

Legal Framework



For Recognising and Acquiring Rights to Rural Land in Mozambique

A Guide to Legalising Land-Holding

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Direcção Nacional de Terras e Florestas



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The Association for Commerce and Industry (*Associação de Comércio e Indústria* – “ACIS”) extends its thanks for the contribution and trust of the above mentioned entities, especially all the technicians and other people responsible and directly involved in the project, as well as all those who gave their support so that this important instrument of dissemination of land legislation and investment support could be produced, in the first instance, and updated, in subsequent versions.

PREÂMBULO

A terra é um dos mais importantes recursos naturais que o País dispõe, visto que é a partir dela que se produz e se retira grande parte da riqueza dos países e dos seus habitantes. Em Moçambique a terra tem sido tratada com especial atenção, na tentativa de conciliar a necessidade do desenvolvimento económico e a forma mais adequada de responder às questões sociais a ela ligadas.

A legislação de terras moçambicana foi uma das primeiras a reconhecer e a garantir expressamente os direitos costumeiros. A forma de conciliar os direitos costumeiros, garantir a sua efectiva protecção e, simultaneamente, motivar o investimento privado, articulando os direitos titulados e os não titulados, tem sido um grande desafio para as autoridades públicas.

O Estado moçambicano garante o acesso à terra tanto aos moçambicanos como aos estrangeiros. A Constituição da República de Moçambique define o regime de terras em Moçambique e a legislação sobre terras determina as condições e procedimentos para o reconhecimento e/ou obtenção de direitos sobre a terra.

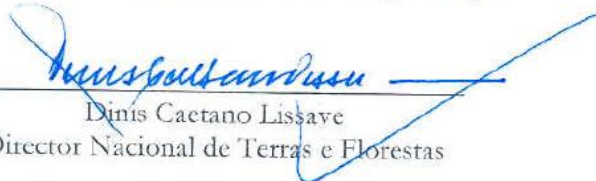
O Estado moçambicano garante e incentiva o investimento privado no país e reconhece o direito de propriedade sobre os bens erguidos sobre a terra. A Constituição limita e determina os requisitos para que possa ter lugar qualquer expropriação. O Estado moçambicano garante o acesso à justiça na defesa dos direitos e interesses legítimos violados relativamente à terra, seja através de meios de defesa extrajudiciais, como através do recurso aos tribunais competentes.

Em Moçambique a legislação sobre terras permite o investimento privado e os retornos económicos que daí podem advir para o investidor. A melhor forma de garantir que os direitos sobre a terra seriam reconhecidos e plenamente protegidos, é conhecer a lei e zelar para que os direitos sobre a mesma sejam legalmente obtidos.

A Associação de Comércio e Indústria – ACIS, com o apoio das entidades participantes, tem desenvolvido um louvável trabalho de divulgação da legislação moçambicana de interesse para o investimento privado.

Este manual sobre terras, em especial sobre os procedimentos para acesso à terra na zona rural, é um instrumento que permite ao investidor e demais interessados o conhecimento de uma série de dispositivos legais relevantes na área de terras e os procedimentos aí fixados. É um contributo na garantia dos direitos e prevenção de conflitos de terra, através da divulgação das normas legais a serem respeitadas. Acreditamos que, com o mesmo, os investidores adquirem o conhecimento necessário para melhor se relacionarem com as autoridades públicas competentes no âmbito do acesso à terra em Moçambique.

Bem-vindos ao investimento em Moçambique


Dinis Caetano Lissave
Director Nacional de Terras e Florestas

[Free Translation of the signed preamble]

PREAMBLE

Land is one of the most important existent natural resources in the country, given that it is from land that a large part of the wealth of countries and their inhabitants is produced and extracted. In Mozambique, land has been dealt with, with special care, in an attempt to reconcile the need for economic development with the most appropriate way in which to respond to social issues which are related to land.

Mozambican land legislation was some of the first legislation to expressly recognise and ensure customary rights. The reconciliation of customary rights, so as to guarantee their effective protection, and the simultaneous motivation of private investment, while dealing with both certificated and non-certificated rights, has been a significant challenge for the public authorities.

The Mozambican State guarantees access to land, both for Mozambicans and foreign citizens. The Constitution of the Republic of Mozambique defines the legal framework in Mozambique, and land legislation determines the conditions and procedures for the recognition and/or obtaining of rights over land.

The Mozambican State guarantees and incentivises private investment in the country, and recognises the right of ownership of property erected on land. The Constitution limits and determines the requirements for any expropriation. The Mozambican State guarantees access to justice for the defence of legitimate land-related rights and interests which may have been violated, both by way of extrajudicial defence mechanisms, and by way of recourse to competent courts.

In Mozambique, land legislation permits private investment and the economic returns which may flow back to the investor. The best way in which to ensure that rights over land are recognised and fully protected is to be aware of the law, and to strive to ensure that rights over such land are legally obtained.

The Association for Commerce and Industry (ACIS), with the assistance of participating entities, has done highly laudable work on publishing Mozambican legislation which is of interest to private investment.

This manual on land, and particularly on the procedures for accessing land in rural areas, is an instrument which permits investors and other interested parties to obtain knowledge of a series of legal instruments relating to land, and the procedures they contain. It contributes to the ensuring of rights and the prevention of land conflicts, by publishing the legal norms to be complied with. We believe that it will enable investors to acquire the knowledge they require to improve their relationships with competent public authorities, in the context of access to land in Mozambique.

Welcome to investment in Mozambique.

[Signature]

Dinis Caetano Lissave

National Director of Land and Forestry

INTRODUCTION

This manual forms part of a series aimed at helping investors to do business in Mozambique. It is based on the idea that informed investors can more easily comply with the law, and on the conviction that the rule of law is the best guarantor of property and orderly and sustained development.

This manual is aimed primarily at investors but is also, we hope, a useful tool for local communities and those working with them, and also for those from the public sector who promote economic development and land use in rural Mozambique. However, this manual could address and or exhaust all the relevant situations. Other works exist which may be consulted for a deeper understanding of the matter. 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. As mentioned above, we have had to limit the scope of our manual. 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. Nonetheless, we make reference to issues such as the acquisition of urban land, the transfer of land rights, resettlement and compensation, among other topics and legislation relevant to land matters.

While we were developing the manual, there were times at which we disagreed over what the “proper” procedure was, considering that in some instances matters are handled differently in different parts of the country. While the sources of law governing most procedures (and without detracting from municipal regulatory authority) are standardised at national level, local interpretation may vary. These differences are rarely of major significance but, where applicable, we felt it important to note these differences. On this basis, we have therefore taken the procedures as followed in Maputo and Sofala Provinces 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.

The manual is structured in ten chapters as follows:

Chapter I – “Brief reference to the background and general principles of the land legislation in Mozambique”: this chapter indicates the first set of legislation regarding land which was approved after the national independence and focuses on some relevant aspects of the current regime in the country.

Chapter II – Process for the authorization of the DUAT in rural areas through the authorization of an application”: in terms of the procedures for the acquisition of DUAT, this is the main chapter of the manual. This chapter presents, in a sequential order, the different phases of the acquisition of the DUAT in the rural areas, by authorization of the application. This chapter explains the procedures based on the law, as well indicating some practical aspects to be considered. A flow chart is attached for each of the respective principal processes. Some of the models for the application and

information regarding the application form used in the competent public institutions have also been attached.

Chapter III – “Fees”: this chapter provides information regarding the fees payable for the DUAT application and the costs of the process, as well as the annual fees payable for the DUAT.

Chapter IV – “Expropriation, compensation and resettlement”: this chapter addresses a very relevant matter and the evaluation of costs to be incurred can be of interest to an investor. The norms in force are highlighted here, as well as the legal instruments relevant to the matter in the process of approval by the competent entities.

Chapter V – “Rights and duties”: in this chapter the rights and duties of the DUAT titleholder in terms of the law are highlighted, as well as useful advice about other obligations which should be complied with.

Chapter VI – “Recognition of the DUAT obtained through good faith occupation or customary norms and practices”: this chapter makes a brief reference to the recognition or legalization of the DUATs acquired through occupation or customary practices. For better understanding of the matter, a flow chart is attached.

Chapter VII – “Protection zones and special licenses”: this chapter highlights the particularities regarding access to land in areas of public domain.

Chapter VIII – “Transfer of DUAT”: this chapter informs you of the possible forms of transfer and the requirements imposed by law.

Chapter IX – “Extinction of the DUAT”: this chapter sets out the situations which could lead to extinction of the DUAT and a flow chart is attached regarding the process of extinction in cases where the DUAT holder abdicates their respective title.

Chapter X – “Brief reference to other legislation relevant for the legal framework for land”: This chapter draws attention to the existence of sector legislation which have an impact over DUAT, as well as other complementary legislation necessary for the DUAT process. In these terms, some legislation regarding land in urban areas, procedures for the approval of investment projects, legislation regarding forestry and wild life, mining legislation, water legislation, environmental legislation and Mozambican archaeological heritage and legislation regarding touristic interest.

It is important to note that, both the law and Public Administration are dynamic. Some of the laws and procedures we describe may change in the near future (and we have included information regarding various legislative proposals currently being considered, in those cases in which we have had access to them). Additionally, we may have committed errors, in spite of our efforts to ensure that none were committed. We welcome you to tell us of any errors or omissions you may 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. The use of this manual does not preclude the need to consult relevant legislation, liaise with the competent authorities, and seek legal advice.

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Much of the legislation cited in this manual is available in both Portuguese and English. This legislation and other manuals in the Legal Framework series are available to download from the ACIS website, at www.acismoz.com.

GLOSSARY OF TERMS

Please find below a list of some of the terms you will encounter during the process of obtaining a land use authorisation.

Acta	Document which records the decisions taken at a meeting. In this manual, special reference is made to a document resulting from public consultation with local communities, during the process of obtaining a land use authorisation.
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 Republic of Mozambique, in which legislation, as well as certain public deeds and DUAT s, must be published.
Certidão Oficial	Certificate presented to a community to demonstrate that it has undergone a delimitation process.
Cessão de Exploração	The temporary transfer 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 the SPFFB advising the applicant of the approval of their concession application.
Conservatória de Registo Predial	The Real Property Registry. In Maputo, commercial and property registrations are handled by distinct registries, the “Conservatória de Registo das Entidades Legais”, or Office for the Registration of Legal Entities (previously called the “Conservatória de Registo Comercial”, or Commercial Registration Office) and the “Conservatória de Registo Predial”, or Office for Real Estate Registration. Elsewhere, these registries have been combined, and are known as the “Conservatória de Registo”, or Registration Office.
Cópia autenticada	Copy of a document compared to the original and stamped as corresponding thereto by the Notary .
Coutada (Oficial)	Delimited area in the public domain, intended for recreational hunting, the stimulation of hunting-related tourism and the protection of species. The management of such an area may be allocated to a private operator, by way of a concession agreement concluded with the State.
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 areas occupied by local communities, over which they have land use rights.

DUAT	Direito de Uso e Aproveitamento de Terra, or a right to use and appropriate 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 notice issued for public knowledge. Here we refer, in particular, to information regarding an application for a DUAT over a specific area, and regarding the final authorisation of a DUAT which had been issued provisionally.
Esboço (de localização)	Map prepared by the SPGC , indicating the area for which a DUAT has been requested. This is an initial document, and not a final map.
Escritura Pública	Document prepared by the Notary . In this case, we refer in particular to contracts for the transfer of improvements, infrastructure, constructions and/or immovable property erected in a specified area, or for cessão de exploração in a specified area, in both cases, over which a DUAT has been issued.
Fazenda (de bravio)	A delimited area, in which the right to hunt pertains to the holder of the respective DUAT , or to those authorised by him, all of whom must be duly licensed by the competent authority.
Licença de Exploração	An authorisation which permits the undertaking of forestry activities in the country.
Memória descritiva	Literally, a written description. In this case, a description of the area in which a specific plot of land is located, as per the esboço de localização prepared by the SPGC .
Notary	A duly qualified technician, linked to a specific Notary's Office, responsible for the preparation of public deeds (escrituras públicas), the official validation of certain other legal acts, and the authentication of signatures and documents, among other duties.
Pedido	A formal request or application to a competent public authority.
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 related to 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. A <i>"building implanted in the ground, with the land which serves as its curtilage, the source of income of which depends principally on the existing constructions, and not on the land itself."</i> ¹
Postura	Municipal ordinance or by-law, being a municipal stipulation, applicable to the municipality to which it relates, i.e., that responsible for its approval within the scope of its legally attributed authority.

¹ Note that this concept differs from the concept of "Prédio Urbano" which must be taken into account in the case of urban areas, as defined in the Regulations on Urban Land – *"a building implanted in the ground, with the land which serves as its curtilage, as well as a delimited plot or stand, integrated into an urbanized area."* Everything points to the fact that the legislator intended to allow greater flexibility in the transfer of DUAT's in urban areas, subject to the requirements set out in the Regulations. However, in practice, this free transfer of plots and stands in urbanized municipal areas has not yet been entirely accepted.

Procuração	Power of Attorney, being an authorisation granted by one person to another to represent him, usually for certain limited purposes, depending on the context.
Reconhecimento	Literally, “reconnaissance”. A process undertaken by the SPGC , for the purpose of preparing an Esboço of an area, and so as to determine what third-party rights may exist.
SPFFB	Serviços Provinciais de Florestas e Fauna Bravia – the Provincial Forestry and Wildlife Department. ²
SPGC	Serviços Provinciais de Geografia e Cadastro – the Provincial Geography and Cadastre Department. The department responsible for managing the provincial land cadastre, undertaking land surveying, and processing applications for the authorisation and transfer of DUAT ’s, and other acts related to them. A department of the Ministry of Agriculture.
Termo de adesão	A preliminary agreement signed by the applicant and the SPFFB during the application for a forestry concession.
Vistoria	An inspection undertaken by the SPGC before issuing a definitive DUAT (in the case of a DUAT based on the authorisation of a application), so as to verify compliance with the proposed use or establishment plan.

² At national level the National Directorate of Forestry and Wildlife (Direcção Nacional de Florestas e Fauna Bravia – DNFFB) has recently changed its name to the 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.

1. BRIEF REFERENCE TO THE BACKGROUND AND GENERAL PRINCIPLES OF THE LAND LEGISLATION IN MOZAMBIQUE

The background of the legal regime regarding land in Mozambique and the current relevant set of legislation regarding the matter are formed by a combination of policies, laws and other legal instruments, duly cited throughout this manual.³

The constitution itself has also always contained a definition of the legal framework applicable to land. Currently, the 2004 Constitution of the Republic of Mozambique is in force. The 1975 Constitution and the 1990 Constitution preceded the current Constitution. The Constitution establishes the following principles in respect of land⁴:

- Land in Mozambique is the exclusive property of the State.
- It may not be sold, mortgaged, pledged or otherwise alienated.
- As a universal means for the creation of wealth and social well-being, the use and enjoyment of land is 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.

The first Land Law in force in Mozambique, after national independence, was approved by Law 6/79, of 3 July. The respective regulations were approved by Decree 16/87, of 15 July. In addition to creating a new legal framework for land access in Mozambique, these instruments stipulated the process for validating rights relating to land which were acquired during the period prior to national independence.

In 1995, the National Land Policy and the Implementation Strategy were approved, which formed the basis for subsequent amendments to land legislation. The National Land Policy (*Política Nacional de Terras* – approved by Resolution No. 10/95 of 17 October) defines 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”⁵. The National Land Policy also provides guidance regarding the recognition of customary land rights and lays the foundation for the current legislation, which describes the process for formalizing rights to land.

The current Land Law (hereinafter “the Land Law”) was approved in 1997, by way of Law 19/97, of 1 October. The Regulations on the Land Law applicable to “areas not covered by areas under the jurisdiction of Municipalities which have Municipal Cadastre Services” were approved in 1998, by way of Decree 66/98, of 8 December (hereinafter the “Land Regulations”). The regulations applicable to “legally existing city and town areas, and human settlements or agglomerations of people organised by way of an urbanisation plan” were approved by way of Decree 60/2006 (hereinafter, the “Regulations on Urban Land”). The Land Law applies to both urban and rural land⁶,

³ Confer the list of legislation on the Bibliographical and Legislation page.

