

REPUBLIC OF MOZAMBIQUE COUNCIL OF MINISTERS

Decree no.14/93 of 21st July 1993

The approval and entry into force of Law No.4/84 of 17th August and of Law No.5/87 of 30th January, ad of their respective Regulations, marked an important step in the definition of the legal and regulatory frameworks which govern the process of carrying out foreign and national investment in the Republic of Mozambique.

Lessons and experience has been acquired since then through practical application of the legislation referred to above and though activities of promotion and realisation of investments in the country. Such experience raised the need for revision and adaptation of the legislation and its Regulations and simplification and standardisation of the procedures for evaluation, approval and monitoring of the processes of both foreign and national investments.

In this context, with the new legislation governing foreign and national investment in the country having been approved and with a view to establishing the regulatory framework foreseen in Article 29 of Law No.3/93, of 24th June, the Council of Ministers decrees that:

Article 1. The Regulations of the Investment Law, Law No.3/93, of 24th June, which constitute an integral part of this Decree, are hereby approved.

Article 2. The provisions of the Regulations on Procedures for National Investments and of the Regulations on Direct Foreign Investment approved respectively by Decrees No.7/87 and No.8/87, both of 30th January, are hereby revoked.

Article 3. The present Decree enters immediately into force.

Approved by the Council of Ministers.

Published.

THE PRIME MINISTER

Mário Fernandes da Graca Machungo

REPUBLIC OF MOZAMBIQUE COUNCIL OF MINISTERS

Decree No. 36/95 of 8th August 1995

Being it necessary to review the procedures in force established by Regulations of the Investment Law approved by Decree No.14/93, of 21st July, with the aim of streamlining the process of submission, verification, registration, inter-institutional coordination and the decision-making on investment project proposals, the Council of Ministers, under the provision of article 29 of the Law No. 3/93, of 24th June, decrees:

Article 1. The articles 6, 10, 11, 12, 13, 14, 15, 16, 17 and 19 of the Regulations of the Investment Law are hereby altered to the text contained in the Annex to the present Decree.

Article 2. The changes contained in the Annex referred to in previous paragraph constitute integral part of this Decree, which content shall be incorporated in the Regulations of the Investment Law approved by Decree No. 14/93, of 21st July.

Approved by Council of Ministers.

Published.

THE PRIME MINISTER

Pascoal Manuel Mocumbi

Regulations of the Law on Investment

(Approved by Decree no. 14/93, of 21st June 1993, with changes approved by Decree no. 36/95, of 8th August 1995, incorporated)

Article 1
(Subject)

The purpose of these Regulations is:

1. the indication of the body charged with the coordination of the processes of investment and the creation of the institution which shall be responsible for the promotion of investment and rendering advisory services to Government bodies on investment matters;
2. the definition of areas reserved for the public sector to carry out investments, with or without the involvement of the private sector;
3. the fixing of a minimum value for direct investment required in investment projects as well as the establishment of rules for the determination of the real value of investments made;
4. the stipulation of rules and deadlines for the presentation, analysis,

- evaluation and decision-making on investments, as well as for monitoring and verifying the processes of implementation of investment projects;
5. the definition of the levels and deadlines for decision-making on investment projects and the procedures to be followed when the proposals are not approved within the established time period limit;
 6. the establishment of rules for the issue of investment certificates, for the introduction of alterations in the terms of the authorizations granted and for the cancellation of such authorizations; and
 7. the institutionalisation of rules of communication and correspondence and of resolution of any complaints in connection with investment matters.

Article 2

(Scope of application)

The provisions contained in these Regulations shall apply to investment initiatives and projects submitted, approved and implemented under Law No.3/93, of 24th June.

Article 3

(Coordination of investment processes)

The Minister of Planning and Finance shall ensure the coordination of all processes of investment governed by Law No.3/93, of 24th June, and by the present Regulations.

Article 4

(Investment Promotion Centre)

1. The Investment Promotion Centre is hereby created with the aim of assisting the Minister of Planning and Finance to ensure the implementation of the provisions of Law No.3/93, of 24th June, and of these Regulations, through undertaking actions to coordinate the promotion, analysis, follow-up and verification of investments carried out under the Law referred to above and these Regulations.

