

G:ENESIS



**A review of tourism investment procedures in
Mozambique**

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EXECUTIVE SUMMARY

This report sets out the findings of a detailed analysis of Mozambique's tourism investment regulatory framework. It identifies the key constraints which undermine the scale and quality of tourist investment in Mozambique and recommends measures which should be taken to overcome them.

The work was commissioned by President Armando Guebuza's Presidential International Advisory Board (PIAB). It was funded by the ComMark Trust with a view to supporting the Mozambican government in its commitment to transform the country's prevailing tourism investment climate. Tourism in Mozambique is widely acknowledged to be under-performing as a source of growth, employment and poverty reduction. The work was carried out in high level partnership with the Ministry of Tourism and other relevant Mozambican authorities and agencies.

The findings and recommendations are presented in relation to the following key outcome areas:

- An assessment of the procedure for private sector hotel investment in Mozambique and for smaller tourist support businesses;
- A review of the prevailing incentive benefits for hotel investors; and
- A review of the prevailing visa procedures for tourists entering Mozambique – particularly for international arrivals from outside the SADC region.

The findings and recommendations are summarised as follows.

Hotel investment

The report finds that hotel investment procedures in Mozambique are complicated, confusing, poorly communicated, and slow, and also that the current incentives offered to investors are not compelling.

To build a new hotel on a beachfront site, an investor's application will need to pass through up to 30 procedural steps or government opinions and sign-offs. The same process in Mauritius takes a maximum of 8 steps. Moreover, the process in Mozambique takes as long as 100 weeks (nearly two years); in Mauritius it takes as little as 25 weeks, about a quarter of the time in Mozambique. These delays impact negatively on the competitiveness of Mozambique as a tourism investment destination.

This is already broadly understood by the government of Mozambique. The Ministry of Tourism has gone some way in identifying the problems, and has been working successfully with the

IFC and USAID to address them at certain high potential sites. This report endorses this approach, but recommends the idea is strengthened legally and institutionally, and rolled out to more premium sites. The government should urgently proclaim a number of special tourism zones across the country in areas which offer immediate potential for middle and high-end tourism development. Simultaneously, it should duly empower a specialised tourism development agency to develop the zones. The institutional structure, developmental rights, and powers of administrative processing of the development agency need to be defined and strengthened in law. The agency's role will be to expedite the transfer of land rights to the investor, and to take proactively take responsibility for completing up to two thirds of the investment procedures *in advance* of an investor becoming involved, including completing any relevant community consultations. Much will depend on the detailed design of this agency which is beyond the scope of this report and whether the zones can be mapped and protected before they are developed with low-value tourism product. In addition, a simplified regulatory approach which is agreed upfront should govern tourism investments within these areas. The zones should also offer exceptional investment incentives to prospective investors, which are set out in the report.

This will dramatically improve the complexity, cost and time currently associated with leisure investments in Mozambique, in the areas that that are best suited for the investment. The zones will ensure that the best parts of the country are reserved for the highest-return investment, and will put an end (in the zones) to the somewhat random and ramshackle development that Mozambique has seen in recent years, where valuable parts of the country are lost to low-end, low-return campsites, cheap hotels and holiday homes.

The report also recommends strong enforcement within the zones and in tourism sites in general to deal with planning and environmental infringements which, if left unchecked, have the potential to permanently damage Mozambique and ruin its potential as a prime tourism destination.

Travel agencies and restaurants

The investment climate in these sectors is bogged down by cumbersome licencing requirements. In some cases there appears to be no valid policy reason for licencing; it may simply be a remnant of the controlled economic approach that characterised previous administrations. In particular, many businesses report an overweening state intervention in the day-to-day *running* of the business. Bureaucratic compliance is heavy, costing time and money, and inspections and fines are frequently arbitrary. Inspections are more of a punitive nature rather than a quality control process or one aimed at raising awareness for improvement in compliance and performance. Reforming this interventionist system will take a major shift in mindset and systems. A number of specific reforms are set out in the report.

Visas

Mozambique imposes visa requirements on visitors from most countries beyond its regional neighbours, including on the main tourism source markets in Europe and North America. Effectively, this is a tax on foreign visitors. It is hard to prove conclusively that visa requirements are a significant barrier to tourism growth, but the available research suggests they are more damaging to tourism than currently acknowledged. At least it seems counter-productive for a country with a strategy strongly committed to attracting more visitors from certain markets to insist on charging these visitors a considerable fee to enter the country – especially when compared to competitor countries in the region whose visa requirements are less onerous and cheaper. Overall, the policy reasons given for maintaining visas do not hold up well under scrutiny. The report thus recommends that Mozambique should do away with visa requirements for citizens of identified target source markets as set out in Mozambique's tourism strategy, while maintaining the requirements on countries believed to create a real security risk for Mozambique.

Next steps

It is worth noting again that much positive work has been done in establishing a zone and agency model. The government of Mozambique, either using resources from the fiscus or funds sourced from the donor community, should now build on this work by strengthening the concept and institutions in law. Significant preparatory work would be needed to achieve this, including:

- The identification and geographic **mapping of zones** of high tourism potential across the country;
- assisting with and supporting the **legal process** for having these sites declared as special tourism zones and boosting the status of these zones in law;
- a **regulatory review and preparation of decrees and laws** to introduce and strengthen the powers of the zone development agency with respect to developmental rights, and in applying an expedited investment process;
- the **detailed institutional design** and drafting of the charter of the agency, including governance structures, provincial-national representation issues, funding and reporting matters, how staff are remunerated, and so on;
- the preparation of high-level **community participation principles and guidelines** that set out the issues, options and best approaches for the agency and investor to fairly compensate and include local communities in the development and success of the zones;

- the preparation of memorandums of understanding with other agencies for the **delegation of approval functions** for investments meeting certain criteria, and the drafting of those criteria; and
- a detailed strategy and plan for **introducing stronger incentives** within the zones.

The recommendations and their status are summarised in the following table.

Recommendation	Status	What might still need to happen (this is to be agreed with Minister of Tourism)
Identify and map special tourism zones	Some sites already identified, mapped and established	Ministry of Tourism may need assistance in identifying, and then mapping sites with geographic co-ordinates
Have sites declared special tourism zones	Minister of Tourism has this right under the tourism law	Review legal implications of this is under current law, and what would need to change to boost the STZ's legally-reserved status
Establish dedicated zone development agency with right of first refusal of development over STZs	An agency called INATUR has been created to play this role; though it does not have a dedicated mandate – and its functions and powers in respect of the STZs need to be focused and strengthened	Regulatory review of INATUR to assess its legal powers, plus preparation of decrees and laws to introduce and strengthen the powers of the agency with respect to obtaining developmental rights and expediting investment process. A governance review of INATUR to identify and pre-empt potential conflicts of interest and overlap.
Agency needs good institutional design with right incentives	-	Internal institutional design of agency or department within INATUR to design roles, staffing structures, decision-making procedures, incentive-based remuneration etc – taking careful cognisance of other INATUR mandates and functions
Clarify guidelines for dealing with communities within STZs	-	The preparation of community consultation guidelines
The agency should have power to reach agreement with other departments, in advance, to approve projects by delegated authority	-	Legal review to allow this to happen; then negotiation and agreement with each relevant department of agency's rights
Incentives in the STZs should be more compelling than in other areas	Some limited incentives in place already	Technical design of compelling STZ incentive package

1 INTRODUCTION

1.1 BACKGROUND

This report flows from work commissioned in 2007 by the Mozambican president and his international advisory board (PIAB), with financial support from the ComMark Trust. This involved an assessment of the impact that 'Open Skies' (the deregulation of Mozambique's international air transport regime) would have on the economy, and the additional measures needed for the country to capitalise on the growth and investment opportunities that such reform would catalyse. At the heart of these additional measures was the perception that the country's tourism investment procedures needed to be comprehensively reviewed and overhauled, so as to enable and incentivise the large volume of investment required to turn Mozambique into a globally recognised mid-market tourism destination. The PIAB appointed Genesis Analytics (Genesis) to undertake, in partnership with the Ministry of Tourism, the necessary research to quantify the constraints and to prepare appropriate proposals for reform.

The preliminary findings and recommendations arising from this work were presented to the President, the PIAB and the Mozambican cabinet in the PIAB meeting of 10 October 2008 where they were well received. The analysis has since been developed into this more detailed report for the ComMark Trust and the Ministry of Tourism. This report thus relates to the supply side of the envisaged tourism sector reform agenda, namely the transformation of the country's tourism investment regulatory framework. The 'demand side' component, which entails a review of the regulatory and institutional reforms associated with the deregulation of international air access to Mozambique has proceeded in parallel to this work, under the auspices of the Ministry of Transport, but is not dealt with in this report.

1.2 INTRODUCTION

It is no secret that Mozambique has the potential to be a world-class tourist destination. During the years of armed conflict, Mozambique's tourist industry was virtually non-existent, but with the return of peace and stability in the early 1990s, tourists started to return, and growth in the number of visitors has been positive. That said, the sector is still a long way from fulfilling its potential as a key driver of long-term economic growth.

The Presidency and the Ministry of Tourism accept that Mozambique needs to build on its current tourism models, which cater almost exclusively to upper-end island visitors or lower-end overland travellers, and to expand into the middle and upper hotel and resort market. A strategy is particularly needed to target the mass international tourist market arriving for fly-in holiday packages in resort hotels, and from South Africa for long weekends in Maputo.

The Presidency previously identified two reasons why this class of tourist is not coming to Mozambique in greater numbers. Firstly, flights to Mozambique are too expensive and irregular to support a mass fly-in market. Secondly, Mozambique does not have sufficient mid- to-upper-end hotels to accommodate these visitors. One of the key reasons for underinvestment in hotels is the slow, difficult and complex investment procedures.

Genesis was thus commissioned to look more closely at the hotel investment procedures and to recommend how they might be made to be more “investor-friendly”. In addition, Genesis was asked to consider the procedures associated with investment in the tourism support industry, involving smaller scale enterprises. Thus the procedures associated with investment in a restaurant and travel agency were also investigated. Finally, the consultants were asked to consider if and how the holiday entry visa system might be improved.

1.3 METHODOLOGY

The consultants looked at the procedures from both a legal view (what the law says) and from a *de facto* view (what actually happens on the ground). They reviewed tourism strategy documents and a welter of reports that have been produced on the Mozambican investment climate. They also spent several weeks in Mozambique, travelling to Maputo, Inhambane and Pemba to interview 35 government officials from national, provincial and municipal government. They also interviewed eight regionally or globally represented hotel investor companies with a particular current interest in Mozambique, including Dubai World, Serena, VisaBeira, Pestana, Barra Lodges and the Rani Group; as well as more than a dozen independent tourism consultants, donor specialists and leading Mozambican investment lawyers. A full interview list can be found in Appendix 4. The consultants worked closely throughout with the Ministry of Tourism, as well as the IFC and USAID, both of whom run tourism development initiatives in Mozambique. A comparative study was also done of the investment procedures that govern leisure investments in Mauritius, so that Mozambique’s performance could be benchmarked against the region’s widely-regarded tourism investment leader.

2 HOTEL INVESTMENTS

To invest in a new hotel development in Mozambique, the investor needs to pass through the following procedural steps:

- Preliminary procedures like registering a company, opening a bank account, and registering for tax;
- obtaining investment approval for the repatriation of profits, to access incentives and to entitle the company to obtain land use rights;
- obtaining from the state the right of use over the land in question, which may include acquiring the consent of a local community or other 3rd party right-holder;
- obtaining a special licence for use of land along the sea-shore;
- having the proposed project approved by the Ministry of Tourism;
- securing an environmental licence;
- securing a building licence; and, after completion of construction,
- securing an operating licence.

In addition, once the hotel is operational, the hotel manager will need to comply with a number of operational requirements and ongoing inspections.

A full description of the hotel investment procedures, including a flowchart, is available in Appendix 1.

2.1 DIAGNOSIS

2.1.1 PROCEDURAL PROBLEMS

The hotel investment procedures are complicated, confusing, slow, and poorly understood. This impacts negatively on the competitiveness of Mozambique as a tourism investment destination and is a significant barrier to doing business. If the government of Mozambique is committed to prioritising tourism as a growth sector, it must meaningfully address these procedural problems.

The following weaknesses have been identified in the investment process:

The procedures are complicated. They rely on the involvement of a multiplicity of agencies and government departments both vertically between tiers of government and horizontally between various ministries (see Appendix 1). This complexity increases the necessary steps in the process. To build a new hotel in a rural area on a beachfront site of about 500 hectares, an investor's application will need to pass through up to 30 different procedural steps (see Figure 1, Appendix 1 for details) or government opinions or sign-offs. The same process in Mauritius was found to take a maximum of 8 steps. In this respect Mozambique is uncompetitive. The

complexity of the process means that many investors employ local lawyers or investment consultants to navigate the procedures on their behalf, at considerable additional cost.

The procedures are not widely known. There is a great degree of uncertainty as to what the investment process actually is. Officials hold different views on what the investor is expected to do, and at what point he is expected to do it. Moreover, when the aggregated version constructed by information given by government officials involved at each step in the process, was compared to the legal version prepared by Mozambican lawyers, it became clear that many officials, especially at local and provincial levels, readily deviate from the investment law and make up the process as they choose. Investors are sometimes made to satisfy additional steps that don't actually exist in law. The flexibility in interpretation of the law creates many opportunities for unscrupulous officials to extract unofficial payments or to apply additional *ad hoc* administrative procedures. This can be a frustrating, costly, and disillusioning experience.

As a more general observation, a disconnect exists between national strategies for tourism as they arise in Maputo in central government and as they are understood and applied in the provinces and outlying municipalities where there is often a disregard for national tourist strategies, plans and rules, and for the needs and expectations of investors.

The procedures are slow. Depending on the exact nature of the development, it will take an investor approximately 70 to 100 weeks of government processing time to build a beachfront hotel in Mozambique.¹ The same process in Mauritius takes approximately 25 weeks, less than one third of the time. In other words, it can take up to *nearly two years* of processing time for the state to conclusively approve the hotel investment project. Even making allowance for valid policy objectives, this is too slow and is well beyond the global and regional industry's tolerance level. International investors report that, on average, they expect to *start construction* within a maximum of 50 weeks (roughly one year) from a site being identified. After this, head office will likely lose interest in the project and will divert the investment to any of a number of competing destinations.

Anecdotally, the time problem is well illustrated by a large Gulf-based international hotel group which targeted Southern Africa in 2007 looking for a range of hotel investment opportunities. In all of the Comoros, South Africa, Tanzania, and Rwanda, construction of hotels had started within 8 months of the sites being identified. In Mozambique, after 8 months the investors were "re-starting" their application for investment approval because they were told they had started "at the wrong place". At the time of interview, after 15 months, the group had not secured definitive rights to the land.

Investors must proceed at risk. In parts of the process the investor must take an "investor's gamble". What this means is that in order to start the process, a large, upfront investment of

¹ This is time spent obtaining necessary sign-offs and licences from the state and does not include the building of the hotel or other non-state related steps like contracting a consultant to do an EIA, opening a bank account, and so on.

time and professional service fees must be made and at each successive step more expenditure of time and capital is required. There is no guarantee that securing early approvals will guarantee approvals down the line. This creates a climate of risk for investors.

There are “chicken and egg” problems. In some instances, the investor will find that in order to obtain Approval B (say, the right to use land), the investor must be compliant with Approval A (say, that the project has been approved by the Ministry of Tourism). However, the opposite approval requirement is frequently also true. This chicken and egg situation is highly frustrating and acts as a disincentive to investors.

There is insufficient facilitation support for investors. There is an undue expectation on the investor to walk applications through various departments and procedures itself. What is missing is a single, centrally-based, authoritative facilitator to welcome the investor, assist proactively with approval processes, and which is empowered to secure the necessary approvals from various line ministries and other government departments. The Centre for Investment Promotion (CPI) is meant to fulfil this function but struggles to do so, partly because of capacity constraints and partly because it is not empowered in law to make decisions on behalf of other departments or to pressure other departments to make decisions timeously.