⁴ Constitution of the Republic of Mozambique, 2004, Articles 109 and 110.

⁵ National Land Policy, Resolution No. 10/95 of 17 October Point 18.

⁶ Land Law, Article 23.

The law recognises three ways of acquiring a DUAT⁷:

- 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 DUATs by occupation based on local traditions, such as inheritance from their ancestors;
- As a result of 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 way of the authorisation of an application presented to the State as established in the land legislation. This is the only way of obtaining a DUAT which is applicable to both natural and legal foreign persons⁸.

The process for requesting a DUAT by way of the 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 desired. DUATs may not be conceded in protected zones, but, depending on the area, and on inherent public needs, special licenses may be obtained for the conducting of certain activities in such areas⁹. The law does not prescribe the requirements and conditions to be met.

The entity responsible for authorising DUATs in rural areas depends on the size of the land required as follows¹⁰:

- 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.

Foreign and national natural and legal persons and local communities may hold DUATs¹¹.

A DUAT conceded for economic activities is valid for a period of up to 50 years, and is renewable for an equal period, on the application of its holder¹².

Other technical and/or complementary legislation – such as that which approved the Technical Annex to the Land Regulations, that which approved the fees payable for DUAT, and that which defined public consultation mechanisms, inter alia – as well as that which made various amendments to the Land Regulations – comprise the “package” of land law legislation. In addition, it must be taken into account that there is other sector legislation which impacts the development of land, for example, legislation regarding national patrimony and the environment, maritime and mining legislation, tourism, energy, forestry exploration, use of water, land planning, public-private

⁷ Land Law, Article 12.

⁸ “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.

⁹ Land Law, Article 9.

¹⁰ Land Law, Article 22.

¹¹ Land Law, Article 10, Paragraph 1.

¹² Land Regulations, Article 18.

partnerships, large scale projects and business concessions, among other specific sectors, which should be considered in every specific case under analysis

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.

2. DUAT AUTHORIZATION PROCESS IN THE RURAL LAND AREATHROUGH THE AUTHORISATION OF AN APPLICATION

2.1 Introductory Note

As noted above there are three ways of acquiring a DUAT, although not all options are open to all applicants¹³. Only Mozambicans can acquire DUATs acquired by customary practice, or “good faith” occupation. Acquiring a DUAT by way of the State authorisation of an application (addressed to the responsible authorities by way of the cadastre services) is however open to both national and foreign natural or legal persons, and is the subject of this section.

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					X	

¹³Land Law, Article 12; Land Regulations Articles 9, 10 and 11

persons (legal or natural)						
Usage plan				X	X	X
Architects drawings			X			
Exploitation plan					X	X
Approved investment project					X (for areas above 10000ha)	X

Table 1 – *Some differences to be noted in the forms of acquisition of a DUAT*

In order to identify a suitable area of land the applicant must undertake some local research. 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 particularly relevant in light of the fact that DUATs held by local communities and good faith occupants are legally recognized and protected, irrespective of whether they have been certificated or registered.¹⁴

2.2. Request for a preliminary visit and “esboço da localização” of the land and the “memória descritiva”

Having identified an area of land, an 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 illustrated below). 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 of submission, if another request is submitted in respect of the same area.

As stated above, the relevant authority varies depending on where the land is situated and the size of the area being requested.

After having received an application, the SPGC, in conjunction with local authorities and communities, will identify the area applied for, particularly in the cases of private investment projects, and document it, via an **esboço** and **memória descritiva** of the land.¹⁵

During the reconnaissance of the area (**reconhecimento**), the SPGC identifies any third party (including community) rights in and around the requested area. This visit and survey is particularly important because of the fact that DUATs may be held on the basis

¹⁴ Land Law, Article 13, paragraph 2 and Article 14, paragraph 2.

¹⁵ Land Regulations, Article 24, paragraph 1, subparagraphs b) and c), and Article 25.

of good faith occupation and through customary norms and practices, as already indicated.

During the identification and **reconhecimento** by the applicant of the intended area or the project proponent, the cadastre technician, should insert the following indispensable elements in the **esboço de localização** of the plot and on the form:¹⁶

- Location of the parcel requested by the Administrative Post;
- Dimension (area in hectares) of the intended parcel;
- Location of the parcel in the District;
- The administrative division including the names;
- Existent population in the area of the project (population inside the area of the project and in the surrounding area);
- Indication of the existent public infrastructure (roads, bridges, railways, etc);
- Existence of third party rights over the intended area;
- Information regarding the resettlement of the population affected by the project (in case the necessity to do so exists); and
- How the requested area fits into the agro-ecological zoning.

The estimated number of days required for a **reconhecimento**, based on the size of the area applied for is indicated in the following table:¹⁷

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

Table 2 – *An estimate of the number of days for the **reconhecimento***

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 (cost assistance) and should only be paid against an official receipt, as indicated in the following table:¹⁸

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

¹⁶ Information provided by DNTF on March 2012.

¹⁷ Indicative table provided by SPGC Sofala.

¹⁸ Approved by Order of the Minister of Finance issued on 10 October 2006 and in force since 1 November 2006.

Table 3 – Table for the out of office expenses

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** and **memória descritiva** are indicated below. The **memória descritiva** includes the coordinates and address (district, village etc.).

After this phase, the SPGC sets a date for a community consultation which is dealt with in the next section in this manual,

Model of the application for the **reconhecimento** of the area request:

EXMO SENHOR _____ ¹⁹
Aos _____ de _____ de 2012 ²⁰
Assunto: <u>Pedido de Reconhecimento da Área.</u>
Exmo. Senhor _____ ²¹ ,
Nos termos de Artigo 25 de Decreto 66/98 de 8 de Dezembro _____ ²² vem por este meio solicitar o reconhecimento da área de _____ ²³ Ha no _____ ²⁴ e a preparação do esboço de localização 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
_____ ²⁵ Nome:

¹⁹ Insert the title and address of the relevant entity e.g. Senhor Governador, Província de Sofala, Beira.

²⁰ Insert date.

²¹ Insert title e.g. Governador, Ministro etc.

²² Insert name, address and contact details of applicant.

²³ Insert size of area requested in hectares.

²⁴ Insert location of area being requested including as much detail as possible.

²⁵ Insert signature of applicant.

2.3 Community Consultation²⁶

A copy of the application file (which now includes the **esboço** and **memória descritiva**) is sent by the SPGC to the relevant District Administrator. 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 District Administration themselves, so as to expedite the process.

A public consultation is undertaken with the communities identified in the **reconhecimento** as being affected by the land application²⁷. 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.

Local 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. New legislation on the public consultation process expressly provides that public consultations which do not comply with set legal procedures will be deemed to be invalid.²⁸

Ministerial Diploma 158/2011 of 15 June sets out the procedures to be followed when community consultations are held. This diploma provides that two meetings must be held – one, for the purpose of informing the community of the application for the DUAT acquisition and the identification of the boundaries of the land tract, and the other, for the purpose of hearing the pronouncement of the local community as to the availability of the area for the implementation of the proposed establishment or use plan, which must take place within a period of 30 days after the first meeting is held.²⁹ Whenever there is additional information to be provided to the community, other meetings may be scheduled.³⁰

The meeting includes the District Administrator or his representative, representatives of SPGC, members of the Advisory Councils for Villages and Towns (*Conselhos Consultivos de Povoação e Localidade*), members of the local community and title holders or occupants of neighbouring land.³¹ 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 public consultation meetings.

In the case of private sector investors, investment projects are seen as guarantees of employment opportunities or small-scale infrastructure investments such as providing a

²⁶ Land Law, Article 24, Land Regulations, Article 27 and Decree 15/2000 of 20 June.

²⁷ Land Law, Article 24 and Land Regulations, Article 27.

²⁸ Ministerial Diploma 158/2011, of 15 June, Article 5.

²⁹ Ministerial Diploma 158/2011, of 15 June, Article 1, paragraph 1.

³⁰ Ministerial Diploma 158/2011, of 15 June, Article 1, paragraph 2.

³¹ Ministerial Diploma 158/2011, of 15 June, Article 2, paragraph 1.

school roof or well. In the case of large projects, which involve resettlement, this may include a more serious level of compensation by the investor, along with the construction of new housing and the erection of the minimum level of infrastructure required, such as a school, boreholes, and the financing of a health post, inter alia. In the case of these projects, it is also normal for an investor to include a social component in its project study, for the benefit of the affected community (sometimes referred to as the “host community”), which also includes cultural and training programmes, inter alia; (below we make reference to the recently approved legislation regarding this matter). These aspects are discussed during the public consultation.

The **acta** produced at the community consultation meeting, is signed by members of the Advisory Councils for Villages and Towns, and, after the opinion of the District Administrator is issued, a copy is delivered to the local community.³² **Actas** must 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, as indicated, the applicant, the District Administration and SPGC. The type of form used to generate an **acta** is indicated below.³³

Sample of the form used to prepare the **acta** of the community consultation:

GOVERNO DA PROVÍNCIA 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 requer _____ ha/m2 na _____

³² Ministerial Diploma 158/2011, of 15 June, Article 2, paragraphs 2 and 3.

³³ 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 have not been resolved, and are frequently discussed. New legislation and the participation of Local Consultative Councils have sought to improve these procedures, so as to ensure better protection of the interests of local communities. However, having only been approved recently, it remains to be seen if it will have the desired effect. Certain concerns have already been raised, for example, questions related to guaranteeing the choice of the members of the Local Consultative Councils, guaranteeing the supervision of the members in question, and the possibility of conflicts of interest relating to the position of the members in question, as regards community DUATs.– Sergio Baleira and Eduardo Chiziane (HPTSE consultants), *Documento para Debate sobre o Modelo de Consulta Comunitaria*, 22 September 2011, Pg. 18. (Document presented and debated at the 2nd Ordinary Session of the Land Consultation Forum, which took place in Beira, on 22 and 23 September 2011).

Localidade de _____, Posto Administrativo 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, árvores 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 _____

2.4 Display of the edital

After the public community consultation, the SPGC then prepares a summary of the application (**edital**) to be posted as part of the public information phase of the process³⁴. 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 so as to allow for publication of the application, for 30 days to allow the general public to comment.

2.5 Opinion of the District Administrator

After the public community consultation and having posted the **edital** for comment, the Administrator drafts his / her opinion. The opinion will indicate if a DUAT acquired through occupation or customary practices was found in the requested area or not. If there are other rights and there is an agreement between the applicant and the occupants, the opinion will also indicate the terms which will govern the partnership or the agreement in question.³⁵

The Administrator's opinion is finalized, integrating any comments received, and afterwards sent to the SPGC. The applicant may opt to personally deliver the opinion to the SPGC.

³⁴ Land Regulations, Article 27 paragraph 1.

³⁵ Land Regulations. Article 27 paragraph 3.

2.6 Usage plan and the opinion of the technical services

For DUATs intended for economic activities, a usage plan must be submitted with the application. This describes the future economic use of the land and respective activities, and planned infrastructure developments³⁶. 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 usage plan as presented at this stage of the process within a given time period (two years for foreigners and five years for nationals)³⁷. 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.

Applications for land for economic activities may be accompanied by a technical opinion provided by the services which are responsible for the activity in question (for example, the Provincial Directorate of Tourism or Mining)³⁸. These are sometimes requested by the applicant and submitted as part of the application. The SPGC may also request technical opinions from other ministries and directorates (for water resources for example).

In cases where the SPGC requests a technical opinion the services in question have 45 days to respond. If they do not, the SPGC is required to move forward with the application process noting a “no response” from the ministry.

2.7 Additional Requirements for applications for DUAT Authorizations over 10000 hectares of land

Due to the recent number of investments requiring large areas of land (over 10000ha), 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 10000 ha:

- 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

³⁶ Land Law, Article 1, paragraph 12 and Article 19.

³⁷ Land Regulations, Article 28, paragraph 3.

³⁸ Land Regulations, Article 26.

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 DUATs held by customary usage and good faith occupation);
- 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.

2.8 Provisional Authorization of DUAT – opinions and authorization, according to variable competencies according to the dimension of the area

Having completed the local consultation phase and obtained the District Administrator’s opinion and, of the technical services if it had been issued as well, as indicated above, the applicant should now be in possession of the following documents:³⁹⁴⁰

- **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)
- **Plano de exploração** (in the case of requests for economic activities);

³⁹Land Regulations, Articles 24 and 28.

⁴⁰The 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.

- Proper form fully filled in. The applicant purchases and completes a form provided by the SPGC⁴¹. A sample of this form is indicated below. This form, and the documents submitted with it, constitutes the formal application for the DUAT, and 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;
 - The request in question;
 - Purpose for which the land is being requested;
 - Description of the area being requested including details of any existing third party rights;
 - Details of any water resources in the area being requested;
 - Date of **reconhecimento**;
 - Date of community consultation.

In addition to the application form and the documents indicated above, consider the following:

- a) When dealing with a foreign collective person, the following criteria should also be complied with:
 - 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.
- b) 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.
- c) When dealing with an area above 10000ha, the approval of the environmental feasibility of the project by the Ministry of Coordination of Environmental Action should also be attached and, the whole process is attached to the investment project and submitted to the Centre for the Promotion of Investments for authorization by the Council of Ministers.

Fees which are due are paid against a receipt⁴². A schedule of fees is included in Chapter 3⁴³. Proof of payment is submitted along with the form and supporting documents⁴⁴.

The full application process which includes the form and supporting documentation is submitted in triplicate⁴⁵. Proof of payment of the application fee and land tax is submitted in quadruplicate.

⁴¹ Decree 30/2001 of 15th October, at Article 57, requires that government departments have bank accounts into which the public can deposit funds directly.

⁴³ Land Regulations, Article 41 and Annexure.

⁴⁴ Land Regulations, Article 24, paragraph 1, clause g).

⁴⁵ Land Regulations, Article 24 paragraph 3.

The application is then sent to the governor of the province in which the land is situated, for his or her approval if the area of the tract of land requested does not exceed 1000 hectares, or for his / her opinion on the application, in the case of applications falling outside of his / her competency. In an area above 1000ha, after the opinion of the Governor of the Province, the process is sent to the central authorities for the purposes of authorization by the Ministry of Agriculture, in areas up to 10000ha or, for an opinion, in areas above 10000ha. In areas above 10000ha, after the Minister of Agriculture's opinion, the Council of Ministers shall have the competency to authorize. In this last case, the process is sent to CPI to be joined to the applicant's investment project to be authorized by the Council of Ministers.

If the application is approved, the applicant is informed and a provisional authorisation is issued. In practice departments rarely have the resources to communicate with applicants, who are advised to visit the department on a regular basis to check if a response has been forthcoming.

A Ministry of Agriculture directive stipulates that the entire process up until this point may take no more than 90 days. Note however that this is not a legal provision, but a directive, aimed at improving the efficiency of the process. Many application processes have exceeded 90 days, and in no sense does this imply a situation where approval is either automatically given or declined.

