it was caused by one of the reasons provided for by law. In the first case, provided the communication procedure is observed, the employee does not lose any rights, including remuneration (except for absences due to illness or accident and assistance to a child admitted to a hospital, which do not imply payment of remuneration).

Unjustified absences determine, on the other hand, loss of pay for the period of absence, as well as the relevant vacation time and seniority, without prejudice to disciplinary proceedings, when applicable.

14.6 Remuneration

Remuneration of work comprises the basic wage and all regular, periodic benefits paid, directly or indirectly, in cash or in kind, though the latter may not exceed 25% of the employee's total remuneration.

The remuneration may take the form of remuneration by time (depending on the time actually spent at work), by performance (variable), or mixed, the second of these calculated in the direct light of the results achieved determined on the basis of the nature, quantity and quality of work performed, and applies only when the nature of work, the customs of the profession, of the branch of activity or previously established norm so permit.

Under the contract or collective bargaining agreement or when specific conditions so warrant, there are also additional benefits to the basic wage, either temporary or permanent, including travel costs, cashier's allowance, meal subsidy, night work, sundry bonuses related to seniority and productivity, stock options, among others.

Lastly, the minimum wage is set annually by ministerial order, as a result of tripartite negotiations between the government and the representative of the private-sector employers and unions at the Employment Consultative Committee (*Comissão Consultiva do Trabalho*), for the following nine sectors of activity: (*i*) agriculture, hunting, livestock and forestry; (*ii*) fisheries; (*iii*) mineral extraction industry; (*iv*) manufacturing industry; (*v*) production and distribution of electricity, gas and water; (*vi*) construction; (*vii*) non-financial services; (*vii*) financial activities; and (*ix*) public administration, defence and security.

The lowest minimum wage is currently MZN 2,300 (approximately USD 80), for agriculture, hunting, livestock and forestry, and the highest is set for the financial sector, at MZN 6,171 (approximately USD 220).

14.7 Termination of the employment contract by the employer

Mozambican labour legislation enshrines the right of employees to employment stability, prohibiting and punishing termination of employment contracts based on grounds other than those referred to in the law or in breach of its provisions.

The most common forms of termination of employment contracts at the initiative of the employer are as follows: (*i*) termination during the trial period, (*ii*) disciplinary dismissal, and (*iii*) termination with notice for objective reasons.

During the trial period (initial period of execution of the contract), either party may terminate the contract without need to invoke due cause and without right to compensation, provided than a minimum of seven days' notice is given.

The trial period has the following maximum duration:

(i) term employment contract – 90 days for fixed-term contracts lasting more than one year; 30 days, for fixed-term contracts lasting between six months and one year; 15 days for fixed-term contracts lasting up to six months; and 15 days for unfixed-term contracts whose expected duration is equal to or greater than 90 days;

(ii) permanent employment contract – 180 days for mid-level and senior technicians and employees engaged in leadership and management positions jobs, and 90 days for employees as a whole.

The duration of the trial period may be reduced by means of collective bargaining agreement or employment contract.

Lastly, if the duration of the trial period is not set out in writing in the employment contract, it is presumed that the parties wished to exclude it.

Disciplinary dismissal must be based on committal of a disciplinary offence embodying serious facts or circumstances that morally or materially preclude the continuation of the contractual relationship, in particular:

(i) manifest inability of the employee to carry out the agreed service, provided it was preceded by training for the purpose;

(ii) serious and culpable violation of the employee's duties; and

(iii) detention or imprisonment of the employee, unless subsequently acquitted or exempted from prosecution.

The employer may also terminate the employment contract with notice, provided that the measure is based on structural, technological or market reasons and is seen to be essential to the competitiveness, economic recovery, administrative or productive reorganisation of the company, following compliance with the formal procedure required for the purpose. In this case, where the termination embraces more than 10 employees at the same time, it is considered a collective redundancy, which involves a specific and distinct procedure.

This type of termination of the contract entitles the term employee to a minimum compensation equal to the wages falling due between the date of termination and that agreed as the date of termination of the contract.

In the case of a permanent employment contract, the minimum amount of compensation payable may vary between three and 30 days' pay per year of service (depending on the employee's wage and the date of termination of the contract) or between 45 days' pay and

three months' pay for every two years or part thereof (in those cases in which Act 8/98 of July 20 still applies, which depends on the date of termination of the contract).

All these types of termination (disciplinary dismissal and termination with notice for objective reasons, individual or collective) must be preceded by lodging and complying with the respective legal procedure.

14.8 Collective bargaining

Employers and employees are constitutionally entitled to organise themselves in business associations or trade unions, and to join them to defend and promote their socio-professional and business rights and interests.

Trade unions and employers' associations take part in drafting labour legislation and in the definition and implementation of policies on various employment matters or that impact on employment, and may also exercise the right to collective bargaining, among other rights provided by law.

Collective employment regulation instruments may be negotiated (collective bargaining agreement, accession agreement and voluntary arbitration decision) or not negotiated (compulsory arbitration decision) and have as their object the establishment and stabilisation of collective labour relations through the regulation of reciprocal rights and duties and means of resolving labour disputes, though they cannot set conditions less favourable to employees or limit the employer's management powers. Collective bargaining agreements, in turn, may be company agreement (signed by a trade union association and a single employer for one company), collective bargaining agreement (signed by a trade union association and several employers for various companies) or collective bargaining agreement (signed between trade union associations and employers' associations).

Collective bargaining instruments are binding on employers parties thereto or covered thereby, as well as all employees of the company, regardless of their membership of the signatory union and date of joining the company.

LT sets no limit to the number of organisations allowed in respect of a given industry or sector of activity.

Trade union organisations may be structured, by order of increasing complexity, in shop steward, union or company committee, trade union, or federation and general confederation of unions. The absence of a structure at the company means that the employees' rights are assured by the structure next following, without prejudice to the possibility of existence of a employees' committee.