Taken together, these problems create an investment environment that is unattractive and which alienates all but the most resilient and well resourced investors. All of the investment companies interviewed agreed that these issues impact negatively on the competitiveness of Mozambique and are a significant barrier to doing business in the country. Given the competitiveness of the southern and eastern African hotel investment market, it is unlikely that Mozambique will attract the level of hotel investment it needs to support its middle market tourism development strategy unless the current investment approval process is expedited.

2.1.2 SUBSTANTIVE PROBLEMS

In addition to the procedural complaints set out above, investors have substantive concerns about investing in Mozambique. These are arguably even more off-putting than the procedural issues. Although the focus of this study is on improving investment procedures, reform will be meaningless unless it also tries to deal with these substantive issues.

There is uncertainty around land ownership: All land in Mozambique is the property of the state and persons who wish to use it must apply to a competent state authority to award an official right called *Direito de Uso e Aproveitamento de Terra* or DUAT. This is essentially a form of 50 year leasehold, renewable, at the option of the state, for another 50 years. While investors are generally happy with the duration and security of tenure provided by the DUAT, the channels for securing it are far from clear. As most of Mozambique is not surveyed or formally registered in terms of a formal land registry, it is not always apparent who has the legal right to the DUAT, or to award the DUAT. Appendix 1 sets out the complex process

involved in securing a DUAT. There is confusion about where development rights actually reside. There have been instances of the double-allocation of the same piece of land.

When it comes to securing land, investors have two core requirements: firstly, “clean ownership” of the land given from an impeccable legal source, and secondly a preference for an accredited external source – i.e. the state - to deal with and definitively resolve community issues in advance. As it stands, the land law recognises informal communal and third party land rights, the majority of which are not registered. While the law provides a legal process to clarify these rights by way of community consultation, and while most investors recognise the need to act in co-operation with local communities, community consultations and the institutions involved are an ill-defined and problematic practice. The community is defined by loose traditional bonds which are invisible to an investor. The process is ripe for exploitation by opportunists at any stage of the process (and even after its formal conclusion).

Poor enforcement of planning, and environmental laws: In general, planning and environmental laws are inconsistently defined and weakly enforced in Mozambique. Investors express concern about assets being devalued if surrounding areas are not reserved for similar hotels or leisure-compatible enterprise, or when key resources like beaches and offshore diving sites are not properly preserved. The lack of properly defined and enforced planning guidelines means that ideal high-value sites have been and are still being parcelled off by provinces and municipalities for ad-hoc and ramshackle development of low-value investments like self-catering resorts, campsites and holiday homes. In many areas of the country, a visual inspection will confirm that Mozambique is using superior land for inferior development. Also, poor enforcement lets unscrupulous investors “sit” unproductively on prime sites. In law, where a DUAT holder fails within two years of its award to develop the land in accordance with the approved purpose, the state should withdraw the DUAT. In practice this hardly ever happens.

Weak incentives: The incentives for tourism investment in Mozambique are not compelling, although they are improving. At the time of writing (October 2008) an approved investment of more than USD50,000 by non-national investors and USD5,000 by national investors would secure basic investment guarantees of property rights, permission to remit profits and expropriation-risk cover. However, similar guarantees are offered by almost all investment seeking countries, and this would be the minimum that most investors would expect to see.

The Ministry of Tourism is in negotiations with the Ministry of Finance to introduce tourism sector-specific incentives. These will take the form of exemptions of import duties on all hotel construction and interior decoration materials and other key hotel inputs. These benefits, if approved by parliament in 2009, will apply until 31 December 2013. They are widely welcomed by investors and hotel managers, as currently almost all inputs into hotel construction need to be imported.

However, even if these benefits are approved, Mozambique will still not be any more attractive in terms of incentives than her nearest Indian Ocean competitors. Table 1 shows that

Mauritius, the Seychelles, and Zanzibar all offer similar or better customs duty exemptions on hotel inputs, but they outperform Mozambique by offering significantly lower corporate tax rates, and, in the case of Zanzibar, limited tax holidays.

Country	Profit and capital repatriation	Customs duties exemptions on hotel imports	Corporate tax rate	Tax holiday
Mozambique	Yes	Exemption from import duties and VAT for hotel construction and set-up	33%	None
Zanzibar	Yes	Exemption from import duties and VAT for hotel construction and set-up	0% for five years, then 30%	100% for five years
Seychelles	Yes	Exemption from import duties and VAT for hotel construction and set-up	15%	None
Mauritius	Yes	Low or zero rates	15%	None

Table 1: Comparison of tourism incentives in Indian Ocean tourism destinations

Source: CPI, Zanzibar Investment Promotion Agency, Mauritius Board of Investment, Seychelles Investment Bureau

Thus, even with the proposed introduction of the customs duty exemptions, Mozambique will still be the worst performer in a group which comprises three of its nearest tourism competitors.

There have been calls for reductions in the corporate tax rate for tourism investors and the introduction of five year tax holidays for large, employment-creating hotel investments. However, the literature on tax incentives is ambivalent about their usefulness in a *country-wide* setting.² The multilateral institutions, particularly the IMF, are keen proponents of a uniform flat rate rather than the creation of a plethora of sector-specific investment incentives. However, Mozambique is some way from being able to introduce a flat rate. While the country might move in that direction once the industry is established, for now there is rationale for kick-starting tourism investments for the next decade by applying certain targeted investment incentives, at least in zones of high-tourism potential. It is arguable that these would not be necessary if Mozambique had an excellent and efficient investment process, and that with this in place, the country would be able to “sell itself” to investors without incentives. But this is not the case presently.

2.2 HOW CAN THE PROCEDURES BE IMPROVED?

There are three possible approaches to fixing the problems set out in the preceding section. These are not mutually exclusive, and all three will bring benefits. However, owing to capacity issues, the broad approach that is recommended is to start with the best parts of the country first as standalone zones, and then to apply the best practice and learning to other parts of the tourist system.

² See for instance Easson, A. and Zolt, E.M., 2003. “Tax Incentives,” World Bank

Change nothing but try to speed up processing times: This is the approach of least resistance and though it is intuitively attractive, it will not be effective because of extensive capacity constraints at all levels of government, and the interlocking nature of approvals currently required from different tiers of government. This suggests that the procedures cannot be processed more efficiently in the short-term. Even if they are, the sheer number of procedures would still make the process slower than in competitor countries.

Scrap a number of procedural steps and centralise others in one powerful body: If there are “too many” procedures, then a logical solution is to scrap some of them. The problem with this approach, at a systemic level at least, is that some of the steps represent legitimate policy goals. Few can argue with the legitimacy of requiring the investor to complete an EIA, or having building and fire plans approved to ensure the safety of buildings. These technical approvals obviously cannot be scrapped. That leaves investment approval decisions – e.g. whether to accept the investment or not, whether to provide the investor with a DUAT, whether to approve the proposed project, and how these approvals are given.

However, the procedures are complex because they reflect a decentralised approach to decision-making. Mozambique is characterised by a three tier system government and strongly decentralised powers. All tiers are involved at stages in the procedural process *by design*. This brings democratic benefits to the country but also means that an array of authorities has consultative or sign-off powers on almost every decision. Similarly, the constitutionally-enshrined land ownership system effectively gives anyone who can show an invisible (i.e. informal) claim in the land, a say in how it is developed. This reflects an inclusionary spirit that characterises Mozambican politics and society, but unavoidably makes administrative processes more complex. Thus the scope for wholesale systemic reform of the procedures is limited, because to do so would mean rewriting the constitutional position – and this is not politically feasible.

Changes may, however, be viable *if limited to specific areas*. This would be a compromise between doing nothing and trying to reconstruct an entire political-legal system. This leads to consideration of a third approach.

Empower a dedicated state agency to proactively complete and simplify procedures in selected zones of high tourism potential. This approach does not try to improve the procedures for every investment application across the country, but applies a streamlined procedural process driven by a powerful agency in *selected zones* of high tourism potential only. This is not dissimilar to the role the GAZEDA agency³ has been empowered to play in special economic zones. Not only will this cut an investor’s procedural burden, it will also ensure that the best remaining tourism areas in Mozambique are reserved for the most valuable tourism investment.

³ GAZEDA is the state agency that is responsible for the development of special economic zones. At the time of writing (October 2008) the first such zone was due to be declared around the port of Nacala.

The principle of targeted zones is not new, in fact, the idea has already been rolled out by the Ministry of Tourism in partnership with the IFC (at the so-called ‘Anchor Project’ sites) and USAID (at the Arc Norte project sites). There is already momentum in this direction and key learning has been captured. The report recommends that the zone and agency concept is taken from these pilot sites and a) developed in more detail; b) rolled out at scale in more sites across the country; and c) greatly strengthened from a regulatory, institutional, policy and political position. The detail of this recommendation is described in more detail below.

2.3 HOW THE ZONE AND AGENCY MODEL WOULD WORK

What follows is a description of how an effective “zone and agency” model would work:

One: The Ministry of Tourism, in co-operation with provincial governors and municipalities, identifies sites for the development of high-value tourism – in short, moving away from campsites, cheap backpackers and holiday homes to the instalment of mid-and upper-level hotels and resorts. The national tourism strategy has already identified Priority Areas for Tourism Investment (PATIs) but these exist at a high level only. The zones/sites would be within the PATIs but would be more specifically demarcated. The Ministry of Tourism has already identified four possible pilot sites and, over time, at least another 20 to 30 should be identified and added to the scheme.

Two: The identified zones are surveyed and mapped.

Three: The Minister of Tourism prepares an application to the Council of Ministers to have the identified sites declared special tourism zones (STZs).⁴

Four: A stand-alone state agency reporting to the Minister of Tourism is established and given the sole mandate of preparing these sites for the development of mid- and upper-end hotel tourism (or other high-value tourism as defined by the agency). In the interim, this role might be played by the newly formed Institute for Tourism (INATUR), although in time it should be a dedicated agency⁵, without other mandates. The agency should dedicate itself only to this task, and it needs to have the power to withstand the political pressure it will likely face. The agency will report to a board made up of public *and private sector* representatives and is staffed by capable employees who “understand investors” – they need to be business people before being civil servants. To secure the right staff, the agency should pay on a separate scale to other civil bodies, and staff need to be appropriately incentivised in relation to the effective creation of STZs and the facilitation of the necessary investment. The agency might be established via seed funding out of the fiscus but should be self-funding out of the investment it

⁴ The Minister has this power in law (Article 8 of the Tourism Law of 2004).

⁵ INATUR has a wider mandate than developing tourist sites - it is also involved in tourism training, marketing, and small tourism business development amongst other things – roles that would distract it from its key function of attracting investment in the zones.

secures, within three years. Note: There is significant further research and design still needed to establish the agency.

Five: Once a STZ is declared by the Council of Ministers (the Mozambican cabinet), all other DUAT applications over or touching the land should be frozen pending investigation. Any DUAT awarded post-freezing is void in law. This is to avoid speculation in the land by opportunists. The agency then works in co-operation with the DUAT-issuing authority (whether a municipality or provincial governor) to issue the DUAT over the land into the name of the agency. The hope is that provincial governors and municipalities will co-operate with this scheme because of the inherent, and in time demonstrated, benefits of allowing a professional and dedicated agency to bring high-value tourism investment into their jurisdiction. However, and this is a critical power, the agency is provided in law with *a right of first refusal to the DUAT* over the zone. In other words, the agency has first rights to develop the site, unless it chooses not to. This is key to ensuring that the government has the rights to reserve parts of the country for valuable investment. It is controversial because it provides the agency with rights which outrank those of a provincial governor or municipality, over land within their jurisdiction. This proposal may – indeed is likely to – prove controversial to powerful vested interests, and will take careful institutional design and real political commitment to be brought into force and routine operation.

Six: The agency deals with rights of 3rd parties over the land, including community consultations if necessary, according to the prevailing provisions of the land law. The agency is empowered and funded by the fiscus to negotiate arrangements with communities, including relocation, in exchange for fair compensation according to principles and guidelines agreed in advance and to which the agency will be publicly accountable. (Alternatively, the agency may agree with the community, general principles of compensation or inclusion in the development, to be honoured by the ultimate investor.) The balance here is to ensure the investor takes possession of land “cleared” of other rights, while simultaneously ensuring that the rights of the local community or other legitimate right holders are not ignored or exploited. Note: There may be scope to assist further with the design and drafting of these guidelines.

Seven: Once the DUAT is in the agency’s control it *proactively* deals with other procedural issues:

- It develops (in partnership with the Ministry of the Environment) a strategic EIA framework for the whole zone. The investor still needs to submit an EIA for a specific development, but the strategic framework will exist and will provide approved pointers for the specific development, thereby significantly speeding up that process and allowing the prospective investor to pass through an expedited process.
- It maps a master land use plan and drafts policy guidelines for the zone setting out the type and nature of development that would be suitable, and where it should take place. It is important that these guidelines focus on attracting high-value investment only.

While the guidelines should not be prescriptive, they should provide the investor with clear planning parameters and a vision for the area.

- The agency is provided with the power to agree with other agencies in the approval process, like the CPI, central bank, Ministry of Tourism and so on, a set of arrangements that allows the agency to expeditiously give approvals on a delegated basis where certain requirements are clearly met, without the need in each and every case to refer the application to the relevant department. In other words, for certain investments (criteria to be decided in conjunction with relevant line ministries) the agency has a *delegated right of approval*. This approach ensures the agency is empowered to quickly process applications while still conforming to the principles provided for by the line ministry in approving projects.
- The agency is empowered to convene meetings of key investors with other agencies that cannot delegate authority (e.g. technical building plan approvals) to expedite the approval process. The agency can also impose a “silent consent” rule: where it requests an opinion or consent from a department, and this is not forthcoming within a pre-agreed and reasonable period, the consent is taken as given and is binding on that department.
- Once the STZ has been declared, any investment in that zone *automatically* benefits from all available tourism sector-specific incentives, as well as repatriation of profit permission and guarantees against expropriation, and other investment guarantees, without the need for separate application. In addition, all benefits that are available to an investor in Mozambique’s newly established special economic zones are made available to the investment without the need for any further application. Finally, fiscal incentives that may be extended, including limited period tax holidays etc., are available to anchor investors in the zones.

Eight: The agency prepares a marketing and procurement strategy for the zone and it markets the investment opportunity to the international and local investor community, by putting development of the site out to tender.

Nine: The agency negotiates entry terms and conditions with investors including joint venture arrangements and public-private partnerships, according to pre-defined and published principles, where they are appropriate.

2.4 ADVANTAGES OF THE ZONE AND AGENCY MODEL

The zone and agency approach relieves much of the procedural complexity and delay for the investor, without undermining the approval process or stripping any state agency of its fundamental power. The attraction for investors is that the burden of procedural compliance shifts to the government, because the agency takes responsibility for at least two thirds of the procedures and has the authority to deal with these effectively. This could cut processing time

(at least from the investor's view) from between 70 to 100 weeks at present, down to around 30 to 40 weeks. By the time the investor arrives on the scene, most processes have been proactively completed by the agency, and the investor can concentrate on the project's detail.

Investors also get the following additional benefits, which deal with the substantive concerns laid out in section 2.1.2:

- The investor gets clean, unchallengeable rights of land development from a duly-empowered source;
- community relations are handled positively and proactively by the state (with room for investor "fine-tuning");
- the investor deals with just one investment facilitator;
- the investor enjoys better planning and environmental enforcement;
- the investors' risk is substantially removed – there is no chance of moving through the procedures only to be disappointed in the end; and
- the investor benefits from automatic qualification for investment and repatriation guarantees and potentially for much stronger incentives than are currently on offer.
- Overall, the high transactions costs and risks associated with the current investment process are significantly reduced.

Perhaps the most positive outcome of this approach is that the government can ensure that the best parts of Mozambique are reserved for the highest-return investment. It will put an end, in the zones at least, to the ad hoc and chaotic development that Mozambique has seen in recent years, where beautiful and valuable parts of the country are given to low-value investors.

These characteristics, together with the improved processing times, would move Mozambique from being one of the least attractive investment destinations in the region to one of the most attractive – commensurate with its natural tourist 'offering'.

