

Legal Framework



For Recognising and
Acquiring Rights to Rural
Land in Mozambique

A Guide to Legalising Land-Holding

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giz Programa Pro-Econ

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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 on 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), a GIZ PRODER (Programa de Desenvolvimento Rural), CFJJ (Centro de Formação Jurídica e Judiciário), SAL & Caldeira Advogados, Sofala Provincial Government, and ACIS. By combining the experience of a leading business association with that of organizations working on community and private sector development and in the field of law, we hope to give clear, practical advice with a sound basis in law.

This booklet is aimed primarily at investors but is also, we hope, a useful tool for local communities and those working with them, and indeed those from the public sector promoting economic development and land use in rural Mozambique. However the booklet cannot be all things to all people. An extensive body of quality writing on land issues in Mozambique already exists and we have drawn heavily on this in our research. For those interested in learning more about this complex subject we have prepared a short but by no means all-inclusive bibliography of texts that we have found helpful.

Land acquisition is a complex matter in most jurisdictions and Mozambique is no exception. By necessity we have had to limit the scope of our booklet. We aim therefore to provide what is principally a guide to the acquisition of rights to use and enjoy rural land through authorisation of application and unless otherwise stated it is to this process we refer. We make reference to issues such as the acquisition of urban land, transfer of land rights and the mortgaging of improvements made to land. We have also briefly drawn attention to issues of current importance such as resettlement, illegal occupation and mineral rights. However the main purpose of this booklet is to assist interested parties in applying for new land use DUATs in non-urban areas and in verifying that their land is legally held.

As we developed the booklet at times we disagreed over what was the “proper” procedure. On further investigation we noted that this is because in some instances matters are handled differently in different parts of the country. While the sources of law governing most procedures (with the exception of land in municipal and other urban areas) are standardised at national level, local interpretation can vary. These differences are rarely of major significance but we felt it important, since this is a guide book of sorts, to note these differences. We have therefore taken the procedures as followed in Sofala Province as our baseline and, where we are aware of them, have made note of any differences in the way procedures are handled elsewhere in the country.

In this, the English language version of the booklet we have been faced with the choice of using terms in English or in Portuguese. We have opted to introduce both terms together and then to use the Portuguese term. While this may at first seem inconvenient to those who are not familiar with Portuguese in the longer run we believe it will help readers to become familiar with the basic terminology for land holding in Mozambique. A glossary of the terms used in Portuguese is included.

Much of the legislation cited in this booklet is available in both Portuguese and English from ACIS, and other booklets in the Legal Framework series are available from ACIS' website www.acismoz.com.

We have tried to be accurate but given the complexity of the subject matter it is likely that we have made some omissions and probably some mistakes as well. Both the law and public administration are dynamic so some of the laws and procedures we describe may change in the near future. We welcome you telling us of any errors or omissions you find so that we can correct them in future editions. That being said we must disclaim liability for any errors or omissions in this edition. As we have said, the issues surrounding land acquisition are complex and in cases of doubt, readers would do well to consult legal counsel.

We would like to thank GIZ for their belief in and support of this booklet and CFJJ (Centro de Formação Judicial e Judiciária) and SAL & Caldeira Advogados Lda for their invaluable legal insights.

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A note about footnotes: This booklet is not designed for lawyers, and while we hope that it will also be of use to them we have taken the view that footnotes, where included should be easily accessible to the average reader who does not have legal training. Therefore we have provided the formal citation of pieces of legislation in the text where they first occur. Subsequent references use the "name" of the legislation, for example the Land Law, Land Regulation etc.

2 GLOSSARY OF TERMS

Please find below a list of some of the terms you will encounter during the process of registering your land holding.

Acta	Minute of a meeting.
Assinatura Reconhecida	Signature on a document compared to that in an identity document and stamped as corresponding thereto, by the Notary .
Auto de Notícia	An official notification.
Boletim da República	The official gazette of the Government of Mozambique, in which legislation, as well as certain public deeds and DUATs , must be published.
Certidão Oficial	Certificate presented to a community to demonstrate that it has undergone a delimitation process.
Cessão de Exploração	Documented cessation of land use rights.
CGRN	Comité de Gestão dos Recursos Naturais or Natural Resource Management Committee which comprises community representatives.
COGEP	Conselho de Gestão Participativa or Participative Management Council. A body which includes private sector, community, government and NGO representatives at local level.
Comunicação de Despacho	A notice of dispatch, in this case from SPFFB advising the applicant of the approval of their concession application.
Conservatória de Registo Predial	Real Property Registry. In Maputo commerce and property registration are handled by distinct registries, the Conservatório de Registo Comercial (actually designated Conservatória de Registo das Entidades Legais) and the Conservatório de Registo Predial. Elsewhere the conservatories are co-located and known as “Conservatória de Registo”.
Cópia autenticada	Copy of a document compared to the original and stamped as corresponding thereto by the Notary .
Coutada	Officially delimited hunting and game management concession.
CPI	Centro de Promoção de Investimentos, or Investment Promotion Centre.
DIRE	Documento de Identificação e Residência para Estrangeiros, or Foreigners’ Identification and Registration Document.
DRP	Diagnóstico Rural Participativo or Participative Rural Diagnostic. The method used to delimit local communities.
DUAT	Direito de Uso e Aproveitamento de Terra or the right to use and enjoy land. Used here to refer both to the right itself (which may either be acquired, or an existing right recognised) and the documentary proof of such right. DUAT itself may be deemed to exist in certain cases without being documented.
Edital	A public notice.
Esboço	Map prepared by SPGC of the area for which DUAT has been requested.
Escritura Pública	A public deed prepared by the Notary .
Fazenda	A game farm.
Licença de Exploração	An operations license.
Memória descritiva	Literally a written description. In this case a description of the land area as prepared by SPGC .
Notary	The Provincial Registry and Notary Department, responsible for the preparation of public deeds, official validation of certain other legal acts, and authentication of signatures and documents, among other duties.
Pedido	A formal request.
Prédio rústico	Literally a “rustic building” but actually an identified area the structure on

	which has no economic utility distinct from the land itself, income derives mainly from the land and the function of the buildings is in respect of the use of the land.
Prédio urbano	Literally an “urban building” but in fact a legally defined concept that does not depend on the geographical location of the structure.
Postura	Municipal ordinance or by-law.
Procuração	Power of Attorney, a grant by one person to another to represent him, usually for certain limited purposes, as appropriate to the context.
Reconhecimento	Literally “reconnaissance”. A process undertaken by SPGC , before preparing the Esboço of an area, to determine what third-party rights exist.
SPFFB	Serviços Provinciais de Florestas e Fauna Bravia – Provincial Forestry and Wildlife Department. ¹
SPGC	Serviços Provinciais de Geografia e Cadastro – Provincial Geography and Cadaster Department. The department responsible for maintaining the provincial land cadastre, undertaking land survey and processing land applications. A department of the Ministry of Agriculture.
Termo de adesão	A preliminary agreement signed by the applicant and SPFFB during the application for a forestry concession.
Vistoria	An inspection, such as that undertaken by SPGC before issuing a definitive DUAT (in the case of DUAT based on authorisation of application).

¹ At national level the National Directorate of Forestry and Wildlife (Direcção Nacional de Florestas e Fauna Bravia – DNFFB) has recently changed its name to National Directorate of Forestry and Land (Direcção Nacional de Terras e Florestas – DNTF). Provincial directorates are expected to soon change their names in line with this. We have opted to use the current nomenclature

3 BACKGROUND TO LAND IN MOZAMBIQUE

A number of pieces of legislation and policy provide legal context and background for the land system in Mozambique. These include the 2004 Constitution of the Republic and the National Land Policy and Implementation Strategy. The Policy in turn prepared the way for the 1997 Land Law, the 1998 Regulations to the Land Law, and the 2000 Technical Annex to the Regulations. Other areas of legislation which impact the development of land include those related to national heritage and the environment. In areas bordering the sea, maritime legislation can also apply, and in sectors such as mining and tourism, sectoral legislation should be taken into account when applying for land. This Guide however focuses on the Land Law and the key processes involved in accessing and using land in Mozambique. As always, in case of doubt we encourage the reader to seek advice from legal counsel.

3.1 CONSTITUTION

The Constitution establishes the following principles in respect of land²:

- Land in Mozambique is the property of the State.
- It may not be sold, mortgaged or otherwise alienated.
- As a universal means for the creation of wealth and social well-being, the use and enjoyment of land shall be the right of all the Mozambican people.
- The right to use and enjoy land is conferred by the State, and conditions for such use are determined by the State.

3.2 LAND LEGISLATION

The National Land Policy (*Política Nacional de Terras* – Resolution No. 10/95 of 17 October) provides the following guiding principle for Mozambique’s land legislation: “To ensure the rights of the Mozambican people to the land and other natural resources, while promoting investment and the responsible and equitable use of these resources”³.

The Policy recognizes customary land rights as well as laying the foundation for the current legislation which describes the process for formalizing rights to land. The Land Law (*Lei de Terras* - Law No. 19/97 of 01 October,), its regulation (*Regulamento da Lei de Terras* - Decree No. 66/98 of 08 December) and the Technical Annex to the regulations regulate access to land for all uses including economic and residential purposes. This legislation provides the basis for the procedures described in this booklet. We have combined an explanation of the system as foreseen in the legislation with practical experience so that in instances where, in our experience, practice differs, this is noted.

3.3 LAND RIGHTS

The land use right conferred by the State through the Land Law is known as the “*Direito de Uso e Aproveitamento de Terra*” or “DUAT”. In English this is translated as the Right of Use and Enjoyment, but throughout this guide we use the term DUAT to refer to this State conferred right. A DUAT is important both for the State and for its holder because

² Constitution of the Republic of Mozambique, 2004, Articles 109 and 110

³ National Land Policy, Resolution No. 10/95 of 17 October Point 18

it guarantees legal possession of a tract of land, and where documented, provides formal proof of this possession and enables the State to organise its land cadastre.

The law provides for three ways in which a DUAT can be acquired⁴:

- By customary norms and practices - Occupation by individuals and local communities based on customary norms and practices. This means that individuals and local communities can obtain DUAT by occupation based on local traditions, such as inheritance from their ancestors;
- By good faith occupation – Occupation by individuals who have, in good faith, been using the land for at least ten years. This type of occupation only applies to national citizens;
- By authorisation of an application presented to the State as established in the land legislation. This is the only type of DUAT applicable for foreign natural and legal persons⁵.

Foreign and national natural and legal persons and local communities may hold DUATs⁶. The conditions of each DUAT are determined by the State. This booklet deals with the procedures for obtaining a DUAT, though the main focus of the booklet is on the third type of land holding – acquisition of DUAT through authorisation of an application and unless otherwise stated it is to this process we refer.

In the case of foreign applicants for a DUAT they must have an approved investment and have been resident in Mozambique for five years in the case of individuals or, in the case of legal persons, they must be registered and incorporated in Mozambique⁷.

In the case of foreign individuals a number of important questions are unanswered by the legislation, including what happens if, after five years, the person no longer continues to reside in Mozambique but has been issued a DUAT. Further details on rural land holding by foreigners are included in the FAQs in Section 4.6. Foreign individuals seeking land in Mozambique would do well to consult with legal counsel.

The process for requesting DUAT by authorisation of application is basically standard throughout the country. However the application is made to a different entity depending on the size of the land or, in certain cases, the use for which the land is intended. DUATs may not be conceded on public land or protected zones but special licenses for certain activities may be granted in such areas⁸.

The entity responsible for authorising a DUAT in rural areas depends on the size of the land required as follows⁹:

- the provincial government authorises DUAT for areas of less than 1,000 hectares;
- the Minister of Agriculture authorises DUAT for areas of between 1,000 and 10,000 hectares; and
- the Council of Ministers authorises DUAT for areas greater than 10,000 hectares.

⁴ Land Law, Article 12.

⁵ “Natural Person” is the legal term used to denote an individual person while “Legal Person” is used to denote bodies created under law, such as companies and other organizations.

⁶ Land Law, Article 10, Paragraph 1.

⁷ Land Law, Article 11.

⁸ Land Law, Article 9.

⁹ Land Law, Article 22.

The Land Law itself applies to both urban and rural land¹⁰ while the Land Law Regulation applies principally to rural land. Legislation specifically governing the allocation of land in urban areas was introduced at the end of 2006¹¹. This booklet touches on this new urban land legislation, but because there is little practical experience of its application and we have opted to leave the study of this important area for a later publication. Suffice it to say that in those urban areas with an organized land cadastre, access to land is regulated by municipal ordinance (*postura*) or DUAT conceded by the district administration.

The holder of a DUAT has certain rights and obligations¹². If the DUAT was conceded for economic activities, these must be undertaken in accordance with the usage plan presented as part of the land application process, and in accordance with the relevant sectoral, environmental and health and safety legislation¹³.

The DUAT issued based on authorisation of application is subject to charges (authorisation and annual usage fees) determined based on the location of the land, its size and the purpose for which it is used¹⁴.

A key aspect of the process for obtaining DUAT through authorisation of application is local community participation. Communities are consulted prior to approval of any DUAT application¹⁵. The community consultation process is discussed in Section 4.2.

If the application is approved a provisional authorisation is issued. This provisional authorisation is valid for 5 years for nationals and 2 years for foreigners¹⁶. During the provisional authorisation period the usage plan presented as part of the initial application must be fulfilled¹⁷. If the plan is fulfilled on or before time an inspection takes place and definitive DUAT is conceded. However if the plan is not fulfilled by the end of the provisional authorisation period the title is cancelled¹⁸ unless the provisional DUAT holder can provide a convincing reason (such as force majeure) for the delay in implementing the plan. This applies to land for both residential and economic purposes¹⁹.

A DUAT conceded based on economic use of the land is valid for a period of up to 50 years, and is renewable for an equal period on application²⁰. However any change of use, or indeed change of user is subject to reporting, registration or authorisation. These aspects are explained in more detail below. A new application is required at the conclusion of the first renewal period²¹.

Both land and forestry & wildlife application procedures follow the principle of the rule of first deposit, informally in the case of land legislation and formally in the case of

10 Land Law, Article 23.

11 Decree No. 26/06 of 26 December.

12 Land Regulation, Decree No. 66/98 of 08 December, Articles 13 and 14.

13 Land Regulation, Article 14.

14 Land Law, Article 28.

15 Land Law, Article 13, paragraph 3 and Article 24, paragraph 1, clause c).

16 Land Law, Article 25.

17 Land Law, Article 26.

18 Land Law, Article 27.

19 Land Regulation, Article 19, Paragraphs 1 and 2.

20 Land Regulation, Article 18.

21 Land Law, Article 17.

forestry and wildlife legislation²². This means that the first applicant to formally communicate their interest in a given area of land or concession has the first right to go through the DUAT or concession application process. Any subsequent applicant for the area in question must wait for the first applicant's right to expire, for the first applicant to renounce their right or to have their right revoked for non-completion of their project, before they are free to proceed with their own application.

Important Note: Obtaining a DUAT does not allow the holder to undertake the economic activity proposed in the DUAT application. The relevant licenses (commercial, tourism, industrial etc.) must also be obtained. Land clearance and the removal of trees from land may require a felling license from the Forestry Department. Many activities also require an environmental impact assessment before they can go ahead.

3.4 DECENTRALISATION

Mozambique is becoming increasingly decentralised. This means that authority for decision-making and management of funds is being vested at provincial and district level. The decentralisation process is not being rolled out at the same speed throughout the country and practices in certain provinces or districts often do not reflect changes in legislation. The time-lag between enactment and implementation of legislation is often more notable the further one is from central government authority. This means that as a matter of good practice, if not of law the applicant seeking land in a rural area would be advised to talk to the District Administrator of the area in which the land he or she wants is located. In the preparation of this booklet we have heard of many instances in which application processes are referred from provincial to district level and vice versa with staff being unsure as to who should make specific decisions or indeed being offended because they were not informed of the proposed application.

Given the complexity and sensitivity of the decentralisation process it is unlikely that such occurrences will reduce in the short term. Therefore it is incumbent on the applicant to work with both district and provincial level government representatives to ensure that everyone is aware of the proposed application and project, and thus to reduce the likelihood of delays.

4 OBTAINING A RURAL LAND DUAT THROUGH AUTHORISATION OF APPLICATION

4.1 PROCESS

As noted above there are three ways of acquiring a DUAT, although not all options are open to all applicants²³. Only Mozambicans can acquire DUATs acquired by customary or 'good faith' occupation, and this process is discussed in detail in Chapter 5. Acquiring a DUAT by formal application to the State (through its land administration agencies) is however open to both national and foreign natural or legal persons, and is the subject of this section. The procedures described below are complex and may appear at times contradictory or overlapping. Please consult the flow diagrams provided in

²² Forestry and Wildlife Regulation (Decree 12/2002 of 06 June) Article 19.

²³ Land Law, Article 12, Land Regulation Articles 9, 10 and 11

Section 8 to orient your reading of this guide. The following table summarises the key differences in types of land application:

	Occupation by customary norms and practices	Occupation by good Faith	Authorisation of Application (national natural person - residential)	Authorisation of Application (national natural person - economic)	Authorisation of Application (Legal person - national)	Authorisation of Application (Legal person - foreign)
Traditional use based on community rights / ancestry	X					
Proven occupation of at least 10 years		X				
Incorporated company					X	X
Shareholding of at least 51% national persons (legal or natural)					X	
Usage plan				X	X	X
Architects drawings			X			
Approved investment project						X

4.1.1 Application for Provisional DUAT

We have taken as our basis a national legal person. Where exceptions exist, for example in the case of foreigners or individuals, this is indicated. For the purposes of the Land Law, a national legal person is one in which equity of more than 50% is held by Mozambican citizens²⁴. A diagrammatic representation of the DUAT application process is provided in Section 8.

In order to identify a suitable area of land the applicant must undertake some local research. As well as consulting the provincial cadastre maps the applicant should visit the area and check the situation on the ground. At this point a visit to the District Administrator is useful, to inform him or her about the project, and to get some initial idea of where land might be available. It is important to note that land use by both rural populations and those applying for a DUAT is dynamic, and at times the maps at national and provincial level are unable to keep up with the reality on the ground. This is especially the case for community-held DUATs, which although fully legally recognized and protected, do not have to be registered and recorded on official maps.

Having identified an area of land, application is made by means of a letter (*pedido* – literally a request) which is directed to the relevant authority via the Provincial Geography and Cadastre Department (*Serviços Provinciais de Geografia e Cadastro - SPGC*). An example of a *pedido* is included in annex 7.1. As noted above in Section 3.3, the

²⁴ Land Law, Article 1, paragraph 9.

decentralization process means that in practice the applicant would be advised to contact the district administrator to discuss the availability of the land before making a formal application. The applicant should have a copy of the pedido stamped and dated by the SPGC when it is submitted. The applicant should then retain this copy to serve as proof, should it be needed, that a request was submitted.

The relevant authority varies depending on where the land is situated and the size of the area being requested. Rural land is requested through the SPGC and authorised by²⁵:

- Provincial Governor for areas of up to 1,000 ha;
- Minister of Agriculture for areas of between 1,000 and 10,000 ha;
- Council of Ministers for areas greater than 10,000 ha.