The trade unions and their subsidiary bodies (shop stewards and union committees) have the right to meet at the company and to post notices and information related to union affairs at appropriate places in the company. On the other hand, members of the governing bodies of the trade unions and trade union delegates enjoy special protection in transfers of workplace and termination of contract for due cause.

14.9 Social Security and employee protection

Under the law, the compulsory social security system includes protection in the events of sickness, maternity, disability, old-age and death, and covers all employees, both domestic and foreign, residing in the Mozambican territory, and their dependent relatives (Act 4/2007 of February 7 and Decree 53/2007 of December 3).

For this purpose, the term employee is deemed to include directors and members of companies' governing bodies under an employment contract, including single-member companies, as well as sole traders having employees in their service or with permanent establishment.

Registration of employees and employers at the National Social Security Institute (*Instituto Nacional de Segurança Social*/INSS) is mandatory. Registration of employers must take place within 15 days of the date of commencement of business or acquisition of the company. Registration of employees is the responsibility of their relevant employer within 30 days of the commencement of the contractual tie, except those already registered, in which case entering the respective social security number on the wage sheet is sufficient.

Both employer and employee are required to contribute to the beneficiary employee's social security, being the former responsible for withholding and paying all contributions due each month to the INSS, to be paid up to the tenth day of the month next following.

The base for the calculation of the contributions includes the basic wage, bonuses, commissions and other payments of a similar nature paid on a regular basis, as well as management bonuses.

The contribution rate in force is 7%, of which 4% is for the account of the employer and 3% of the employee.

Foreign employees providing service in Mozambique who demonstrate that they are covered by the social security system of another country are exempt from contributions to the national social security system, without prejudice to the provisions of international bilateral agreements.

Lastly, responsibility for the material subsistence of employees with temporary or permanent disabilities resulting from vocational sickness or accidents, as well repayment of the respective expenses, lies with the employer and not with the INSS, and the employer must therefore take out collective insurance covering such situations.

15. Immigration and the Mechanism for Obtaining Visas and Residence Permits for Foreign Citizens

15.1 Types of visas and their requirements

Entry visas for the Republic of Mozambique can be obtained from Diplomatic and Consular Missions of the Republic of Mozambique abroad, at border crossings authorised for the purpose, at the Migration Service and at the Ministry of Foreign Affairs and Co-operation.

Entry visas may be individual or collective, single or multiple, and may be of any of the following types: (*i*) diplomatic visa; (*ii*) courtesy visa; (*iii*) official visa; (*iv*) residence visa; (*v*) tourist visa; (*vi*) transit visa; (*vii*) visitor visa; (*viii*) business visa; (*ix*) student visa; (*x*) employment visa; and (*x*) border visa.

For their nature, visas are issued outside Mozambique. Although the Migration Services in Mozambique may renew or extend the term of the visas, they cannot issue visas in most cases, except for the border visa.

The visa is granted subject to the following requirements:

(i) passport or equivalent document valid for at least six months;

(ii) demonstration of means of subsistence during the stay in Mozambique;

(iii) form duly filled in;

(iv) payment of the respective fee.

The Mozambican government recently altered the visa policy, and now requires submission of proof of accommodation by means of hotel reservation or declaration of responsibility of a resident in Mozambique, as well as the presentation of a letter of invitation.

15.2 Agreements with other countries

Mozambique has signed visa waiver agreements for every type of passport with South Africa, Botswana, Malawi, Mauritius, Swaziland, Tanzania, Zambia and Zimbabwe, and abolition of visas for diplomatic or service passport with the Community of Portuguese-Speaking Countries (*Comunidade dos Países de Língua Portuguesa*/CPLP) and Cuba.

16. Intellectual Property

The current system of legal protection of intellectual property in Mozambique came about following the country's accession to the World Trade Organisation (and to the TRIPS agreement), the World Intellectual Property Organisation (WIPO) and the 1981 Madrid Agreement and its 1989 Protocol relating to International Registration of Marks administered by WIPO, the Patent Co-operation Treaty and the African Regional Intellectual Property Organisation (ARIPO). Implementation of the provisions of these international and regional treaties was enacted by the Industrial Property Code in 1999 (which was thoroughly reviewed in 2006, with the approval of the new Industrial Property Code of April 12, 2006) and the Copyright Act of 2001 ("*Lei dos Direitos de Autor*", Act 4/2001 of February 27).

16.1 Copyright

The purpose of the Copyright Act is the protection of literary, artistic and scientific works and of their authors, performers, record and video producers, and the originals of radio broadcasts and is applicable to:

(i) works whose author or any other original holder of the copyright is Mozambican or, if a foreigner, has usual residence or registered office in Mozambique;

(ii) audio-visual works whose producer is Mozambican, or, if a foreigner, has usual residence or registered office in Mozambique;

(iii) works published in Mozambique or works first published abroad and then in Mozambique;

(iv) architectural works erected in Mozambique; and

(v) works that can be protected under an international treaty to which Mozambique is a party.

Copyright covers rights of an economic and non-economic nature. The former consist mainly of exclusive right of economic exploitation of the work, reflected in the option of authorising its reproduction, translation, adaptation, import or export, and of having copies for sale to the public and performing any other type of transfer of ownership. Economic rights are transferable *inter vivos* or by inheritance and are also liable to forfeiture and seizure under the general law. A contract for the assignment of economic rights, as well as the grant of licences must be in writing.

In turn, non-economic rights are of a personal nature and consist of the author's right to claim authorship of the work, to remain anonymous or to use a pseudonym, and to oppose any distortion, mutilation or modification of his work or any attack against it detrimental to honour, reputation, integrity or authenticity. Non-economic rights are not transferable *inter vivos*, only by inheritance.

