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For Environmental Licensing in Mozambique

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acts

COOPERAÇÃO

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Preface

Among the responsibilities of the Provincial Directorate for the Coordination of Environmental Action is the attribution of environmental licenses. Licensing promotes practices which have both good and benign effects on the environment as well as promoting sustainable development in general.

Under current legislation environmental licensing is mainly regulated by the Environment Law (Law 20/97 of 01 October), by the Environmental Impact Evaluation Regulation (Decree 45/2004 of 29 September) and by various sector or issue-specific legislation.

The dissemination of practical information about environmental licensing is extremely important for both new and existing companies. It not only provides the basis for companies to become, or ensure that they are, legally compliant, it also provides an unparalleled opportunity for business to participate in environmental preservation and clean production.

The Province of Sofala faces a number of environmental challenges including various forms of pollution, discharge of liquid effluent in inappropriate locations, poor solid waste management, soil erosion, uncontrolled fires, and lack of sanitation among others. The reduction of these problems is possible as long as each of us assumes the role of environmental protection agent.

Environmental preservation should be one of the main points on the agenda of business and of civil society in general, in order that we can promote the sustainable development of our province.

Through its "*Legal Framework*" initiative ACIS, working with its group of partners, is supporting the private sector by disseminating key legislation required for business activities. This initiative is most welcome and long may it continue.

This guide, which deals with *the legal framework for environmental licensing in Mozambique* is the result of combined efforts to bring to the attention of business what is required to ensure sound environmental practice and preservation of nature.

Our hope is that in publishing this guide investors can find everything they need to know about environmental licensing in Mozambique in one place.

Comments and suggestions are welcome to enable us to improve for future editions about environmental licensing in Mozambique.

Beira, June 2009

Maurício Xerinda
Provincial Director for the Coordination of Environmental Action for the Province of Sofala

1 INTRODUCTION

This booklet is one of a series aimed at helping investors do business in Mozambique. It is based on the idea that informed investors can more easily follow the law, and the conviction that the rule of law is the best guarantor of property and of orderly and sustained development.

The series has been developed jointly by a number of institutions, including GTZ APSP (Ambiente Propício para o Sector Privado), GTZ PRODER (Programa de Desenvolvimento Rural), Projecto GERENA (Gestão de Recursos Naturais), CFJJ (Centro de Formação Jurídica e Judiciária), SAL & Caldeira Advogados e Consultores Lda and ACIS (the Sofala Commercial & Industrial Association). By combining the experience of these institutions, we hope to give investors clear, practical advice with a sound basis in law.

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

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

A number of additional legal requirements are mentioned in the booklet, such as the requirements for incorporation of a company and for obtaining the right to use and enjoy land. These are complex subjects in their own right and each is the subject of a booklet in this series. We have opted not to give detailed treatment to these questions here but recommend that the reader consults the other titles in this series.

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

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

While we have tried our best to be accurate, we may have made some mistakes, and we certainly made some omissions. Also, law and public administration are dynamic subjects, and it is very likely that in the near future, some law or regulation described herein will be changed. We hope to correct the mistakes and supply the omissions in a next edition, so please do tell us of any that you find. In the meantime, the detailed nature of the subject matter and ordinary prudence both compel us to disclaim liability for those errors or omissions. In cases of doubt, readers would do well to consult legal counsel.

We hope that you find this booklet and the others in the series useful. Mozambique is a wonderful country and, as an entrepreneur creating wealth and employment, you have an important role to play in building it. Our role is to help you do yours. Força!

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

2 GLOSSARY OF TERMS

Please find below a list of some of the terms you will encounter during the process of environmental licensing. Defined terms are set forth in bold typeface.