Form for requesting a DUAT by means of an authorization of the application:

REPÚBLICA DE MOÇAMBIQUE
 PROVÍNCIA DE _____
 SERVIÇOS PROVINCIAIS DE GEOGRAFIA E CADASTRO

FORMULÁRIO

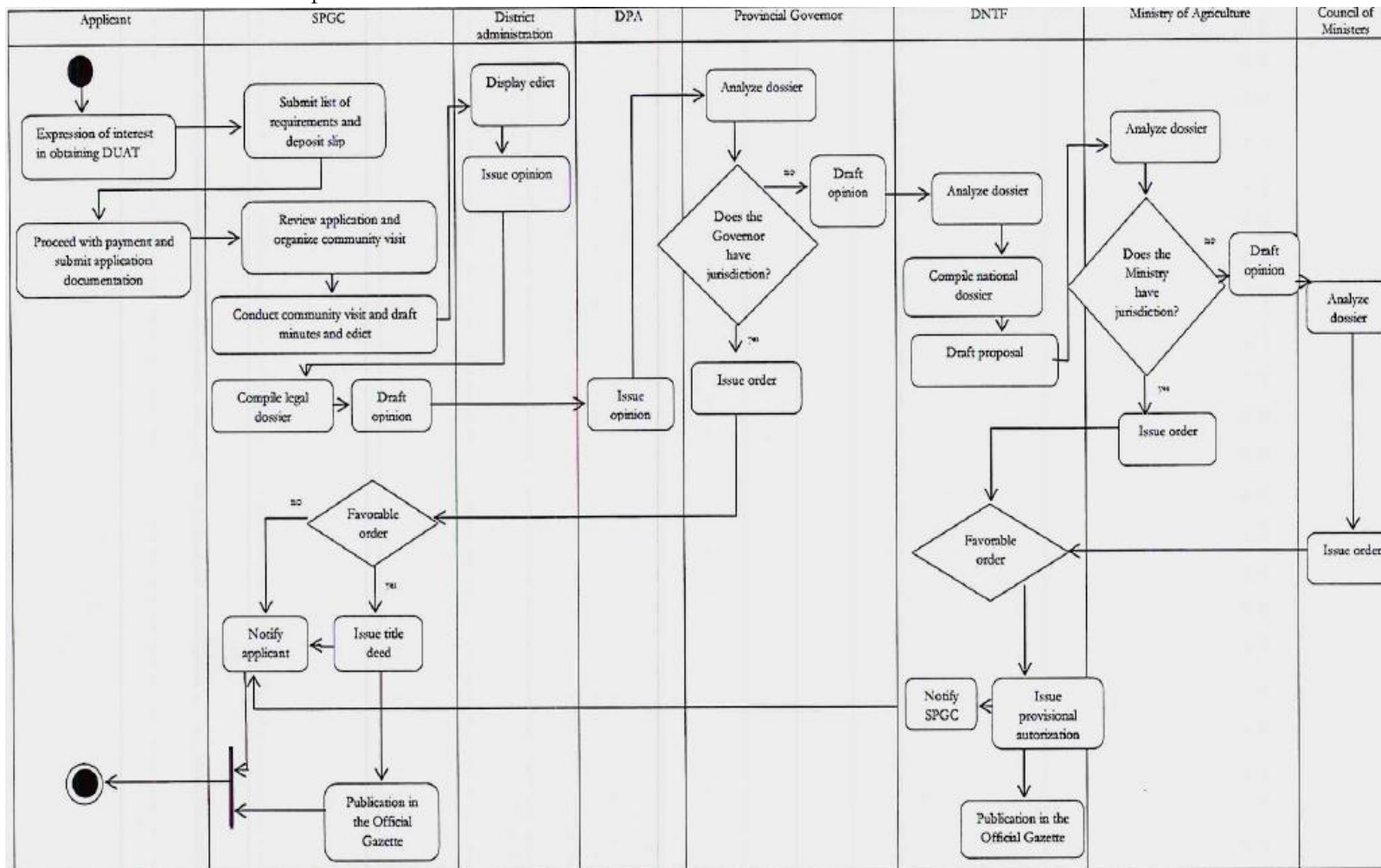
<input type="checkbox"/> Pessoa singular			<input type="checkbox"/> Pessoa colectiva			
Data de Nascimento		Nacionalidade	Nº BI/Passaporte/DIRE	Emissão	Validade	
Dia	Mês	Ano		Dia	Mês	Ano
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>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

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"/>	Transferência 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="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"/>					

Flow chart 1 – Process for provisional authorization of the DUAT⁴⁶



⁴⁶ Flow chart provided by DNTF in March 2012.

2.9 Publication of the provisional authorization in the Official Gazette of the Republic

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

2.10 Real Estate registration of the provisional authorization ⁴⁷

During this phase, the applicant may register the approval with the Real Property Registry (*Conservatória do Registo Predial*) for the area where the land is situated (and it is advisable to do so for better protection of the right)⁴⁸. Registration fees are payable at the **Conservatória**. Fees are paid based on calculations of the costs of different aspects of the procedure. Details of rates used as a basis for such calculation are laid out in Ministerial Diploma 19/98, of 04 March.

Registration is an administrative form of publicizing the various facts or acts which are related to a DUATs. The Land Law determines that constitution, modification, transmission and extinction of a DUAT must be registered.

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.

It must be taken into account that we are here referring to real estate registration. This is the form of registration which strengthens the protection of a DUAT holder, since his right may thereafter be invoked as against third parties. There is another type of registration, which is done by the SPGC – cadastral registration, at the Land Cadastre. This has a more administrative function, for the management of the land resource by the State.

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.

⁴⁷ Regulamento da Lei de Terras, Artigo 20. Land Regulations. Article 20.

⁴⁸ Land Law, Article 14 and Land Regulations, Article 20, as modified by Decree No. 1/2003 of 18 February.

2.11 Demarcation⁴⁹ and the distinction of the delimitation

2.11.1 *Demarcation*

After the issue of the provisional authorization, the holder of a provisional DUAT authorisation has one year from the date of approval to demarcate the area of land conceded.

This can be done by technicians from the 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 the SPGC. The holder of the provisional DUAT must 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 markers). For this application, the same type of form is used as for the DUAT provisional application.

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

Apart from revocation of the authorization due to lack of demarcation, the non-compliance of the terms of its issuance and the usage plan within the allocated time may also result in revocation. In these circumstances, any investment done is not subject to compensation but reverts to the State.⁵⁰

In our experience the SPGC are generally flexible and conscious of the type of obstacles which may affect or delay an investment project. Holders of a provisional authorization who foresee problems in complying with the terms of the DUAT should contact the SPGC as soon as possible to discuss the options to renew the provisional authorization period. The law also allows the downsizing of the area covered by the DUAT, which allows investors to reduce the size of the area, if they are unable to comply with usage plan to develop the whole area.⁵¹

2.11.2 *Delimitation*

A process different from the demarcation and with its own objectives is delimitation. The demarcation is prior to the issue of the definitive title, whereas, delimitation serves to prove the existence of the DUAT acquired by a community or a good faith occupant, as a form of facilitating partnerships and projects or to resolve conflicts. It may also be requested by communities and good faith occupants for the purposes of obtaining a certificate of the limits of the respective parcels, but which does not imply the issue of title.

⁴⁹ Land Regulations, Article 30.

⁵⁰ Land Regulations. Article 32.

⁵¹ Land Regulations, Article 33.

The process could proceed to demarcation and issuing of a title deed (**título**) like that issued for applications for new DUATs (obtained through authorization of an application). 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 wish⁵².

The Technical Annex of the Land Regulations 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:

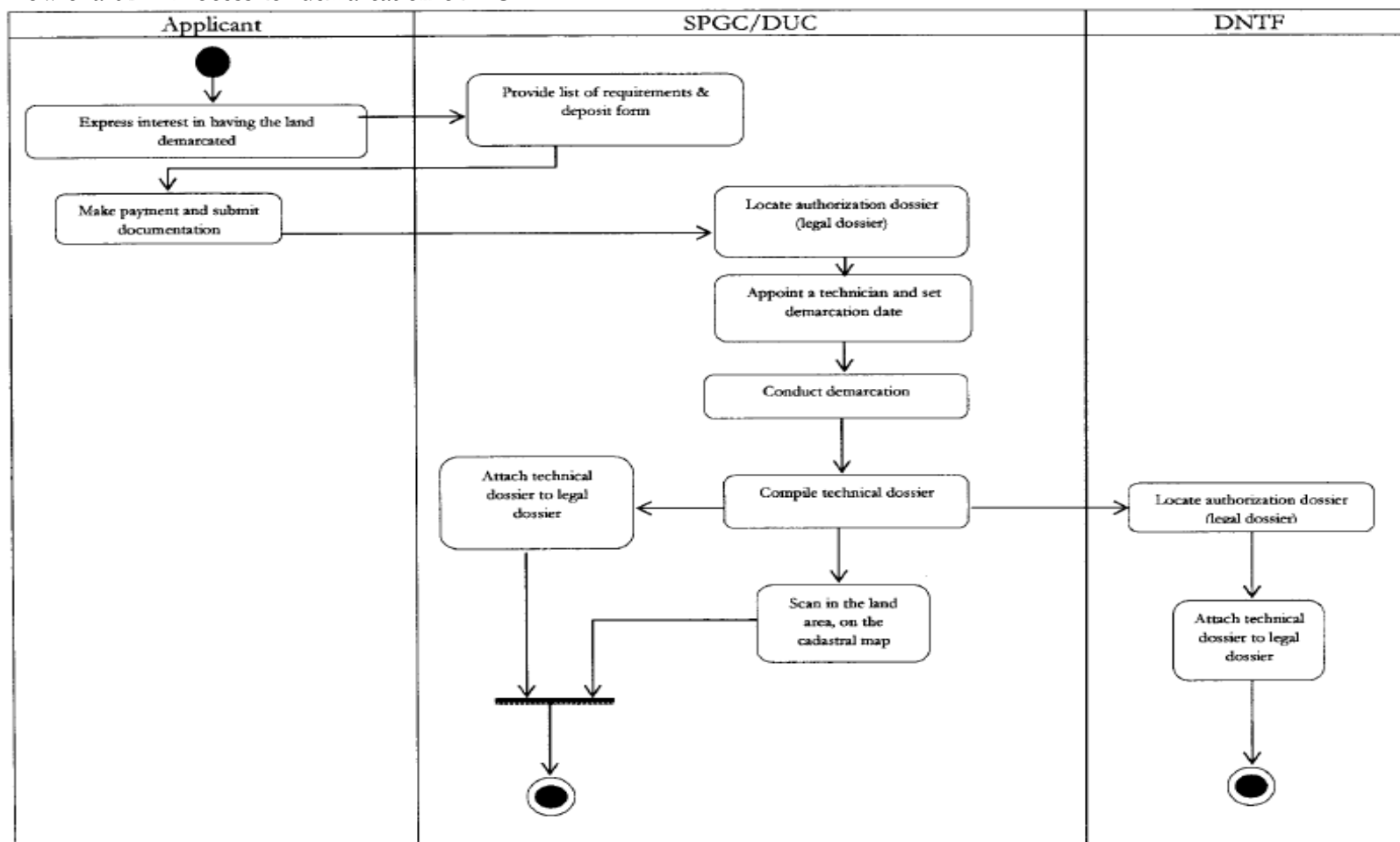
- Provision of information and sensitisation of the community about the Land Law and their rights;
- Community formally requests delimitation, based on their understanding of their rights;
- Participative diagnostic (DRP) which includes historical analysis, analysis of the social organisation of the 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 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 less literate members of the population and arrives at consensus by repeatedly going back to the community group to discuss changes and updates to diagrams.

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.

⁵² Some observers think that communities can register at the **Conservatória** on the basis of the Certificate of Delimitation. However, this has not yet been tested in practice

Flow chart 2 – Process for demarcation of DUAT: ⁵³



⁵³ Flow chart provided by DNTF on March 2012.

2.12 Inspection (*vistoria*) and Definitive DUAT authorization⁵⁴

As noted above foreign applicants' provisional authorisations 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 authorization period.

The holder of a provisional authorisation must request a site inspection (*vistoria*) so as to confirm compliance with the usage plan.⁵⁵ A **vistoria** is requested on the form used to apply for a DUAT. The **vistoria** is subject to payment of fees for the out of office expenses of SPGC staff based on the tables above indicated.

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 holder must retain a copy of the **Auto de Notícia** for his records. The holder pays the definitive DUAT authorisation application fee.⁵⁶ Three copies of the **Auto de Notícia** and four copies of proof of payment of the definitive DUAT authorisation application fee and the annual fee must be submitted. The law allows that the definitive authorisation fee be paid within three months of the issuance of the authorisation⁵⁷. In practice proof of payment is required for the certificate to be issued.

The 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. 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. The Ministry will authorize or, issue an opinion if the competency lies with the Council of Ministers..

After having been approved at each stage, the definitive authorisation is granted, and a DUAT certificate is issued. The DUAT certificate contains the following information⁵⁸:

- 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;

⁵⁴ Land Regulations, Article 31.

⁵⁵ Land Law, Article 26 and Land Regulations Article 31.

⁵⁶ Land Regulations, Article 41 and Annexure.

⁵⁷ Land Regulations, Article 42, paragraph 2.

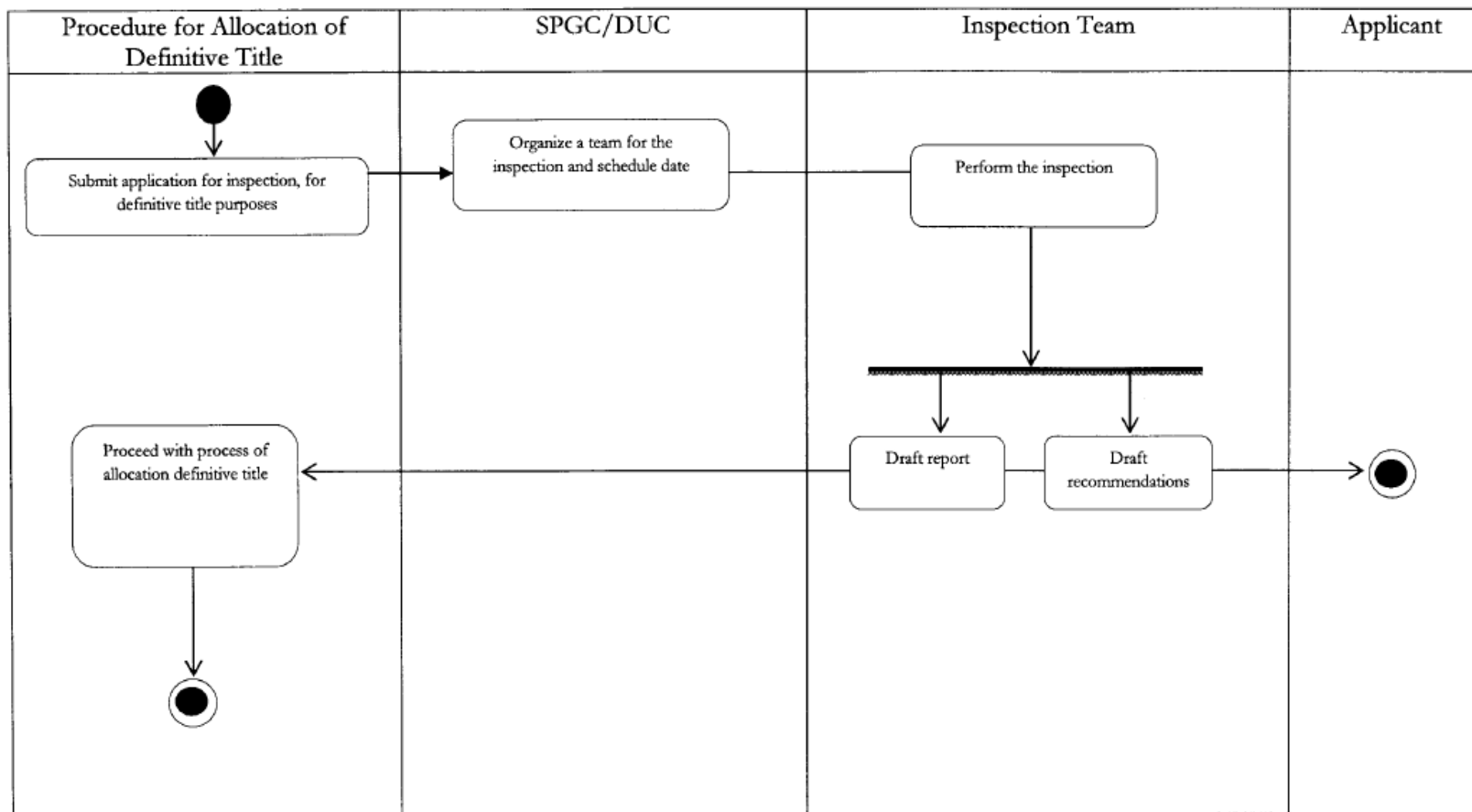
⁵⁸ Land Regulations, Article 36.

