

# Doing business in Mozambique

## 1. Introduction

This memorandum sets out a summary of certain legal aspects which should be taken into account when doing business in Mozambique. It is not intended to be exhaustive and is provided for information purposes only. If further information or legal advice is required, the readers are invited to contact one of the lawyers of Clifford Chance LLP or Ferreira Rocha & Associados who are listed below.

## 2. General information

### 2.1 Political structure

<b>Official name</b>	<i>República de Moçambique</i>
<b>Form of state</b>	Unitary republic
<b>Legal system</b>	Based on Portuguese law
<b>National legislature</b>	<i>250-member Assembleia da República (parliament) elected by direct, universal suffrage every five years</i>
<b>Legislative elections</b>	28 October 2009 (legislative and presidential); next national, provincial and presidential elections are due in late 2014
<b>Main political parties</b>	<i>Frente de Libertação de Moçambique (Frelimo)</i> is the ruling party; the main opposition party is <i>Resistência Nacional de Moçambique (Renamo)</i>
<b>President</b>	Armando Guebuza
<b>Prime Minister</b>	Aires Bonifácio Ali

### 2.2 Basic data

<b>Land area</b>	799,390 sq km
<b>Population</b>	20.5 million (2007, census)
<b>Main towns</b>	Population in '000 (2010, <i>World Gazetteer</i> )
	Maputo (capital) 1,888*
	Nampula 535
	Beira 440
	Chimoio 259
	Nacala 221
	Quelimane 205
	Tete 170
	Pemba 161
	* Including Matola and Maputo province
<b>Language</b>	Portuguese (official) and three main African language groups: Makua-Lomwe, Tsonga and Sena-Nyanja
<b>Currency</b>	The metical (MT). In 2009 the average exchange was MT26.3:USD1

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### 3. Financial data

#### 3.1 Annual data and forecast

	2007 <sup>a</sup>	2008 <sup>a</sup>
<b>Gross domestic product</b>		
Nominal GDP (USD bn)	8.0	9.8
Real GDP growth (%)	7.4	6.8
<b>Income</b>		
GDP per head (USD at PPP)	788 <sup>b</sup>	840 <sup>b</sup>
<b>Prices and financial indicators</b>		
Exchange rate MT:USD (end-period)	23.80	25.50
Consumer prices (end-period: % change)	10.3	6.2
Lending interest rate (av; %)	19.5	18.3
<b>Current account (USD m)</b>		
Trade balance	-399	-805
Goods: exports fob	2,412	2,653
Goods: imports fob	-2,811	-3,458
Services balance	-397	-394
Income balance	-592	-631
Current transfers balance	602	854
Current-account balance	-785	-975
<b>International reserves (USD m)</b>		
Total international reserves	1,445	1,578

<sup>a</sup>Actual. <sup>b</sup>Economist Intelligence Unit estimates. Source: IMF, International Financial Statistics.

#### 3.2 Main Export (2008)

Product	value (USD mln)	% of total
Aluminium	1,156.60	59.20
Electricity	184.20	9.43
Natural gas and bunkers	108.50	5.56
Prawns	38.20	1.96
Sugar	66.30	3.39
Tobacco	112.60	5.76
Cotton	36.20	1.85
Timber	20.90	1.07
Cashew nut and cashew nut kernel	21.10	1.08
Others	209.00	10.70
<b>Total</b>	<b>1,953.60</b>	<b>100.00</b>

Source: IPEX (Instituto para a Promoção de Exportações)

Main exports markets: the Netherlands, South Africa, Spain, Portugal, the United Kingdom, Zimbabwe, Kenya, Malawi and India.

### 3.3 Main Imports (2008)

Product	value (USD mln)	% of total
Alumina	528.70	21.39
Machinery	328.90	13.31
Fuels (gasoil and gasoline)	461.00	18.65
Automobiles	182.10	7.37
Cereals	129.40	5.24
Electrical power	83.30	3.37
Medicines	34.30	1.40
Others	723.70	29.27
<b>Total</b>	<b>2,471.40</b>	<b>100.00</b>

Source: IPEX

Main import markets: South Africa, the Netherlands, the United States of America, India, Portugal, China, the United Arab Emirates, Japan, Taiwan and Pakistan.