4.1.2 Local Consultations

The importance of local consultation cannot be stated strongly enough – it is essential if the applicant is to avoid future conflict, and paves the way for the formal community consultation.

Having received an application the SPGC may inspect the area applied for and demarcate it on maps if this has not already been done. Existing maps may be updated following the SPGC representatives' visit to the area. SPGC prepares a map of the area applied for (*esboço*) and undertakes a reconnaissance of the area (*reconhecimento*) during which they identify any third party (including community) rights in and around the requested area. This visit and survey is particularly important given that DUATs may be held through good faith occupation and through customary norms and practices. There is no obligation for either of these types of DUAT to be registered and recorded on cadastral maps and therefore, without detailed local investigation and a comprehensive community and public consultation phase the applicant for DUAT through authorisation of application cannot be sure what other rights may exist on the area applied for. The estimated number of days required for a *reconhecimento*, based on the size of the area applied for is included in annex 7.4.

Note that the Technical Annex in its Article 7 proposes that in all cases where a new project is proposed, a delimitation should be carried out first. While the process is not mandatory it is a good thing to do to avoid conflicts downstream, as explained in more detail in Chapter Five below.

The applicant is required to provide transport and travel expenses to the SPGC technicians undertaking this work. Such costs are based on the government's table of out-of-office expenses and should only be paid against an official receipt. A copy of the current expenses schedule is included in annex 7.2. In other cases, such as in certain districts in Sofala Province, SPGC has technicians at district level which means that the request for drawing up the *esboço* can be made at district level, which reduces time and cost implications. Fees for the *reconhecimento* and preparation of the *esboço* are included in annex 7.3.

SPGC prepares a map and a written description (*memória descritiva*) of the area requested. The *memória descritiva* includes the coordinates and address (district, village etc.). The SPGC then sets a date for a community consultation.

²⁵ Land Law, Article 22.

A copy of the application process (which now includes the esboço and memória descritiva) is sent from SPGC to the Administrator of the relevant district. Correspondence between provincial capitals where SPGCs are located and (often remote) district administration posts is sometimes slow and applicants sometimes opt to deliver the application to the administration post themselves to expedite the process.

A public consultation is undertaken with the communities identified in the reconhecimento as being affected by the land application²⁶. Representatives of SPGC and the District Administration, as well as the applicant or his representative, also participate in this meeting. Community consultations are dealt with further in Section 4.2 below.

The applicant is expected to bear the cost of the community consultation including transport and out of office expenses for SPGC and District Administration staff and a contribution towards any traditional ceremonies the local community may hold. Such payments should be made against an official receipt. Payments are detailed on tables available from SPGC and on the land application form which they issue. The table in use at SPGC Sofala is included in annex 7.3.

The outcome of the community consultation is a minute (*acta*) signed by community representatives and by the district administrator and SPGC representatives. A sample of the form used to prepare the acta is included in annex 7.5²⁷.

The SPGC then prepares a summary of the application (*edital*) to be posted as part of the public information phase of the process²⁸. This is prepared after the community consultation since the consultation may lead to a reduction in the size of the land applied for, or indeed to a change of location if the community does not agree with the project. The Administrator posts the edital at the District Administration Post to permit a public enquiry. The application is displayed for 30 days to allow the general public to comment. Having posted the edital for comment, the Administrator also begins preparing an official opinion which may include information about other planned or actual investments and land holdings in the area and can also propose terms under which the Administrator recommends that the DUAT be granted²⁹. These terms should in principle reflect the agreements reached in the community consultation. At the end of the 30 day consultation period the Administrator's opinion is finalised incorporating any comments received, and is then sent back to SPGC. The applicant may opt to collect the opinion from the Administrator and deliver it to SPGC.

4.1.3 Provisional Authorisation³⁰

Having completed the local consultation phase the applicant should now be in possession of the following documents:

- Esboço – map of the area
- Memória descritiva – written description of the area
- Acta – minute of the community consultation
- Edital – the public notice posted at District Level (proving that people have been informed according to the law)

²⁶ Land Law, Article 24 and Land Regulation, Article 27.

²⁷ Decree 15/2000 of 20 June.

²⁸ Land Regulation, Article 27 paragraph 1.

²⁹ Land Regulation, Article 27 paragraph 3.

³⁰ Land Regulation, Articles 24 and 28.

The applicant then purchases (for 10Mt – in accordance with the table in annex 7.3) and completes a form provided by SPGC³¹. A sample of this form is available in annex 7.6. This form, and the documents submitted with it, constitutes the formal application for the land.

The form requires the following information:

- Details of the applicant (natural or legal person);
- Name of the legal representative in the case of a legal person;
- Legal representative or individual applicant's biodata – including date of birth, nationality, identity document details, profession, marital status, address and contact details;
- Reason for completing the form (the same form can be used for increasing or decreasing the area covered by a DUAT, for delimitation, for requesting definitive DUAT etc.);
- Purpose for which the land is being requested;
- Description of the area being requested including details of third party rights;
- Details of any water resources on the area being requested;
- Date of reconhecimento;
- Date of community consultation;

The form also provides space for SPGC to calculate the fees payable in the form of land tax and provisional application fees.

The form must be signed by the applicant. Note that the applicant should submit notarised copies of documents such as the acta and esboço, retaining the originals and should retain a copy of the form that has been submitted including the date and signature of the SPGC staff member that received it.

In addition to the application form a foreign legal person must also fulfil the following criteria:

- Having an approved investment project (usually meaning approved by the Investment Promotion Centre – *Centro de Promoção de Investimentos*, CPI);
- Being incorporated or registered in Mozambique.

Documentary proof of the foregoing in the form of copies of the project approval, public deed and certificate of commercial registration are submitted along with the application³².

A foreign individual must provide proof of having been resident in Mozambique for at least 5 years. Individual applicants and representatives of legal entities must submit a notarised copy of their identity document. The use of powers of attorney to mandate representatives of legal entities is dealt with in Section 4.7.2 below.

A usage plan must be submitted with the application. This describes the future economic use of the land and planned infrastructure developments³³. While legal persons provide a detailed economic usage plan, natural persons undertaking residential construction require architects plans which fulfil the role of the usage plan. Economic usage plans usually include as a minimum details of the economic activity to be undertaken, and

31 Land Regulation Annex.

32 Land Regulation, Article 24.

33 Land Law, Article 1, paragraph 12 and Article 19.

infrastructure to be constructed. Applicants sometimes opt to include any agreements reached with the local communities in their usage plan.

It is worth noting that the issuing of the definitive DUAT is dependent on completion of the plan as presented at this stage of the process within a given time period (two years for foreigners and five years for nationals)³⁴. Applicants sometimes opt to make conservative estimates of the level of development they plan to achieve in the plan they submit with their application.

The DUAT will be conceded based on the use (economic or other) outlined in the usage plan and any subsequent change of use is subject to prior approval.

These processes having been completed the applicant pays a provisional license fee and their annual land tax³⁵. This is paid against a receipt³⁶. A schedule of fees is included in annex 7.7³⁷. While payment does not guarantee issuance of a provisional license a positive outcome to the public enquiry and community consultation processes are good indicators of a favourable response. Proof of payment is submitted along with the form and supporting documents³⁸.

The full application process which includes the form and supporting documentation is submitted in triplicate³⁹. Proof of payment of the application fee and land tax is submitted in quadruplicate.

Applications for land for economic use also require a technical opinion provided by the local representation of the line ministry responsible for that economic sector (for example the provincial directorate of tourism or mining)⁴⁰. These are sometimes requested by the applicant and submitted as part of the application but are more normally requested by SPGC during the process of reviewing the application. SPGC may also request technical opinions from other ministries and directorates (for water resources for example). In cases where SPGC requests a technical opinion the line ministry has 45 days to respond. If they do not, SPGC is required to move forward with the application process noting a “no response” from the line ministry.

The application is then sent to the governor of the province in which the land is situated, for his or her approval if it is not more than 1000 hectares, or for him or her to comment on the application before it is then sent by the SPGC to a higher level for formal approval (the Minister of Agriculture for areas up to 10,000 hectares; or the Council of Ministers for areas above 10,000 hectares).

If the process is approved the applicant is informed and a provisional license is issued. In practice departments rarely have the resources to communicate with applicants, who would do well to visit the department on a regular basis to check if a response has been forthcoming.

34 Land Regulation, Article 28, paragraph 3.

35 Land Law, Article 28.

36 Decree 30/2001 of 15th October Article 57 requires that government departments have bank accounts into which the public can deposit funds directly.

37 Land Regulation, Article 41 and Annex.

38 Land Regulation, Article 24, paragraph 1, clause g).

39 Land Regulation, Article 24 paragraph 3.

40 Land Regulation, Article 26.

A Ministry of Agriculture directive stipulates that the entire process up until this point take no more than 90 days. Note however that this is not a legal requirement stipulated in the Land Law or its regulations, but is merely a target to improve the efficiency of the process. Many processes go past 90 days, and in no sense does this imply a default situation where approval is either automatically given or declined.

Having been given, provisional approval is published in the government gazette (*Boletim da República*). Publication is usually arranged by SPGC at the applicant's cost, though the applicant may opt to arrange for publication for the sake of speed.

The applicant must now register the approval with the Real Property Registry (*Conservatória do Registo Predial*) for the area where the land is situated⁴¹. Registration fees are payable at the Conservatória. Fees are paid based on calculations of the costs of different aspects of the procedure multiplied by the size of the land among other issues. Details of rates used as a basis for such calculation are laid out in Ministerial Diploma 19/98, of 04 March.

Note: Land Tax must be paid each year and proof of payment is required when applying for definitive DUAT.

4.1.3.1 New requirements for applications for over 10,000ha of land

Due to the recent number of investments requiring large areas of land (over 10,000ha), and to better enable the Council of Ministers to take decisions about such applications additional application requirements have been introduced (through Resolution 70/2008 of 30 December). Note that these only apply to applications for DUAT on land of over 10,000ha, and all documents must be presented in Portuguese:

- a) General information about the applicant: name / company name; nationality; place of incorporation; main activity; other activities; experience in the type of activity for which the land has been applied for; additional information such as web address, accounts statements, bank references; CVs of the proposed project managers; other information deemed relevant by the applicant;
- b) Information about the proposed investment: demonstration of financial capacity to undertake the project; demonstration of technical capability and business experience to undertake the project; profitability of the project; number jobs to be created divided according to national or foreign; ways in which the project conforms to national policy and strategy; infrastructure existing on the site applied for (including roads, bridges, railway lines, schools, health posts);
- c) Information about the land itself: esboço including maps of how the land will be used and how it is currently being used; nature and scale of the proposed business venture; acta of the community consultation and the other documents listed above as for a standard DUAT application; opinions of the district administrator, provincial governor and minister of agriculture; development plan; relevant technical opinions from other government departments and independent third parties if these are available; partnership agreements with other DUAT-holders on the land applied for (including DYAT held by customary usage and good faith occupation);

⁴¹ Land Law, Article 14 and Land Regulation, Article 20, as modified by Decree No. 1/2003 of 18 February.

- d) Environmental information: an opinion from the Ministry for Environment on the environmental feasibility of the project;
- e) Socio-economic information: demographic information about the population resident in the area applied for; resettlement programme; social infrastructure to be provided by the project (including education, health, roads, electricity, water etc.); impact of the project on food production; involvement of local producers in the project (technical assistance, provision of inputs, provision of production equipment, assistance with market access);
- f) Information about the project development plan: technical information about the project (main and subsidiary activities, area required and its fit within the local agricultural system, soil types, crops in the area, water resources, irrigation systems, 10-year production plan – agricultural / industrial); investment and financing (investments per year, funding sources, proof of availability of funds); markets (including location of markets, products to be sold, typical prices); 10-year business plan.

4.1.4 Demarcation⁴²

The holder of a provisional DUAT then has one year from the date of approval to demarcate the area of land conceded. This can be done by technicians from SPGC or by a government-registered land surveyor. In practice there are few land surveyors available outside the south of the country so many investors opt to use the services of SPGC. This requires the holder of the provisional DUAT to request these services in writing and to provide out of office expenses and transport for the SPGC technicians, as well as providing any support the technicians require (for example labourers to make concrete demarcation posts and prepare holes for these markers). Demarcation is requested using the same type of form used for the provisional application (annex 7.6).

If demarcation is not completed within the first twelve months after issuance of the provisional DUAT an extension of a further ninety days may be requested. If after this time demarcation has not taken place the provisional DUAT may be cancelled.

4.1.5 Definitive DUAT⁴³

As noted above foreign applicants' provisional licenses are valid for two years and national applicants' provisional licenses are valid for five years. During this time period the development outlined in the usage plan submitted with the original application must be completed. A definitive license may be requested immediately on completion of the project rather than at the end of the provisional license period.

Definitive DUAT is not issued automatically but is subject to a site inspection (*vistoria*) by SPGC to ensure that land tax has been paid and that what has been done complies with the project or plan submitted as part of the original application⁴⁴. A *vistoria* is requested on the form in annex 7.6. The *vistoria* is subject to payment of fees for the out of office expenses of SPGC staff based on the tables in annexes 7.2 and 8.3.

If the outcome of the *vistoria* is favourable SPGC then moves the process through similar stages to that of the provisional DUAT application. That is to say SPGC issues an inspection report (*Auto de Notícia*). The DUAT-holder should retain a copy of the *Auto de Notícia* for his records. The DUAT-holder pays the definitive DUAT application fee

⁴² Land Regulation, Article 30.

⁴³ Land Regulation, Article 31.

⁴⁴ Land Law, Article 26 and Land Regulation Article 31.

(see annex 7.7)⁴⁵. The DUAT-holder then submits a form requesting definitive DUAT. This is the same type of form used for application for provisional DUAT (see annex 7.6). 3 copies of the Auto de Notícia and four copies each of proof of payment of the definitive DUAT application fee and the annual land tax must also be submitted. The law allows that the definitive authorisation fee be paid within three months of the issuance of the authorisation⁴⁶. In practice proof of payment is required for the certificate to be issued.

SPGC prepares an edital which it sends to the District Administration. The District Administration posts the edital on the notice-board at the administration for 30 days and provides an opinion on the issuing of the definitive DUAT. This opinion is returned to SPGC which passes the process to the provincial governor. The provincial governor then provides his opinion. In the case of land of less than 1,000 ha the governor approves the issuance of the definitive DUAT. In the case of larger tracts of land the governor's office returns the process with the governor's opinion to SPGC which passes the process either to the Ministry of Agriculture or to the Council of Ministers. Having been approved at each stage the definitive DUAT is issued in the form of a certificate and is published in the Boletim da República. The applicant may opt to arrange publication to expedite the process. Publication is paid for by the applicant.

The DUAT certificate contains the following information⁴⁷:

- Identity of the entity which authorised the DUAT;
- Date of authorisation;
- DUAT number;
- Name of DUAT-holder;
- Identification of the area (coordinates, parcel number and numbers of neighbouring parcels);
- Validity period;
- Type of use for which the DUAT was conceded;
- Description of existing infrastructure and improvements;
- Fees payable;
- Date and place of issue of the certificate;
- Signature and stamp of the issuing authority.

The holder of the definitive DUAT must then register it with the Conservatória de Registo Predial⁴⁸. This registration is subject to fees.

DUATs are valid for as long as the corresponding authorisation certificate states, the outside limit being 50 years⁴⁹. One year before the authorisation period ends, the holder may request its extension for up to a further 50 years. Renewal requires that the DUAT holder demonstrate that they continue to exercise the same economic activity for which the original authorisation was issued.

4.1.6 Cancellation & Revocation

A provisional DUAT may be cancelled for non-compliance with the terms on which it was issued. For example non-demarcation of the area or non-completion of the project

45 Land Regulation, Article 41 and Annex.

46 Land Regulation, Article 42, paragraph 2.

47 Land Regulation, Article 36.

48 Land Regulation, Article 20.

49 Land Regulation, Article 17.

outlined in the usage plan within the given time period are reasons for cancellation. In these circumstances any investment already made is not subject to indemnity but reverts to the State⁵⁰.

In our experience the SPGC are generally flexible and aware of the type of constraints that can affect or slow down an investment project. Holders of a provisional DUAT who foresee problems in complying with the terms of the DUAT should contact the SPGC as early as possible to discuss with them options for extending the period of the provisional DUAT. The law also permits re-dimensioning of an area covered by a DUAT, which permits investors to reduce the size of the area if they are unable to comply with the usage plan to develop the entire area⁵¹.

A definitive DUAT may be revoked for reasons of public interest⁵². In this case revocation must be preceded by compensation. Mining rights are one area of public interest which can lead to the revoking of a definitive DUAT and are dealt with in more detail in Section 6.5 below. Further discussion of extinction of DUATs is included in section 4.3.3.

4.1.7 Fees⁵³

Two classes of fees - authorisation fees and annual fees are associated with the DUAT. Differentiated rates apply to national and foreign investors, as well as to different areas of the country and to different types of land use. The fees and costs associated with application for and allocation of land often prove more onerous than the authorisation and annual fees themselves. Tables of fees are provided in annex 7.7.

Annual land tax fees are payable in either one or two instalments: if paid in one instalment they must be paid in the first quarter of the calendar year (by the end of March); if paid in two instalments they must be paid by the end of March and the end of June. Non-payment results in a fine and could result in revocation of the DUAT.

4.2 COMMUNITY CONSULTATION⁵⁴

The community consultation has at times been seen by investors as a mere formality, but it is in fact a fundamental component of the application for DUAT by authorisation of application. Every land application process must include a community consultation. This provides an opportunity not only for local communities but also for those neighbouring the requested land area to comment on the proposed development. Such consultations are undertaken to reduce the likelihood of future conflict. They also provide a structured environment for dialogue between the potential investor, the community and other land holders in the area, and the government.

Community consultations (undertaken in conjunction with the reconhecimento mentioned in 4.1.2 above) are initially to determine whether or not the area applied for is free of occupation. In Mozambique, community boundaries are established by long standing patterns of historical occupation and extensive land use systems, referred to in

⁵⁰ Land Regulation, Article 32.

⁵¹ Land Regulation, Article 33.

⁵² Land Regulation, Article 45, Decree 16/87, of 15 July, Article 79.

⁵³ Land Regulation, Articles 41, 42, 43 and 44.

⁵⁴ Land Law, Article 24, Land Regulation, Article 27 and Decree 15/2000 of 20 June.

the definition of the 'local community' in the Land Law⁵⁵. In most areas therefore, a new applicant for a DUAT is very unlikely to find land that is free of occupation. This being the case the community consultation aims to define the conditions under which the holders of the DUAT (held based on good faith occupation or customary norms and practices – and which right may or may not be documented) cede or share their rights over the area applied for. Community consultation is therefore a mechanism to ensure that rights and expectations are managed and to reduce the likelihood of future conflict.

Community consultations take the form of a meeting on the area of land being applied for. The meeting includes the District Administrator or his representative, representatives of SPGC and the local community and neighbouring land holders. During the reconhecimento stage of the process SPGC representatives identify third party rights which abut or overlap with the land being applied for, and these third parties are invited to participate in the local consultation phase of the application process.