- Description of existing infrastructure and improvements;
- Fees payable;
- Date and place of issue of the certificate;
- Signature and stamp of the issuing authority.

DUATs are valid for as long as the corresponding authorisation certificate states, the outside limit being 50 years⁵⁹. 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.

⁵⁹ Land Regulations, Article 17.

Flow Chart 3 – Process for the inspection with the purpose of issuing the definitive DUAT: ⁶⁰



⁶⁰ Flow chart provided by DNTF on March 2012.

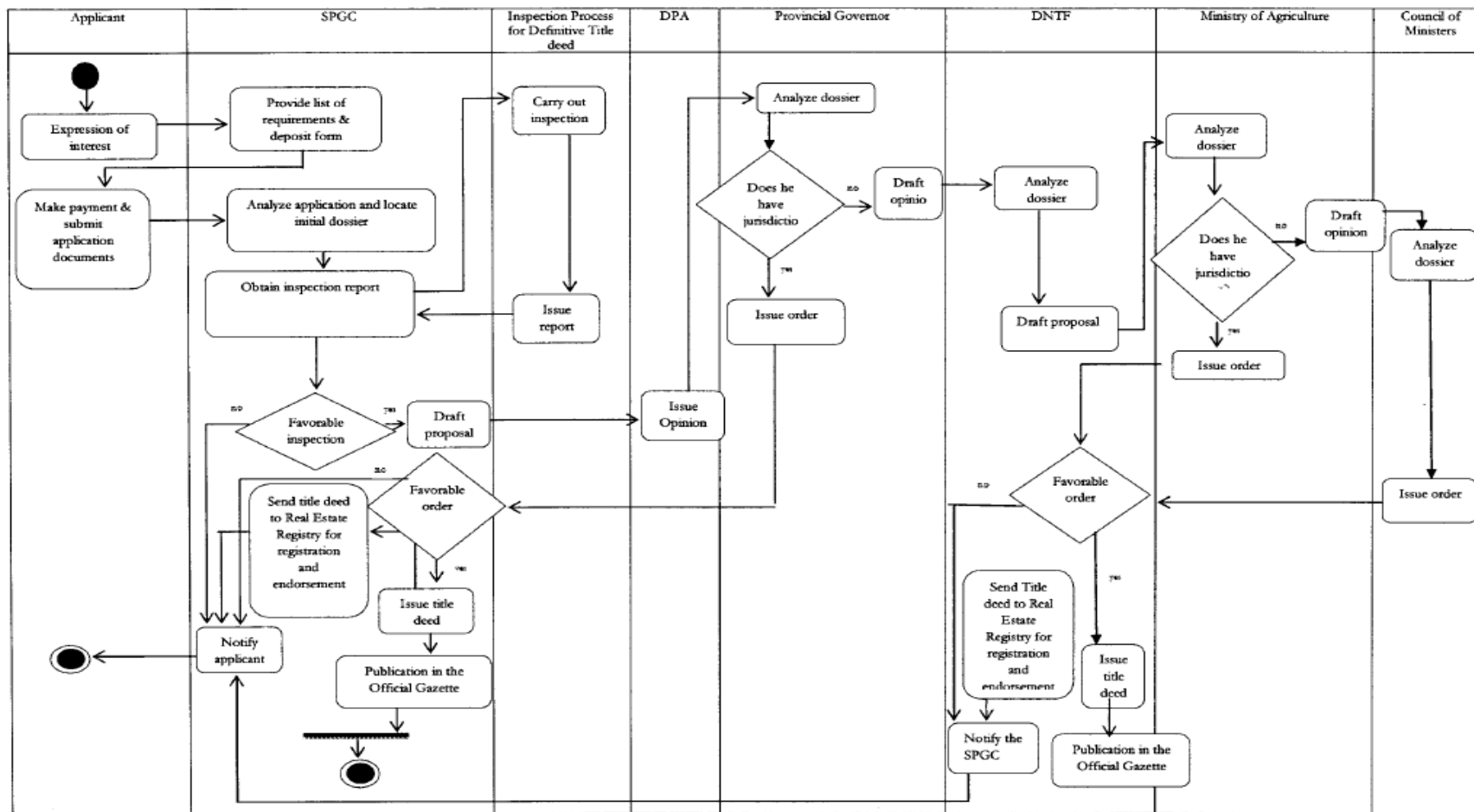
2.13 Publication in the Official Gazette of the Republic and Real Estate registration of the definitive DUAT

Once the definitive DUAT title is issued, the respective information should be published in the Official Gazette of the Republic by the SPGC. The applicant may opt to deal with the publication in order to accelerate the process. The publication is paid for by the applicant.

The definitive DUAT titleholder should also perform the registration at the Real Estate Registry or, if the provisional registration was done before, proceed with the endorsement of the definitive authorization. This registration is subject to the payment of fees.

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Flow Chart 4 – Process for the definitive authorization of the DUAT: ⁶¹



⁶¹. Flow chart provided by DNTF in March 2012.

2.14 FAQs (Frequently Asked Questions)

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 an environmental 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 10000ha). However the environmental legislation provides that anyone operating without an environmental license may have their activities suspended or their licenses revoked. However in our experience the SPGC understands these issues. If the DUAT holder foresees a problem, he should notify the SPGC that issued the provisional authorisation, as soon as possible, in writing. It is a good idea to provide proof of the reason for requesting an extension of the provisional DUAT authorisation – in this case, the environmental licensing application. Don't forget to keep stamped and dated copies of all correspondence submitted.

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 of residence in the country: The land legislation permits a foreigner that has been resident in Mozambique for more than five years to 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 proof⁶².

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 Regulations 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

⁶² Decree 38/2006, of 27 September, Article 1 paragraph u.

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?

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 account⁶³. 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

⁶³Decree 30/2001 of 15 October, Article 57.

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.

2.15 Checklist & Tips

Submission of provisional DUAT authorisation application

<p>The applicant must submit a form (which requires the following information):</p> <ul style="list-style-type: none">▪ 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. <p>In addition, the applicant must attach:</p> <ul style="list-style-type: none">▪ 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 (plano de exploração). <p>Applicants which are legal persons must also submit:</p> <ul style="list-style-type: none">▪ Proof of registration and incorporation (usually in the form of the public deed and certificate of commercial registration). <p>Applicants which are foreign legal persons must also submit:</p> <ul style="list-style-type: none">▪ An approved investment project (usually meaning approved by CPI);
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For areas of land over 10,000 ha, the below must also be submitted:

- Approval from MICOA regarding the environmental feasibility of the project.

Three copies of each of the above must be submitted, along with four copies of:

- Proof of payment of provisional authorisation fee;
- Proof of payment of annual tax.

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

The applicant will receive:

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

Submission of definitive DUAT authorisation application:

The applicant must submit the 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;
- 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, the applicant must attach:

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

Three copies of each of the above must be submitted, along with four copies of:

- Proof of payment of definitive authorisation fee;
- Proof of payment of annual tax.

The applicant will receive:

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

Tips:

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

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

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 public consultation, as well as in the case of collective persons, a representative can be nominated through a competent Power of Attorney (**Procuração**). 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 at the **conservatória**, participate in public 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 are conferred by way of the **procuração**, and to define the limits of those powers appropriately. A **procuração** may be drafted and signed at a Mozambican Embassy or Consulate abroad. These documents must also be officially translated if they are in a language other than Portuguese. In the case of juristic persons, powers may be conferred by the corporate body with authority for this purpose. An authenticated copy of the **procuração** has to be well kept, 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.

3. FEES⁶⁴

3.1 Introductory note:

Two classes of fees - authorisation fees and annual fees - are associated with DUATs. These were set by the Land Regulations, and have been updated by Ministerial Diploma 144/2010, of 24 August. Different 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 below.

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 equivalent to one twelfth of the annual fee, for each month of delay. The non-payment of the fine within a period of 15 days following notification, results in the remittance of the matter for the purposes of coercive collection by the competent authorities.⁶⁵

Note that the services of SPGC technicians are required at least three times during the process, once for the reconnaissance phase and at least twice for public consultations.

⁶⁴ Land Regulations, Articles 41, 42, 43 and 44.

⁶⁵ Land Regulations, Article 39, paragraphs 4 and 5.

Additional fees are required for other government staff (for example from the district administration) that participates in these activities.

The use and enjoyment of land is gratuitous when destined for situations or entities indicated below, according to law:⁶⁶

- The State and its institutions;
- Public utility associations recognized by the Council of Ministers;
- Family holdings, local communities and the individuals who form part of them;
- cooperatives and small scale national agricultural and livestock cooperatives and associations

The DUAT titleholder, who, owing to conditions beyond their control and responsibility, is unable to comply with the usage plan, may request from the entity that authorized the request, an exemption from payment of the annual fee for a period of three years.⁶⁷

⁶⁶ Land Law. Article 29.

⁶⁷ Land Law Regulations. Article 44.

3.2 Tables of fees and costs due for obtaining a DUAT

3.2.1 Fees and Costs for the DUAT authorization request

TABELA I		TABELA II	
Item	Montante a pagar (MT)	Item	Montante a pagar (MT)
Esboço	200,00	Técnico superior	600,00 MT
Custos	600,00	Técnico médio	487,50 MT
Levantamento e consulta à comunidade	(Ver tabela II)	Técnico básico	397,50 MT
Taxa da comunidade	300,00	Combustível	5,00 MT/ km
Formulário	10,00		

FÓRMULA USADA PARA CALCULAR O LEVANTAMENTO DE TERRA (R) E A CONSULTA À COMUNIDADE (C)

$L = \text{Técnico} \times \text{dias} + (5.000,00\text{MT} \times K) =$		MT
$C = \text{Técnico} \times \text{dias} + (5.000,00\text{MT} \times K) =$		MT

Onde L = Levantamento
 C = Consulta à Comunidade
 K = Distância em km da sede à terra requerida

Table 4 – Fees and Costs for the DUAT authorization request

3.2.2 Fees for the request

Type of authorization	Fee
Provisional authorization	1.500.00 Mt
Definitive authorization	750.00 Mt

Table 5 – Fees for the provisional and definitive authorization of the DUAT

3.2.3 Taxa Annual Annual fee

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

General Annual Fee	75,00 MT/ha
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Table 6 – General Annual Fee

Annual fees for Specific Activities

Purpose	Value
1. Cattle breeding, repopulation of game (wildlife breeding), permanent crops	5,00MT/ha
2.Repopulation of wildlife breeding	5,00MT/ha
3. Permanent crops	5,00MT/ha
4. Agriculture	37,50 MT/ha
4. Tourism, vacation housing (holiday homes), commerce within the 3km strip of land bordering the maritime coastline, in the public domain	500,00MT

Table 7 – *Annual fees for specific activities*

Annual fee adjustment indexes

Location	Maputo province	2.0
	Bordering 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 of Use	Associations	0.5
Nationality	National natural persons	0.8

Table 8 – *Adjustment indexes*

- The Maputo Provincial adjustment does not apply to cattle breeding.
- Priority development areas are those of 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, Marrromeu, Cheringoma, Muanza in Sofala Province, Districts of Barue, Guro, Tambara, and Macossa in Manica Province).
- The size factors do not apply to cattle production, game farming and permanent crops (sugar, citrus etc.)

The formula for the calculation of the annual fee is as follows: ⁶⁸

$$\text{Annual fee} = \text{TB} \times \text{IL} \times \text{A} \times \text{ID} \times \text{IN} \times \text{IF} \times \text{IZ}$$

Where:

TB – Base fee for the dominate activity

IL – Location Index

A – Area of the parcel in hectares

ID – Dimension Index

IN – Nationality Index

IF – Purpose Index

IZ – Zone Index

4. EXPROPRIATION, COMPENSATION AND RESETTLEMENT

DUAT authorization processes, especially those involving large areas of land, may require resettlement of the local population who occupied the land to be conceded and, additionally, payment of compensation for the resettlement.

The Ministry of Agriculture has various guidelines for compensation in respect of certain improvements, particularly trees, erected on land. These do not cover compensation as a result of the expropriation of immovable property erected on the land, where this exists.

In cases where expropriation has to be done for public utility, the Regulations on Expropriation, approved by Decree 43587, of 8 April 1961, made applicable in Mozambique by way of Ordinance 23404, of 28 May 1968 (hereinafter, the “Expropriation Regulations”) provide the rules which should be followed, as well as the elements to be considered for purposes of calculating compensation.

The Land Planning Law was approved by way of Law 19/2007, of 18 July, and its Regulations by way of Decree 23/2008, of 1 July. In 2010, Ministerial Diploma 181/2010, of 3 November, approved the Directive on the Process of Expropriation for the Purposes of Land Planning. As the names of these instruments indicate, this set of legislation defines specific rules for the approval and implementation of land planning instruments, and sets out the responsibilities, objectives, mechanisms, expropriation

⁶⁸ Information provided by DNTF in March 2012.

processes and rules for the calculation of compensation, *inter alia*, to be complied with in each specific situation.

The Regulations on the Land Planning Law provide that expropriation, for the purposes of land planning, shall be deemed to have taken place for public interest reasons when it was aimed at the common interest, and may be declared to be so in the case of the erection of economic and social infrastructure with significant positive social impact, for the preservation of biodiversity, and in the case of infrastructures of public or military interest.⁶⁹ Expropriation will be a public need when the Public Administration seeks to respond to disasters or natural calamities, or similar events.⁷⁰ Finally, it will be useful to the public when it seeks to fulfil the objectives of the Public Administration itself, connected to State security, the maintenance of public order and the meeting of collective needs.⁷¹

A declaration of interest, need or public utility is made by the Government. Expropriation is subject to just compensation which, for the purposes of land planning, must take into account not only the actual and current value of the expropriated goods, but also the resultant damage and lack of profits on the part of the owner.⁷²

The expropriated party shall be notified of the goods to be expropriated, the proposal, as regards the calculation of compensation, the deadline by which the expropriating party must take possession, and the deadlines for any opposition.⁷³

The Directive on the Process of Expropriation for the Purposes of land planning sets out additional guidelines to be complied with during the expropriation process. Some of these are:

- Payment may be made in cash, in one lump sum, except if the parties agree to payments in instalments. The payment may, alternatively, be made in kind, for example, by way of the construction of immovable property of an equivalent value.
- The expropriation must take intangible assets into consideration (routes for the communication and accessibility of means of transport) and the rupture of social Law on land planning cohesion (increase in the distance of the new place of resettlement from social structures and the habitual nuclear family, family cemeteries, medicinal plants).
- The person against whom the expropriation may potentially operate has 30 days, after receipt of notification, to submit a counterproposal as regards the amount of compensation. This compensation must be paid within 12 months, counting from the month of notification, and the taking of possession must take place within 60 days after this payment has been made.
- The amount of compensation must be updated on the date on which the payment is made.
- In the case of immovable properties, the Directive sets its categorisation (purposes for which it is intended, and in the case of residential properties, if these are

⁶⁹ Regulations on the Land Planning Law, Article 68, paragraphs 1 and 2

⁷⁰ Regulations on the Land Planning Law, Article 68, paragraph 3

⁷¹ Regulations on the Land Planning Law, Article 68, paragraph 4

⁷² Regulations on the Land Planning Law, Article 70

⁷³ Regulations on the Land Planning Law, Article 71

luxurious or above average dwellings, above average or normal apartments and social habitations), matters to consider (location, value, type, etc.). The Directive sets the base value per square metre, the formulae to be used and the respective variation coefficients.

- The Directive also sets the calculation terms for crops, determining that this must be done with attention to the life of such crop, the age of the plants, the growth period, average annual production and the coefficient, between 0 and 1, allocated on the basis of the land, state of the plants, inter alia, which may influence income.

Note that, the Regulations on the Resettlement Process Resulting from Economic Activities has recently been approved by Decree 31/2012 of 08 August (the “Resettlement Regulation), which will be applied to all DUAT processes, which is supported by the territorial zoning legislation referred to here. Up until now, there was no specific legislation to regulate the resettlement of communities or individuals who have their DUATs revoked in order to make room for a private investment. In practice, the large projects were guided by the good practices of the World Bank or the European Union.

