

The Legal Framework

For Company Start-up in Mozambique



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SAL & CALDEIRA
ADVOGADOS, LDA

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1. INTRODUCTION

This booklet is one of a series aimed at helping investors do business in Mozambique. It is based on the idea that informed investors can more easily follow the law, and the conviction that the rule of law is the best guarantor of property and of orderly and sustained development.

The series has been developed jointly by a number of institutions, including GIZ Pro-Econ (Ambiente Propício para o Desenvolvimento Económico Sustentável), GIZ PRODER (Programa de Desenvolvimento Rural), CFJJ (Centro de Formação Jurídica e Judiciária), SAL & Caldeira Advogados Lda, Deloitte, and ACIS. By combining the experience of these institutions, we hope to give investors clear, practical advice with a sound basis in law.

In 2008 the government published its strategy to improve the business environment in Mozambique (Resolution 3/2008 of 29 May). This was a response to growing concern about Mozambique's slippage in the World Bank's Doing Business indicators, and ongoing complaints from the private sector about the complexity of the procedures required to incorporate, register and license companies.

The business environment improvement strategy is in the process of being operationalised, and certain supporting legislation, such as that creating forms of simplified licensing and one-stop shops has been introduced. These changes have been taken into consideration in this new edition and it is anticipated that further changes and improvements will be made as a result of implementation of the strategy which is designed to take place between 2008 – 2012. Updates to this guide will be made as significant changes become operational.

As we prepared this booklet, we found ourselves at times disagreeing over what was proper procedure in respect of certain official acts. We learned that that was because, in some cases, the same matters were handled slightly differently in Beira and Maputo. While the differences are not of great consequence, for clarity of exposition we decided to follow this simple rule: we describe procedures as conventionally done in Maputo. Of course, the day-to-day application of the rules may be different in Quelimane or elsewhere in the country. While the sources of law governing most of these procedures (with the exception of municipal by-law), are national, of course, local interpretation of national law can generate distinct practices.

We also had to choose between describing procedures as they apply to limited liability quota companies (colloquially known as *limitadas*) and limited liability share companies (colloquially known as SAs or previously as SARLs). Because the great majority of start-up companies in

Mozambique are organized as *limitadas*, we chose the *limitada* as our prototypical form of legal person.

On many occasions in the text of this English language edition, where we have been faced with a choice of whether to use a term in English or in Portuguese, we have used the term in Portuguese. While this may seem, in the short term, disadvantageous to the reader unfamiliar with Portuguese, in the long term she will become more conversant and comfortable with the basic vocabulary of corporate governance in Mozambique. The effort is one worth making.

Other booklets in the series are available on the ACIS web site, www.acismoz.com.

While we have tried our best to be accurate, we may have made some mistakes, and we have certainly made some omissions. Also, law and public administration are dynamic subjects, and it is very likely that in the near future, some law or regulation described herein will be changed. We hope to correct the mistakes and supply the omissions in a next edition, so please do tell us of any that you find. In the meantime, the detailed nature of the subject matter and ordinary prudence both compel us to disclaim liability for those errors or omissions. In cases of doubt, readers would do well to consult legal counsel.

We hope that you find this booklet and the others in the series useful. Mozambique is a wonderful country and, as an entrepreneur creating wealth and employment, you have an important role to play in building it. Our role is to help you do yours. Força!

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2. GLOSSARY OF TERMS

Please find below a list of some of the terms you will encounter during the process of incorporating and registering your company. Defined terms are set forth in bold typeface.

Águas de Moçambique	Local water company. Águas de Moçambique is a private company supplying water under contract in various Mozambican cities. It invoices monthly.
Alvará	Company trading or operating license.
Assembleia Geral	The General Assembly of a company, sometimes also called the General Meeting. The Assembleia Geral is the highest corporate body of a company; it is composed of the quotaholders or their representatives. The Assembleia Geral elects the management of the company. The Assembleia Geral must by law meet at least once a year and may meet more often. The minutes of those meetings are recorded in the Livro de Actas .
Assinatura Reconhecida	Signature on a document compared to that in an identity document and stamped as corresponding thereto, by the Notary .
Auto de Vistoria	Certificate of Inspection of company premises. To be signed by inspectors from CHAEM, Bombeiros , and the relevant Provincial Directorate, as well as by the municipal council where relevant.
Autorização de Trabalho	Work authorisation issued by Ministry of Labour to foreign employees. Usually valid for two years.
Balancete	Long hand accounting book purchased at government stationers, stamped and signed by the Court and Provincial Finance Department.
Balcão Único	One Stop Shop. These entities have been created in provincial capitals. So far they receive licensing applications for commercial and industrial licenses and for import and export permits though under new regulations their role is to be expanded to cover other procedures in the incorporation and registration process.
BI	Bilhete de Identidade, or Mozambican Identity Card. Every Mozambican worker must have a current one of these.
Boletim da Republica	The official gazette of the Government of Mozambique, in which laws and regulations, as well as companies' articles of association, must be published.
Bombeiros	The Provincial Fire Department, who will send a representative to inspect the safety of your premises. This department can inspect your offices at any time
Caderneta de Controlo Sanitário	Health and Safety Inspection Book. Purchased then stamped by CHAEM . Must be available for inspection at company offices.

Cartão de Contribuinte	Individualized social security identification card provided by INSS (the National Institute for Social Security) to each worker. A copy should be kept in the worker's personnel file.
Cartão de Desemprego	Provincial Labor Department registration document. Every new employee must have one. Rarely requested in Maputo.
Certidão de Registo Comercial	Certificate of commercial registration of a company, sometimes called the <i>certidão comercial</i> . The registration can be a provisional one, valid for 90 days and therefore called <i>provisório</i> , or a permanent one, called <i>definitivo</i> .
Certidão de Reserva de Nome	Certificate issued by the Conservatória de Registo de Entidades Legais affirming that there exists no company with same name as the name by which the incorporators propose to call their company, in the geographical region covered by that Conservatória de Registos and reserving that name for 90 days.
CHAEM	The Centro de Higiene, Ambiente e Exames Medicos, a division of the Provincial Health Department. CHAEM inspects company premises for health and safety prior to and as a condition of licensing, and carries out health checks on new employees. (This latter procedure is not often done in Maputo.) CHAEM can inspect company premises at any time.
Conservatória de Registo	Commercial and Property Registry. In Maputo, commerce and property registration are handled by distinct registries, the <i>Conservatória de Registo Comercial</i> and the <i>Conservatória de Registo Predial</i> . Changes made in 2006 should lead to all registries being known as “ <i>Conservatória de Registos de Entidades Legais</i> ” and to all procedures being streamlined and digitized. However that has not yet happened.
Cópia autenticada	Copy of a document compared to the original and stamped as corresponding thereto by the Notary
Data de Início de Actividade	The date you specify, in communications to various government departments, as the date on which your company will start trading. Periodic accounts must be submitted from this date and no item can be invoiced prior thereto.
DIRE	Documento de Identificação e Residência para Estrangeiros, or Foreigners' Identification and Registration Document. A DIRE is issued by the Provincial Immigration Department on the basis of a work permit issued by the Ministry of Labour. (In Maputo, the DIRE is issued by the National Department of Immigration). DIREs are usually required to be renewed annually.
Direcção Provincial de Trabalho	Among other functions this department receives an application for and issues work permits to foreigner workers, based on a quota system calculated according to the size of each company.
DUAT	Direito de Uso e Aproveitamento de Terra or the right to use and benefit from land – a land usage title

EDM	Electricidade de Moçambique, the national power company. EDM invoices monthly.
Empresa Unipessoal	A limited liability company with a single quotaholder or shareholder.
Escritura Pública	Literally, a public deed. In the context of company incorporation, the term is sometimes used as shorthand for the handwritten (or increasingly in some provinces, computer printed) extract of the articles of association prepared by the Notary , with certain other documents attached.
Estatutos	The articles of association of a company, supplying the rules by which corporate life and the relationship between the quotaholders will be conducted.
Folha de Salário	Pay schedule. This must be completed in duplicate with the worker signing both copies and also receiving a take-home breakdown of his salary. The schedule must contain all deductions and is submitted monthly to the Provincial Labor Department by the 10 th of the subsequent month.
Horário de Trabalho	Work schedule form outlining the hours during which the company will be open for business. The Horário de Trabalho must be approved by Provincial Labor Department and displayed at the company's offices.
INSS	Instituto Nacional de Segurança Social, or National Institute for Social Security, the institution that administers the social security system. Workers pay 3% of their salaries, withheld at the source, to which the employer adds a further 4% contribution. Payments must be made monthly by the 10 th of the subsequent month. The term INSS is sometimes used as shorthand to refer to the social security tax itself.
IRPS	Imposto sobre o Rendimento da Pessoa Singular, or Personal Income Tax. A tax on income withheld at the source from all employees listed on the Folha de Salário (national and foreign), and payable by the employer by 20 th of month. Rates vary in accordance with income, and supplemental payments may be due from the employee the following year based on his or her total income.
IVA	Imposto sobre o Valor Acrescentado, or Value Added Tax. Currently set at 17%. Some goods are exempt.
Livro da Razão	Long hand accounting book purchased at government stationers, stamped and signed by the Court and the Provincial Finance Department.
Livro de Actas	Company minutes book, in which the minutes of meetings of the Assembleia Geral are recorded.
Livro de Reclamações	Complaints book. Each government department must have one. It can be used to raise both general and specific complaints.
Livro Diário	Long hand accounting book purchased at government stationers, stamped and signed by the Court and Provincial Department of Finance.