Typically a community consultation would discuss the reasons for the meeting, details of the proposed project, the land legislation with reference to this process, and the community's rights. Community members would be given an opportunity to ask questions and discuss the implications of the development.

Applicants or their representatives (see Section 4.7 below for details of mandating a representative) are expected to attend the community consultation which is an opportunity for the community to negotiate defined benefits with the applicant. In the case of private sector investors this may include guarantees of employment opportunities or small-scale infrastructure investments such as providing a school roof or well. Certain improvements which have been made on the land, such as the planting of fruit trees must be compensated for. In the case of fruit trees for example, the Ministry of Agriculture has a defined compensation rates table. Agreements or promises made during community consultations are included in the consultation acta and are considered binding.

The introduction of the new Territorial Planning Law (Law 19/2007 of 18th July – Lei do Ordenamento Territorial) provides a structure which, in the absence of specific legislation governing compensation for expropriation, is likely to be applied to indemnity calculations in the future. This legislation provides for public consultation followed by compensation for the sacrifice of acquired rights. The rights to be compensated for are: loss of tangible and intangible assets; damage to social cohesion; loss of productive assets.

Community consultation meetings are minuted (in the form of the acta) and signed by the District Administrator, the applicant, between three and nine representatives of the community and a representative of SPGC. Actas should include the date, participants including the number of community participants, a summary of the discussion and any future meeting dates if the meeting was not conclusive. At least four copies of the acta should be prepared with one copy each for the community, the applicant, the District Administration and SPGC. The type of form used to generate an acta is included in annex 7.5.

⁵⁵ Land Law, Article 1, paragraph 1

If the initial meeting does not result in consensus a second meeting must be held within 10 days after the first and in this and any subsequent meetings between three and nine community representatives must participate.

The issues of community consultation and of who has the right to represent the community, and whether or not the process undertaken was truly representative are contentious ones which are discussed with increasing frequency as more investors and individuals apply for DUAT. Further discussion of community land rights is included below in Section 5.

4.3 REGISTRATION, TRANSMISSION & EXTINCTION

This is a complex area and one we have chosen to touch on only briefly here. Further, case-specific information can be obtained by consulting legal counsel. To better understand this section it is important to note that while land itself cannot be sold, mortgaged or otherwise alienated, the buildings and other improvements on that land may be mortgaged or alienated by the person who holds the rights to the underlying land.

Buildings and improvements, and therefore the land which underlies them, are dealt with in two distinct ways⁵⁶:

- *Prédio urbano* - literally an “urban building” but actually a legally defined concept which does not depend on the location of the building;
- *Prédio rústico* – literally a “rustic building” but actually an identified land area the structure on which has no economic utility distinct from the land, income derives mainly from the land and the function of the buildings is in respect of the use of the land.

4.3.1 Registration⁵⁷

Registration is an administrative form of publicizing the various acts which make up a DUAT process. The Land Law requires that constitution, modification, transmission and extinction of DUAT be registered. Exceptions to this are DUATs based on customary norms and practices or good faith occupation held by national individuals or local communities. Land rights held based on good faith occupation or customary norms and practices are not prejudiced by the absence of registration.⁵⁸

Certain acts are subject to registration with the Conservatória de Registo Predial⁵⁹. Others may only be effected through a public deed (*escritura pública*). Both provisional and definitive DUAT and any subsequent changes to the DUAT (see section 4.3.2 below) must be registered at the Conservatória de Registo Predial. These must also be published in the Boletim da República. Both procedures are subject to costs. The law envisages that the DUAT-holder should report any changes to SPGC. It should be noted that it is the responsibility of the DUAT-holder to report any change and to ensure that all the necessary steps from escritura pública to publication have been undertaken. The registration at the Conservatória de Registo Predial is the responsibility of the DUAT-holder.⁶⁰

⁵⁶ Land Regulation, Article 1, paragraphs 4 and 5 and Articles 15 and 16.

⁵⁷ Land Regulation, Article 20.

⁵⁸ Land Law, Article 14 paragraph 2.

⁵⁹ Decree 01/2003 of 18 February.

⁶⁰ Land Regulation, paragraph 1, Article 20, as modified by Decree No. 1/2003 of 18 February.

Changes that should be reported include:

- Purchase, sale or mortgage of any infrastructure, construction or improvement on the land;
- Changes to rights of way;
- Partial cessation of use of land.

Note - Any change of use from that for which the DUAT was issued, is subject to prior approval, not to simple registration after the fact.

4.3.2 Transmission⁶¹

4.3.2.1 Inheritance

Land rights may be transmitted by inheritance. This process is governed by the Civil Code and does not require official authorisation. It is interesting to note that the legislation specifically allows transmission by inheritance to both male and female heirs.

A DUAT obtained by authorisation of application can be transferred to the heirs of the original holder on presentation of proof that the applicants are the legal inheritors of the property. Registration at the Conservatória de Registo Predial should be made by the heirs, and the DUAT is then re-issued in the names of the heirs.⁶²

4.3.2.2 Transfers “inter vivos”⁶³

The law permits the transfer of buildings, improvements and infrastructure between living persons. The transfer of DUAT in this case depends on the type of land to which the DUAT relates. In the case of a prédio rústico the transfer of infrastructure, buildings and improvements does not imply the automatic transfer of the DUAT. In order for the DUAT to be transferred along with the buildings the transfer must be approved by the entity which issued the DUAT. The parties wanting to effect the transfer must first request approval from SPGC, which will direct the application to the relevant entity. The request for approval must demonstrate that the usage plan has been complied with and that annual land tax payments are up to date. Having received approval the applicants must celebrate an escritura pública of purchase and sale at the notary. The escritura is subject to fees and taxes, such as stamp tax.

Another form of transfer is the transfer of use rights (*cessão de exploração*) which envisages the transfer of the operation as a whole, including the underlying land. This is subject to the same process as that described above for prédios rústicos, but it is a temporary rather than a definitive transfer.

In the case of prédios urbanos transfer does not require prior authorisation by the State. In this case the transfer of property automatically includes the transfer of the DUAT. However such transfers also require the celebration of an escritura pública and the payment of applicable fees and taxes.

For further information on the debate surrounding the transfer and mortgage of land in Mozambique we recommend W.B. Hughes’ report “An Economic Analysis of Natural Resources in Mozambique - Rural Land Issues and Policies” published in 2005.

⁶¹ Land Law, Article 16 and Land Regulation, Articles 15 and 16.

⁶² Land Regulation, Article 20, paragraph 2, as modified by Decree No. 1/2003 of 18 February.

⁶³ Land Law, Article 16 and Land Regulation, Articles 15 and 16.

In it for example Mr. Hughes is of the opinion that: “*If the land title is held by a company, which is permissible under the Regulations to the Land Law, then effective control of the land may be transferred simply by transferring a majority of shares in the company. There seem to be no change of control provisions in land titles - in any case, they would be almost impossible to enforce – so land held by a company can be offered as security by pledging shares in the company. A lender can execute this security by selling the shares in the company. With a moderate degree of legal ingenuity there would seem to be no barrier to creating arrangements that are equivalent in economic terms to a mortgage on land. The only problem is that, in absence of a clear and specific regulation, these arrangements will be more costly and perhaps provide less reliable security than a simple mortgage, so that the effect of current legal provisions is to increase transactions costs for borrowing secured against land*”.

4.3.3 Extinction⁶⁴

By extinction we mean the definitive cessation of the right conceded in the DUAT. There are a number of ways in which a DUAT can become extinct. These include:

- Non-compliance with the usage plan – in which case the DUAT is cancelled by the State;
- Revocation in the public interest (see Section 4.1.6 above) – subject to a compensation and expropriation process;
- Conclusion of the period for which the DUAT was granted, or the renewal period if renewed - expiry;
- Renunciation of right – in which case the DUAT-holder hands the property back to the State.
- Extinction of the DUAT means the termination of any and all rights which the DUAT-holder had over that area of land. All non-removable improvements revert to the State.

4.4 PROTECTED AREAS⁶⁵

The land legislation provides for both total and partial protection areas. It is not possible to acquire a DUAT in either type of protected area. Total Protection Areas include areas set aside for the preservation of nature and areas of importance for national defence. Partial Protection Areas are zones around key infrastructure or which contain key natural resources. Though a DUAT may not be acquired, special operating licenses may be conceded in these areas⁶⁶. The procedures for such concession are not detailed in legislation. This is an area which is increasingly causing controversy particularly in respect of tourism development and those considering seeking authorisation of a DUAT in such areas would be advised to seek legal counsel.

The forestry and wildlife legislation also provides for the creation of protected areas such as national parks and reserves, and areas of historic or cultural value⁶⁷. Protected areas are considered part of the public domain and are managed by the government through the relevant ministries. National parks for example fall within the remit of the Ministry of Tourism. While the law does not provide for land concessions or DUATs acquired through authorisation of application in protected areas it does mention the possibility of concessions for the management of such areas, though procedures for obtaining such concessions are not specified.

⁶⁴ Land Law, Article 18 and Land Regulation, Article 19.

⁶⁵ Land Law, Articles 6, 7, 8 and 9 and Land Regulation Articles 4, 5, 7 and 8.

⁶⁶ Land Law, Article 9

⁶⁷ Forestry and Wildlife Law (Law 10/99 of 07 July), Articles 10, 11, 12 and 13.

Mozambique's attractive coastline has long been of interest to investors. Maritime and environmental legislation require that any coastal development be subject to an environmental scoping exercise and in some cases to a full environmental impact assessment. In order to protect the dunes and the coastal environment in certain parts of the country the land and maritime legislation is interpreted to mean that structures may not be built within 100 metres of the high tide mark⁶⁸. However another reading of the relevant legislation is that provided that the planned development complies with the procedures for obtaining an environmental license and the procedure for special licensing, such development could be authorised⁶⁹.

4.5 RIGHTS & OBLIGATIONS

The DUAT-holder's rights and obligations are defined in law. Their rights are as follows⁷⁰:

- To defend their land-holding against intrusion by other parties;
- To have access to their area of land and to public water resources through neighbouring landholdings, where necessary creating rights of way.

Their obligations are⁷¹:

- To use the land in accordance with the principles enshrined in the Constitution and other legislation;
- In the case of economic activity to use the land in accordance with the usage plan submitted;
- To allow access across the land for neighbours that do not have access to public roads or public water, and where necessary to create rights of way;
- To respect existing rights of way;
- To allow access and permit installation of equipment for mining activities, subject to compensation;
- To maintain demarcation markers;
- To collaborate with SPGC staff, registered surveyors and government inspectors.

Holders of DUAT through authorisation of application have certain obligations in respect of local communities. These include fulfilling the agreements in accordance with the community consultation acta and allowing access to certain resources for traditional community use⁷². This can include access to areas of cultural and historical significance, collection of medicinal plants and gathering of firewood for individual consumption. However local communities must also abide by the usage or management plans of the DUAT-holder.

In practice the rights to protect land from third party access and the right to access water resources and public roads across land can lead to confrontation. Difficulties arise particularly between investors and largely illiterate rural populations. As noted above, in order to protect community rights, customary land rights are enshrined in both the Constitution and the land legislation. The criteria for determining good faith occupation (by testimony from community witnesses) mean that an area of land may have more

⁶⁸ Land Law, Article 8 and Land Regulation, Article 5.

⁶⁹ Decree 45/2004 of 29 September, the Environmental Impact Assessment Procedure Regulation and Land Law Article 9 and Article 22 paragraph 1

⁷⁰ Land Regulation, Article 13.

⁷¹ Land Regulation, Article 14.

⁷² Land Regulation, Article 14, clauses b) and c) and Article 17, and Forestry & Wildlife Law, Article 18.

claimants than the investor (or the State) expected. The investor and the State are then faced with the need to indemnify and resettle the claimants. While in the case of large projects an early population survey may help reduce risk, the rights of holders of DUAT by authorisation of application are rarely upheld particularly in respect of illegal settlement post-concession of the DUAT and this is an increasingly sensitive area.

The reason often given is the obligation of the holder of DUAT by authorisation of application to clearly maintain their demarcation and to defend their land-holding. If a holder of DUAT by authorisation of application does not notice illegal settlement on his area or does not report it to district and provincial authorities immediately he is held to be in breach of his rights and obligations. It is also argued in some cases that since the holder of DUAT by authorisation of application is obliged to use the land he has been conceded, not noticing and dealing with illegal settlement or invasion immediately means that he is not using all the land and that it could therefore be re-dimensioned to make room for the settlers. Holders of DUAT by authorisation of application should therefore ensure that their demarcation markers are clearly visible and even use natural markers (for example planting trees) to further demarcate the area. They should regularly inspect the “borders” of their area and should alert authorities in writing immediately of any illegal settlement or invasion.

4.5.1 Resettlement

There is no specific legislation governing the resettlement of those whose DUATs are cancelled. Land cannot be bought or sold and thus has no market value and there is no specific formula used to calculate indemnity. Instead an estimate is made based on location (proximity to public services for example) and aspects such as productivity and soil quality. Any improvements on the land should be included in the calculation. Fruit trees for example have a fixed compensation value established by the Ministry of Agriculture. Certain sector-specific legislation, such as the mining legislation allows for the negotiation of specific terms and in practice large projects look to World Bank or European Union guidelines for best practice.

4.6 FAQs

I have been advised that my proposed project requires an environmental impact assessment. Do I need an environmental license to get my DUAT? I have been told that environmental licensing can take a long time, what should I do if I don't have the license within the two years my company has to complete its project?

An environmental license is not a pre-requisite for obtaining a DUAT. In fact the license is not requested by SPGC at any point during the application procedures (though an opinion from the Environment Ministry must now be included in applications for land of over 10,000ha). However the environmental legislation permits that anyone operating without an environmental license may have their activities suspended or their licenses revoked. Therefore you must obtain an environmental license and should not begin work on developing your project on the land on which you have provisional DUAT until you have one. Depending on the level of environmental impact assessment your activity requires the process can be lengthy. However in our experience SPGC are understanding of these issues. If you foresee a problem you should notify the SPGC that issued your provisional DUAT as soon as possible, in writing. It is a good idea to provide proof of the reason for requesting an extension of your provisional DUAT – in this case your

environmental licensing process. Don't forget to keep stamped and dated copies of all correspondence you submit.

I am a foreign individual, I have lived in Mozambique for five years and I would like to acquire land to build a house in Mozambique. Can I?

The simple answer to this question appears to be “no”. Firstly as a practical matter there is the issue of proof: The land legislation permits that a foreigner that has been resident for more than five years can apply for DUAT. However the immigration legislation recognises proven residence of more than 10 years as the right to permanent residence. In practice, to date a person residing for more than five but less than ten years finds it difficult to provide the proof required when applying for a DUAT. Changes to the immigration legislation which only permit the issuance of a temporary residence document after five years would in theory facilitate this proof⁷³.

However, secondly, and more critically there is the government's own interpretation of the Land Law which it issued in a circular in August 2006. In this circular the government notes that one of the prerequisites for foreigners obtaining DUAT is proof of an approved investment project. However the investment legislation and Land Regulation state that personal dwellings do not constitute investment projects. The circular has in a number of instances been understood as an instruction not to accept applications for land for residential purposes from foreigners.

I have received my provisional DUAT. My project requires me to clear trees from the land. I would like to use these trees to build the infrastructure I need such as offices. Can I do so?

Removal of trees is usually dependent on licensing by the forestry service. The type of license you will need will depend on the number of trees to be removed. The law permits that timber from the area on which you have DUAT, can be used for your own consumption. In the case of local communities this allows them to gather timber poles for construction, and you could certainly argue that this is what you are doing. However in practice it is advisable to approach the forestry department in writing advising them of what you plan to do. They will then issue you with the documents you may need.

Why do you use the term DUAT when what I have is basically a leasehold?

You are correct in noting that in some aspects a DUAT and a leasehold resemble each other. However they are not the same. Both are less than outright ownership, both have a time limit (a maximum of 50 years renewable in the case of a DUAT) and both can be lost or revoked unless conditions provided in a contract are fulfilled. However, different understandings of leaseholds in Mozambican and other jurisdictions aside, a DUAT goes beyond a leasehold in that the holder of DUAT by authorisation of application has the right to register the improvements he makes on the land in his own name and then mortgage or sell these improvements.

You mention demarcating the boundaries of my area, can I use fencing?

⁷³ Decree 38/2006 of 27 September, Article 1 paragraph u.

The short answer is “yes”. Certain types of fencing, such as electric fencing are subject to signage requirements based on health and safety norms. You may not fence across rights of way and in rural areas you should be aware of environmental issues such as migration routes. However in general plainly visible physical demarcation, such as fencing is encouraged by SPGC since it reduces instances of accidental or deliberate invasion. Due to the cost of fencing some people opt to plant trees and in the case of large land areas may follow the requirements of the forestry and wildlife legislation which requires the painting of marks on trees and affixing of small signs around the perimeter.

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. The law requires that each government department have a bank account and payments may be made directly into that account⁷⁴. Where possible it is preferable to use this system rather than to pay cash.

I have demarcated the land and am using it in accordance with my usage plan but members of the neighbouring community have moved onto part of the land and are building houses. What should I do?

As a first step you should meet with the community leader and show the demarcation of your land and request that the community members settled within your demarcated area move. If this does not have the desired outcome you should contact the District Administration as soon as possible and request their intervention. Keep copies of all correspondence on the matter. If the District Administration is unable to assist you should refer the matter at the earliest opportunity to SPGC, again retaining copies of correspondence. Unless the community members have been resident on your land for a considerable period before you have raised a concern the government authorities are able to assist. If however you have not raised the issue immediately the community members and the authorities may argue that you are not fully utilizing your land, as required under the terms of your DUAT and may propose that you re-dimension allowing the community members to retain the area that they have occupied.

The land area I have been allocated has some forest on it, which I would like to conserve. Members of the local community are cutting the trees and selling the timber at the side of the road. They are also using the timber to make charcoal which they sell in town. Is this allowed?

The short answer is “no”. Communities are permitted to access resources on your land for their own consumption, not for economic purposes. You should first raise the matter with the community leader and explain why you are concerned. If you are unable to resolve the matter this way you should contact the District Administration and request their assistance. Don’t forget to retain copies of any correspondence.

4.7 CHECKLIST & TIPS

4.7.1 Checklist

Submission of provisional DUAT application

You submit:

⁷⁴ Decree 30/2001 of 15 October, Article 57.

Form (which requires the following information):

- Details of the applicant (individual or legal person);
- Name of the legal representative in the case of a legal person;
- Legal representative or individual applicant's biodata – including date of birth, nationality, identity document details, profession, marital status, address and contact details;
- Reason for completing the form (the same form can be used for increasing or decreasing the area covered by a DUAT, for delimitation, for requesting definitive DUAT etc.);
- Purpose for which the land is being requested;
- Description of the area being requested including details of third party rights;
- Details of any water resources on the area being requested;
- Date of reconhecimento;
- Date of community consultation.

In addition:

- Esboço – map of the area;
- Memória descritiva – written description of the area;
- Acta – minute of the community consultation;
- Edital – proof of public enquiry at district administration level;
- Usage plan.