2. The Investment Promotion Centre shall be directly under the aegis of the Minister of Planning and Finance and shall be governed by its own Statute as approved by the Council of Ministers.

Article 5

(Areas reserved for the public sector)

1. Without affecting the provisions of Article 4 of Law No.15/91, of 3rd August, and any other specific laws, the areas defined as reserved for

investment by the public sector, with or without private sector participation, shall comprise the following:

1. the production of electrical energy for public consumption in accordance with the specific legislation relevant to the matter;
2. the public supply of water for domestic and industrial purposes in urban centres;
3. the operation of postal services and public telecommunications;
4. the development and operation of national parks, both marine and on land, and of other areas under protection of law;
5. the production, distribution and trade of arms and munitions.

2. In justifiable circumstances, the Ministers and Secretaries of State supervising the respective areas of activity may propose to the Council of Ministers the alteration of the areas referred to in paragraph 1 of this Article. Such changes shall only be effective from the date of their entry into force.

Article 6

(Minimum value of direct investment)

1. For the purposes of these Regulations and of Law No. 3/93 of 24th June, the minimum value of direct national investment, as the paid up own equity capital of the respective investors, is fixed at the countervalue in national currency of five thousand United States dollars.

2. For the specific purposes of the remittance of profits abroad under paragraph 1 (a) of article 14 and other applicable provisions of the Law No. 3/93, of 24th June, and these Regulations, the minimum value of direct foreign investors and applied in an authorized economic undertaking, is fixed at the value of fifty thousand United States dollars.

3. The Council of Ministers may alter the minimum values of direct investment established in paragraphs 1 and 2 above, and such alterations shall only be effective as from their date of entry into force.

Article 7

(Determination of the value of direct national investment)

1. The value of direct national investment made, for purposes of registration and legitimacy for enjoyment of the guarantees and of fiscal and customs incentives provided for under Law No. 3/93, of 24th June, shall comprise the sum of the value of the own equity capital, including shareholders' loans and/or additional supplies of shareholder capital contributed in accordance with paragraphs 2 of Article 17 of the said law.

2. The burden of proof of the effective application of direct national investment in an undertaking approved by the competent authority and implemented in the country, shall rest with the respective investor through registrations duly organised and confirmed by documents issued or certified by competent authorities for specific matters depending on the nature or form of contribution of the capital or relevant investment.

Article 8

(Determination of the value of direct foreign investment)

1. the value of direct foreign investment made, for the purposes of registration and of eligibility for guarantees and incentives established for foreign investors, as well as for the purposes of remittance of profits and capital abroad, shall consist of the sum of the value of investors' own equity capital, shareholders' loans and additional supplies of shareholders' capital made available in accordance with the terms of paragraph 2 of article 17 of Law No. 3/93, of 24th June, which have entered the country and been effectively applied in an investment project, and of the exportable profits reinvested in the country and registered with the competent authority in the Republic of Mozambique.

2. the burden of proof of the effective entry of foreign direct investment applied in an undertaking duly authorised and carried out in the country, lies with the respective foreign investor through the presentation of registrations duly organised and confirmed by documents issued or certified, in the Republic of Mozambique, by the customs authorities and banking institutions, depending on the nature or form of the investment realised.

3. if the foreign direct investment is in the form of equipment, machinery and other imported material goods, then the respective values of the investment shall be considered at F.O.B. prices for the purposes of the provisions of this Article, unless the transport and insurance have been carried out by Mozambican companies and the respective payments have been made in foreign currency and effectively entered Mozambican territory.

4. the Ministry or Secretariat of State in charge of the sector of activity in which the investment has been made, in coordination with the Investment Promotion Centre, the Ministry of Trade and the National Customs Directorate, may determine that a technical team or an appropriately specialised entity carry out the evaluation and supervision of the costs, quality and specifications of the equipment, machinery, goods and materials imported and destined to be incorporated as investment in a project.

5. if, in the evaluation referred to above, situations of overinvoicing are discovered, the investors shall pay the expenses of evaluation, without affecting the application of sanctions provided for in the law.

