

2009 Investment Climate Statement - Mozambique

BUREAU OF ECONOMIC, ENERGY AND BUSINESS AFFAIRS

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Mozambique encourages foreign direct investment. CPI, the government's Investment Promotion Center, seeks to bring investors to Mozambique and should be a potential investor's primary contact with the government. CPI is particularly interested in increasing investment in the central and northern regions of the country in order to address large regional development imbalances.

Contact information for the Investment Promotion Center (CPI) is as follows:

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Mozambique's Law on Investment, No. 3/93, dated June 24, 1993, and its related regulations govern foreign investment.

Additional amendments were passed on July 21, 1993, Decree No. 14/93, and on August 8, 1995, Decree No. 36/95. The law and amendments generally do not make distinctions based upon investor origin, nor do they limit foreign ownership or control of companies. The lengthy registration procedures can be problematic for any investor -- national or foreign -- but those unfamiliar with Mozambique and the Portuguese language face greater challenges. Working with a local consulting firm or partner familiar with the requirements will facilitate the registration process. CPI assists both local and foreign investors in obtaining licenses and permits. However, in general, large investors receive much more support from the government in the business registration process than small and medium-sized investors.

The World Bank's "Doing Business in 2009" report indicates that entrepreneurs can expect to go through at least 10 identifiable steps to launch a business that according to the World Bank lasts, on average, 26 days.

Overall, the ease of doing business in Mozambique is ranked at 141 out of 181 countries. The government and private sector continue to work with donors to improve the business environment.

To date Mozambique's privatization program has been relatively transparent, with open and competitive tendering procedures in which both foreign and domestic investors have participated. Most remaining parastatals are in public utilities, making their privatization more politically sensitive. While the government has indicated an intention to take on partners in most of these utility industries, progress on privatization has been slow.

Government authorities must approve all foreign and domestic investment requiring guarantees and incentives provided by the Investment Law and its regulations.

Currently CPI handles the approval process for both foreign and domestic investors. The final approval is granted by the following government entities: 1) The Provincial Governor for domestic investment up to USD 100,000; 2) The Minister of Planning and Development for domestic investment exceeding USD 100,000 and foreign investment up to USD 100 million; and 3) The Council of Ministers for any investment project exceeding USD 100 million and those involving large tracts of land (5,000 hectares for agricultural investment and 10,000 hectares for livestock and forestry projects). The minimum investment threshold for tax and import incentives is USD 50,000.

Conversion and Transfer Policies Foreign exchange retention accounts are permitted for 100 percent of foreign exchange earnings without formal justification. These may be used to purchase imports.

Investment registration and repatriation procedures must be followed to repay foreign loans and for the repatriation of invested capital, profits and dividends. Delays are uncommon beyond those typical for administrative processing in a developing country.

Expropriation and Compensation

Private property was nationalized throughout Mozambique in 1975 following independence from Portuguese colonial rule.

After Mozambique's turn away from socialism in the 1980s, citizens had a period of time to reclaim residential property. The government retained commercial property, but later sold it off as part of its privatization efforts. All but a handful of religious properties that were nationalized have been returned; negotiations are ongoing for the remaining few. It is worth noting, however, that there is no private ownership of land in Mozambique; all land is owned by the state.

While there have been no significant cases of nationalization since the adoption of the 1990 Constitution, Mozambican law holds that "(w)hen deemed absolutely necessary for weighty reasons of national interest or public health and order, the nationalization or expropriation of goods and rights shall (result in the owner being) entitled to just and equitable compensation."

Dispute Settlement

In December 2005 the National Assembly approved major revisions to the commercial code - the result of a collaborative effort starting in 1998 between the Mozambican government, the private sector and donors. The previous commercial code was from the colonial period, with clauses dating back to the 19th century, and did not provide an effective basis for modern commerce or resolution of commercial disputes. The revised code is generally viewed as a very positive development. The new Commercial Code went into effect July 1, 2006.

To date the judicial system has been largely ineffective in resolving commercial disputes. Instead most disputes among Mozambican parties are either settled privately or not at all.

In February 1999, the National Assembly legally recognized Alternative Dispute Resolution, which provides for foreign investors to have access to arbitration. The Center for Commercial Arbitration, Conciliation and Mediation (CACM), which is supported by USAID, offers commercial arbitration. CACM has two locations - one in Maputo and a second in the central city of Beira. CACM does not, however, deal directly with labor issues. From 2009, CACM will also do labor issues mediation and arbitration. For disputes between international and domestic companies, the law closely follows UNCITRAL, the United Nations Commission of International Trade Law.