According to the general principle, the author of a work is the first owner of its economic and non-economic rights, and specific rules are established for determining ownership of the rights in cases of works produced in collaboration, collective works, folklore works, audio-visual works and works created under an employment contract. With regard to the latter, unless otherwise provided by contract, the first holder of the economic and non-economic rights is the employee, but the economic rights are considered to be transferred to the employer, to the extent warranted by the customary activities under the contract.

According to the general rule, economic rights expire 70 years after the author's death, even if it is work disclosed or published posthumously; non-economic rights are protected indefinitely.

Copyright is vested by virtue of the creation of the work, by contract or by licence, its registration having a purely declarative role (that is, the copyright does not arise from the registration, which merely publicises a right that already exists). The following are subject to registration: (*i*) acts constituting, transferring, modifying or extinguishing the copyright, (*ii*) its encumbrance, (*iii*) the literary or artistic name, (*iv*) the title of the work and its author, and (*v*) the seizure and attachment of copyright.

Violation of copyright is civil and criminally punishable.

The National Book and Record Institute (*Instituto Nacional do Livro e do Disco*/INLD) is charged with promoting and regulating editorial activity and publication in series, promoting and regulating the production of records and recorded tapes, licensing and supporting national publishers and booksellers, the registration of national publications and the organisation of a copyright sector.

16.2 Industrial property

The Industrial Property Code (Decree 4/2006 of April 12) establishes the legal framework of industrial property, which includes trademarks, invention patents, utility models, industrial designs, trade names and insignia of establishment, logos, geographical indications, designations of origin and recompense, leaving the administration of industrial property to the Industrial Property Institute (*Instituto de Propriedade Industrial*/IPI).

The following are entitled to undertake acts with the IPI: (*i*) the natural person concerned or owner of the industrial property right, or his agent with special powers for the purpose, provided they are established or domiciled in Mozambique; (*ii*) the corporate person concerned or owner of the industrial property right, if its registered office is in Mozambique, through its legal representative or employee accredited for the purpose; and (*iii*) the official industrial property agent invested by the IPI. Consequently, any natural or corporate person who is neither domiciled in nor has its registered office in Mozambique can only perform acts before the IPI through an industrial property agent invested by the IPI.

Applications for registration of industrial property at the IPI must be submitted on proper forms. Registration of contracts that imply technology transfer, franchise agreements and the like is a requirement to be enforceable against third parties.

Industrial property rights are transferable *inter vivos* or by inheritance, and the transfer, co-ownership and any liens or charges shall be recorded in the granting document. Transfer *inter vivos* must be made in writing with the signature of the holder notarised, while the assignment of patents and utility models requires a public deed and the transfer of ownership of trade names, insignia, logos and rewards can only occur together with the establishment to which they relate, unless otherwise agreed. Designations of origin and geographical indications are not transferable.

The patent has a term of 20 years, the utility model a duration of 15 years, and industrial design of five years (renewable for like periods up to 25 years). Trademarks, trade names, insignia and logos have duration of 10 years (renewable indefinitely for like periods), while designations of origin and geographical indications last indefinitely.

Violation of intellectual property rights is punishable by a fine under the law.

17. Means of Dispute Resolution

In Mozambican law, dispute-resolution may be through the courts or out-of-court (by conciliation, mediation or arbitration).

17.1 Judicial system

17.1.1 Organisation and general rules of jurisdiction

The Mozambican system includes three different categories of courts: judicial and administrative courts and the Constitutional Council.

The judicial courts include the Supreme Court and the provincial and district courts. Their jurisdiction covers both civil and criminal matters and also all matters not assigned to other courts. Territorially, they are organised in keeping with the country's administrative structure.

The Administrative Court is now a specialised jurisdiction responsible for reviewing the legality of administrative acts and of the execution of the regulatory norms issued by the Public Administration, as well as of the State's accounts and of public expenditure.

The Constitutional Council is a specialised jurisdiction for constitutional and electoral matters, verifying and controlling the constitutionality of the laws and the legality of normative acts of the Executive, resolving conflicts of jurisdiction between sovereign bodies and assessing in advance the constitutionality of referenda. The Constitutional Council is also responsible for appraising electoral complaints and appeals as final court of review.

17.1.2 Recognition of foreign judgements

To be effective in Mozambique, rulings on private rights issued by a foreign court must be reviewed and confirmed before the Supreme Court.

For confirmation of a foreign judgement, it is essential that the content of the decision does not lead to a result which is manifestly incompatible with the principles of public order of the Mozambican State, though the confirmation process does not assess the merits of the decision.

A ruling recognised by the Supreme Court has the effect of *res judicata* and is enforceable within national territory; judgements of foreign courts not reviewed may, however, be invoked in cases pending in Mozambican courts as simple means of evidence subject to appraisal by those judging the cause.

17.1.3 International competence of Mozambican courts

The Mozambican courts consider themselves internationally competent when the action has to be brought in Mozambique under the rules of jurisdiction laid down by Mozambican law or where the fact constituting the cause of action or any of the facts forming part thereof have occurred within Mozambican territory, or in cases where the defendant is a foreigner and the claimant is Mozambican, provided that, in the reverse situation, the Mozambican party could be sued in the courts of the State to which the defendant belongs.

The international jurisdiction of the Mozambican courts is, however, mandatory in matters about inalienable rights or if the right in question cannot become effective except by means of an action brought before the Mozambican court, provided that between the proposed action and Mozambique there is a weighty element of personal or real connection (in the case of actions relating to rights *in rem* or personal rights of fruition of real estate situate in Mozambique), and lastly, if it is a special bankruptcy or insolvency process or one to assess the validity of resolutions of the governing bodies, in relation to corporate persons or companies domiciled in Mozambique.

Apart from these cases, the parties may agree that a particular dispute or disputes which may arise from certain fact be decided by the courts of the country of one of the parties or by international courts, provided that such agreement is in writing and the designation corresponds to a serious interest of the parties or of one of them (provided it does not involve major inconvenience for the other).