AA	**Auditoria Ambiental**. An environmental audit.
AIA	**Avaliação de Impacto Ambiental**. This is the entire set of procedures from the submission of initial information about a proposed activity for pre-assessment through to the issuing of an environmental license.
Alvará	Company trading or operating license.
ARA	**Administração Regional de Águas**. Regional Water Administration bodies responsible for the licensing of water use.
Assinatura Reconhecida	Signature on a document compared to that in an identity document and stamped as corresponding thereto, by the **Notary**.
Balcão Único	One Stop Shop. These entities have been created in provincial capitals. So far they receive licensing applications for commercial and industrial licenses and for import and export permits though under new regulations their role is to be expanded to cover other procedures in the incorporation and registration process including possibly receiving documents pertaining to the **AIA**.
Boletim da Republica	The official gazette of the Government of Mozambique, in which laws and regulations, as well as companies' articles of association, must be published.
Certidão de Registo Comercial	Certificate of commercial registration of a company, sometimes called the certidão comercial.
Cópia autenticada	Copy of a document compared to the original and stamped as corresponding thereto by the **Notary.**
DPCA	**Direcção Provincial de Coordenação de Acção Ambiental**. Provincial representation of **MICOA.**
DUAT	**Direito de Uso e Aproveitamento de Terra.** Title to use and enjoy land or land usage title.
EAS	**Estudo Ambiental Simplificado.** A simplified environmental impact study which may be required as part of the **AIA**.
EIA	**Estudo de Impacto Ambiental**. An environmental impact study which may be required as part of the **AIA**.
EPDA	**Estudo de Pré-viabilidade e Definição do Âmbito.** Pre-feasibility and scoping study which may be required as part of the **AIA**.
MICOA	**Ministério para a Coordenação de Acção Ambiental.** The Environment Ministry.
Notary	The Provincial Notary Department, responsible for the preparation of public deeds (including for the incorporation of companies), official validation of certain other legal acts, and authentication of signatures and documents, among other duties. In Maputo, there are a variety of notarial offices distributed around the city.
NUIT	Número Único de Identificação Tributária, or tax registration number. The **NUIT** is sometimes also referred to as the VAT registration number. The **NUIT** must be clearly printed on all invoices and receipts, as well as being shown on any invoices and receipts submitted into the company accounts. Individuals' personal tax identification numbers are also referred to as **NUIT**s.
Périto Ambiental	An environment expert who may be appointed by **MICOA** to undertake an **AA.**

PI&As	**Partidos Interessadas e Affectadas**. Interested and affected parties invited to contribute to the public consultation phases of the **AIA**.
Técnico de Contas	Government-registered accounts technician.

3 BACKGROUND TO ENVIRONMENT IN MOZAMBIQUE

3.1 CONSTITUTION

A number of pieces of legislation and policy provide legal context and background for the environmental licensing system in Mozambique. These include the 2004 Constitution of the Republic and the National Environment Policy. Other areas of legislation which impact environmental licensing include those related to land and water use, and national heritage. In specific sectors such as mining and fisheries, sectoral legislation should be taken into account. As development and investment increase in Mozambique the demands on the environment also increase and investors should be aware of the possibility of sector-specific environment legislation being promulgated for their sector. As always, in case of doubt we encourage the reader to seek advice from legal counsel.

Mozambique's Constitution establishes the right to live in a balanced environment and the right to defend that environment.[1] The state and local authorities are required to adopt policies to protect the environment and ensure the responsible use of natural resources.[2] To guarantee the right to a favourable environment while recognising the need for sustainable development the state is to adopt policies which prevent and control pollution and erosion, integrate environmental objectives in sectoral policies and promote the integration of environmental values in its education policy and programmes.

The state is also required by the Constitution to guarantee the sustainable use of natural resources and ecological stability for future generations and to promote land use planning in order to ensure that activities take place in the correct locations and that such activities contribute to balanced socio-economic development.[3]

The 2004 Constitution also creates an obligation on communities to defend the environment,[4] and allows for class action in defence of the environment.[5]

3.2 ENVIRONMENT LEGISLATION

The Ministry for the Coordination of Environmental Action (*Ministério para a Coordenação de Acção Ambiental* - MICOA) is the Government institution responsible for ensuring the preservation and responsible use of natural resources, the coordination of environmental activities and environmental licensing. Provincial Directorates for Coordination of Environmental Action (*Direcções Provinciais para Coordenação da Acção Ambiental* - DPCA) and in some cases District Directorates for Coordination of Environmental Action (*Direcções Distritais para Coordenação da Acção Ambiental* - DDCA) are the local representatives of MICOA.