For domestic arbitration, the law is formulated to cover a wide range of potential disputes, including non-commercial issues. Mozambique acceded in mid-1998 to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. For disputes between American and Mozambican companies where a violation of the nations' Bilateral Investment Treaty (BIT) is alleged, recourse via international ADR under the BIT may also be available. Investors who feel they have a dispute covered under the BIT should contact the US Embassy Economic Section.

Performance Requirements and Incentives

Mozambique is generally in compliance with WTO Trade-Related Investment Measures (TRIM) obligations. A variety of tax incentives exist to encourage direct foreign investment, which vary according to the region of the country and the nature of the investment but often include a 50 to 80 percent reduction in taxes. After the end of the period of tax reductions, additional benefits, which vary according to the location of the investment, are available. For example, investment in new or rehabilitated projects benefit from a 50% reduction in Corporate Tax Rates during the period necessary for recovering the investment, which may not exceed 10 years. For investments in the provinces of Niassa, Cabo Delgado, and Tete, the reduction is 80% of the normal rates.

After the end of the period of tax reductions, additional benefits, which vary according to the location of the investment, are granted. Special tax benefits are granted to investors for the rehabilitation or expansion of operating projects. For a five-year period, an immediate 100% write-off is allowed for investments in new equipment and in the construction of civil installations and agricultural infrastructure. Customs exemptions are possible for the importation of capital equipment and raw materials. To qualify, a minimum investment of USD 50,000 and pre-approval from CPI are required. However, a handling fee of 1% is charged on all goods, irrespective of the goods being exempt from the payment of any import duties of the duty applicable to 0% goods. The government grants special fiscal, labor and immigration arrangements to companies operating in designated Rapid Development Zones. Rapid Development Zones include the whole of Niassa Province, Nacala District, Ilha de Mocimboa, Ibo Island and the Zambezi river valley.

Investments in these zones are exempt from import duties on certain goods, from real property transfer tax and are granted an investment tax credit equal to 20% of the total investment (with a right to carry forward for five years).

There are also incentives for companies in industrial free zones.

Specific performance requirements are built into mining concessions and management contracts, and sometimes into the sale contracts of privatized entities. Investments involving partnerships with the government usually include milestones that must be met for the investor's project to continue.

Note: The process of obtaining a visa and related work permits in Mozambique is lengthy and overly bureaucratic.

The Ministry of Labor must approve the employment of foreigners. The Ministry of Interior's immigration department issues a DIRE (a work permit/identification card) once the Ministry approves the application. Assistance through a local lawyer, consulting firm or an individual familiar with the process will facilitate obtaining necessary work permits.

Right to Private Ownership and Establishment

The legal system recognizes and protects property rights to building and movable property. Private ownership of land, however, is not allowed in Mozambique. Instead the government grants land-use concessions for periods of up to 50 years, with options to renew. The government at times has granted overlapping land concessions. Essentially, land-use concessions serve as proxies for land titles; however, they are not allowed to be used as collateral. Land surveys are being carried out throughout the country to enable individuals to register their land concessions. This process is moving slowly and will not provide any real legal protection to investors for some time to come. The Mozambican banking community uses property other than land, such as cars and private houses, as collateral. Investors should be aware of the requirement to obtain endorsement of their projects in terms of land use and allocation at a local level from the affected communities.

Protection of Property Rights

The inefficient nature of the Mozambican judicial system makes protection of property rights extremely problematic.

Pirated copies of audio, videotapes, DVDs and other goods are sold in Mozambique.

The National Assembly passed a copyright and related rights bill in 2000. This bill, combined with the 1999 Industrial Property Act, brought Mozambique into compliance with the WTO agreement on the Trade Related Aspects of Intellectual Property Rights (TRIPS). The law guarantees the security and legal protection of industrial property rights, copyrights and other related rights. In addition, Mozambique is a signatory to the Bern Convention on International Property Rights, as well as the New York and Paris conventions.

Over the last four years private sector organizations have been working together with various government entities on an IPR task force team in an effort to combat intellectual property right infringement and related public safety issues.

The task force has successfully acted on IPR infringement issues, highlighting a successful private/public partnership.

