

ADDRESSING THE CHALLENGES OF DOING REAL ESTATE BUSINESS IN MOZAMBIQUE

a deep dive look into tax efficiencies, risk mitigation &
legal framework

1. Mozambique's legal framework and land use regulations

1.1. Constitution of Mozambique

Art. 109.1.: Land is property of the State (can not be owned by private entities)

Art.109.2.: Land shall not be sold or, by any other form, alienated, mortgaged or encumbered

Art.110.1.: The State determines the conditions for the use and enjoyment of land.

Art. 110.2.: The right to use and enjoy land is granted to natural persons and corporate/legal entities taking into consideration the social and economic purpose.

Mozambique's legal framework and land use regulations

1.2. Land Law – Law n.º 19/97 of October 1st

Art. 1.2.: Right of use and enjoyment of land (definition)

The right that a natural person, a corporate person or the local communities acquire over land, under the legal requirements and limitations.

Art. 12: Acquisition of the right of use and enjoyment of land

a) occupancy by natural persons and local communities, in accordance with customary norms and practices which do not contradict the Constitution;

b) good faith occupancy by natural persons for at least 10 years;

c) authorization – most used for real estate developments.

Exercising of economic activities:
of use and enjoyment of land Applicants to the right
shall present an exploitation plan

Term: 50 years, renewable.

Mozambique's legal framework and land use regulations

1.2. Land Law – Law n.º 19/97 of October 1st

Who can benefit from the right of use and enjoyment of land?

Nationals

- Natural persons;
- Corporate entities (held by nationals by at least 50%);
- Local communities.

Foreign

- Natural persons living in Mozambique for at least 5 years and with an investment project approved;
- Corporate entities established or registered in Mozambique with an investment project approved.

Mozambique's legal framework and land use regulations

1.2. Land Law – Law n.º 19/97 of October 1st

Titling: Issued by general or urban public cadaster services

Titling procedures shall include statement by local administrative authorities, preceded by consultation of respective communities, for the purposes of confirming that the area is free and has no occupants.

Registration: Subject to registration – Immovable Registrar Office

Mozambique's legal framework and land use regulations

Competences:

- a) Urban areas: Presidents of Municipalities, Settlement Councils and District administrators
- b) Non urban areas:
 - (i) Provincial Governors:
 - Areas not exceeding 1.000 ha;
 - Special licenses in partial protection zones (areas covered or surrounding interior waters , territorial sea, coastline, dams reservoirs, railway lines, motorways, highways, electricity and telecommunications conducts, borders, airports, military and defense zones).
 - (ii) Minister of land, environment and rural development:
 - Areas between 1.000 and 10.000 ha
 - Special licenses in total protection zones (areas intended for conservation or preservation activities, State security and defence)
 - (iii) Council of Ministers
 - Areas above 10.000 ha
 - Creation and extinguish of total and partial protection zones.

Mozambique's legal framework and land use regulations

Authorization process

a) Provisional authorization

Issued under the submission of a application

Validity: 5 year for nationals
 2 years for foreign

b) Final authorization

Issued upon fulfilment of the exploitation plan within the period of the provisional authorization

Extinguish causes:

- a) Failure to fulfil the exploitation plan or investment project;
- b) Revocation for reasons of public interest, preceded by payment of fair compensation (includes overlap of economic interests);
- c) Expire of its terms or renewals;
- d) Renunciation

Mozambique's legal framework and land use regulations

Transfer:

a) Immovable on Urban areas:

- Transfer of immovable on urban areas includes the transfer of respective the right of use and enjoyment of land and does not require authorization.

b) Infrastructures and improvements:

- Existing infrastructures and improvements may be transferred under previous authorization.
- Transfer of infrastructures and improvements on rural tenement only include transfer of respective right of use and enjoyment of land if prior authorized.

c) Transfer of exploitation - Subject to prior approval

Mortgage:

It is possible to mortgage immovable assets and improvements.

Mozambique's legal framework and land use regulations

Transfer of existing immovable (urban areas):

- Payment of Sisa;
- Public deed;
- Registration before Immovable Registrar Offices;
- Registration before the municipality.

Certain immovable can not be transferred to foreign (subject to burden of non-transferability to foreign) – mainly immovable that have been nationalized after the independency of Mozambique.