## 4. The business environment

### Areas of investment

The Government of Mozambique actively promotes private investment in the following areas:

- Agriculture
- Fisheries and aquaculture
- Industry
- Tourism and hotels
- Public infrastructures
- Mineral resources
- Energy

#### 4.1 Agriculture

This sector offers opportunities for the production of cereals, fruits, flowers, vegetables, for the local market and for export. The country has been exporting various products, notably baby-corn, flowers, citrus, cashew nuts, various fruits, peppers and paprika, to markets in Europe.

#### 4.2 Fisheries and aquaculture

This sector has been developing with the presence of local and foreign companies and has seen a strong growth and strong presence in European and Asian markets with respect to prawns and various other sea products, the country has a coast line of 2,700 km on the Indian Ocean, combined with natural conditions that are favourable for aquaculture.

#### 4.3 Industry

One of the country's biggest challenges is adding value to its primary products. This sector offers investment opportunities almost all over the country. The textile industry, agribusiness and the aluminium, iron and steel industries are some examples of industries to take into consideration.

#### 4.4 Tourism and hotels

This sector has been growing steadily in recent years given the public investments in infrastructure, allowing access to previously inaccessible locations. The country offers investment opportunities in national parks and beach tourism.

#### 4.5 Public infrastructure

The Government of Mozambique, in partnership with the private sector, has been investing in the development of public infrastructure, such as roads, bridges, telecommunication and energy. Consequently, various business opportunities exist in these sectors.

#### 4.6 Mineral resources

There are major investment opportunities for the exploration, extraction, processing and utilization of various types of resources. The most important are natural gas, coal, coal bed methane, gold, titanium, ilmenite, zircon, rutile, tantalite, marble and precious stones.

#### 4.7 Energy

Following the commercial extraction of natural gas, rehabilitation and construction of new hydroelectric dams and the start of the exploitation and development of alternative and renewable energies such as solar, oleic, and bio-fuels (bio-ethanol, biodiesel and biogas), the country has expanded its energy generation capacity potential to more than 16,000 mw. Taking into account the liberalisation of the energy sector, this sector represents a major investment and growth opportunity.

### 5. Investment procedure

#### 5.1 CPI – Centro de Promoção de Investimentos

The CPI is the investment promotion centre for Mozambique and offers a package of services to assist national and foreign investors.

The mission of the CPI is (a) to promote national and foreign direct investment, (b) to provide institutional assistance to investors in the approval and implementation of investment projects, (c) to assist with the concession of fiscal and customs incentives to investors, (d) to promote between national and foreign companies, SME's and large undertakings, (e) to identify potential financial partners and/or technological partners for joint ventures, (f) to identify and disseminate investment opportunities, and (g) more generally to support programmes that support and assist business development.

The activities of the CPI are conducted in accordance with the following legislation:

- Law n° 3/93 of 24 June 1993 (Investment Law) and the corresponding Regulation, approved by decree n° 14/93 of 21 July 1993 (as amended), which define the regulatory framework for national and foreign investments and eligibility to guarantees and fiscal incentives.
- The Code of Fiscal Benefits, approved by Law 4/2009 of 12 January 2009, which establishes the framework of fiscal incentives.

The minimum value of investment for accessing the investment incentives is approximately USD 100,000 for direct foreign investment. As per a recent change in the law there is no minimum value of investment for accessing investment incentives for national investment.

#### 5.2 Project approval

The procedures for investment and obtaining incentives and guarantees are set out in Law n° 3/93 and ancillary legislation and can be summarised as follows:

- The investor submits to the CPI three copies of a business plan and/or three copies of the CPI application form for approval. The accompanying documents (such as copies of ID, articles of association of the company, maps, proofs of technical and financial capability, investor and/or company profile) should be filed together with the application.
- The CPI coordinates the approval process, in conjunction with the authorities at local and central levels. As part of the project's approval process the CPI will also negotiate the terms of authorisation with the investors.
- Upon agreement between CPI and the investors on the terms of authorisation, CPI submits the project for approval to the relevant authority (the Provincial Governor, the Minister of Planning and Development or the Council of Ministers, depending on the size of the project).