The Resettlement Regulation determines the rights to be guaranteed to the affected population directly or indirectly affected by the project. This regulation has as its objective not only the “just compensation” which is established in the Territorial Zoning Law, but also or mainly to “improve the quality of life of citizens” and “boost the socio-economic development of the country”. In this sense, it provides a series of provisions regarding social responsibility, which should be complied with by the applicant’s DUAT. The investor is expected to respond to certain aspects such as electricity in the resettlement area, sanitation, access roads, installation of water systems, police and health posts, shops, schools, recreational centers for sport, leisure and cultural activities, amongst others.

The rights held by the population include:

- a) To have their income level re-established, equal to or above the previous level;
- b) To have their standard of living re-established, equal to or above the previous level;
- c) To be transported with their goods to the new place of residence;
- d) To live in a physical space with infrastructures and social facilities;
- e) To have space to perform their subsistence activities;
- f) To give their opinion about the entire resettlement process.⁷⁴

The Resettlement Regulation set the aspects which must be included in the resettlement plan, specifically:

- a) Analysis of the socioeconomic profile of the affected households (affected households refer to households from the departure site and from the resettlement site);
- b) Evaluation and analysis of their tangible and intangible goods;
- c) Definition of the quantitative and qualitative degree of damage;
- d) Definition of the compensation criteria;

⁷⁴ Resettlement Regulation, Article 10.

- e) Presentation of solutions and technically and economically viable alternatives that allow the continuation or improvement of the affected households' current standard of living.⁷⁵

At least four meetings for the purposes of resettlement are expected, and the minutes of these meetings are certified by proper entities indicated in the regulation (which differ from those indicated in the land legislation).

Several other rules are established in Resettlement Regulation, among which also determines the amount of fines for transgressions. For example, it is established that the non-fulfilment of the approved Resettlement Plan can result in a fine equivalent to 10% of the value of the project or undertaking.

Take into account the reference made in Chapter 7 relating to protection zones, specifically, to the draft “Law on Nature Conservation and Biodiversity”, which contains specific rules for the resettlement of populations living within protected areas.

5. RIGHTS & OBLIGATIONS

DUAT holders' rights and obligations are defined in law. Their rights are as follows⁷⁶:

- 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 are⁷⁷:

- 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 State inspectors.

Holders of DUATs 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 traditionally used or needed by communities⁷⁸. This can include access to areas of cultural and historical significance, the collection of medicinal plants, the gathering of firewood for

⁷⁵ ⁷⁵ Resettlement Regulation, Article 21.

⁷⁶ Land Regulations, Article 13.

⁷⁷ Land Regulations, Article 14.

⁷⁸ Land Regulations, Article 14, clauses b) and c) and Article 17, and Forestry & Wildlife Law, Article 18.

individual consumption, and access to water resources and public roads. However local communities must also abide by the usage or management plans of the DUAT-holder, and commitments for which they are responsible, for example, not to return to areas which they had left, so as to make space for private investment, inter alia.

It is important to comply with their duty to clearly maintain the demarcation of the area, and to defend their land-holding against invasion by having recourse to legally stipulated legal instruments, especially against illegal settlement on his area. 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 immediately alert authorities in writing immediately of any illegal settlement or invasion.

6. RECOGNITION OF A DUAT OBTAINED BY WAY OF GOOD FAITH OCCUPATION OR CUSTOMARY NORMS AND PRACTICES

6.1 Introductory note

As noted above, the right to use and appropriate land can be obtained in three distinct ways: authorisation of application; good faith occupation for more than 10 years; and customary norms and practices⁷⁹. This chapter makes a brief reference to the second and third methods of obtaining a DUAT.⁸⁰ A good way to understand the distinction is to think of a DUAT through authorisation of application as being a procedure seeking approval of a right that does not yet exist, while DUATS acquired by way of customary norms and practices, and good faith occupation for more than 10 years, already exist and are legally protected, irrespective of the existence or not of a title deed, and their formal recognition may be requested, for the purposes of the issuing of a title deed, if their title holders so desire.

The definition of local community established by the Land Law is the following:⁸¹

“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.”

Decree 15/2000, of 20 June, and its respective regulations, approved by Ministerial Diploma 107-A/2000, of 25 August, deals with the forms of liaison between local State organs and community authorities, and the procedures for the formal recognition of these community authorities. Ministerial Diploma 80/2004, of 14 May, approved the

⁷⁹ Land Law, Article 12.

⁸⁰ This chapter briefly discusses the process to document or formally recognize a DUAT in these situations. The procedures to be followed are given in more detail and in a format which is easier to understand in the Delimitation of Community lands Manual.

⁸¹ Land Law, Article 1, paragraph 1.

Regulations on Liaison between Organs of Local Authorities and Community Authorities.

In matters related to the allocation of land, the community is not automatically represented by its chief or headman. The Land Regulations previously determined that minutes of community consultations must be signed by a minimum of 3, and a maximum of 9 members of the community⁸². This provision was recently altered by Decree 43/2010, of 20 October, as indicated above, it having been determined that minutes of a community consultation were to be signed by the members of the Advisory Councils for Villages and Towns (**Conselhos Consultivos de Povoação e Localidade**).⁸³

Given the growing pressure for land, communities and individuals holding DUATS by way of customary norms and practices, or good faith occupation, are encouraged to seek formal recognition of their rights, that is, to document their rights and delimit the areas over which they have a DUAT both on the ground and in the national land cadastre.⁸⁴

While DUATs issued based on authorisation of application, when requested for the purpose of economic activities, 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 limit (just as in the case of DUATs based on the authorisation of an application, when intended for private residential use)⁸⁵.

6.2 Recognition of DUAT based on Customary Norms and Practices⁸⁶

Acquisition by way of customary norms and practices is more frequently used than good faith occupation for more than 10 years as a basis for recognising an existing DUAT. The process of *delimitation* of areas in this situation culminates in the issuing of a Certificate of Delimitation, and the recording (*lançamento*) of the borders of the area in question on SPGC maps. However, for the issuing of a DUAT title deed, the demarcation of the area in question is necessary, and not only its delimitation, as we explain further below.⁸⁷

⁸² Land Regulations Article 27, paragraph 2.

⁸³ This amendment sought to harmonize the land legislation, particularly the process of community consultation, with the rules established by the Law on Local State Organs and their respective regulations, which regulate the matter of the participation of citizens in fundamental matters, by way of local consultative councils.

⁸⁴ It is important to note that a DUAT is not legally recognized either through customary norms and practices or good faith occupation over areas which constitute public domain, such as total and partial protection zones. If the right pre-dates the creation of the zone (as is the much-debated case in Quirimbas National Park for example), the problem becomes more complicated, particularly with regards to the removal of occupants. However, such DUATs may be legally revoked, because of reasons of public interest, without prejudice to compensation and/or damages which may be owed. But, even so, this is not a situation which can be resolved easily. Above, we refer to the draft Law on the Protection of Nature and Biodiversity, the articles of which deal with the rules for the resettlement of people groups living in protected areas.

⁸⁵ Land Law, Article 17.

⁸⁶ Land Regulations, Article 35 and Land Regulations, Article 9.

⁸⁷ Technical Annex, Article 15, paragraph 2

Delimitation does two things: it proves the existence of the DUAT; and establishes where its limits are. This is normally, and particularly, done in the following situations⁸⁸:

- Cases of conflict regarding the use of land and/or natural resources;
- In local community areas in which the State and / or investors intend to launch new economic activities and/or development projects and plans;
- On request of local communities.

Delimitation is done through a participatory procedure that is legally defined and laid out in the Technical Annex to the Land Regulations⁸⁹. The document issued at the end of this process is in the name of the community.

In cases of conflict over community land, oral testimony bears the same weight as documented proof⁹⁰.

Although communities are exempt from the payment of the annual DUAT fee, they are not exempt from the costs and fees involved in the application for their DUAT document⁹¹. Given the cost and technical complexity of the process of delimiting and/or demarcating the area of a DUAT held by 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\$10,000⁹², 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.

6.3 Recognition of DUAT based on Good Faith Occupation⁹³

For the holder of a DUAT based on good faith occupation to be able 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 delimitation⁹⁴. There is no provisional DUAT in this process because the right already exists and is only being recognised and documented. Having complied with the requirements, the application is sent on to the authority which is competent to authorise it, in accordance with the size of the area in question. Note that, as from 2007, by way of Decree 50/2007, of 16 October, which amended Article 35(d) of the Land Regulations, this remittance to the competent authority, in accordance with the size of the area in question, became necessary. Prior to the said Decree, irrespective of the size of the area, competence was that of the Governor of the Province.

⁸⁸ Technical Annex, Article 7, paragraph 1

⁸⁹ And described in detail in the Land Commission Manual referred to above. See footnote 80.

⁹⁰ Land Law, Article 17 and Land Regulations, Article 21.

⁹¹ Land Law, Article 29.

⁹² ORAM, see complete cost breakdown in a report for DfID Maputo by CTConsulting, 2003.

⁹³ Land Regulations, Article 34 and Land Regulations, Article 10.

⁹⁴ Technical Annex, Article 14

According to the law, the community members can request that his or her portion of 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.

Communities are also eligible to receive 20% of the fees which the government derives from the concession of natural resources in their area⁹⁵. This includes fees from forestry undertaken based on simple license or concession, hunting (inside 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 fees⁹⁶. 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.

6.4 Local Consultative Councils, the Forum for Land Consultation, COGEPs & Community Committees

As stated above, the Land Regulations were recently amended, so as to clarify the participation of Local Consultative Councils in public consultations. Ministerial Diploma 67/2009, of 17 April, approved the "Guide to the Organisation and Operation of Local Councils". A local council is a consultative body of the local administration, as regards matters which are fundamental, for the life of populations.⁹⁷

Consultative Councils are responsible, inter alia, for the promotion and organisation of the participation of the population, for publishing information, participating in the evaluation of private investment proposals, and concession of the use of natural resources and DUATs⁹⁸. The members of Local Councils are chosen by the local community, for a period of 4 years, and may be reappointed. Meetings for such purposes must be minuted, and the choice made recorded in the appropriate book, which must be deposited with the competent authority. Members of civil society may be invited to participate by the District Administrator, but do not have a right to vote.⁹⁹

⁹⁵ Forestry and Wildlife Law, Article 35, paragraph 5 and Forestry and Wildlife Regulations, Article 102, paragraph 1.

⁹⁶ Forestry and Wildlife Law, Article 35, Paragraph 5, Forestry and Wildlife Regulations, Art. 102, Paragraph 1. The mechanisms for channeling the 20% to the communities and utilization of the funds by communities are defined in Ministerial Diploma 93/2005 of 04 May.

⁹⁷ Ministerial Diploma 67/2009, of 17 April, Article 2

⁹⁸ Ministerial Diploma 67/2009, of 17 April, Article 35

⁹⁹ Ministerial Diploma 67/2009, of 17 April, Article 36

The Guide incentivises the participation of community leaders (whenever possible, by at least 40%), women (never less than 30%) and young people (at least 20%)¹⁰⁰.

A Land Consultation Forum ("the Forum") was recently created, by way of Decree 42/2010, of 20 October. This is a Government consultative body, composed of a Government representative from Agriculture (who presides), the State Administration, Tourism, Mineral Resources, Planning and Development, the Coordination of Environmental Action, Public Works and Housing, Culture and Justice. Local State and Municipal bodies also form part of the Forum, along with civil society and professional institutions, in particular, the Association of Land Surveyors (*Associação dos Agrimensores Ajuramentados*), and the Mozambican Bar Association (*Ordem dos Advogados de Moçambique*) and the Order of Engineers (*Ordem dos Engenheiros*). Depending on the issue involved, other entities may be invited¹⁰¹.

The Forum is responsible, inter alia, for the identification of necessary legal revisions, providing advice regarding the dissemination of information, debating proposed revisions, and providing an opinion on zoning and land planning, so as to direct investment into rural areas, among others¹⁰².

The Forum meets ordinarily twice a year, and extraordinarily whenever necessary. In between its sessions, its activities are ensured by the Reflection Group - Grupo de Reflexão - indicated in the decree which created it¹⁰³.

Other forms of organisation to be taken into account, are COGEPs and CGRNs. These should not be confused. CGRNs are *Comités 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 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 use of land and natural resources in their area. 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 associations¹⁰⁴. This enables them to more effectively and democratically manage the 20% natural resource use fee which communities are eligible for. However, the process of registering an association is cumbersome and difficult particularly for those living in rural areas so in practice few

¹⁰⁰ Ministerial Diploma 67/2009, of 17 April, Article 36, paragraphs 10, 11 and 12

¹⁰¹ Decree 42/2010, of 20 October, Article 5

¹⁰² Decree 42/2010, of 20 October, Article 4

¹⁰³ Decree 42/2010, of 20 October, Article 7

¹⁰⁴ 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.

such committees exist. Decree-Law 2/2006 of 03 May, sought to simplify the registration of associations for agro-processing and forestry.

The law also envisages the creation of COGEPs¹⁰⁵. 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.

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.

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 (*contadas*), productive and multiple-use forests, and multiple use zones¹⁰⁹. To date this type of delegation has not been regulated and does not take place.¹¹⁰

¹⁰⁵ Forestry and Wildlife Law, Article 31, paragraph 3 and Forestry and Wildlife Regulations, Article 95, paragraph 1, Clause a.

¹⁰⁶ Forestry and Wildlife Regulations, Article 98.

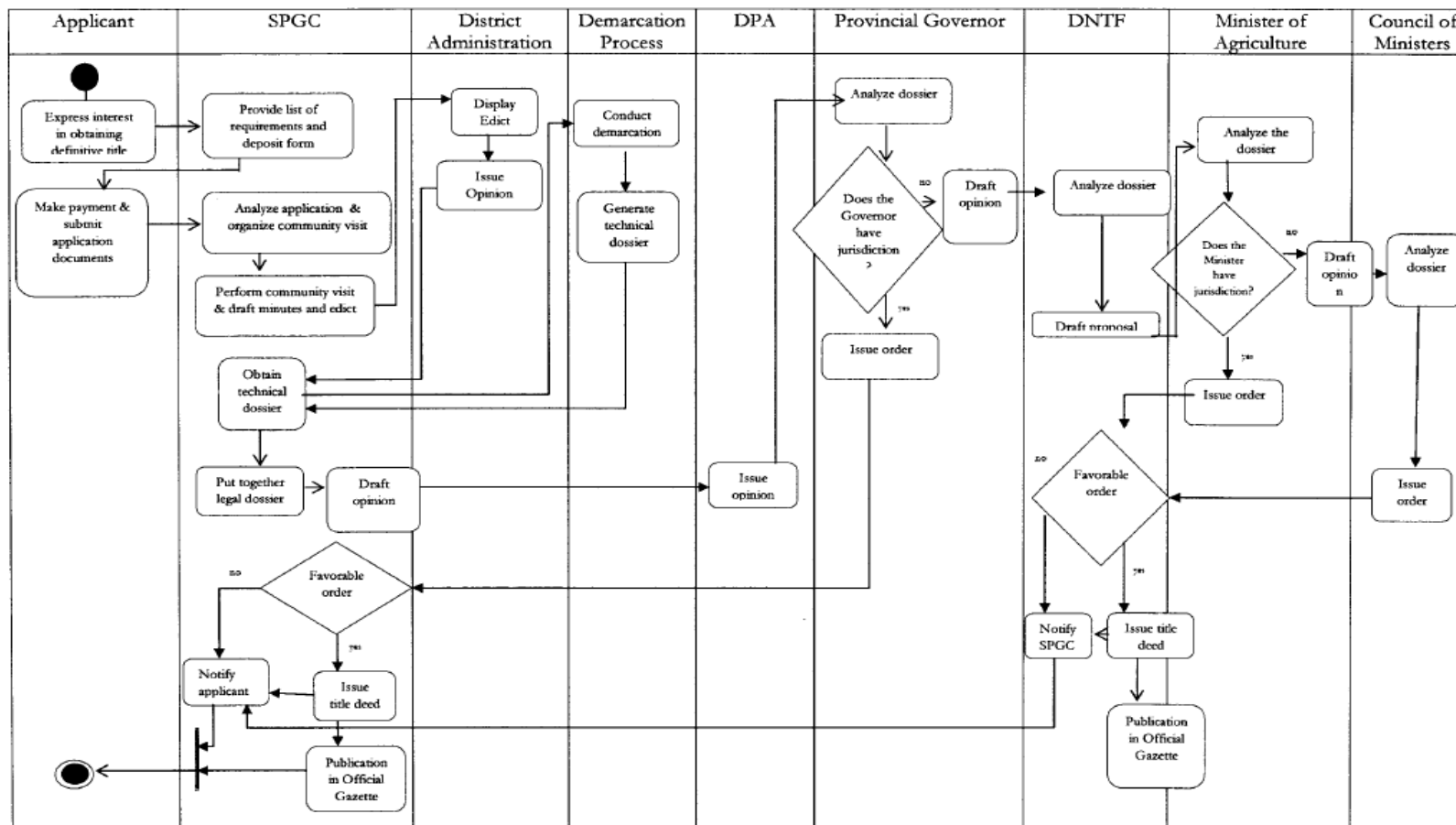
¹⁰⁷ Forestry and Wildlife Law, Article 33.

