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Mozambique investment regime

by Xadrequé Horácio Fernando

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Abbreviations

ACP	African Caribbean Pacific
AFTFP	Africa Finance and Private Sector
AWEPA	European Parliamentarians with Africa
BCI	Banco Comercial e de Investimentos (Commercial and Investment Bank)
BIM	Banco Internacional de Moçambique
BIT	Bilateral Investment Treaty
CAGR	Compounded Annual Growth Rate
CIP	Centro de Integridade Pública (Centre for Public Integrity)
CPI	Centro de Promoção de Investimentos (Investment Promotion Centre)
DS	Dispute Settlement
EITI	Extractive Industry Transparency Initiative
EPA	Economic Partnership Agreement
FDI	Foreign Direct Investment
FIAS	Facility for Investment Climate Advisory Services
FTA	Free Trade Area
GAPI	Gabinete de Apoio às Pequenas Indústrias
GAZEDA	Special Economic Zones Office
GDP	Gross Domestic Product
ICA	Investment Climate Assessment
ICSID	International Convention for the Settlement of Investment Disputes
ICT	Information and Communication Technology
IDS	Investment Dispute Settlement
IESE	Instituto de Estudos Sociais e Económicos
IFC	International Financial Corporation
MERT	Marginal Effective Tax Rate
MLT	Mozambique Leaf Tobacco
ODA	Official Development Aid
PARPA	Plano para a Redução da Pobreza Absoluta
PFI	Protocol on Finance and Investment
RPED	Regional Program for Enterprise Development
SADC	Southern African Development Community
SEZ	Special Economic Zones

SME	Small and Medium Enterprises
TIFA	Trade and Investment Framework Agreement
TRIMs	Trade-Related Investment Measures
UNCITRAL	United Nations Commission of International Trade Law
WB	World Bank
WTO	World Trade Organisation
ZFI	Industrial Free Zones

1. Introduction

Investment has always been referred to as a major catalyst of economic development. Since long back, many economists have been sharing a unanimous view that foreign investment enhances growth, and, where there is competition, productivity and economies of scale are resultant. Evidence has also demonstrated that foreign investment provides technology through production and economic activities in locations where they operate.

Mozambique is one of the Southern African Development Community (SADC) members experiencing a steady economic growth in the region. Macroeconomic policy is deemed sound and the Gross Domestic Product (GDP) has been inching upwards. The country has been regularly ameliorating its investment law to fit the current good business environment requirements to attract more investors, especially foreigners. As a World Trade Organisation (WTO) member, a more open trade and business environment has been apportioned to Mozambique by the Trade Policy Review Committee.

While the business environment has improved, the question is whether the country's economic performance should be attributed to foreign investment inflow. Although a lot of investment facilitation has been done so far on official documents, on the ground the reality might be different, as is the usual challenge of policy implementation in many developing countries. Hitherto, the country's economy is more reliant on prevailing Official Development Aid (ODA) channelled by traditional donors into diverse development projects.

Bilateral Investment Treaties (BITs) tend to be associated more with traditional development assistance partners. At regional level, though Mozambique is one of vibrant members promoting regional integration through political endeavour, investment and trade volumes with regional members are still negligible.

This paper seeks to delve into the investment regime of Mozambique. The main aim is to shed light on its contribution to economic performance in the country. In addition, the paper seeks to trace investment law implementation challenges, on the one hand, for the country, and on the other, for investors.

While the second chapter makes a brief presentation of the investment law and its diverse fiscal incentive models, the third presents the burdens and challenges encapsulated in the investment platform. In the fourth chapter, we discuss the nature of investment protection mechanisms and how

disputes arising from investment agreements are settled. Lastly, the paper looks into Mozambique's compliance with the SADC Investment Protocol.

2. Mozambique's investment law and policy

Investment in Mozambique is mirrored in the national development strategy.¹ In the National Development Plan (Parpa II), government recognises that among necessary conditions to reach a sustainable economic development level that can contribute to rapid poverty reduction a favourable institutional framework and environment for investment are crucial.

One of main challenges identified for the economic development pillar is to ameliorate business environment through adopting facilitating procedures and providing incentives to domestic and foreign investors. In addition, the country will continue to improve the integration method into the regional and international economy through smooth trade and investment relationships with foreign partners.

Because administrative barriers to economic activities were identified as a major constraint for development, the strategy provided an instrument to re-examine the legal and institutional framework with the view to simplify and accelerate the licensing process of any commercial, industrial and tourism activity. This resulted in the reformulation of the investment legal system, which is viewed to be better and more adapted to current investment treaties than the former one.

Mozambique's Law on Investment has been subject to several amendments with the aim of adapting it to progressive investment changes. First, Investment Law No. 3/93, dated 24 June 1993, and governing national and foreign investment, was amended in 1995, and fairly recently this was replaced by Decree No. 43/2009 in August 2009, which provided new regulations to the Investment Law.