2.5 RECOMMENDATIONS

Based on the above the report makes the following recommendations

Zones: The government of Mozambique should immediately embark on a process of identifying, mapping and reserving geographically-defined sites of high tourism potential as special tourism zones (STZs). This should take place across the country. STZs should be preserved only for high-value tourism investment as determined by the Ministry of Tourism. The four sites already identified by the Ministry should be mapped immediately.

Agency: The government should establish a standalone state agency reporting to the Ministry of Tourism that has a mandate to prepare the STZs for the development of mid- and upper-end hotel and resort tourism (or other high value tourism). The government should undertake rapidly to address the institutional, governance, operating, budgetary and staffing design of the

agency (whether as an entity within INATUR or independent of it) to be finalised by no later than June of 2009.

Incentives: Within the STZs, the government should offer a) all standard investment guarantees for large investments; b) custom duty exemptions on all imported hotel construction and operating inputs; c) all benefits accruing to investors in special economic zones and, d) any specific limited period tax holidays or other fiscal incentives for key investors that might be determined (these to be separately assessed).

Next steps: The government of Mozambique, either using resources from the fiscus or funds sourced from the donor community, should immediately commission the preparatory work that is needed to bring the special tourism zones and agency into being, including:

- The identification and geographic mapping of zones of high tourism potential across the country;
- the institutional design and drafting of the charter of the agency, including governance structures, provincial-national representation issues, how it funds itself, how staff are remunerated, budget, staffing plan and so on;
- a regulatory review and preparation of decrees and laws to introduce and strengthen the zonal development agency;
- the preparation of high-level community participation principles and guidelines that set out the issues, options and best approaches for the agency and investor to fairly compensate and include local communities in the development and success of the zones;
- the preparation of memorandums of understanding with other agencies for the delegation of approval functions for investments meeting certain criteria, and the drafting of those criteria;
- preparing a strategic marketing and procurement document – which sets out the agency’s criteria for “high-value” investments that will be targeted for the zones; and
- a detailed strategy and plan for introducing fiscal incentives with STZs.

Enforcing the law outside of the proposed zones: The government should make a big effort to enforce the existing law to put an end to inappropriate tourism development. More specifically, the government should target and make prominent examples of three instances where the law is being flagrantly disobeyed, namely:

- where a DUAT holder has failed to develop prime land as promised, the government should, in one high profile instance in each province, by the end of 2009 order that the government’s rights be enforced and *have the DUAT withdrawn* and, where possible reallocated, as an example to other unproductive speculators; and
- where structures have been built illegally, or without the builder applying for a DUAT, or in contravention of planning or environmental laws, the government should *demolish three such structures* in each province by the end of 2009.

3 TRAVEL AGENCIES

To open a travel agency, the investor will pass through five procedures. These are:

- Preliminary steps like registering a company, opening a bank account and obtaining tax numbers;
- obtaining investment approvals for incentives and permission to repatriate profits;
- acquiring premises, either through construction, purchase or rental;
- obtaining project approval; and
- obtaining an operational licence.

Further operational requirements will thereafter be met on a day to day basis.

A comprehensive description of these procedures is available in Appendix 2.

3.1 DIAGNOSIS AND RECOMMENDATIONS

The key difficulties in setting up and running a travel agency according to these requirements are:

1. **Bank guarantee and insurance requirements:** In terms of the regulations on tourism and travel agencies⁶ the Ministry of Tourism will not approve a travel agency unless the investor provides security by way of cash deposit or securities, insurance or bank guarantee, in an amount of at least Mt250,000 (R10,000) valid for at least one year.⁷ In addition, the investor must provide professional third party liability insurance in an amount of not less than Mt100,00 (R40,000) valid for one year.⁸ The bank guarantee and insurance requirements constitute a significant barrier to investors in this type of business, especially local investors. R50,000 is a significant amount for a local investor wanting to start a small travel agency business. These requirements have been the subject of much debate among the members of the travel agency association who are currently involved in a dialogue with national authorities to have the provisions revised so as to make travel agencies a more accessible investment option for enterprise development.

Recommendation: To deal with the prohibitive expense of bank guarantee and insurance requirements the government might consider the adoption of a *tiered set* of financial requirements which could facilitate growth in the number of nationally-owned travel agencies. A two tiered system, with lower initial bank guarantee requirements

⁶ Decree 41/2005

⁷ Article 39

⁸ Article 42

for national investors, would permit them to start their operations. A minimum time-frame of between three and five years could be set for national operators to increase the value of the bank guarantee to a pre-determined limit dependent on criteria such as overall turnover values for national agencies. This policy would allow prospective national investors to overcome the current barrier to investment and to develop their businesses over time, and pay a bank guarantee that is based on and commensurate with their overall exposure/risk in daily operations.

2. ***Confusion around appropriate authority, and feedback:*** The review of project approval and licensing for a travel agency falls under the competency of the Ministry of Tourism via its National Tourism Directorate (DNATUR). However, the law states that this competency can be delegated to the provincial governor in question.⁹ If so, the Provincial Directorate of Tourism (DPTUR) is responsible for overseeing and evaluating the request for licensing. The delegation of competencies to provincial level is a source of some confusion to investors who often lose time by submitting their requests at national level only to find that after sometimes significant delays, they are informed that the request should be submitted at provincial level.

Furthermore, where licencing applications are not complete, often the instructions from the competent authority provide little direction to investors on what they have done incorrectly. Many times these instructions are little more than “Your file is not correct/complete; please see the appropriate authorities in your area to ensure you have all correct documentation for the licensing process to advance.” This is a source of frustration for investors who, having paid an analysis fee and realising they have done something incorrectly, are unclear as to how to correct the documentation. Revising the application is then necessarily associated with additional rounds of consultation with the relevant authority.

Recommendation: The licencing authorities should better publicise on the ministerial website and elsewhere the process for applying for a licence, clearly identifying the appropriate authority. Moreover, it would be simple and in keeping with the principles of administrative justice for the issuing authority to provide fuller and more certain feedback within well publicised time limits on applications which are deferred or turned down.

3. ***Duplication of licences and delays:*** As it stands, the investor must first have the travel agency project approved by the Ministry of Tourism, and must apply for an inspection after which an operating licence can be issued. If the project is approved, there seems no reason for this duplication, which serves to increase the costs and time taken to open the business. Moreover, there is no clear guideline in the current legislation regarding the time period required between the initial inspection and the

⁹ Article 13 of Decree 41/2005

issuance of a licence. Investors feel that the period between the last administrative step and the final issuance of the business licence is one of the key constraints in the process. The investor has spent the significant financial resources required to comply with the licensing process but is unable to operate until the business licence is in their possession.

Recommendation: The government should consider whether the project approval and licencing process cannot be collapsed into one exercise, centralised within a specialised unit in the Ministry of Tourism. Alternatively, clearer guidelines on the issuance of the business license would help to expedite the time lags between initial inspection and the commencement of commercial activities. Alternatively, investors should be allowed to begin interim operations, pending arrival of the licence.

4. **Titling requirements:** One of the requirements to request an inspection in order to obtain a licence is that title to the property in question be included in the request. Investors avoid the construction of new premises in the initial phase of the investment due to the time it takes to go from building plan approval to the issuance of a title for the infrastructure they have built. Many start their business in rented installations and develop future plans for the construction of installations.

Recommendation: The government should dispense with the title requirement for a request for the initial inspection in preference to the final construction inspection conducted by the municipality. This would promote the construction of new installations. The licensing authority could then require the title to the property be submitted within a pre-determined time frame after the municipal inspection.

5. **Inspections and fines:** Investors in travel agencies report that inspections are normally focused on issues related to labour and finance. Tourism inspections are rare. Most complaints arise from the perception by investors that fines and penalties for infractions are applied in an arbitrary manner without explanation of what the infraction results from. Inspections are seen by investors as a purely punitive, and in some cases a fine-raising, process rather than a process of education and awareness raising for improvement in service standards and compliance levels.

Recommendation: The government should review the law regarding operational inspections and limit these to those departments who are relevant to the professional running of a travel agency (or whatever the enterprise in question is). Inspections should not be carried out on successive occasions in a piecemeal fashion. It is difficult to run a business when the operator is regularly seeing to visiting government officials. Rather departments should co-ordinate to run one, consolidated annual inspection.

4 RESTAURANTS

To invest in a new restaurant in Mozambique, an investor will pass through the following procedural steps:

- Preliminary steps like company registration, the opening of a bank account, and tax registration;
- obtaining investment approval for the repatriation of profits and to access incentives;
- having the proposed project approved by the provincial governor;
- securing a rental agreement, or if premises are to be constructed:
 - obtaining from the state the right of use over the land in question, which may include acquiring the consent of a local community;
 - securing an environmental licence, where applicable;
 - securing building licences; and
- securing an operating licence.

In addition, once the restaurant is operational the owners must comply with ongoing requirements and inspections. These can be particularly burdensome.

The procedure involved in each of these steps is set out in detail in Appendix 3.

4.1 DIAGNOSIS AND RECOMMENDATIONS

The complaints of hotel investors set out above are generally valid for investors in restaurants except that approvals for the latter are likely to be obtained faster because the concept and scale of a restaurant is simpler.

The complaints of restaurateurs include:

1. ***Unnecessary licencing:*** As it stands, the restaurant investor must first have the restaurant project approved by the provincial governor, and then must apply for an operating licence from the governor. There seems no valid reason why a governor should decide whether or not a person or company should open a restaurant, except to ensure that food is prepared in a healthy environment. Thus health and safety considerations excepted, the current level of state sanction is not necessary or encouraging of free enterprise.

Recommendation: The government should consider allowing restaurants to flourish without having to have the project approved – health and safety approvals should be the only licencing requirements. The government needs to trust that restaurants that provide poor service, abuse or overcharge customers will go out of business.

2. **“Chicken and egg” risk:** Tourism regulations require an investor to provide evidence of the right to use the intended location, before the project is approved, which puts him at risk of, for example, concluding a rental agreement and then finding that the location is not approved.

Recommendation: To the extent that licencing requirements are not scrapped per the recommendation above, the regulations should be revised to require an investor to provide only *indicative* evidence of his right to use the intended location, before the project is approved, and absolute evidence only when the inspection is carried out. In the case of a rental, indicative evidence might be a non-legally-binding MOU with the landlord, or a copy of a freshly prepared though unsigned lease agreement, or documents proving application has been made for a DUAT.

3. **Land issues:** A general area of concern, as for hotels, is the process to obtain a DUAT over the land. Whether within or without municipal areas, the land acquisition process is plagued by conflicting information, uncertainty, and the misapplication of rules and regulations. This is only where the restaurateur plans to “own” the land, not where the restaurant premises are rented.
4. **Operational issues:** A recurrent point made by restaurateurs is that, the above points aside, setting up a restaurant is relatively easy, especially if the premises are rented, compared to the hassle involved in actually *running* the restaurant. Reports suggest an overweening involvement of the government in the day-to-day operation of the restaurant. Ad hoc inspections from government departments are rife, with health, finance, labour and tourism all visiting regularly and independently of each other. In any given month a restaurant might undergo up to 10 inspections. It is commonplace for officials to impose fines and sometimes to extort unofficial payments. While restaurateurs see the value in regular health inspections, the value added by recurrent inspections by finance, labour and tourism is questionable. Moreover, inspections are seen by investors as a purely punitive and arbitrary process rather than a process of education and awareness-raising for improvement in compliance and quality standards.

Examples of this interventionist style of regulation include:

Tourism issues: A restaurant owner is required to submit price lists when requesting an inspection for licencing purposes or if the restaurant is reclassified. It may not charge higher prices than those which have been authorised.¹⁰ The fine for the charging of prices which are higher than those authorised, is between Mt 8,000 (R3,000) and Mt

¹⁰ Article 231 and 235 of Decree 18/2007, of 7 August (the Regulations on Tourism Accommodation, Catering, Beverages and Dance Halls)

40,000 (R16,000). The restaurant must keep a complaints book¹¹ and copies of complaints must be submitted to the tourism inspectorate within 5 working days, so that the complaint may be investigated.¹² The restaurant may pay a fine for any complaint. The restaurant must also inform the Ministry prior to 31 May each year, of the periods for which the establishment will be functioning (if not open all year round); and must appoint a manager who must be certified by the Ministry.

Labour issues: The investor is required to register all employment contracts with the Ministry of Labour; apply to the Ministry for work permits for foreign employees,¹³ display all required labour-related forms at the premises, including a list of employees and their respective salaries, and a schedule of working hours (both of which should first be submitted to the Ministry of Labour) amongst other things.

Recommendations: The government should review the operational obligations of restaurants and consider removing those that require intervention for no valid public policy reason, and those which particularly interfere with a restaurant's freedom to do business. Particularly interventionist is the Ministry of Tourism's insistence on reviewing prices. A restaurant should be free to set prices as it chooses, partly as a matter of freedom, and partly because it is not in the nature of running a business to always know what prices will need to be charged, especially since the price of supplies might vary on a weekly basis. A restaurant that overcharges repeatedly will not survive for long; the Ministry does not have to play this watchdog role. Likewise, complaint books are easy to be abused by spurious complaints. The most efficient form of complaint for any customer is not to return to the restaurant, or to tell their travel agent or tour guide of the poor service they received. There is no need for the state to become involved in what is essentially a matter between the restaurant and the consumer.

Similarly, government should consider the purpose of lodging employment contracts with the Department of Labour and what value this adds to either employer or employee. These are private contracts made between employer and employee. Workers rights are enshrined in the labour law. If the contract is breached then there is

¹¹ Article 223

¹² Article 225

¹³ The new Labour Law provides a quota system for the employment of foreigners, depending on whether the establishment is classified as large (more than 100 employees – in which case 5% of employees may be foreign), medium (11 to 100 employees – in which case 8% may be foreign) or small (10 or fewer employees – in which case 10% may be foreign). These foreigners may be employed by way of a simple letter of notification to the Ministry. Beyond that, formal applications for work permits must be submitted. Note however that if a CPI authorisation makes provision for the employment of a certain number of foreigners, then that number may be employed automatically (even if the quota is exceeded), by simple notification to the Ministry within 15 days after the arrival of the employee.

recourse for both parties through the courts without need for the government to become involved.

Finally, the government should review the law regarding operational inspections and limit these only to those departments which are directly relevant to the professional running of a restaurant (health and safety), or should at least consolidate this function into a single inspectorate.

5 VISAS

5.1 SYNOPSIS

The Ministry of Foreign Affairs is responsible for deciding which countries' citizens require visas to enter Mozambique and which do not. The Ministry of Finance (Customs) and Ministry of Interior have responsibility for implementing the policy at the points of entry.

At the time of writing (October 2008) citizens from all countries except Botswana, Mauritius and Mozambique's immediate neighbours, namely South Africa, Swaziland; Tanzania; Malawi; Zimbabwe and Zambia required a visa to enter the country. Visas can be secured before arriving in the country at a Mozambican consulate or embassy; but some countries' citizens can have a visa issued at the port of entry upon payment of US\$25. A visa issued at a consulate or embassy costs between US\$40 (for 10 day processing) and US\$140 for same-day processing.

It is hard to say for sure if the visa requirement is a significant barrier to tourism. Recent research shows that bilateral flow of visitors can be reduced by as much as 49% when imposing visa restrictions¹⁴. Visa restrictions could thus have a potentially very large negative effect on growth in a number of economic sectors, and most directly on the tourism sector. That said, a tourist who has actively decided to visit Mozambique will probably not be dissuaded by a payment of US\$25 at the airport. A tourist who must pay up to US\$140 at an embassy, which would include long queue times, might be, especially if competing destinations do not charge a visa fee. It is also likely that many tourists visiting Mozambique or Africa for the first time will not take the chance of flying all the way to Mozambique without securing a visa in advance. While US\$25 may not be a deal-breaker for a European tourist who is determined to visit Mozambique, it may be enough to put off a tourist who is comparing a beach package break in Mozambique on the basis of price to competitive packages in Mauritius, Egypt, Thailand, Zanzibar, Mexico, for example.

In Mozambique's tourism strategy document, a number of countries are identified as key source target markets for growing the tourism industry, namely the EU (specifically France, Germany, Italy and Holland), Australia, Canada, UK and US. Mozambique requires an entry visa for citizens from all these countries. This compares poorly to Mauritius and South Africa, two of Mozambique's nearby competitors in the tourism market who welcome these nationalities without any visa requirement (Table 2).