17.2 Out-of-court means of dispute resolution

Conflicts arising from commercial-legal relations in a broad sense (including relations arising from investments) are generally amenable to resolution by arbitration. The parties to these relations may submit them to arbitration under the Arbitration, Conciliation and Mediation Act ("*Lei de Arbitragem, Conciliação e Mediação*", Act 11/99 of July 8), either in advance (through the provision of an arbitration clause in the contractual instruments), or subsequently (by entering into an arbitration agreement), to be done explicitly. In trade relations, arbitration may be either domestic or international.

Mozambican law makes a distinction between national arbitration (arbitration in which the matter of the dispute within the scope of trade relations is subject to Mozambican national jurisdiction, the formation and working of the arbitral tribunal and the arbitral award being governed by the Arbitration, Conciliation and Mediation Act) and arbitration of international scope (covering dispute resolution in which there are interests of international scope).

In the case of investment relations between a foreign investor and the Mozambican State, and if there is no agreement between them or mandatory or statutory provision to the contrary, the Investment Act expressly acknowledges that disputes emerging therefrom be resolved, on the basis of prior agreement, by applying the following rules on international commercial arbitration:

(i) rules of the Washington Convention of March 15, 1965, on the Settlement of Investment Disputes between States and Nationals of Other States and of the International Centre for Settlement of Investment Disputes between States and Nationals of Other States (ICSID);

(ii) rules of the Supplementary Mechanism Regulation, approved on September 27, 1978, by the ISCID Board of Directors, if the foreign company does not fulfil the nationality conditions under Article 25 of the Washington Convention; or

(iii) arbitration rules of the International Chamber of Commerce, based in Paris.

Inclusion of a compromise or arbitration clause in contracts in the country is increasingly frequent.

Arbitral awards are final and enforceable and may be appealed to the court only on the basis of formal order and procedural principles laid down in the law, in particular in the case of manifest disregard of procedures with impact on the exercise of the rights of defence.

The law admits recognition and confirmation of foreign arbitral awards in cases being heard at the Supreme Court. The rules of the New York Convention on the recognition and enforcement of foreign arbitral awards, dated 1958, to which Mozambique acceded, subject to reciprocity, on June 10, 1998, apply to the review and confirmation of arbitral awards proffered by foreign courts or arbitrators.

The Mozambique Arbitration Act embraces, in many aspects, the solutions of the United Nations Commission on International Trade Model Law (UNCITRAL).

18. Combating Money Laundering

Since, in 2001, the United Nations Security Council passed Resolution 1373, calling on Member States to adopt legal measures for preventing and combating money laundering and financing of terrorism, Mozambique has made several efforts in this direction, having adopted, in 2002, Act 7/2002 of February 2, which established the legal framework for the prevention and suppression of the use of the financial system for laundering money, goods, products or rights arising from criminal activities, which was regulated by Decree 37/2004 of September 8.

In 2007, the Mozambique Information Agency was created, its aim to establish additional mechanisms to ensure timely implementation and effective application of the anti-money laundering law.

More recently, in 2012, the Mozambican Government approved a national strategy for preventing and combating money laundering and financing of terrorism, based on four pillars: legislation, organic restructuring of institutions, technical training of personnel and international co-operation.

In the field of legislation, Act 7/2002's revision is underscored, which aim to:

(i) typify the financing of terrorism as criminal conduct;

(ii) expand the range of criminal offences underlying money laundering and increase legal penalties;

(iii) hold not only companies but also the individuals who work for them criminally liable;

(iv) cover non-financial activities and professions;

(v) establish automatic breach of banking and professional secrecy in cases of criminal investigation involving suspicion of involvement in the crime of money--laundering.

Within the framework of international co-operation, attention is drawn to the signature, in June 2011, of a memorandum of understanding between Mozambique and South Africa with a view to joint patrol of the channel along the Indian Ocean, to which Tanzania acceded in the meantime.

In October 2012, Mozambique assumed the presidency of the council of ministers of the Eastern and South African Anti Money Laundering Group (ESAAMLG).

19. Major Sectors of Activity

Mozambique's economy is diversified, one in which the agriculture, transport, energy, fisheries and tourism sectors are of greater relevance.

The most dynamic sectors have been construction, manufacturing industry, mining industry, transport, communications, construction and electricity generation.

Together, the services and industry sectors account for the greater part of the GDP, followed by agriculture, and about 80% of the population are engaged in these sectors.

The main products are tobacco, sugar, cotton, rice and sugar cane.

19.1 Mining

The use and exploitation of mineral resources, except oil, are currently governed by Act 14/2002 of June 26 (Mines Act/"*Lei das Minas*") and by Decree 62/2006 of December 26 (Mines Act Regulation/"*Regulamento da Lei das Minas*"), and these resources are owned by the State, under the Constitution.

The right to reconnaissance, prospecting, and exploitation of mining resources is obtained through one of the following mining permits and approvals: reconnaissance licence, prospecting and research licence, mining concession, and mining pass.

19.1.1 Reconnaissance licence

Entitles the holder to carry out reconnaissance, gain access to, enter or fly over the licensed area, without exclusivity, for reconnaissance purposes and to obtain and remove samples, as well as the right to, with compliance with the laws in force, occupy land and erect temporary facilities, camps or buildings necessary for reconnaissance purposes, and to use water, wood and other materials needed for the reconnaissance. The licence holder can only perform drilling and excavations under the conditions laid down in the Mines Act Regulation.

Any natural or corporate person, national or foreign, who wishes to carry out the operations permitted by this licence may be a reconnaissance licence holder.

The maximum area for which a reconnaissance licence may be granted shall not exceed 100,000 hectares and the licence area cannot be enlarged after it is issued.

The maximum term of the reconnaissance licence is two years, not renewable, and is personal and not transferable.