Article 9 (Presentation of Proposals)

Investment proposals shall be submitted in three copies, duly elaborated in an appropriate form, to the Investment Promotion Centre or its provincial delegate, accompanied by die relevant documents referred to below in Articles 10 and 11, as applicable.

Article 10 (Documentation accompanying Proposals)

1. The submission of investment proposals must be accompanied by the following documentation:

1. bank references for each prospective investor;
2. documents proving the legal existence of the prospective corporate investors;
3. reports and accounts of the previous financial year as well as any existing catalogues, brochures and other publications which illustrate the activities of the proponents;
4. the "curriculum vitae" and certificate of the criminal record of the main persons responsible for the implementation and operation of the project;
5. any proposed articles of association of the company to be formed and registered in Mozambique for carrying out the proposed project and its activity in cases the envisaged implementing company doesn't yet exist;
6. any proposed alterations to be introduced in the articles of association, if the company is one which already exists;
7. the agreement or contract of association between the partners of the company, if applicable;
8. an evaluation study of the environmental impact of the project.

2. The submission of proposals which involve indirect investments shall include, additionally, the following elements:

1. the title deed or title to exclusive access or use of the specific form of indirect investment under consideration, indicating the respective period of validity of the deed;
2. the contract proposal or other valid document that establishes the forms and conditions applicable to the utilisation or application of the form of indirect investment in question.

3. Foreign corporate proponents intending to invest through establishment of a branch in Mozambique shall present, in addition to the relevant elements referred to above, the following:

1. the legal document that proves the existence and the field of the firm or institution intending to establish a branch in Mozambique;
2. an indication of the own equity capital of the branch to be opened and operated in Mozambique, indicating explicitly the form of its realisation;
3. the minutes of the general meeting convened to deliberate on creating a branch, duly translated into Portuguese and authenticated.

Article 11

(Investments with share capital expansion and/or share offers)

1. Investment proposals which involve an increase in share capital or the offer or acquisition of shares shall be accompanied by the following supplementary documents:

1. the project or information which demonstrates the economic or legal need for the increase of share capital and the participation of foreign direct investment;
2. a photocopy of the minutes of the general meeting or other body deemed competent under the respective articles of association, which contains the decision taken to proceed with the expansion of share capital envisaged;
3. a copy of the certificate of commercial and fiscal registration of the firm in which the investment shall take place;
4. Financial statements and accounts for the last two financial years, except in cases where the company has existed for a shorter period of time; and

2. Proponents which are public limited companies shall, in addition, indicate:

1. the face value and the number of shares to be issued, the forms of their subscription, their issue price and conditions of purchase;
2. any rights and privileges envisaged which may be conferred upon new shares to be issued and benefit the shareholders participating in the expansion of capital; and likewise, the number of shares to be subscribed and the forms and dates of their realisation;

3. Proponents which are private limited companies shall, in addition, identify the shareholders who will participate in the expansion of share capital as well as the values, forms and time periods for realising their respective

participations.

Article 12

(Verification of the conformity of investment proposals)

1. The Investment Promotion Centre, or its provincial delegate, shall, upon the reception act, verify the conformity of each investment proposal and other documents presented on the basis of the appropriate application form.

2. The verification of the conformity of investment proposals shall essentially be focussed on the following aspects:

1. Prosecution of at least seven (7) of the ten (10) main investment objectives in Mozambique as stated out in article 7 of the Law No.3/93, dated 24th June;
2. Capacity and availability of financial resources necessary for carrying out and start the operation of proposed investment project;
3. Capacity, experience and entrepreneurial and/or technical characterisation of the proponents of the project (or provided by them) in order to guarantee the technical implementation and operation of the project;
4. Positive balance of the profitability foreseen for the project proposal;
5. Any implication of political, social, economic, financial and environmental concerns or of any other nature;
6. Measures provided (or to be undertaken) in order to guarantee the availability of:
 7. land necessary for the project;
 8. premises (own ones or to be leased);
 9. equipment (existing one or to be acquired);
10. logical structure of personnel foreseen for the management, operational, executive, auxiliary and seasonal staff (existing or to be recruited).
11. Compliance with law and basic principles of the national economic policy and the sectorial development policies and strategies.

