CORPORATE LAW
IN MOZAMBIQUE
1. General

To the extent of our knowledge, Mozambican law does not establish significant differences between national held company and a foreign held company. In fact, Mozambique grants several incentives, namely tax benefits, to foreign investment in the country. There are special requirements applicable to a foreign investor as further detailed and there are limits imposed to capital repatriation under Mozambican law.

2. Private Foreign Investment

The investments covered by the applicable legislation must aim to and meet the requirements of at least 7 of the following objectives:

- Implementation, rehabilitation, expansion or modernization of the economic infrastructures destined to the operation of production activities or to the provision of services;
- Expansion and enhancement of the national production capacity or of the provision of services supporting the production activity;
- Contribution to training, multiplication and development of entrepreneurship and Mozambican entrepreneurial partnerships;
- Creation of jobs for national workers and the increase of professional qualification of the Mozambican workforce;
- Promotion of the technological development, increase of productivity and entrepreneurial efficiency;
- Increase and Diversification of exports;
- Productive provision of services and currency generating services;
- Reduction and replacement of imports;
- Contribution to improve the supply of the internal market and to satisfy the priority and essential needs of the populations;
- Direct or indirect contribution to the improvement of the balance of payments and of the public treasury.
I - COMPLIANCE WITH REGULATIONS CONCERNING FOREIGN INVESTMENTS IN MOZAMBIQUE (CONTINUATION)

3. Application

The investment proposal, duly formulated in the proper form, must be presented in four copies, in the Portuguese or English language, with the following documents:

■ Documents proving the legal existence of the tenderers if they are legal entities, or individual identification if they are natural persons;

■ Topographic map of sketch of the location intended to implement the project;

■ Other additional information; considered opportune for the analysis of the project, included, but not limited to:

i) Reports and account balance of the last tax year, as well as any catalogues, brochures and other illustrated publications regarding the activity of the tenderer;

ii) Curriculum vitae and criminal record of the person or principle persons who will be responsible for the implementation and operation of the project;

iii) Proposal of the draft articles of incorporation of the company to incorporate and register in Mozambique, to carry out the implementation of the project, when the implementing company does not yet have any legal existence.

For proposals regarding indirect investment, additional documents must be included:

■ Property registration title or that of a exclusive right of access or of use in the specific form for the indirect investment under consideration, with an indication of the respective validity period;

■ Contract proposal or any other valid document which establishes the forms, terms and conditions applicable to the use or request for the form of investment.

4. General principles

The Mozambican Law on Investment of 1993, completed by the Regulations of the Investment law of 2009, the Code of Fiscal Benefits of 2009, and the Foreign Exchange Law of 2009 define the regime to which investments are subject as well as the type of incentives that can be granted in connection with such investments. It contains a list of general principles and guarantees that are intended to safeguard and promote investments in Mozambique.
5. Responsible bodies

The CPI – Centro de Promoção de Investimentos

The CPI is a center for the promotion of investments in Mozambique, and it offers a package of services to assist both domestic and foreign investors.

The mission of the CPI:

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

The CPI assists investors in the implementation of their project, for example, in the licensing of their activity, the obtaining of entry, work, and residence visas, and in the authorizations of customs exemptions and property licensing.

The GAZEDA is the institution responsible for the Industrial Free Zones and Economic Special Zones.

The Ministry of Industry and Commerce (MIC) is responsible for trade and industrial policy drafting.

The Instituto para a Promoção de Exportações (IPEX) is the traditional trade promotion body which promotes exports from Mozambique to foreign markets. Its role covers the identification and advice to exporters and investors regarding market access opportunities and export-related logistical services.

6. Legal basis of investment

I - COMPLIANCE WITH REGULATIONS CONCERNING FOREIGN INVESTMENTS IN MOZAMBIQUE (CONTINUATION)

7. Repatriation of funds

According to Law No. 11/2009 of March 11, 2009, all foreign exchange operations must be communicated to the Bank of Mozambique (BoM), which must authorize them and duly register them. Residents are permitted to hold foreign exchange accounts in Mozambique as well as abroad, but have a duty to declare them.

Repatriation of net profits and dividends is also subject to authorisation by the BoM. Article 14 of the Law on Investment guarantees the remittance of funds abroad in connection to certain elements as listed below under the guarantees granted to investors.