¹⁴ Neumayer, E., 2008, *Shooting Oneself in the Foot? The Damaging Effect of Visa Restrictions on Bilateral Travel*, Working Paper Series, London School of Economics and Political Science.

Source country	Mozambique	Mauritius	Tanzania	South Africa
Australia	Yes	No	Yes	No
Canada	Yes	No	Yes	No
EU (specifically France, Germany, Italy & Holland)	Yes	No	Yes	No
United Kingdom	Yes	No	Yes	No
United States	Yes	No	Yes	No

Table 2: Visa requirements for Mozambique's main source markets

Source: National tourism information or foreign affairs websites

It is counter-intuitive that a country with a strategy strongly committed to attracting more visitors from these countries would insist on charging them an up-front fee to enter the country. According to the Ministry of the Foreign Affairs, the policy rationale for visas is threefold: reciprocity under bilateral agreements, for security reasons to keep undesirables out of the country, and as a revenue-raising function. None of these would appear to justify the retention of this arrangement.

The first may talk to national pride but it is not a pragmatic approach for a developing country anxious to grow its tourism base. Imposing visa requirements only to honour reciprocity smacks of cutting off ones nose to spite ones face.

Security seems a more valid concern, but is likely a red herring. An undesirable who wants to enter Mozambique will find a way to do so whether or not s/he requires a visa. Visa controls are not stringent enough to keep out "undesirables", but they are inconvenient enough to keep out some "highly desirables". In other words, by trying to monitor a tiny fraction of "bad" visitors, the country is keeping out a far greater number of "good" visitors. The purpose and consequence of this arrangement are out of kilter.

The revenue-raising function is a non-argument. It is illogical to raise revenue by raising barriers to entry, when greater revenue could be raised from lowering such barriers. Visitors who want to spend thousands of dollars or Euros in Mozambique should not sensibly be chased away on the grounds of raising revenue.

5.2 RECOMMENDATIONS

A more holistic view of the value of visas needs to be taken. A working group comprised of the Ministries of Finance, Tourism, Interior, and Foreign Affairs should be convened, to pragmatically consider the trade-off between protectionist measures and lost tourism opportunity and revenue.

The recommendation is that the working group should do away with visa requirements for citizens of the target source markets as set out in Mozambique's tourism strategy. Visa

requirements could still be imposed on those countries believed to contain a great security risk for Mozambique and its citizens. An alternative, and one which is in any event advocated, would be to do away with visas for all tourists coming to stay within the special tourism zones, described above.

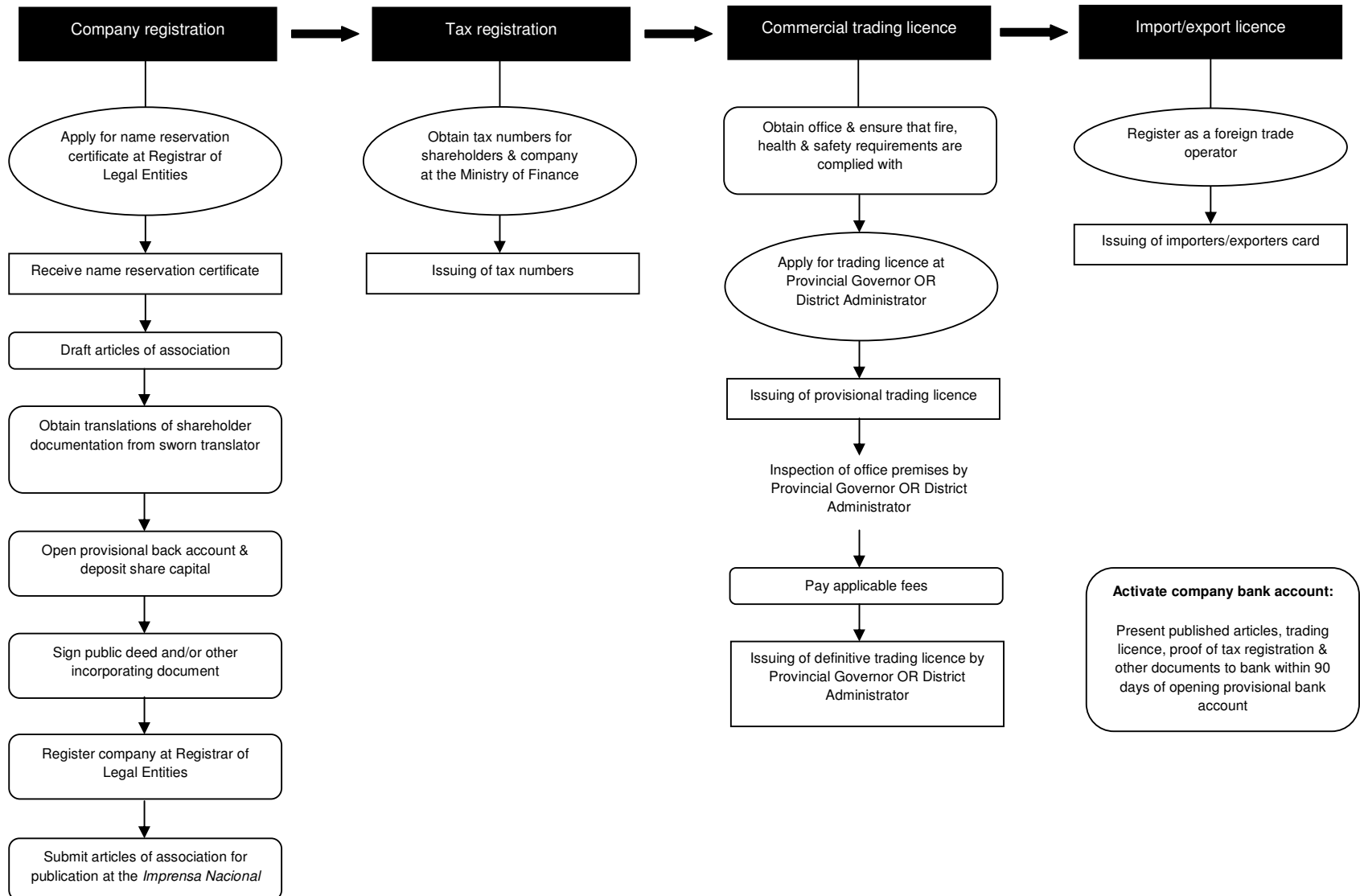
APPENDIX 1: THE PROCEDURE TO INVEST IN A NEW HOTEL DEVELOPMENT

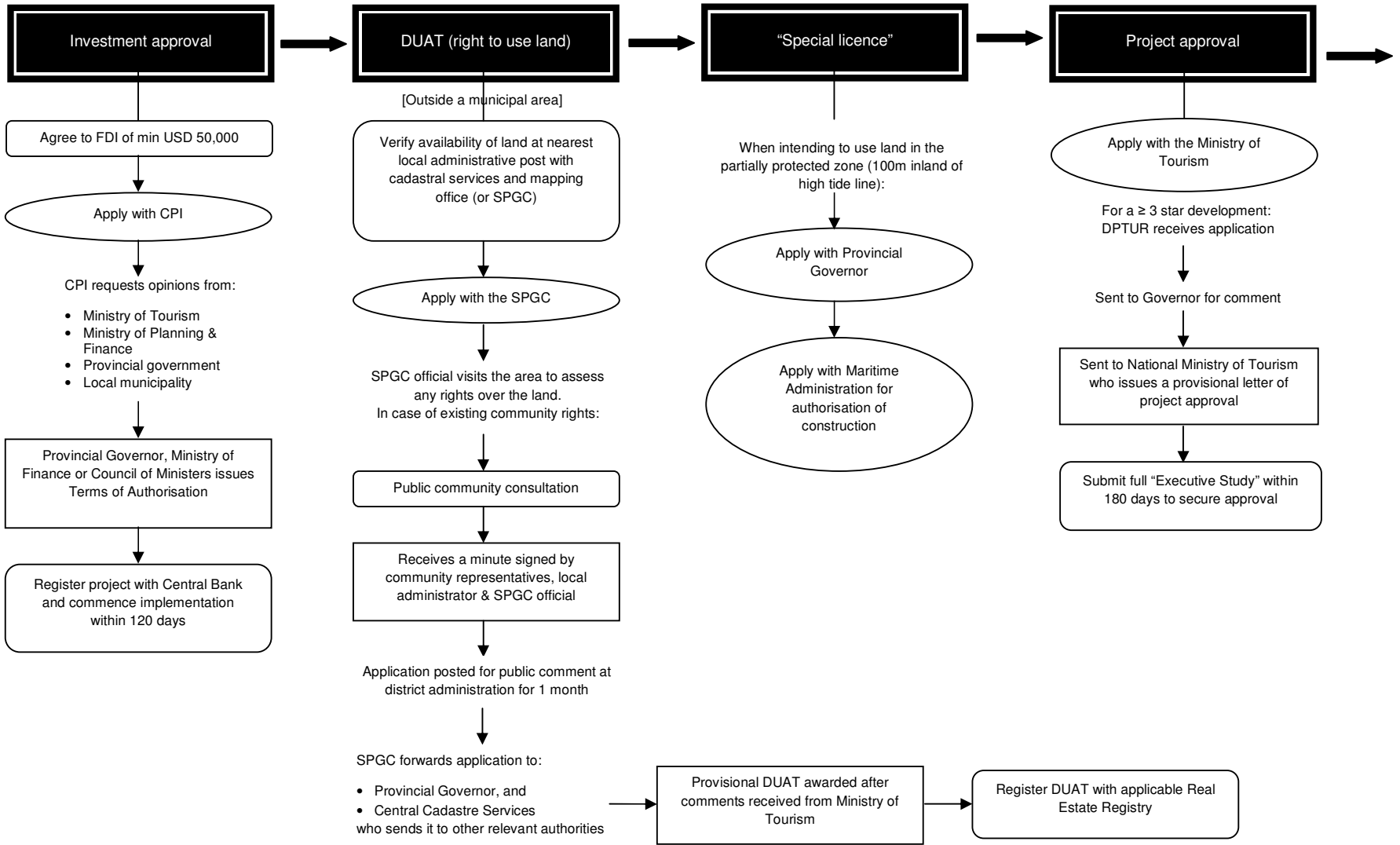
To invest in a new hotel development in Mozambique, an investor will need to pass through eight main procedural steps. These are:

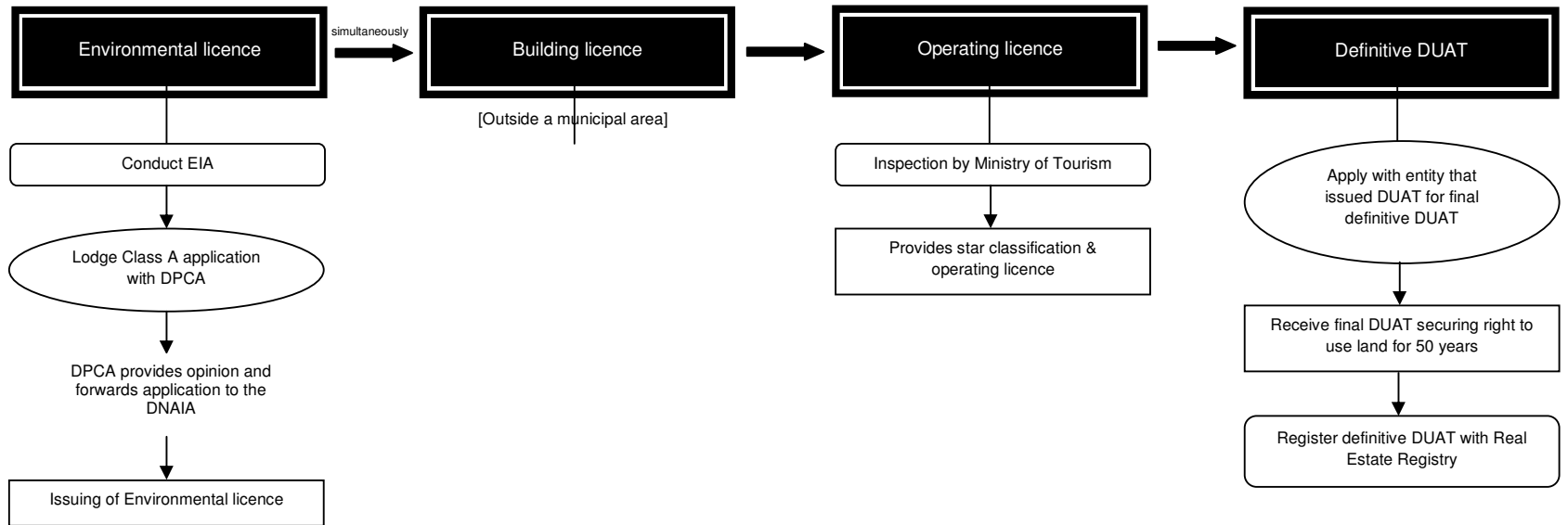
- Preliminary steps including company registration, opening a bank account, tax registration, and obtaining a general commercial licence and an import / export licence;
- obtaining investment approval for the repatriation of profits, and to access incentives, and to entitle the company to obtain land use rights;
- obtaining from the state the right of use over the land in question, which may include acquiring the consent of a local community or other 3rd party right-holder;
- obtaining a special licence for the use of land along the sea-shore;
- having the proposed project approved;
- securing an environmental licence;
- securing a building licence; and after completion of construction,
- securing an operating licence.
- In addition, once the hotel is operational, the hotel manager must comply with a number of operational requirements and inspections.

The procedure involved in each of these steps is shown graphically in the following flow chart overleaf and described below.

Figure 1: Flow chart of hotel investment procedures, Mozambique







Preliminary steps

Preliminary steps include the registration of a company, registration for tax (tax numbers are required for a number of activities including the activation of a company bank account and installation of a fixed telephone line), and an application to obtain a general commercial and import / export licence.¹⁵ According to local lawyers and investment consultants, these preliminary steps will take between 8 and 12 weeks to complete.

Investment approvals

This is a critical step for foreign investors for two reasons:

- So as to benefit from certain tax incentives and guarantees against expropriation and to be entitled to repatriate the initial investment, as well as profits; and
- So as to be entitled to acquire land use rights, in terms of Article 11 of the Land Law of 1997. (National investors do not require investment approvals in order to acquire land rights, but foreign investors do.)

In order to obtain investment approval, a foreign investor must agree to invest at least USD 50,000 by way of direct foreign investment, and a domestic investor at least USD 5,000.¹⁶

Applications for investment approvals are lodged with the Centre for the Promotion of Investment (CPI) on the standard form. The CPI will request opinions from various government authorities including the Ministry of Tourism, the Ministry of Planning and Finance and the provincial government and municipality where the project is situated, prior to issuing Terms of Authorisation, which are reviewed by the investor before being made final.¹⁷

Once this final authorisation has been received, the investor must register the project with the Central Bank within a period of 120 days and thereafter register each capital import, failing which he will not benefit from the agreed tax incentives and right to repatriate funds.

¹⁵General commercial licences are required for any company or individual wishing to conduct a wide range of commercial activities, as listed in the Annexure to the General Commercial Licensing Regulations. Although these activities do not actually include tourism, hotel investors are advised by local lawyers to obtain a general commercial licence to facilitate other procedures: officials will often ask to see the general commercial licence even though it is not legally required. An import / export licence will be required where the hotel investor intends to import goods.

¹⁶ Article 6 of the Regulations on the Investment Law, Decree 14/93

¹⁷ Article 13 of the Investment Law provides, "1. Following the verification of the investment proposals, the investment Promotion Centre shall, within seven (7) working days after the reception of the proposal, ensure the necessary co-ordination with the project sector supervising Government body and with the Provincial Government and the Municipal Council of the City in which area the project shall be located, with the aim of creating practical conditions that will allow the commencement of the project implementation. 2. For the purposes of the previous provision, the Head of each sectoral supervising Government body, the Ministry of Planning and Finance (Customs and Taxation Departments) and the Provincial Government and the Municipal Council of the City shall appoint the relevant representative, and his substitute, who shall guarantee the inter-institutional coordination with the Investment Promotion Centre." The full procedure and time frames followed by the CPI prior to issuing the final authorisation, is contained in Decree 14/93.

