

## MEMO

The present serves the purpose of briefly summarizing the main features of the recently approved *Time share* legal diploma (attached). Many features of the regime had to be left out, thus this Memo cannot be considered a legal analysis of the articles of the Decree, nor of the regime thereby approved.

Furthermore, this regime has to be read jointly with that approved by Decree n° 40/2005 dated 30<sup>th</sup> August (Tourism accommodations, catering and beverages).

Before entering into the description of this legal Diploma (a Decree enacted by the Council of Ministers according to the powers granted under the Tourism Law, Law n° 4/2004, dated 17<sup>th</sup> June), it is important to note that under Mozambican legal regime, the ownership of the land is vested in the State and private entities (commercial or not, singular or collective) can only be granted the Right to Use and Develop the Land (the "DUAT") or a Special License to carry out economical activities inside totally or partially protected or conservation areas. As for the ownership of an asset, it shall be granted, outside urban areas, where the regime is different, to the entity (with a DUAT) that registers the immovable asset as its own.

It can be then concluded that the rights involved in time share of property in Mozambique are more similar to the concept of "possessory interests", than to that of "complete ownership rights".

The Decree, which, according to the transitional rule in art. 98, may be reviewed 1 year after its entering into force, governs (art. 2): (1) the creation, exercise, transfer and termination of Periodical Housing Rights (hereinafter "Rights"), (2) the rules and procedures applicable to the licensing of tourism and real estate projects (hereinafter "Project"), intending to promote the Rights, and (3) Residential tourism (all terms defined in art. 1).

The regime applicable to the non compliance with the rules of the Decree is established in arts. 81 and following.

The Decree applies to all purchasers or transferees of the Rights, irrespectively of their nationality.

## **The Main Investors**

The owner of a Project, the promoter and the owner of the facilities/units - immovable assets (art. 3), can apply before the competent authority (Ministry of Tourism - MITUR, also competent for approving the location - art. 53), to be licensed to develop tourism Projects, facilities (units) and Residential Tourism on a time share scheme.

Projects and Residential Tourism undertakings can be implemented in stages.

Amongst the several requirements for the licensing of a Project (and relevant facilities/units), the Decree establishes those to be considered as general conditions (art. 7), which include the need for any Project to be managed by a single entity, to grant the Rights for the entirety of an immovable asset (Apart-Hotel and Tourism apartments excluded).

The specific requirements in terms of data and information to be submitted with the application for the License, the consultative process to be followed, the grounds for the decision of the competent authority (arts. 54 and following) and for the authorization of the installation of the facilities (arts 63 and following) of the Decree, are also regulated.

Art. 68 stipulates that the authorization procedure applicable to projects inside conservation areas are to be regulated by the Tourism accommodations, catering and beverages' Decree. Also specifically in relation with the holders of Special Licenses, the Decree clarifies that an applicant does not have to be the owner *stricto sensu* but it can also be the entity to which the Special License was issued.

Before beginning of operations, the owner shall apply for the Final License in accordance with the procedure established in arts. 72 and following.

The owners of the Projects are obliged to present a bond for the purpose of securing third parties rights and expectations on the Project (art. 9) - between 500 x the minimum wage (approx. 65 USD) to 1000 x the minimum wage -. The entity in charge of the lease or management of the Project (owner of the accommodation units or lessor) is also liable to present a bond for the good management and conservation of the assets (art. 36).

The entity in charge of the management, and for each of the different types of Rights, is legally required to periodically provide to MITUR, a Management report (with financial information and other).

The Decree also regulates the items to be addressed or disclosed on any marketing of the Rights (art. 5) including, that there is an obligation to disclose the information to any party that so requests, and the need for all representatives, agents or Lessees (Affermage Contract) to be authorized by MITUR before engaging into any activities related with a Project (art. 5).