8. Tax and customs benefits and incentives

Article 6 of the Regulations of the Investment Law, 2009 sets the minimum value for foreign direct investment at MZN 2,500,000 (about US$94,162) for eligibility for external remittance of profits and repatriation of invested capital. There is no minimum amount for national investment.

Notwithstanding existing agreements for the promotion and protection of foreign investment, celebrated by the Mozambican State with certain countries, the Mozambican legislation on investments provides that investors benefit from the following guarantees:

- Legal protection of their property and rights, including those applicable to industrial property;
- Freedom to import capital and to contract loans to carry out the investment;
- Remittance of funds for the following:
  - i) Exportable profits resulting from investments eligible for export of profits under the Regulations of the Investment Law of 2009;
  - ii) Royalties and other payments for remuneration of indirect investments that are associated to the granting and transfer of technology;
  - iii) Amortization of loans and payment of interest on loans that are contracted in the international financial market and apply to the respective investment projects;
  - iv) Proceeds of any compensation paid in case of nationalisation or expropriation;
  - v) Invested and re-exportable foreign capital, independently of eligibility of the investment project to export profits under the regulations of the Law.
I - COMPLIANCE WITH REGULATIONS CONCERNING FOREIGN INVESTMENTS IN MOZAMBIQUE (CONTINUATION)

- Inexistence of restrictions regarding loans or payment of interest abroad¹;
- Inexistence of restrictions regarding the transfer of dividends abroad²;
- Arbitration in accordance with the International Center for the Settlement of Investment Disputes (ICSID) or the Regulation of the International Chamber of Commerce for conflicts regarding investments.

In addition to the guarantees on property and fund transfer abroad, the Mozambican State guarantees the concession of tax incentives and benefits.

Are considered tax benefits the tax mechanisms which imply a reduction of the amount to pay in taxes, aiming to benefit activities recognized as having a public, social or cultural interest, as well as encouraging the economic development of the country.

9. Exemption from import obligations and from VAT on primary goods

**Tax Credit per investment**: Tax credit for investments for a period of 5 years and equal to 5%, for investments carried out in Maputo, and 10% in all other location, of the total investment made.

**Training**: Costs for professional training of Mozambican employees is deductible from the taxable corporate income during the first 5 years to a maximum of 5% of the taxable income, and up to 10% for the training in the use of equipment that is considered new technology.

**Infrastructure**: For private investments or investments conducted under public-private partnerships aimed at basic public infrastructure, alongside the exemption in terms of VAT and custom duties, investors will benefit from a tax benefit on the Corporate Income Tax as follows:

- 80% reduction in Corporate Income Tax (IRPC) rate for the first 5 years;
- 60% reduction in the IRPC rate from year 6 to 10;
- 25% reduction in the IPRC rate from year 11 to 15.

**Rural Commerce and Industry**: Projects involving the construction and/or rehabilitation of infrastructure to be used exclusively for the conduct of commercial and industrial activity in rural areas receive additional customs duty and VAT exemptions.

**Industrial Free Zones and Special Economic Zones**: Investments in industrial free zones and special economic zones may benefit from exemptions in customs duty and VAT, as well as reductions of the IRPC. Such zones are also subject to specific regulations.

¹ The approval of an investment project and the subsequent approval of the exchange with a foreign country are mandatory.
² The approval of an investment project and the subsequent approval of the exchange with a foreign country are mandatory.
I - COMPLIANCE WITH REGULATIONS CONCERNING FOREIGN INVESTMENTS IN MOZAMBIQUE (CONTINUATION)

Agriculture and Fishing: In addition to the general exemptions in customs duty and VAT, as well as those for professional training and for infrastructure projects, investments in agriculture and fishing may also benefit from reductions of the IRPC:

- 80% reduction on IPRC until 31 December 2015;
- 50% reduction on IPRC from 2016 until 2025.

Tourism: Certain investments in this sector may benefit from tax exemptions for customs duty and VAT on equipment related to tourism and hotels. Moreover, they may also benefit from credits for the investment rate and deductions in the areas of new technologies, professional training and infrastructure expenses. The depreciation of tangible fixes goods can then be increased by 50% from the normal rate.

