

LICENSING OF TOURIST PROJECTS

MOZAMBIQUE

Regarding the licensing process for a tourist project, the first choice to be made is on the type and classification of said project, for which the applicant aims to obtain a license. In this respect, the Regulation of Mozambican Tourism (“*Regulamento de Turismo Moçambicano*”) lists the following types of accommodation: (i) hotel; (ii) resort hotel; (iii) lodge; (iv) apartment hotel; (v) residential hotel; (vi) hostel; (vii) residential hostel; (viii) inn; (ix) motel; (x) tourist village; (xi) camp site; (xii) guest house; (xiii) bed and breakfast; (xiv) room rental; (xv) tourist farm; (xvi) tourist ensemble, as well as all the necessary requirements for the licensing of each type of accommodation.

However, for the purposes of this briefing, we will only dwell on hotels and resort hotels.

In accordance with the aforementioned regulation, the competent authority that grants such licensing to hotels and resort hotels that range from three to five stars is the Ministry of Tourism. The application is made to this entity through a preliminary project by means of an application. Such application must include the location of the touristic project site and must have a certificate for the rights to use and profit from the land (“*DUAT*”) for touristic purposes. The idiosyncrasies of each type of project are present in the Annexes of the Regulation of Tourism.

In case the preliminary project is approved, the applicant shall present the executive project within 180 days containing all of the elements required, as well as a set of documents best described in the aforementioned Regulation.

After the presentation of the executive project, various entities are consulted and others requested to give opinions. However, despite these consultations, the decision on the licensing may not take more than 17 days to be communicated to the applicant. After the decision is transmitted to the applicant, he must start construction within a year. A breach of this obligation triggers a forfeiture of the permit and the subsequent filing process. The competent authority granting the certificate of *DUAT* must be notified that the land is no longer in use. It is also during this stage that the maximum grade attributable to the project is proposed, notwithstanding the possibility of it being changed in the final survey.



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When the construction is concluded, the applicant must require, in writing, a survey, the issuance of a management certificate and the approval of the prices to be stipulated. The project may only be approved by unanimous vote of all of the members of the survey commission. At the time of the conclusion of the latter, the commission will issue a survey notice, which will include an approval of the project or recommendations for changes in the project. If the survey is favorable to the applicant, a business permit is issued. Concurrently, the applicant must submit the touristic project classification request to the competent classification body.

PORTUGAL

In the case of the Portuguese legal system, licensing of touristic projects is regulated in Decree-Law no. 39/2008 of March 7, with changes made in 2008 and 2009 (hereinafter referred to as “RJIEFET”), in the ordinances that regulate it, and, by default, the Decree-Law 555/99 of December 16, with changes made in 2007 and 2010 (hereinafter referred to as “RJUE”).

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Touristic projects may fit into one of the following types: (i) hotel establishments; (ii) tourist villages; (iii) touristic apartments; (iv) touristic ensembles (*resorts*); (v) touristic projects in rural areas; (vi) camp sites and caravan parks; and (vii) eco-tourism projects.

Touristic projects are subject to an environmental impact evaluation, when located outside of urban areas or areas that may be deemed to be urban, according to the Plan of Territorial Planning (“PDM”), and, when they encompass an area greater than 5ha and have a capacity of over more than 50 beds/ha, in the case of touristic villages and over 200 beds/ha in case of hotels, apartment hotels, and touristic apartments. In areas deemed sensible all hotels, apartment hotels and touristic apartments which have more than 20 beds are subject to an environmental impact evaluation.

Requests for licenses or advance notices in touristic project allotment operations must include (i) a descriptive document which specifies the project typology, the classification and category which the project is applying for, the number of units in the accommodation, the number and type of beds; (ii) a synthesis plan; and (iii) photographs of the site.

The descriptive document must also include, as long as they are requirements are in accordance with the applicable legislation or an option of the promoter, the

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following information: (i) identification and general characteristics of the green spaces; (ii) planned capacity for other uses, namely restaurants, meeting rooms, areas for commerce and rendering of services, entertainment equipment, sports, leisure, and other complementary equipment; and (iii) the number of parking places, both public and private.

Regarding the works of the construction of touristic projects, the licensing request, or advance notice must include (i) the type of project, the classification and category which the project is applying for; (ii) the number of units of accommodation, the number of beds (single or double) fixed and convertible; (iii) the planned capacity for other uses namely restaurants, meeting rooms, areas for commerce and rendering of services, entertainment equipment, sports, leisure, and other complementary equipment; (iv) the number of parking places, both public and private; (v) the plan to comply with mandatory and optional requirements and respective punctuation; (vi) the functional organization of the project and its horizontal and vertical circulations; (vii) accessibility plan; (viii) the timings of the execution of the project, if the former is to be done in stages. Licensing requests must also include all of the elements in Ordinance 232/2008 of March 11, which regulates the RJUE.

A prior opinion from the Municipality may be requested on the possibility of launching a touristic project and its difficulties. When the result of the information request is favorable, the licensing request or advance notice must be made within a year from that event.

The licensing request or advance notice is still dependent on the opinion of the Institute of Tourism of Portugal (“*Turismo de Portugal*”) which is binding in case of an unfavorable decision. It is still this Institute’s prerogative to cap the accommodation capacity and to grant a grade on certain touristic projects such as hotel establishments, touristic villages, rural apartments, touristic ensembles (*resorts*) and rural hotels. In other projects this competence belongs to the Municipality.

When the work is concluded, the applicant must make a request to the Municipality asking for an authorization of the concession of use of land for touristic purposes, and the issuance of the respective business permit, which must be granted within 20 days, unless a survey takes place. Notice of the issuance of the permit to use must be made to the Institute of Tourism of Portugal, and must include all of the elements in article 77, no. 5 of RJUE. Once this procedure is concluded, the business permit to use for tourism will be issued when the payment of the respective fee is made.

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The applicable legal provisions of the latter centralizes the decisions on the licensing of hotels and resort hotels in the Ministry of Tourism, whereas in Portugal these decisions are decentralized in the Municipality

CONCLUSION

The legal provisions in both countries for the licensing of touristic projects are substantially different. The first major difference pertains to property rights, due to the existence of rights of use of land but not private property in Mozambique. Secondly, the legal framework in Portugal on the subject is better regulated than the Mozambican. The applicable legal provisions of the latter centralizes the decisions on the licensing of hotels and resort hotels in the Ministry of Tourism, whereas in Portugal these decisions are decentralized in the Municipality, which has prerogatives on the area where a touristic project is located, and in the Institute of Tourism of Portugal whose opinion regarding hotel establishments, touristic villages, touristic apartments, touristic ensembles (*resorts*), and rural hotels is binding.

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