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

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

¹¹⁰ 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).

Flow Chart 5 –Process for the recognition (legalization) of community or good faith occupants’ DUAT:¹¹¹



¹¹¹ Flow chart provided by DNTF in March 2012.

7. PROTECTED AREAS AND SPECIAL LICENSES¹¹²

The land legislation envisages the existence of total and partial protection areas, which are deemed to be areas in the public domain. 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 in these areas, special licenses for the undertaking of specified activities, may be conceded¹¹³. The procedures for such concession are not detailed in legislation. This is an area which has been controversial, particularly as regards tourism developments, and those considering seeking DUATs in areas which include protected zones, or a special license in such a protected zone, are advised to seek legal counsel.

Forestry and wildlife legislation also provides for the creation of protected areas such as national parks and reserves, areas of historic or cultural value, and official hunting reserves (“coutadas”)¹¹⁴. Protected areas are considered to form part of the public domain and are managed by the government through the relevant ministries. Natural protection zones, for example fall within the remit of the Ministry of Tourism.

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 mark¹¹⁵. However, provided that the planned development complies with the procedures for obtaining an environmental license, the limitations set out therein, and the procedure for special licensing, such development could be authorised¹¹⁶.

The Land Law provides that the Provincial Governor is responsible for authorising special licenses in partial protection zones.¹¹⁷ The same law also provided that, for total protection zones, the responsibility for the authorisation of special licenses fell to the Ministry of Agriculture.¹¹⁸ However, because of the transition of protection zones to the jurisdiction of the Ministry of Tourism, these responsibilities came to be exercised by the Ministry of Tourism.¹¹⁹ In addition, it should be noted that the Land Regulations

¹¹² Land Law, Articles 6, 7, 8 and 9 and Land Regulations Articles 4, 5, 7 and 8.

¹¹³ Land Law, Article 9

¹¹⁴ Forestry and Wildlife Law (Law 10/99 of 07 July), Articles 10, 11, 12 and 13.

¹¹⁵ Land Law, Article 8 and Land Regulations, Article 5.

¹¹⁶ Decree 45/2004 of 29 September, the Environmental Impact Assessment Procedure Regulations and Land Law, Article 9 and Article 22, paragraph 1

¹¹⁷ Land Law, Article 22, paragraph 1, clause b)

¹¹⁸ Land Law, Article 22, paragraph 2, clause b)

¹¹⁹ Presidential Decree No. 9/2000, of 23 May, and Ministerial Diploma No. 17/2001, of 7 February, which defines the mechanisms for the transfer of conservation areas to the Ministry of Tourism. The fact that hierarchically inferior legal provisions have repealed a provision of the law, without express or tacit revocation thereof by way of an instrument of equal hierarchy, has been questioned.

provided that any constructions erected in partial protection zones which border on water resources require authorisation from the entities which supervise the management of interior and maritime waters.¹²⁰

Decree 79/2009, of 29 December, approved the Regulations on Military Service. These regulations deal with protection zones for the purposes of national security and defence. The concession of licenses and DUATs in these zones requires a binding opinion from the Ministry which superintends the area of defence.¹²¹ The regulations also provided that a DUAT and a right of ownership in areas integrated into military operation plans, or those in the interests of national defence, may be subject to transitional restrictions.¹²²¹²³

8. DUAT TRANSMISSION¹²⁴

8.1 Introductory note

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 alienated, the buildings and other improvements erected on that land may be mortgaged or alienated by the person who holds the rights to the underlying land.

For the purposes of transmission, two legal concepts are particularly relevant, namely, *prédio urbano* and *prédio rústico* (see the definitions in the Glossary in the initial part of this manual.)¹²⁵

8.2 Transmission by Inheritance¹²⁶

Land rights may be transmitted by inheritance. This process is governed by the Civil Code and does not require official authorisation. The Land Law makes express reference to transmission, by inheritance, both to women and to men, in light of the fact that there are customs, throughout the country, which exclude one or the other sex, women being the most affected.

¹²⁰Land Regulations, Article 8, paragraph 2

¹²¹Regulations on Military Service, Article 3 and Article 7, paragraph 4

¹²²Regulations on Military Service, Article 13

¹²³It must also be mentioned that discussions regarding a draft “Law on Nature Conservation and Biodiversity” are underway. The text of the draft states that “Inter alia, aspects that are of particular relevance in the draft law are:(...) the resettlement (...)” The draft law refers to the following conservation area categories: (i) total conservation areas (which include total nature reserves, national parks and cultural and natural monuments) and (ii) conservation areas for sustainable use (which include special reserves, protected landscapes, official hunting areas (“coutadas”), transfrontier conservation areas, community conservation areas, sanctuaries, game farms and municipal ecological parks). It also deals with the issue of the resettlement of peoples living within protected areas, and respective compensation mechanisms.

¹²⁴Land Law, Article 16 and Land Regulations, Articles 15 and 16.

¹²⁵ Land Regulations, Article 1, paragraphs 4 and 5 and Articles 15 and 16

¹²⁶ Land Law. Article 16 and Land Regulations. Article 15 and 16.

A DUAT obtained by authorisation of an application can be transferred to the heirs of the original holder by way of the presentation of proof that the applicant is an heir, i.e., the respective certificate or court order confirming that person's status as an heir. 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.¹²⁷

8.3 Transfers “inter vivos”¹²⁸

The law permits the transfer of buildings, improvements and infrastructure by way of transactions between living persons. In these cases, requirements differ, according to whether the properties concerned are *predios rusticos* or *predios urbanos*. 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 approved the DUAT. The parties wanting to effect the transfer must first request approval via the SPGC, which will direct the application to the relevant entity. It will be necessary to prove 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 duty.¹²⁹

The Regulations on the Land Law also envisage the possibility of the temporary transfer of the DUAT, by way of a *cessão de exploração* (transfer of use rights), which may relate to the entire area covered by the DUAT, or only to part of it. The parties are free to negotiate counter payments for such transfer, which must be approved before the fact by the entity which authorised the DUAT, and, in the case of local community areas, a

¹²⁷Land Regulations, Article 20, paragraph 2, with the wording brought about by Decree No. 1/2003 of 18 February.

¹²⁸Land Law, Article 16 and Land Regulations, Articles 15 and 16.

¹²⁹For 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. In it for example, 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*”.

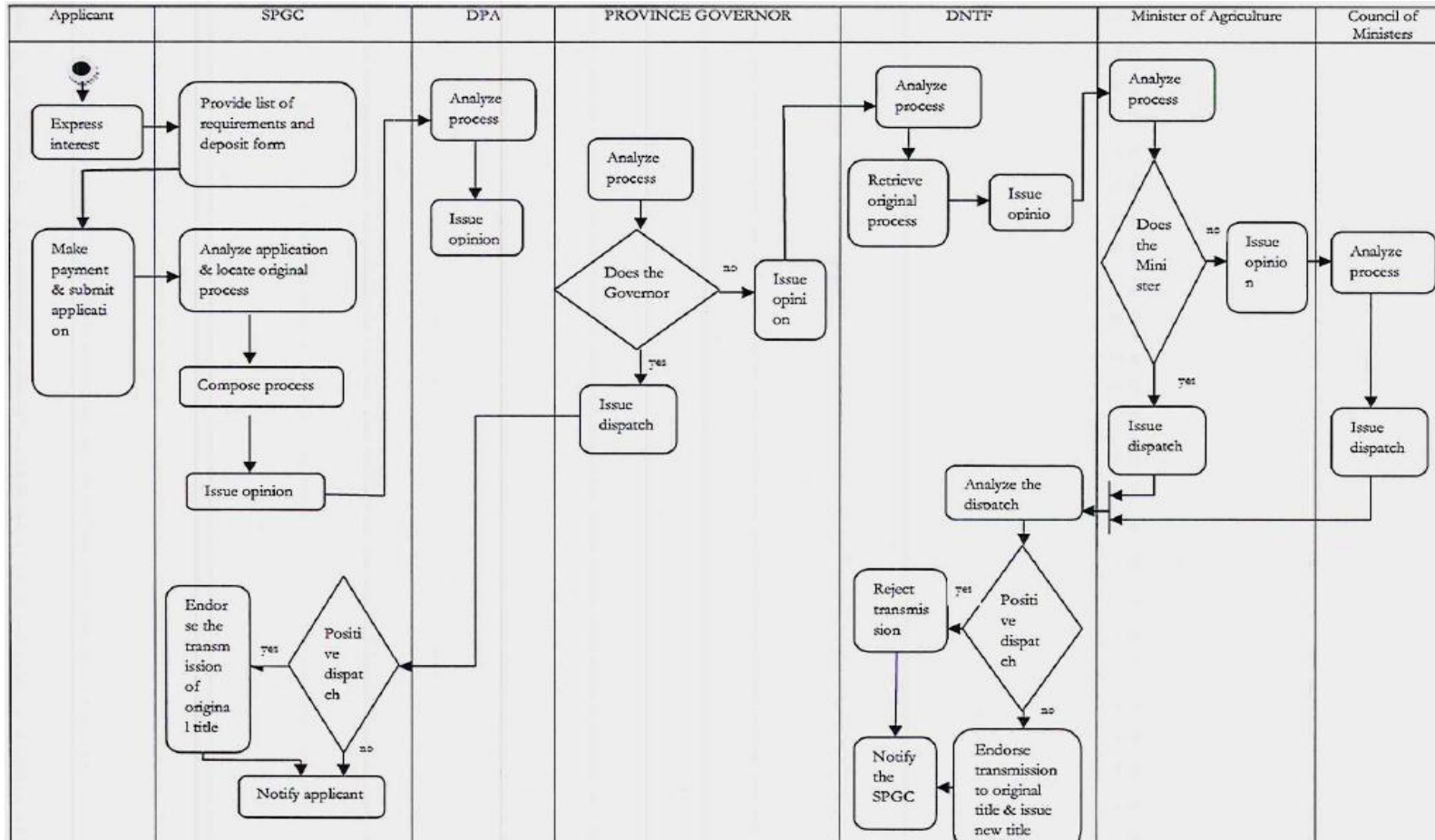
It should be noted that the Land Consultation Forum (Forum de Consulta sobre Terras), presented a series of aspects for discussion at its 2nd Ordinary Session, held in Beira, on 23 and 24 September 2011. These included the issue of the need for flexibility in the transfer of DUATs, one of the proposals presented by the consultants who had been contracted was that the need for prior authorisation for the transfer of DUATs for small establishments (up to 10 hectares) and for medium sized establishments (up to 50 hectares) be done away with – **See Land Consultation Forum – National Land and Forests Directorate, Eduardo Chiziane, The Transfer of DUATs inter vivos in rural areas, Beira, 23-24.09.11**. However, these were merely initial debates and at present there is no legal reform in this aspect.

public consultation will be necessary. Once the authorisation has been obtained, the parties must conclude a public deed, and register the contract.

In the case of **prédios urbanos** transfer does not require prior authorisation by the State. In this case the right of ownership of the property erected on the land is transferred, and the DUAT transfers automatically. However such transfers also require the conclusion of an **escritura pública**, real estate registration, and the payment of applicable fees and taxes.

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Flow Chart 6 - DUAT Transmission Process.¹³⁰



¹³⁰ Flow chart provided by DNTF in March 2012.

9. EXTINCTION¹³¹

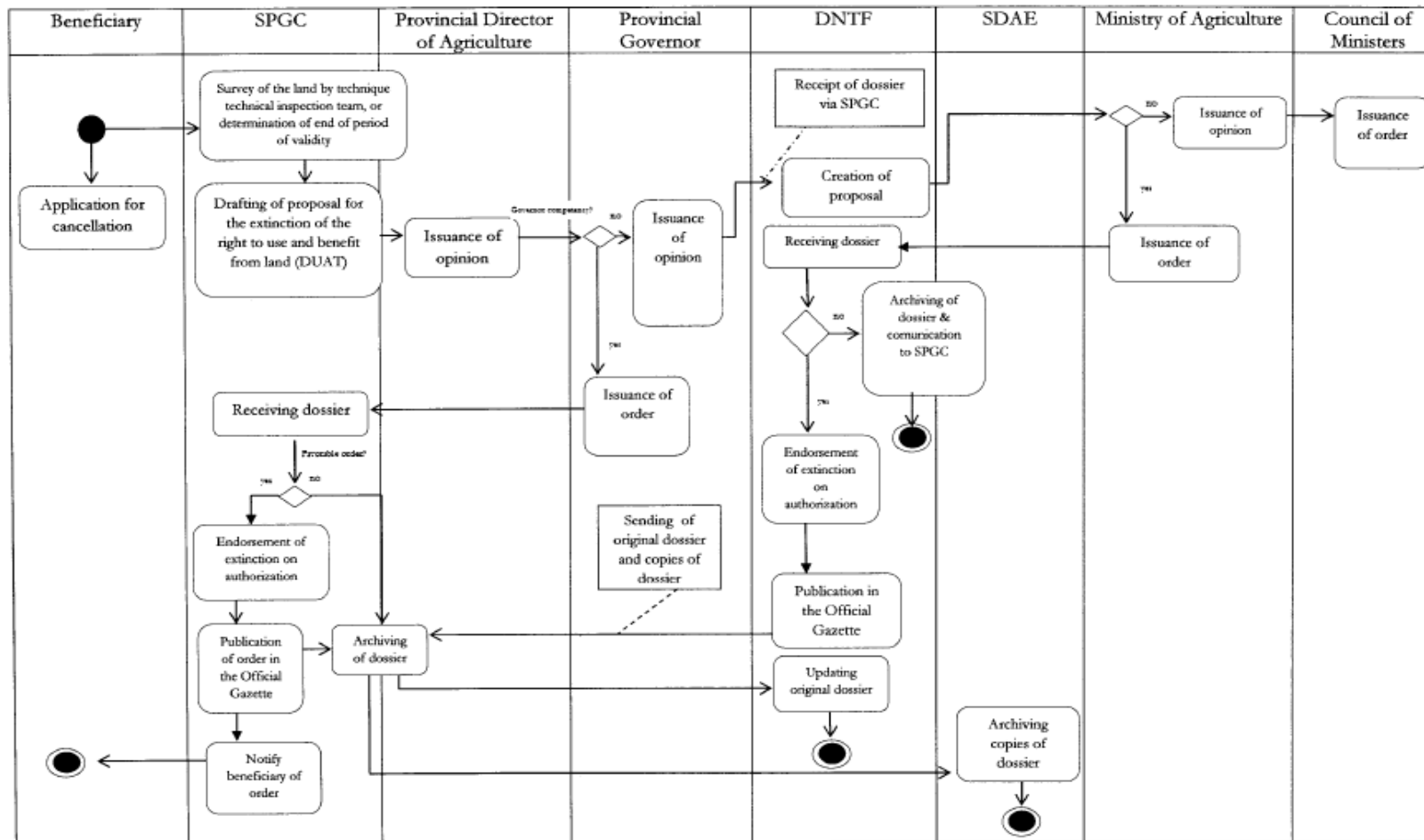
By extinction we mean the definitive cessation of the DUAT. There are a number of ways in which a DUAT can become extinct. These include:

- Non-compliance with the usage plan – in which case the DUAT is cancelled by the State;
- Revocation in the public interest – subject to compensation and/or damages, along with an expropriation process, if property has been erected;
- 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 right 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.