Transparency of Regulatory System

Investors face a myriad of requirements for permits, approvals and clearances, all of which take a significant amount of time and effort to obtain. The difficulty of navigating the system creates space for corruption, and bribes are often requested to facilitate transactions.

Regulations in the areas of labor, health and safety and the environment are routinely not enforced, or are enforced randomly to generate revenue from fines. In addition, civil servants have at times threatened to enforce antiquated regulations that remain on the books to obtain favors or bribes.

The government is aware of the problems and has launched a donor-funded effort to streamline procedures. The new Commercial Code that went into effect July 1, 2006, is seen as a step forward in combating many of these issues.

Efficient Capital Markets and Portfolio Investment

Mozambique has a small capital market of thirteen commercial banks, of which four dominate the market. The banks compete for important clients and deposits. Access to credit for the private sector remains difficult and expensive -- interest rates for loans generally fall between 20 and 23 percent per year. Access to capital in the rural areas is constrained by the fact that land leases cannot serve as collateral. Various entities, such as the Aga Khan Foundation, Banco Oportunidade and Novo Banco, offer micro-credit financing programs to partially fill this need.

The Mozambican Stock Exchange, founded in October 1999, was started with less than USD 5 million in capitalization.

Although a fundamental instrument for the raising of finance by companies, to date the exchange's principal listing is Cervejas de Mocambique. In 2008, the Mozambican government announced plans to place a significant part of the shares of Mozambique Cellular (Mcel), the longest standing mobile telecommunications company in the country and entirely state owned, on the Mozambique Stock Exchange. Dates have not yet been set for the initial public offering. The main objective of the stock exchange will be to place on the market shares of the larger companies that were recently state-owned. The capital base requirement for listing is USD 1.5 million.

Political Violence

There were few incidents of localized violence in the run-up to the 2004 general elections. In May 2004 many opposition parties and the ruling FRELIMO party subscribed to an electoral code of conduct, which was generally upheld during the campaign and the elections. However supporters of the opposition party RENAMO complained of intimidation and arbitrary arrests during the December 2004 voting. In the 2008 municipal elections, observers found that both major parties used state resources for campaign purposes, and noted that the election was transparent, with some irregularities.

RENAMO issued complaints of election fraud to several agencies. Political parties could generally operate with some restriction or outside interference, including unlawful arrest, unlawful disqualification of candidates, and other interference by the State.

Labor unions are becoming less vocal, and lack the financial and institutional capacity to be very effective.

Protests rarely turn violent. However, on July 16, the head of the Mafambisse security force in Sofala province shot and killed striking worker Domingos Chanjane and injured two others. While workers participating in the strike insisted the perpetrator was also a member of the police, a police spokesman denied the claim. There were no further updates at year's end. As in many capital cities, crime is problematic in Maputo, where carjackings, muggings and armed home break-ins are commonplace. The country experienced a sharp increase in crime during 2008, particularly in and around Maputo City. An overanxious police force responded with a strong show of force and often resorted to violence as a first resort. In several instances, the police themselves have been targeted for assassination by organized crime.

While such acts have been on the rise over the past few years, they have not reached the same proportions as in neighboring South Africa.

Corruption

The World Bank's Worldwide Governance Indicators reflected that corruption was a serious problem, with no change in ranking from 2007. Transparency International's 2008 Corruption Perception Index score for Mozambique dropped for the first time in 5 years, indicating that corruption in the country is "rampant." The police continued to be poorly paid, despite an increase in pay during the year. Trainee level officers reportedly received approximately 2,345 meticaais (\$98) a month, while those at higher rank received approximately 3,025 meticaais (\$126) a month. Corruption and extortion by police were widespread, and impunity remained a serious problem. In July a former head of the PIC stated that gangs had captured the police. He noted that due to low wages and poor conditions, some police members tipped off criminals to police operations, and in some cases, such corruption was responsible numerous killings of police by criminals.

Senior officials often have conflicts of interest between their public roles and their private business interests. Bribery is considered a criminal offense in Mozambique, and political declarations have been repeatedly issued denouncing corrupt practices and promising actions against the guilty. Despite this, such actions have been extremely slow in coming, with the first three high-profile arrests of current and former senior government officials on corruption charges coming at the end of 2008.