Final investment approvals are issued either by a Provincial Governor, the Ministry of Finance, or the Council of Ministers depending on the size of the investment, via application to the CPI.¹⁸

Article 19 of the Investment Law Regulations requires that the investor commence implementation of the project within 120 days of the date of notification, which period may be extended once, on payment of a performance guarantee, failing which the investment authorisation will be cancelled. However, in practice, investment approvals are usually made conditional upon certain factors – including, for example, the conducting of an environmental impact assessment – and the view of the CPI in general is that the 120 day period for project implementation does not commence until these conditions have been fulfilled.

The CPI is also able to help the investor to identify investment opportunities, put the investor in touch with the Ministry of Tourism, and be of general service in facilitating the investment, although the level of help obtained may not always meet with international expectations.

The obtaining of an investment authorisation should take place prior to attempting to acquire land use rights. Although there have been cases in which land rights have been allocated without prior CPI approval, this is in conflict with Article 11 of the Land Law.

The experience of investors suggests that the investment approvals will take between 8 and 12 weeks to process.

Obtain approvals to use the land (provisional DUAT)

In terms of both the Mozambican Constitution and Article 3 of the Land Law 19 of 1997 all land in Mozambique “is the property of the State and cannot be sold or otherwise alienated, mortgaged or encumbered.” Persons who wish to use land must apply to the competent state authority as set out in Articles 22 and 23 of the Land Law (depending on the location and size of the land) to award them a right to use and enjoy the land. The land use right is called a “*Direito de Uso e Aproveitamento de Terra*” or DUAT.

Land use rights are issued either as provisional or definitive titles. Provisional titles are issued for two years for foreign individuals or companies in which the majority shareholding is foreign, or five years for national individuals or companies in which the majority shareholding is national.¹⁹

A definitive title is only issued once the initial land use plan (submitted to the DUAT-issuing authority by the land use right holder) has been complied with, and then for a period of 50 years, renewable once for another 50 years at the option of the state.²⁰ The state is thus a key player in deciding who uses the land and for what purpose. In addition, the law recognises that

¹⁸ Article 15 of Decree 14 of 93 (the Investment Law Regulations)

¹⁹ Article 25 of the Land Law, read with Article 1(8), (9), (10) and (11)

²⁰ Article 17 of the Land Law, which reads, “The right of land use and benefit for purposes of economic activities is subject to a maximum term of 50 years, which is renewable for an equal period upon application by an interested party. After the renewal period, a new application must be presented.”

informal rights to the land exist where there has been long-term use by communities or individuals – they effectively hold an informal DUAT over the land.²¹

The organs of state empowered to issue a DUAT are the following:²²

- Presidents of Municipal Councils (cities and towns) and Settlement Councils (smaller administrative posts), and where there are no municipal structures, District Administrators, in areas that are covered by urbanisation plans (i.e. city zoning plans), drafted in terms of the Regulations on Urban Land Use;
- Provincial Governors, in areas not covered by urbanisation plans, over land areas not exceeding 1000 hectares;
- The Minister of Agriculture and Fisheries, in areas not covered by urbanisation plans, over land areas of between 1000 and 10,000 hectares; or
- The Council of Ministers, in areas not covered by urbanisation plans, over land areas exceeding the competence of the Minister of Agriculture and Fisheries, provided that they are within a land use plan or could be integrated in a land use map.

The DUAT application process differs according to whether the land is located within a municipality or not:

Within a municipal area:

Mozambique has 43 municipalities.²³ If the identified land falls within one of these municipal areas and an urbanisation plan exists, then the local municipality has authority to issue the DUAT over the land.

If the municipal land in question already has a DUAT issued over it, then the investor must either apply to the municipality which issued the original DUAT for its transfer (which generally requires the co-operation of the existing land rights holder), or, alternatively, may purchase the *infrastructure* which has been built on the land from its owner. (Note that, in general, infrastructure in Mozambique may be privately owned, although the land on which it is located may not. If the land is classified as urban, then the land rights will transfer automatically, on transfer of the infrastructure.²⁴ If it is rural, prior approval for the transfer must be obtained, even if there is infrastructure on the land.)

²¹ Article 12 of the Land Law, which states that “The right of land use and benefit is acquired by a) occupation by individual persons and local communities in accordance with customary norms and practices which do not contradict the Constitution, b) occupancy by individual national persons who have been using the land in good faith for at least ten years, c) authorisation of an application submitted by an individual or corporate person in the manner established by this Law.”

²² Article 22 and 23 of the Land Law

²³ See http://pt.wikipedia.org/wiki/Lista_de_munic%C3%ADpios_de_Mo%C3%A7ambique_por_ordem_alfab%C3%A9tica for a list of municipalities.

²⁴ Article 16(2) of the Land Law Regulations, Decree 66/98

Where the land in question is undeveloped, the investor will approach the municipality to confirm that the identified site is available and that the development is appropriate in terms of the local urbanisation plan. (Note that if there is no urbanisation plan, then the municipality has no competence to issue the land title, in terms of Article 23 of the Land Law, and an application must instead be submitted to the Provincial Governor.) If the municipality approves the planned use for the land in principle, then it will provide written confirmation to this effect to the investor. Then the investor can start with the formal process of applying for the provisional DUAT.

The provisional DUAT can be revoked if the investor fails to start project implementation within the period for which it is issued (i.e., two years for foreign investors and five years for national investors).²⁵ However, if the investor has good reason for the delay, he can apply to the municipality for an extension of the DUAT. The term of the extension may not exceed six months in terms of Article 36 of Decree 60 / 2006 (the Regulations on Urban Land). After the expiry of the extension, if no progress has been made, the provisional DUAT may be revoked (although in practice this rarely occurs).

If the planned hotel is three stars or better, the municipality will first seek the comments and approval of the proposed project from the Ministry of Tourism before awarding the provisional DUAT.²⁶

Outside a municipal area:

If the land lies outside a municipal area then the procedure for acquiring the DUAT over undeveloped land is different. In such a case the investor would visit the nearest town where there is a local administrative post and a branch of the Provincial Geography and Cadastre Department of the Ministry of Agriculture (the cadastral services and mapping office (or SPGC)). The investor will ask to check the cadastral maps to the extent they exist. The investor will speak to the local administrator to inform him or her about the project and to check if the land in question is available. If the administrator confirms the land is available then an application for the DUAT is lodged by the investor with the SPGC office in the town. An official from the SPGC will visit the area to prepare a map and to assess any third party rights over the land, including an assessment of informal community rights. The applicant is obliged to provide transport and travel expenses to the SPGC official.

If the SPGC official determines that there are community rights over the land, he or she will set a date for a community consultation. This is a public meeting with the communities identified by the SPGC, the costs of which are borne by the applicant. The outcome of the community consultation is a minute signed by community representatives, the local administrator and

²⁵ Article 27 of the Land Law, Article 19 and 32 of the Land Law Regulations

²⁶ In terms of Article 11 of the Regulations on Tourism Accommodation, Catering and Beverages, the Ministry of Tourism is the competent authority for the authorisation of the installation of establishments with a classification of 3 or more stars, and also of campsites, tourist resorts and complexes. The Provincial Governor is competent to authorise the installation of establishments of 1 or 2 stars, of private accommodation letting, catering and beverage services, and dance halls. A municipality may only authorise the installation of single classification tourist establishments, with the exception of the abovementioned establishments.)

SPGC representatives.²⁷ A summary of the application is posted for one month at the district administration post and at the site to invite public comment. Once the period has elapsed without comment, the SPGC will forward the application to the Provincial Governor for review (Article 28(2) of the land law), and then to the Central Cadastre Services, for forwarding to the relevant authority (as indicated above) to award a provisional DUAT.

In addition, the issuing authority will seek the comments of the Ministry of Tourism for the development.²⁸ If the Ministry does not respond within 45 days, the Provincial Governor must be notified (Article 26(2)).²⁹

The provisional DUAT provides the investor with the opportunity to start the environmental licencing process and to draw up technical plans. As with a DUAT in a municipal area, the provisional DUAT can be revoked if the investor fails to begin project implementation within the term for which the provisional DUAT has been issued. However, if the investor has good reason for the delay he can, as in the case of municipal land, apply to the relevant authority for an extension of the DUAT. The law does not specify how long the extension may be.

Note that the holder of a DUAT must register the DUAT with the applicable Real Estate Registry. This is a simple procedure requiring presentation of the DUAT at the Registry, following which the Registrar will issue a “*certidao*”.

According to local lawyers, investment consultants and investors who have been through this process, securing a DUAT is a process that can take as long as 6 months to 1.5 years.

Secure a special licence

If the hotel intends to use land with 100m from the high tide mark then it will be necessary, in addition to the DUAT, to obtain a special licence, as this strip of maritime coast line is a partial protection zone. In these areas, special licences are issued to conduct particular activities, by Provincial Governors. Even where the hotel will not intend to use this land, lawyers recommend obtaining a special licence so as to prevent the possibility of another entity obtaining one, and constructing infrastructure in that area.

The running of a tourism establishment within such an area must be authorised by the authority referred to in Article 11 of Decree 18 of 2007 (indicated above).

In addition, any construction on the strip of maritime coastline referred to above must be authorised by the Maritime Administration. The length of time for which a special licence is issued is not legislated and depends on the particular project.

Experience suggests that the granting of a special licence takes about 12 weeks.

²⁷ Article 27 of the Land Law Regulations

²⁸ Article 26 of the Land Law requires technical opinions to be issued by the services which supervise the economic activity for which the land is requested.

²⁹ The law does not specify what will happen when the Governor is notified, apart from the fact that the Provincial Governor must still take a decision. In practice he will most likely attempt further liaison with the relevant authority before taking a decision.

Have the project approved

Once a provisional DUAT or special licence has been obtained, an application should be submitted to the Ministry of Tourism for approval of the location of the establishment.³⁰

If the planned development is for three stars or more then Provincial Directorate of Tourism (DPTUR) will receive the application, seek the Governor's comments (although the law does not provide a right of veto, it is likely that a project that does not meet the governor's approval would not be approved by the Ministry) and send it on with recommendations to National Ministry of Tourism³¹ based in Maputo, who will receive and consider the application.³² The investor needs to submit sufficient information and diagrams to give DPTUR and DNATUR, a reasonable vision of the proposed project, but full technical drawings are not required at this time.³³ Upon the receipt and approval of the project proposal, DNATUR will issue a provisional letter of project approval.

In terms of the law (Article 18 of Decree 18 of 2007) this process should not take more than 18 working days of receipt of the proposal (10 days for a technical assessment; 5 days for decision; and 3 days for notification). In fact, the process takes much longer, chiefly because of delays in the transfer of the application from one government office to the next.

Once the authorisation of this preliminary application is obtained, the applicant must submit a full "executive study" (the name for a comprehensive application for the installation of a tourism establishment) within a period of 180 days, failing which the preliminary approval will lapse. An applicant may choose to submit only an executive study, and dispense with the preliminary approval, if he wishes.

Local experience suggests that the project approval can take anything from 9 to 15 weeks to process.

Obtain an environmental licence

With the project approval and provisional DUAT in hand, the investor can start the process to secure an environmental licence. The investor will engage the services of an environmental consultant to prepare an environmental impact assessment (EIA). Most large hotel developments will require a Class A application, the most rigorous. Class A applications are specifically required for tourism establishments outside urban areas or in areas without urbanisation plans with a capacity of more than 150 beds or more than 10 hectares, and the

³⁰ Article 34 of Decree 18 of 2007, read with Articles 14 and following

³¹ Or more specifically, the National Directorate of Tourism (DNATUR) within the Ministry of Tourism

³² If the planned hotel development will be rated two stars or less, a preliminary application or "anteprojecto" must be submitted to the Provincial Governor, via the Provincial Directorate of Tourism (DPTUR) based in the regional office in the provincial capital, who must approve or reject the project. Article 11(2) of Decree 18 of 2007 states that the competence for the issuing of tourism licences for these types of establishments rests with the Provincial Governor.

³³ A full set of requirements is contained in Article 14 and 15 of Decree 18 of 2007. Note that additional requirements are present if the hotel is to be located in an area zoned for conservation purposes.

establishment and expansion of large recreational areas such as golf courses of 5 hectares or more.³⁴

Class A applications are lodged with the Provincial Directorate of the Ministry of Environmental Action and Co-ordination (DPCA) based in the regional centre.³⁵ The DPCA will provide an opinion and forward the application to the National Directorate of the Ministry of Environmental Action and Co-ordination (DNAIA) based in Maputo for a decision. (The National Directorate may not take a decision without an opinion from the local authority – in terms of Article 1 of Ministerial Diploma 198 of 2005.) The EIA takes into account, theoretically at least, possible impacts on flora, fauna, heritage, culture and geology, as well as a socio-economic impact assessment.

The length of time required for this process depends partly on the time taken by the independent consultant to perform the study, however, once the EIA is submitted for approval, the time periods laid down by law for the assessment of Class A applications are as follows:

- Pre-assessment of application by relevant department – 5 working days;
- Review of terms of reference for the environmental consultant, and “pre-study” – 30 working days;
- Review of full environmental impact assessment – 45 working days;
- Written communication of full or partial rejection/acceptance – 5 working days;
- Issuing of environmental licence – 8 working days.

Recent investors and local lawyers report that the environmental approval takes at least 20 weeks to process.

Environmental licences for Class A applications are valid for 5 years. The fee payable for a class A application is 0, 1% of the investment value.

Have technical plans approved by relevant authority, and obtain a building licence

Simultaneously with environmental approvals, the investor can draw up technical construction plans to obtain a building licence, in the manner set out in Decree 2 / 2004 (the Regime for the Licensing of Private Construction). In a municipality, the plans need to be approved by the municipality through its departments of construction (for building plans), health (for kitchen design, sanitary facilities, quality of workers’ change rooms etc), and fire (for assessment of emergency exits, location of fire detectors, etc). Outside of a municipality this role is played by

³⁴ Environmental Impact Assessment Regulations Annexure I, II and III (Decree 45 of 2004 of 29 September)

³⁵ Ministerial Diploma 198-2005 of 28 September, Article 1

the District Administrators in terms of Article 5 of Decree 2/2004, who delegate their responsibility to the Provincial Directorate for Public Works.³⁶

Once the technical plans have been approved and a building licence has been issued, the investor can start construction. When the construction is complete the investor requests an inspection by a multi-sectoral team comprising officials dealing with construction, health and fire. If everything is in order, the municipality or District Administrator will issue a utilisation licence, following which the building may be occupied.

Building licences should, by law, be issued within 30 days of the receipt of the relevant application (Article 22(5) of Decree 2 of 2004). An inspection must be conducted within 30 days of a receipt of a request for an inspection, and a utilisation licence issued within a further 30 days following a favourable inspection (Articles 35 and 36 of Law 2 of 2004).

The ownership of the building should thereafter be registered with the relevant Real Estate Registry by the investor.

Obtain operating licence

Once a utilisation licence has been issued and the establishment is fit for operation, the investor should request the Ministry of Tourism to perform an inspection and to provide the establishment with a star classification in terms of articles 207 and following Decree 18 of 2007 (the regulations of Tourism, Accommodation, Catering and Beverages). An inspection should, by law, be conducted by two representatives of the Ministry, a health inspector, a representative of the National Parks, if the establishment is located within a park, and a member of the police if the establishment includes a dance hall. This team will inspect the site and confirm that the establishment is fit for operation. If so, it will issue a final operating licence. The operating licence must be displayed at all times in the hotel. A tourism licence is issued for an indeterminate period.

DNTUR will also grade the hotel and award stars (although this procedure does not necessarily take place simultaneously).

Local lawyers and investors indicate that this process can take anything from 8 to 12 weeks to complete.

Secure a definitive DUAT

Now the investor can apply to the entity which issued its provisional land title, for the award of a final and definitive DUAT, which means that the investor officially has the right to use the land for the purpose set out in the approved project for the next fifty years, renewable upon application for another 50 years. The definitive DUAT should be registered with the Real Estate Registry.