Legal persons must also submit:

- Proof of registration and incorporation (usually in the form of the public deed and certificate of commercial registration).

Foreign legal persons must also submit:

- An approved investment project (usually meaning approved by CPI);

Submit three copies of each of the above.

Submit four copies of:

- Proof of payment of provisional licensing fee;
- Proof of payment of annual land tax.

Note that for areas of land over 10,000ha additional documentary requirements exist (as listed above)

You will receive:

- A stamped copy of the form as proof of submission;
- If your application is successful you will receive a notification of provisional authorisation.

Submission of definitive DUAT application

You submit:

Form (which requires the following information):

- Details of the applicant (individual or legal person);
- Name of the legal representative in the case of a legal person;
- Legal representative or individual applicant's biodata – including date of birth, nationality, identity document details, profession, marital status, address and contact details;
- Reason for completing the form (the same form can be used for increasing or decreasing the area covered by a DUAT, for delimitation, for requesting definitive DUAT etc.);

- Purpose for which the land is being requested;
- Description of the area being requested including details of third party rights;
- Details of any water resources on the area being requested;
- Date of reconhecimento;
- Date of community consultation.

In addition:

- Auto de Notícia of vistoria (proof of inspection and compliance with usage plan);
- Proof of demarcation.

Submit three copies of each of the above.

Submit four copies of:

- Proof of payment of definitive licensing fee;
- Proof of payment of annual land tax.

You will receive:

- A stamped copy of the form as proof of submission;
- If your application is successful you will receive a notification of definitive authorisation;
- A DUAT certificate.

4.7.2 Tips

The following suggestions which are based on practical experience are provided to assist, they are not based on law:

- Wherever possible correspondence with government should be undertaken in writing;
- When submitting correspondence or documents always retain a copy which has been stamped and dated by the government department that received the item;
- Retain originals of all official documents pertaining to the land application process (such as actas, esboços, memórias descritivas, autos de notícias etc.). Instead submit copies which have been notarised.

If one or more of the applicants for a DUAT (for example in the case of a legal person) are not available to sign documents or attend the local consultation they should consider giving a Powers of Attorney (*Procuração*) to someone they trust to represent them.

A *procuração* is usually drawn up for a limited purpose as appropriate to the context. In the case of application for a DUAT, a *procuração* would ordinarily state that the proxy has the right to sign forms, request registration of documents at the conservatória, participate in community consultations and act as proxy in interactions with the SPGC.

A *procuração* can be drawn up by a lawyer or by the Notary. The signature must always be verified by a Notary. It is critically important to understand what powers you are conceding through a *procuração*, and to craft the limits of those powers appropriately.

Legal persons may draw up and sign a *procuração* at a Mozambican Embassy or Consulate. In this case documents must first be presented at the embassy for the purposes of verifying that the legal person has taken a decision to appoint the proxy, and to invest in Mozambique. These documents must also be officially translated if they are in a language other than Portuguese. If the rules governing the corporate body require that a majority

of the board sign official acts, then these board members will need to visit the Mozambican Embassy or Consulate to sign the *procuração*.

It is usually best to make and keep an authenticated copy of the *procuração*, especially in the case of a *procuração* from a legal person, because replacing it if it happens to be misplaced can be a lengthy process. The proxy will need to show the *procuração* at a number of stages during the DUAT application process.

5 OBTAINING RECOGNITION OF A RURAL A RURAL LAND DUAT BASED ON GOOD FAITH OCCUPATION OR CUSTOMARY NORMS AND PRACTICES

As noted above, the right to use and enjoy land can be obtained in three distinct ways: authorisation of application; good faith occupation; and customary norms and practices⁷⁵. The process for acquiring DUAT through authorisation of application is described in Chapter 4 above.

This chapter considers the second two methods of obtaining recognition of an existing DUAT, from the point of view of communities, with a particular focus on obtaining recognition of an existing DUAT based on customary law. A good way to understand the distinction is to think of DUAT through authorisation of application as being a procedure seeking approval of a right that does not yet exist while customary and good faith DUAT's already exist and the procedures described below are ways to provided documented recognition of these existing rights. As mentioned above, land rights held based on good faith occupation or customary norms and practices are not prejudiced by the absence of registration or of being formally documented.

5.1 WHAT IS A LOCAL COMMUNITY?

There are a variety of types of community in Mozambique which differ from area to area. Traditional authorities are overlaid with administrative, religious and sometimes even political authorities and divisions created both in colonial and post-colonial times. Often administrative divisions do not coincide with the divisions perceived by the communities themselves.

One of the difficulties encountered by those involved in natural resource issues in Mozambique is therefore in the legal definition of "communities", given that various definitions are provided in the glossaries of different pieces of legislation. However in respect of land a specific concept is defined in the Land Law, namely the 'local community', with its own specific definition which reflects the diverse and complex nature of real local level land use and occupation across the country⁷⁶:

"A grouping of families and individuals living in a territorial area equal or inferior to a locality, with the aim of safeguarding common interests through the protection of residential and agricultural areas (be they in use or fallow), forests, places of cultural importance, grazing lands, water resources and expansion areas."

⁷⁵ Land Law, Article 12.

⁷⁶ Land Law, Article 1, paragraph 1.

The Community Land Delimitation Manual produced by the Inter-ministerial Committee for the Revision of the Land Law⁷⁷ notes that a local community:

- Is that which really operates as a community in respect of land and natural resource use;
- Has its own customary institutions and rules which regulate access to and use of land;
- It also notes that the institution responsible for managing resources and its representatives are those which the community recognises as an authority and which exist and function.

In matters related to the allocation of land, the community is not automatically represented by its chief or headman. The Land Regulation refers to a group of between 3 and 9 people that should represent the community⁷⁸. In some places this group is becoming formalised into Community Land & Natural Resource Committees.

Both the Constitution and the Land Law provide that DUAT is not limited to those holding a physical certificate to prove that they have applied for and been granted land⁷⁹. National natural persons and local communities are held to have DUAT through rights under customary norms and practices or through good faith occupation of the same area for more than ten years⁸⁰. As mentioned above, land rights held based on good faith occupation or customary norms and practices are not prejudiced by the absence of registration or of being formally documented. Given the growing pressure for land, communities and individuals holding land under these circumstances are being encouraged seek formal recognition of their right, that is to document their rights and delimit the areas over which they have DUAT both on the ground and on the national land cadastre. This chapter therefore deals briefly with the process of documenting community DUAT. The procedures to be followed are presented in detail and in an easily comprehensible format in the Community Land Delimitation Manual. We have summarised them here.

It is important to note that DUAT is not generally legally recognized either through customary norms and practices or good faith occupation on areas which constitute the public domain, such as total and partial protection zones, unless the right pre-dates the creation of the zone (as is the much-debated case in Quirimbas National Park for example).

While DUAT's issued based on authorisation of application have a fixed duration (maximum of 50 years, renewable on application), DUATs based on customary norms and practices or good faith occupation have no time limit⁸¹.

⁷⁷ This Manual and an accompanying video, 'A Nossa Terra' (also available in English), are available from the Centre for Juridical and Judicial Training (CFJJ); and the library of FAO Maputo

⁷⁸ Land Regulation Article 27, paragraph 2.

⁷⁹ Constitution, Article 111 and Land Law, Article 15.

⁸⁰ Land Law, Article 12.

⁸¹ Land Law, Article 17.

5.2 PROCEDURE

5.2.1 Recognition of DUAT based on Customary Norms and Practices⁸²

“Customary norms and practices” is more frequently used than good faith occupation as a basis for recognising and existing DUAT. Increasing pressure for land means that communities are being encouraged to formally identify the areas covered by their DUATs, through a process called *delimitation*, which culminates in the issuing of a Certificate of Delimitation, and the recording (*lançamento*) of the community borders on the official maps at provincial SPGC offices.

Delimitation does two things: it proves the existence of the DUAT; and establishes where its limits are. This is done through a participatory procedure that is legally defined and laid out in the Technical Annex to the Land Law Regulations⁸³. The document issued at the end of this process is in the name of the community.

Note also that other key features are recorded on the official map as part of the delimitation process, notably customary rights of way which by law cannot be closed off by new DUAT holders without community agreement. Legally however, documented or not, the communities have DUAT on the land that, according to customary norms and practices, they have occupied and used. In cases of conflict over community land, oral testimony bears the same weight as documented proof⁸⁴.

Communities that opt to document their DUAT follow a defined procedure laid out in the Technical Annex to the Land Law (Ministerial Diploma 29-A/2000 of 17 March). The DUAT document issued at the end of this process is in the name of the community⁸⁵. Though communities are exempt from the payment of annual land tax, they are not exempt from the costs and fees involved in application for their DUAT document⁸⁶. Given the cost and technical complexity of the process of delimiting a community, assistance is often provided by local and international NGOs. The cost of delimiting a community is estimated by a major national NGO to average around US\$10,000⁸⁷, and varies depending upon the size, terrain, and time of year the delimitation is carried out.

It is important to note that if a community wants to use part of its land for economic purposes (for example setting up a sawmill or tourism facility) it is subject to the same licensing requirements (industrial, tourism etc.) as other economic operators

5.2.2 Recognition of DUAT based on Good Faith Occupation⁸⁸

For the holder of DUAT based on good faith occupation to register this right the process is simplified. It follows the same procedures as the authorisation of application, requiring a technical opinion from SPGC, an *esboço*, a documented local consultation phase, completion of a form and submission of a usage plan or it can also follow the same procedure as for community delimitation⁸⁹. There is no provisional DUAT in this process because the right already exists and is only being recognised and documented.

⁸² Land Regulation, Article 35 and Land Regulation, Article 9.

⁸³ And described in detail in the Land Commission Manual referred to above. See footnote 80.

⁸⁴ Land Law, Article 17 and Land Regulation, Article 21.

⁸⁵ Land Law, Article 13, paragraph 4.

⁸⁶ Land Law, Article 29.

⁸⁷ ORAM, see complete cost breakdown in a report for DfID Maputo by CTConsulting, 2003.

⁸⁸ Land Regulation, Article 34 and Land Regulation, Article 10.

⁸⁹ Technical Annex, Article 14

Having complied with the documentary requirements and subject to approval by the provincial governor a documented DUAT is issued recognising the right which already existed. In practice good faith occupation is rarely used as a justification for formalising a DUAT.

5.2.3 Community Land Delimitation

As noted above, delimitation serves to prove the existence of the DUAT acquired by occupation – community or good faith occupant – and establish where its limits are. The Technical Annex and Delimitation Manual define a participatory process to be followed. This includes a procedure known as Participative Rural Diagnostic (*Diagnóstico Rural Participativo* – DRP). DRP focuses on a historical analysis of the community and its occupation of the area, analysis of current production and land-use systems and an analysis of population dynamics including migration and population growth.

Community delimitation proceeds according to the following stages:

- Provision of information and sensitisation of the community about the Land Law and their rights;
- Community formally requests delimitation, based on their understanding of their rights;
- Participative diagnostic (DRP) which includes historical analysis, analysis of the social organisation of the community, analysis of resource utilisation, interviews, analysis of conflicts and participative mapping;
- Development of draft esboço and memória descritiva;
- Discussion with the community and their neighbours of the draft esboço and memória descritiva and alteration as necessary;
- Registration of the land holding in the national cadastral atlas;
- Issuance of certificate of registration (certidão oficial).

The process could proceed to demarcation and issuing of a Title document (*titulo*) like that issued for applications for new DUATs, as described in Chapter 3. In practice however this rarely happens due to the very high cost of carrying out a demarcation process compared with the much lower cost delimitation. Note however that communities get much stronger protection of their DUATs if they can afford the additional costs, and then proceed to register their DUAT at the Conservatória de Registo Predial if they so wish⁹⁰.

The community delimitation process involves staff from SPGC and the district administration, members of the community being delimited and its neighbours, and staff from any NGOs supporting the process. The DRP process is based on the development of diagrammatic representations of the community and its land arising from discussion with local people. It is designed to be accessible to illiterate members of the population and arrives at consensus by repeatedly going back to the community group to discuss changes and updates to diagrams.

5.2.4 Importance of Delimitation

Delimitation allows any third party wanting to access land in that area to know the exact limits of the community's land rights. It also allows the community, as "owners" of the land to either exploit it commercially themselves or negotiate with third parties to access and use the land. Delimitation also serves to reduce the likelihood of future conflicts by

⁹⁰ Some observers think that communities can register at the Conservatoria on the basis of the Certificate of Delimitation. This has not yet been tested in practice however.

involving those whose land borders with that of the community and ensuring that everyone involved in the process agrees with the outcome.

A delimited community is NOT then closed off for private investment. Quite the opposite, the Land Policy and the Land Law both foresee incoming investment as a prime force for new *equitable and sustainable* development. A delimited community in this context is free to allow investors to use and occupy their land through the consultation process. The difference is that a delimited community will also be much more aware of their rights, and will be able to negotiate with the investor much more effectively, ensuring that local people get a good deal in exchange for giving up their rights. Alternatively, the community and the investor can agree to form some kind of partnership whereby the community land right is seen as the stake offered by the community in exchange for some active participation in the new enterprise or project. Either way, the delimitation process creates the conditions for a sound development and investment process built upon mutual understanding of and respect for the rights of both sides.

5.2.5 Division or Transfer of Community Land Rights

The Land Law is designed not only to protect the rights of communities but also of the individuals within those communities⁹¹. For this reason, local communities are managed internally by the principles of 'co-title', which are laid out in the Mozambican Civil Code⁹²

In theory an individual can request that his or her land be removed from the community parcel and be given an individual DUAT (this process is known as "*desmembramento*" or "*desanexação*" of community areas). In practice this is rare, so much so that we were unable to find instances of it having occurred. We were told that as more delimitation takes place in areas of the country with less strong community ties, a small increase in the number of requests for DUATs based on good faith occupation are being seen, presumably because in these areas individuals are seeking to register their own rights rather than those of a community. We are unable to vouch for the truth of this, but it would be an area worthy of further study.

Communities can also concede areas of land which have been delimited as comprising their DUAT. This process is subject to agreement by members of the community and approval of the authority that recognised the community's DUAT (usually the provincial governor).⁹³ In theory this means that communities could rent or lease areas over which they have DUAT to private persons to obtain income to invest in further community development. In practice this rarely takes place.

Private holders of DUATs (usually held through authorisation of application), including investors are often concerned about the community delimitation process. However the process, if undertaken properly, should not be a cause for concern since its aim is to define and recognise rights, to resolve any existing conflict and reduce the likelihood of future conflict. The process should also define the parties' rights and responsibilities in respect of shared resources. In some cases investors have encouraged their neighbouring communities to undertake the delimitation process with a view to improving relations and resource management.

⁹¹ Land Law, Article 10.

⁹² Articles 1403 onwards.

⁹³ Land Regulation, Article 15, paragraph 4.

5.3 RIGHTS, OBLIGATIONS & NATURAL RESOURCE MANAGEMENT

The National Agriculture Policy is guided by the principle that local communities should benefit from the distribution of income derived from the rational use of natural resources⁹⁴. Legislation governing land and natural resources recognises that communities' knowledge of natural resources is valuable and that training communities in the responsible use of such resources is vital. Community rights and obligations in respect of management of natural resources is an area at the junction of the land, forestry & wildlife and environmental legislation. Increased decentralisation is also bringing issues around resource management at district level to the fore. As a practical matter community involvement, and indeed natural resource management itself, is complex, and this is another area in the land sector where conflict can arise.

This section considers the involvement of communities in the management of natural resources including forestry and wildlife resources. Further details on obtaining forestry and wildlife concessions are included in Section 6.2.2 below.

The law allows local communities in their own areas to use natural resources for their own consumption. Such consumption is free of charge⁹⁵. However in practice it has proven difficult to define "own consumption". The law defines such consumption by communities as the use of resources undertaken not for financial gain but to satisfy their needs and to exercise skills based on traditional practice⁹⁶. It is difficult to distinguish between financial gain and consumption needs, particularly when both the agriculture and forestry & wildlife policies see natural resources as a route out of absolute poverty for the communities. Should the sale of products deriving from natural resources to enable the community to clothe itself for example be considered "own consumption" or subject to tax for the use of such resources?

Communities are also eligible to receive 20% of the fees which the government derives from the concession of natural resources in their area⁹⁷. This includes fees from forestry undertaken based on simple license or concession, hunting (both inside and outside hunting concessions), production of charcoal and harvesting of bamboo among other commercial activities based on the use of natural resources. Recent legislation has now extended this right to cover mineral resources. This practice has recently been further regulated and some communities are now receiving fees⁹⁸. However in order for the community to receive its 20%, it must be represented by a CGRN (*Comité de Gestão dos Recursos Naturais* - Natural Resource Management Committee) which must be registered with the District Administration responsible for the area where the committee has been formed. The CGRN must have a bank account (with at least 3 signatories if the CGRN is not yet incorporated as an association) and is required to make public its activity and financial reports.

⁹⁴ National Land Policy Section 2.2 .

⁹⁵ Forestry and Wildlife Law, Article 35, paragraph 3 and Forestry and Wildlife Regulation, Article 100, paragraph 2.

⁹⁶ Forestry and Wildlife Law, Article 1, paragraph 9.

⁹⁷ Forestry and Wildlife Law, Article 35, paragraph 5 and Forestry and Wildlife Regulation, Article 102, paragraph 1.

⁹⁸ Forestry and Wildlife Law, Article 35, Paragraph 5, Forestry and Wildlife Regulation, Art. 102, Paragraph 1. The mechanisms for channelling the 20% to the communities and utilization of the funds by communities are defined in Ministerial Diploma 93/2005 of 04 May.

Overcoming the practical difficulties preventing often illiterate communities in rural areas accessing this valuable income is a major challenge for the government. The formation of Community Land & Natural Resource Committees is one way to deal with this and is dealt with further in Section 5.3.1 below.

Communities are expected to respect the management and usage plans of investors that are developing and exploiting natural resources in or near their areas. Therefore for example while communities can gather firewood for their own consumption in a forestry concession neighbouring their village, they cannot fell trees or start fires in the concession. Community members hunting for their own consumption in either a forestry or wildlife concession must follow the legal norms regarding the type of instruments that can be used (snares may not be used for example⁹⁹) and must be licensed by the District Agriculture Department. They may only hunt small game. The legislation is clear that non-licensed use of natural resources by communities must be for their own consumption, not for commercial gain, and those communities using resources in forestry or wildlife concessions must comply with the management plans of those concessions.

The law envisages the creation of Participative Management Committees (Comité de Gestão Participativa – COGEP) involving district government staff, community representatives, representatives of private investors and NGOs involved in a defined area¹⁰⁰. Such committees are discussed in Section 5.3.1 below and are reportedly one of the more effective ways of overcoming the conflicts that arise from natural resource use and management. It should be noted however that COGEPs cannot act in the name of a local community, given that these committees combine a number of local interests and may include representatives from more than one community.

In rural areas communities are therefore expected to participate in¹⁰¹:

- Management of natural resources;
- Conflict resolution;
- The process of issuing DUAT through authorisation of application or natural resource management concessions to third parties;
- Delimitation of their own land.