Modelo 1	The form by means of which one states ones intent to the Ministry of Finance to begin activities and by which one defines the tax regime to apply to the company
Modelo 6	The form by means of which one applies for a NUIT .
Notary	The Provincial Registry and Notary Department, responsible for the preparation of public deeds (including for the incorporation of companies), official validation of certain other legal acts, and authentication of signatures and documents, among other duties. In Maputo, there are a variety of notarial offices distributed around the city.
NUIT	Número Único de Identificação Tributária, or tax registration number. The NUIT is sometimes also referred to as the VAT registration number. The NUIT must be clearly printed on all invoices and receipts, as well as being shown on any invoices and receipts submitted into the company accounts. Individuals' personal tax identification numbers are also referred to as NUITs .
Plano de Férias	Company leave schedule prepared annually in accordance with the Labor Law. The Plano de Férias must be displayed at the company's offices.
Processo Individual	Personnel File. A processo individual must be created for each new employee, and should contain the employee's photograph, BI , labor contract, cartão de desemprego , health certificate issued by CHAEM . It is also where other personnel records are to be kept. In Beira and Maputo, special files for the processo individual may be purchased.
Procuração	Power of Attorney, a grant by one person to another to represent him, usually for certain limited purposes, as appropriate to the context.
Relação Nominal	List of all employees (national and foreign, including quotaholders) on the Folha de Salários , including details of salary, grade, and educational attainments, among other details. Prepared on a form sold at the Provincial Department of Labor or government stationers, or electronically on a template available from ACIS. The Relação Nominal must be displayed at the company's offices.
Seguro Colectivo	Workers' insurance. This must be paid by companies for all employees, and usually covers work-related accidents and other risks not covered by INSS .
Taxa de Lixo	Municipal rubbish collection tax, payable monthly or annually to the Municipal Council. In Maputo, the taxa de lixo is included on a utility bill rather than being collected directly.
TDM	Telecomunicações de Moçambique, the national telephone company. Having connected your line, contact TDM on 800 123123 (in the city of Beira) between the 15 th and 30 th of each month to receive a statement of your account, which must be paid by the 30 th .
Vistoria	Inspection by officers of the relevant Provincial Directorate, Bombeiros and CHAEM of the company's premises, prior to or following the issuing of an Alvará , depending on whether simplified licensing or standard licensing procedures are followed.

3. INCORPORATION AND COMMERCIAL REGISTRATION

There are various types of commercial society, those in collective name, of capital and industry, of shares or anonymous ones. A society which intends to operate a commercial company may only do so using one of the types mentioned. The most common type of commercial society created is the limited liability, quota-hold company and it is this type that is described herein.

A quota-hold company, in which the social capital is divided into quotas and the partners are fully responsible the provision of that social capital is characterized by the limited liability of the partners. This means that the owners of the company – whether shareholders or, as in the present case of the *limitada*, the quotaholders – are only liable to third parties up to the amount they contributed to the capital of the company. If the company becomes insolvent, the disappointed creditors cannot reach the quotaholders' personal assets.

Incorporation, as the name itself implies, is the process by which the law confers legal personality on a business enterprise that we call in this booklet, and in ordinary speech, a company. The law requires that a certain number of formalities be completed to create such companies. And if those formalities – detailed below – are slighted, then the business endeavor may not have legal personality distinct from that of its promoters. So please be most careful to take each required step, and you will have a reliable corporate vehicle with which to do business in Mozambique.

The first step to incorporate a company is to select a name and reserve it at the Commercial Registry (*Conservatória do Registo de Entidades Legais* or just *Conservatória*). The name chosen can be an individual's name, a composite of the names of the partners, an invented name, or can allude to the type of business the company will undertake. In the case of a limited liability quota-hold company, at the end of the name, an abbreviation indicating the legal form of the company is appended. In the case of a *limitada*, the abbreviation used is "Lda".¹ On all official correspondence the name followed by the abbreviation for legal form must be shown. This serves the purpose, among others, of alerting a third party that the people she is transacting with have limited liability – that is, only the assets that belong to the company are, in principle, available to back up the commitments those people make.

¹ For a limited liability share company (*Sociedade Anónima*) the abbreviation "S.A." is used. In an SA, the participants in the capital are called "Shareholders". For a limited liability company with only one participant (empresa unipessoal) the designation *Limitada* or *Lda* is not used

3.1 NAME CERTIFICATE (*Certidão de Reserva de Nome*)

In order to reserve the company name, you send a simple request (*requerimento*) to the Commercial Registry asking that they verify in their records that no other company with the same or a similar name exists. A fee must be paid. A receipt is provided.² (Do keep all your receipts – they are useful as business expenses to offset your revenues).

Having verified that the name selected is unique and not so similar to any other name as to create confusion in the public mind, the *Conservatória* issues a *Certidão de Registo Negativo* or *Certidão de Reserva de Nome*.³ This has the effect of reserving that name for your use for 90 days – time enough to proceed to the next step in the incorporation process.

There are two details worth remembering about reserving a company name. One is that the *Conservatória* in each city or district is not integrated with all the others (though over time this should change as Decree-Law 1/2006 of 3 May is implemented). That means, in practice, that a person can successfully reserve a name in Maputo while in Beira, a company with that same name already exists. While not a common event, it does happen from time to time. Second, the Commercial Registry's records currently consist of a series of ledgers, some of which are quite old, and a search may not always provide accurate results. For those reasons, it is worthwhile doing some research, for example using telephone directories from the main urban centers, in order to ensure that the name selected is not already in use. The process of establishing a computerized registry has already begun in Maputo and is being extended to other provinces, so these issues should be resolved in the near future.

3.2 THE SOCIAL CONTRACT (*Contrato de Sociedade*)

The Social Contract is the term used for the constitution of a commercial society. In broad terms this contract comprises three parts: the signing of the contract; its registration; and its publication.

² In Maputo, the letter sent to *Conservatória* does not need the signature to be notarised whereas in other provinces this continues to be required. Nor is there a special rate for expedited service in Maputo while in other provinces this difference exists, and there are some differences between the fees charged and times required for issuing the certificate, in different parts of the country.

³ In Maputo the *Certidão de Registo Negativo* is now called *Certidão de Reserva de Nome* (Name Reservation Certificate).

The Social Contract may be celebrated in the form of a document drawn up by the quota-holders and signed in the presence of a notary, or in the form of a public deed if immovable assets are included as part of the contract.

“Public deed” is simply the name given to the formalities associated with making certain classes of acts or contracts valid and enforceable in Mozambique⁴

The terminology used in this context can be a bit confusing. This is because the same phrase – public deed, or *escritura pública* – is used to denote at least three different but related things. It is used as short-hand for the social contract drawn up by the quota-holders and signed before the notary, even though this does not in fact constitute a public deed. It is also used variously to mean the whole, formal affair of incorporation, as well as the document in which an abbreviated account of that formal affair is recorded. Below, we use it in the latter sense, but please be aware that it is often used to denote the former and still other things (such as the extract (*extrato*) of the record that is produced by the Notary to be used for further steps in the incorporation process, described below). So don't be too concerned if you're a bit confused – so is everyone else.

The social contract, or articles (*estatutos*) as it is commonly known presents the rules by which the company, and the relationship of the owners of the company as such, will be governed. The *estatutos* can be as simple or detailed as the parties require, but in any event must contain certain key features, as follows⁵:

a. Identity of the partners

The names or company names of the founding quota-holders, and elements identifying them (for example natural person (that is, an individual) must give his full name as it appears in his passport or other identification document while a legal person, such as a company, must give the name of such legal person as it appears in the company corporate identification document (whether a certificate of incorporation, a charter or another document). A *limitada* must have a minimum of two partners and a maximum of thirty.

b. Company name

As registered with the *Conservatória*, including the abbreviation that denotes the legal form the company is taking (in our case, a *limitada*).

⁴ This is equally true in many other civil law jurisdictions. Mozambique's laws and practices in these regards are descended from Portugal's, and are squarely in the civil law tradition.

⁵ Código Comercial, Article 92

c. Objectives of the company

The objectives must indicate for what purpose the company is being created.

A company may be registered for a specific objective (for example, tourism) or for a variety of possible objectives. We recommended that, where applicable, companies be registered with a broad yet reasonable set of objectives. This allows for expansion or adaptation of the company in future, since the application for any operating license requires proof that the company has the legal capacity to operate in a specific sector. This proof is provided by the article of the company's articles of association that states its objectives.

For example, if a company is originally registered in order to retail computers using a commercial retail license but in the future the directors decide to open a computer training school, the application for a license to open the school will depend in part on whether the company's *estatutos* include training among the Company's objectives.

The inclusion of import and export among the company's purposes allows the company to apply for its import and export licenses.

While it is certainly possible to amend the *estatutos* in the future, there is no good reason to spend the time and money to do so if the company's objectives can be appropriately defined from the start.

d. Location of the company's headquarters (city or town and province) or where this is unknown, the address of one of the partners

The company headquarters must be in a defined location, which must be registered before the company can begin operating. The *estatutos* can allow the company to change headquarters and open specific sites for specific activities.

e. Duration of the company

Usually for an unlimited or undefined period, but is also possible for a company to exist for a limited period.

f. Social capital, method and time period for its constitution

In Portuguese we refer to *capital social*. This is the stated value of the assets the quotaholders have contributed to the company, and may be realized in cash, goods or rights. The social

capital must correspond to the sum of the nominal values of the quotas with the partners defining the amount necessary to undertake the company's activities.

The social capital is the amount the partners contribute to the company. Quotaholdings are expressed in monetary amounts, notwithstanding that capital may be contributed in the form of cash, goods or rights. Values must be expressed in the national currency⁶.