³⁶ Article 14 and 15 of Decree 2/2004 allow for the delegation of authority to Provincial Directorate for Public Works, and to "functionaries of the local authority or district administrator" (for the purpose of verifying sewerage / drainage systems.)

Operational issues

Once the hotel is open for business, there are also a number of operational procedures to go through. These include the following general requirements:

(I) Labour matters:

- a. registration of all employment contracts with the Ministry of Labour;
- b. applications to the Ministry of Labour for work permits for foreign employees³⁷;
- c. registration of employees for social security;
- d. displaying of required labour-related forms, at the premises, including a list of employees and their respective salaries, and a schedule of working hours (both of which should first be submitted to the Ministry of Labour);
- e. keeping of a record of overtime and exceptional work, as required by the Labour Law;
- f. correct maintenance of individual employment files;

(II) Tax matters and accounting:

- a. tax registration (if not performed immediately following company registration);
- b. the filing of monthly VAT and annual corporate tax returns, as well as the payment of VAT and corporate tax at the times required by law;
- c. the appointment of a duly licensed Mozambican accountant;

(III) Company books

- a. The keeping of legally required company books (including those containing shareholders and directors resolutions);

(IV) Compliance with requirements specific to tourism establishments, as contained, *inter alia*, in Article 219 and following of Decree 18 of 2007, including:

- i. Displaying the hotel's current star classification;

³⁷ The Labour Law provides a quota system for the employment of foreigners, depending on whether the establishment is classified as large (more than 100 employees in which case 5% of employees may be foreign), medium (11 to 100 employees – in which case 8% may be foreign) or small (10 or fewer employees – in which case 10% may be foreign). These foreigners may be employed by way of a simple letter of notification to the Ministry. Beyond that, formal applications for work permits must be submitted. Note however that if a CPI authorisation makes provision for the employment of a certain number of foreigners, then that number may be employed automatically (even if the quota is exceeded), by simple notification to the Ministry within 15 days after the arrival of the employee.

- ii. Informing the Ministry of Tourism, prior to 31 May each year, of the periods for which the establishment will be functioning (if not open all year round);
- iii. The appointment of a manager, who must be certified by the Ministry of Tourism;
- iv. Making a complaints book available, and submitting copies of complaints to the Tourism Inspectorate within five working days;
- v. Practicing non-discrimination in the running of the establishment;
- vi. Complying with Law 6 of 99, as regards the entry of minors into the establishment;
- vii. Not allowing child sex tourism;
- viii. Informing the Ministry of Tourism of prices charged at the establishment (which must include prices in Meticaís), and any minimum consumption requirements, on the applicable forms;
- ix. Displaying applicable prices at the establishment;
- x. Employing receptionists, waiters and telephonists who speak at least Portuguese and English.

(V) Article 266 of Decree 18 of 2007 requires an establishment to notify the Ministry of its transfer of ownership, termination or suspension of activities, closure, revocation or expiry of its operating licence, and amendments to the company's articles of association or any elements contained in its operating licence.

Procedure	Relevant Authority	Relevant laws
Register a company	Commercial registry & Notary's Office, Government Printer (for publication of articles of association)	<ul style="list-style-type: none"> 1. Commercial Code 2 of 2005, of 27 December 2. Decree – Law 3 of 2006 (Regime for constitution, alteration and dissolution of collective persons)
Register with CPI	CPI	<ul style="list-style-type: none"> 1. Law on Investment, Law No. 3/93, of 24th June. 2. Regulations on the Investment Law, Decree 14 / 1993, of 21 July
Check availability of land and apply for land rights	Municipality, or Provincial Governor, or Ministry of Agriculture, depending	<ul style="list-style-type: none"> 1. Law 19/97 of 01 October – Land Law

	on size and location of land; Provincial Directorate of cadastral services & mapping	<ol style="list-style-type: none"> 2. Decree 66/98 of 08 December— Land Law Regulations 3. Decree 1/2003, of 18 February, amending Decree 66/98 of 08 December 4. Decree 77/99 of 15 October (setting authorisation and annual fees) 5. Ministerial Diploma 29/2000-A of 17 March (Technical Annex to the Land Regulations) 6. Regulations on Urban Land Use Decree 60 of 2006, of 26 December
Environmental Licensing	MICOA (environment)	<ol style="list-style-type: none"> 1. Law 20/97 of 01 October, Environment Law. 2. Decree 32/2003 of 12 August (Environmental Audit Process Regulations) 3. Decree 45/2004 of 29 September (Regulations on Environmental Licencing) 1. Decree 18/2004 of 02 June (Environmental Quality and Effluent Emission Norms)
Obtaining a building licence	Municipality or District Administrator	Decree 2 of 2004 (Regime for the Licencing of Private Construction)
Obtaining a business licence	MITUR (tourism), Ministry of Trade and Industry (general commercial and import and export licences)	<ol style="list-style-type: none"> 1. Tourism Law 4/2004 of 17 June 2. Decree 49 of 2004 – general commercial licencing regulations 3. Decree 41/2005 – Regulations on Tourism and Travel Agencies 4. Decree 18 of 2007 – Regulations on Tourism Accommodation, catering, Beverages and Dance Halls

Relevant laws

- 1) Law 3/93, of 24 June – Law on Investment
- 2) Decree 14/1993, of 21 July - Regulations on the Investment Law
- 3) Law 19/97 of 1 October – Land Law

- 4) Law 20/97 of 1 October - Environment Law.
- 5) Decree 66/98 of 8 December—Land Law Regulations
- 6) Decree 77/99 of 15 October - setting authorisation and annual fees for land use
- 7) Ministerial Diploma 29/2000-A of 17 March - Technical Annex to the Land Law Regulations
- 8) Decree 1/2003, of 18 February - amending Decree 66/98 of 08 December (the Land Law Regulations)
- 9) Decree 32/2003 of 12 August – the Environmental Audit Process Regulations
- 10) Decree 2 /2004 - Regime for the Licencing of Private Construction
- 11) Law 4/2004 of 17 June – the Tourism Law
- 12) Decree 18/2004 of 2 June (Environmental Quality and Effluent Emission Norms)
- 13) Decree 45/2004 of 29 September (Regulations on Environmental Licencing)
- 14) Decree 49/2004 – General Commercial Licencing Regulations
- 15) Decree 41/2005 – Regulations on Tourism and Travel Agencies
- 16) Decree-Law 2/2005, of 27 December – the Commercial Code
- 17) Decree–Law 3/2006 - Regime for the constitution, alteration and dissolution of collective persons
- 18) Decree 60/2006, of 26 December - Regulations on Urban Land Use
- 19) Law 23/2007, of 1 August – the Labour Law
- 20) Decree 18/2007 – Regulations on Tourism Accommodation, Catering, Beverages and Dance Halls

APPENDIX 2: THE PROCEDURE TO OPEN A TRAVEL AGENCY

To invest in a travel agency business in Mozambique, an investor will need to pass through four main procedural steps. These are:

- Preliminary steps, including registering a company, opening a bank account and obtaining tax numbers;
- Obtain investment approvals, for incentives and permission to repatriate profits;
- Acquisition of premises, either through construction, purchase or rental; and
- Project approval and licencing.

Further operational requirements will thereafter need to be met on a day to day basis.

Preliminary Steps

Register a company: The investor will first register a trade name at the registry office (*conservatoria de registo*) of the locale where the travel agency is going to operate. This takes about two days. Then a lawyer will be engaged to prepare the articles of association, which should clearly reflect the primary activity of the travel agency as well as any future complementary activities to be conducted by the company. The investor should also open a provisional bank account in the name of the company, into which share capital, in an amount of at least 20,000 Mt, should be deposited.³⁸ Articles of association, and proof of share capital, are then lodged with a notary. The notary then incorporates the company and issues a “certidao”. The incorporation is registered with the Registrar of Legal Entities, and articles of association are submitted to the *Imprensa Nacional* for publication in the Government Gazette (*Boletim de Republica*).³⁹

Register for tax numbers: The investor will need to obtain a tax number (NUIT) for the shareholders, and for the company itself, which can be completed in one or two days. The second key step is to declare the initiation of commercial activities. This second step should be carefully timed by the proprietor to coincide with actual commencement of services, i.e. after the licensing procedure is complete, as there are monthly administrative obligations with the tax authorities to fulfil from the month of start of activities.

Activate the company’s provisional bank account: Published articles of association and a copy of the company’s trading licence are generally required to activate a provisional bank account. The initial deposit of social capital of the company remains frozen in the bank account until the company completes the registration process.

Investment approvals

³⁸ The Commercial Code also provides for share capital to be constituted in kind (ie, by donating goods to the company), but, since a formal valuation of these goods is required, most investors prefer to simply open a bank account and deposit share capital.

³⁹ See Article 10 of Decree 41/2005

Foreign companies investing more than USD50,000 and national companies investing more than USD5,000 may wish to register their investment with the Centro de Promocao de Investimentos (CPI). CPI registration is a requirement if investors wish to obtain land use rights, or to export the initial investment or profits. Investment approval also provides a series of tax incentives for new investors, including an exemption on import duties for all equipment listed in class K of the customs tariff schedules (heavy machinery – not particularly useful for a travel agency). Typically, CPI will not provide direct investment facilitation, however, in practice this may depend on the size and importance of the proposed investment.

Once an investment authorisation has been obtained, the project should be registered with the Central Bank within a period of 120 days, and each subsequent import of capital also registered with the Central Bank. Failure to do this will mean that the investor will not have the benefit of the tax incentives, and rights to export profits, contained in the investment authorisation.

Acquiring land

There are two principal ways an investor can go about acquiring installations for the carrying on of commercial activities. The first is to acquire existing real estate via a rental or purchase agreement. The second is the acquisition of land and the construction of installations for the commercial activities. The steps to be followed in each case are outlined below:

Rental: After the investor has identified a suitable building in which to operate, a rental agreement will be signed. The existence of premises, at which an investor has a legal right to trade (e.g. by means of a rental agreement) is a key step in the licensing process. Premises will need to be inspected before an operating licence is issued. Investors renting premises should take note that VAT is levied on commercial letting agreements, at 17%, and also that they, as tenants, are liable to withhold an amount of 20% of the rental, as a tax on the landlord, which must be paid by the tenant on a monthly basis.

Purchase: Investors may wish to purchase premises. Mozambique has no restrictions on the foreign ownership of buildings (as opposed to the land). Foreign purchasers should however note the law on land use (and in particular, that all land is state-owned, but that land use rights may be issued to certain qualified persons by the state) - and should obtain legal advice before purchasing premises. Also, see the description of land acquisition in Appendix 1 – Hotel Investment Procedures.

Once the investor has identified a particular piece of land, the location should be verified with the municipal council as being zoned for commercial activities. Acquisition of land within a municipal area is governed by relatively new urban land legislation (*Decree 60/2006, Regulation on Urban Land*) that is complementary to the national land law. Investors seeking to acquire land in an urban area are subject to the guidelines within that law. This law foresees the possibility of direct negotiation between the investment group and the municipality for the

provisional DUAT. Decree 60/2006 on Urban Land Regulations is focused primarily on outlining the processes that municipalities must follow to develop and implement land use plans within their area of jurisdiction. The law is a relatively new development in Mozambique and the impact of this decree has been virtually invisible to the average medium and small scale investor at municipal level. Whether in municipal areas or outside of municipal jurisdiction the land acquisition process is still plagued by conflicting information, uncertainty amongst investors and the misapplication of rules and regulations regarding land acquisition.

Community consultation would only take place in circumstances in which the land in question is held under traditional community land rights, i.e. the investors were acquiring the land directly from a particular community who has a traditional DUAT. Regardless, if land is acquired from traditional land right holders a period of 30 days of public review (*edita*) at the municipality is required to ensure that the proposed land is available for transfer and that there are no other parties with conflicting claims to that land or who stand to benefit from the transmission of a given parcel of land.

The following additional licences would be required to construct premises.

Building Licence

In cases where the travel agency is to be installed in a newly constructed office, the municipality is responsible for the approval of the building plans and a building licence for the construction phase. The issuance of a building licence is dependent on final approval of the construction and building plans, and issuing of a provisional DUAT, all of which have to go to the president of the municipal council and the urban services directorate in the municipality for approval prior to the issuance of the building licence. The approval process and issuance of the DUAT can take up to twelve months. Once this is approved the building licence can be issued in one day. Costs of the building licence vary according to the square metreage of a new construction. Investors should note that, by law, only licensed Mozambican construction companies may construct properties in Mozambique.

Environmental Approvals

The environmental law provides for the categorisation of projects requiring varying levels of environmental oversight. Most often, smaller scale investments such as a travel agency are not subject to the full EIA process as per the regulation on EIA process (Decree number 45/2006) as they fall within category C of that regulation. A category C activity is required to observe “norms and specific directives of good practice in the area of environmental management⁴⁰”. However, an opinion on the project from municipal authorities is very often requested from the competent authority. A team comprising representatives from the Provincial Directorate of the Environment and the municipality will conduct a visit to the location of newly constructed premises to ensure that the project is consistent with broad guidelines for

⁴⁰ Article 3, paragraph c), Decree 45/2006

environmental management. The completion and submission of a “Preliminary Environmental Information Form⁴¹” to the provincial directorate and municipality assists the team in assessing the application of good environmental management guidelines.

Project approval (Ministry of Tourism)

The review of requests for project approval or licensing for a travel agency falls under the competency of the Ministry of Tourism via its National Tourism Directorate (DNATUR). However, the law states that this competency can be delegated to the provincial governor in question.⁴² If so, the Provincial Directorate of Tourism (DPTUR) is responsible for overseeing and evaluating the request for licensing.

In order to be considered for approval, the licensing request must contain all of the elements defined in Article 15 of Decree 41/2005, which are the following:

- The name and head office of the entity;
- Whether the activity applied for is that of travel agency or tour operator;
- Location of the travel and tourism agency;
- Value of investment;
- Number of jobs to be created;
- Articles of association;
- Design plan, on a scale of 1:100, of company premises;
- Technical and exploratory plan; and
- Descriptive memorandum.

If any of the documentation required is missing, the request will be returned to the investor with observations on what is missing. Each investor is required to submit a processing fee for the analysis of the project that should be no more than Mt7000 (R2300). The competent authority is obliged to request opinions from relevant local authorities, in a municipality, the municipal council. The municipal council has 10 days to respond. Failure of the municipal council to respond implies consent and approval of the request.⁴³ Usually the health and safety authorities of the municipal council are requested to provide an opinion on the project. Additional opinions on the qualifications of the director of the company can be requested if it this is felt to be necessary.

The appraisal of the application should take no more than 20 working days by law.⁴⁴ A decision must thereafter be taken within a further 15 working days, and the applicant notified

⁴¹ Decree 45/2004, Annex 4, “Ficha de Informacao Ambiental Preliminar”

⁴² Article 13 of Decree 41/2005

⁴³ Article 16

⁴⁴ Articles 14 of Decree 41/2005

within a further 5 working days.⁴⁵ The law thus envisages a total project appraisal timeframe of 40 working days.

Operating licence

Once the investor has notification of a favourable decision, the investor can begin making preparations for the final inspection of the business, which must be requested by the investor within 60 days of receiving the said notification. A letter of request for an inspection must include:

- A certified copy of the rental agreement / building title deeds;
- Certificate of final commercial registration of the company;
- Curriculum vitae of the proposed director;
- Documentary proof of the education qualifications in tourism of the proposed director, or proof of at least three years of professional experience;
- Bank guarantee (or other bond) valid for at least one year. (Article 39 requires a travel agency to provide security, by way of cash deposit or securities, insurance or bank guarantee, in an amount of at least Mt 250.000 (R10,000); and
- Insurance, valid for at least one year. (Article 42 requires professional third party liability insurance in an amount of not less than Mt 100,000 (R40,000).

The inspection should be conducted within 10 working days of receipt of the inspection request.⁴⁶

The inspection team typically comprises a representative from tourism (whether national or provincial), a representative of the municipality and a representative of the local health authorities. Additional authorities may be invited to participate in the inspection if deemed necessary.