¹³¹ Land Law, Article 18 and Land Regulations, Article 19.

Flow Chart 7 - DUAT extinction process:¹³²



¹³² Flow chart provided by DNTF in March 2012.

10. BRIEF REFERENCE TO OTHER LEGISLATION RELEVANT FOR THE LEGAL FRAMEWORK FOR LAND

10.1 Urban land

DUAT over urban land is requested from the cadastre department of the relevant municipal authority and authorized by the President of the Municipal and Village Council (*Presidente do Conselho Municipal e de Povoação*). In the case of land situated outside the boundaries of a municipality but within an area which has a cadastre service and an urbanisation plan (a district capital for example), authorisation is given by the District Administrator¹³³. Note that such areas are currently rare in Mozambique.

Application procedures depended on municipal by-laws and differed from municipality to municipality. But with the recent approval of the Urban Land Regulations, in December 2006, such discrepancies should be reduced.¹³⁴ This decree begins the legislative process of regulating DUAT on urban land.

The Regulations on Urban Land provide that urbanisation is a requirement for the allocation of a DUAT in urban areas, and adds that these zones include areas intended for social facilities and public services. Urbanisation may be basic, intermediate or complete.¹³⁵ The Urban Land Regulations provides detailed requirements for each of these situations. These regulations envisage the following forms of DUAT acquisition:

- f) *Approval of an allocation*: this method is available only to individual and juristic national persons. Requests are submitted by way of an application from the interested party, addressed to the competent entity.¹³⁶
- g) *Lot*: this method is applied only in basic urbanisation areas, determined according to the quantity and quality of public use facilities placed at the disposal of users, and will only be applicable to individual national persons. The regulations also provide that 20% of plots to be distributed by lot, shall be reserved for low income individuals, and others in disadvantaged situations.¹³⁷
- h) *Public tender*: the use of this method is conditional upon the meeting of two basic preconditions, namely (i) the land plots in question being in complete or intermediate urbanisation zones, and (ii) that they be intended for residential or commercial use, or for the provision of services. This method is available to any person or entity, including foreigners.¹³⁸
- i) *Private Transaction*: this method is available to any entities or persons, including foreigners. Negotiations take place on a case by case basis, between the competent entities and project proponents. When justifiable, the competent entity may, prior to negotiation, seek possible candidates, and prequalify them. Note that land plots transacted by this means must be intended for the following uses:

¹³³ Land Law, Article 23.

¹³⁴ Decree 60/2006 of 26 December.

¹³⁵ Urban Land Regulations. Article 1 paragraph 15. Article 21 paragraphs 1 and 2 and Article 22.

¹³⁶ The Urban Land Regulations, Articles 24 and 25.

¹³⁷ The Urban Land Regulations, Articles 24 and 26.

¹³⁸ The Urban Land Regulations, Articles 24 and 27.

- construction and urbanisation on the direct initiative of residential cooperatives and associations;
- the installation of industrial and agricultural units;
- the installation of commercial units for large buildings, terminals and commercial trading posts, or services, which, because of their size, need large structures;
- the construction of housing, associated with large investment projects, in particular, those referred to in the second and third points, above.¹³⁹

e) *Good Faith Occupation*: this consists of the recognition of a DUAT held by national individuals, who have been using such land in good faith for at least ten years. This recognition may result from an enquiry held into the zone in which land use plans are intended to be approved, but will be subject to the harmonisation of existing uses with those envisaged in the land use plan.

The application for the obtaining of a DUAT must be substantiated by way of the following documents:

- Identification document of the candidate, or articles of association, depending on whether the person is an individual, or a juristic person;
- Diagram (**esboço de localização**) of the land, and descriptive memorandum (**memória descritiva**);
- An indication of the enterprise which the candidate intends to implement (this requirement is dispensed with in the case of lot, public tender and private transaction).¹⁴⁰

Once the granting of the DUAT has been authorised, a provisional authorisation will be issued. This will have a duration of 2 years, for foreigners, and 5 years, for nationals. At the end of this time period, compliance with the use plan will be confirmed by the Cadastre Services, definitive authorisation will be granted, and a title deed issued. If compliance is not confirmed, the provisional authorisation may be revoked, and non-removable investments made up until such time will revert to the State.¹⁴¹

It must be noted, however, that a DUAT in urban areas may become extinct, prior to the end of the time period for compliance with a usage plan, if the title holder of a provisional authorisation does not commence works within the established time periods. Such extinction is automatic, and does not require any formalities.¹⁴²

One rule contained in the Land Law is equally apparent in the Urban Land Regulations. This is that in the case of urban tenements, the transfer of a DUAT does not require the authorisation of the entity which approved its granting (which is the opposite rule from that which is applicable in the case of rural tenements, for which improvements, constructions and infrastructure may only be transferred with the authorisation of the competent entity).¹⁴³

As regards the transfer of DUATs, the concept of urban tenement (**prédio urbano**) merits special attention. In addition to it being a concept similar to that which is applicable in the context of the Regulations on the Land Law, it has a greater scope, in that it covers land plots and tracts. This implies that a DUAT which is issued in areas which are urbanised comes to be freely transmissible, without the need for any prior authorisation from the competent authority,

¹³⁹The Urban Land Regulations, Articles 24 and 28.

¹⁴⁰The Urban Land Regulations, Article 40.

¹⁴¹Land Law, Articles 25, 26 and 27.

¹⁴²The Urban Land Regulations, Article 36.

¹⁴³Land Law, Article 16, paragraphs 2 and 4, and the Urban Land Regulations, Article 35.

and also that the ownership of such DUAT does not follow the erection of any prior construction, although the transfer must, mandatorily, be endorsed on the DUAT title deed.¹⁴⁴

Note, however, that the greater part of the rules contained in the Urban Land Regulations are not being effectively applied, either because the envisaged legal instruments have not yet been created (for example, land use plans, enquiries, etc.) or because there is still resistance to the acceptance of some of these changes, as is the case with the question of free transmission, once the legal requirements have been met.

There is no existing experience of the application of the new forms of DUAT acquisition, particularly those of lot and public tender.¹⁴⁵

10.2 Approval of Investment Projects

As stated above, in order for foreigners to acquire a DUAT, they must have an approved investment project in the country. “Foreigners” are deemed to be both non-Mozambican individuals, and companies or institutions constituted in terms of Mozambican or foreign legislation, 50% of the share capital of which is held by foreign citizens, companies or institutions.¹⁴⁶

Except in the case of mining and petroleum activities, investment projects are approved by the CPI.¹⁴⁷

A proposed investment project must be submitted on a standard form, accompanied by the following documents:¹⁴⁸

- Project study (in Portuguese or English);
- Copy of investor’s identification document;
- Certificate of commercial registration, or name reservation certificate, of the company which is to implement the project (and if the company already has published articles of association, then a copy of the respective *Boletim da República*, or Official Gazette. In the case of a foreign commercial representation, a copy of the commercial representation license is required);
- Topographical plan, or diagram of the location at which the project is intended to be implemented.

Authority for the approval of investment projects, is allocated as follows:¹⁴⁹

¹⁴⁴ The Urban Land Regulations, Article 1, paragraphs 7 and 13, Article 35 and Article 43.

¹⁴⁵ One frequently asked question merits mention here: “Can foreigners acquire urban property, or own immovables / buildings?” 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. Note that Ministerial Diploma 97/92 of 08 July does not apply the same criteria to the acquisition of ruins and unfinished properties which belong to the State or were nationalised. In this case, a national company is defined as one that is incorporated and has its headquarters in Mozambique. 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 registered, and have their headquarters, in Mozambique.

¹⁴⁶ Land Law, Article 1, paragraphs 9 and 11.

¹⁴⁷ Law 3/93, of 24 June – the Investment Law, Article 3, paragraph 3.

¹⁴⁸ Regulations on the Investment Law – Decree 43/2009, of 21 August, Articles 8 and 9.

- The Provincial Governor: national investment projects in an amount not exceeding one billion, five hundred million Meticaís;
- The Director General of the CPI: national or foreign investment projects, in an amount not exceeding two billion, five hundred million Meticaís;
- The Minister of Planning and Development: national and foreign investment projects, in an amount not exceeding thirteen billion, five hundred million Meticaís;
- The Council of Ministers: (i) investment projects in amounts exceeding thirteen billion, five hundred million Meticaís; (ii) projects which require DUATS over areas exceeding 10,000 hectares; (iii) projects which require forestry concessions in areas exceeding one hundred thousand hectares, and (iv) any other project with political, economic, social, financial or environmental implications, which is remitted to the Council of Ministers for consideration, on the proposal of the Minister of Planning and Development.
- The Director General of the Office for Accelerated Development Economic Zones (GAZEDA): projects in Special Economic Zones and Industrial Free Zones.

A foreign direct investment project must be registered with the Bank of Mozambique, within a period of 90 days, counting from the authorisation of the project by the competent authority.¹⁵⁰

10.3 Forestry and wildlife

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 system¹⁵¹. 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.¹⁵²

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 un-demarcated area. In others applications either follow the process for applying for a 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 Department¹⁵³.

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

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

¹⁴⁹ Regulations on the Investment Law, Article 12.

¹⁵⁰ Regulations on the Investment Law, Article 15, paragraph 1.

¹⁵¹ Forestry and Wildlife Law, Article 2.

¹⁵² Amended by Decree 11/2003, of 25 March and Decree 30/20012, of 01 August.

¹⁵³ Forestry and Wildlife Law, Article 9.

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.

Forestry is one of the sectors designated as requiring a full environmental impact process¹⁵⁴. 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 also be suspended pending agreement to, for example improve forest practice.

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.

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.

10.4 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 activity¹⁶⁰. Clearly this is an area which is open to discretionary interpretation, and is under increasing debate given the growing interest in Mozambique's mineral resources.

¹⁵⁴Decree 45/2004 of 29 September, Annexures, clause a and paragraph 2.

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

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

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

¹⁵⁸ Forestry and Wildlife Regulations, Article 84.

¹⁵⁹ Forestry and Wildlife Regulations, Article 85.

¹⁶⁰ Land Regulations Article 14, paragraph d) and Mining Law, Article 43, paragraph 2.

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 compensation¹⁶¹.

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 losses¹⁶². Mediation may be used, either based on legally established norms or using the Ministry of Mineral Resources as mediator¹⁶³.

After obtaining a mining concession, it is mandatory to obtain a DUAT. The Mining Law - Law 14/2002, of 26 June - sets a period of 3 years within which to obtain a DUAT, after the issuing of a mining concession, failing which the mining concession may be revoked.¹⁶⁴ Note however, that the Mining Law is in the process of reform. One of the proposed amendments is to remove this 3 year deadline to obtain the DUAT.¹⁶⁵

A DUAT granted for mining operations is exempt from the payment of the annual DUAT fee, in light of the fact that it is subject to the payment of specific taxes, in this case, Surface Tax.¹⁶⁶ If the concession area does not coincide, in totality, with the area of the DUAT, the annual DUAT fee will be applicable to the remaining part of the DUAT.

The DUATs obtained for purposes of mining exploration will have the same validity period established for the mining concession of the mining certificate, and will be automatically renewed with the renewal of these titles.¹⁶⁷

10.5 Private Water Use 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. Regulations on this Law were passed in 2007, by way of the Regulations on Water Licenses and Concessions - Decree 43/2007, of 30 October. Regulations on the Prospecting and Exploration of Subterranean Water have been recently approved by the Government, through the Decree 18/2012, of 05 July.

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, for the issuing of a license or concession for private water use, depending on the volume and time of use. 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 services.¹⁶⁸

The Water Law prioritises water use with water required for sanitation and consumption by the general population being the key priority¹⁶⁹. Private consumption which could prejudice common

¹⁶¹ Land Regulations Article 14, paragraph d)

¹⁶² Mining Law, Article 18, paragraph d) and Decree 62/2006 of 26 December - the Mining Regulations, Article 113 paragraph 2.

¹⁶³ Mining Regulations Article 113 paragraph 4.

¹⁶⁴ Mining Law, Article 15, paragraph 2

¹⁶⁵ As provided for in the reasoning and article 16 of the proposed Mining Law circulated by ACIS on 18.11.2011. .

¹⁶⁶ Law 11/2007, of 27 June, which updated the tax legislation relating to mining activities, Article 18.

¹⁶⁷ Mining Law. Article 43 paragraph 3.

¹⁶⁸ Decree n° 72/98 of 23 December.

¹⁶⁹ Water Law, Article 26, paragraph 1.

use by the general public or cause damage to the environment is not permitted. 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 use¹⁷⁰.

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 purposes¹⁷¹. 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 for¹⁷²:

- 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 resource¹⁷³.

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.

10.6 Environment & Heritage

10.6.1 *Environment*

Protection of the environment is enshrined in the Mozambican Constitution. Citizens have the right to live in a well-balanced environment¹⁷⁴ and to legal recourse against threats to that environment¹⁷⁵. Mozambique's criminal and civil codes both include the concept of responsibility (both civil and criminal) for environmental damage¹⁷⁶.

The National Environment Policy (*Política Nacional do Ambiente* - Resolution 5/95 of 03 August) defines guiding principles, including the principle of the "polluter payer"¹⁷⁷. 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 system¹⁷⁸. 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 specific manual in this series, which can be found on the website indicated below. Below, we provide a basic overview of key aspects. In case of doubt readers are advised to seek legal counsel.

¹⁷⁰ Water Law, Article 26, paragraphs 2 and 3.

¹⁷¹ Water Law, Article 23, paragraphs 1 and 2.

¹⁷² Water Law, Article 18, paragraph 3 line c) and Article 32 paragraph 2).

¹⁷³ Water Law, Article 33, paragraphs 1 and 2.

¹⁷⁴ Constitution of the Republic of Mozambique, Article 90.

¹⁷⁵ Constitution of the Republic of Mozambique, Article 81 paragraph 1 and lines a) and b) of paragraph 2.

¹⁷⁶ Civil Code, Articles 483, 493 and 1346 paragraph 2, Penal Code Articles 464, 476 and 478.

¹⁷⁷ National Environment Policy, Point 22, paragraph 4.

¹⁷⁸ Environment Law Article 2.

Any activity which is expected to cause an environmental impact is subject to an environmental impact assessment, for the purpose of obtaining an environmental license, in the event that the environmental viability of the proposed activity is proven¹⁷⁹. Low-impact and small-scale activities may be subject to simplified assessment, or merely be required to comply with basic environmental management rules, 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 licensing¹⁸⁰.

The Regulations on the Evaluation of Environmental Impact (Decree 45/2004, of 29 September), with amendments brought about by Decree 42/2008, of 4 November, list, in an annexure, those activities which fall within categories A, B and C, and so determine which activities are subject to an environmental impact assessment ("EIA"), which to a simplified environmental assessment, and which must simply comply with environmental management rules.

Certain activities, such as mining and petroleum activities are governed by specific regulations on environmental assessment - Decree 26/2004, of 20 August, Decree 56/2010, of 22 November, respectively. Decree 45/2006, of 30 November, approved the Regulations on the Prevention of Pollution and the Protection of the Marine and Coastal Environment, which contain specific environmental rules to be taken into account in the said zones.