3. Once verified the conformity of each investment proposal, the Investment Promotion Centre shall proceed with the registration of the relevant investment project.

Article 13

(Inter-institutional coordination)

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 coordination with the project sector supervising Government body and with the Provincial Government and the

Municipal Council of the City in which are 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 sectorial 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 Promotional Centre.

3. Independently of the reasons that may be evoked, in lack of any position, reaction and viewpoint within the time-limit set out in paragraph 1 of this article from the representative or his substitute appointed as per the previous paragraph, the Investment Promotion Centre and the relevant decision-making authority shall consider the tacit favourable position taken by such representative or substitute in relation to the proposal of approval to carry out the investment project submitted to him for his pronouncement.

Article 14

(Approval proposal)

1. Completed the verification of each investment proposal, the Investment Promotion Centre shall prepare the approval proposal to be submitted to the consideration and decision of the competent decision-making authority.

2. The approval proposal shall contain the draft of the Provincial Governor's Order, Ministerial Order or Internal Resolution of the Council of Ministers and the Specific Terms of Authorization shall, inter alia, contain:

1. the identification of the investors;
2. the designation and activity of the project and of goods and/or services envisaged by the project, and an indication of the targets and results to be attained;
3. the location and scope of activity of the project;
4. the regime of authorization of the concession or license to exploit natural resources and to use infrastructure and equipment;
5. the value of the resources and other goods and services referred to in paragraph (d) above, as well as the forms of payment for the use of such goods and services;
6. the nature, value and forms of the realisation of the investment concerned;
7. the legal status of the enterprise to be formed or established for the project, as well as the list of the possible shareholders or partners,

- the distribution of capital shares, the total value of the initial capital and the dates they are to be paid up;
8. the import-export regime and the nature of the commodities to be imported and exported;
 9. the number and the categories of the national and foreign workers to be employed, and the training schemes envisaged for Mozambican workers;
 10. the incentive to be granted and the regime for remittance abroad of profits accruing to foreign investors;
 11. the time period for starting the implementation of the undertaking, or of each phase of its implementation, as appropriate;
 12. the area and availability of the land required for the project, with favourable supporting information from the National Directorate of Geography and Surveys or by the City Council, as applicable;
 13. any other relevant issues to be included in the authorization.

Article 15

(Competence and time-limits for decision making on investments)

1. Decision making for the approval of carrying out the investment projects received in the country shall be taken by:
 1. the Provincial Governor, within the maximum time-limit of three (3) working days after the reception of each approval proposal for carrying out investment projects of amounts equal to or higher than the countervalue of five thousand United States dollars up to one hundred thousand United States dollars;
 2. the Minister of Planning and Finance, within the maximum time-limit of three (3) working days after the reception of each approval proposal for carrying out investment projects which are eligible for the remittance of profits abroad as well as any national investment project, when the total value of the project does not exceed the countervalue of one hundred million dollars of United States.
 3. the Council of Ministers within the time-limit of ten (10) working days after the reception of each investment approval proposal for carrying out the following type of projects:
 1. investment projects which values exceed the countervalue of one hundred million of United States dollars;
 2. projects requiring land concessions of areas equal to or higher than five thousand (5 000) hectares for agricultural purposes and ten thousands (10 000) hectares for livestock and forestry purposes;
 3. any other project with foreseeable serious implications of political, social, economic, financial concerns or of any other nature which should be pondered and decided upon by the Council of Ministers.

2. Based on weighty consideration of political, financial, economic, social and any other complexities and implications of an investment project, the Investment Promotion Centre may submit investment proposals, under competence of the authorities referred to in subparagraphs (a) to (c) of previous paragraph to the consideration of the Minister of Planning and Finance for referring them to the decision-making by the Prime Minister.

Article 16

(Confirmation of tacit approval)

1. Elapsed over three (3) or ten (10) working days, counted from the date of reception of the approval proposal submitted as per the provisions of, respectively, the sub-paragraph (a) and (b) and the sub-paragraph (c), both of paragraph 1 of the previous article, without a decision having been taken on the proposal, the Investment Promotion Centre shall confirm the tacit authorization granted by the relevant decision-making authority for carrying out the investment project in conformity with the precise terms of the approval proposal submitted to such authority for decision making purpose.