Science and Technological parks: Investments in the area of specific research, information and technology, as well as research in the area of science and technological parks may benefit from an exemption on the IPRS of 100% for the first 5 fiscal years and a deductions of respectively 50% and 10% for the following 6 to 10 fiscal years and 11 to 15 fiscal years.

Modernization and Introduction of New Technologies: The value invested in specialized equipment which is considered by the competent entity as cutting-edge technology for the development of the authorized entrepreneurial activity, will benefit, during the first 5 years as of the start of the activity, from a deduction of the tax base, for IRPC purposes, up to a limit of 15% of the tax base.

Expenses considered tax costs: During a period of 10 years starting from the date of operation, the companies can consider the following as tax costs for the determination of the tax base for the IRPC:

- 110% (for the City of Maputo) or 120% (the remaining Provinces), of the expended values with all the expenses they incurred in the construction and rehabilitation of roads, railways, airports, mail, telecommunications, water supply, electric power, schools, hospitals and other works which are considered of public utility by the competent entities and proved as such by the Tax Authorities, and
- 50% in the case of expenses incurred in the purchase, for their own patrimony, of works of art and other objects representing the Mozambican culture, as well as the actions which contribute to its development, the may deduct as a cost for tax purposes only 50 from the value expended.

10. Procedure

The procedures for investment and obtaining benefits, incentives and guarantees are set out in Law No. 3/93 and supplementary legislation, and comprises of the following:

- The investor submits three copies of a business plan and/or three copies of the CPI application form to the CPI for approval. The attached documents (such as copies of ID, articles of association of the company, maps, proof of technical and financial capability, investor and/or company profile) are filed with the application.
The CPI coordinates the application and approval process, together with the local and national authorities. The CPI will also negotiate the terms of the authorization with the investors directly for the approval process.

Upon agreement between the CPI and the investors on the terms of the authorization, the CPI then refers the project for approval to the competent authority (the Provincial Governor, the Minister of Planning and Development or the Council of Ministers, depending on the project size).

Upon approval by the competent authority, the issued authorisation shall include a draft ministerial order (Despacho) or Council of Ministers Internal Resolution, which will provide the specific terms and conditions regarding the approved investment project. The authorisation will provide:

- The identification of the proponent investors;
- The project designation and objectives;
- The name of the implementing company;
- The location and scope of operations;
- The value and structuring of the investment;
- The investment incentives and guarantees;
- The number of national and foreign persons to be employed;
- The time limit and terms for the start of the implementation of the project;
- Any other specific terms to be included in the authorisation that are relevant given the characteristics of the project.

Once the authorisation is issued and the project approved, the implementation will start within a maximum of 120 days starting from the date of notification of the authorisation, unless a different time period had been set by the authorisation.

11. Implementation of the project

The registration of a company can be made at public One-Stop-Shop Bureaus (Balcões de Atendimento Único-BAUs) which have been established in every provincial capital throughout the country through the Decree No. 14/2007 of 30 May.
I - COMPLIANCE WITH REGULATIONS CONCERNING FOREIGN INVESTMENTS IN MOZAMBIQUE (CONTINUATION)

12. Regulated Activities

Most economic branches are open to foreign equity ownership with the exception of the media and telecommunications sectors. Such ownership in media enterprises is allowed up to a maximum of 20% stake. The land-line telecommunication sector is exclusively reserved for public investment, and Telecommunications of Mozambique S.A.R.L. is the only company allowed to operate in that sector.

II - PROCEDURES AND FORMALITIES FOR THE INCORPORATION OF COMPANIES IN MOZAMBIQUE

The new Company Code allows five (5) forms of companies, but the Private Limited Companies (Sociedade por Quotas) and the Public Limited Companies (Sociedade Anónima) are the most common types adopted for setting up business.