5.3.1 COGEPs & Community Committees

COGEPs must not be confused with CGRNs. CGRNs are Comitês de Gestão dos Recursos Naturais (Natural Resource Management Committees) and are composed solely of community representatives. COGEPs are Conselhos de Gestão Participativa (Participative Management Councils) and include representatives of the State, private sector (for example concession holders), NGO's and community.

As part of the delimitation process (see section 5.2.3 above) communities are encouraged to create Community Land Committees and Community Natural Resource Management Committees (CGRN). In some provinces, such as Sofala, best practice has been developed whereby rather than having several committees for different issues, communities create Community Land & Natural Resource Committees. Members are elected to these committees and are responsible for matters related to the allocation and

99 Forestry and Wildlife Regulation, Article 47.

100 Forestry and Wildlife Regulation, Articles 95, 96, 97, 98 and 99.

101 Land Law, Article 24, paragraph 1.

use of land and natural resources in their area. Mindful of the Land Regulation's requirement that any community consultation have between 3 and 9 participants and the Forestry & Wildlife Law's requirement that such consultations have at least 10 participants¹⁰², Community Land & Natural Resource Committees ideally have between 9 and 12 members. Best practice also indicates that such committees should be formed as associations under the legislation governing associations¹⁰³. This enables them to more effectively and democratically manage the 20% natural resource use fee which communities are eligible for. However, as annex 7.8 shows, the process of registering an association is cumbersome and difficult particularly for those living in rural areas so in practice few such committees exist. The introduction of Decree-Law 2/2006 of 03 May which simplifies the registration of associations for agro-processing and forestry is expected to facilitate this process, and indeed is reportedly already producing favourable results in some provinces.

In practice the current lack of formal natural resource management structures at community level means that community consultations are based on the approval of those community members that arrive for the consultation and investors are often unsure of who genuinely represents the community they are expected to work with.

The law also envisages the creation of COGEPs¹⁰⁴. In theory the representatives on the Community Land & Natural Resource Committee would represent community interests at COGEP level. COGEPs are envisaged as independent management bodies comprising communities, investors, local government and any NGOs operating in the natural resource sector in the area covered by the COGEP. The COGEP is a potentially powerful body, and investors and private DUAT-holders that are involved with functioning COGEPs find them a useful forum in which to discuss resource management, potential conflicts and other issues.

Among the roles of the COGEP the law envisages the following¹⁰⁵:

- Promotion of activities involving responsible use of resources, which contribute to improvements in the community's quality of life;
- Conflict resolution;
- Support to government natural resource inspectors;
- Providing input and recommendations for the improvement of legislation as it relates to natural resource management;
- Planning for the management of resources in the area covered by the COGEP.

While the law does not stipulate the involvement of COGEPs in the authorisation of land and natural resource concession applications it does allow that COGEPs can propose the cancellation or revocation of a project which they believe does not fulfil the objective of responsible resource management. COGEPs also have the right to represent their members in dialogue with government¹⁰⁶.

102 Land Regulation, Article 27, paragraph 2 and Forestry and Wildlife Regulation Article 36, paragraph 3.

103 Associations are governed by the following: Civil Code (Law 08/91 of 18 July), Decree No. 21/91, of 03 October, Ministerial Diploma No. 31/92 of 04 March.

104 Forestry and Wildlife Law, Article 31, paragraph 3 and Forestry and Wildlife Regulation, Article 95, paragraph 1, Clause a.

105 Forestry and Wildlife Regulation, Article 97, paragraph 1.

106 Forestry and Wildlife Regulation, Article 98.

The law also permits the government to delegate the management of natural resources to local communities¹⁰⁷. Such delegation is to be further defined in a joint Ministerial Diploma by the Ministers of Agriculture and Tourism¹⁰⁸. The law allows such delegation in protected areas, buffer zones, official hunting reserves (*coutadas*), productive and multiple-use forests, and multiple use zones¹⁰⁹. To date this type of delegation has not been regulated and does not take place.

5.4 FAQs

For a comprehensive series of frequently asked questions about communities and their relationships with natural resources we recommend the “Recursos Naturais - Guião de Direitos das Comunidades Locais” (Natural Resources – A Guide to Local Community Rights) a manual produced by CFJJ (see the bibliography in Section 9).

6 OTHER

6.1 Urban land

Urban land is requested from the cadastre department of the relevant municipal authority and authorized by the mayor. Application procedures depend on municipal by-law and differ from municipality to municipality. But with the recent approval of the Urban Land Decree, in December 2006, such discrepancies should be reduced.¹¹⁰ This decree begins the legislative process of regulating DUAT on urban land.

In the case of land situated outside the boundaries of a municipality but within an area which has a cadastre service and an urban plan (a district capital for example), authorisation is given by the District Administrator¹¹¹. Note that such areas are currently rare in Mozambique.

This booklet does not deal with rights to urban land. However one frequently asked question merits mention here: “Can foreigners acquire urban property?” The answer to this lies in a series of legislation namely: Decree-Law 5/76 of 05 February, Law 5/91 of 09 January, Ministerial Diploma 50/94 of 13 April, Decree 2/91 of 16 January, Ministerial Diploma 97/92 of 08 July, and Ministerial Diploma 152/92 of 30 September. The simple answer to the question is that foreigners (which for the purpose includes companies with less than 51% national shareholding) cannot own property which has belonged to the State or which was nationalised.

After Independence many properties were nationalised. Those that were not were those which belonged to Mozambican nationals at the time and those which belonged to foreigners who remained in Mozambique post-independence¹¹². From 1991 forwards (beginning with Law 5/91 of 09 January) the State began the process of denationalising its property assets with a view to encouraging property ownership by nationals. Decree 2/91 of 16 January, which regulated Law 5/91, makes it clear that property acquired by nationals under the denationalisation process cannot later be alienated in favour of

107 Forestry and Wildlife Law, Article 33.

108 Forestry and Wildlife Regulation, Article 99, paragraph 1.

109 Forestry and Wildlife Regulation, Article 99, paragraph 2.

110 Decree 60/2006 of 26 December.

111 Land Law, Article 23.

112 Decree Law 5/76 of 05 February, Article 3 paragraph 1 and Article 6 paragraphs 1 and 2.

foreigners¹¹³. Decree 2/91 further stipulates that companies with less than 51% national shareholding are also considered as foreign for this purpose¹¹⁴. This is further reinforced by Ministerial Diploma 152/92 of 30 September which requires that those applying for denationalised property must provide proof of nationality¹¹⁵.

Note that Ministerial Diploma 97/92 of 08 July does not apply the same criteria to ruins and unfinished properties which belong to the State or were nationalised¹¹⁶. In this case, a national company is defined as one that is incorporated and has its headquarters in Mozambique.¹¹⁷ Thus, companies majority-owned by foreigners may acquire ruins or unfinished buildings that had once been State property, as long as these companies have been incorporated and have their headquarters in Mozambique.

6.2 FORESTRY AND WILDLIFE

6.2.1 Background

Certain abiding principles from land legislation apply to the forestry and wildlife sectors. For example, all natural forest and non-farmed wildlife belong to the State. The Forestry and Wildlife Development Policy and Strategy (*Política e Estratégia de Desenvolvimento de Florestas e Fauna Bravia* - Resolution No. 8/97, of 01 April) provide the framework for the involvement of the government, private sector and communities in social and economic development through the protection, conservation and sustainable use of forestry and wildlife resources. In the decade since its publication the forestry and wildlife sectors have undergone a number of changes and been faced by a number of challenges which include increased private sector interest, uncontrolled destruction of resources particularly through fire, and unmanaged use.

The Forestry and Wildlife Law (*Lei de Florestas e Fauna Bravia* - Law No. 10/99, of 07 July) establishes guiding principles for the protection, conservation and sustainable use of forestry and wildlife resources to achieve economic and social development based on an integrated sectoral management system¹¹⁸.

The Forestry and Wildlife Regulation was approved in 2002 (*Regulamento da Lei de Florestas e Fauna Bravia* - Decree No. 12/2002, of 06 June) and fills in the detail in the framework provided by the Forestry and Wildlife Law.

Issues related to community involvement in natural resource management are discussed in Section 5.3 above.

The forestry legislation deals with the use and management of natural forest and pre-existing plantations as well as the creation of new plantations. Some provinces have pre-designated forest and hunting concessions. In such cases application is made for the concession of the pre-designated area, rather than for a new concession on an undemarcated area. In others applications either follow the process for applying for a

113 Decree 2/91 of 16 January, introduction and article 16.

114 Decree 2/91 of 16 February, Article 1 paragraph 2 in conjunction with Law 5/76, Article 4 paragraph 2.

115 Ministerial Diploma 152/92, paragraph 4.2, clause d and paragraph 4.3.

116 Ministerial Diploma 97/92 of 08 July, Article 1 paragraphs 1, 2 and 3.

117 Ministerial Diploma 97/92 of 08 July, Article 2 paragraph 2.

118 Forestry and Wildlife Law, Article 2.

DUAT (plantations) or for the designation of the area as a forestry concession (natural forest).

The final document issued can either be a concession contract, which includes a number of technical, contractual specifications governing management of the forestry or wildlife area, or a DUAT. In the case of plantations or game farms based on a DUAT, the activity is also subject to sectoral licensing by the Forestry & Wildlife Department¹¹⁹.

Forestry and wildlife activities are also subject to sectoral licensing such as industrial licensing for a timber processing operation and tourism for a photo safari operation.

Obtaining a forestry or wildlife concession or indeed the DUAT for an area on which the applicant plans to plant trees or keep wild animals is complicated to some extent by the overlap of the roles of SPGC and the Provincial Forestry and Wildlife Service (*Serviços Provinciais de Florestas e Fauna Bravia* – SPFFB) and a number of apparent contradictions between the requirements governing concessions, and DUATs. Operators in this sector should note that a concession contract is not a DUAT and indeed if the concession holder plans to build infrastructure within the concession, a DUAT must be applied for on the land on which the infrastructure is to be built.

In order to provide the information below we have used the Forestry and Wildlife Legislation Manual published by the Ministry of Agriculture, which provides the guidelines for SPFFB staff to interpret the forestry and wildlife legislation. We have focussed on the procedures for accessing pre-delimited concession blocks and for requesting concession of un-delimited areas of natural forest. As we will see, the legislation is largely silent on the procedures for applying for wildlife concessions. We have not focussed on obtaining land for plantation forestry or game farming here since that process is based on licensing subsequent to obtaining a DUAT through authorisation of application¹²⁰. What is detailed below is the standard application procedure as envisaged in the existing legislation. Where regional differences occur and we are aware of them, we have indicated these.

As discussed above in Section 3.3 decentralisation also has an impact on the forestry and wildlife sectors with applicants being encouraged to begin with informal dialogue at District Administration level before formally approaching SPGC for mapping and survey and then moving on to apply to SPFFB for the concession itself¹²¹. The role of SPGC in such processes is limited to supporting the applicant in preparing the esboço and memória descritiva which form part of the application. The process from receipt of the full application forwards is the responsibility of SPFFB

6.2.2 Forestry

6.2.2.1 Overview

The law divides Mozambique's forests into three categories¹²²:

- Conservation forest;
- Productive forest; and
- Multiple use forest.

119 Forestry and Wildlife Law, Article 9.

120 Forestry and Wildlife Regulation, Article 79.

121 Forestry and Wildlife Regulation, Article 29.

122 Forestry and Wildlife Law, Article 5.

National natural, and both national and foreign legal persons may apply to the State for forestry concessions¹²³. Only productive and multiple use forest can be conceded. Forestry can be undertaken based on a simple license or on a concession contract¹²⁴. Simple licenses are only available to national individuals¹²⁵. Since simple licences are only valid for one year and do not constitute long term land use this booklet focuses on the process of applying for a forestry concession.

Concessions are granted based on the submission of a management plan and the approval of an environmental impact assessment¹²⁶. Concessions are expected to fulfil the principles of responsible use and development in rural areas. Holders of concessions are expected to site a certain level of processing in the rural area in which the concession is situated¹²⁷.

Forest concessions are applied for by means of a request addressed to the relevant entity, via SPFFB. The Provincial Governor is entitled to attribute forestry concessions of up to 20,000 ha, the National Director of Forestry up to 100,000 ha and the Council of Ministers for any area above 100,000 ha¹²⁸.

Public consultation is a prerequisite for the attribution of a concession¹²⁹. Concessions are valid for a period of 50 years and are renewable on request by the concessionaire one year before the full term of the contract¹³⁰. Concessions are subject to the payment of an annual tax¹³¹.

A diagrammatic representation of the forest concession application process is provided in Section 9.

6.2.2.2 Application process

Having located a potential concession area the applicant is encouraged to contact the District Administration. While this step is not required by law, decentralisation has led to increased authority being vested in district authorities, and their positive disposition towards an investment project is a significant factor in the approval of applications¹³².

The applicant should then approach SPGC for the preparation of an esboço and memória descritiva of the area requested. In the case of pre-defined concession blocks such maps may already exist. In the case of un-demarcated blocks it is necessary for SPGC technicians to visit the area to undertake a reconnaissance and the applicant will be required to support the cost of this against receipts. This part of the process is as for that of obtaining a DUAT. Forms of requesting reconnaissance, costs and likely number of days required are included in annexes 7.1 through 7.4. The applicant should retain copies of the documents arising from this process (esboço, memória descritiva).

123 Forestry and Wildlife Law, Article 16.

124 Forestry and Wildlife Law, Articles 15 and 16.

125 Forestry and Wildlife Law, Article 15.

126 Forestry and Wildlife Regulation Article 25, paragraph 2.

127 Forestry and Wildlife Law, Article 16 and Forestry and Wildlife Regulation, Article 26, paragraph 2, clause d.

128 Ministerial Dispatch, Minister of Agriculture, 13th October 2005.

129 Forestry and Wildlife Law, Article 17.

130 Forestry and Wildlife Law, Article 16, paragraph 4.

131 Forestry and Wildlife Law, Article 35, Forestry and Wildlife Regulation, Article 28 and Articles 100 and 101.

132 Forestry and Wildlife Legislation Manual, Chapter 4, Section 25.

Having obtained the esboço and memória descritiva, the applicant then submits a formal letter of request to SPFFB along with a brief outline of the proposed project¹³³. A sample letter is included in annex 7.9. SPFFB then contacts the District Administrator responsible for the district in which the proposed concession falls and together SPFFB and the District Administration arrange the local consultation phase of the application. Communities are notified at least 15 days in advance of the meeting¹³⁴. Local consultation is undertaken in the same way as in a DUAT application which is to say that a public consultation is undertaken with the communities affected by the land application, and with representatives of SPFFB and the District Administration as well as with the applicant. Community consultations are dealt with further in Section 4.2 above.

Based on the outcome of the community consultation the District Administration prepares a declaration that the community consultation has been held and an acta of the meeting which are then added to the other documents required for the application. An acta of the community consultation is produced using the form in annex 7.5. Applicants should retain a copy of the acta. The administrator then prepares an opinion based on the outcome of the community consultation and sends this to SPFFB. Correspondence between provincial capitals where SPFFBs are located, and (often remote) district administration posts and localities is sometimes slow and the applicant may opt to collect and deliver documents between SPFFB and the district to expedite the process.

The formal application stage of the process begins with the submission by the applicant of six copies of each of the following¹³⁵:

- A form (see copy in annex 7.10) which includes the following information:
Company name; business license (alvará) number; tax registration number (NUIT); company representative's name; company representative's biodata; size and location of proposed area; purpose for which the area will be used; species to be exploited in the proposed area; signature of the applicant's representative.
- A letter of request addressed to the relevant entity depending on the size of the area requested (see model in annex 7.11);
- A notarised copy of the identity document of the signatory of the application (see Section 4.7.2 regarding the use of powers of attorney);
- In the case of a legal person, proof of registration and incorporation (usually in the form of the public deed and certificate of commercial registration);
- The esboço prepared by SPGC;
- The memória descritiva prepared by SPGC;
- A preliminary inventory;
- A project plan including (as applicable depending on whether the concession is to be natural forest or plantation) principal species to be harvested, type of products to be made, estimated annual off-take, type of industry to be installed, proposed developments of staff accommodation, proposed community investments, potential markets;
- A guarantee of technical and industrial capacity to ensure the project can comply with the legal requirement to undertake at least primary processing;
- A declaration by the District Administration that the community consultation has been undertaken;
- An acta of the community consultation meeting(s);

133 Forestry and Wildlife Regulation, Article 27.

134 Forestry and Wildlife Regulation, Article 36 paragraph 1.

135 Forestry and Wildlife Regulation, Article 26, paragraph 2.

- A survey of all third-party rights affecting the proposed concession and a plan to ensure their harmonious integration into the project;
- A plan for the use of by-products including any potential use as fuel.

Having reviewed the application SPFFB then undertakes a public enquiry by publishing a summary of the application (edital) in a national newspaper for three days inviting comments within 30 days of the publication¹³⁶. This publication is arranged and paid for by the applicant. Applicants should retain originals of the advertisements published in the newspaper, and indeed of all documents submitted as part of the application. See section 4.7.1 for further tips on submission of documents.

The same edital is posted at the SPFFB office, in the District Administration Post and at locality level for 30 days. Applicants sometimes opt to deliver and collect the edital themselves to expedite the process.

At the same time SPFFB sends staff to the area to verify the preliminary inventory and ensure that the original reconnaissance and mapping are correct¹³⁷. Costs of this are supported by the applicant based on the table of fees in annex 7.2.

The public enquiry phase having been completed SPFFB then forwards the application to the Provincial Governor and Provincial Director of Agriculture for their opinions. If the area requested is less than 20,000 ha the governor may approve it. If not, his office returns the process to SPFFB with the governor's opinion and SPFFB forwards it to the relevant entity for their provisional approval. It is the responsibility of the applicant to communicate regularly with SPFFB to ascertain whether or not approval has been given.

If the application is approved the applicant receives a dispatch (comunicação de despacho) and is invited to sign a preliminary agreement (termo de adesão)¹³⁸.

6.2.2.3 Management Plan¹³⁹

Provisional approval having been given the applicant has 180 days to submit a management plan. A management plan may only be prepared by a government-approved forestry management plan consultant¹⁴⁰. A list of such consultants is available from SPFFB. Further details of how a management plan should be prepared are included in The Forest Management Plan Manual published by the Ministry of Agriculture and in Technical Section 14 of Volume 2 of the Forestry and Wildlife Legislation Manual.

A management plan must include:

- Introduction
 - Location and contact details
 - Objective of project
- Concession area
 - Location, topography and boundaries (including maps)
 - General description of resource
 - Size
 - Occupation
 - Population grouping
 - Strategies for ongoing community engagement

¹³⁶ Forestry and Wildlife Regulation, Article 27, paragraph 2, clause e.

¹³⁷ Forestry and Wildlife Regulation, Article 27, paragraph 2.

¹³⁸ Forestry and Wildlife Legislation Manual, Chapter 13, Section 2.

¹³⁹ Forestry and Wildlife Law, Article 1, paragraph 29.

¹⁴⁰ Forestry and Wildlife Regulation, Article 89.