The social capital, if constituted in cash, can only be used by the person designated to sign on behalf of the company after the company is registered, unless three months has passed since the date of deposit and the company has not yet been registered in which case the person who made the deposit can withdraw it.

g. Participation in social capital by each partner, payments and other contributions made, description and values of any goods or rights which constitute part of the social capital

Social capital is divided into quotas and the social capital to which each partner subscribed corresponds to a quota. Usually the *estatutos* indicate the percentage value of each quota. At constitution partners must put up at least 50% of the social capital with the remainder made available within the next three years⁷.

h. How the company will be managed

As noted above, the highest corporate authority in a *limitada* is the *Assembleia Geral*. There may also be a requirement to have a management board, audit board or single auditor. An audit board or single auditor are compulsory in companies with 10 or more quota-holders, or which operate in a manner similar to an SA.

The *Assembleia Geral* meets ordinarily within three months of the end of each financial year to approve the accounts and extraordinarily when called by its chair, by the administration or the auditor or by partners representing at least 10% of the social capital.

The company may be managed by one or two administrators or by a management board comprising at least three members. Usually the *estatutos* allow for the day to day running of the company to be undertaken by a manager to be appointed by the management board.

⁶ Código Comercial Article 290

⁷ Código Comercial, Article 292., paragraphs 1 and 2

The titles given to the managers can vary. Quotaholders can be, but need not be, managers.

It is prudent, in the final section of the *estatutos*, to provide for a certain named person or persons to manage the company until the first Assembleia Geral can be held, and boards elected.

i. Date on which the company is incorporated

Other rules exist which, while not compulsory are often found in *estatutos*.

j. The way in which quotas may be sold, divided or transferred

It is common, in *limitadas*, for quotaholders and the company itself to have rights of first refusal in respect of another quotaholder's proposed sale, division or transfer to his quota to a third party.⁸ This means that before a quotaholder can sell (or otherwise transfer) her quota to a third party, she must first offer that quota to the other quotaholders, or the company itself, on the same terms as offered to the third party. Only if her fellow quotaholders, and the company itself, decline to purchase may she sell her quota to the third party, and only on the terms originally proposed. Rights of first refusal are commonly, though not invariably, set out in the *estatutos*.

Rights of first refusal are useful in *limitadas* because such companies are often run by, or depend importantly on the day-to-day involvement of, their owners – the quotaholders. If one quotaholder could simply sell his quota without the knowledge and, at some level, consent of the others, those remaining quotaholders could suddenly find themselves in business with people they don't know and don't trust.

In any event, any sale or other transfer of a quota which contains real property goods is accomplished by public deed.⁹

j. Provision regarding yearly accounts and the payment of dividends.

The general rule under Mozambique's General Accounting Plan (*Plano Geral de Contas*) is that the fiscal year corresponds to the calendar year, i.e. 01 January to 31 December. It is possible, however, to apply for authorization from the Ministry of Finance for the company

⁸ Código Comercial, Article 297

⁹Código do Notariado, Article 85, clause i). By contrast, in the case of a SA, a transfer of shares can be accomplished by an entry in the share register of the company; no public deed is required.

to have a fiscal year that does not coincide with the calendar year. This is only worth doing for a good reason (e.g. the company's parent must consolidate the company's accounts with its own, and has a fiscal year that does not coincide with the calendar year).

3.3 PRESENTATION OF *ESTATUTOS* TO THE NOTARY

The *estatutos* can be drawn up by the quotaholders themselves or by a lawyer. The draft *estatutos* are then presented to the Notary. The draft should be accompanied by a number of other documents the Notary requires. These are:

- The original *certidão de registo negativo* – and please remember, it is only valid for 90 days;
- Identity documents for each quotaholder (the documents required are different for natural persons (i.e. individuals) and legal persons (e.g. companies) - the differences are discussed in FAQs below);
- In the case of legal persons, appropriate resolutions of the corporate bodies empowered to make decisions in the matter of the creation of and participation in the capital of a subsidiary (again, some further notes on this are below); and
- For either natural persons or legal persons who cannot be present at the signing of the *escritura pública*, appropriate powers of attorney to persons in Mozambique who can sign on their behalf and otherwise represent them for related purposes.

The documents requested during this process are required in order to permit the Notary to judge whether (i) the transaction proposed is legal, and (ii) all those named as quotaholders truly wish to participate in the company. If, for example, the Notary finds a clause of the *estatutos* that contravenes the corporate law, he will invite the quotaholders to amend it. And if proper powers have not been granted to a representative, then the Notary will properly refuse to give effect to a public deed (i.e. the incorporation), because it does not appear to be in conformity with the will of the person named. Thus, the formal procedures of the public deed operate fundamentally to protect parties from making technical mistakes with respect to important commitments.

Once the Notary has verified that the documents submitted comply with legal requirements, he will provide a quote for the cost of incorporation. This value is calculated based on a percentage

of the social capital as stated in the Deed.¹⁰ The methods used to calculate these costs are provided in Ministerial Diplomas 150/2001, of 03 October and 19/98, of 04 March. In the case of companies where the social capital is less than 5 million Meticais, the cost is $2/1000 \times$ social capital and for those companies with social capital of over 5 million Meticais the calculation is 0.1% of the social capital.

Payment may be made in cash.¹¹ A receipt is provided.

Following payment the *estatutos* may be hand transcribed into the Notarial Ledger. This process can take between three days and one month. In some provinces such as Maputo, Notarial offices are now equipped with computers, meaning that the process is becoming much faster.¹²

Once the document is ready, the quotaholders or their representatives (those who have powers of attorney) are invited to make an appointment and to go in person to the Notary's office to sign the *estatutos*.¹³ The Notary reads the document aloud to the quotaholders. This is done to ensure that each of the quotaholders is aware of what she is signing and to give the opportunity to correct any errors in the transcription. If during this reading there is any uncertainty about any aspect of what has been written any of those present may, and in fact should, ask to check the document. Corrections at a later date can be costly and time-consuming. When signing the documents the Notary may ask to check the identity of those present against the copies submitted with the original *estatutos*, so you should take personal identification with you.

In the case of signature before the notary of a social contract no document is provided. However in the case of a public deed, when all the quotaholders have signed the *estatutos* the Notary produces a certificate, which is in fact a photocopy of the signed *estatutos* along with the supporting documentation such as the *Certidão de Registo Negativo* and the powers of attorney of those who signed. The fees paid for the *estatutos* include a number of notarized copies (in Beira, six and in Maputo five) of the certificate which will be needed at other stages of the registration process. At the same time the Notary also prepares a type-written *extracto* or summary of the

¹⁰ The exact methods of calculation of the cost of a public deed are somewhat obscure however we provide the following rule as described by Ministerial Diplomas n°. 150/2001 of 3 October and n°. 19/98. Companies with a *capital social* up to 5 million meticais will be charged two by one thousand, the formula being the following: $2/1000 \times$ social capital. Above 5 million meticais the formula is $0.1 \times$ social capital. Additionally, 100 meticais are charged for each public deed with only one act and 5 meticais are charged for each page.

¹¹ In some provinces payment may be made by cheque or deposit into a bank account. Check with the Notary – but always get a receipt.

¹² It is now legally permissible to accomplish the public deed by signing a version of the *estatutos* on plain paper, rather than the version inscribed in the Notarial Ledger, but doing so is still the exception.

¹³ If you would like the notary to come to your office or another place you choose for the signing of the public deed, an additional fee is payable. This service is rarely available in Beira.

estatutos which is needed for publication in the *Boletim da Republica*. Preparing these documents can take some time.¹⁴

It is important to ensure that at least one notarized copy of the certificate of the *estatutos* remains at the company headquarters at all times. This document is used in many of the other processes you will need to complete and obtaining new copies can be a time consuming process.

At this stage it is possible to apply to the Commercial Registry for Commercial Registration. As a rule at this stage registration should be provisional but some Registries are now issuing definitive registration certificates immediately, with applicants then providing the remaining supporting documents as these become available.

We have had the misfortune to see the consequences in a number of cases where investors who do not speak Portuguese have signed up to *estatutos* that they either did not read or the implications of which they did not fully understand. If Portuguese is not your first language, we recommend that you have the articles of association reputedly translated and seek professional counsel in their regard.

3.4 GOVERNMENT GAZETTE (*Boletim da Republica* or BR)

Following signing either the partners (in the case of a social contract) or the Notary in the case of a public deed must prepare a document (the *extracto*) for publication in the *Boletim da Republica*.

In Maputo, the *extracto* must be submitted at the *conservatória* when undertaking the commercial registration. Publication of the *estatutos* is now officially the responsibility of the *conservatória* though outside Maputo this rarely takes place.

The fee paid for this publication is calculated based on the number of pages used and the *capital social* of the company. Though the fee established by Ministerial Diploma 228/2002, of 25 December is from 17 MT - 21 MT per line of the different types of column the actual fee charged by the National Printing Press is between 19.42 - 485.55 MT. Both an invoice and a receipt are given.

Printing in the *BR* can take between two weeks and two months though longer delays have been recorded. Once the *BR* containing your *estatutos* has been published you will need to buy at least

¹⁴ In Maputo, the time required has reduced to as little as two days while elsewhere it can continue to take up to one month

one copy. The government's site www.portaldogoverno.gov.mz provides copies of the third series of the BR in which company *estatutos* are usually published.

We recommend that you take a number of copies of the relevant pages of the *BR* (front cover plus pages containing the *estatutos*) and authenticate them. Copies of the *BR* are needed in many of the stages of registration as well as in day-to-day corporate life.