The law and its regulations are perceived to be transparent because they do not make distinctions based upon investor origin, nor do they limit foreign ownership or control of companies. Legal conditions for Mozambican citizens to own shares in foreign investments are required for investment in private security companies, media companies and game hunting concessions under certain conditions.

¹Plano de Acção Para a Redução da Pobreza Absoluta 2006-2009 (Parpa II) – Poverty Reduction Action Plan.

The differences between the two regimes are in that the former included a guarantee of property rights, access to foreign exchange for remittance of capital and profits, and generous fiscal incentives for a wide range of economic activities. But to benefit from the guarantees and incentives, several conditions were set, such as authorisation from the Investment Promotion Centre (CPI) and, initially, a designated ‘competent decision-maker’ in government, a minimum investment of \$5,000 for nationals and \$50,000 for foreigners to qualify for incentives (Nathan Associates Inc. 2009).

The Decree 43/2009 created GAZEDA, the Special Economic Zones Office that, with the Centre for Investment Promotion (CPI) supports and assists investors. But GAZEDA is more focused on the Beluluane Industrial Free Zone in Maputo Province and the Nacala Special Economic Zone in Nampula Province. These Special Economic Zones (SEZs) allow exemptions from customs duties and value-added tax on imports of equipment and raw materials for use within the zones. Other benefits such as a reduced corporate income tax rate are available, although for limited durations. A special labour and immigration tax scheme is available for industrial free zones.

According to the 2012 Investment Climate Statement by the Bureau of Economic and Business Affairs, currently, CPI and GAZEDA handle the approval process for both foreign and domestic investors. The former operates throughout the country, while GAZEDA is responsible for the establishment, management and development of Industrial Free Zones (ZFI) and Special Economic Zones (SEZs). For investment projects submitted to CPI, final approval is granted by the following government entities:

- 1) The Provincial Governor for domestic investment projects with an investment value of less than 1.5 billion meticaís (the local currency or about \$55 million);
- 2) The Director General of CPI for foreign and/or national investment projects with an investment value of less than 2.5 billion meticaís (or about \$92 million);
- 3) The Minister of Planning and Development for foreign and/or national investment projects with an investment value of less than 13.5 billion meticaís (or about \$500 million);
- 4) The Council of Ministers for:
 - a) investment projects with an investment value greater than 13.5 billion meticaís (or about \$500 million);

- b) investment projects that require a land area greater than ten thousand hectares, to be used for any purpose, except if located on a forest area greater than 100,000 hectares;
- c) any other projects that have foreseeable political, social, economic, financial or environment impacts such that their nature should be reviewed and decided by the Council of Ministers, on the proposal of the Minister of Planning and Development.

In a nutshell, while CPI assists both local and foreign investors in obtaining licences and permits, large investors receive much more support from the government in the business registration process than small and medium-sized investors.

2.1. Fiscal Benefits: Law 4/2009 of 12 January

In order to be compliant with WTO Trade-Related Investment Measures (TRIMs) obligations, Mozambique enacted a Code of Fiscal Benefits governed by Law 4/2009 of 12 January (Bureau of Economic and Business Affairs). This code is structured into:

1. **general incentives**, granted to investments in sectors to which specific incentives are not granted under the same code or other legislation; and
2. **specific incentives**, granted to investments in strategic sectors of activity (such as agriculture and fisheries), creation of basic infrastructure, rural commerce and industry, manufacturing and assembly industries, hotels and tourism, science and technology parks and large-scale projects.

Table 1 below summarises both kinds of incentives.

Table 1: Mozambique fiscal benefits regime

General benefits	Specific benefits
<ul style="list-style-type: none"> • Exemption from import duty on class K equipment, for goods not produced in Mozambique (or not to satisfactory specifications). • 5% investment tax credit on new fixed tangible assets – with 10% credit for investments in Gaza, Sofala, Tete, and Zambézia; 15% in Cabo Delgado, Inhambane, and Niassa – for five years from date of commencement of the investment (defined as the moment when the procedure to acquire fiscal benefits begins). • Accelerated depreciation for new immovable assets at twice the normal rate. • Expensing for specialised advanced technology’ equipment for five years from commencement of activity (operations), up to 15% of taxable income. • Deduction for professional training up to 5% of taxable income for five years, or 10% of taxable income for training relating to advanced technology equipment. • 120% deduction for ten years for spending on public infrastructure in Maputo City; 150% elsewhere; 50% for art and culture objects. 	<p>Agriculture – 80% reduction in the tax rate on profits until 2012.</p> <p>Hotel and Tourism – An additional 3 percentage points of investment tax credit and triple accelerated depreciation for investments approved by 31 December 2007.</p> <p>Large-scale projects (exceeding US\$500 million in designated sectors or in public domain infrastructure concessions).</p> <ul style="list-style-type: none"> • Exceptional incentives via contractual regime granted by Council of Ministers for up to ten years – in lieu of general incentives. • Investment tax credit of 5% to 10% for the first five years – with 10% to 20% in six designated provinces outside Maputo and 15% to 30% for three others. <p>Rapid Development Zones (Zambezi Valley, Niassa, Nacala, plus Moçambique and Ibo Islands).</p> <ul style="list-style-type: none"> • Special incentives covering 18 designated areas of activity, through 2015. • Import duty relief for Class K and I imports, first three years only. • 20% investment tax credit for five years. <p>Industrial Free Zones (IFZs)</p> <ul style="list-style-type: none"> • For IFZ developers: duty relief on capital imports. • For IFZ enterprises: both import duty and VAT relief on imports for projects and operations. • For developers and enterprises: 60% reduction in the corporate income tax rate for ten years. <p>Mining and petroleum</p> <ul style="list-style-type: none"> • Import duty relief on Class K imports and other listed items, for 5 years. • 25% reduction in the corporate income tax rate for eight years. Availability ended in 2007 with passage of a new Mining and Petroleum Act (Law 13/2007 of 27 June).