Over the past several years the United States has been one of the lead donor countries in providing assistance to the government to fight corruption. With US resources, the government set up an Anti-Corruption Unit in the Office of the Attorney General (renamed in 2005 the Central Office for the Combat of Corruption). This body is charged with investigating and prosecuting corruption-related crimes.

According to the GCCC, from January to October prosecutors received 429 allegations of corruption, carried-out 187 investigations, submitted 132 cases to the attorney general's office, terminated 49 cases for lack of evidence, and tried 56 cases of corruption, with a further 8 cases having scheduled trial dates involving 98 suspects. The Ministry of Civil Service reported that between January and June 2008 authorities investigated 2,415 employees of the state, terminated 813 public servants, fined 380, and demoted 247 for various irregularities, including corruption and theft, which in some cases will be followed by criminal proceedings.

In 2005 the government passed Decree 22/2005, which created provincial-level offices to combat corruption.

Offices were opened in Beira and Nampula, and are in operation. In 2006 documents authorizing the creation of two additional offices in Inhambane and Zambezia provinces, respectively, were submitted; offices will be opened once the Council of Ministers publishes its approval decree.

The National Assembly passed an anti-corruption bill in 2004 that updated previous antiquated legislation. Civil society (particularly the media and a few dedicated NGOs) has remained vocal on corruption-related issues, with some support from the US government. One NGO, the Center for Public Integrity, continues to be active in pressuring the government to act against corrupt practices.

Mozambique is a signatory to the United Nations Convention Against Corruption.

Bilateral Investment Agreements

In December 1998 Mozambique negotiated a Bilateral Investment Treaty (BIT) with the United States. The U.S.

Senate ratified the treaty in November 2000, followed by the Mozambican Council of Ministers in December 2004. The US-Mozambique BIT came into effect on March 3, 2005. In June 2005 the US and Mozambique signed a Trade and Investment Framework Agreement (TIFA) that established a Trade and Investment Council to discuss bilateral and multilateral trade and investment issues. The Council held its first meeting in October of 2006. OPIC signed an agreement with Mozambique in 1999, later ratified in 2000.

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

South Africa is Mozambique's biggest trading partner.

Since 1995 Mozambique has engaged in regular discussions with South Africa to harmonize trade regulations and facilitate cross-border trade and investment. Other countries with significant investment in Mozambique include the United Kingdom, India, China and Portugal. The United States is a relatively minor trading partner, but was the largest source of FDI in 2008.

OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) is an independent U.S. government agency that can assist with project finance, through loans or loan guarantees, and political risk insurance in Mozambique, up to a total of USD 400 million for projects with U.S. involvement.

Mozambique is a member of the Multilateral Investment Guarantee Agency (MIGA), part of the World Bank Group.

Labor

The estimated work force is approximately 9.6 million, out of a total population of 21 million. However, only approximately 16.4% are in salaried positions. In 2008 the government increased the country's minimum wage by 20% in the industry and services sectors and by 26% in the agriculture sector, making the new minimum wage for industry and services approximately USD 89 a month and the minimum wage for agricultural workers approximately USD 54 a month. These increases were slightly above reported inflation. This minimum wage applies only to those working in the formal sector; those working in the informal sector may earn significantly less. Many people work several jobs to earn a sufficient income and often grow corn and vegetables on a small plot of land for personal consumption. Approximately 80% of the labor force works in agriculture, 6% in industry and 13% in services. Current estimates place nationwide adult literacy levels at under 50%, with most of the literate Mozambicans living in urban centers.

Although the contracting of Mozambican workers is unrestricted, contracting of foreign workers by national or foreign entities, including administrators and representatives of foreign companies, is subject to the authorization of the Ministry of Labor. Foreign workers must possess professional qualifications and may only be contracted where there are no Mozambicans with such qualifications or their number is insufficient. All investments must specify in the investment project proposal the number and category of Mozambican and foreign workers to be employed.

The establishment of wages and other forms of compensation to be paid to the employee are not subject to control. However, the labor legislation provides for a minimum wage of USD 50 per

month for employees in the commercial, industrial and other sectors. Employers are obliged by law to pay a social security tax assessed at 7% of the employees' wages. A maximum of 3% of this is deductible from the employee's salary, while the remaining 4% is met by the employer. Foreign resident workers may be exempt if they can demonstrate participation in an alternate social security scheme.