In 1995, a National Environmental Policy (*Política Nacional do Ambiente*, Resolution No. 5/95, of 03 August) was approved as an instrument representing the foundation for sustainable development in Mozambique with the basic targets of poverty eradication, improvement of quality of life and the reduction of environmental damage.[6] The Policy

[1] Constitution of the Republic of Mozambique, 2004, Article 90, paragraph 1
[2] Constitution, Article 90, paragraph 2 and Article 117, paragraph 1
[3] Constitution, Article 117, paragraph 2
[4] Constitution, Article 45, clause f
[5] Constitution, Article 81, paragraph 2 clause b)
[6] National Environment Policy, Resolution No. 5/95 of 03 August, paragraphs 1 and 2

requires that the government includes an environment component in all development plans[7] and provides a clear indication of the importance of environmental matters to the legislator.

The Policy allows the possibility of the government establishing incentives to stimulate private sector participation in environmental management.[8] It also requires that the government work with local communities to develop an improved understanding of resource use patterns, traditional management methods and customs,[9] and anticipates that the government will strengthen community capacity to understand and apply general rules and principles of natural resource.[10] The Policy envisages the creation of legal conditions and institutional capacity to enable the decentralization of community management of natural resources,[11] with a view to eradicating poverty.

In 1997 the Environment Law was passed (Law 20/97, of 01 October). This Law regulates the use and management of the environment with a view to promoting sustainable development. It includes a number of definitions and establishes principles based on the Constitutional right to a favourable environment. These principles include:

- the principle of use and rational management of natural resources;
- the principle of recognition and value of community knowledge and traditions;
- the principle of environmental management based on preventive systems;
- the principle of integrative management;
- the principle of citizen participation; and
- the principle of responsibility.

All of which inform the environmental licensing process.

The Environment Law prohibits pollution.[12] Activities which accelerate erosion, desertification, deforestation or any other form of environmental degradation are also prohibited.[13] The law also prohibits the importation of hazardous residues or waste, except for that permitted by specific legislation.[14]

The Environment Law also provides that the government may establish environmental quality standards.[15] These standards are defined as being the admissible levels of pollution prescribed by law.[16] The Environmental Quality Standards Regulation was approved in June 2004[17] and regulates atmospheric, water and soil quality for industrial purposes. This regulation establishes standards for environment quality and the emission of effluents.[18]

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[7] National Environment Policy, paragraph 2.3.3
[8] National Environment Policy, paragraph 2.3.11
[9] National Environment Policy, paragraph 2.3.10
[10] National Environment Policy, paragraph 2.3.10
[11] National Environment Policy, paragraph 2.3.10
[12] The Environment Law in its Article 1, paragraph 21 defines pollution as "the depositing into the environment of substances or residues, regardless of type, and the emission of light, sound and other forms of energy in such a way and quantity as to cause negative effect".
[13] Environment Law, Article 9, paragraph 1
[14] Environment Law, Article 9, paragraph 2. Such legislation has not yet been introduced. However the Bamako Convention of 30 January 1991 has been ratified. This convention deals with the prohibition of the transport of dangerous waste, and the control of cross-border movement of such waste in Africa (Resolution 19/96 of 26 November)
[15] Environment Law, Article 10, paragraph 1
[16] Environment Law, Article 1, paragraph 19
[17] Decree 18/2004, of 02 June - the Environmental Quality Standards and Emission of Effluents Regulation
[18] Environmental Quality Standards and Emission of Effluents Regulation, Article 2

The Environment Law provides for the creation of environmental protected areas,[19] which are subject to specific conservation and monitoring measures including definition activities permitted or prohibited within the area and its surroundings, and the definition of the role of communities in the management of such areas.[20] Here the Environment Law, the Land Law and the Forestry & Wildlife Law overlap in that the Land Law, (Law 19/97, of 01 October) provides that in total and partial protection zones, special licenses can be issued authorizing the exercise of certain activities.[21] The Forestry & Wildlife Law also allows for the creation of protected areas designed to conserve biodiversity and fragile ecosystems, plants and animals[22], and admits the possibility that, for reasons of necessity or public interest, the exercise of certain activities in such areas may be allowed[23].