19.1.2 Prospecting and research licence

Entitles the holder, in the prospecting and research area, to have access to and search for, on an exclusive basis, mining resources covered by the licence and to carry out the work required to achieve this objective. The holder may also research, under terms to be regulated, the associated minerals that appear in the area; gather, remove and export samples that do not exceed acceptable limits for prospecting and research purposes; gather samples and perform mining-processing tests; sell, with due authorisation, specimens and samples obtained for purposes of prospecting and research or sampling and processing tests; occupy land and erect any temporary facilities, camps or buildings required for prospecting and research purposes, and use the necessary water, wood and other materials.

Any natural or corporate person, national or foreign, who wishes to carry out the operations permitted by this licence may be a reconnaissance licence holder.

The area of the licence shall not exceed 25,000 hectares, although the allotted area may be subsequently enlarged at the request of the holder.

The maximum term is five years, renewable, at most, for another five-year period.

The prospecting and research licence is transferable *inter vivos* or on the death or disability of the holder, under the Mines Act Regulation and upon prior authorisation of the minister.

19.1.3 Mining concession

Applications for a mining concession may or not derive from a prospecting and research licence, and it entitles its holder to use and occupy the land and carry out, on an exclusive basis, exploitation of the mining resources identified in the research stage and to carry out operations and the work necessary to this end; to construct any facilities or infrastructures necessary for the purpose; to use water, wood and other materials required for operating activities; to use such parts of the area as may be necessary for agriculture, livestock or breeding purposes in a proportion suited to its own consumption; to store transport and process the necessary mineral resources; and to sell or otherwise dispose of the mineral products resulting from mining operations. The holder of the mining concession is also entitled to request and to be granted a permit to use and enjoy the land under the terms established in the land legislation.

Only a corporate person or company established and registered in Mozambique may hold a mining concession.

The concession period is based on the economic life of the mine or mining operations, with a maximum of 25 years, and may be extended (provided, however, that no extension may exceed said period).

The prospecting and research licence is transferable *inter vivos* or on the death or disability of the holder, under the Mines Act Regulation and upon prior authorisation of the minister.

19.1.4 Mining certificate

A mining certificate holder is entitled to conduct small-scale mining operations, as defined in Mines Act Regulation and, as such, may occupy and use the land and conduct, on an exclusive basis, small-scale mining operations and carry out the work and operations necessary for this purpose; use the land and construct the temporary facilities or infrastructure required for the mining operations; use water, wood and other materials required for the mining operations; store, transport and process the mineral resources and dispose of any waste, sell or dispose of mineral products resulting from mining operations; and apply for a concession licence. The holder of a mining certificate is also entitled to request and to be granted a permit to use and enjoy the land under the terms established in the land legislation.

Pursuant to Act 14/2002, a mining certificate may be held by a person, natural or corporate, Mozambican or foreign entity domiciled in the country, and by any co-operative or family able to carry out the authorised operations. However, the Mines Act Regulation stipulates that a mining certificate may only be held by a national natural or corporate person, a national person being understood as being natural person of Mozambican nationality and a national corporate person one incorporated by natural persons of Mozambican nationality or corporate persons created and registered in accordance with the laws of Mozambique, with 100% of Mozambican share capital. The National Directorate of Mines (*Direcção Nacional de Minas*) has followed this latter understanding and formal clarification of this matter is awaited with the review of the mining legislation currently under way.

The mining certificate is issued for a maximum period of two years, renewable for successive periods not exceeding two years, provided the mining activity so warrants.

Inter vivos transfer of the mining certificate is allowed only to a natural or corporate person domiciled in Mozambique and is subject to prior authorisation by the Provincial Government under the Mines Act Regulation, authorisation that is also required for transfer on the death or disability of the holder.

19.1.5 Mining pass

The mining pass entitles its holder to carry on, on a non-exclusive, artisanal basis, mining of any mineral resource and to store, to transport the minerals extracted and to sell them to marketing-licence holders.

The mining pass may be held by any natural person of Mozambican nationality having the legal capacity to carry out the operations permitted by the pass, and it is granted for a period of 12 months, renewable for like periods.

The mining pass is personal and non-transferable.

19.1.6 Mineral water

It should also be mentioned that mineral-water prospecting, research and abstraction is undertaken under a prospecting and research licence and under a mining concession. The area over which the prospecting and research licence may be granted shall not exceed 80 hectares and is valid for 12 months, renewable, at most, for a like period. The application for a mineral-water concession may be submitted by any corporate person incorporated and registered in Mozambique, regardless of whether or not the application stems from a prospecting and research licence.

19.1.7 Granting process

The reconnaissance licence, the mining certificate and the mining pass are assigned at the request of the interested party submitted to the Directorate General of Mines or to the Provincial Department with jurisdiction over the intended mining area. The prospecting and research licence and the mining concession are granted at the request of the interested party submitted to the Directorate General of Mines or the Provincial Department with jurisdiction over the intended mining area, or by public tender, where there are overlapping requests.

Exceptionally and taking into account the size of the project, the Council of Ministers may conclude a mining contract with the holder of a prospecting and research licence or of a mining concession.

19.1.8 Marketing

The marketing of mineral products of Mozambican origin is permitted when they are the result of mining activities carried out in accordance with the mining permit. The marketing of mineral products that do not result from mining activities conducted under a mining permit or authorisation requires a licence and is subject to proper monitoring and supervision under terms pending regulation.

19.1.9 Taxation of mining

Persons engaged in mining, their contractors, subcontractors and operators are subject to taxes in force in Mozambique, including the Municipal Tax, and the Production Tax and the Surface Tax, in particular, are also due.

The rates of the Tax on Mining Production ("*Imposto sobre a Produção Mineira*") established by Act 11/2007 of June 27, are 10% for diamonds, precious metals (gold, silver and platinum) and precious stones, 6% for semi-precious stones, 5% for basic materials and 3% for coal and other mining products.