3.5 COMMERCIAL REGISTRATION

After signing the social contract or public deed, commercial registration is required. The theoretical purpose of commercial registration is to give broad publicity to the individuals' and companies' legal ability to transact commercial business, as well as to certain legal facts connected with commercial life.¹⁵ The fact that a legal person – say, a *limitada* – has come into existence, is the subject of commercial registration. But so too are other important events in the life of a company, such as capital increases, the appointment and removal of corporate officers, sale and transfer of quotas and certain judicial decisions in respect of the company.¹⁶

With the approval of Decree-Law 1/2006 of 03 May the two previous types of commercial registration (*provisório* and *definitivo*) were replaced by a single registration – the *registo comercial*. By the same legislation publication in the BR became the responsibility of the *Conservatória*. However in most provinces this system has yet to be introduced. Indeed delays in the publication of the BR mean that for many companies the use of the *registo provisório* remains a useful tool as an interim means of moving forward with their registration process. We have therefore opted to include each of the different types of registration here.

3.5.1 **Provisional Registration**¹⁷ (*registo provisório*)

Once you have legalized the social contract or obtained the certificate of the *estatutos* at the Notary, you can apply to the Commercial Registry for *registo provisório*. Along with the receipt received from paying for the publication of the *estatutos* in the *BR*, getting its *registo provisório* allows the company to proceed with a number of other important processes while waiting for the *BR* to be published.

¹⁵ See Decree-Law n° 1/2006, of 3 May, Article 1

¹⁶ Ibid, Articles 3 and 5.

¹⁷ Decree n° 42-654 of 14 November 1959, Articles 32 and 33

The application for *registo provisório* is made by means of a form (available for free) which is signed by the quotaholders or their proxy. The request is presented along with one of the copies of the certificate provided by the Notary. Completion of this form requires that each of the quotaholders is registered for tax purposes in Mozambique and has been attributed an Individual Tax Identification Number (*Número Único de Identificação Tributária – NUIT*). It also requires that the company has appointed an accountant, and the accountant's bio data along with a notarised copy of his identity document must be submitted as part of the application. It is worthwhile retaining a copy of the submission made at the *registo provisório* stage so that when applying for definitive registration the form can be completed using the same information. Discrepancies can lead to the form being returned one or more times.

Commercial registration is one distinct act so in theory only one fee should be paid for both provisional and definitive registration. Costs for *registo provisório* vary depending on the social capital of the company.¹⁸ They are calculated on the same basis as those used for the public deed described above. A receipt is given. *Registo provisório* may take between three days and three weeks and results in the issuing of a certificate.

As the name suggests, *registo provisório* is only provisional. It exists because of a timing problem. Legally, a company is obliged to request commercial registration within 90 days of its public deed of incorporation.¹⁹ Outside Maputo, to get final (i.e. definitive) registration, a company must present, among other documents, a copy of its *estatutos* as published in the *BR*²⁰. Since publication ordinarily takes longer than 90 days, a company is legally obliged to apply for *Registo provisório* as a stop gap until publication in the *BR*. Proof of *Registo provisório* in conjunction with proof of payment to the *BR* permits you to continue with the registration process.

Following publication of the *BR* containing the *estatutos*, you must file a request to convert the *registo* from *provisório* to *definitivo*.²¹

In Maputo there is no need for a request letter for the *registo commercial* (as previously stated, the system in Maputo does not differentiate between the *registo provisório* and *definitivo*). In place of a letter applicants complete the form mentioned above. All supporting documentation detailed here for *registo provisório* and *definitivo* is also required in Maputo.

¹⁸ Charges also tend to vary between provinces.

¹⁹ Decree-Law n° 42.644 of 14 November 1959, Article 13

²⁰ Decree n° 42.654 of 14 November 1959, Article 47, paragraph 2

²¹ *ibid* Article 57. The law does not mention the validity for the *registo provisório*, however, according to a government site, www.utrel.gov.mz, consulted on 20 April, 2009, the same is valid for a period of six months, during which time the *estatutos* may be published in the *BR*.

We realize that these different procedures are a little confusing and recommend that you look at the flow diagram below which highlights the different treatments of commercial registration.

3.5.2 **Final Commercial Registration** (*registo definitivo*)

Registo definitivo is carried out at the *Conservatória de Registos*. Registration is done by submitting:²²

- Notarized certificate of *estatutos*
- Notarized copy of *BR* (title page and pages containing the *estatutos*)
- Notarized copy of the *Registo provisório* (if it was made)
- A payment calculated as above for *Registo provisório*
- Form (the same as the one used for *Registo provisório* and again requiring signatures of quotaholders and proof of having appointed an accountant)

The process for preparing a request letter for *registo definitivo* is the same as that for *registo provisório*. The process is completed by issuance of a certificate of commercial registration²³. This may take up to one month to issue.

The company is now incorporated and definitively commercially registered. It cannot, however begin to trade until it has secured the issuance of an Operating License from the relevant ministry for the sector in which it is going to operate.

3.6 FAQs

- Must I have a Mozambican Shareholder?

There is no legal requirement that companies have Mozambican shareholders. In certain fields, however, notably construction, firms must be majority-owned by Mozambicans in order to be eligible to bid on certain classes of public procurement.

- Can I apply for my DIRE and start operating now?

²² *ibid* Articles 27, 46 & 47

²³ *ibid* Article 42

No, Commercial Registration creates a “dormant” company. This company must be “activated” through Commercial or Industrial Licensing (see below). It is only possible to trade and also to obtain residence documents with a fully operational company.

- I made a payment but I was not given a receipt. Is this OK?

No, in the case of any payment to any government department you have the right to receive, and in fact should request a receipt. In practice, in the case of the Notary, for small amounts such as the cost of notarizing signatures it is common not to receive a receipt. But most departments of government that you deal with will have a system of “urgency” payments for documents needed in a hurry, and receipts are also given for these. The law requires that each government department have a bank account and payments may be made directly into that account.²⁴ Where possible it is preferable to use this system rather than to pay cash.

- I have a lot of receipts from the Registration process. What should I do with them?

Keep them. The costs of registration can and should be expensed in the company’s accounts.

- What is the difference between the Notary, the Government Gazette and the Commercial Registry and why is it necessary to register with all three?

As suggested above, each has a distinct function:

- The Notary ensures that the company is constituted correctly and legally.
- The Commercial Registry ensures that key details of any events in the life of the company are recorded and available for public consultation.
- The *BR* is the official government publication where all official acts are published and thereby given both the force of law and broad publicity.

While it is theoretically possible, even desirable, that the three functions be carried out by a single agency, in Mozambican law the functions are spread among distinct agencies. The Technical Unit for Legal Reform (the executive arm of an inter-ministerial committee and responsible for legal reform in Mozambique) is considering changes that will, at the least, streamline the process and cause its different elements to be carried out in a single physical space.

²⁴ Decree 30/01 of 15th October, Article 57

- With what document does a quotaholder establish her identity?

If she is a natural person, a *cópia autenticada* (authenticated copy) of that quotaholder's passport or other identification document, containing a photograph, will be acceptable. Only copies that have been authenticated by a Notary in Mozambique or at a Mozambican consulate will be accepted. If the quotaholder is a legal person, a *cópia autenticada* (authenticated copy) of that quotaholder's certificate of incorporation (or analogous document) will be accepted. Sometimes, a Notary will also insist on seeing the operating or trading license of a legal person.

While authenticated copies of passports in foreign languages are readily accepted by Mozambican Notaries, a certificate of incorporation or operating license in a foreign language, of which English is one, will almost always need to be translated and certified by an officially recognized translator. Both the original and translated documents are submitted to the Notary.

- What should an “appropriate resolution of the corporate body empowered to make decisions in the matter of the creation of and participation in the capital of a subsidiary” look like?

Well, by “appropriate” we mean, in the first place, that it should have due effect under the law of the jurisdiction where the quotaholder itself is incorporated and the articles of association of that quotaholder. For instance, if that place is South Africa, then the resolution should take the form it ordinarily takes under South African law and practice; and if it takes the majority of the board of directors of that quotaholder to make investment decisions, then the resolution ought to be signed by a majority of the directors. The signatures of those directors must be recognized by a Notary – either in Mozambique, if the directors visit Mozambique, or in their home countries. A second measure of “appropriateness” is that the resolution contains the basic information that the Mozambican Notary would like to see, including a clear decision to invest a certain amount, the percentage of the capital to which that amount corresponds, and the name of the company in which the investment will be made.

3.7 CHECKLISTS & FLOW CHARTS

Name Certificate (*Certidão Negativa* or *Certidão de Reserva de Nome*)

- Letter of request
- Notarised signature

- Payment

You will receive:

- A certificate valid for 90 days

Public Deed of Incorporation (*estatutos*)

- Company articles of association prepared by lawyer, notary, or company quotaholders
- Evidence of bank deposit of fraction of *capital social* (not always needed in Beira)
- Name Certificate (*Certidão Negativa/ ou Certidão de Reserva de Nome*)
- Corporate resolutions (if needed)
- Powers of attorney (if needed)
- Payment to the Notary.

You will receive:

- Copies of the certificate of the *estatutos*
- 1 type written *extracto*

Government Gazette

- Letter of Request (not always required)
- *Extracto*
- Payment
- Send to Maputo

(Not required in Maputo. The process of getting the articles published in the Government Gazette is undertaken by the *Conservatória*).

