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# Investing in Land in Mozambique

Since gaining independence from Portugal in 1975, land in Mozambique is treated as the property of the State.

Although the political system has become a multiparty system and the socialist economy has shifted to a market economy, this principle has remained unchanged and the land can not be otherwise sold, mortgaged, encumbered or alienated.

The 1997 Land Law, however, establishes a right to use land, usually known by the Portuguese acronym DUAT (*direito de uso e aproveitamento da terra*) – right of use and benefit of land – which is a secure, renewable and long-term use right. DUATs may be granted to individuals, communities or other entities (including companies).

The 2004 Mozambican Constitution, in turn, recognises the right to private property and establishes that any improvements or constructions made on land over which a private person or entity holds a DUAT are the property of such person or entity. These assets can be bought, mortgaged and sold.

## Acquiring a DUAT

DUATs can be obtained through: (i) occupancy of land, by individuals or local communities, pursuant to customary rules and practices; (ii) occupancy of land, in good faith, for at least 10 years, by national citizens; and (iii) an authorisation granted by the state upon application of individuals or entities (Mozambican and foreigners).

A DUAT obtained by occupancy is not subject to a time limit and, in such cases, the delimitation of the land and the registration of the DUAT is not mandatory.

In order to be granted a DUAT under an authorisation granted by the State, the applicant must prepare a plan on the exploitation of the land, which must be reviewed and approved by the relevant government authority. Once the application is approved, the state issues a provisional DUAT for 2 years (to foreign persons or entities) or 5 years (to nationals). If the exploitation plan is fulfilled, the state issues a final DUAT for renewable periods of 50 years.

The entity deciding on the application varies depending on the extent of land sought: for parcels up to 1,000 hectares, the Provincial Governor issues the DUAT, the Ministry of Agriculture approves DUATs of 1,001 – 10,000 hectares, and DUATs of more than 10,000 hectares are approved by the Council of Ministers.

Foreign individuals or entities may be holders of a DUAT, provided they have been granted an investment authorisation, under the Mozambican Investment Law and: (i) in case of individuals, they have been residing in Mozambique for at least 5 years; (ii) in case of foreign entities, they have been duly incorporated or registered in Mozambique.

A “foreign company” is any company set up in accordance with the laws of Mozambique or any foreign law whose share capital is more than 50% held by a foreign citizen or entity.

## Transfer of the DUAT

Any construction, improvement or infrastructure made on the land is private property and can be mortgaged, bought, sold or otherwise alienated, while the underlying DUAT is administratively transferred to the new owner.

However, while urban tenements can be freely transferred, the transfer of rural tenements is subject to prior approval by the entity that approved the DUAT.

## Extinguishing a DUAT

A DUAT can be extinguished in the following scenarios:

- If the holder of the DUAT fails to comply with the exploitation plan without reasonable grounds;
- Revocation by the state, in the public interest, subject to fair compensation (see further below);
- Expiry at the end of its initial term or at the end of a renewal period; and
- Relinquishing by the holder of the DUAT.

The land law itself does not establish what constitutes “public interest”. However the land law regulations refer to the legislation on expropriation with regards to the DUAT’s revocation procedure and the calculating of fair compensation.

The land planning regulations, in turn, provide that expropriation for the purpose of land



planning, shall be deemed in the “public interest” where it is for a common interest, in particular the erection of economic and social infrastructure with a significant social impact, for the preservation of biodiversity, and public or military interest infrastructure.

The land planning regulations establish that “fair compensation” must take into account, not only the current value of the assets, but also the damage and loss of profits of their owner, which is fairly favourable to the landowner/investor.

## Suggested steps to invest in Mozambique

A foreign entity intending to invest in Mozambique should therefore take the following steps so as to secure its access to a DUAT and to comply with the legal framework applicable to land rights:

- i) **Identify the plot of land**, involving the cadastral/utility services, the local administrative authorities and the local communities;
- ii) **Prepare an investment project** to be submitted to the Investment Promotion Centre (CPI) for approval;
- iii) **Incorporate a company** or establish a branch of a foreign company;
- iv) **Apply for a DUAT** over the plot of land previously identified;
- v) **Fulfil the investment project** in order to ensure the issue of a final DUAT.

When establishing the jurisdiction for structuring a foreign company to hold DUAT in Mozambique it is worth noting there are various Double Tax and Bilateral Investment treaties that afford a measure of protection

There are currently 9 Double Tax Treaties in force between Mozambique and each of Botswana, India, Italy, Macau, Mauritius, Portugal, South Africa, United Arab Emirates and Vietnam.

There are also 20 Bilateral Investment Treaties currently in force between Mozambique and Algeria, Belgium-Luxembourg Economic Union, China, Cuba, Denmark, Finland, France, Germany, Indonesia, Italy, Japan, Mauritius, Netherlands, Portugal, South Africa, Sweden, Switzerland, United Kingdom, United States of America and Vietnam.

## Conclusion

Even though land in Mozambique is state’s property, the DUAT system ensures that private investors have access to land, enabling its exploitation.

While the land policy and land law had to respect the constitutional principles, there exists a developed land rights system appropriate for a market economy.

The legal framework on land rights therefore seeks to protect the existing rights and also to promote private investment, providing secure land rights for investors.