


 REAL
 ESTATE

TOURIST COMPLEXE IN MOZAMBIQUE

The Mozambican legal system, contrary to the Portuguese, does not foresee the existence of private property, which implies that the acquisition and construction of tourist complexes have to meet specific requirements.

In fact, the Mozambican law stipulates that the land is owned by the state and may not be sold nor transferred in any manner or mortgaged. However, such law grants the Right of Using and Profit from the Land (*Direito de Uso e Aproveitamento da Terra*, as known as “DUAT”), to national citizens and legal persons, upon request of a title for using and profiting from the land.

The DUAT resembles the legal form of the surface right, provided in article 1524 and following the Portuguese Civil Code, as it grants the right to build or maintain a work on the land by third parties, or to make or maintain plantations on it, and such right may even be transferred. However, the DUAT contains some limitations that the legal form of the surface right does not include and which we will describe below.

Thus, this right may be granted, apart from nationals, to individual and legal persons, provided that they have an investment project duly approved and meet the following conditions: (i) in what concerns natural persons, they must have been residing in the country for at least five years, and (ii) in what concerns legal persons, they must have been incorporated and registered in the Republic of Mozambique.

The DUAT is acquired by three different means: (i) by the occupation by individuals and local communities, according to the rules and customary practices in the country, (ii) by the occupation of national citizens that in good faith have been using the land for at least ten years, and (iii) through an authorization granted upon request by an individual or legal persons. The process for the acquisition of the DUAT through an authorization is subject to the following procedure:

- a) identity document of the applicant, if it is an individual or the articles of association, if it is an entity;
 - b) location plan of the terrain;
 - c) indication of the nature and extension of the development which the applicant intends to build;
 - d) opinion of the district administrator, preceded by consultation with the local community;
 - e) tax payment form attesting the deposit of the fee due for the provisional authorization.
- The holder of the DUAT may also transfer the infrastructures and the constructions through a public deed, which must be preceded by authorization by the relevant state authority.

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BRIEFING

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It is possible to build and transfer tourist complexes in Mozambique, provided that the legal formalities required are complied with

The transmission of DUAT only occurs in real property and public parks, or buildings incorporated on land, provided that their income results essentially from previous constructions and not from the land itself. In what concerns rural properties, defined as a delimited part of land and the constructions enclosed that do not have economic independence, that is, whose income derives mainly from the land, the sale and purchase of infrastructures, buildings and improvements performed therein, this does not imply the automatic transfer of the DUAT, which depends on the approval given by the same entity that authorized the initial request.

In brief, despite the fact that private property is foreign to Mozambican law, it is possible to build and transfer tourist complexes in Mozambique, provided that the legal formalities required are complied with. Nevertheless is necessary to give special attention to the economic utility of the land on which the construction is carried out, namely from where its main income is derived, in order to avoid limitations on its further transmission.

This description of the legal regime of the DUAT is introductory, since for the construction of tourist complexes it is also mandatory to comply with other requirements, which shall be developed for each type the tourist complex in further editions.

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