## **The Rights**

The Rights include the powers to live in the immovable asset for a limited time period, to use common facilities and benefit from common services (utilities and others), to demand access to alternate housing, in similar conditions and close by, in case of a force majeure event, and to transfer the above mentioned powers. The Decree states that (art. ) such powers shall not be limited or excluded in any way.

The Rights can be of the following types: (A) Time sharing enforceable against third parties or contractual; (B) Tourism housing contractual rights; (C) Fractional or Shared ownership; the law excludes the possibility of imposing different types of Rights over the same asset.

The owner of a tourism facility (listed in art. 1) managed under a time share scheme, or who acts as the owner, shall be the first holder of the Certificate.

The main characteristics of each of the Rights are:

### **Time sharing enforceable against third parties**

- Cannot have a term longer than 50 years
- Minimum of 7 days and maximum of 30 consecutive days (all Rights shall be of the same duration)
- project shall have to be classified with 3 stars or equivalent
- The creation of the Right is formalized under a Public Deed (can only be amended after approval of MITUR)
- The Public Deed shall be used for the registration of the Right (art. 19)

- The Right shall be titled on a Certificate (which shall be the basis for subsequent transfer or encumbrances of the Right - all by means of a Public Deed and registered)
- The Buyer of time sharing rights can immediately terminate the contract and cannot advance any payments, for whatever reason and as long as related with the transaction, before the expiry of a 10 business days after the execution of the purchase agreement
- A purchase agreement can be preceded by a Promise to Contract (agreement subject to specific formalities as per arts. 23 and 24)
- Owner can lease the development of the Project, but shall remain joint and severally liable before the holders of the Right
- Holder of the Right has to pay to the owner of the accommodation unit a monetary contribution (specified on the Public Deed of creation of the Right) for the reasons specified in art. 27
- Provisions: not less than 4% of the above mentioned monetary contribution for repair and maintenance and
- Not less than 5% are destined to the local communities
- There are specific requirements for the authorization of the installation of the units object of this Right (art. 65)

### **Tourism housing contractual rights**

- Time sharing contractual rights
- Only exceptionally these rights can be granted during the construction of the units (art. 39)
- Cannot have a duration lower than 3 years nor higher than 25 years
- Minimum of 7 days and maximum of 30 consecutive days
- project shall have to be classified with 3 stars or equivalent
- The creation of the Right is formalized under a Transfer Contract with notarised signatures
- The Buyer can immediately terminate the contract within 10 business days after its execution
- A Transfer Contract can be preceded by a Promise to Contract
- There are specific requirements for the authorization of the installation of the units object of this Right (art. 66)

### **Fractional ownership enforceable against third parties**

- Over each asset there can only be 12 Rights

- Can be created and transferred by means of a corporate mechanism such as the incorporation of a local company, that shall regulate the Right as an interest over the shareholding in a local company, or
- By Public Deed (art. 49 and 50)
- The creation of the Right formalized under a Public Deed can only be amended after approval of MITUR
- The Public Deed shall be used for the registration of the Right
- The Right shall be titled on a Certificate (which shall be the basis for subsequent transfer or encumbrances of the Right - all by means of a Public Deed and registered)
- There are specific requirements for the authorization of the installation of the units object of this Right (art. 67)

### **Residential Tourism**

- Only in areas declared of tourism interest (as per the Tourism Law, to be so declared by the Council of Ministers)
- Includes the granting of full ownership rights and all other use and fruition rights (art. 51), including those enforceable against third parties
- Can be created and transferred by means of a corporate mechanism such as the incorporation of a local company, that shall regulate the Right as an interest over the shareholding in a local company, or
- By Public Deed
- The creation of the Right formalized under a Public Deed can only be amended after approval of MITUR
- The Public Deed shall be used for the registration of the Right (art. 19)
- The Right shall be titled on a Certificate (which shall be the basis for subsequent transfer or encumbrances of the Right - all by means of a Public Deed and registered)
- There are specific requirements for the authorization of the installation of these units (art. 67)