2. It is null and void any other decision taken on the same date or after the confirmation of the tacit authorization granted and confirmed in accordance with the provision of the previous paragraph.

Article 17

(Notification of the decision taken)

1. Decision taken on investment project by the provincial Government shall be notified to the project's proponents by the provincial delegate of the Investment Promotion Centre. Such notification shall be made within two (2) working days of the date the decision has been taken and shall include the terms of the authorization granted to the project.

2. The Investment Promotion Centre shall within the time-limit of two (2) working days counted from the date of the decision taken as per the provisions of articles 15 and 16 on each investment project proposal notify the relevant proponent investors and inform them the decision taken as well as the relevant terms of the authorization being such decision taken a favourable one.

3. Notification of authorization granted by the competent authority confers on the investors the right to immediately begin to implement the authorized project in accordance with the terms of the authorization and the provisions of the legislation applicable on specific matters.

4. Proponents whose investment projects have been rejected my reformulate

their proposals and submit them anew in accordance with the provisions of Articles 9 and 11, as applicable, for the reconsideration of the decision taken.

Article 18
(Company formation and registration)

1. The associated investors shall fulfil the necessary legal formalities relevant to the formation and registration of the company that is to implement the project, namely with the Notary Public, the Commercial Registry and the Local Tax Office of the area of location of the head office or main establishment of the company.
2. When an investment project is to be carried out by a branch of an existing company, such branch shall be registered by the respective investor with the Commercial Registry.

Article 19
(Starting implementation of the project)

1. Implementation of the project approved falls under the responsibility of the individual investors or the company concerned and shall start within one hundred and twenty (120) days counted from the date of notification to the investors as referred to in paragraph 2 or Article 17, if a different time limit is not established in the authorization.
2. In case the effective implementation of the project doesn't start within the time limit set out in previous paragraph, and unless the concerned investors provide a performance guarantee deposit and/or other type of callable performance guarantee correspondent to five percent (5%) of the total investment, but never higher than US\$500.000, as a back-up of the investors' commitment to really pursue the effective implementation of the project, the authorization granted for carrying out the project shall be cancelled and shall not from then have no legal effect.
3. The deposit or other type of performance guarantee provided for as per previous provision shall be fed and given back to the concerned investors once they have effectively made and applied in the approved project an investment amount equal to the value of the deposit or other type of performance guarantee provided for by such investors.
4. If the commencement of the project implementation doesn't take place within the maximum period of additional hundred twenty days (120) the authorization granted to carry out the project shall be cancelled, and the deposit or other type of performance guarantee provided for as per paragraph 2

of this article shall revert to the State of Mozambique and the Bank of Mozambique shall be the competent entity to call for such performance guarantee pursuant to the notification received from the Investment Promotion to proceed in such direction.

Article 20

(Commercial book-keeping and statistical records)

1. Investment undertakings carried out in the Republic of Mozambique shall organise and maintain a system of book-keeping and statistical records in conformity with the commercial legislation applicable, and shall make information available at any time concerning the evolution of the economic and financial situation of relevant projects.
2. Undertaking operating any foreign currency transactions shall maintain records and controls of such operations in conformity with the banking rules and procedures in force in the country.

Article 21

(Follow-up and verification of investments)

1. The realization, operation and management of approved investment projects and their activities shall conform with the provisions of the Mozambican legislation, and, specially, with the conditions established by the terms of the authorization and any other legal provisions governing specific matters relevant to the project or its activities.
2. The follow-up and verification of the realization of investment projects governed by Law No. 3/93, of 24th June, and by the present Regulations, shall be ensured by:
 1. the Government authorities and institutions which supervise the respective sectors and branches of activity to which the investment projects relate, for issues of their specific concern and responsibility;
 2. the Investment Promotion Centre, which shall follow-up the fulfilment of the terms of the authorization of projects, and of the provisions of these Regulations and of Law No. 3/93, 24th June.
3. The Investment Promotion Centre may regularly request information from investors regarding the development of investment undertakings, either through specific forms to be completed, or through visits and audit missions to the investment projects.
4. Depending on the results of the visits and audit mission carried out,

sanctions appropriate to the nature of each infringement found may be applied, including the payment of the expenses of visits and audit missions and possible suspension or cancellation of the right to enjoy the guarantees, incentives and other benefits granted under Law No. 3/93, of 24th June.