The Environment Law is regulated by a raft of additional legislation, both general and sector specific. See Annex 5.3 for a list of applicable legislation. This legislation and the manuals and directives issued by the government have been used as the basis for the development of this booklet. The complexity of the legislation and its different application in different sectors, as well as the strong sanctions that may be applied to anyone contravening this legislation oblige us to encourage the reader to seek specialised counsel if in any doubt about the environmental licensing of a project or activity.

4 OBTAINING AN ENVIRONMENTAL LICENSE

Any activity which may affect the environment requires authorization[24]. Authorisation is based on evaluation of the potential impact of the planned activity to determine its environmental feasibility, and concludes with the issuing of an environmental license by MICOA[25]. The procedures described below are complex and may appear at times contradictory or overlapping. Please consult the flow diagrams provided in Section 6 to orient your reading of this guide.

Please note that under recent changes to the environmental regulations, all environmental licenses already issued for activities currently in progress are valid for a maximum of five years and must then be re-evaluated by submission of a new licensing process[26].

4.1 TYPES OF ENVIRONMENTAL LICENSE

The Environment Policy and Law require that management of the environment should be based on preventive systems, and the Environment Law and its regulations establish a set of preventative requirements that must be fulfilled prior to the issuance of an environmental license.

Annexes I, II and III of the Environmental Impact Assessment Regulation (Decree 45/2004 of 29 September) divide potential activities into three categories based on their likely impact on the environment:

[19] Environment Law, Article 13, paragraph 1
[20] Environment Law, Article 13, paragraph 1, paragraph 3, paragraph 4
[21] Land Law (Law 19/97, of 01 October), Article 9
[22] Forestry & Wildlife Law, Article 10, paragraph 1
[23] Forestry & Wildlife Law, Article 10, paragraph 8
[24] Environment Law, Article 15, paragraph 1
[25] Environment Law, Article 15, paragraph 1
[26] Decree 42/2008 of 04 November, Article 20, paragraph 3 – application for renewal must be made at least 80 days before the license expires, and is subject to a fee for Category A and B licenses

- Category A: Is subject to a full Environmental Impact Assessment (*Estudo de Impacto Ambiental* - EIA);
- Category B: May be subject to a Simplified Environmental Assessment (*Estudo Ambiental Simplificado* - EAS);
- Category C: Is subject to the norms of good environmental management

See Annex 5.1 for a list of activities which fall within in each category.

Any other activities, not listed in these Annexes, but susceptible to cause a significant negative impact on the environment are subject to pre-evaluation by MICOA. This pre-evaluation consists of a preliminary environmental analysis which categorizes the proposed activity and determines the type of environmental evaluation to be carried out.[27] As a result of the pre-evaluation MICOA may: reject the implementation of the activity proposed; categorize the activity and consequently determine the type of environmental evaluation to be undertaken, namely the EIA or the EAS; or exempt the activity from the need to undertake an EIA or EAS.[28]

MICOA can also request the audit of existing activities which began before the current legislation came into force, or which were not originally covered by the legislation.

It should be noted that any significant change to an existing activity (including for example change of activity, construction, expansion of activity or extension of existing premises) which already has an environmental license is subject to a new environmental impact evaluation.

4.2 PROCEDURES FOR OBTAINING A LICENSE

Application for an environmental license is made during the preparation and planning part of a project. It is worth noting that the issuing of certain other licenses (such as industrial operating license, forestry concession license, tourism license and final CPI approval) is dependent on prior issuing of an environmental license. Where the legislation is silent on specific details pertaining to activities licensed by MICOA, the terms of the environmental license itself will supply the details of obligations imposed based on the Environmental Impact Evaluation.

4.2.1 Stages of Environmental Licensing

Any type of activity or investment project which may have an environmental impact must first request an Environmental Impact Evaluation (*Avaliação de Impacto Ambiental* – AIA). The AIA process begins with a pre-assessment. This assessment determines, or confirms (based on the category into which the activity falls) the type of assessment that will be required prior to a license being issued.