- Management and resolution of conflicts
- Assessment of impact
- Water resources
- Other resources – wildlife
- Inventory
 - Design & methodology
 - Annual log requirements
 - Harvesting blocks
- Sustainable forest management
 - Principles of sustainable forest management that will be followed in the concession
 - Assessment of other resources (e.g. wildlife)
 - Zoning plans – conservation and fragile ecosystem areas etc.
 - Annual block divisions
- Investment and production information
 - Sawmill
 - Production information
 - Products
 - Raw materials inputs and sources
 - Species mix
 - Chemicals
 - Description of processing capacities
 - Basic industrial processes
 - Infrastructure
 - Water & electricity
 - Fuel
 - Recycling
 - Equipment breakdown
 - Harvesting
 - Primary processing
 - Value-added processing
 - Employees
 - Numbers and positions
 - Staff infrastructure (housing etc.)
 - Health and safety
 - Training
 - Products
 - Markets
- Community activities

The management plan is submitted to SPFFB where it is subjected to a technical review. Applicants may be requested to revise the management plan one or more times. The concession contract is not signed until the management plan has been approved.

A detailed forest inventory forms part of the management plan. This inventory must be undertaken by government-approved forest inventory specialists according to the government-approved inventory guidelines.

6.2.2.4 Concession Contract & Starting Operations

Having approved the management plan SPFFB communicates with the applicant and invites him to sign a concession contract¹⁴¹. The contract is signed by the Provincial Governor on behalf of the State and contains the following information:

- Duration (to a maximum of 50 years);
- Species to be exploited;
- Quota for each of the permitted species for the first five years;
- Community benefits agreed to by the concessionaire;
- Control and inspection systems to be used to oversee the concessionaire's activities;
- Industrial and social infrastructure to be constructed by the concessionaire;
- Contractual rights and obligations¹⁴².

The concessionaire then has 30 days to have the contract published in the Boletim da República¹⁴³.

However, despite having signed the contract the concessionaire may not begin operations until he has completed the following¹⁴⁴:

- Construction of the social and industrial infrastructure (e.g. workers accommodation, canteen, sawmill etc);
- Inspection of the infrastructure by SPFFB;
- Delimitation and physical demarcation of the concession itself and of the annual cutting blocks (provisional demarcation is sufficient at this stage, full demarcation must be completed within two years of signing the concession contract);
- Payment of the concession license;
- Payment of the felling license fees in accordance with the volumes to be felled based on the management plan;
- Issuance of the felling licenses by SPFFB (which is conditional on the fulfilment of each of the preceding items in the list).

Details of the requirements for demarcation of the concession and its blocks are laid out in Article 33 of the Forestry & Wildlife Regulation and include the fixing of plaques with the details of the concession (name of concessionaire, contract number and date of authorisation and expiry of the contract) at regular intervals around the perimeter of the concession.

6.2.2.5 Other

Forestry is one of the sectors designated as requiring a full environmental impact process¹⁴⁵. Operations may not begin without an environmental license. While SPFFB do not verify the existence or otherwise of the environmental license as part of their procedures prior to signing the concession contract not having a valid environmental license is a legal reason for the State to cancel or suspend the contract.

Concession contracts can be transmitted. Transmission is based on the approval of the Provincial Governor following proof that the concessionaire that currently has the concession has complied with the law and with his management plan and that the

141 Forestry and Wildlife Regulation, Article 28.

142 Forestry and Wildlife Regulation, Article 28, paragraph 3.

143 Forestry and Wildlife Regulation, Article 28, paragraph 3

144 Forestry and Wildlife Regulation, Article 29

145 Decree 45/2004 of 29 September, Annexes, clause a and paragraph 2.

proposed new concessionaire agrees to abide by the same management plan and contract¹⁴⁶.

Concession contracts can be renewed¹⁴⁷. Application must be made 12 months prior to the expiry of the contract. Applications must include proof that the previous management plan was complied with, and a new management plan for the proposed new concession period among other documents. The application must be approved or denied up to 90 days before the expiry of the contract. Non-moveable improvements on the concession revert to the State on expiry of the concession.

Concession contracts are extinguished¹⁴⁸:

- By renunciation by the concessionaire;
- At the end of the concession period;
- By revocation.

Concession contracts can also be suspended pending agreement to, for example improve forest practice.

Forest species are divided into classes from precious through first and second to third class¹⁴⁹. Timber may only be exported in the form of log if it is precious, second or third class¹⁵⁰. First class timber must undergo primary processing in-country before being exported. This measure is intended to encourage the development of a local timber-processing industry.

The forestry sector has a closed season between 1st January and 31st March, which is intended to protect the forest floor from damage caused by felling operations during the rainy season¹⁵¹.

Forestry operators are subject to a number of fees and taxes as well as rules regarding sizes of timber which can be felled, transport of log and sawn timber, forest management and community relations. Anyone considering entering this sector would be advised to familiarize themselves with the forestry and wildlife legislation, including the Forest Inspector's Regulation (Ministerial Diploma 128/2006 of 12 July) and the Forestry & Wildlife Legislation Manual which include details of sector-specific requirements post-issuance of the concession contract.

As part of the management plan the forest concessionaire is expected to indicate how he plans to manage and protect wildlife within the concession. A forest concession contract does not give the holder the right to exploit wildlife within the concession, but it does carry the obligation to protect such wildlife.

6.2.3 Wildlife

Game and wildlife management, including game farming and hunting can be carried out either in game farms (*Fazendas do Bravio or fazendas*) or through the concession of official game reserves (*Coutadas oficiais or coutadas*)¹⁵². Coutadas are similar to the pre-defined

146 Forestry and Wildlife Regulation, Article 34, paragraph 4.

147 Forestry and Wildlife Regulation, Articles 30 and 34.

148 Forestry and Wildlife Regulation, Article 39.

149 Forestry and Wildlife Regulation, Annex.

150 Forestry and Wildlife Regulation, Article 12.

151 Forestry and Wildlife Regulation, Article 13

152 Forestry and Wildlife Regulation, Article 82

forestry concession blocks which exist in some provinces. The law does not define the way in which a concession for either a coutada or fazenda can be applied for. It does however stipulate that, as with a timber felling licenses, hunting operations must request specific hunting licenses at the start of each season for the animal species they plan to hunt¹⁵³.

The forestry and wildlife legislation implies that any natural or legal person can hold the concession for a coutada or fazenda¹⁵⁴. In practice however it is unlikely that a foreign individual could do so.

Coutadas are pre-delimited areas of the public domain which are destined for hunting and synergetic tourism¹⁵⁵. Rights are recognised based on a concession contract between the operator and the State¹⁵⁶. Individual hunting licenses must also be applied for through SPFFB.

Fazendas are based on issuance of a DUAT through authorisation of application. Fazenda operators must then apply to SPFFB for game farming and hunting licenses¹⁵⁷.

In the case of both coutadas and fazendas, tourism activity is subject to licensing by the Ministry of Tourism. In fact both coutadas and fazendas find themselves at the junction of forestry & wildlife and tourism legislation. Certain protected areas such as national parks and reserves fall within the remit of the Ministry of Tourism, while game management falls within the remit of the Ministry of Agriculture. This to some extent explains the lack of clearly defined procedures for obtaining either a coutada or fazenda concession.

The conceding of both types of operation is subject to proof of DUAT and the submission of a management plan and inventory. These must include details of staffing and qualifications of professional hunters, details of plans to work with communities, game restocking plans as well as of current game levels and inventory and plans to manage other natural resources within the concession¹⁵⁸. Start of operations is subject to inspection by SPFFB¹⁵⁹. Wildlife concession holders are responsible for the management of forest resources within their concession and may, subject to approval and licensing by SPFFB, use timber for their own needs or remove timber which interferes with their operation (for example thinning to facilitate photo safari operations). They may not however establish commercial forestry operations within the concession.

The law allows for six types of hunting license, which are regulated according to who may hold them, what weapons may be used by the license-holder and what types of game may be hunted¹⁶⁰.

A limited amount of further information on hunting and wildlife concessions is available in the Forestry & Wildlife Legislation Manual. However many of the procedures for obtaining a concession, setting it up, stocking and managing it have yet to be regulated.

153 Forestry and Wildlife Regulation, Article 55.

154 Forestry and Wildlife Regulation, Article 82.

155 Forestry and Wildlife Law, Article 1, paragraph 8.

156 Forestry and Wildlife Law, Article 1, paragraph 8.

157 Forestry and Wildlife Law, Article 1, paragraph 21 and Forestry and Wildlife Regulation, Article 84.

158 Forestry and Wildlife Regulation, Article 84.

159 Forestry and Wildlife Regulation, Article 85.

160 Forestry and Wildlife Regulation, Article 55.

6.2.4 Rights & Obligations

Forestry concession holders have the following rights¹⁶¹:

- Automatic right to the use and enjoyment of the land on which the concession is situated for the purposes of undertaking forestry activities;
- Right to the use of forest products resulting from their activities;
- Right of exclusive use of forest resources within the concession;
- Right to object to the concession of the area or parts thereof to third parties for other purposes (for example hunting);
- Right to process forest products produced by third parties, subject to legal requirements related to transport etc.

The legality of the right to use the land on which the forest is situated for industrial purposes is a complex area. The forestry and wildlife regulation specifies that such use is subject to obtaining a DUAT. However in practice DUATs for, for example sawmills in forest concessions are understood by SFGC to be based on recognition of an existing right (as good faith and customary law occupation are) rather than on authorization of application. This is an area which has not been fully explored in the legislation and raises a number of questions which have yet to be answered.

Forest concession holders are obliged to¹⁶²:

- Establish an industrial processing facility;
- Responsibly manage the forest resource in accordance with the approved management plan;
- Respect third party rights which fall within the concession area – including community rights and the rights of third parties holding DUAT within the concession;
- Permit local community access to resources for their own consumption (see Section 5.3 above)
- Ensure the patrol and inspection of the concession area;
- Give preference to local communities when recruiting;
- Pay taxes and fees;
- Only exploit the resources permitted in the concession contract.

The law also defines areas of historical and cultural value which are designed to protect areas which are of traditional importance to the local community. These include areas from which medicinal plants are gathered and where traditional rites and ceremonies are held. Communities have the right to request that such areas be formally designated¹⁶³. Concessionaires are obliged to respect such areas and allow community access to them.

The law does not make specific reference to the rights and responsibilities of wildlife operators. However in practice such rights and responsibilities are based on those which apply to forestry operators, and also include respect for protected species.

6.2.5 FAQs

I have a game farming concession. Members of the local community near my concession are hunting in the concession and as a result I have injured animals. Should I go to the police?

161 Forestry and Wildlife Regulation, Article 31.

162 Forestry and Wildlife Regulation, Article 32.

163 Forestry and Wildlife Law, Article 13.

The law permits local communities to hunt for their own consumption, and not for commercial purposes and Article 8 of the Forestry and Wildlife law states that even such hunting must be sustainable. Article 47 of the Forestry and Wildlife Regulation determines that snares and traps may not be used by community hunters. Your first approach in this case should be to the representatives of the local community. You should discuss their actions and the impacts they are having on your business. It may be possible to either show them more effective and sustainable ways of hunting or you could propose sharing game meat which results from your business. If this does not have the desired outcome you have recourse to the local COGEP and to the district administration. While you do have legal rights to protect your business and in fact are obliged to protect the resource that has been conceded to you, a negotiated settlement through which everyone benefits is the most likely to prove sustainable.

I have a forestry concession. It has a lot of game inside it. I would like to invite a safari company to establish a hunting operation. Can I?

The concept of dual use of both forestry and wildlife concessions is not clearly regulated. The same question has been raised regarding forest management operations in coutadas. The Forestry and Wildlife Legislation Manual (Chapter 12 Section 11) notes that the legislation is not explicit. While the legislation permits that a forestry or wildlife operator can oppose (with sufficient justification) the attribution of a concession which overlaps their own, it does not state that they can actively seek out the attribution of such an overlapping concession. While the manual allows that such activity could take place if it coincided with the management plan of the holder of the first concession (in your case a wildlife one) it says that the granting of permission would be unlikely.

6.2.6 Checklist

Application for a forestry concession

You submit:

- A form (see copy in annex 7.10) which includes the following information:
Company name; business license (alvará) number; tax registration number (NUIT); company representative's name; company representative's biodata; size and location of proposed area; purpose for which the area will be used; species to be exploited in the proposed area; signature of the applicant's representative
- A letter of request addressed to the relevant entity depending on the size of the area requested (see model in annex 7.11);
- A notarised copy of the identity document of the signatory of the application (see Section 4.7.2 regarding the use of powers of attorney);
- In the case of a legal person, proof of registration and incorporation (usually in the form of the public deed and certificate of commercial registration);
- The esboço prepared by SPGC;
- The memória descritiva prepared by SPGC;
- A preliminary inventory;
- A project plan including (as applicable depending on whether the concession is to be natural forest or plantation) principle species to be harvested, type of products to be made, estimated annual off-take, type of industry to be installed, proposed developments of staff accommodation, proposed community investments, potential markets;
- A guarantee of technical and industrial capacity to ensure the project can comply with the legal requirement to undertake at least primary processing;

- A declaration by the District Administration that the community consultation has been undertaken;
- An acta of the community consultation meeting(s);
- A survey of all third-party rights affecting the proposed concession and a plan to ensure their harmonious integration into the project;
- A plan for the use of by-products including any potential use as fuel.

Submit six copies of each of the above.

You will receive:

- A stamped copy of the form as proof of submission;
- If your application is successful you will receive a comunicação de despacho and be invited to sign a termo de adesão.

Submission of Management Plan

You submit:

- A management plan prepared by a government authorised forest management plan specialist;
- A forest inventory prepared by a government authorised forest inventory specialist.

Submit six copies of each of the above.

You will receive:

- A forestry concession contract;
- A summary of the concession contract to publish in the Boletim da República.

Application to start operations

You submit:

- A request for a vistoria;
- Proof of payment of annual concession tax;
- Proof of payment of felling license fees.

Submit six copies of each of the above.

You will receive:

- An operations license (licença de exploração);
- A felling license.

6.3 ENVIRONMENT & HERITAGE

6.3.1 Environment

Protection of the environment is enshrined in the Mozambican Constitution. Citizens have the right to a well-balanced environment¹⁶⁴ and to legal recourse against threats to that environment¹⁶⁵. Mozambique's criminal and civil codes both include the concept of responsibility (both civil and criminal) for environmental damage¹⁶⁶.

¹⁶⁴ Constitution of the Republic of Mozambique, Article 90.

¹⁶⁵ Constitution of the Republic of Mozambique, Article 81 paragraph 1 and lines a) and b) of paragraph 2.

¹⁶⁶ Civil Code, Articles 483, 493 and 1346 paragraph 2, Penal Code Articles 464, 476 and 478.

The National Environment Policy (*Política Nacional do Ambiente* - Resolution 5/95 of 03 August)¹⁶⁷ defines guiding principles including “polluter pays”¹⁶⁸. The Environment Law (*Lei do Ambiente* - Law No. 20/97, of 01 October) provides the basis for subsequent environmental legislation and for the country’s environmental management system¹⁶⁹. Since the introduction of the environment law a broad range of general and sector-specific legislation has been introduced and international treaties and conventions adopted. Environmental licensing is to be the subject of a future booklet in this series. For now we provide a basic overview of key aspects. In case of doubt readers are advised to seek legal counsel.

Any activity which is expected to cause an environmental impact is subject to environmental licensing¹⁷⁰. Low-impact and small-scale activities may be subject to an initial assessment while high-impact and large-scale activities may be subject to a full environmental impact assessment process including scoping, environmental impact study, public consultation and disclosure, and development of an environmental management plan. Commercial agriculture, forestry and mining are among the sectors which require a full assessment prior to environmental licensing¹⁷¹.

Environmental licenses are subject to periodic review and license-holders may be required to submit an annual environmental management report which considers the ongoing impacts of the activity and efficacy of mitigation measures being used.

If an activity which is subject to licensing is carried out without a license the proponent may receive a substantial fine and have his activity suspended.

Environmental licensing is subject to payment of inspection fees, the cost of drawing up the environmental impact study (where required) and the cost of licensing. Environmental impact studies and management plans may only be prepared by government-approved specialists. The environmental license itself costs 0.2% of the investment value for category A and B activities (classified as high-impact and low – impact, respectively), and 0.02% for the issuing of a declaration of exemption for activities classified as category C (those with minimum or non-existent impact)¹⁷². The legislation is not specific on how the investment value should be calculated.

For further details please see “The Legal Framework for Environmental Licensing” in the same series, available to download from www.acismoz.com

6.3.2 Heritage

Given the history of Mozambique, and particularly of its coastal areas it is possible that DUAT-holders may encounter areas or items of archaeological or cultural significance on the area over which they hold DUAT. This section serves merely to draw attention to the fact that both cultural and archaeological areas and finds are regulated by law.

Archaeological heritage is regulated by the Archaeological Heritage Protection Regulation (Decree No. 27/94, of 20 July) which defines such heritage as: “assets of archaeological,

167 National Environment Policy, Resolution 5/95, of 03 August.

168 National Environment Policy, Point 22, paragraph 4.

169 Environment Law Article 2.

170 Environment Law, Article 15.

171 Environmental Regulation (Decree 45/2004 of 29 September), Annexes.

172 Environmental Regulation, Article 3, Article 25 paragraph 1, and Annex III, and Decree 42/2008 of 04 November

anthropological or geological value, which relate to previous generations and which are discovered by accident, during prospecting and survey or during archaeological digs”¹⁷³.

Excavation and earth moving activities (such as for construction or mining) can result in the accidental discovery of artefacts. Any such discovery must be communicated to the nearest local authority (district administration or municipal council) within 48 hours¹⁷⁴. Depending on the type of excavation taking place and the discovery made, work may be halted immediately.

The local authority then communicates the find to the National Cultural Heritage Directorate which nominates an inspector who is sent to the area to catalogue the find and protect it. The inspector prepares a report which includes recommendations for the management of the find. Work may be suspended until such time as the find can be safeguarded or removed. A Total Protection Zone may be declared around the area of the find. The proponent of the activity which led to the find may request the modification of plans to safeguard the find if it can be demonstrated that ongoing activity will not damage this or any future finds in the area.

Cultural heritage is more broadly defined than archaeological heritage and includes both physical and non-physical assets which are relevant to the definition and development of the culture of the Mozambican People¹⁷⁵. The Council of Ministers is responsible for the classification of cultural heritage. For example, any building built prior to 1920 and all monuments and archaeological finds are considered part of the cultural heritage. Areas or assets classified as cultural assets must be managed in accordance with the legislation governing cultural heritage, which includes stipulations about land use near to or around such sites or assets, their maintenance and management.

6.4 WATER RIGHTS

As with land, and forestry and wildlife resources, all water resources belong to the State. The Water Law (Law No. 16/91, of 03 August) is the main legislation governing the use of water resources. No official regulation of this law exists, though there is a draft which is used in practice.