The Surface Tax ("*Imposto sobre a Superfície*") is due annually and is determined on the basis of the area subject to the mining permit.

The State provides guarantees for investment and, at the outset, guarantees:

(i) security and legal protection of ownership of assets and rights, including industrial property rights forming part of the authorised investments and carried out in mining activity under the mining permit;

(ii) that, once a prospecting licence, mining concession or mining certificate has been granted for a recognised direct foreign or national investment, the taxation of mining in force at the time of issue of the permit will not be altered, save for the benefit of the permit holder;

(iii) the transfer of funds abroad, in accordance with the conditions set out in the legal instruments pertinent to the investment, among which, exportable profits resulting from investments eligible for the export of profits, royalties or returns on indirect investments associated with the assignment or transfer of technology and repayment and interest on loans taken out on the international financial markets and invested in investment projects in Mozambique.

19.2 Fisheries

Since Mozambique is a country with thousands of kilometres of coastline, the fishing industry naturally is of great importance to the national economy. Production is divided between industrial, semi-industrial and small-scale fishing. Industrial fishing is carried out by fishing companies and shipowners operating vessels of more than 20 metres, provided with on-board processing and freezing facilities. Semi-industrial fishing is also carried on by fishing companies and shipowners with vessels having on-board conservation facilities, but of smaller dimension (10 to 20 metres).

Lastly, artisanal fishing is carried on by artisanal fishermen and small owners, who use small boats and use just ice for conservation. In terms of number and volume, the latter accounts for the largest share of the fisheries sector, providing a very large number of jobs.

In Mozambique, most of the fish kinds caught, both by production volume and by production value, are shrimp, prawns, *kapenta* (freshwater sardines) and tuna. The latter is industrial fishing undertaken largely by European Union shipowners within the Exclusive Economic Zone relatively far from the coast. This type of fishing is part of the major tuna fisheries of the western Indian Ocean, one of the largest, with an annual catch estimated at 885,000 tonnes.

However, small-scale fishing accounts for the biggest share of production and value, playing a pivotal role in Mozambican household economy and, consequently, in the social fabric. The significant increase of fuel prices on the international markets has led to a decline in the volume of semi-industrial and industrial fishing, although it has not affected the shrimp--catch quotas for several years.

Exports have been affected by a drop in demand caused by the economic and financial crisis in the importing markets, particularly shrimp, which accounts for 70% of the total value of exports. The main export market is the European Union, which absorbs about 90% of export turnover.

In this regard, the Fisheries Act ("*Lei das Pescas*", Act 3/90 of September 26), which defines the legal framework for fisheries planning and management, implementation of the licensing system, adoption of resource-conservation measures and monitoring the quality of fishery products intended for export. This act is basically a framework law circumscribing the parameters of fishery administrative activity and the activities of the economic agents. Some of its rules, in particular those relating to inspection, are directly applicable, while other measures still require implementing regulations. There are countless items of legislation governing fishing activity in all its dimensions, most notably the General Sea Fisheries Regulation (enacted by Council of Ministers' Decree 43/2003 of December 10), applicable to fishing in Mozambican marine waters by Mozambican and foreign fishing boats, as well as fishing on the high seas by Mozambican fishing boats. The Fisheries Policy and Implementation Strategies ("*Política Pesqueira e Estratégias de Implementação*") are set out in Council of Ministers' Resolution 11/96 of May 28.

19.3 Ports

The Mozambican fisheries policy and its implementation strategy, approved by Council of Ministers' Resolution 11/96 of May 28, define State ownership of the fishing ports of Mozambique, as well as of other associated infrastructures, including dry-docks.

Since the fishing industry plays a role of considerable importance in the Mozambican economy and as this country has a vast coastline, the ports of Mozambique are seen to be essential structures of great strategic importance. Mozambique has three major ports used in the import and export of products: Nacala, Beira and Maputo. The latter was modernised in 1989 and is the second-largest port in Africa.

In this connection, attention is drawn to the Operation of the Fishing Ports of Mozambique Regulation ("*Regulamento de Exploração dos Portos de Pescas de Moçambique*") enacted by Ministerial Order 204/2011 of August 5, establishing the working and operation of the fishing ports of Mozambique. It determines that the operation of each fishing port is assigned to the respective Port Directorate, which may, upon conclusion of a contract, assign the operation of services to other entities that will be subject to supervision and to certain fees regime.

19.4 Waters

Mozambique, like the rest of sub-Saharan Africa, has serious problems in supplying water to the population, especially in rural areas. The Millennium Development Goals, agreed by Member States of the United Nations in 2000, set goals of 70% coverage of the population by 2015, and water supply now stands at 59.9% in rural areas and 64% in urban areas. Concerns about improving the quality of life for people in this matter are mirrored in the Public Water Distribution and Wastewater Drainage Systems Regulation ("*Regulamento dos Sistemas Públicos de Distribuição de Águas Residuais*", Council of Ministers' Decree 30/2003 of July 1).

Act 16/91 of August 3 enacted the Water Act ("*Lei das Águas*"), which determines the water resources that belong to the public domain, the principles of water management, the need to draw up an inventory of all water resources in country, the general system of its use, the priorities to be taken into account, the general rights of users and their obligations. The Water Licences and Concessions Regulation ("*Regulamento de Licenças e Concessões de Águas*") is set out in Council of Ministers' Decree 43/2007 of October 30, and is applicable only to waters that lie outside the action of the tides and/or whose water bodies (lakes and lagoons) communicate with the sea only during spring tides. Mention is also made of the Quality of Water for Human Consumption Regulation (Ministerial Order 180/2004 of September 15) that sets out the concern for improvement of the quality of water supplied to the population.