Such burden should be identified in all immovable certificates of registration

2. Uncovering the most efficient tax structure for investment in the local real estate

Analysing which offshore structures provide the best local benefits

Personal income tax:

- Tax rate of 10% to 32% - being 32% from an annual income equal to 1.512.000 MT (aprox. USD 25.200) or above.

Costs which are deductible from the income:

- Maintenance and conservations costs (presumable 30% of the income);
- Interests paid to Mozambican credit institutions regarding acquisition of housing immovable
- Property tax
- Costs incurred under the condominium laws and regulations

Uncovering the most efficient tax structure for investment in the local real estate

Analysing which offshore structures provide the best local benefits

Corporate income tax

- Tax rate of 32%
- Immovable incomes are subject to a withholding tax at a rate of 20% - exception to companies having as its commercial purposes the management of owned properties.

Sisa Tax on transfer of properties:

- Tax rate of 2%

VAT on leases of properties:

- Tax rate of 17%
- Exempt on housing properties
- Exempt on properties on rural areas used for commercial, industrial and service purposes

Uncovering the most efficient tax structure
for investment in the local real estate

Analysing which offshore structures provide the best local
benefits

Tax Benefits Code:

- Deduction from taxable income;
- Deduction from tax;
- Accelerated depreciation and reintegration's;
- Investment tax credit;
- Exemptions (Custom duties and VAT on importation);
- Reduction of tax rate and deferral of tax payment.

Uncovering the most efficient tax structure
for investment in the local real estate

Analyzing which offshore structures provide the best local
benefits

Tax Benefits Code – Investment regimes (can not be combined):

- General regime;
- Creation of basic infrastructures;
- Rural commerce and industry;
- Manufacturing and assembly Industries;
- Agriculture and Fishery;
- Hotelry and Tourism;
- Science and technology parks;
- Large dimension projects (12.500.000.000 MT / USD 210.000.000);
- Rapid developed zones;
- Industrial free zones;
- Special economic zones.

Uncovering the most efficient tax structure for investment in the local real estate

Analysing which offshore structures provide the best local benefits

Conventions to Avoid Double Taxation / Double Taxation Agreements (DTAs)			
Country	Capital gains on transfer of immovable	Capital gains on transfer of companies owning immovable, mainly	Dividends paid in Mozambique
Botswana	Payable in Mozambique	Payable in Mozambique	Individuals – 12% Corporate – 0%
India	Payable in Mozambique	Payable in Mozambique	7,5%
Italy	Payable in Mozambique	Payable in Italy	15%
Macau	Payable in Mozambique	Payable in Macau	10%
Mauritius	Payable in Mozambique	Payable in Mauritius	Individuals – 15% Corporate – 8% to 10%
Portugal	Payable in Mozambique	Payable in Mozambique	10%
South Africa	Payable in Mozambique	Payable in Mozambique	Individuals – 15% Corporate – 8%
UAE	Payable in Mozambique	Payable in Mozambique	0%
Vietnam	Payable in Mozambique	Payable in Mozambique	10%

3. Solutions to navigate Mozambique's legal frame work and land use regulations

Common Difficulties:

- Land belonging to the State – No private ownership of land;
- Inability to use land as a security;
- Financing due to limitations on securities.

Solutions to navigate Mozambique's legal frame work and land use regulations

Commons Solutions:

- Developer's investment;
- Selling on plan (before construction), allowing capitation of funds from buyers during the development phase;
- Phase development, allowing lower investments at initial development phase;
- Attracting differentiated investors
- Financing solutions

Solutions to navigate Mozambique's legal frame work and land use regulations

Some financing solutions:

- Promissory Mortgage;
- Irrevocable power of attorney
- Collateral securities
- Step in rights

Thank you!

Contacts:

CGA - Couto, Graça & Associados, Lda

Av. 24 de Julho, 7 – 7º Andar
Maputo, Moçambique

www.cga.co.mz

Telmo Ferreira

- **TEL:** (+258) 21 486 438/40
(+258) 21 496 900
- **CELL:** (+258) 843 333 380
- **FAX:** (+258) 21 496 802
- **E-MAIL:** tferreira@cga.co.mz