CPI further provides assistance to the investor for the implementation of the project, such as business licensing, obtaining entrance visas, work and residence permits, customs exemption authorisations and licensing of land.

#### 5.3 Investment guarantees

The Mozambican legislation on investment provides that investors have the following rights:

- Legal protection of property and rights, including industrial property rights
- No restrictions on borrowing or payment of interest abroad\*
- No restrictions on the transfer of dividends abroad\*
- Arbitration according to International Centre for Settlement of Investment Disputes or International Chamber of Commerce rules for the resolutions of disputes in respect of investments.

\* Approval of an investment project and subsequent foreign exchange control approval is mandatory.

## 6. Investment incentives

As mentioned above, the Mozambican investment legislation provides a number of investment benefits, which are dependent on the value, location and sector of activity of the projects.

The Mozambican code of fiscal benefits of 12 January 2009 (Law n° 4/2009) provides general and specific investment incentives. The general incentives apply to investments that cannot benefit from specific incentives.

### 6.1 General incentives

The general incentives consist of the following.

- Exemptions from import duties and VAT for capital goods. This incentive is generally also available under the specific incentives, and in some cases extended to other goods.
- If the project involves investment in new tangible fixed assets (subject to certain conditions), tax credits for corporate income tax in respect of these investments will be available during five fiscal years. In the city of Maputo the tax credit amounts to 5% and elsewhere to 10% of the total realised investment. The tax credit may be carried forward during the first five fiscal years from the date on which the operations of the project commenced.
- Accelerated depreciation of new innovative assets and machinery and equipment used in industrial and/or agro-industrial operation (normal depreciation rates increased by 50%).
- Income tax credit for investments in specialised equipment using new technologies during the first five years of operation (tax credit of 10%).
- Income tax credit for investments in professional training of Mozambican employees during the first five years of operation (credit of 5% or 10%).
- Expenditure considered to be costs for income tax purposes: allowance for 110% of the value of expenditure in the construction of works with a public utility function located in Maputo and 120% for works located elsewhere.

### 6.2 Special incentives

#### 6.2.1 Rapid Development Zones

Eligible projects in so-called "Rapid Development Zones" can, in addition to certain general incentives, also benefit during the five fiscal years from a tax credit amounting to 20% of the total realised investment. The tax credit may be carried forward and used during the first five fiscal years from the date on which the operations of the project commenced. There is also an exemption from real estate transfer tax (SISA) for transfer of real estate by the Mozambican state to the project if such real estate is used as infrastructure for the project.

The "Rapid Development Zones" include:

- the Zambezi River Valley (including all districts in Tete province, and certain districts in Zambezia Province, Sofala Province and Manica provinces).
- Niassa Province
- Nacala District
- Ilha de Moçambique
- Ibo Island

#### 6.2.2 Basic infrastructure

In addition to the general VAT and import duty exemptions, investments with an exclusive basic public infrastructure purpose can benefit from the following corporate income tax reductions:

- 80% during the first five fiscal years
- 60% from fiscal year 6 until fiscal year 10
- 25% from fiscal year 11 until fiscal year 15

#### 6.2.3 Rural commerce and industry and manufacturing and assembly industries

Projects that involve the construction and/or rehabilitation of infrastructure to be used exclusively for the conduct of commercial or industrial activities in rural areas and certain investments in the manufacturing and assembly industry can benefit from additional exemptions from import duties and VAT.

#### 6.2.4 Industrial free zones and special economic zones

Investments in industrial free zones and special economic zones can benefit from exemptions from import duties and VAT as well as reductions in the tax rate for corporate income tax. Industrial free zones and special economic zones are subject to specific regulations.