Source: Nathan Associates Inc. (2009)

2.2. Foreign Direct Investment Review

The CPI records state that from 1 January 2005 through 31 December 2010, there were 1,173 (both foreign and national) officially approved projects. In terms of monetary values, they are estimated to be worth over \$8.7 billion in Foreign Direct Investment (FDI) funded booked (though not necessarily implemented) projects.

2.2.1. Main foreign investors in Mozambique

In the past decade, minerals and energy resources prospection have been on an irreversible boom. Some companies invest in the country according to the multilateral trade arrangements, while others do so according to regional arrangements. But in the specific case of natural resources multinationals, almost all of them operate on BIT bases.

Table 2 below depicts the magnitude of select mega-projects in the country.

Mega-projects illustrated by the table invest in mining and energy. The discovery of gas and coal in most parts of the northern and central regions has accelerated in the country. A paper issued by the European Parliamentarians with Africa (AWEPA) and the Centre for Public Integrity (CIP) states that Mozambique is to become one of the world's ten largest producers of coal and 20 top producers of natural gas (in the third place in Africa, after Algeria and Nigeria) and \$2.7 billion has already been invested in the mining and hydrocarbon sectors (Hanlon and Selemene 2013). In terms of the magnitude of project value, first there is Companhia Vale do Rio Doce (CVRD), followed by KMPL.

- **Kenmare Moma Mining:** this mega-project of heavy sands has been operating since 2007 and it is located in the south of Nampula province.
- **CVRD (Companhia Vale do Rio Doce):** it explores mineral coal of Moatize, Tete province, operating since 2001.
- **Riversdale Mozambique:** it explores Benga mineral coal, also located in Moatize district, Tete, and it had received a concession in April 2009, with a 25-year duration. The company expects to establish a thermoelectric centre to supply power, using in part coal, in partnership with Elgas SARM, a public-private partnership that invests in the energy sector.
- **Mozaal:** this is an aluminium smelting mega-project, located in Maputo province.

- **Sasol or Temane:** a gas and pipeline extracting mega-project, in Inhambane province (Selemane 2010; Sonne-Schmidt et al. 2009).

Table 2: Top five mega-projects in Mozambique

	Mozaal	Sasol	KMPL	CVRD	LCS
Kind of investment	<i>Greenfield investment</i>	<i>Greenfield investment</i>	<i>Greenfield investment</i>	<i>Greenfield investment</i>	<i>Greenfield investment</i>
Project value (USD)	2.4 thousand million	1.2 thousand million	500 thousand million	1,355 thousand million	1.2 thousand million
Main investors	BHP-Billiton (66%) IDC (20%) Mitsubishi (12%) Mozambican State (2%)	Petroleum Temane (Sasol, 70% and CMH, 30%) Petroleum Moz (Sasol, 50%, iGas, 25% and e CMG, 25%)	Kenmare Resources plc (100%)	CVRD (ITACO-RDIF, 85%) Mozambican State (5%) National Investors (10%)	BHP Billiton (54%) Yangara Ltd (36%) IDC (10%)
Main financiers	IDC, DBSA, IFC, CDC, EIB and Proparco	SBSA, DBSA, SCMB, EIB, IFC, DEG, FMO and Proparco	AfDB, ABSA, EAIF, EIB and FMO	IDC, IFC and BNDES	n.a.
Risk assurance	MIGA (US\$110 million)	MIGA (US\$121.7 million), IBRD-PRG (US\$30 million), ECIC and EIB	Hermes (US\$26 million), ECIC and MIGA (US\$33.2 million)	n.a.	n.a.
Social projects	US\$5 million per annum	US\$5 million per annum	n.a.	US\$6.5 million per annum	n.a.
Labour	Generated about 1,000 direct workmanship (650 nationals), with expansion in 2000 (might have increased)	Employs 238 national workers	425 direct workmanship (43 foreigners, 124 qualified nationals and 259 semi-qualified nationals)	1,500 posts in operational phase	800 posts in operational phase