This technical team should issue an inspection report that is signed by the members of the team as well as the investor on the day of the inspection. This report is the final documentation to proceed to the issuance of the business licence or *alvara*. The fee for the inspection and issuance of the business licence is Mt13.000 (R5,200) and the licence is valid for a period of five years.

⁴⁵ Article 17 of Decree 41/2005

⁴⁶ Article 19(4)

Operational Issues

Once the business licence has been issued the operator has 15 days to ensure that they acquire the appropriate signage for their business and that the business licence is located in a visibly prominent location in their offices.⁴⁷

Business Licence Issues: The business licence can be declared invalid in the following cases:

- If, following the issuing of a licence, the business fails to conduct travel agency activities for a period equal to or greater than 90 days;
- The activity of the travel agency is interrupted for a period of 90 days or greater without just cause and or having been duly authorised by the competent authority; or
- Failure to renew the business licence, security or insurance within 15 days after its expiry.

Inspections and fines: A travel agency may be periodically inspected by the competent authorities. In the case of a travel agency, the inspection team will be headed and formed either by national level (MITUR, DNTUR) or the provincial authorities (DPTUR). Typically, in a municipal setting the Provincial Directorate of Tourism is the lead agency in inspections. The legislation provides for the inclusion of additional authorities in the inspection team, however, does not specifically indicate which authorities. Each infraction noted in the context of an inspection should be provided in writing (*auto de notícias or notificação*) to the manager of the agency and fines are applicable for respective infractions in accordance with Articles 72 to 76, and Annex VI of Decree 41/2005. Upon the reception of the written advice regarding an infraction, the travel agency will have a period in which to reply to the notification. Normally, this period is seven days. The operator can respond by simply paying the fine indicated or can submit a written explanation of the circumstances of the infraction and request an attenuation of the penalty. Should he not be successful, he should obtain legal advice as to his rights, as administrative decisions may also be appealed in court. The competent authorities have discretion to reduce or do away with fines, providing a written warning, in the case of first instances based upon the specific circumstances of the infraction. The procedure for reviewing these requests for the attenuation of penalties, and the respective arbiters of the decision, varies from institution to institution. However, it should be noted that the detection of a reoccurrence of an infraction within a period of six months can amount to the tripling of applicable fines.

Complaint book: All travel agencies must have an approved and registered complaint book available to all clients. The complaint book must be located in a visibly prominent place within the agency. See Annex IV of Decree 41/2005 for the correct format for the complaint book.

⁴⁷ Article 20(3)

Statistics: Travel agencies are responsible for sending statistics to the competent authority regarding the numbers of national and international tourists that have visited the country using their services. Statistics regarding the tourists travelling to the country can be demanded within 5 days of the end of each quarter.⁴⁸

Procedure	Relevant Authority	Relevant laws
Register company	Commercial registry & Notary's Office, Government Printer (for publication of articles of association)	Commercial Code 2 of 2005, of 27 December Decree – Law 3 of 2006 (Regime for constitution, alteration and dissolution of collective persons)
Register with CPI	CPI	Law on Investment, Law No. 3/93, of 24 th June. Regulations on the Investment Law, Decree 14 / 1993, of 21 July
CONSTRUCT NEW PREMISES		
Check availability of land and apply for land rights	Municipality, or Provincial Governor, or Ministry of Agriculture, depending on size and location of land; Provincial Directorate of cadastral services & mapping	Law 19/97 of 01 October – Land Law Decree 66/98 of 08 December—Land Law Regulations Decree 1/2003, of 18 February, amending Decree 66/98 of 08 December Decree 77/99 of 15 October (setting authorisation and annual fees) Ministerial Diploma 29/2000-A of 17 March (Technical Annex to the Land Regulations)

⁴⁸ Article 78 of Decree 41/2005

		Regulations on Urban Land Use Decree 60 of 2006, of 26 December
Environmental Licensing	MICOA	Law 20/97 of 01 October, Environment Law. Decree 32/2003 of 12 August (Environmental Audit Process Regulations) Decree 45/2004 of 29 September (Regulations on Environmental Licencing) Decree 18/2004 of 02 June (Environmental Quality and Effluent Emission Norms)
Obtaining a building licence	Municipality or District Administrator	Decree 2 of 2004 (Regime for the Licensing of Private Construction)
RENT PREMISES		
Conclude a rental agreement	Private contract, no approvals or notarisation necessary	Inter alia: Civil Code, Lei do Inquilinato
PURCHASE PREMISES		
Execute Deed of Sale, pay transfer taxes, register transfer	Notary Municipality (for payment of taxes) Property Registrar of area where premises are located	Inter alia: Civil Code, Real Property Registration Code (<i>Codigo do Registo Predial</i>) approved on 28 March 1967 and published in the Portuguese <i>Boletim Oficial</i> dated 30 December 1967, Series I, Nr. 52, 6 th Supplement

Obtaining a business licence	MITUR (tourism), Ministry of Trade and Industry (general commercial and import and export licences)	Decree 49 of 2004 – general commercial licencing regulations Decree 41/2005 – Regulations on Tourism and Travel Agencies
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APPENDIX 3: THE PROCEDURE TO INVEST IN A RESTAURANT

To invest in a new restaurant in Mozambique, the investor will pass through five procedural steps. These are:

- Preliminary steps including company registration, the opening of a bank account, and tax registrations;
- Obtaining investment approval for the repatriation of profits and to access incentives, to the extent applicable, and also to entitle the company to obtain land use rights, if these are required;
- Having the proposed project approved by the provincial governor;
- If premises are to be constructed:
 - obtaining from the state the right of use over the land in question, which may include acquiring the consent of a local community;
 - securing an environmental licence, where applicable;
 - securing building licences; and
- Securing an operating licence.

In addition, once the restaurant is operational the owners must comply with ongoing requirements and inspections.

The procedure involved in each of these steps is set out in detail below.

Preliminary steps

Preliminary steps include the registration of a company, the opening of a bank account into which company share capital should be deposited, and registration for tax (tax numbers are required for a number of activities, including the activation of a company bank account and the installation of a fixed telephone line).

Investment approvals

Investment approvals are issued either by a provincial governor, the Ministry of Finance, or the Council of Ministers depending on the size of the investment, via application to the Centre for the Promotion of Investment (CPI).⁴⁹

If an investor intends to rent or purchase premises for his restaurant, and is not concerned about exporting profits or tax incentives or employing a large number of foreign workers, then investment approval would not be needed.

If the investment will be more than USD 50,000 by way of direct foreign investment, or more than USD 5,000 by way of local investment⁵⁰, investment approval will be needed should the investor wish to benefit from certain tax incentives and guarantees against expropriation, be

⁴⁹ Article 15 of Decree 14 of 93 (the Investment Law Regulations)

⁵⁰ Article 6 of the Regulations on the Investment Law, Decree 14/93

entitled to repatriate the initial investment, as well as profits, and / or be entitled to acquire land use rights, in terms of Article 11 of the Land Law 19 / 97, or make use of the incentives provided for the in labour law: investors with investment approvals which specify the number of foreign workers they intend to employ, do not need to obtain work permits for these employees, even if the total number of foreign workers at the establishments exceeds the quota laid down in the labour law.

An application should be submitted to the CPI, on the standard form. The CPI will request opinions from other government authorities⁵¹, prior to issuing Terms of Authorisation, which are reviewed by the investor before being made final.⁵²

Once this authorisation has been received, the investor must register the project with the Central Bank within a period of 120 days, and thereafter register each capital import, failing which he will not benefit from the agreed tax incentives and right to repatriate funds. In addition, Article 19 of the Investment Law Regulations requires that the Investor commence implementation of the project within 120 days of the date of notification, which period may be extended once, on payment of a performance guarantee, failing which the investment authorisation will be cancelled.⁵³

The CPI is also able to help the investor to identify investment opportunities, put him in touch with the provincial governor, and be of general service in facilitating the investment, although the level of help may not always meet with international expectation.

The obtaining of an investment authorisation should take place prior to attempting to acquire land use rights, if these are required by a restaurant investor. Although there have been cases in which land rights have been allocated to companies having a majority foreign shareholding, without prior CPI approval, this is in conflict with Article 11 of the Land Law. In addition, investment approval should be obtained prior to importing (i) goods, as one of the incentives available is a complete exemption on import duties on all goods listed in class K of the customs tariffs, which includes certain machinery and materials, and (ii) capital, as the right to repatriate invested capital and profits is dependent upon both the investment approval and the registration of the approval and each capital import with the Central Bank.

⁵¹ Article 13 of the Investment Law provides, "1. Following the verification of the investment proposals, the investment Promotion Centre shall, within seven (7) working days after the reception of the proposal, ensure the necessary co-ordination with the project sector supervising Government body and with the Provincial Government and the Municipal Council of the City in which area the project shall be located, with the aim of creating practical conditions that will allow the commencement of the project implementation. 2. For the purposes of the previous provision, the Head of each sectoral supervising government body, the Ministry of Planning and Finance (Customs and Taxation Departments) and the Provincial Government and the Municipal Council of the City shall appoint the relevant representative, and his substitute, who shall guarantee the inter-institutional coordination with the Investment Promotion Centre."

⁵² The full procedure and time frames followed by the CPI prior to issuing the final authorisation are contained in Decree 14/93.

⁵³ Investment approvals are usually also made conditional upon certain factors – including, for example, the conducting of an environmental impact assessment – and the view of the CPI is, in general, that the 120 day period for project implementation does not commence until these conditions have been fulfilled.

Obtaining the restaurant premises

There are two principal ways an investor can go about acquiring installations for the carrying on of commercial activities. The first is to acquire existing real estate via a rental or purchase agreement. The second is the acquisition of land and the construction of installations for the commercial activities. The steps to be followed in each case are outlined below:

Rental: After the investor has identified a suitable building in which to operate, a rental agreement will be signed. The existence of premises, at which an investor has a legal right to trade (e.g. by means of a rental agreement) is a key step in the licensing process. Premises will need to be inspected before an operating licence is issued. Investors renting premises should take note that VAT is levied on commercial letting agreements at 17%, and also that they, as tenants, are liable to withhold an amount of 20% of the rental, as a tax on the landlord, which must be paid by the tenant on a monthly basis. It is recommended that any rental agreement concluded prior to obtaining the approval of the provincial governor for the installation of a restaurant, be made conditional upon such approval.

Investors who intend to purchase new restaurant premises should also ensure that they have approval for the location of the establishment from the provincial governor, prior to finalising the purchase. Investors should conclude a promissory purchase agreement, which is conditional upon such approval.

Purchase: Investors may wish to purchase premises. Mozambique has no restrictions on the foreign ownership of buildings (as opposed to the land). Foreign purchasers should however note the law on land use (and in particular, that all land is state-owned, but that land use rights may be issued to certain qualified persons by the state) - and should obtain legal advice before purchasing premises.

Once the investor has identified a particular piece of land, the location should be verified with the municipal council as being zoned for commercial activities. Acquisition of land within a municipal area is governed by relatively new urban land legislation (*Decree 60/2006, Regulation on Urban Land*) that is complementary to the national land law. Investors seeking to acquire land in an urban area are subject to the guidelines within that law. This law foresees the possibility of direct negotiation between the investment group and the municipality for the provisional DUAT. Decree 60/2006 on Urban Land Regulations is focused primarily on outlining the processes that municipalities must follow to develop and implement land use plans within their area of jurisdiction. The law is a relatively new development in Mozambique and the impact of this decree has been virtually invisible to the average medium and small scale investor at municipal level. Whether in municipal areas or outside of municipal jurisdiction the land acquisition process is still plagued by conflicting information, uncertainty amongst investors and the misapplication of rules and regulations regarding land acquisition.

Community consultation would only take place in circumstances in which the land in question is held under traditional community land rights, i.e. the investors were acquiring the land directly

from a particular community who has a traditional DUAT. Regardless, if land is acquired from traditional land right holders a period of 30 days of public review (*edital*) at the municipality is required to ensure that the proposed land is available for transfer and that there are no other parties with conflicting claims to that land or who stand to benefit from the transmission of a given parcel of land.

The exact process for acquiring a DUAT over the land is described in detail in Appendix 1 – (The Procedure to Invest in a Hotel).

The following licences would also be required to construct premises.

Environmental licence

The environmental law provides for the categorisation of projects requiring varying levels of environmental oversight. Most often, smaller scale investments such as a travel agency are not subject to the full EIA process as per the regulation on EIA process (Decree number 45/2006) as they fall within category C of that regulation. A category C activity is required to observe “norms and specific directives of good practice in the area of environmental management⁵⁴”. However, an opinion on the project from municipal authorities is very often requested from the competent authority. A team comprising representatives from the Provincial Directorate of the Environment and the municipality will conduct a visit to the location of newly constructed premises to ensure that the project is consistent with broad guidelines for environmental management. The completion and submission of a “Preliminary Environmental Information Form⁵⁵” to the provincial directorate and municipality assists the team in assessing the application of good environmental management guidelines.

Building licence

Simultaneously with environmental approvals, the investor draws up technical construction plans and obtains a building licence, in the manner set out in Decree 2 / 2004 (the Regime for the Licensing of Private Construction). In a municipality, the plans need to be approved by the municipality, through its various departments of construction (for building plans), health (for kitchen design, sanitary facilities, quality of workers’ change rooms etc), and fire (for assessment of emergency exits, location of fire detectors, etc). Outside of a municipality this role is played by the District Administrators, in terms of Article 5 of Decree 2/2004, who delegate their responsibility to various provincial directorates.⁵⁶

Once the technical plans have been approved, and a building licence has been issued, the investor can start construction. When the construction is complete the investor requests an inspection by a multi-sectoral team comprising officials dealing with construction, health and

⁵⁴ Article 3, paragraph c), Decree 45/2006

⁵⁵ Decree 45/2004, Annex 4, “Ficha de Informacao Ambiental Preliminar”

⁵⁶ Article 14 and 15 of Decree 2/2004 allow for the delegation of authority to Provincial Directorate for Public Works, and to “functionaries of the local authority or district administrator” (for the purpose of verifying sewerage / drainage systems.)

fire). If everything is in order, the municipality or District Administrator will issue an utilisation licence, following which the building may be occupied.

Building licences should, by law, be issued within 30 days of the receipt of the relevant application. (Article 22(5) of Decree 2 of 2004.) An inspection must be conducted within 30 days of a receipt of a request for an inspection, and a utilisation licence issued within a further 30 days following a favourable inspection. (Articles 35 and 36 of Law 2 of 2004).

The ownership of the building should thereafter be registered with the relevant Real Estate Registry.⁵⁷

Project approvals by the provincial governor

As soon as a decision has been taken as to the intended location of the restaurant, an application should be submitted to the provincial governor for approval of the location of the restaurant.⁵⁸

The application should include, inter alia, the following:

- The opinion of the municipality or district administrator of the area in which the restaurant is to be located;
- An opinion regarding environmental impact (if applicable);
- The number of workers to be employed;
- Indication of the investor's right to use the location (e.g., a DUAT, or rental agreement, or purchase agreement); and
- Site plan / map of location, building plans and descriptive memorandum of the premises.⁵⁹

In terms of the law (Article 18 of Decree 18 of 2007) this process should not take more than 18 working days of receipt of the proposal (10 days for a technical assessment; 5 days for decision; and 3 days for notification). In fact, the process can take much longer, chiefly because of delays in the transfer of the application from one government office to the next.

Once the authorisation of this preliminary application is obtained, the applicant must submit a full "executive study"⁶⁰ within a period of 180 days, failing which the preliminary approval will lapse. An applicant may choose to submit only an executive study, and dispense with the preliminary approval, if he wishes.

Obtain operating licence from provincial governor

⁵⁷ The construction and utilisation licence should be presented to the Registry, along with proof of the identity of the owner and proof of the payment of applicable taxes. The Registrar will then issue a Certidao.

⁵⁸ Articles 11, and 14 and following of Decree 18 of 2007

⁵⁹ Articles 14 and 17 of Decree 18 of 2007

⁶⁰ An "executive study" is simply a name for a comprehensive application for the installation of a restaurant. Decree 18 of 2007 contains an extensive list of requirements which must be submitted.