You will receive:

- Copy of published *BR* (the fee paid for publication usually includes 1 free copy of the relevant *BR*)

***Registo Provisório / Definitivo* (or *Registo Comercial*)**

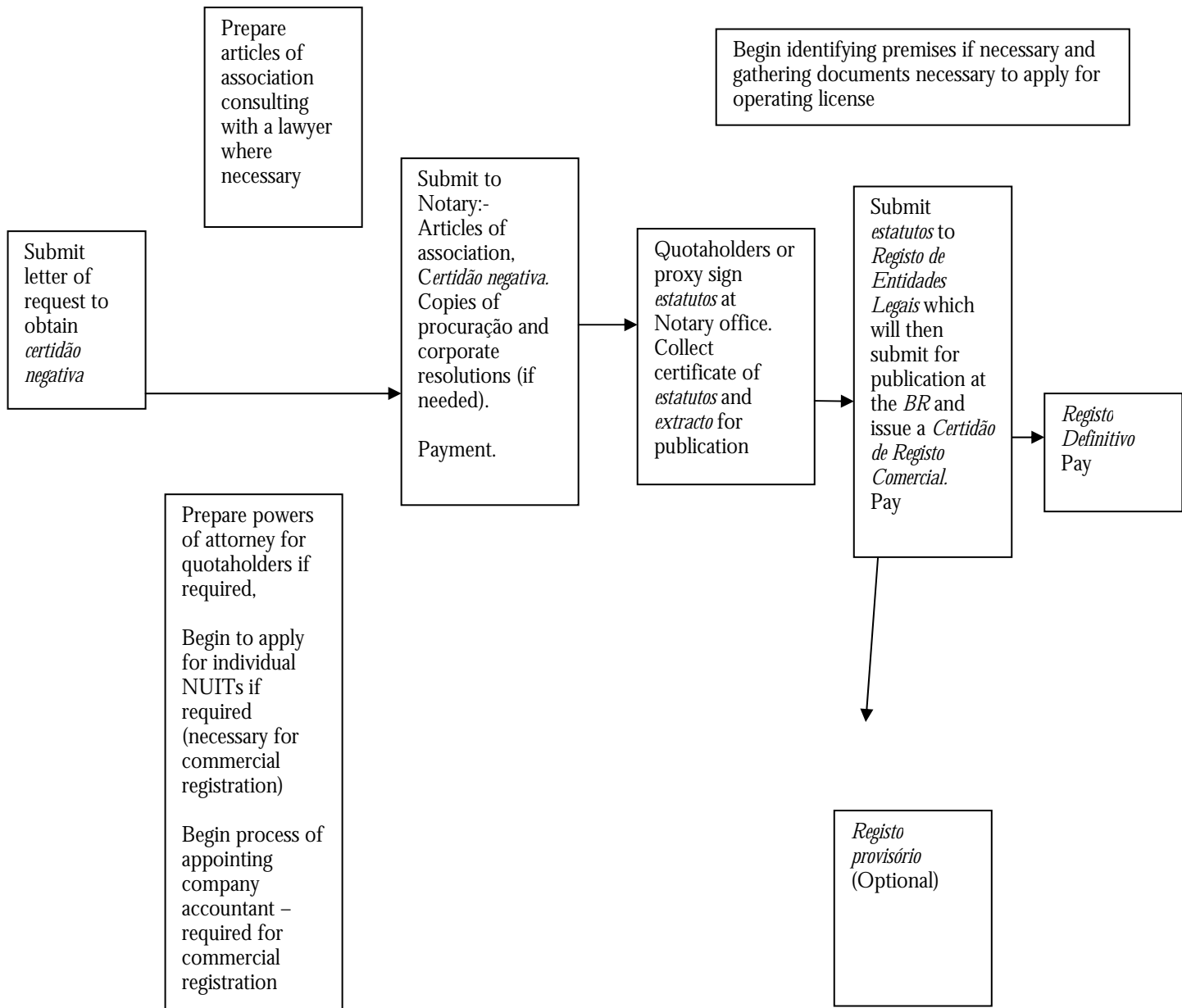
- Letter of request (Not required in Maputo)
- Notarised signature
- Notarised copy of *BR* (*registo definitivo* only)

- Notarised certificate of *estatutos*
- Form signed by quotaholders or their proxies including NUITs of signatories and notarised copy of the identity document of the Company's appointed accountant
- Payment

You will receive:

- A certificate of either provisional or definitive commercial registration

Flow Chart for Incorporation and Registration



4. COMMERCIAL AND INDUSTRIAL OPERATING LICENSES²⁵ (ALVARÁ)

Having incorporated and registered the company it is now necessary to obtain a license to operate. The regulations governing the application for operating licenses for both the industrial and commercial sectors have been revised recently with a view to simplification. As a result, while the information below reflects current legislation, it does not reflect wide-ranging practical experience with the application of that legislation, particularly in respect of simplified licensing procedures which apply to certain activities.

The introduction of simplified licensing procedures (Decree 2/2008 of 12 March) provides an alternative system for certain types of commercial and industrial activity. Any activity not listed as being covered by simplified licensing, is by default required to follow the procedures described in Sections 4.2 (commercial) and 4.3(industrial).

4.1 SIMPLIFIED LICENSING (Decree 2/2008 of 12 March)

Simplified licensing allows for the issuing of a license, in the applicant's presence at one-stop shops (Balcões de Atendimento Único), district administrations and municipal councils. It applies to activities which are deemed not to carry health, environmental or security risks.

The rules governing simplified licensing are applied to the following categories of activity under certain circumstances²⁶:

- Agriculture;
- Commerce and service provision;
- Construction;
- Sport;
- Industry;
- Transport and communication;
- Tourism.

For further details of each category see the relevant legislation

Sector	Description
Agriculture	Up to 350Ha irrigated or 1,000Ha not irrigated Irrigation systems for up to 350Ha

²⁵ Industrial Licensing Regulation 39/03 of 26th November and Commercial Licensing Regulation Decree 49/2004 of 17 November

²⁶ Simplified Licensing Decree 2/2008 of 12 March, Article 3

	Up to 100,000 small animals (rabbits, chickens etc) Up to 3,000 pigs, or 500 breeding pigs Up to 500 head of cattle
Commerce (sale of these items)	Tools, construction materials etc.
	Electrical equipment.
	Photographic and film equipment.
	Clothing and textiles.
	Sewing machines.
	Footwear and leather.
	Books and stationery.
	Office equipment.
	Oils, lubricants.
	Perfumes, and beauty products.
	Jewelry and watches.
	Dried or preserved food and drink products.
	Fresh food products.
Household goods and decoration.	
Construction	Estate agency Small-scale public works
Sport	Sale of sporting goods, arrangement, organisation and promotion of sporting events
Industry	Small and micro industry with the exception of those manufacturing food, drink or pharmaceuticals
Transport & Communication	Internet cafes
Tourism	Tea rooms bakeries and cafes

The licensing procedure in respect of companies eligible for simplified licensing is as follows:

- Completion of a form available from the *Balcão Único*,
- Provision of notarized copies of all documents proving incorporation and registration (*escritura*, *BR* and *Certidão de Registo Definitivo*) plus a notarized copy of the ID documents of the company quotaholders, and a copy of the proof of issuance of the company NUIT by the Ministry of Finance.

The license is then issued immediately in the presence of the applicant.

Prior to licensing companies are expected to ensure that they are compliant with the relevant health and safety, labour and environmental requirements for their sector (dealt with in greater detail for commercial and industrial activities in sections 4.2 and 4.3 below). Inspections take place after licensing in the case of simplified licensing, meaning that the company must ensure it is fully compliant before submitting its application.

Inspection of the company's premises takes place after licensing and is carried out in the same way as described below for *vistorias*. However the company is not required to apply for the *vistoria* or to be involved in the arrangement of it.

The simplified licensing regulation provides that all activities eligible for simplified licensing are exempt from the need to have an environmental impact study.²⁷ However in certain cases this contravenes what is required under the current environmental legislation, and also does not exempt companies from the need to apply for an environmental license.

In theory no fees are levied at any stage of the simplified licensing process however in practice 750Mt is usually charged for issuing the license.

4.2 COMMERCIAL LICENSING

The rules governing commercial licensing provide for four distinct categories of activities:

- activities licensed according to the simplified licensing regulations described above;
- activities that can be licensed at the district level (i.e. hierarchically the lowest level of relevant government authority);
- activities that can be licensed at the provincial level; and
- activities that must be licensed at the national level (i.e. in Maputo, through the Minister of Industry and Commerce).

As a basic rule of thumb, all operations can be licensed provincially unless they involve the opening of a branch office of a foreign company; branch offices are registered at the national level. If you have followed the process above for incorporation of a *limitada*, this will not apply to you, because a *limitada* is, by definition, a national company.

Small-scale operations in rural areas (such as bars and hawking, among others) can be licensed by district authorities or, in a municipality, by the municipal authorities.

Because the great majority of limited liability quota companies are licensed at the provincial level, we will discuss commercial licensing only at that level.

In order to obtain a commercial license a company must have first completed the incorporation process as detailed above. After all, if it has not been incorporated, it does not exist for most legal purposes. The company must also have premises adequate for the type of work it plans to undertake.

²⁷ Simplified Licensing Decree 2/2008 of 12 March, Article 4

4.2.1 Application for a Commercial License

The request for issuance of a license is addressed to the Provincial Governor and submitted to the relevant Provincial Directorate of Industry and Commerce or, in provinces where these exist to the One Stop Shop (*Balcão Único – BaU*). The request letter must contain the following information:

- Company name
- Company headquarters (as stated in the *estatutos*, the city or district where the company is based)
- Identification of the company representative
- Type of commercial activity to be undertaken – this includes categorization of the company according to classification number for economic activity (or CAE; this is Mozambique’s version of standard industrial classification, or SIC codes),²⁸ and the classification of goods or services being sold by the company,²⁹ and
- The address of the premises from which the company will operate.