Source: Carlos Nuno Castel-Branco and Elton Jorge Cavadias

From 2005 to 2009 the largest FDI investor was the United States US), with over \$5 billion in 15 approved projects, through Biworld International Cement Factory, an American cement company based in Sofala Province, Mozambique Leaf Tobacco (MLT) Limitada, based in Tete Province, a

subsidiary of Universal Corporation, and Anadarko Petroleum. When the BIT came into effect on 3 March 2005, immediately in June of the same year the US and Mozambique signed a Trade and Investment Framework Agreement (TIFA) that established a Trade and Investment Council to discuss bilateral and multilateral trade and investment issues. Two meetings have already been held.

The second largest investor is Portugal, with almost \$800 million in 127 projects; Norway is the third largest investor, with \$742 million in two projects. The fourth largest is South Africa with \$424 million in 318 projects, and China, the fifth largest FDI investor, with \$175 million in 41 projects (operating basically in infrastructure building), the United Kingdom, Mauritius, Portugal, India, Zambia and Italy. During a six-year period (2006 to 2011), FDI inflow experienced a progressive growth, being 154, 427, 592, 893, 989 and 2093 million for each consecutive year (UNCTAD, 2012).

But there is something interesting worth mentioning. The US and other partners' investment volume was only temporary for the period 2011-2012. South Africa has always been Mozambique's largest trading partner. A token of robust investment partnership is that discussions aimed at harmonising trade regulations and facilitating cross-border trade and investment have always taken place between these two partners. Other bilateral investment partners are presented in Annex A.

2.3. Appraisal of investment regime and incentives

Mozambique has made visible strides to remodel the investment legal system in a manner that confers merit to the country. Since the end of the civil war, when the government introduced the democratic governance system, many legal aspects, including trade-related aspects, have experienced a notable improvement. For instance, every time that the WTO carries out the Trade Policy Review, reports make mention of positive changes towards the creation of a good business environment.

For instance, in 2007 Bolnick concluded that although some SADC member states offered more generous incentives, the package of fiscal benefits in Mozambique was reasonably attractive. For the period 2005 to 2007 covered by the Nathan Associates Inc. survey, the package of fiscal benefits was notably less generous than the one in place when Macamo² conducted his survey in 2000.

² José Macamo, a former World Vision research and activist, who researched more in Informal cross-border Trade.

If truth be told, the 2012 Investment Development Indicators of the World Investment Report makes mention of Mozambique as one of the countries with an Attraction Index on the 1st quartile, beyond expectations, and a Potential Index, 3rd quartile, relatively low, but fair (UNCTAD 2012).³

3. Fiscal incentives, burdens and incongruence

Nonetheless, there are several bottlenecks in the investment climate in Mozambique. Different analysts have been voicing concern in relation to questionable investment law improvement and fiscal incentives.

A study by Bolnick (2004) found that even with the new system the Marginal Effective Tax Rate (METR)⁴ for investors with fiscal incentives was low to moderate (Nathan Associates Inc. 2009).

Although FDI inflow has experienced growth in the past half-decade, this should not be attributed to fiscal benefits and other incentives. For Mozambique, as in many other developing countries, the Facility for Investment Climate Advisory Services (FIAS) found evidence that the process of obtaining fiscal benefits is often so cumbersome and costly that the benefits are not worth the effort and, possibly, foreign investors may choose to invest elsewhere, while domestic investors may choose to delay investments or decide against investments altogether. Of the investments, 90%, and of those critically influenced by tax breaks 80% were driven by domestic market opportunities because the returns are too low or the costs too high to justify the investment.