Labor unions created during the socialist years of the 1970s and 1980s remain weak and are disengaging themselves from the ruling party, FRELIMO. Total membership among Mozambique's fourteen unions is close to 200,000 persons.

Labor unions are exerting pressure on the government to maintain extremely pro-worker provisions in labor legislation, although they are showing flexibility on major issues. The minimum wage, decided every year, remains a major concern for the unions. Potential investors should be aware that severance payments and other benefits can be costly. Despite the introduction of a new labor law in 2007, the labor market remains rigid and an impediment to business.

Mozambique is a signatory to the International Core Labor Standards.

Foreign-Trade Zones/Free Trade Zones

The government issued Decree No. 61/99 on September 21, 1999, establishing industrial free zones (export processing zones). The decree set up an Industrial Free Zone Council, which approves companies as industrial free zone enterprises, thereby providing them customs and tax exemptions and benefits. There are three essential requirements for Industrial Free Zone status: job creation for Mozambican nationals, the exportation of at least 85% of annual production, and a minimum investment of USD 50,000. The decision to grant Industrial Free Zone status lies with the Mozambican Council of Ministers and is conditional on the proposal creating 500 permanent positions for Mozambican employees, of which each company operating with the Industrial Free Zone must employ at least 20 of these employees. Almost all industries, with the exception of prospecting and exploration of natural resources, processing of raw cashew nuts and national seafood, including prawns, can be authorized under an Industrial Free Zone status.

Industrial Free Zone developers enjoy an exemption from customs duties, VAT and tax on the importation of construction materials, machinery, equipment, accessories, accompanying spare parts and other goods destined for the establishment and operation of the Industrial Free Zone.

Free zone concessions are granted for a renewable period of 50 years. Mozambique's large export-oriented investment projects of recent years, such as MOZAL and SASOL, operate as industrial free zones. There is no requirement for free zone companies to be located at specific sites.

In addition, Special Economic Zones can be established on a case-by-case basis with the objective of developing specific geographical areas that benefit from exemption from custom duties and taxes, a free "off-shore" type foreign exchange regime and special labor and immigration regimes. A special tax and custom regime has been created for the Zambezi Valley until 2025.

Foreign Direct Investment Statistics

Historical Data: The government established the Investment Promotion Center (CPI) in 1985. From January 1, 1990 through December 31, 2008 CPI approved a total of 2,436 projects (both

foreign and national). Many of these approved projects turned out to be smaller than planned or not implemented, however, while other projects are not reported to CPI at all. For all these reasons, approved projects do not represent the actual FDI for any given year.

Foreign Direct Investment in Mozambique

Several U.S. companies have investments in Mozambique, and the United States is the largest source of FDI in the country, though most projects are not recorded with CPI. In 1996 Seaboard Corporation (Kansas) purchased a state-owned flour mill in Beira through the country's privatization of the state firm, Mobeira. The South African Bottling Company (SABCO), which is partly owned by Coca-Cola, owns Coca-Cola bottling plants in Maputo, Chimoio, and Nampula. Chiquita Banana is cooperating on a project to export bananas from Mozambique. There is an American interest in Indian Ocean Aquaculture, a shrimp farm project in Cabo Delgado province.

Universal Leaf invested USD 55 million in a tobacco processing plant in the northern province of Tete through its Mozambican subsidiary, Mozambican Leaf Tobacco. The processing plant began operation in 2006. Dunavant Enterprises, Inc. also has significant investments in Mozambique and is the main purchaser of Mozambican cotton.

American Metals and Coal International has a 5% holding in a giant coal concession in Moatize, Tete province, with 95% owned by the Brazilian firm Companhia Vale do Rio Doce.

CVRD recently completed the financial and technical feasibility studies for the Moatize coal project and related thermal power plant, and has invested USD 80 million to date.

In 2006 Anadarko Petroleum Company (Anadarko) won a tender to explore for oil and gas in the Rovuma basin off Mozambique's northernmost province, Cabo Delgado. Anadarko signed its concession agreement with Mozambique in December 2006, and may begin drilling by 2010. Anadarko anticipates investing USD 500 million in Mozambique and to date has invested USD 82 million.

In 2008, privately held, U.S.-based Ayr Logistics announced the groundbreaking of a \$5 billion oil refinery in the port of Nacala.

The U.S. Embassy in Maputo, Mozambique is able to provide a comprehensive list of U.S. investments in Mozambique upon request.

Information by www.state.gov