The following must be attached to the request³⁰:

- A simple plan of the premises.
- Copy of the *estatutos* and/or *BR* and *registo comercial* (in its provisional or definitive form).
- Proof of right to occupy the business premises which can take the form of either a rental agreement or property title.
- Notarized copy of the identity document of the person signing the application letter.

On submission of the request for licensing the applicant pays a fee determined according to a published schedule. The fee will depend on the type of activity and its geographical location. In the case of CHAEM an additional and separate, but always receipted payment is made for the inspection.³¹ These fees include transport and fees for the inspectors. No further payment should be made. You are entitled to get, and should request, a receipt for each payment.

The Provincial Governor is required to decide on the application within 15 days of it being submitted to the Provincial Directorate³². The application is often provisionally approved subject

²⁸ Published in Decree n.º 58/99 of 08 of September

²⁹ We have provided the annexes of classes as an annex to this document.

³⁰ In Sofala the Empresa Unipessoal constituted by a foreigner must also provide proof of having a business visa issued by the Department of Immigration

³¹ In Sofala Province. In Maputo, the fee associated with CHAEM’s role in the *vistoria* is included in the single fee paid to the Department of Industry and Commerce of the City of Maputo.

³² Decree 49/2004 of 17th November, Article 10 paragraph 1

to the inspection to ensure that the premises are adequate for the proposed activity (e.g., that you are not planning to run a wholesale operation from your home).

In a case where an application is rejected a written explanation is provided.

4.2.2 **Inspections** (*Vistoria*)

Application for inspection is made by means of a letter of request and payment of the necessary fees.

The inspection team is composed of representatives of the following institutions:

- the licensing body (in this case, the Provincial Directorate of Industry and Commerce),
- the local administrative authority (district or municipal),
- the local health body (CHAEM),
- the fire service, and
- other agencies as necessary and appropriate.

While it is the responsibility of the Provincial Directorate of Industry and Commerce to request the presence of other departments at the inspection, in practice the company is often required to deliver the letters informing other members of the team of the date of the inspection.

Companies are also often requested to provide transport for the members of the inspection team. Once again, this is not a legal requirement but doing so is the most effective way of ensuring that your inspection happens at the designated time and runs smoothly.

The law makes no clear provision for what each of the inspectors can ask to see at an inspection. In our experience companies are often requested to produce documents that they would not be able to apply for without first having an operating license, such as employment contracts for example. Some of these issues are dealt with below in FAQs.

The inspection must take place within 15 days of receipt of the request.

4.2.3 **Issuance of the *Alvará***

Following or even during the inspection an Inspection Report (*auto de vistoria*) is prepared and signed by those who attended the inspection.³³ A copy of this report is given to the company, and can be requested at any future inspections of the premises.

A second copy of the *auto de vistoria* is used by the Provincial Directorate of Commerce and Industry to complete the process of issuing the commercial license (i.e. the *alvará*).

This should take no more than 15 days.

4.3 INDUSTRIAL LICENSING³⁴

The rules governing industrial licensing provide for three distinct categories of license as well as a fourth category that requires only registration, and now a further category which is permitted to use the simplified licensing system described above. Three criteria are used in order to categorize a company: value of investment, KVA usage and number of workers.

The categories and the corresponding criteria are set forth below:³⁵

Category	Initial investment (USD)	Potential installed or to be installed (KvA)	No of workers
Large scale	10,000,000 or over	1,000 or over	250 or over
Medium scale	2,500,000 or over	500 or over	125 or over
Small scale	25,000 or over	10 or over	25 or over
Micro scale	Less than 25,000	Less than 10	Less than 25

To be classified in any given category, a company must fit two of the three criteria for that category. For example a company investing 2,500,000 US dollars, and employing 126 workers and drawing 100 KvA would be considered medium-scale, while the same company with only 124 workers would be considered small-scale³⁶

Small-scale industry is licensed at provincial level while medium- and large-scale industry are licensed at the national level, by Ministry of Industry and Commerce in Maputo. The law allows the Minister to delegate licensing of medium-scale industry to Provincial Governors, but the

³³ Decree 49/2004 of 17 November Article 13, Article 15 paragraph b

³⁴ Decree 39/03 of 26 November

³⁵ *ibid.* Article 3 paragraph 1

³⁶ *ibid.* paragraph 2.

discretion to delegate is not always used. Micro industry is not subject to the industrial licensing process; it is only required to register before starting to trade.

4.3.1 Application for the *Alvara*³⁷

The application is made by way of a letter addressed to either the Minister or the Provincial Director of Industry and Commerce or, in provinces where these exist to the One Stop Shop (*Balcão Único – BaU*). The letter must include the following:

- Name and details of representative, and address of company headquarters
- Copy of the *estatutos* and/or *BR* and/or *registo comercial* (in its provisional or definitive form)
- Address of planned factory
- Proof of ownership, lease agreement or land usage title
- Project plan
- Notarized signature of the company's authorized representative.

The project plan is submitted on a special form and must include³⁸:

- A topographical plan including the location of buildings or proposed buildings, access roads, other buildings nearby, public roads and watercourses.
- A plan of the industrial premises including offices, warehouses, workshops, bathrooms, eating areas, drains and communications as well as a complete plan of the industrial installation including machinery and equipment, safety equipment etc.
- A written project plan including process diagrams, information on raw materials, production capacity, machines and their specifications, number and sex of workers to be employed, total electrical potential to be installed, security, first aid and safety measures, water supply, bathroom toilet and shower provisions, drainage, effluent treatment and initial investment.
- Environmental impact study approved by the Ministry for the Coordination of Environmental Action (MICOA) for those activities listed in the annex to Decree n.º 45/2004 of 29 September or an environmental exemption certificate.
- If construction is necessary as part of the project, copies of the construction license; and
- In the case of industries within city or town limits, approval from the city or town council.³⁹

³⁷ Ibid, Article 10

³⁸ Decree 39/03 of 26 November, Article 11

A decision on the application should be taken within eight days and the company should be notified of this decision within a further three days.⁴⁰ This article is however apparently in tension with Article 15 which allows a period of 30 days in order for the relevant authorities to study the project submitted and secure opinions from CHAEM, the fire department and, where relevant, the municipal authorities. If the project plan is approved then the company can proceed. If the project plan is rejected a written explanation will be provided. We have requested clarification on the apparent inconsistencies in the legislation, and anticipate being able to clarify this point in future editions.

Following approval the company has 180 days to begin to install or construct the factory.⁴¹ Once the installation or construction is complete the company must make a written request for an inspection before operations can begin.⁴²

During the waiting period while the project plan is being evaluated, or after it has been approved and installation or construction is underway, the company can request a declaration from the National Directorate of Industry or Provincial Industry Department confirming the status of the project and enabling the company to proceed with other administrative processes.⁴³

At this stage it is not necessary to pay any fees.

4.3.2 Inspections (*Vistoria*)

As is the case for a commercial *alvará* an inspection must be requested in writing. The inspection should take place within six days of receipt of the request.⁴⁴ Within eight days after the inspection a report (*auto de vistoria*) signed by two thirds of the inspectors must be issued.⁴⁵

If minor problems are found during the inspection conditional approval may be given for the start of operation. The problem must be fixed in the time limit given on the inspection report, and a follow-up inspection carried out.⁴⁶

Payments for inspections and the issuance of *alvarás* are required.⁴⁷ These fees include all necessary payments.

³⁹ Ibid, Article 4

⁴⁰ Ibid, Article 14

⁴¹ ibid Article 17, paragraph 2

⁴² ibid. paragraph 3

⁴³ ibid Article 11 paragraph 4

⁴⁴ ibid. Article 18 paragraph 3

⁴⁵ ibid. Article 18 paragraph 4

⁴⁶ ibid. Article 19

Payments are only made following a favorable decision and are made at the nearest representative office of the Ministry of Finance (the *Repartição das Finanças*) using a form known as *Modelo B* or by direct deposit into the Provincial Directorate of Industry & Commerce's bank account at the local office of the Central Bank.

As is the case with commercial licensing, companies are often requested to provide transport for the inspection team to site. It is worth noting that the fee table for industrial licensing includes a per kilometer rate to cover transport for inspectors.

4.3.3 Issuance of the alvará⁴⁸

Following the issuance of an unqualified, or even a mildly qualified inspection report, an *alvará* is issued. Operations must begin within ninety days of the issuance of this license.

4.4 FAQs

- I have my Operating License. Can I start trading now?

Basically, yes. However there are a number of other requirements to comply with, including those of the Finance and Labor Departments

- During my inspection the inspectors requested payment for travel to the site. Is this OK?

No. All costs to cover the inspection are paid to the local office of the Ministry of Finance or directly into the bank account or to the finance section of the relevant departments (Industry and Commerce and *CHAEM*). Receipts are given. No payments are made directly to inspectors.

- What are the inspectors looking for?

As mentioned above there is no clear definition in the law of what the inspectors can ask to see. As a general guideline premises should have:

- A separate entrance (if the office is in a building housing other companies)

⁴⁷ *ibid* Technical Annex III

⁴⁸ Decree 39/03 of 26 November Article 27

- Separate toilet facilities for staff and clients, and where possible for male and female
- Adequate ventilation and light
- Fire extinguishers and/or sand buckets.

For example the decree governing industrial licensing states that the premises must satisfy the technical/functional requirements of that particular industry as well as the hygiene, convenience and safety needs of the workers.⁴⁹ The National Directorate of Industry has recently published an “Industrial Guide” which contains comprehensive, recommendations for industrial premises. The Industrial Guide covers many aspects of health and safety, but bear in mind this is a guide rather than a piece of legislation.