### 6.2.5 Agriculture and fisheries

In addition to the general exemption for import duties and VAT and the deductions in connection with professional training and infrastructure related expenditures, investments in the agriculture and fisheries area can benefit from a reduction in the corporate income tax rate:

- 80% until 31 December 2015
- 50% from 2016 until 2025

### 6.2.6 Tourism

Certain investments in this sector can benefit from exemptions from import duties and VAT in relation to hotel and tourism related equipment. In addition, they can benefit from the investment tax credit and the deduction for new technology, professional training and infrastructure related expenditure. The depreciation of tangible fixed assets can furthermore be increased by 50% of the normal rate.

### 6.2.7 Science and technology parks

Investments in the area of specific investigation, information and communication technology as well as research development carried out in science and technology parks benefit from a corporate income tax exemption of 100% in the first five fiscal years and a reduction of 50% in the tax rate from fiscal year 6 until fiscal year 10 and 25% from fiscal year 11 until fiscal year 15.

## 7. Bilateral treaties & agreements

Mozambique has signed investment promotion and reciprocal investment protection agreements with the following countries: South Africa, Germany, Algeria, Belgium, China, Cuba, Denmark, Egypt, the United States of America, Finland, France, Indonesia, Italy, Mauritius, the Netherlands, Portugal, Sweden, the United Kingdom, Vietnam, India, Switzerland and Zimbabwe.

Mozambique has taxation treaties with the following countries: Portugal, Mauritius, the United Arab Emirates, the Autonomous and Special Administrative Region of Macau, Italy and South Africa.

## 8. Companies

The two most often used company types for investment in Mozambique are the public limited company (*sociedade anónima*; "SA") and the private limited liability company (*sociedade por quotas*; "SQ").

### 8.1 Sociedade anónima

An SA has a capital divided into shares and must have at least three shareholders. The SA must have a minimum capital that is commensurate with its objectives. Mozambican company law does, however, not prescribe a precise amount of minimum capital that the company is required to have. The shares can be in bearer, book-entry or registered form. Upon incorporation, at least 25% of the SA's share capital should be paid up. The shares can be paid up in cash or in kind. The transfer of shares is in principle not subject to restrictions, although the articles of association can for example prescribe pre-emption rights for the other shareholders upon a transfer of shares. The transfer formalities depend on the type of shares held by the shareholder.

The organs of the SA are the general meeting of shareholders (*assembleia geral*), the board of management (*conselho de administração*) and the supervisory board (*conselho fiscal*) or a single supervisor (*fiscal único*). The general meeting of shareholders is the main corporate body and has, *inter alia*, the right to appoint and dismiss the members of the management board and the supervisory board (or the single supervisor).

The management is responsible for the management of the company and represents the company. The board should have an odd number of members. Small companies may have a single member board. Legal entities that are board members should designate a representative who will act as board member. The supervisory board must consist of three or five members and is responsible for supervising the activities of the company. The SA may also opt, instead of appointing a supervisory board, to appoint a single supervisor, which must be an accountant or a firm of accountants.

### 8.2 Sociedade por quotas

An SQ has a capital divided into *quotas*. The minimum capital is MT 20,000. The capital must be sufficient for the objectives of the company. The amount and number of *quotas* is determined by the members. The minimum amount of a quota is MT 500. An SQ must have at least two but cannot have more than 30 members. It is possible for an SQ to have one member, but then the term "*unipessoal*" must be added to its name. The *quotas* are in registered form and can be

paid up in cash or in kind. A transfer of *quotas* must be effected in writing. The company or, if the company does not exercise this right, the other members have a right of pre-emption in connection with a transfer of *quotas*, unless the articles of association provide otherwise.

The organs of the SQ are the general meeting of shareholders (*assembleia geral*), the board of management (*administração*) and, if the members so decide, the supervisory board (*conselho fiscal*) or a single supervisor (*fiscal único*). The board of management can consist of one or more members.