To begin the AIA process the applicant must submit the following:[29]

- Written description of activity;
- Justification of activity;
- Legal status of activity (this includes for example documentary proof of registration of a company such as the certidão comercial, a provisional land title

[27] Environmental Impact Assessment Regulation, Article 1, paragraph 28 and Article 7, paragraph 1
[28] Environmental Impact Assessment Regulation, Article 7, paragraph 2
[29] Environmental Impact Assessment Regulation, Article 6

or DUAT or other authorisation demonstrating that the activity has been approved at sectoral level for example an alvará);

- Socio-economic and environmental information about area in which the activity will be undertaken;
- Current land use in area;
- Information on stages to be covered during the AIA such as Terms of Reference (ToR) for the environmental consultant, pre-feasibility and scoping activities (*Estudo de Pré-viabilidade Ambiental e Definição do Âmbito* - EPDA), Environmental Impact Assessment (EIA) or simplified EIA (EAS);
- Completed form (the form is available for 20Mt from both MICOA and DPCA; a copy is included in Annex 5.2).

While the law is silent on this matter those receiving the form may sometimes request that the applicant's signature is notarised (assinatura reconhecida).

Note that any supporting documents submitted (such as the certidão commercial or alvará of the company) should be submitted in the form of notarised copies. Originals should not be submitted. The applicant should take a copy of the application form and have it stamped and dated by the member of staff that receives the application. This serves as proof of submission and enables the applicant to verify that responses are provided within the legal time limits provided.

This information must be submitted to the relevant environment authority responsible for the area in which the activity will take place.[30] This may mean at either provincial, or where district environment authorities exist, at district level. Category A activities may go on to submit their applications at national level provided that they first have an opinion provided at local level.[31]

A note on decentralisation

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

Given the complexity and sensitivity of the decentralisation process it is unlikely that such occurrences will reduce in the short term. Therefore it is incumbent on the applicant to work with both district (where relevant) and provincial level government representatives to ensure that everyone is aware of the proposed application and project, and thus to reduce the likelihood of delays. In the case of Category A activities licensing decisions may be referred to national level and the final decisions taken there, but this does not preclude the need for district and provincial authorities to be aware of and comment on the application. In practice this can result in substantial delays and as a practical matter the applicant would do well to follow the process closely and remain in regular contact with the authority to which the application has been submitted.

[30] Ministerial Diploma 198/2005 of 28 September, Article 1
[31] Ministerial Diploma 198/2005 of 28 September, Article 1, paragraph 2

Having received the information the relevant authority will consider it and provide a written opinion on how the applicant should proceed. In a number of cases it has been reported that at this stage representatives of the department to which the application is submitted request payment of transport and out of office fees to travel to the proposed site of the activity to undertake their assessment. There is no legal requirement for the applicant to pay such charges, and the legally established time period for a response from the department may not be extended based on non-payment of such fees.

The following table summarises the possible responses to the pre-assessment and the next steps to be taken by the applicant, and the legal time periods within which the government must respond at each stage:

Procedure	Reference (Decree 45/04 of 29 September)	Time period Category A (Full EIA)	Time period Category B (EAS)	Time period Category C (No EIA/EAS required)
Request for pre-assessment Submit documents listed above	Article 6			
Pre-assessment by relevant department and provision of written response (including the number of copies of ToRs and EPDA to be submitted, where relevant)	Articles 7 & 18	5 working days	8 working days	8 working days
Review of ToRs and EPDA by government and provision of written response	Articles 15 & 18	30 working days	N/A	N/A
Review of ToRs by government and provision of written response	Articles 15 & 18	N/A	15 working days	N/A
Review of full EIA by government	Articles 16, 17 and 18	45 working days	N/A	N/A
Review of EAS by government	Articles 16, 17 and 18	N/A	30 working days	N/A
Written communication of full or partial rejection of project	Article 19 paragraphs 2, 3 and 4	5 working days	5 working days	5 working days
Issuing of environmental license (subject to written confirmation of approval of project and payment of fees by applicant)	Article 19	8 working days	8 working days	8 working days
Validity period of license issued	Article 20 paragraph 4	5 years	Indefinite	Indefinite

Whenever additional information is requested the time period is suspended until the information is provided by the applicant. In exceptional cases with written notification, the time periods may be extended by up to 30 days. MICOA and the DPCAs sometimes lack the resources to communicate a request for additional information to the applicant. It is therefore worthwhile to check regularly on the progress of the application in case any questions or requests for additional information have arisen.