Once the establishment is fit for operation, the investor should request the provincial governor to perform an inspection, and to provide the establishment with a classification, in terms of articles 174 and following, and 207, of Decree 18 of 2007 (The Regulations on Tourism Accommodation, Catering and Beverages). Restaurants are classified as luxury, or 1st, 2nd or 3rd class, depending on the services offered.

An inspection should, by law, be conducted by two representatives of the Ministry, a health inspector, a representative of the National Park if the establishment is located within a Park, and a member of the police if the restaurant includes a dance hall. This team will inspect the site and confirm that the establishment is fit for operation. If so, it will issue a final operating licence. The operating licence must be displayed at all times in the restaurant. An operating licence is issued for an indeterminate period.

If the investor has land rights: secure a definitive DUAT

If an investor has acquired provisional land rights, and has constructed a restaurant, he should then apply to the entity which issued its provisional land title, for the award of a final and definitive DUAT, which means that the investor will have the right to use the land for the purpose set out in the approved project for the next fifty years, renewable upon application for another fifty years. The fact of the extension should be registered with the Real Estate Registry.

Operational issues

Once the restaurant is open for business, there are also a number of operational procedures to go through to run the restaurant. These include the following general requirements:

Tourism matters:

- Article 231 of Decree 18/2007, of 7 August (the Regulations on Tourism Accommodation, Catering, Beverages and Dance Halls) requires restaurants to submit price lists when requesting an inspection for licencing purposes.
- Article 231(4) requires amended price lists to be submitted within 5 working days "if the establishment has been reclassified."
- Article 235 states that no establishment may charge prices higher than those which have been authorised.
- The fine for the charging of prices which are higher than those authorised, is between 8,000 and 40,000 Meticaiss, in terms of Annexure IX of Decree 18/2007.
- Restaurants are also required to submit complaints book to Tourism in terms of article 223 of Decree 18/2007.
- Copies of complaints must be submitted to the tourism inspectorate within 5 working days, so that the complaint may be investigated. (Article 225).
- The fine imposed for the non-submission of complaints, should be between Mt 5,000 and Mt 10,000 as per Annexure IX of Decree 18/2007.

Labour matters:

- Registration of all employment contracts with the Ministry of Labour;
- applications to the Ministry of Labour for work permits for foreign employees⁶¹;
- registration of employees for social security;
- displaying of required labour-related forms, at the premises, including a list of employees and their respective salaries, and a schedule of working hours (both of which should first be submitted to the Ministry of Labour);
- keeping of a record of overtime and exceptional work; and
- correct maintenance of individual employment files.

Tax matters and accounting:

- Tax registration (if not performed immediately following company registration);
- the filing of monthly VAT and annual corporate tax returns, as well as the payment of VAT and corporate tax at the times required by law; and
- the appointment of a duly licensed Mozambican accountant.

Company books

- The keeping of legally required company books (including those containing shareholders and directors resolutions);

Compliance with requirements specific to restaurants, as contained, inter alia, in Article 219 to 238, and 259 and following of Decree 18 of 2007, including:

- Serving the kinds and varieties of food required by law, as per the restaurant's specific classification,
- Displaying the restaurant's current classification and operating licence,
- Practicing non-discrimination in the running of the establishment,
- Complying with Law 6 of 99, as regards the entry of minors into the establishment, and
- Displaying appropriate signage.

Article 266 of Decree 18 of 2007 requires an establishment to notify the Ministry of its transfer of ownership, termination or suspension of activities, closure, revocation or expiry of its operating licence, and amendments to the company's articles of association or any elements contained in its operating licence.

⁶¹ The new Labour Law provides a quota system for the employment of foreigners, depending on whether the establishment is classified as large (more than 100 employees – in which case 5% of employees may be foreign), medium (11 to 100 employees – in which case 8% may be foreign) or small (10 or fewer employees – in which case 10% may be foreign). These foreigners may be employed by way of a simple letter of notification to the Ministry. Beyond that, formal applications for work permits must be submitted. Note however that if a CPI authorisation makes provision for the employment of a certain number of foreigners, then that number may be employed automatically (even if the quota is exceeded), by simple notification to the Ministry within 15 days after the arrival of the employee.

Procedure	Relevant Authority	Relevant laws
Register a company	Commercial registry & Notary's Office, Government Printer (for publication of articles of association)	Commercial Code 2 of 2005, of 27 December Decree – Law 3 of 2006 (Regime for constitution, alteration and dissolution of collective persons)
Register with CPI	CPI	Law on Investment, Law No. 3/93, of 24 th June. Regulations on the Investment Law, Decree 14 / 1993, of 21 July
Check availability of land and apply for land rights (if required)	Municipality, or Provincial Governor, or Ministry of Agriculture, depending on size and location of land; Provincial Directorate of cadastral services & mapping	Law 19/97 of 01 October – Land Law Decree 66/98 of 08 December—Land Law Regulations Decree 1/2003, of 18 February, amending Decree 66/98 of 08 December Decree 77/99 of 15 October (setting authorisation and annual fees) Ministerial Diploma 29/2000-A of 17 March (Technical Annex to the Land Regulations) Regulations on Urban Land Use Decree 60 of 2006, of 26 December
Environmental Licensing (if required)	MICOA	Law 20/97 of 01 October, Environment Law. Decree 32/2003 of 12 August (Environmental Audit Process Regulations) Decree 45/2004 of 29 September (Regulations on Environmental Licencing) Decree 18/2004 of 02 June (Environmental Quality and Effluent Emission Norms)
Obtaining a building licence (if required)	Municipality or District Administrator	Decree 2 of 2004 (Regime for the Licencing of Private Construction)
Obtaining a commercial and restaurant operating licence	MITUR (tourism), Ministry of Trade and Industry (general commercial and import and export licences)	Tourism Law 4/2004 of 17 June Decree 49 of 2004 – general commercial licencing regulations Decree 41/2005 – Regulations on Tourism and Travel Agencies Decree 18 of 2007 – Regulations on Tourism Accommodation, catering, Beverages and Dance Halls

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Relevant laws

- 1) Law 3/93, of 24 June – Law on Investment
- 2) Decree 14/1993, of 21 July - Regulations on the Investment Law
- 3) Law 19/97 of 1 October – Land Law
- 4) Law 20/97 of 1 October - Environment Law.
- 5) Decree 66/98 of 8 December—Land Law Regulations
- 6) Decree 77/99 of 15 October - setting authorisation and annual fees for land use
- 7) Ministerial Diploma 29/2000-A of 17 March - Technical Annex to the Land Law Regulations
- 8) Decree 1/2003, of 18 February - amending Decree 66/98 of 08 December (the Land Law Regulations)
- 9) Decree 32/2003 of 12 August – the Environmental Audit Process Regulations
- 10) Decree 2 /2004 - Regime for the Licencing of Private Construction
- 11) Law 4/2004 of 17 June – the Tourism Law
- 12) Decree 18/2004 of 2 June (Environmental Quality and Effluent Emission Norms)
- 13) Decree 45/2004 of 29 September (Regulations on Environmental Licencing)
- 14) Decree 49/2004 – General Commercial Licencing Regulations
- 15) Decree 41/2005 – Regulations on Tourism and Travel Agencies
- 16) Decree-Law 2/2005, of 27 December – the Commercial Code
- 17) Decree–Law 3/2006 - Regime for the constitution, alteration and dissolution of collective persons
- 18) Decree 60/2006, of 26 December - Regulations on Urban Land Use
- 19) Law 23/2007, of 1 August – the Labour Law
- 20) Decree 18/2007 – Regulations on Tourism Accommodation, Catering, Beverages and Dance Halls

APPENDIX 4: HOTEL INVESTMENT PROCEDURES IN MAURITIUS

The investment procedure in Mauritius is relatively streamlined. The investor must go through the following steps:

- Registering a company;
- having the project concept approved;
- applying for a lease over state land;
- obtaining an environmental licence;
- having the technical building plans approved; and
- obtaining an operating licence

In straightforward cases, these steps will take about 6 months to process in total. Approval is needed from five different authorities. There is no need to apply for any incentives or permission to repatriate capital as there are, in fact, no sector-specific incentives and no prohibitions on repatriating capital or any customs duties. This reflects the fact that since 2004 Mauritius has been moving to a flat tax system.

The key procedures are described here in more detail:

Registering a company: This is a simple procedure with the Registrar of companies that takes one day to complete.

Have project approved by Ministry of Tourism: The Ministry of Tourism will decide on the suitability of the project and will ensure it is in line with the Planning Policy Guidelines (these set out standards on how densely spaced the units can be, plot coverage, maximum height etc), and certain agreed architectural principles. It will also take an opinion from the local authority that the project respects planning guidelines. Once satisfied, Tourism will issue a letter of intent which confirms its approval of the project in principle, subject to certain conditions. This process takes about 1 month.

Apply for a lease over state land: Most land in Mauritius is held by private freehold, with about 20% being owned by the state. State land cannot be alienated by freehold transfer but it is possible to obtain a long-term lease for 60 years over state land. Importantly, all land that lies within 90m of the sea is, by default, state land and as almost all hotel investments in Mauritius are found along the coast, investors will need a lease over state land to set up the hotel. (This might be supplemented by contiguous land in the hinterland acquired private sale and transfer of freehold.)

The application for a lease is lodged with the Ministry of Housing and Lands which is the only state entity entitled to dispose of state land. The Ministry of Housing and Lands will seek comment on the application from the Ministry of Tourism, the only other Ministry who can reject the application. The decision of the Ministry of Housing and Lands will take about one month. If the lease is approved the investor must make a payment of MUR25million (R8million) into a

tourism development fund which is used to promote tourism, improve tourism infrastructure and for social projects.

One major advantage of the procedures in Mauritius compared to Mozambique is that it's very rare that state land is inhabited by local communities. The law does not establish or recognize any communal rights to the land so there is no need for any sort of community consultation or consent process.

Another advantage is that the decision to accept or refuse the investment rests with just two centralised bodies – namely the Ministry of Housing and Lands and the Ministry of Tourism. There is no competition between central, provincial and local government, as a) there is no provincial government in Mauritius and b) local government has no power of discretion or refusal in awarding the land for the project. The process is centralised and hence easier to facilitate, and so much clearer to and predictable for the investor.

The letters of intent from the Ministries of Housing and Lands, and Tourism are issued subject to environmental approvals and building licenses being granted.

Obtain environmental approvals: The environmental application is made to the Ministry of the Environment and National Development, though an EIA is only required if the hotel is within 1km of the sea. Hotels with more than 75 rooms require their own sewerage facility and desalination plant. The EIA process takes about 3 months to complete.

Obtain planning and construction licenses: Then the investor lodges construction plans, fire drawings and other technical drawings with the local authority where the hotel will be situated. The local authority will ensure the development is compliant with the local planning scheme and that the buildings are technically sound. They will issue a building and land use permit, which takes just 2 weeks to process. The Business Facilitation Act of 2006 introduced the notion of silent agreement – that is, if the application is not refused within 2 weeks then it is deemed by law as granted.

Obtain tourism licence: When construction is complete, the investor will apply to the Tourism Authority, an autonomous body which regulates standards in the tourist businesses, for an operating licence. A separate licence is needed for every listed activity e.g.) for running a hotel, for running a restaurant, for running a tour operator etc. All hotels and restaurants are regulated by the Tourism Authority, even those typically serving locals rather than tourists. The Tourism Authority will take input from the police, the fire department and health and safety and if the application is approved (1 month turnaround) will issue a letter of intent with conditions that need to be met. Standards are patrolled strictly and licences tend only to be issued to developers with strong brands and proven deep links to targeted source markets.

The investor cannot start operating without the licence, though, in practice; there have been very few instances of licenses being refused. The licence must be renewed annually although this is a formality, and the application is not considered in detail again. There is no additional operating licence needed from the local authority, although other licences may be needed for the sale of liquor, running a restaurant and so on.

Hotels also have to pay a levy of 0.85% of total net turnover which is used for social projects.
No labour permits are required except for employing foreigners

APPENDIX 5: INTERVIEW LIST (MOZAMBIQUE AND MAURITIUS)

Name	Institution	Position
MOZAMBIQUE GOVERNMENT		
Fernando Sumbana	Ministry of Tourism	Minister
Mohamed Harun	Ministry of Tourism	Advisor to Minister
Bartolomeu Soto	Ministry of Tourism	National Director for Conservation Areas
Ana Comoane	Ministry of Tourism	National Director of Tourism
Helder Chambal	Ministry of Tourism	National Deputy Director of Tourism
Albino Mahumane	Ministry of Tourism	Advisor to National Dir. Tourism
Dina Tava Ribeiro	Ministry of Tourism	National Director of Planning and Cooperation
Ricardo Combomune	Ministry of Tourism	DNATUR
Osman Mussa	CPI	Deputy Director
Nuno Maposse	CPI	Projects Department Manager
Zacarias T. Sumbana	FUTUR	CEO
Mario Sevene	FUTUR	Lawyer
Engineer M. Nakala	Ministry of Agriculture	National Director
Salvador Jossias	Ministry of Agriculture	Head of Cadastral Surveys & Mapping
Leonardo Boby Bauhofer	Ministry of Interior	Deputy National Director Migration Services
Luis Luis	Ministry of Environmental Action & Coordination	Head of Environmental Assessment Unit
Hortencia Uetela	Ministry of Trade & Industry	Private Sector Development Unit
Aida Muinga	Ministry of Health	Health Technician
Joaquim Cha Bethe	Ministry of Public Works	Senior Inspector public works
Renato Taveira	Maputo Fire Brigade	Manager, Department of Fire Fighting and Prevention
Silva Magaia	Maputo Municipal Council	Head, Planning and environment
Mario Macaringue	Maputo Municipal Council	Head, Infrastructure
Mr Muadxiwa	Inhambane Provincial Directorate of Tourism	Provincial Director
Alfredo King	Inhambane Provincial Directorate of Tourism	Head of Department-Tourism Activities
Itai Meque	Governor of Inhambane Province	Governor
Lourenço Macul	Mayor of Inhambane City	Mayor
Patricio De Jesus	Inhambane Provincial Directorate of Labour	Provincial Director of Labour
MOZAMBIQUE DONORS/NGOS		
Tim Bourne	USAID	Head
Andrew Hebler	USAID	Senior consultant
Kwasi Agbley	Nathan Associates Inc.	Team leader of Arc Norte project

Irene Visser	IFC	Programme Manager
Hermione Nevill	IFC	Consultant - Tourism
Michel Souto	IFC	Consultant - Business Analyst
Binoy Sharma	SNV	Consultant
Jeremy Gottwals	Freelance consultant	Tourism consultant
Thomas Ebeherr	Inhambane DPTUR	Consultant
MOZAMBIQUE PRIVATE SECTOR		
Arturo Esposito	Pestana Group	Director Operations
Karim Merali	Serena Hotel Group	Director
Rui Monteiro	Turconsult	Director
Sergio Moreira	Visa Beira	Commercial Director
John Law	Barra Resorts Mozambique	CEO
Dave Law	Barra Resorts Mozambique	MD
Rui Santana	DubaiWorld	Project Manager
Natalie Tenzer	Dana Tours	Director
Joao Das Neves	Mozambique Adviser/Thompsons Mozambique	Director
Manuel Patrakakis	Costa Do Sol	Owner
Jorge Jordao	Restaurant Zambi	Owner
Mario Martinho	The Meat Company	Owner
Arthur Collet	Three Cities Group	Development Manager
Adrian Frey	Mozlegal	Director
Louise Alstom	Mozlegal	Senior Legal Consultant
MAURITIUS		
Raju Jaddoo	Board of Investments	Managing Director
Dev Chamroo	Board of Investments	Director
Anjali Narrainen	Board of Investments	Manager - Hospitality
Radhakrishna Chellapermal	Ministry of Finance and Economic Development	Director – Financial Policy Analysis
Jean Maxy Simonet	Ministry of Tourism, Leisure & External Communications	Permanent Secretary
S. K. Pather	Ministry of Public Utilities	Permanent Secretary
Sateevad Seebaluck	Ministry of Environment & National Development Unit	Permanent Secretary
Premila Aubeeluck	Ministry of Housing and Lands	Permanent Secretary
Robert Pallamy	Tourism Authority	Director