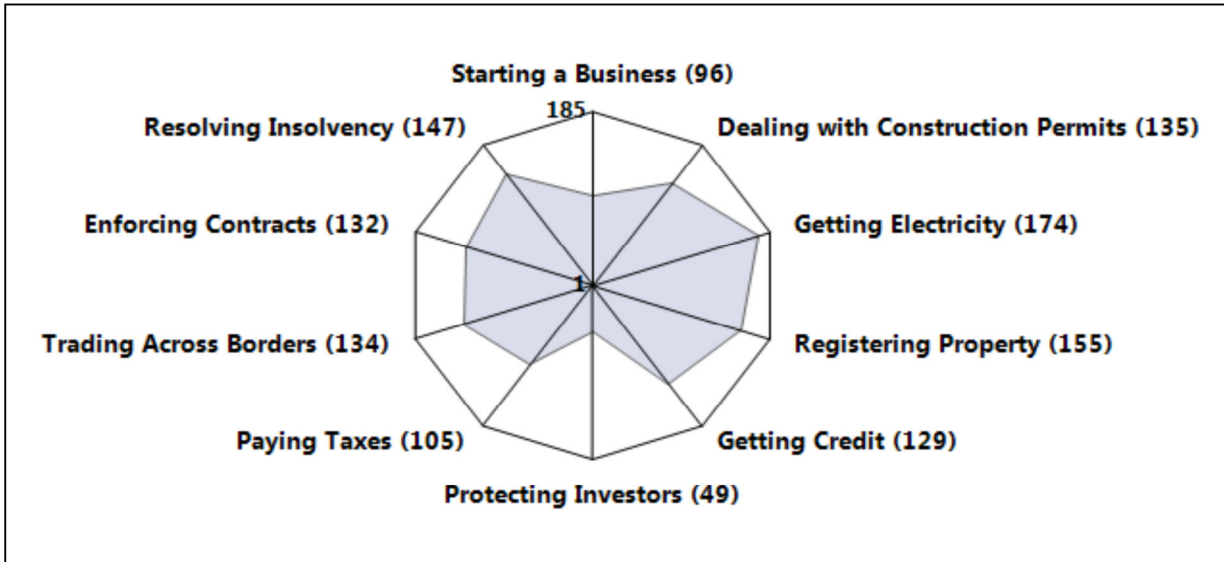
Several World Bank Doing Business and IFC studies presented by Nathan Associates Inc. have been progressively noticing burdens in the investment climate. In 2003, the World Bank's Investment Climate Assessment (ICA) report on the results of 55% of a field survey of 193 manufacturing firms in all size categories viewed tax rates as a 'large' or 'severe' problem – the tenth most serious constraint out of 18 examined in the survey. The 2009 report using 2007 tax structures⁵ indicates that while Mozambique's total tax rate is lower than the rates in Swaziland (36.6) and Tanzania (45.1), it is 34.3%, which exceeds the percentage of several other SADC countries, such as Zambia (16.1%), Botswana (17.1%), Lesotho (18.0%), and Malawi (31.4%).

³These countries are Albania, Bahamas, Congo, Congo (Democratic Republic of), Equatorial Guinea, Jordan, Lebanon, Luxembourg, Mongolia, Mozambique and Zambia.

⁴The METR is a common measure of the extent to which the overall tax system reduces the rate of return on investment, at the margin.

⁵The **total tax rate** on businesses is a percentage of profits for a standardized business case, a calculation that takes into account all tax payments incurred by the business.

The chart below portrays the summary of how Mozambique ranks on ‘Doing Business’ topics in 2013. As is well known, the World Bank (WB) carries out its survey based on 185 countries. This means that among ten topics selected for the ‘doing business’ environment, only one (10%) is attractive, while 90% is above half of the desirable level. Protecting the investor is believed to be workable in Mozambique, but many of the components are still too far behind to satisfy the levels.



Source: Doing Business (2013)

The other findings are from RPED and AFTFP, as Table 3 highlights.

Table 3: Barriers to investment in Mozambique

Practices of informal competitors	49%
Access to finance	42%
Tax rates	36%
Crime, theft, and disorder	31%
Transportation	27%
Electricity	25%
Corruption	15%

Source: RPED and AFTFP

In brief, competition from the informal sector is still the top constraint to investors. Then there is the need to improve the business environment and to increase access to finance for firm growth in Mozambique. In infrastructure, reconstruction of roads and ports (including the provision of reliable energy) remains a key constraint for businesses. Weak governance structures, corruption, institutions,

the rule of law, security and, at the macro level, human capital and technology absorption are shortcomings (World Bank 2009).

The economic role of mega-projects hinges on their linkage with economy, which entails the capability of the national economy of retaining and distributing wealth and is essential, as pointed out by Castel-Branco et al. (2009). In tandem with this position, there is an ongoing debate on fiscal benefits from mega-projects that accrue to the country. Many researchers such as the Centre for Public Integrity, the Institute for Social and Economic Studies (IESE), the Breton Woods Institutions as well as reputable economists such as Jeffrey Sachs, share a unanimous concern that the country is collecting less revenue than it should, in relation to its investment magnitude (Seleman 2011). These researchers have been proposing a need to renegotiate the contracts for new thresholds of mega-projects.

The other concern with mega-projects is the Corporate Social Responsibility. It is argued that Mega-projects do not respect local indigenous conditions, which makes investment lead to more disadvantages than it serves as a poverty-alleviating tool. For instance, Mosca and Seleman (2011) have found that big investors operating in Tete province on coal in Moatize District have moved people to a different location. But, after promises of miracles, the indigenous were relocated to a very inappropriate location, under inhumane conditions (Ibid.).

This is still topic under discussion among many analysts, and they are of the opinion that these conditions will continue due to weak and corrupt negotiation schemes between local officials and investors who garner certain private benefits to the detriment of the populace.

3.1. Regulatory regime

In large-scale ventures and business concessions (normally known as mega-projects) a new law governing public-private partnerships, Law No. 15/2011, passed in August 2011 states that Mozambican persons should participate in the share capital of all such undertakings in a percentage ranging from 5% to 20% of the equity capital of the project company (compulsory).