The results of the pre-assessment of the proposed activity take into account the following factors:

- size of population and communities affected;
- affected ecosystems, plants and animals;
- location and size of the area affected;
- probability, nature, duration, intensity and significance of the impacts;
- direct, indirect, potential, global and cumulative effects of the impacts; and
- reversibility or irreversibility of the impacts.[32]

The pre-assessment takes place in the following stages:

a) Stage 1

- Verification of the documentation submitted;
- Verification of whether or not the activity falls within categories A, B or C as defined by the annexes to the Environmental Impact Assessment Process Regulation;
- Activities which do not fall within the specified categories are evaluated based on type of activity and location.

b) Stage 2

The principal activity, infrastructure and subsidiary activities are classified according to their scale of impact from minor through moderate, to major, and from reversible to irreversible. Classification takes place based on the technical inputs of a multi-disciplinary team created for the purpose.

c) Stage 3

Key impacts are identified based on their probability of occurring, duration of effect, irreversibility, consequences at local and regional level, possible objections and possibilities for the management of such impacts. The intensity of the likely environmental impact is a key determining factor. Stage 3 considers:

- Sensitivity of proposed location – fragile environmental resources, existing legislation protecting a specified area and development plans for the area;
- Scale and intensity of proposed activity;
- Impacts of the principal and subsidiary activities;
- Cumulative impacts.

Stage 3 concludes with the preparation of a written decision on the outcome of the pre-assessment.

The written decision determines or confirms the category into which the proposed activity falls and therefore defines next steps.

Note that while no fees are payable to the government until the process is approved and the license ready to be issued, all costs of studies, investigations, and preparation of documents leading up to approval and the issuing of the license for the activity are for the cost of the applicant.

4.2.1.1 Environmental licensing for Category A activities

Activities categorised as Category A must now proceed with the following:

- Appoint a government-registered environmental consultant (if this has not already taken place). See section 4.8 for further information on the licensing of environment consultants;

[32] Environmental Impact Assessment Regulation, Article 8, paragraphs 1 and 2

- Work with the environment consultant to develop an EPDA, (based on articles 10 and 11 of the Environmental Impact Assessment Process Regulation);
- Work with the environment consultant to develop ToRs (based on articles 10 and 11 of the Environmental Impact Assessment Process Regulation) for the consultants to undertake the full EIA;
- Submit the number of copies of the EPDA and ToR defined in the written response to the pre-assessment to the relevant department.

Details on the contents of EPDAs and ToRs are included in Section 4.3 below.

As with the submission of the initial pre-assessment documents the applicant should take a copy of any documents submitted and have the copy stamped and dated by the member of staff that receives the application. This serves as proof of submission and enables the applicant to verify that responses are provided within the legal time limits provided. This practice should be followed with documents submitted throughout the various processes to be followed.

Having received these documents the relevant government department has 30 working days to respond to the applicant, either approving the EPDA and ToRs or requesting alterations and re-submission.

If the application is successful the contracted government-registered environment consultants undertake the EIA based on the approved ToRs. The EIA process includes a public consultation (see Section 4.4 below). When completed the EIA takes the form of a report (see Section 4.3 below). In its written communication approving the EPDA and ToRs the government stipulates how many copies of the EIA report are to be submitted.

Having received the EIA report the relevant government department has 45 working days to respond, either approving the EIA or requesting alterations and resubmission. If the application is successful the applicant must then pay a licensing fee based on the total investment value of the activity.[33] The total investment value must be demonstrated by the Ministry of Finance or by the applicant's nominated accountant who must be a government-registered accounts technician (*técnico de contas*).[34] The fee payable for Category A activities is 0.2% of the total investment value[35].