Inspectors may also ask to see the company’s *horário de trabalho* and employment contracts.

- I have been told that the plan of my premises must be done on special map paper/must be an architects drawing/must be of a certain size or shape/must include a detailed written description. Is this true?

The law does not define what type of plan is required stating only that a “drawing” of the premises must be provided. In practice this plan can be a simple sketch, drawn by hand or on a computer, and should include the purpose of each room i.e. office, toilet etc. as well as measurements. This adequately covers the requirement of providing a description. There is no requirement to submit architect’s drawings or plans of a particular size or on a particular type of paper.

- I have been told that I have to provide proof that the person/company I am renting premises from has the right to rent those premises. Is this correct?

The law has no such requirement. In practice, however, it is always as well to request such documents for your own peace of mind when renting a property.

- I have a complaint about the way my process was handled/my inspection was carried out. What can I do?

Each government department has a Complaints Book (*Livro de Reclamações*) for the general public. If you have a complaint, visit the department in question and request the book. You should record your complaint in as much detail as possible (e.g., names, times, locations).

⁴⁹ *ibid.* Articles 18 & 20

4.5 CHECKLIST AND FLOW CHARTS

4.5.1 Simplified Licensing

Application for an *alvará*

- Completion of a form available from the *Balcão Único*,
- Provision of notarized copies of all documents proving incorporation and registration (*escritura*, *BR* and *Certidão de Registo Definitivo*) plus a notarized copy of the ID documents of the company quotaholders, and a copy of the proof of issuance of the company NUIT by the Ministry of Finance.

4.5.2 Commercial Licensing

Application for an *alvará*

- Letter of request addressed to Minister or Provincial Governor
- A plan of the premises to be licensed.
- Notarised copy of *estatutos* and/or *BR* and/or *registo comercial* (in either provisional or definitive form)
- Lease Agreement or proof of ownership
- Notarised copy of the identity document of the person signing the application
- Payment for the license

Application for Inspection

- Request letter
- Copy of notification of approval of application signed by Minister or Governor
- Payment

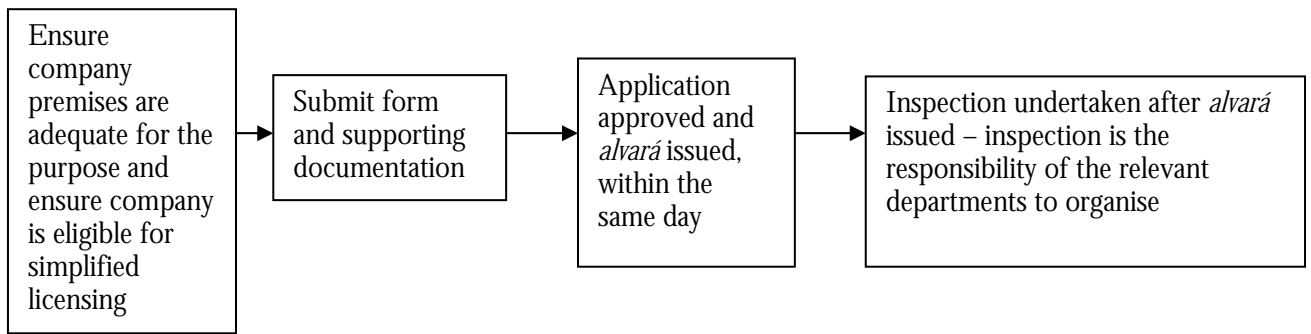
4.5.3 Industrial Licensing

Application for an *alvará*

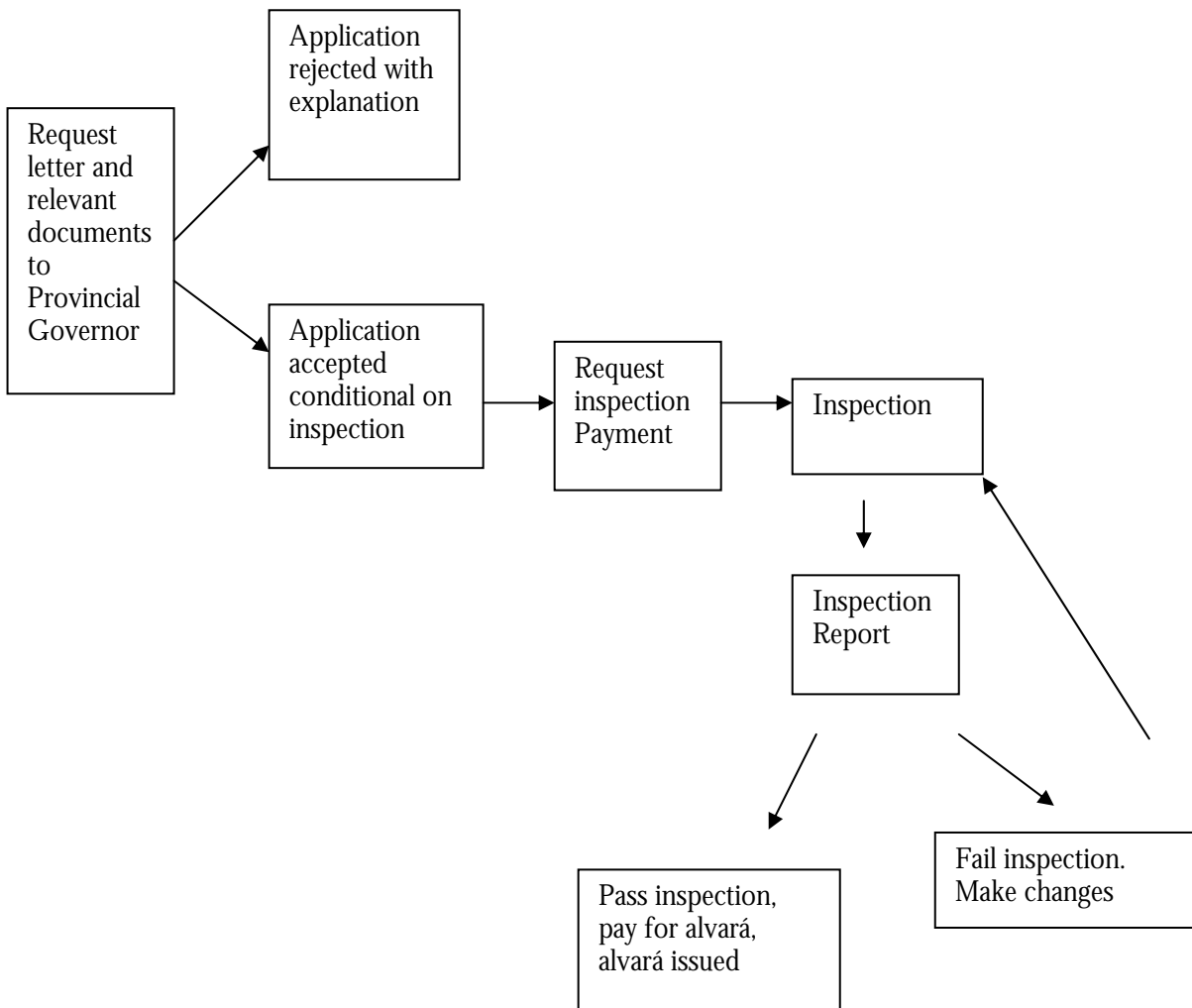
- Letter of request addressed to Minister or Governor
- Topographical plan of the area
- Plan of infrastructure

- Written description containing details of:
 - Processes and factory diagrams
 - Raw materials including specifications and quantities
 - Production capacity
 - Machines and equipment including specifications
 - No. and sex of those to be employed
 - Electrical potential to be used or installed
 - Worker security
 - Security, first aid and social installations
 - Water supply
 - No. of washroom facilities
 - Drainage network
 - Effluent treatment plan
 - Initial investment
- Environmental impact study (if required)
- Lease agreement or land usage title
- Construction license where relevant
- Payment