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 who are registered with the Ministry which oversees the environmental sector. The costs of licensing are entirely paid by the proponent, and for the issuing of an environmental license, fees are due, equal to 0.2% of the investment value for category A and B activities (classified as high-impact and low –impact, respectively), and to 0.02%, for the issuing of a declaration of exemption for activities classified as category C (those with minimum or non-existent impact)¹⁸¹. The legislation is not specific on how the investment value should be calculated, and this is mostly based on the value declared by the proponent.

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

¹⁷⁹ Environment Law, Article 15.

¹⁸⁰ Environmental Regulations (Decree 76/98, of 29 December), Annexures.

¹⁸¹ Environmental Regulations, Article 3, Article 25 paragraph 1, and Annexure III, and Decree 42/2008 of 04 November.

10.6.2 *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, anthropological or geological value, which relate to previous generations and which are discovered by accident, during prospecting and survey or during archaeological digs”¹⁸².

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 hours¹⁸³. 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 People¹⁸⁴. 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.

10.7 **Tourism Interest Zones**

Tourism Interest Zones (TIZs) are areas which are aimed, in particular, at incentivising tourism activities. Decree 77/2009, of 15 December, approved the Regulations on Tourism Interest Zones. These regulations provide that any region or area in the national territory, free or occupied, may be declared to be a tourism interest zone, provided that it has relevant characteristics, such as natural, historical or cultural resources, and the capacity to cause a flow of national and foreign tourists, and its economic dynamics are based essentially on the development of tourism activities, as principal activity.¹⁸⁵ Areas other than those indicated may

¹⁸² Decree 27/94 Article 2.

¹⁸³ 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).

¹⁸⁴ Law 10/88 of 22nd December, Article 3 paragraph 1.

¹⁸⁵ Regulations on Tourism Interest Zones, Article 3, paragraph 1.

also be covered, provided that they have the potential to generate integrated ecotourism projects, or have already been identified as priority areas for the development of tourism.¹⁸⁶

The Regulations on Tourism Interest Zones provide that the creation of these zones must take already constituted rights into account.¹⁸⁷ The Regulations also provide that the issuing of DUATs and special licenses issued in Tourism Interest Zones will be suspended if they are not covered by approved or amended land planning instruments, until due legalisation. Thus, DUAT and special license authorisations are subject to the approval of a land use and development plan for the area covered by the declaration. It is intended that the land use and development plan will determine the action necessary for the development of each tourism interest zone created, as well as measures for the preservation of the environment and the sustainable use of resources in each zone.

Another aspect which is relevant to the authorisation of DUATs, is the fact that the National Tourism Institute (*Instituto Nacional do Turismo*, or INATUR) has begun to issue binding opinions as regards the merits of DUAT and special license applications falling within tourism interest zones, and as regards proposed investment projects, and licensing.¹⁸⁸ The intention of this formality is to annul authorisations which may be issued.¹⁸⁹ When the TIZ are situated in a Special Economic Zone, INATUR's competencies are transferred to the Office for Accelerated Development Economic Zones - GAZEDA.

The Regulations on Tourism Interest Zones provide that the time period for the taking of a decision on applications for DUAT concessions and renewals, and special licenses, may not exceed 30 days, provided that the legal requirements for such purpose have been met.¹⁹⁰

The procedure for the declaration of a Tourism Interest Zone involves the identification, by the National Tourism Institute (INATUR) of a zone with potential for this purpose, and then the drafting of a proposal, subject to the non-binding opinion of the Commission for the Evaluation of Tourism Interest Zones (*Comissão de Avaliação das Zonas de Interesse Turístico*, or CAZIT), in terms of the respective Regulations, approved by Ministerial Diploma 77/2009, of 15 April, and a decision by the Council of Ministers, by way of a diploma declaring the Tourism Interest Zone.

The Tourism Interest Zones declared by the Council of Ministers in its Session XXIV, held on 13 July 2010, were published in No. 52, 1st Series, of the *Boletim da República*, dated 31 December 2010, as follows:

- Decree 70/2010, of 31 December, declared the 80 hectare area of Chiunga, situated in the Metagula Municipal Area, District of Lago, Niassa Province, to be a TIZ;
- Decree 71/2010, of 31 December, declared the 100 hectare forest area of Lichinga City, Niassa Province, to be a TIZ;
- Decree 72/2010, of 31 December, declared the 1081 hectare area from the City of Pemba, East Coast, until Murrébué, Cabo Delgado Province, to be a TIZ.
- Decree 73/2010, of 31 December, declared the 80 hectare area of Chiunga, situated in the Metagula Municipal Area, District of Lago, Niassa Province, to be a TIZ;
- Decree 74/2010, of 31 December, declared the 1750 hectare areas of the Crusse and Jamali Islands, Nampula Province, to be TIZs;

¹⁸⁶ Regulations on Tourism Interest Zones, Article 3, paragraphs 2 and 3.

¹⁸⁷ Regulations on Tourism Interest Zones, Article 3, paragraph 4.

¹⁸⁸ Regulations on Tourism Interest Zone, Article 16, subparagraph a).

¹⁸⁹ Regulations on Tourism Interest Zones, Article 13, paragraph 4.

¹⁹⁰ Regulations on Tourism Interest Zones, Article 13, paragraph 5.

- Decree 75/2010, of 31 December, declared the 2750 hectare zone of Mapanzene and Chipongo, Inhambane Province, to be a TIZ;
- Decree 79/2010, of 31 December, declared the 1400 hectare Bay of Pemba, Cabo Delgado Province, to be a TIZ.

These decrees for the creation of TIZs provided that the respective land use and development plans must be approved within a period of 6 months, calculated from the date of entry into force of each decree.

11. BIBLIOGRAPHY AND LEGISLATION

The authors would like to acknowledge the work and contribution of a number of authors and organizations in this field. A selection of their work and articles is included below. We recommend that anyone wanting to obtain a deeper understanding of the issues around land in Mozambique obtain these works:

Publications:

- Reflexões Sobre o Regime Jurídico de Terras – Raposo Pereira e Rui Baltazar dos Santos Alves. Editora: central impressora - Ministério da Saúde. República de Moçambique. Maputo.
- 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 (Coordinator), CFJJ, Maputo 2004.
- O Direito de Uso e Aproveitamento da Terra – M. da Conceição Faria and Nelson O. J. P. Jeque (Coordinators), UEM University Library, Maputo 2005.
- Jornadas de Estudos sobre Aspectos Jurídicos, Económicos e Sociais do Uso e Aproveitamento da Terra – Gilles Cistac and Eduardo Chiziane (Coordinators), UEM University Library, Maputo 2003.
- Lei de Florestas e Fauna Bravia Comentada – Carlos Serra (Jr.), CFJJ, Maputo 2005. 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
- Manual de Delimitação de Terras das Comunidades – Comissão Inter-Ministerial para a Revisão da Legislação de Terras (available via the CFJJ and in the FAO library).

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- An Economic Analysis of Natural Resources in Mozambique - Rural Land Issues and Policies – W.B. Hughes, Maputo, February 2005.
- Documento para Debate sobre o Modelo de Consulta Comunitária. Sérgio Baleira and Eduardo Chiziane (HPTSE Consultants / IInd Ordinary Session of the Fórum de Consulta sobre Terras, Beira), 22 de Setembro de 2011.
- A Transmissão de DUAT entre Vivos nas Áreas Rurais. Fórum de Consulta sobre Terras – Direcção Nacional de Terras e Florestas, Eduardo Chiziane, Beira, 23-24.09.11.
- Alguns Aspectos da legislação sobre o Uso da Terra: Omissões e Sobreposições entre direitos mineiros e outros usos da terra – Ássma Nordine Jeque, SAL & Caldeira, Advogados, Lda. Newsletter No. 9. September /October 2006.
- Breve Apreciação do Regulamento do Solo Urbano – Ássma Nordine Jeque, SAL & Caldeira, Advogados, Lda. Newsletter 13. May/June 2007.
- A Transmissibilidade do Direito de Uso e Aproveitamento da Terra – José Manuel Caldeira, SAL & Caldeira, Advogados, Lda. Newsletter 16. November/December 2007.

- Protecção dos Direitos à Terra das Comunidades Locais: a consulta à comunidade local. Maria da Conceição de Quadros. Conferência Comemorativa dos 10 Anos da Lei de Terras. 17-18 October 2007. Maputo.

Systematic information on various procedures relating to the DUAT which was kindly provided by the National Directorate of Land and Forestry in March 2012 was also consulted.

Legislation:

- The Constitution of the Republic of Mozambique, 2004.
- Law 6/79, of 25 September (amended by Law 1/86, of 16 April), which approved the Land Law (repealed).
- Law 10/88, of 22 December, which approved the rules on archeological heritage.
- Law 5/91, of 9 January, which lays down conditions for the purchase and sale of immovables.
- Law 15/91, of 3 August, which approved the Privatization Law.
- Law 16/91, of 3 August, which approved the Water Law.
- Law 3/93, of 24 June, which approved the Investment Law.
- Law 19/97, of 1 October, which approved the Land Law (in force).
- Law 20/97, of 1 October, which approved the Law on the Environment.
- Law 10/99, of 7 July, which sets out the principles and basic rules for the protection, conservation and sustainable utilization of forestry and wildlife resources.
- Law 14/2002, of 26 June, which approved the Mining Law.
- Law 11/2007, of 27 June, which updated tax legislation with bearing on mining activities.
- Law 19/2007, of 18 July, which approved the Land Planning Law.
- Law 15/2011, of 10 August, which established the guidelines for the process of contracting, implementing and monitoring public private partnership establishments, large scale projects and business concessions, and revoked some of the provisions of Law 21/97, of 1 October – the Electricity Law.
- Presidential Decree 9/2000, of 23 May, which decreed the transfer of conservation areas from the Ministry of Agriculture to the Ministry of Tourism.
- Decree-Law 5/76, of 5 February, which governs the nationalization of tenements, and sets out the rules for the payment of rentals by tenants.
- Decree-Law 2/2006, of 3 May, which approved the rules for the simplification of the process of registering associations in the agro-processing and forestry sectors.
- Decree 43587, of 08 April 1961, made applicable in Mozambique by way of Ordinance 23404, of 28 May 1968, which approved the Expropriation Regulations.
- Decree 16/87, of 15 July, which approved the Land Regulations (repealed).
- Decree 27/94, of 20 July, which approved the Regulations on the Protection of Archeological Heritage.
- Decree 66/98, of 8 December, which approved the Land Regulations (in force).
- Decree 15/2000, of 20 June, which sets out the forms of liaison between local State organs and community authorities.
- Decree 30/2001, of 15 October (with the rectifications published on 23 January 2003), which approved the rules for the operation of Public Administration Services.
- Decree 12/2002, of 6 June, which approved the Regulations on the Forestry and Wildlife Law.
- Decree 1/2003, of 18 February, introduced amendments into the Regulations on the Land Law (Articles 20 and 39).

- Decree 11/2003, of 25 March, which amend the Forestry and Wildlife Law Regulations (Articles 20, 21 and 29).
- Decree 45/2004, of 29 September (with the amendments introduced by Decree 42/2008, of 4 November), which approved the Regulations on the Process of Environmental Assessment.
- Decree 26/2004, of 20 August, which approved the Environmental Regulations for Mining Activities.
- Decree 60/2006, of 26 December, which approved the Regulations on Urban Land.
- Decree 62/2006, of 26 December, which approved the Regulations on the Mining Law.
- Decree 45/2006, of 30 November, which approved the Regulations for the Prevention of Pollution and the Protection of the Marine and Coastal Environment.
- Decree 43/2007, of 30 October, which approved the Regulations on Water Licenses and Concessions.
- Decree 50/2007, of 16 October, introduced amendments into the Regulations on the Land Law (Articles 35).
- Decree 23/2008, of 01 July, which approved the Regulations on the Land Planning Law.
- Decree 43/2009, of 21 August, which approved the Regulations on the Investment Law.
- Decree 77/2009, of 15 of December, which approved the Regulations on Tourism Interest Zones.
- Decree 79/2009, of 29 of December, which approved the Regulations on Military Service.
- Decree 42/2010, of 20 October, which created the Land Consultation Forum.
- Decree 43/2010, of 20 October, which introduced amendments into the Regulations on the Land Law (paragraph 2 of Article 27).
- Decree 56/2010, of 22 November, which approved the Environmental Regulations for Petroleum Operations.
- Decree 70/2010, of 31 December, which declared the 80 hectare area of Chiunga, situated in the Metagula Municipal Area, District of Lago, Niassa Province, to be a TIZ.
- Decree 71/2010, of 31 December, which declared the 100 hectare forest area of Lichinga City, Niassa Province, to be a TIZ.
- Decree 72/2010, of 31 December, which declared the 1081 hectare area from the City of Pemba, East Coast, until Murrébué, Cabo Delgado Province, to be a TIZ.
- Decree 73/2010, of 31 December, which declared the 80 hectare area of Chiunga, situated in the Metagula Municipal Area, District of Lago, Niassa Province, to be a TIZ.
- Decree 74/2010, of 31 December, which declared the 1750 hectare areas of the Crusse and Jamali Islands, Nampula Province, to be TIZs.
- Decree 75/2010, of 31 December, which declared the 2750 hectare zone of Mapanzene and Chipongo, Inhambane Province, to be a TIZ.
- Decree 79/2010, of 31 December, which declared the 1400 hectare Bay of Pemba, Cabo Delgado Province, to be a TIZ.
- Decree 18/2012, of 05 July, which approved the Regulations on the Prospecting and Exploration of Subterranean Water.
- Decree 30/2012 of 01 August, which repeal Articles 16, 18 and 20 of the Forestry and Wildlife law Regulations and defines the requirements for exploitation of forests under license and establishment of forest plantations.
- Decree 31/2012, of 08 August, which approved the Regulations on the Resettlement Process Resulting from Economics Activities.
- Ministerial Diploma 76/99, of 16 June, which determined the distribution of consigned income, resulting from the collection of DUAT fees.
- Ministerial Diploma 107-A/2000, of 25 August, which approved the Regulations on Decree 15/2000, of 20 June.

- Ministerial Diploma 29-A/2000, of 17 March, which approved the Technical Annex to the Land Regulations.
- Ministerial Diploma 17/2001, of 7 February, which defines the mechanisms for the transfer of conservation areas to the Ministry of Tourism.
- Ministerial Diploma 80/2004, of 14 May, which approved the Regulations on the Liaison of Local Authority Organs with Community Authorities.
- Ministerial Diploma 181/2010, of 03 November, which approved the Directive on the Process of Expropriation for the Purposes of Land Planning.
- Ministerial Diploma 67/2009, of 17 April, which approved the Guide to the Organization and Operation of Local Councils.
- Ministerial Diploma 144/2010, of 24 November, which updated DUAT fees.
- Ministerial Diploma 158/2011, of 15 June, which sets out the procedures to be followed for the holding of community consultations.
- Resolution 5/95, of 3 August, which approved the National Policy on the Environment.
- Resolution 10/95, of 17 October, which approved the Land Policy and respective Implementation Strategies.
- Resolution 11/95, of 31 October, which approved the Agrarian Policy and Implementation Strategies.
- Resolution 18/2007, of 30 May, which approved the Land Planning Policy.
- Resolution 70/2008, of 30 December, which approved the procedures for submission and consideration of investment proposals involving extension of land over 10000.

Reference is also made to various draft laws which are in progress, so as to alert readers to the need to refer to the legal instrument which is in force from time to time.

- Draft Law on Nature Conservation and Biodiversity. Version of 26 October 2011, circulated by ACIS.
- Draft Mining Law Revision. Version of 18 November 2011, circulated by ACIS.
- Resettlement Regulations. Version of 25 May 2012 circulated by ACIS.
- Draft Decree updating the amounts of fines set out in Article 41 of the Law on Forestry and wildlife. Version of 26 October 2011, circulated by ACIS.
- Draft Decree, updating fees for forestry activities. Version of 26 October 2011, circulated by ACIS.
- Draft Decree, aimed at establishing the terms, conditions and incentives for the establishment of forestry plantations for conservation, commercial, industrial and electricity-related purposes, with a social, economic or environmental objective. Version of 26 October 2011, circulated by ACIS.