Lastly, attention is called to Ministerial Order 258/2010 of December 20, enacting the National Water Supply and Rural Basic Sanitation Programme ("*Programa Nacional de Abastecimento de Água e Saneamento Rural*"/PRONASAR), which is a joint effort of the Government of Mozambique, development partners, non-governmental organisations, private sector, community members and other interested parties at central, provincial,

district and local levels to accelerate the coverage of water and basic sanitation in rural areas in order to meet the Millennium Development Goals, thereby contributing to the satisfaction of basic human needs, improvement of wellbeing and reduction of rural poverty through increased use of and access to water-supply and basic-sanitation services

19.5 Oil and gas

The Constitution stipulates that petroleum resources, as natural resources located in the ground and underground, in internal waters, in the territorial sea, in the continental shelf and in the Exclusive Economic Zone, are State property.

The rules of allocation of rights for carrying out exploration, development, production, separation and processing, storage, transport and sale or delivery of crude oil or natural gas at the point of export or agreed delivery point in the country, including natural-gas processing operations and shutting down all completed operations (petroleum operations), are defined by Act 3/2001 of February 21 (Petroleum Act/"*Lei dos Petróleos*") and Decree 24/2004 August 20 (Petroleum Operations Regulation/"*Regulamento das Operações Petrolíferas*").

In accordance with the Petroleum Act and the Petroleum Operations Regulation, the conducting of petroleum operations is subject to the prior entering into of a concession contract. The concession contract may be for reconnaissance, exploration and production or for oil or gas pipelines. Reconnaissance, exploration and production and oil or gas pipeline concession contracts are granted as a result of public tender (or, under certain conditions, simultaneous negotiation or direct negotiation).

Mozambican or foreign corporate entities of proven technical competence and financial capacity may be oil-operations concessionaires. However, Mozambican corporate persons and foreign corporate persons that join up with Mozambican corporate persons (for this purpose, a Mozambican corporate person is any corporate person incorporated and registered under Mozambican law, having its registered office in Mozambique, in which at least 50% of its share capital belongs Mozambican citizens or private or public Mozambican companies or institutions), enjoy preferential right to allocation of exploration or production blocks.

The State is entitled to participate in petroleum operations in which any corporate person is involved, at any stage of the operations, under terms and conditions to be established by contract. Where the national interest so requires, preference shall be given to the Government in the acquisition of the oil produced in the area of the respective research and production contract.

19.5.1 Reconnaissance concession contract

A reconnaissance concession contract entitles the holder to carry out preliminary research and assessment works through studies, including geophysical, geochemical, palaeontological, geological and topographic studies.

This contract is executed on an exclusive basis for a maximum period of two years and allows drilling to a depth of 100 metres below the surface or seabed, the holder having right of preference in concluding the exploration and production concession contract.

Data obtained under this contract, as well as data obtained under exploration and production and oil or gas pipeline concession contracts, are owned by the State.

19.5.2 Exploration and production concession contract

An exploration and production concession contract assigns the exclusive right to oil exploration and production and the non-exclusive right to build and operate oil and gas pipeline systems, unless access is available to an existing oil or gas pipeline system under acceptable business terms and conditions.

The exclusive exploration right is assigned for eight years.

In the event of a discovery, the holder of exploration and production right may maintain the exclusive right to complete the work of assessing the commercial value of the discovery during a further period of two years or, in the case of a finding of non-associated natural gas, for a further period not exceeding eight years.

As for the exclusive right to develop and produce oil, this can be maintained by the holder for 30 years as from the approval of the respective development plan by the Council of Ministers.

19.5.3 Oil or gas pipeline concession contract

The oil or gas pipeline concession contract grants the right to establish and operate pipelines for the transportation of crude oil and natural gas where these operations are not covered by an exploration and production concession contract.

The holder of an oil or gas pipeline right (and also the holder of an exploration and production right where the oil or gas pipeline operations are provided for in the exploration and production concession contract) is obliged to transport third-party oil, under commercially acceptable terms, provided there is available capacity and there are no technical problems preventing the transport. In case of incapacity of the oil or gas pipeline system, concessionaires are obliged to increase the capacity of the system so that third party requests

for transportation of oil and gas are met on commercially acceptable terms, provided that such increase will not endanger the technical integrity or the safety of the system and that the third parties cover the costs of the increase of capacity.

19.5.4 Public tender

The principle underlying the award of reconnaissance, exploration and production, and oil or gas pipeline concession contracts is the public tender. Simultaneous negotiation or direct negotiation occurs only in respect of areas already declared available as a result of: (*i*) a prior public tender in which no concession was granted; (*ii*) rescission, termination and abandonment; and (*iii*) need to attach adjacent areas to a concession because of technical and economic grounds.

The award of reconnaissance, exploration and production, and construction and operation of oil or gas pipeline rights is initiated by means of an application submitted to the Petroleum National Institute and addressed to the minister who oversees the petroleum industry, in response to a public tender or on the basis of a direct or simultaneous negotiation.

The Council of Ministers is responsible for approving the award of concession contracts for exploration and production concession contracts and oil and gas pipeline concession contracts. The minister who oversees the petroleum industry is responsible for approving reconnaissance concession contracts.

The tender principle also applies to contracting the services and the acquisition of goods needed to carry out petroleum operations, and in appraising the bids consideration must be given to the service quality, price, delivery time and guarantees offered.

Tenders for procurement of goods and services include invitations to tender or to pre-qualify addressed to a reasonable number of suppliers potentially able to deliver the goods or render the services required. The tender specifications and deadlines shall be so established as not to unduly exclude competitive suppliers. A copy of the list of pre-qualified competitors selected shall be sent to the Petroleum National Institute and, prior to the award, this institute must be informed of the award made by the petroleum operations operator. If the Petroleum Institute, after discussion with the operator, concludes that the tender procedures were not complied with, it may ask the operator to reconsider its decision as to the award of the contract in question.

19.5.5 Grounds for termination of concession contracts

Concession contracts terminate for total surrender of the contract area, rescission or abandonment.