## 9. Company registration process

The procedure for company registration in Mozambique has recently been simplified and comprises the following steps:

- Registration of the company name with the company register (*Conservador do Registo das Entidades Legais*).
- Agreement on the wording of the company's articles of association by the shareholders.
- Opening of a bank account for the purpose of depositing the share capital. The necessary documents are: a certified copy of the company's name reservation certificate, a draft of the company's articles of association and a certified copy of the shareholders' identification documents.
- Registration of the company with the company register. The documents to be submitted are a copy of the company's name reservation certificate, a draft of the articles of association of the company, proof of the bank deposit and a certified copy of the shareholders' identification documents.

After the completion of these procedures the company is legally registered and the articles of association of the company will be published in the official gazette (*Boletim da República*) by the Conservatory of Legal Entities Registration.

After the registration has been concluded, the company must arrange for its tax registration and obtain a tax registration number (*NUIT*) at the fiscal office of the area where it has its business operation. Operations licenses from the authorities that are responsible for the sector of the company's business activities are also required.

## 10. Taxation

### 10.1 Taxes

The Mozambican tax system integrates national and municipal taxes. There are corporate and personal direct and indirect taxes, namely direct taxation on income and wealth and indirect taxation on expenditure (VAT, ICE and customs duties)

- Corporate income tax (*IRPC*) is charged in respect of income generated, during the taxation period at a rate of 32%.
- Personal income tax (*IRPC*) is charged in respect of the global annual value of income, is paid by individuals who are residents in Mozambique and by those not residing in the country but receiving income from it. The tax is charged progressively and the maximum rate is 32%.
- Value added tax (*IVA*) is taxable on the sale of goods and provision of services in Mozambique, as well as in connection with the import of goods. The applicable rate is 17%.
- Specific consumption tax (*ICE*) is charged in connection with certain locally produced or imported goods at:
  - 2.5% for raw materials
  - 5% for capital goods
  - 7.5% for intermediary goods
  - 20% for consumption goods

As a result of the Southern Africa Development Community ("**SADC**") trade protocol, various products from the SADC region countries benefit from exemptions from custom duties. Other taxes are, for example, seal tax, tax on successions and donations, real property transfer tax (*SISA*), tax on gambling, national reconstruction tax and vehicle tax.

### 10.2 Social security

It is mandatory to register employees and their respective employers with the National Social Security System. The fee for social security is 7% of the gross salary, being 4% paid by the employer and 3% by the employee.

## 11. Land use

According to the Constitution of the Republic of Mozambique, land is property of the State and can be used on a lease basis. The use of land and the leases are regulated by Law n° 19/97, of 1 October 1997 (Land Law) and by Decree n° 66/98, of 8 December 1998 (Land Law Regulation). The maximum period of a land lease is 50 years. The lease can, upon request, be renewed for a further 50-year period. The lessee can in principle use the land for construction, subject to prior authorisation by the competent authorities. The lessee will have full ownership rights of the constructions erected on the land.

The land lease itself is in principle not transferable. However, the lessee can transfer the construction built on the land and mortgage or rent the constructions.

Foreign persons may become holders of land use rights provided they have approved investment projects and observe the following conditions:

- For an individual, residence in Mozambique for at least five years is required.
- For a legal entity, incorporation and registration in Mozambique is required.

The authorities may issue a provisional lease based on a development plan. The provisional lease is valid for a period of five years for a Mozambican entity and two years for a foreign entity.

## 12. Visas

There are, broadly, three types of visas for entry into Mozambique:

- Transit visa, costing approximately USD 80, granted for individuals travelling to Mozambique for short periods (maximum 24 hours) and having as final destination a third country;
- Single entry visa, costing approximately USD 80 for individuals staying in Mozambique for periods between one to thirty days and approximately USD 160 for individuals staying in the country for periods not exceeding sixty days;
- Multiple entry visa, costing approximately USD 320, for multiple entries within a period of three months; approximately USD 640, for multiple entries within a period of six months; and approximately USD 1,270 for multiple entries within a period of twelve months. ■

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