Water can be for common use or for private use. Common use (defined as domestic or personal use) is free in terms of both cost and access. Private use is subject to licensing or concession if above a certain volume. The legislation also governs water quality and management, and here intersects with the environmental legislation. In urban areas legislation allows for the private management of water provision services¹⁷⁶.

The Water Law prioritises water use with water required for sanitation and consumption by the general population being the key priority¹⁷⁷. Private consumption which could prejudice either common use by the general public or the environment is not permitted.

173 Decree 27/94 Article 2.

174 Decree 27/94 of 20th July, Article 2 paragraph 2). In such cases, the discovery must be communicated within 48 hours to the district administration or to the city council (Decree 27/94 of 20th July, Article 10 paragraph 1 and Law 10/88 of 22nd December, Article 6 paragraph 3 which defines the Legal Protection of Mozambique's Cultural Heritage).

175 Law 10/88 of 22nd December, Article 3 paragraph 1.

176 Decree n° 72/98 of 23 December.

177 Water Law, Article 26, paragraph 1.

Private use may also not be permitted if the socio-economic benefits of the activity for which the water is intended do not justify such use¹⁷⁸.

DUAT-holders can use water resources on the area covered by the DUAT without a license if such use is for domestic or small-scale agricultural purposes¹⁷⁹. If use exceeds volumes which are considered domestic or small-scale then the DUAT-holder must apply for a license or for a concession.

Licenses are required for¹⁸⁰:

- Surveying for, storing and using underground water in a protected area;
- Construction of storage facilities or planting crops or felling trees on the shores or banks of a water resource;
- Removal of earth or clay on the shores or banks of a water resource.

Licenses are valid for five years and can be renewed. In any other situation a water concession must be applied for. Water licenses are extinguished if a water concession is issued over the same resource¹⁸¹.

The transfer or transmission of DUAT implies the transfer or transmission of any water usage rights that have been licensed or conceded. Such transfer is subject to authorization.

6.5 MINERAL RIGHTS

As noted above mining is one of the sectors in which rights can supersede those of other DUAT-holders. The law vests mineral resources and mining activities with priority over other forms of land use. An exception to this is where the social and economic benefit of the activity for which the land is being used exceeds such benefits from mining activity¹⁸². Clearly this is an area which is open to discretionary interpretation, and it is one which is under increasing debate given the growing interest in Mozambique's mineral resources.

DUAT-holders are obliged to permit prospecting and survey activities in the area which they have been conceded. Any disruption caused by such activities is subject to compensation¹⁸³.

Pre-existing DUATs, whether of private holders or of communities, may be extinguished (following payment of compensation), and re-issued in favour of the mining concession. Compensation is negotiated based on current and future losses¹⁸⁴. No fixed rates exist, and as with resettlement (Section 4.5.1 above) compensation is agreed on a case-by-case basis and subject to negotiation. Mediation may be used, either based on legally established norms or using the Ministry of Mineral Resources as mediator¹⁸⁵. In the case of communities, mine operators are encouraged but not required, to enter into partnership agreements with the community.

178 Water Law, Article 26, paragraphs 2 and 3.

179 Water Law, Article 23, paragraphs 1 and 2

180 Water Law, Article 18, paragraph 3 line c) and Article 32 paragraph 2)

181 Water Law, Article 33, paragraphs 1 and 2

182 Land Regulation Article 14, paragraph d) and Mining Law, Article 43, paragraph 2

183 Land Regulation Article 14, paragraph d)

184 Mining Law, Article 18, paragraph d) and Decree 62/2006 of 26 December - the Mining Regulation, Article 113 paragraph 2.

185 Mining Regulation Article 113 paragraph 4.

7 ANNEXES

7.1 REQUEST FOR RECONNAISSANCE OF AREA

EXMO SENHOR

_____ ¹⁸⁶

Ao _____ ¹⁸⁷

ASSUNTO: PEDIDO DE RECONHECIMENTO DA ÁREA

Exmo. Senhor _____ ¹⁸⁸,

Nos termos de Artigo 25 de Decreto 66/98 de 8 de Dezembro
_____ ¹⁸⁹ vem por este meio solicitar o reconhecimento da área de
_____ ¹⁹⁰ Ha no _____ ¹⁹¹ e a preparação do esboço
preliminar como o passo inicial de processo de eventual pedido de Direito de Uso e
Aproveitamento de Terra por Autorização de Pedido.

Sem mais de momento subscrevemo-nos com estima e consideração.

De V. Excia

Atenciosamente

_____ ¹⁹²

¹⁸⁶ Insert the title and address of the relevant entity e.g. Senhor Governador, Província de Sofala, Beira.

¹⁸⁷ Insert date.

¹⁸⁸ Insert title e.g. Governador, Ministro etc.

¹⁸⁹ Insert name, address and contact details of applicant.

¹⁹⁰ Insert size of area requested in hectares.

¹⁹¹ Insert location of area being requested including as much detail as possible.

¹⁹² Insert signature of applicant.

7.2 GOVERNMENT OUT OF OFFICE EXPENSES SCHEDULE

The following rates apply based on the dispatch of the Minister of Finance issued on 10th October 2006 and which came into force on 01 November 2006:

Salary group	functional group	value per day (in MT)
12, 13, 14, 15, 16, 17, 18, 19, 22, 23, 25 & 78	1 - 2.1 10 - 13	2.000,00
10,11, 32, 41, 51, 75, 76, 79, 82, 86 & 87	3 - 3.1 14 - 16	1.700,00
7, 8, 9, 21, 65, 66, 67, 71, 72, 73, 74, 77, 81, 83, 84, 88, 93 & 94	4 - 7	1.500,00
1, 2, 3, 4, 5, 6, 20, 92, 97, 98, 99	7.1 - 9	1.250,00

7.3 TABLE OF FEES PAYABLE TO SPGC FOR PROVISIONAL DUAT APPLICATION

Item	Fee
Preparation of Esboço	200Mt
Costs	600Mt
Community fee	300Mt
Application form	10Mt
Senior technician (per day)	600Mt
Mid-level technician (per day)	487.50Mt
Basic-level technician (per day)	397.50Mt
Fuel (if using SPGC vehicle)	5Mt/Km

Note that the services of SPGC technicians are required twice during the process, once for the reconnaissance phase and once for the local consultation. Additional fees are required for other government staff (for example from the district administration) that participate in these activities. Fees payable to SPGC staff are in addition to the out of office expenses provided in annex 7.2.

7.4 ESTIMATED NUMBER OF DAYS REQUIRED FOR RECONHECIMENTO

The following is based on a table provided by SPGC Sofala.

Area (hectares)	No. working days
0-100	1
100-500	2
500 – 1,000	3
1,000 – 4,000	4
4,000 – 5,000	5
5,000 – 10,000	8

7.5 MODEL OF ACTA USED FOR COMMUNITY CONSULTATION

GOVERNO DA PROVINCIA DE _____
DIRECÇÃO PROVINCIAL DA AGRICULTURA
SERVIÇOS PROVINCIAIS DE GEOGRAFIA E CADASTRO

MODELO DE ACTA DE CONSULTA ÀS COMUNIDADES LOCAIS AO
ABRIGO DO Nº 3 DO ART. 13 DA LEI DA TERRA, CONJUGADO Nº 2 DO
ART. 27 DO RESPECTIVO REGULAMENTO

Aos _____ dias do mês de _____ de _____ teve
lugar uma reunião de consulta à Comunidade de

_____, em virtude de ter sido
requerida uma área do território pelo Sr. (a)

_____ que
_____ ha/m² na Localidade _____ requer
de

Administrativo _____, Posto
de

_____, Distrito de _____,

para fins _____.

O encontro foi dirigido pelo Sr.(a)

_____ e contou com o envolvimento de

_____ técnico dos SPGC, bem como de _____ membros da
Comunidade de

Os participantes da reunião, pronunciaram-se a cerca do pedido de ocupação do
terreno em causa, sendo de destacar as seguintes intervenções:

1.Senhor(a) _____

proferiu sua opinião nos seguintes termos

: _____

2.Senhor(a) _____

3. Senhor(a)

Por fim foi acordado que :

Indicar o tipo de infra-estruturas e benfeitorias existentes (exemplo: casa, tanques, armazéns, arvores de fruta e etc.).

No fim do encontro foi elaborada a presente acta de consulta que foi lida em Português e traduzida em _____ (língua de influência local). Depois convidou-se a comunidade a assinar a acta, que vai ser assinada pelos representantes da comunidade incluindo os ocupantes dos terrenos limítrofes, dos representantes do Estado, e do requerente ou seu representante.

Assinaturas

Função

O Secretariado

O parecer do DDA

O Director Distrital

O parecer do Administrador

O Administrador do Distrito

_____ **aos,** _____ **de** _____ **de** _____

7.6 APPLICATION FORM FOR DUAT THROUGH AUTHORISATION OF APPLICATION

REPUBLICA DE MOÇAMBIQUE
 PROVINCIA DE _____
 SERVIÇOS PROVINCIAIS DE GEOGRAFIA E CADASTRO

FORMULARIO

<input type="checkbox"/> Pessoa singular	<input type="checkbox"/> Pessoa colectiva		
Data de Nascimento	Emissão	Validade	
Dia Mês Ano	Dia Mês Ano	Dia Mês Ano	Dia Mês Ano
[] [] []	[] [] []	[] [] []	[] [] []
Loça de emissão	Nacionalidade	Nº BI/Passaporte/DIRE	Nome da (o) Cônjuge
[]	[]	[]	[]
Regime de casamento	Profissão	Estado civil	
[]	[]	[]	
	Residência (Rua/Av./Local./Aldeia/Distrito/Província)		Nº Andar
[]	[]		[] []
Flat	Quarteirão	Bairro	Telefone
[]	[]	[]	[]
E. Mail		Fax	Cell
[]		[]	[]

Ocupação	<input type="checkbox"/>	Aumento da área	<input type="checkbox"/>	Reconhecimento	<input type="checkbox"/>	Associação de direitos	<input type="checkbox"/>
Legalização	<input type="checkbox"/>	Desistência	<input type="checkbox"/>	Esboço de localiza	<input type="checkbox"/>	Ocupação de boa fé	<input type="checkbox"/>
Co-titularidade	<input type="checkbox"/>	Certidão	<input type="checkbox"/>	Validação do título	<input type="checkbox"/>	Transferencia de infraest/benfeitor.	<input type="checkbox"/>
Demarcação	<input type="checkbox"/>	Vistoria	<input type="checkbox"/>	Pedido do título	<input type="checkbox"/>	Transmissão por herança	<input type="checkbox"/>
Redução da área	<input type="checkbox"/>	Delimitação	<input type="checkbox"/>	2ª via de título	<input type="checkbox"/>	Isenção temporária de taxas	<input type="checkbox"/>

Licença especial	<input type="checkbox"/>	Outros (especificar)	<input type="checkbox"/>	<input type="text"/>
------------------	--------------------------	----------------------	--------------------------	----------------------

Agricultura	<input type="checkbox"/>	Silvicultura	<input type="checkbox"/>	Industria	<input type="checkbox"/>	Criação de gado bovino	<input type="checkbox"/>
Agro-pecuária	<input type="checkbox"/>	Habitação	<input type="checkbox"/>	Fauna bravia	<input type="checkbox"/>	Culturas permanentes	<input type="checkbox"/>
pecuária	<input type="checkbox"/>	Comercio	<input type="checkbox"/>	Turismo	<input type="checkbox"/>	Habitação	<input type="checkbox"/>
Outros (especifica)	<input type="checkbox"/>	<input type="text"/>					

DESCRIÇÃO DO TERRENO

Áreas (ha/m2)	<input type="text"/>	Situada em	<input type="text"/>	Ocupações existentes no terreno					
Localidade	<input type="text"/>	Posto Administrativo	<input type="text"/>	Infra-estruturas	<input type="checkbox"/>	Servidões	<input type="checkbox"/>	Mac ham.	<input type="checkbox"/>
Distrito	<input type="text"/>	Provincia	<input type="text"/>	Benfeitorias	<input type="checkbox"/>	Famílias	<input type="checkbox"/>		
				Áreas sagradas das comunidades					

RECURSOS NATURAIS EXISTENTES NO TERRENO

Rios	<input type="checkbox"/>	Diques	<input type="checkbox"/>
------	--------------------------	--------	--------------------------

Lagos	<input type="checkbox"/>	Lagoas	<input type="checkbox"/>	Outros (especificar)	<input type="checkbox"/>	<input type="checkbox"/>
-------	--------------------------	--------	--------------------------	-------------------------	--------------------------	--------------------------

TRABALHO DE CAMPO

Identificação prévia e reconhecimento do terreno	Dia	Mês	Ano	Data da Consulta as	Dia	Mês	Ano
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Comunidades locais	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Eu concordo e obrigo-me a respeitar os termos de parceria e/ou acordos firmados no acto da consulta às Comunidades Locais, respeitar outras riquezas existentes no terreno requerido, bem como as normas técnicas que forem fixadas pelos organismos competentes e pagar a primeira taxa anual antecipadamente, no valor de _____

_____	Recebeu e conferiu
O Requerente	
_____	_____
(Assinatura)	(Nome do funcionário)
<input type="checkbox"/>	<input type="checkbox"/>
mê	
dia s ano	dia mês ano

DOCUMENTOS OBRIGATÓRIOS

<input type="checkbox"/> Fotocopia do BI / DIRE ou ESTATUTO	<input type="checkbox"/> Esboço de localiza.	<input type="checkbox"/> Acta de cons. às Com. Locais	<input type="checkbox"/> Duplicado do edital
<input type="checkbox"/> Guia comprovativa de depósito	<input type="checkbox"/> Memória descritiva	<input type="checkbox"/> Recibo de pag. da taxa anual	<input type="checkbox"/> Plano de exploração

7.7 LAND TAX AND APPLICATION FEES

Costs

TABLE I		TABLE II	
Item	Value payable (MT)	Item	Value payable (MT)
Esboço	200.00	Senior technician	600.00 MT
Costs	600.00	Mid-level technician	487.50 MT
Survey and community consultation	(Ver table II)	Basic technician	397.50 MT
Community fee	300.00	Fuel	5.00 MT/ Km
Form	10.00		

FORMULA USED FOR CALCULATING LAND SURVEY (R) AND COMMUNITY CONSULTATION (C)

$$R = \text{Technician} \times \text{days} + (5.000,00\text{MT} \times K) =$$

MT

$$C = \text{Technician} \times \text{days} + (5.000,00\text{MT} \times K) =$$

MT

Where R = Survey

C = Community Consultation

K = Distance in KM from headquarters to land requested

Application fees

Type of authorization	Fee
Provisional authorization	600.00 Mt
Definitive authorization	300.00 Mt

Annual taxes

Purpose	Value
1. Cattle breeding, wildlife breeding, permanent crops	2.00MT/ha
2. Agriculture	15.00MT/ha
3. All other	30.00MT/ha
4. Tourism, temporary residential (holiday homes), commerce up to 1Ha from the beach front	200.00MT

The value of the tax is calculated according to land location, size and use.

Annual tax adjustment

	Maputo province	2.0
	Land in partial protection zones	1.5

	Priority development zones	0.5
	All other zones	1.0
Size	Up to 100 hectares	1.0
	From 101 to 1,000 hectares	1.5
	Over 1,000 hectares	2.0
Purpose	Associations	0.5
	National natural persons	0.8

- The Maputo Provincial adjustment does not apply to cattle production.
- Priority development areas are those in the Zambeze Valley (Tete Province, districts of Morrumbala, Mopeia, Chinde, Milange, Mocuba, Maganja de Costa, Nicoadala, Inhassunge, Quelimane in Zambezia Province, Districts of Gorongosa, Maringue, Chemba, Caia, Marromeu, Cheringoma, Muanza in Sofala Province, Districts of Barue, Guro, Tambara, Macossa in Manica Province).
- The size factors do not apply to cattle production, game farming and permanent crops (sugar, citrus etc.)

7.8 COMMUNITY COMMITTEE PROCESSES

The following is a brief summary of the procedures to be followed for citizens in rural areas to open bank accounts in order to receive 20% of the licensing fees paid for use of natural resources, and to form an association to manage such an account or to manage the Community Natural Resource Committee (CGRN).

In order to open a bank account a citizen must first have an identity document (Bilhete de Identidade – B.I.). To obtain this document the citizen must present their birth certificate at the registry office and receive a “cédula” (a proof of eligibility to have a BI). The citizen must then present the cédula at the Civil Identity Registry. While this procedure is relatively simple it does not take into account the fact that many people are not born in hospitals and do not have their births legally registered. In addition some of these procedures, especially the application for the BI itself, usually take place in the provincial capital.

A bank account cannot be opened with a proof of application for a BI, the actual BI itself must be presented. Issuance of BIs can take several months. In addition to the BI banks require a Police Clearance Certificate, which must be applied for in the provincial capital and then sent to Maputo. Receiving a Police Clearance Certificate can take several weeks. Each of the procedures detailed so far has cost implications. Banks also require a minimum deposit to open a bank account.

In order to register an association the community must put forward at least ten members, each of whom must have a BI. The community must then prepare articles of association outlining the rules which will govern the functioning of the association. Organizations such as ORAM which have experience in this area have developed model articles which communities can use.

Each of the ten or more founder members of the association must then apply for Police Clearance Certificates at provincial level. Having received these they are submitted along with notarized copies of each person’s BI and a letter of request signed by each of the 10 members and with each of the signatures having been notarized, to the Registry. The Registry then passes the process to the provincial governor for his approval, which must be given within 45 days.

The provincial governor’s approval must then be published in the government gazette in Maputo.

The community must then take proof of publication of the governor’s approval along with the articles of association to the notary where a public deed is prepared. Each of the ten members must then go personally to the notary to sign the deed. A copy of the deed is then registered at the commercial registry. The deed must also be published in the government gazette in Maputo.

Each stage of this process has costs associated with it. On average each of the community members must visit the provincial capital three to four times to complete the process.

The introduction of Decree-Law 2/2006 of 03 May simplifies this procedure for agro-processing associations at community and district level. Such associations are understood to be those with interests in agricultural production and processing, livestock raising and forestry¹⁹³. Such associations can be registered at District Administration level and the district administration is responsible for ensuring that the dispatch recognizing the constitution of the association is published in the BR194. The procedure requires the following documentation¹⁹⁵:

- Letter of request signed by 10 founder members (those that cannot sign can use their finger print);
- Articles of association (prepared on a form provided by the District Administration);
- Written or verbal testimony provided by a recognized community leader as to the aptness of each founder member for the role;
- Proven identity of each founder member (in the form of a BI, testimony from two witnesses or personal knowledge of the person by the District Administrator)

The District Administrator issues a dispatch confirming the registration within eight days of receiving the submission from the founder members and provides the association with a certificate¹⁹⁶.

Clearly this change has the potential to have a major positive impact on the registration of associations at community level and the formation of CGRNs, enabling communities to receive the 20% fees for which they are eligible.

¹⁹³ Decree-Law 2/2006 of 03 May, Article 2.

¹⁹⁴ Decree-Law 2/2006 of 03 May, Article 5.

¹⁹⁵ Decree-Law 2/2006 of 03 May, Article 7.

¹⁹⁶ Decree-Law 2/2006 of 03 May, Article 8.