Foreign investors are challenged by numerous and onerous time- and effort-consuming requirements for permits, approvals and clearances. The procedures of the system create space for corruption, and deliberate bribes have become the normal mechanism to facilitate formal transactions. Labour, health and safety and the environment regulations are routinely not enforced, or are selectively enforced to generate revenue from fines.

Current state-owned enterprises of landline telephones, airports, electricity, and railways enter into joint ventures with private firms to deliver certain services. What is criticised is that not only some of them benefit from state subsidies, but also the state is actively involved in their operations. The result is competition that is neither fair nor transparent vis-à-vis the private sector.

3.1.1. The specific situation of small and medium-sized businesses and the banking system

This subchapter analyses the situation of SMEs vis-à-vis the investment regime. This discussion will focus on the banking sector because later on a correlation between this sector and the SMEs stance will be indicated.

A very prudent fiscal policy adopted by the Bank of Mozambique over many years led to a stable economic environment that has endured the global downturn of the past four years and positioned it to tap into emerging opportunities in many economic sectors. Key economic indicators demonstrate this occurrence through the growth from US\$255 million in 2001 to US\$2 billion in 2011 (EIU 2011), reflecting a stable investment environment. The country experienced an inflation decline from 10.4% in 2011 to 2.2% by December 2012 and a steady improvement of gross foreign exchange reserves with a December 2012 forecast of US\$2.6 billion (IMF 2012), providing an import cover average of 5.2 months of import.

Rapid growth in the banking sector in deposits and loans of commercial banks between January 2007 and September 12 is summarised in the table below.

Table 4: A six-year deposit and advances trends, 2007-12

(MT Billion)	January 2007	September 2012	CAGR
Deposits	46.2	147.5	21.3%
Demand deposits	30.7	94.9	20.7%
In domestic currency	17.3	58.7	22.7%
In foreign currency	13.4	36.2	18.0%
Time deposits	14.0	52.6	24.6%
In domestic currency	8.6	41.6	30.0%
In foreign currency	5.4	11.0	12.5%
Total loans & advances	25.1	105.8	27.1%
In domestic currency	17.3	80.6	29.3%
In foreign currency	7.9	25.2	21.4%

Source: Bank of Mozambique Statistics

However, concerning the banking sector, several barriers are cause for concern. The country has 18 commercial banks, the four largest being the Millennium BIM, BCI, Standard Bank and Barclays, with more than 80% of total bank assets.

In the first place, this factor is the cause of the low level of competition among existing banks. Second, interest rates for commercial loans in meticaís are generally around 18-22% per year, a range which is too high to be affordable. Third, poor levels of customer service, slow response times and high bank charges are critical aspects that hamper investors from obtaining loans. The overall services in connection with SMEs have always been regarded as very poor by traditional banks and, as access to financial resources has proven critically prohibitive, SMEs' development is still a challenge in the country. Economic diversification has not yet seen an improvement since strong SMEs are far from flourishing.

Several financial institutions contribute to developing micro-finance programs and small investments for agricultural development in rural areas. The government also plays its role in business investment with the Gabinete de Apoio às Pequenas Indústrias (GAPI or Small-Scale Investment Support Office) through working on rural finances and developing small agro-industries.

4. Investment protection agreements and dispute settlement mechanisms

The Commercial Code which came into effect from 1 July 2006 as a result of a collaborative effort starting in 1998 between the Mozambican Government, the private sector and donors, replaces the code from the colonial period, dating back to the 19th century, which did not provide an effective basis for modern commerce or resolution of commercial disputes.

Mozambique's investment legal framework, Law No. 3/93, approved on the 24th June provides protection clauses for investors. Chapter II, paragraphs 1 and 2 guarantee security and legal protection of property on goods and rights, including industrial property rights which comprise approved investments. Just and equitable compensation due to nationalisation or expropriation of goods and rights for weighty reasons of national interest or public health and order is also made mention of.

Chapter V, paragraphs 5.1, 6.2 and 7a state that an investment dispute which cannot be resolved on a friendly basis or by means of negotiation, may be submitted to the competent judicial authorities for resolution. Recourse will be had to arbitration, if the previous mechanism fails, upon express agreement of both parties. This will be through the rules of the International Convention for the

Settlement of Investment Disputes between States and Nationals of other States (ICSID) adopted in Washington on 15 March 1965, or the United Nations Commission of International Trade Law (UNCITRAL), for disputes between international and domestic companies.

Mozambique has signed investment protection conventions with Algeria, Egypt, Indonesia, Italy, Mauritius, Portugal, South Africa, Sweden, the US and Zimbabwe (state-state investment protection conventions). The other mutual investment protection agreement and memorandums of understanding concerning the fisheries and tourism sectors is with Spain, in operation since October 2010.