Article 22

(Issues and updating of investment certificates)

1. Having produced proof of fulfilment of the formalities required by legislation applicable to approved investment undertakings, the Investment Promotion Centre shall, at the request of the respective investors, issue the investment certificate which proves the compliance of requirements demanded by law and the effective realization of the investment in the undertaking or company, which shall also contain the names of the national and foreign investors involved in the undertaking.

2. The proof referred to in paragraph 1 above shall consist of a dossier containing authenticated copies of the following documents:

1. certificate of the formation of the company at a Notary Public;
2. articles of association of the company published in the Official Gazette (Boletim da República);
3. certificate of registration of the undertaking with the Commercial Registry;
4. proof of registration of the undertaking with the local tax office;
5. document of appointment of the managing director of the undertaking and assignment of duties s/he will carry out for the project;
6. proof of the effective realization of the investment, including the description and specification of the investment actually made by each co-investor through:
 7. contributions to share capital;
 8. shareholders' loans;
 9. provision of equipment and other material goods;
 10. other forms (specified).
11. Financial statements and accounting reports of the closed financial year(s);
12. Other information considered by the investors as of interest and relevant for the purposes of following-up the state of development of the undertaking;

3. If additional investments or other substantial changes to the undertaking has taken place, and have been proved in accordance with the provisions of paragraph 2 of this Article, the Investment Promotion Centre shall update the relevant investment certificate, at the request of the investors.

4. The investment certificate issued under the terms of this Article shall provide sufficient proof for the purposes of recognition and the enjoyment of the guarantees and incentives referred to in Articles 14 to 17 of Law No. 3/93, of 24th June.

Article 23

(Alterations to the terms of authorization)

Under circumstances worthy of consideration, and at the duly founded formal request of the investors or their representatives, the terms and conditions established in the authorization may be modified by the competent authority that approved the investment project, as provided for in Article 16 of these Regulations.

Article 24

(Cancellation of the authorization)

Cancellation of the authorization to carry out an investment project may only be decided by the entity which granted such authorization, if any of the following circumstances occurs:

1. winding up of the company before the expiry of the validity period of the authorization granted;
2. expiry of the time limit established for the start of the project's implementation without it having been actually started;
3. refusal to supply information, supply of false information and/or denial of access for the appointed officials for visits and audit missions to the undertakings;
4. Interruption of performance of the project's activities for a period of more than three successive months or for a period of more than four interpolated months without previous consent of the competent authority that granted the authorization for the project's realization;
5. serious infringement of the provisions of Law No. 3/93, of 24th June, or of these Regulations, or of the terms of the respective authorization or any other relevant legal arrangements.

Article 25

(Communication and Correspondence)

Any communication and exchange of correspondence between the parties and entities involved in the process of presentation, verification, analysis and evaluation, approval, notification, supply of information and follow-up, linked to investment projects, shall be legally binding when having been reduced to writing and communicated to the parties and entities envisaged, and

the relevant documents shall acquire legal force once signed by the authorized representatives of the parties or entities involved.

Article 26
(Complaints)

1. Complaints related to investment issues arising from the application of Law No. 3/93, of 24th June, and these Regulations, shall be submitted, duly founded, to the Investment Promotion Centre.

2. The Investment Promotion Centre shall, within ten days, refer each complaint to the appropriate entity, requesting the necessary analysis and the measures to be taken for its resolution.

3. If, within the period of twenty days, counted from the date of the request referred to in paragraph 2 above, no reply has been given or no steps taken for the resolution of the complaint submitted, the Investment Promotion Centre shall refer the matter for consideration and decision by the Minister of Planning and Finance, with the express information of the silence assumed by the entity which the complaint had been directed to.

4. Complaints relating to the Investment Promotion Centre shall be submitted, adequately founded, to the Minister of Planning and Finance.

5. The provisions of this Article do not limit the right of recourse by the interested parties in applying the procedures for resolution of disputes on investments provided for in Article 25 of Law No. 3/93, of 24th June.