7.9 INITIAL LETTER OF REQUEST FOR FORESTRY OR WILDLIFE CONCESSION

EXMO SENHOR

_____ ¹⁹⁷

Ao _____ ¹⁹⁸

ASSUNTO: PEDIDO DE INICIAÇÃO DE PROCESSO DE ATRIBUIÇÃO DE CONCESSÃO
FLORESTAL / DE FAUNA BRAVIA ¹⁹⁹

Exmo. Senhor _____ ²⁰⁰,

Nos termos de Artigos 25 e 26 de Decreto 12/2002 de 06 de Junho
_____ ²⁰¹ vem por este meio solicitar a iniciação de processo de
atribuição da área de _____ ²⁰² Ha no _____ ²⁰³ e a
preparação da consulta comunitária e edital como passo inicial de processo de eventual
pedido de Concessão.

Sem mais de momento subscrevemo-nos com estima e consideração.

De V. Excia

Atenciosamente

_____ ²⁰⁴

¹⁹⁷ Insert the title and address of the relevant entity e.g. Senhor Governador, Província de Sofala, Beira.

¹⁹⁸ Insert date.

¹⁹⁹ Delete as applicable.

²⁰⁰ Insert title e.g. Governador, Ministro etc.

²⁰¹ Insert name, address and contact details of applicant.

²⁰² Insert size of area requested in hectares.

²⁰³ Insert location of area being requested including as much detail as possible.

²⁰⁴ Insert signature of applicant.

7.10 APPLICATION FORM FOR FORESTRY CONCESSION
 DIRECÇÃO PROVINCIAL DE AGRICULTURA DE _____
 SERVIÇOS PROVINCIAIS DE FLORESTAS E FAUNA BRAVIA

FORMULÁRIO

Processo No.

Identificação

Empresa / pessoa colectiva		Nome da empresa			
O representante		Alvará		NUIT	
Pessoa Singular		Nome		Sexo	
Data de nascimento	Local de Nascimento	No. BI/ Passaporte / DIRE		Emissão	Validade
Local de Emissão	Nacionalidade	Profissão		Estado Civil	
Residência		Telefone	Fax	Celular	

Descrição do Terreno

Área (ha)		Situada em	
Localidade		Posto Administrativo	
Distrito		Província	
Pretensão			
Concessão Florestal		Licença Simples	
Produtos a explorar	Madeira	Combustíveis lenhosos	Materiais de construção
Outros (especificar)			
Fazenda de Bravio		Modelo de licença de caça	Última licença No
Período de Caça			Código
Outros (especificar)			

Finalidade

Consumo Próprio		Comércio	Interno		Produção de carvão vegetal	
			Externo		Trofeus	
Abastecimento a indústria de processamento					Desporto	Despojos
Outros (especificar)						

Indicação das espécies

Espécie	Florestas		Fauna			
	Classe	Volume M3	Quantidade	Quota Atribuída	Quota Remanescente	Meios ou instrumentos a serem usados

Outras informações julgadas relevantes:

Declaro solenemente que os dados acima por mim fornecidos são verdadeiros. Mais declaro não ter formulado qualquer outro pedido de licença simples para o ano em exercício.

O Requerente

Recebido e

Conferido

(Assinatura e data)

7.11 LETTER OF REQUEST FOR FORESTRY CONCESSION
EXMO SENHOR

_____ ²⁰⁵

Ao _____ ²⁰⁶

ASSUNTO: REQUERIMENTO DE CONCESSÃO FLORESTAL

Exmo. Senhor _____ ²⁰⁷,

Nos termos do Paragrafo 2 do Artigo 26 do Decreto 12/2002 de 06 de Junho
_____ ²⁰⁸ vem por este meio solicitar a atribuição da área de
_____ ²⁰⁹ ha no _____ ²¹⁰ para fins de exploração
florestal em regime de concessão.

Sem mais de momento subscrevemo-nos com estima e consideração.

De V. Excia

Atenciosamente

_____ ²¹¹

²⁰⁵ Insert the title and address of the relevant entity e.g. Senhor Governador, Província de Sofala, Beira.

²⁰⁶ Insert date.

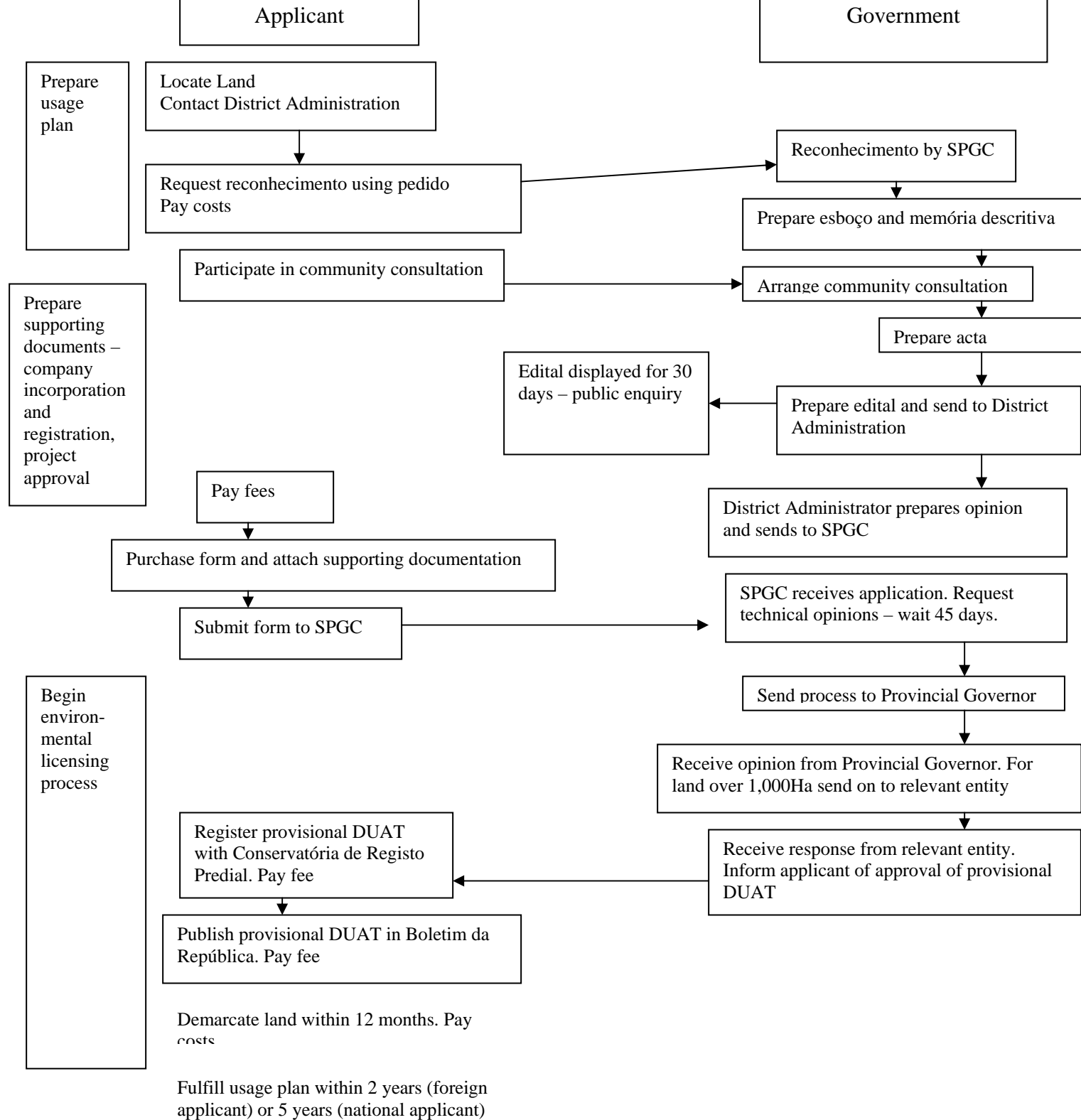
²⁰⁷ Insert title e.g. Governador, Ministro etc.

²⁰⁸ Insert name, address and contact details of applicant.

²⁰⁹ Insert size of area requested in hectares.

²¹⁰ Insert location of area being requested including as much detail as possible.

²¹¹ Insert notarised signature of applicant.



Prepare usage plan

Prepare supporting documents – company incorporation and registration, project approval

Begin environmental licensing process

Applicant

Locate Land
Contact District Administration

Request reconhecimento using pedido
Pay costs

Participate in community consultation

Pay fees

Purchase form and attach supporting documentation

Submit form to SPGC

Register provisional DUAT with Conservatória de Registro Predial. Pay fee

Publish provisional DUAT in Boletim da República. Pay fee

Demarcate land within 12 months. Pay costs

Fulfill usage plan within 2 years (foreign applicant) or 5 years (national applicant)

Government

Reconhecimento by SPGC

Prepare esboço and memória descritiva

Arrange community consultation

Prepare acta

Prepare edital and send to District Administration

Edital displayed for 30 days – public enquiry

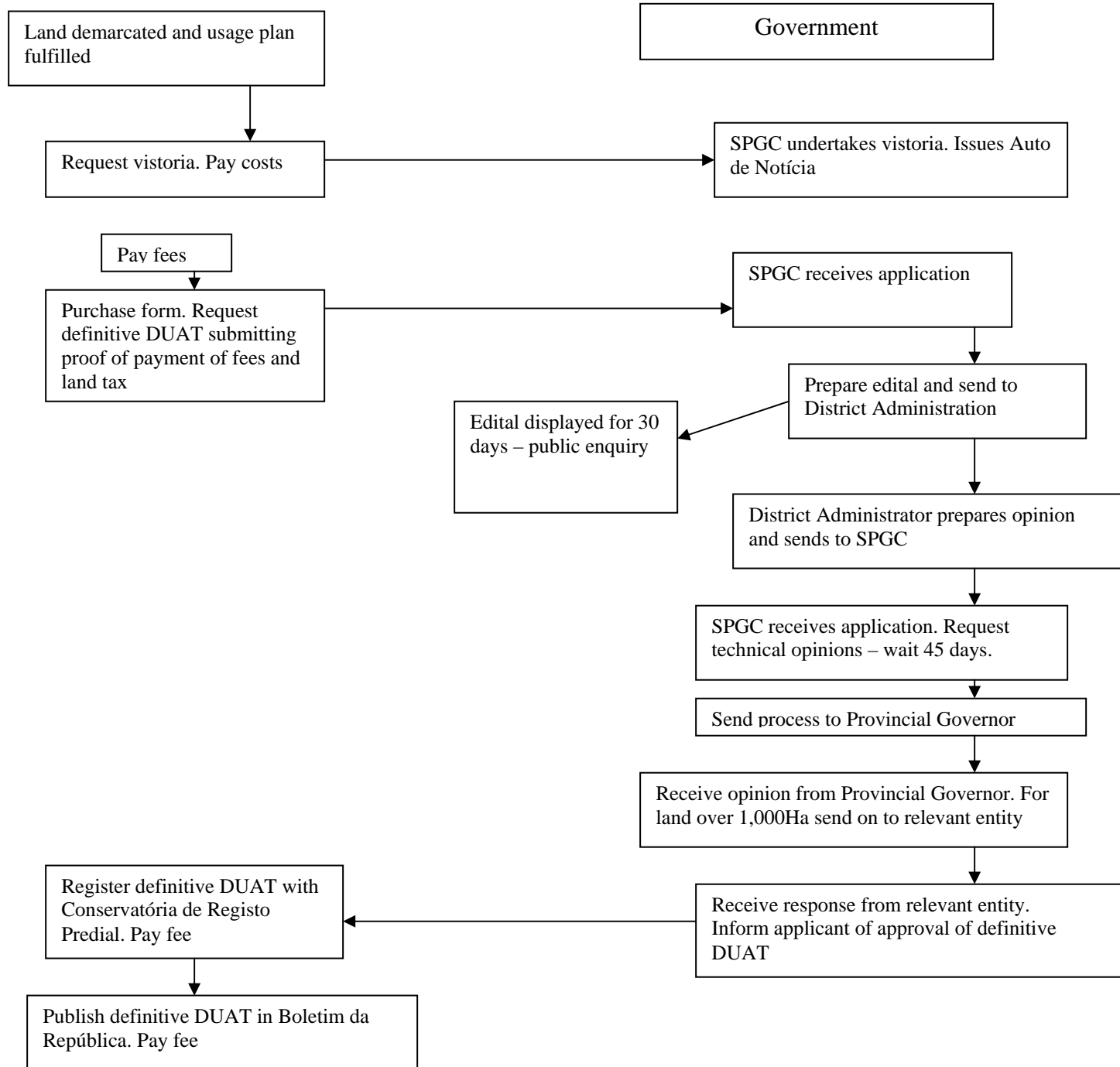
District Administrator prepares opinion and sends to SPGC

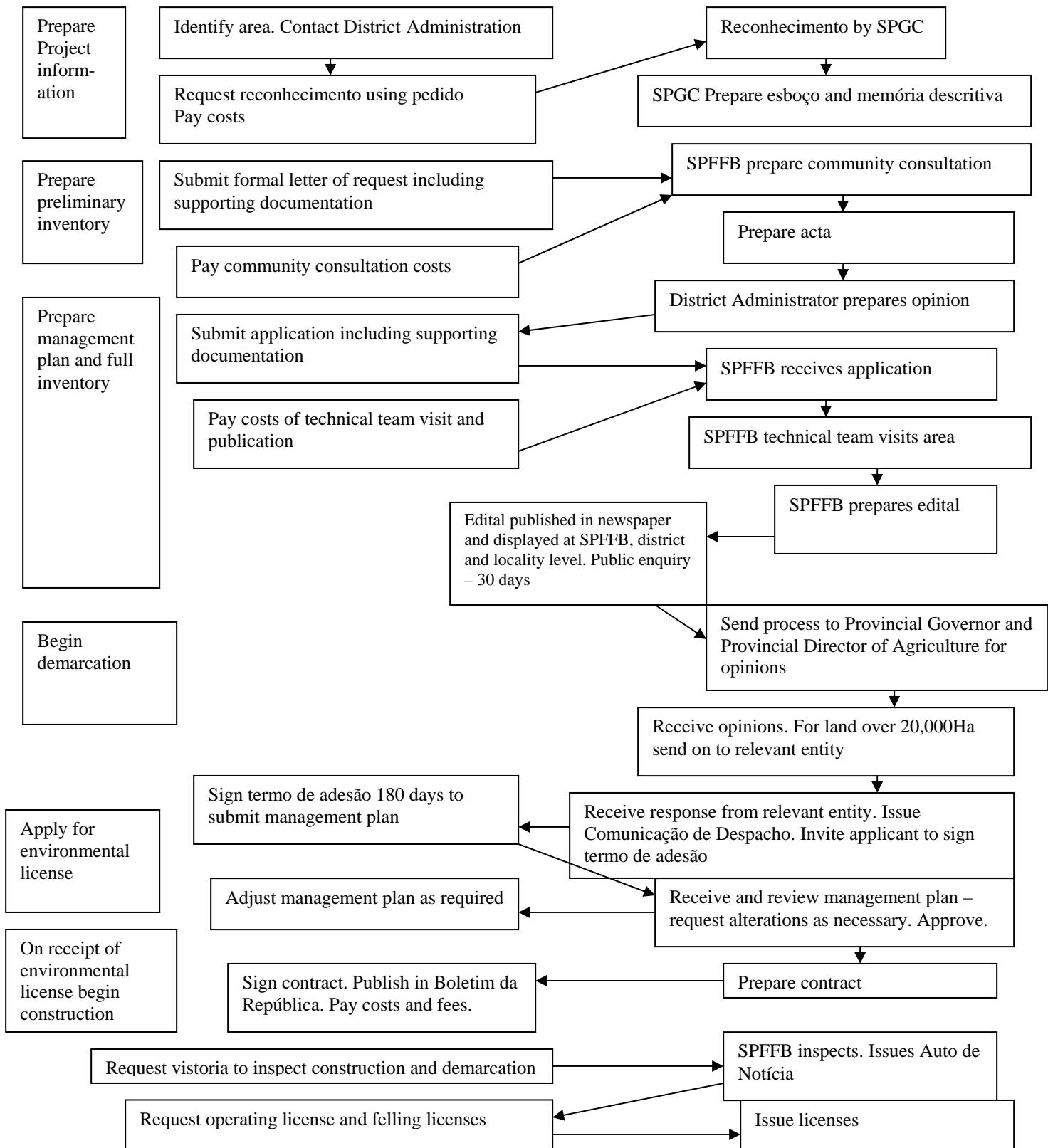
SPGC receives application. Request technical opinions – wait 45 days.

Send process to Provincial Governor

Receive opinion from Provincial Governor. For land over 1,000Ha send on to relevant entity

Receive response from relevant entity. Inform applicant of approval of provisional DUAT





Prepare Project information

Identify area. Contact District Administration

Reconhecimento by SPGC

Request reconhecimento using pedido
Pay costs

SPGC Prepare esboço and memória descritiva

Prepare preliminary inventory

Submit formal letter of request including supporting documentation

SPFFB prepare community consultation

Pay community consultation costs

Prepare acta

Prepare management plan and full inventory

Submit application including supporting documentation

District Administrator prepares opinion

Pay costs of technical team visit and publication

SPFFB receives application

SPFFB technical team visits area

Edital published in newspaper and displayed at SPFFB, district and locality level. Public enquiry - 30 days

SPFFB prepares edital

Begin demarcation

Send process to Provincial Governor and Provincial Director of Agriculture for opinions

Receive opinions. For land over 20,000Ha send on to relevant entity

Apply for environmental license

Sign termo de adesão 180 days to submit management plan

Receive response from relevant entity. Issue Comunicação de Despacho. Invite applicant to sign termo de adesão

Adjust management plan as required

Receive and review management plan - request alterations as necessary. Approve.

On receipt of environmental license begin construction

Sign contract. Publish in Boletim da República. Pay costs and fees.

Prepare contract

Request vistoria to inspect construction and demarcation

SPFFB inspects. Issues Auto de Notícia

Request operating license and felling licenses

Issue licenses

anyone wanting to obtain a deeper understanding of the issues around land in Mozambique obtain these works:

- Colectânea de Legislação do Ambiente – Carlos Serra Jr, CFJJ, Maputo 2003.
- Lei de Terras Anotada e Comentada – André Jaime Calengo, CFJJ, Maputo 2005.
- Manual de Delimitação de Terras das Comunidades – Comissão Inter-Ministerial para a Revisão da Legislação de Terras.
- Manual de Direito da Terra – Maria da Conceição de Quadros, CFJJ, Maputo 2004.
- Manual de Legislação de Florestas e Fauna Bravia, volumes I e II – Ministério de Agricultura, Maputo 2005.
- Manual para a Elaboração do Plano de Maneio de Concessão Florestal – Siteo & Bila, MINAG, Maputo 2002.
- Recursos Naturais – Guião de Direitos das Comunidades Locais – CFJJ, Maputo

And the following report:

- An Economic Analysis of Natural Resources in Mozambique - Rural Land Issues and Policies – W.B. Hughes, Maputo February 2005.