As pointed out by Khaseke (*in* Georgiadis 2012), quoting Doug Jones, and a high level of dispute settlement mechanism such as the investor-state dispute settlement has the potential of attracting foreign investment. The reason is that it provides predictability for both investor and host state and a degree of assurance, particularly for investors on the instruments and mechanisms to implement when any dispute arises. Thus, it is argued that inclusion of investor-state arbitration in an investment agreement signifies the parties' intention to afford protection to investors and in the event of any violations to be held accountable for any violation by the investors.

In Mozambique, investment dispute settlement has several aspects worth mentioning. First, the judicial system in Mozambique is always said to present many obstacles for potential investors because it is largely ineffective in resolving commercial disputes and certain cases consume a large amount of time and resources.

Second, investment and trade-related aspects are very complex in the sense that they require technical capacity to effectively enforce settlement rules and laws. To this extent, it has never been clear on whether the country has ever been involved in any investment dispute settlement (IDS). Hitherto, no IDS has been made public. Several factors induce us to point out the main reasons:

1. Because investment and trade normally co-occur, the complexity of disputes does not allow the country to initiate cases under the aegis of international bodies. A good illustration is that
 - a) under the WTO aegis, Mozambique has never been involved in any dispute settlement, at least neither as a respondent nor as a third party;
 - b) the Civil Society and various reports by the media have always voiced concern on ruthless dilapidation of natural resources and several practices of human rights violation by Chinese investors;

- c) in the Fisheries Agreement with the EU, the latter monitors the fishery process, including the Vessel Monitoring System, where Mozambique has had reports of good fishing practices but where official discretion has not been observable.
2. As provided by the protection clause above, it entails that IDS is based on the Calvo Doctrine⁶ hallmark, given that it is not investor-state agreement. Therefore there are possible risks of involving corrupt mechanisms to silence the judicial apparatus when the investor breaches a rule (Chinese case?) or when an ineffective resolution is made with the state as the respondent.
3. The last reason worth mentioning is that with developing countries, especially those with which Mozambique has historical ties and which belong to same FTA, BITs are more likely to be dealt with in a ‘brotherhood’ environment, as is the usual situation in African countries. This does not allow agreements to give investment disputes any relevance and, where they might arise, they are settled through political handshaking.

There are two caveats that Mozambique should be aware of in the case of non-existence of disputes with investors. Most of investment partners who actively infuse funds in the country are traditional WTO partners and the Donor Community.⁷ For the first caveat, Khaseke’s observation from the EAC-EU EPAs is applicable for this discussion: as Mozambique is one of the African, Caribbean, Pacific (ACP) countries, possibly most of the EU members are striving to discretely incorporate ‘Singapore issues’⁸ into BITs, which were refused at the multilateral forum, chiefly by Developing Countries (Georgiadis 2012).

The rationale is that developed countries might be rushing for bilateral investment arrangements because solving disputes with developing countries has always proven simpler to manoeuvre at bilateral level than under the multilateral Dispute Settlement Mechanism, as it involves international dispute forums.

The second and last caveat is that investors from developed countries might be vesting other interests in their investment packages through ODA. In this situation, on an investor’s breach of any rule,

⁶ Calco Doctrine: a dispute settlement mechanism between investors and host states, whereby investors were required to refer any disputes with host states to the domestic courts.

⁷ These countries are Belgium, Denmark, France, Germany, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States.

⁸ ‘Singapore issues’ refer to the four issues that were to be adopted as part of the negotiations under the Doha Round. They include investment, competition policy, trade facilitation and government procurement. Out of the four, only Trade Facilitation was retained as a negotiation item under the Doha Round.

hardly any issue can be raised when donations and other forms of assistance have flowed into the country.

5. Mozambique and the SADC Protocol on Finance and Investment

5.1. A brief overview on the protocol

The main objective of the SADC Protocol on Finance and Investment (PFI) is to foster harmonisation of the financial and investment policies of the state parties in order to make them consistent with objectives of SADC and to ensure that any changes to financial and investment policies in one state party do not necessitate undesirable adjustments in other state parties. This protocol seeks to achieve its objective through facilitation of regional integration, cooperation and coordination within finance and investment sectors.

The main goal of this protocol is to achieve diversification and expansion of the productive sectors of the economy, and to enhance trade in the region to achieve sustainable economic development and growth and eradication of poverty.

Mozambique is one of the protocol signatories and has ratified the PFI, which came into force in July 2010. The country is officially in compliance with the SADC binding foundations laid by its guiding instruments. The national investment law covers the aspects that the regional protocol stipulates. Officially, there are no restrictions on investment in Mozambique since regulations concerning investment facilitation, protection and settlement of disputes are enshrined in the national investment law.