1. Formalities

The procedure for the incorporation of companies in Mozambique comprises of the following steps:

- Agreement on the wording and final documents of the company’s Articles of Association by the shareholders, or public deed of incorporation before a Notary;
- Obtaining a Company License;
- Obtaining licenses for the activity from the authority responsible for the intended economic sector;
- Tax registration and obtaining of a tax registration number before the Tax office of the location where the activity is carried out;
- Registration before the Labour Office and the Social Security Office, Instituto Nacional de Segurança Social (INSS);
- Open a bank account for the purpose of depositing the share capital. Necessary documents for that are a certified copy of the company’s name reservation certificate, draft of the Articles of Association of the company, and certified copy of the shareholders identification documents;
- Registry of the company before the Commercial Registry Office. The documents necessary for this process are a certified copy of the company denomination reservation certificate, draft of the Articles of Association of the company, proof of existence of a bank account, and certified copy of the shareholders identification documents;
- Publication of the Articles of Association in the Official Gazette (Boletim da República) by the Commercial Registry Office.
II - PROCEDURES AND FORMALITIES FOR THE INCORPORATION OF COMPANIES IN MOZAMBIQUE (CONTINUATION)

All documents emitted abroad, as well as the Articles of Association and Registration Certificates must be certified by a Notary Public and stamped by the Mozambican Consular Office present in the country the documents originated from. The same may be applied to Deliberation and Powers of Attorney.

2. Timeframe

The timeframe for incorporating a company in Mozambique is estimated to take about 13 days in order to fulfil each step of the incorporation procedures. The aim is however to reduce the number of days for incorporation of a company to 1-2 days.

3. Legal expenses

Only certain procedures have associated costs, but generally it will costs 13.91 % of the income per capita to start a company in Mozambique.

III. BUSINESS STRUCTURE

The two most used corporate structures for investments in Mozambique are the Private Limited Company, sociedade por quotas (“SQ”), and the Public Limited Company, sociedade anónima (“SA”).

1. Private Limited Companies

i) General requirements:

■ Share capital represented by quotas;
■ Partner identification registered at the Commercial Registry Office;
■ Quotas may have different nominal values but cannot be lower than MT 500;
■ There is no minimum amount of share capital for the incorporation of a Mozambican private limited company. However, the Companies Registrar may deny the registration of a private limited company the share capital of which is clearly insufficient for the pursuit of the corporate purpose of the Company. The share capital can be increased or reduced following certain procedures provided by law;
■ Minimum number of shareholders: 23;

3. It is possible to register a sole shareholder private company. Such company will have to adopt a legal designation that identify such sole shareholding situation (Sociedade Unipessoal)
III. BUSINESS STRUCTURE (CONTINUATION)

- Maximum number of shareholders: 30;
- Partners’ liability: partners are jointly liable for putting up all of the capital agreed in the articles of association. Partners shall only be obligated to pay the additional capital contributions if the articles of association or applicable legislation so require.

ii) Corporate governance/management:

- One or more managers (Administradores) appointed by Partners’ decision;
- The management powers remain with the managers;
- The articles of association may determine that the company have a supervisory board;
- Two types of partners general meetings: the ordinary general meetings (i.e. those foreseen by Law and in the by-laws, namely the general meeting to approve the annual report and financial statements) and the extraordinary general meetings (which are general meetings convened for a specific purpose);
- The convening of the general meeting is made by any manager, with at least 30 days in advance and must be published in the most read newspaper in company’s head office locality; and,
- The chairman of the general meeting shall be the shareholder who possesses or represents the largest fraction of the capital.

iii) Taxation of the company income:

The Private Limited Companies are subject to corporate income tax, as described below.

iv) Pros and cons:

- **Pros:** Simpler structure and less complex management system; ideal for smaller companies / family owned companies.
- **Cons:** Cannot be listed in stock exchange markets; partners may be easily identified; fixed corporate governance.

2. Public limited companies

i) General requirements:

- Share capital represented by shares, material, which may be nominative or bearer;
- There is no minimum capital provided by law;
- The company may be incorporated if at least 25% of the share capital is paid up;
III. BUSINESS STRUCTURE (CONTINUATION)

- Minimum number of shareholders at incorporation: 3;
- Liability of the shareholders: Limited to the shares subscribed;
- The transfer of shares and pre-emption rights provisions are allowed; however, in this cases, the shares must be nominative;
- The company may be listed in the Stock Exchange.

ii) Corporate governance/management:

- Sole board member (Administrador Único) or board of directors (Conselho de Administração) with the number of directors defined in the by-laws (necessarily an odd number);
- One supervisory officer (Fiscal Único) or a supervisory board (Conselho Fiscal);
- Only one management structure, comprised of a shareholders’ general meeting, board of directors and supervisory board;
- Two types of shareholders general meetings, the ordinary general meetings (i.e. those foreseen by Law and in the by-laws, namely the general meeting to approve the annual report and financial statements) and the extraordinary general meetings (which are general meetings convened for a specific purpose);
- The chairman of the shareholders general meeting is appointed in the initial by-laws and by subsequent shareholders’ resolutions.

iii) Taxation of the company income:

Public limited companies are subject to corporate income tax, as described below in section V.

iv) Pros and cons:

- **Pros**: Allows a complex corporate governance structure; these may be listed in stock exchange markets.
- **Cons**: Heavier and burdensome structure may be inadequate for small businesses.

IV - FOREIGN EXCHANGE

Exchange Control Regulations apply to all contracts or service agreements which imply payments to a foreign entity. These contracts or agreements must be registered with the Central Bank of Mozambique.
V - RELEVANT TAX ASPECTS RELATED TO CORPORATE LAW

1. Taxes

The Mozambique tax system provides for national and municipal taxation. The taxation can be collective or individual, direct or indirect, namely direct for income and health, and indirect for expenditures.

- **Corporate Income Tax (IRPC)**: Charged according to generated income during the tax year at a rate of 32%.

- **Personal Income Tax (IRPS)**: Charged according to the annual global income, paid by natural persons residing in Mozambique and by non-residents who have income generated in the country. This tax is progressive and the maximum rate if of 32%.

- **Value Added Tax (IVA)**: Charged through the sale of goods and services in Mozambique, as well as in connection with the import of goods. The applicable rate is of 17%.

- **Special Consumer Tax (ICE)**: Charged in connection with certain goods produced locally or imported, at a rate of:
  
  i) 2,5% for raw materials;

  ii) 5% for essential goods;

  iii) 7,5% for intermediary goods;

  iv) 20% for consumer goods.

Other applicable taxes are, for example, Stamp Duty, Municipal Taxes, Inheritance and Donation Tax, Gaming Tax, National Reconstruction Tax, Automobile Tax and Real Estate Transfer Tax.

2. Tax Enforcement

Mozambique’s Tax Administration is improving skills on tax enforcement. Because the tax code was complex, many businesses (especially SMEs) could not comply fully with all of its requirements.

Consequently, many entrepreneurs faced differentiated treatment and costly penalties, which created incentives for unofficial side payments to tax officials in some cases.

All evidence suggests that the Tax Administration is improving taxpayer services and tax education programs. However, there are still many complexities or procedural requirements that can mislead taxpayers. In addition, the incentive structure of the Tax Administration encourages severe enforcement actions whenever a local tax office is falling short of an assigned revenue target.

This may tend to create costly problems for small and medium businesses at a local level.
V - RELEVANT TAX ASPECTS RELATED TO CORPORATE LAW (CONTINUATION)

The Tax Administration has been working through public information emphasizing that taxation is extremely important for financing public services and that citizens must contribute to the country’s development.

The Tax Administration is nearly reaching an opening of its website to provide access to any businesses or citizens through Internet. This information campaign is considered an important step in the right direction. Nonetheless, it will take time to alter the taxpayers’ attitudes in respect of tax payments. Taxpaying shall be encouraged by supportive means and the public must see its benefits day by day.

An observation made on Mozambique’s tax culture shows that tax evasion and smuggling is still extensive, along with bribery and corruption. Again, in this field, the Tax Administration has made progress in adopting and publicizing a code of conduct for tax and customs officials, emphasizing integrity and professionalism. However, the revenue loss is still considerable.

3. International Taxation

Mozambique has signed bilateral investment agreements with the following nations Algeria, Belgium, China, Cuba, Denmark, Egypt, Finland, France, Germany, Indonesia, Italy, Mauritius, The Netherlands, Portugal, South Africa, Sweden, Switzerland, The United Kingdom, the United States of America, and Zimbabwe.

Double Taxation Treaties have also been agreed with Portugal, Mauritius, Italy, and the United Arab Emirates.

4. Groups of Companies

There is no special regime regarding the taxation of groups of companies.