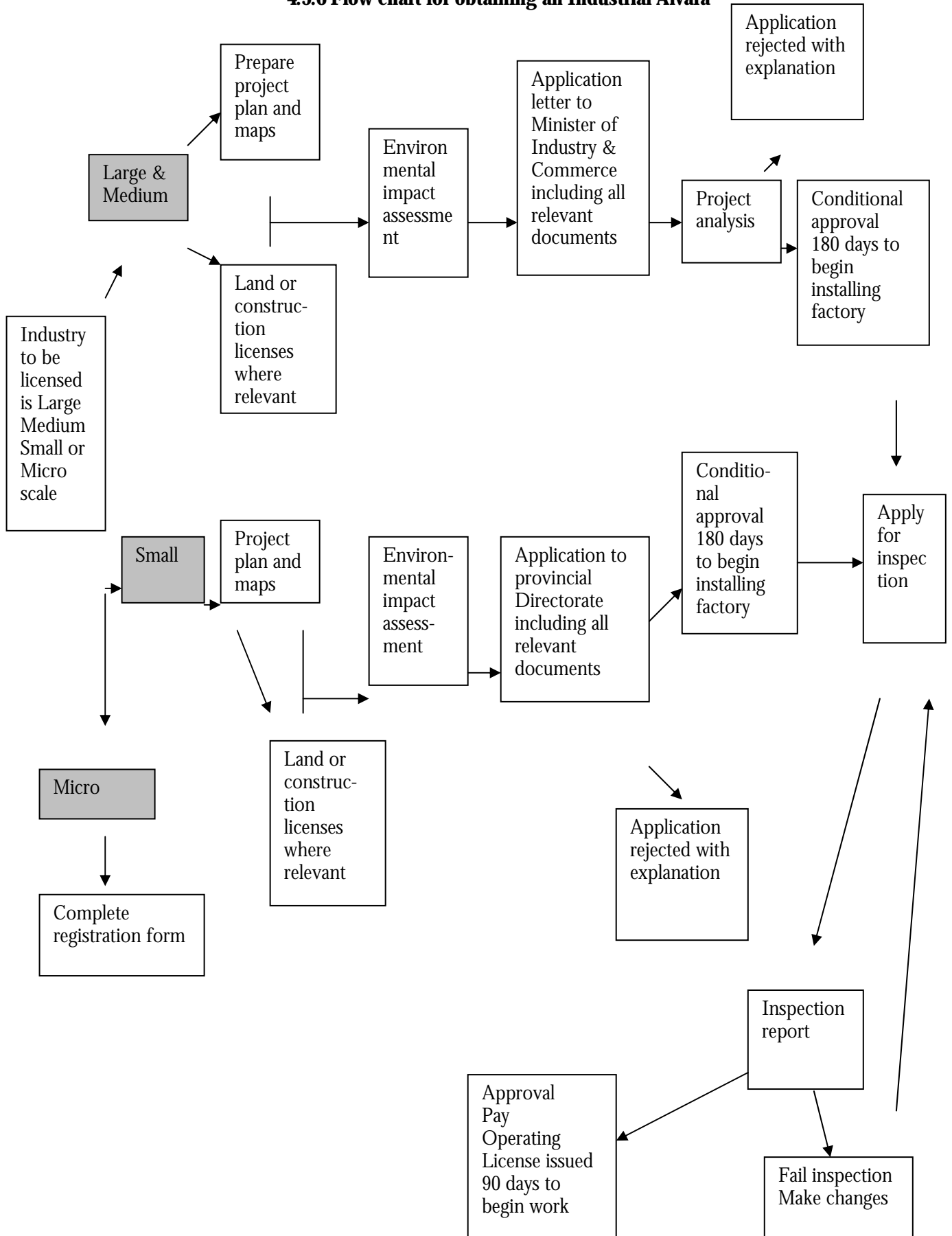
4.5.4 Flow chart for simplified licensing



4.5.5 Flow chart for obtaining a Commercial *Alvará*



4.5.6 Flow chart for obtaining an Industrial Alvará



5. OTHER LICENSES AND AUTHORIZATIONS

There are a range of other procedures and requirements which must be complied with before a company can be considered to be operating legally. These include, tax, employment, environmental, import & export and municipal requirements. We suggest that you use the other manuals in this series to ensure that your company is fully compliant in all necessary areas.

Here we have restricted ourselves to mentioning procedures to be followed prior to opening the company.

5.1 Work Schedule (*Horário de Trabalho*)

Two copies of a form are purchased from government stationers or the Ministry of Labor and completed detailing the weekly hours which the company will work. These hours must be in keeping with the requirements of the Labor Law. The managing director or other authorized representative of the company then signs the schedule. This is submitted along with a letter bearing a notarized signature requesting approval of the schedule. Approval takes approximately 30 days. A copy of the form is then returned to the company and must be on display at all times.

5.2 Declaration of start of activity

A letter must be submitted to the Provincial Directorate of Labor informing it that the company has begun operations. A copy of this duly signed and stamped must be retained by the company for future inspection.

5.3 Minute Book (*Livro de Actas*)

Each company must keep a book in which key decisions of formal meetings of the quotaholders are recorded. Before being used, this book must be tendered to the *Repartição das Finanças* and to the local court as well as to the Commercial Registry or *conservatória* as the official minute book.⁵⁰ The minute book then becomes a legal document. Minutes signed by all quotaholders are binding among them.

5.4 Invoice Books (*Livro de factura*)

⁵⁰ Código Comercial, Article 44. While in Maputo it is no longer necessary to tender the book to the local court, in Beira this continues to be required

Unless you are using computer-generated invoicing (in which case there are a number of rules which must be followed) invoice and receipt books may only be printed by a registered government printer. Once the company NUIT is available a letter is submitted to a registered government printer requesting printing of a set of invoice and receipt books.

5.5 Workers Name List (*Relação Nominal*)

This form must be filled out in four identical copies and submitted to the Provincial Directorate of Labor. The form contains details of workers salaries and categories as well as other information. Two copies are retained by the Directorate and two are returned to the company. One copy is displayed at the company's premises and a second is filed for use the following year, when it is submitted along with the one for the new year. Electronic forms for this document are available from ACIS.

5.6 Signage

Any alterations to your work place such as the putting up of signs, flags, umbrellas, posters etc. are all subject to licensing by the municipal council. Licenses are payable for among other things:-

- Logos on vehicles
- Company signs
- Flags
- Fences.

5.7 Flag Tax

If your company flies flags from the office you are liable for an annual tax per flag. These licenses are available from the Municipal Council. If flags are flown they must always be accompanied by a Mozambican flag that must be licensed but there is no charge.

5.8 Salaries

Workers are generally paid at the end of each month.

A payroll (*folha de salários*) is prepared and is signed by each worker. Each worker must be given a pay slip detailing all payments and deductions, for each wage paid.

Income tax and social security payments are withheld at the source. Income tax is paid to the Provincial Directorate of Finance by the 20th of the following month. Social Security is paid to

the Social Security Department by the 10th of the following month. The INSS forms contain workers names and individual ID numbers as found on their Contributor Card. Electronic versions of the INSS form are available from ACIS.

5.9 IVA

Payments will be calculated by your *técnico de contas* based on the previous month's trade and must be paid to the *repartição* by the 30th of each month Payment is accompanied by a form completed in four copies.

5.10 Rubbish Tax⁵¹

Paid monthly or annually per calendar year to the Municipal Council. Be certain to keep receipts as inspections can take place.

5.11 Fire Tax⁵²

Payable to Municipal Authorities as a percentage profit. Therefore this tax is only applicable in a year in which a company declared a profit. This tax is apparently not levied in Maputo.

5.12 IRPS Declaration

An individual IRPS declaration must be completed each year on a *Modelo 10* form. To facilitate this companies are required to provide workers with a breakdown of net and gross salaries as well as tax deductions at the end of each fiscal year. The declaration takes into consideration the employee's marital status, salary and also any benefits such as use of house or vehicle, as well as any other sources of income.

5.13 Foreign Employees

Residence documents (DIRE or Residência Precária) are renewable annually and must be submitted at least 30 days prior to expiry date. Work permissions or authorizations are renewed bi-annually and should be submitted at least 30 days prior to expiry. Allow at least six weeks for collection of necessary documentation prior to submission.

5.14 Leave Plan (*Plano de Férias*)

⁵¹ In Maputo this tax is often included within utility bills

⁵² The tax is not charged in Maputo

This document which details holidays for all eligible staff must be prepared in accordance with the Labor Law and displayed at the company premises from January 30th each year.

5.15 Workers List (*Relação Nominal*)

Four copies are prepared and submitted by 31st March along with the second copy of previous year's form.

5.16 Accounting

A number of documents must be submitted on instruction from the *técnico de contas*. These include a profit forecast and a full statement of the previous year's accounts.

5.17 General Assembly (*Assembleia Geral*)

This is an annual legal requirement. Quotaholders must be must be given advance notice in accordance with the rules defined in the *estatutos*. Decisions taken must be minuted in the *livro de actas* and signed by those in attendance. This meeting is usually used to sign off the year-end accounts as well as dealing with other relevant issues.

There are a number of other payments and licenses which must be paid or requested each year depending on the type of business you are in and the government department responsible for that sector. It is advisable to submit letters to sectoral departments requesting information on any special rules that apply to your area of business.

5.18 Checklist

5.18.1 Start of Business (After receiving *alvará*)

Item	Department	Date
Tax (IVA & IRPS) registration	Finance	Immediate
Invoice & receipt books	Government stationers	Immediate
Social Security Registration	INSS	Immediate
Inform Labor department of start of operation	Labor	Immediate
List of workers (<i>relação nominal</i>)	Labor	Immediate
Work schedule (<i>horário de trabalho</i>)	Labor	Immediate
Leave schedule	Labor	Immediate
Collective insurance	Insurance company	Immediate
Flag, signage taxes	Municipal council	Immediate
Copies of important company documents		Immediate
Display key documents – holiday schedule, work timetable, list of workers, operating license, inspection report, tax registration document		As soon as possible
Book of meeting minutes (<i>livro de actas</i>)	<i>Repartição das Finanças</i> Court and <i>Conservatória</i>	As soon as possible

5.18.2 Things to do monthly

Item	Department	Date
Wage schedule (<i>folha de salários</i>)	Labor	By 10 th of month
Social security	INSS	By 10 th of month
IRPS	Finance	By 20 th of month
IVA	Finance	By last day of month
TDM, Water and electricity	Respective utility departments	By last day of month
Wages (including pay slips for		Monthly

Item	Department	Date
each worker)		

5.18.3 Things to do annually

Item	Department	Date
Rubbish tax	Municipal council	Payable monthly or in January
Fire tax	Municipal council	Payable based on declared profits – check with individual municipal councils
Sign and flag taxes	Municipal council	By end January
IRPS declaration (Model 10)	Finance	By end February
<i>Plano de férias</i>	Labor (it is not necessary to submit this document, only to display it)	By 30 th January
<i>Relação nominal</i>	Labor	By 31 st March
Year end accounts (prepared by accountant)	Finance	By 31 st March
Residence permits (foreign workers)	Immigration	Renew annually, submit at least 30 days before expiry date
Work permits (foreign workers)	Labor	Renewable bi-annually
Workers individual income tax declarations		End December or early January