But, the question should not be whether regional norms appear on an official paper. There are several aspects which could be termed as my personal concerns:

- a) **BITs v SADC effective integration and PFI implementation.** Critically looking into investment flows to Mozambique (as presented in Chapter II) we ascertain that main investment inflow in the country is through BITs. Overwhelmingly, most of investors (except Mauritius, South Africa and Zimbabwe) are not members of SADC. The majority are the traditional donors from developed countries. The correlation between BITs and the SADC Protocol I proposal is that while attention is concentrated on the large investment players, this could possibly lead to diversion away from regional integration and investment platforms compliance.

- b) **Information and Communication Technology (ICT) cooperation.** In order to strengthen this area, in May 2010, SADC created a development strategy called the E-SADC Strategic Framework. Its main objectives were to promote the use of ICT in the region to enhance connectivity and access to ICT services among SADC member countries, develop E-government, E-commerce, and financial issues, among others.

However, as pointed out by Nicholas (2012), E-government in most SADC countries, with the exception of South Africa, is still in its initial stages, compared to other countries in the world. Among these countries Mozambique features as a country with very low usage of government web pages, aggravated by the lowest literacy rate in the SADC region in terms of the usage of government websites and, therefore, the country ranks on the first place of inefficiency, as far as E-governance is concerned. The challenge is that because of severe poverty, investment in E-government implies that a huge chunk of gross domestic earnings will be channelled to E-government projects.

- c) **Transparency.** This has been discussed above. Lack of transparency is a barrier against investment in Mozambique. Many investors and analysts have expressed disenchantment with the fact that the procurement environment is not transparent since in general state-owned enterprises tend to gain priority.
- d) **Environmental measures.** Despite the fact that the environment is contemplated on Mozambican investment platforms, investment structures do not observe it. One of indicators pertaining to environmental challenges is that, according to the CIP Newsletter, Mozambique has been failed to adhere to the Extractive Industry Transparency Initiative (EITI) (Selemane and Nombora 2012). The country has been aspiring to belong to the industrial environmental initiative, but the EITI Council decided to reprove the candidature in August 2011, though the process has not yet reached a deadlock. The reason is that Mozambique has not been able to comply with six of the eighteen indicators that make up the EITI evaluation matrix that any country should satisfy in order to become an actual member, namely:

1. Incompliance with indicator 8: removal of obstacles to EITI implementation
2. Incompliance with indicator 9: support forms
3. Incompliance with indicator 11: ensuring that all companies do report
4. Incompliance with indicator 13: government report standards
5. Incompliance with indicator 14: publication of all payments
6. Incompliance with indicator 15: publication of all receipts

Conclusions

In this paper, Mozambique's investment regime was evaluated. The fact that the country has made heroic efforts to improve the investment regime through adopting a suitable law for a better and fairer business environment has been acknowledged. The country has been continuously receiving investment inflow from foreign investors and, at the same time, national investors have also been scaling up their investments in various business projects.

However, several aspects deserve attention. First, evidence shows that the continuous FDI inflow is not due to good policy investment law and fiscal incentives provided for in the official documents but rather due to the market itself.

Foreign investors face many challenges ranging from complex regulations to governance issues, while national investors, especially SMEs, find that the banking systems do not favour their activity, therefore hampering their competitiveness.

The country itself still does not yet reap the benefits from investment regulation due to poor policy implementation mechanisms and hindering procedures. Investment dispute settlement on one hand is complex and on the other the process is more likely to be involving obscure and corrupt practices.

Though the investment platform on official documents appears to be excellent, much still needs to be done in the area of law implementation. Revisiting implementation mechanisms, displaying more legal institutional transparency and simplifying banking procedure are some of the elements crucial for a better investment environment in Mozambique. These issues are essential for the country for effectively reaping benefits from investment, particularly foreign investment.

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Annex A: Total number of Bilateral Investment Agreements concluded, 1 June 2012

Partner	Date of Signature	Date of entry into force
Algeria	12 December 1998	25 July 2000
Belgium and Luxembourg	18 July 2006	1 September 2009
China	10 July 2001	26 February 2002
Cuba	20 October 2001	26 February 2002
Denmark	12 October 2002	30 December 2002
Egypt	8 December 1998	---
Finland	3 September 2004	21 September 2005
France	15 November 2002	6 July 2006
Germany	6 Marc 2002	15 September 2007
India	19 February 2009	---
Indonesia	26 March 1999	25 July 2000
Italy	14 December 1998	17 November 2003
Mauritius	14 February 1997	26 May 2003
Netherlands	18 December 2001	1 September 2004
Portugal	28 May 1996	31 October 1998
South Africa	6 May 1997	28 July 1998
Spain	18 October 2010	---
Sweden	23 October 2001	1 November 2007
Switzerland	29 November 2002	17 February 2004
United Arab Emirates	24 September 2003	---
United Kingdom	18 March 2004	12 May 2004
United States	1 December 1998	3 March 2005
Vietnam	29 May 2007	16 January 2007
Zimbabwe	12 September 1990	---