Up to three months before the expiry of the concession contract the concessionaire of the exploration and production right may surrender the area of the contract, provided it shall have fulfilled the stipulated minimum work and expenditure obligations, except in the case of a development and production area. After commencement of commercial production, the holder of the exploration and production right may only surrender the development and production area upon at least one year prior notice.

Concession contracts may be rescinded by the minister who oversees the petroleum area on the basis of: (*i*) deviation of the object of the concession; (*ii*) bankruptcy of the concessionaire; (*iii*) breach of the law and of the contract; and (*iv*) prolonged interruption of activities for reasons attributable to the operator.

Abandonment occurs when, without due cause and during a minimum of three months, the concessionaire stops oil operations in the area applied for.

Upon termination of the concession, all the assets forming part thereof revert to the State at no cost, save contractual provision to the contrary.

19.5.6 Documentation and samples

Petroleum operations operators shall provide the Petroleum National Institute with any documentation or sample gathered during such operations, when so requested.

The original documents and samples collected must remain in Mozambique, and may only leave the country with the approval of the Institute.

On termination of the exploration and production and oil or gas pipeline concession contracts, the original documentation and the collections of samples must be handed over to the Institute.

19.5.7 Local content

Holders of reconnaissance, exploration and production and oil or gas pipeline rights are required to give preference to Mozambican products and services comparable to international products and services in terms of quality and delivery and whose price, including taxes, is not more than 10% higher than the prices of available imported goods.

Furthermore, the operator shall train Mozambican technicians in accordance with the exploration and production and oil or gas pipeline concession contracts.

19.5.8 Guarantee of compliance

As guarantee of compliance of the obligations arising from the concession, the concessionaire must provide a bank guarantee or parent company guarantee of an amount equivalent to

the minimum work obligations, and such guarantee may be released only one year after the term of the concession.

19.5.9 Gas flaring

Natural gas flaring is allowed only if it can be proved that alternative use thereof would render impossible the commercial exploitation of the reservoir in question.

Authorisation is not required for flaring in the event of tests for safety reasons, but such flaring of the natural gas must be notified to the Petroleum National Institute.

19.5.10 Inspection of petroleum operations and fines

Places where petroleum operations are undertaken, as well as the assets, records and data held by the operator, may be inspected by the inspectorate-general of the ministry that oversees the petroleum industry, which may appoint for the purpose an independent entity or a commission especially created for the purpose.

The Petroleum National Institute may at any time inspect the equipment or methods of measurement of the oil produced and transported.

Failure to comply with orders and administrative instructions is subject to a fine of a minimum of MZN 250 million (approximately USD 8.7 million) and a maximum of MZN 2.5 billion (approximately USD 86.5 million) per day of default. The grading of the fine to be levied by the Petroleum National Institute depends on the severity of the offence.

19.5.11 Disputes

Disputes concerning the interpretation of the Petroleum Act, the Petroleum Operations Regulation and the reconnaissance, exploration and production and oil or gas pipeline concession contracts that do not come to be settled by agreement shall be settled by arbitration or by the competent judicial authorities.

19.5.12 Taxation

In addition to the other taxes provided for in the tax system, Mozambican law stipulates the application of the Petroleum Production Tax. This tax is levied on the value of oil produced in the country and the taxpayer is the producer. A concessionaire having exploration and production rights pays the Petroleum Production Tax ("*Imposto sobre a Produção do Petróleo*") at a rate of 10% for crude oil and 6% for natural gas. The collection of this tax is presumed to be in cash, unless the Government gives six months written notice to the taxpayer to pay part or all in kind.

19.6 Biofuels

The biofuels policy and strategy in Mozambique were approved by Resolution 22/2009 of May 21, and the grounds were the promotion and use of national agro-energy resources, sustainable socio-economic development, reduction of greenhouse gas emissions and reducing the country's dependence on imported fossil fuels and the weight of the import bill on the national economy.

This policy provides for three stages: a pilot stage, from 2009 to 2015, in which the purchase of biofuels from domestic producers commences; an operational stage, beginning in 2015 with the consolidation of the biofuel industry and possible achievement of higher blend level; and an expansion stage, as from 2011, involving the development of separate and parallel distribution networks for fuels with higher percentages of ethanol and pure biodiesel.

Decree 58/2011 of November 11 enacted the regulation on biofuels and their blends with fossil fuels (Biofuels Regulation/"*Regulamento de Biocombustíveis*"), which defines the production, processing, marketing and distribution of biofuels and their blends.

In accordance with the Biofuels Regulation, these activities must be undertaken in compliance with the respective licence. The licence for the production, storage, export and transportation of biofuels must be applied for by natural or legal persons at the ministry that oversees the energy area. The licensing of production activities is entrusted to the Council of Ministers, for production greater than 12 million litres per year, and to the minister who oversees the energy area for production up to 12 million litres per year. The production of up to 5,000 litres per year for own use does not require a licence. Any licences issued are valid indefinitely and licensed activities must begin within two years of the date of issue of the licence. Licences terminate on surrender or revocation.

It should be noted that raw materials for the production of biofuels must be delivered solely to holders of biofuel production, storage and distribution licences for subsequent marketing on the domestic blended-product market. Production of these raw materials is promoted and supervised by the ministry that oversees agriculture. Supervision and inspection of industrial facilities for the production, processing, storage, distribution and marketing of biofuels is carried out by a multi-sectoral team of technicians of the ministries that oversee the energy, agriculture, industry and commerce, health, and environment areas.

Biofuel producers must report the quantities of biofuels produced and marketed as well as the identity of their buyers. Exports are allowed only after the minimum amounts required for blending with fossil fuels for consumption in the country have been met. The ministers who oversee energy and finance are responsible for approving the pricing structure for pure biofuels for the purpose of blends within the country.

Breach of legal obligations relating to the production, processing, marketing and distribution of biofuels is subject to fines, cancellation, forfeiture, seizure and revocation of the licence.

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