4.2.1.2 Environmental licensing for Category B activities

Activities categorised as Category B must now proceed with the following:

- Appoint a government-registered environmental consultant (if this has not already taken place). See section 4.8 for further information on the licensing of environment consultants;
- Work with the environment consultant to develop ToRs (based on articles 10 and 11 of the Environmental Impact Assessment Process Regulation) for the consultants to undertake the full EIA;
- Submit the number of copies of the ToR defined in the written response to the pre-assessment to the relevant department.

Details of the contents of ToRs are included in Section 4.3 below.

[33] Environmental Impact Assessment Regulation, Article 25, paragraph 1
[34] Procedures Manual for Environmental Licensing published by MICOA, October 2006
[35] Decree 42/2008, Article 25, paragraph 1

As with the submission of the initial pre-assessment documents the applicant should take a copy of any documents submitted and have the copy stamped and dated by the member of staff that receives the application. This serves as proof of submission and enables the applicant to verify that responses are provided within the legal time limits provided. This practice should be followed with documents submitted throughout the various processes to be followed.

Having received these documents the relevant government department has 15 working days to respond to the applicant, either approving the ToRs or requesting alterations and re-submission.

If the application is successful the applicant must contract a government-registered environment consultant (if they have not already done so) to undertake the EAS based on the approved ToRs. The EAS process includes a public consultation optional in some cases and compulsory in others[36] (see Section 4.4 below). In addition Category B activities are required to submit an environmental monitoring plan, which includes as a minimum a mitigation programme, environmental education programme and accident contingency plan[37].When completed the EAS takes the form of a report (see Section 4.3 below). In its written communication approving the ToRs the government stipulates how many copies of the EAS report are to be submitted.

Having received the EAS report the relevant government department has 30 working days to respond, either approving the EAS or requesting alterations and resubmission. If the application is successful the applicant must then pay a licensing fee based on the total investment value of the activity.[38] The total investment value must be demonstrated by the Ministry of Finance or by the applicant's nominated accountant who must be a government-registered accounts technician (*técnico de contas*).[39] The fee payable for Category B activities is 0.2% of the total investment value[40].

4.2.1.3 Environmental licensing for Category C activities

Activities categorised as Category C must now pay a licensing fee based on the total investment value of the activity.[41] The total investment value must be demonstrated by the Ministry of Finance or by the applicant's nominated accountant who must be a government-registered accounts technician (*técnico de contas*).[42] The fee payable for Category C activities is 0.02% of the total investment value[43].

4.2.2 Validity, Cancellation & Revocation

Once the license has been issued the activity to which it applies must begin within 2 years, or the license will expire. Extension of the validity of the license is dependent on approval by MICOA, and a new AIA may be required.

[36] Environmental Impact Assessment Regulation Article 14, paragraph 5
[37] Decree 42/2008, Article 24, paragraph 2
[38] Environmental Impact Assessment Regulation Article 25, paragraph 1
[39] Procedures Manual for Environmental Licensing published by MICOA, October 2006
[40] [40] Decree 42/2008, Article 25 paragraph 1
[41] Environmental Impact Assessment Regulation Article 25, paragraph 1
[42] Procedures Manual for Environmental Licensing published by MICOA, October 2006
[43] [43] Decree 42/2008, Article 25 paragraph 1

A decision on the application to extend the validity of a license must be given within 30 working days. This decision may extending the period for start of activity, requesting changes to the AIA already undertaken or request a new AIA process.

All licenses are valid for 5 years and are renewable on request[44]. A request for renewal must be submitted at least 180 days prior to expiry of the license and may result in a decision to request changes to the AIA already undertaken. Category A licenses pay 10,000Mt for renewal and Category B 5,000Mt while renewal is free of charge for Category C licenses[45]. Renewal is conditional on presentation of a new environmental management plan for categories A and B and an environmental performance report for category C licenses. No details of what an environmental report should contain or who should prepare it are provided in the legislation[46].

4.2.3 Fees

The entire cost of the licensing process is payable by the applicant. The only exception to this is further public consultation undertaken by MICOA (see section 4.4.2 below). Licensing fees are the only fees payable to the government for environmental licensing. Other costs, such as the contracting of environmental consultants are assumed privately by the applicant.

Licensing fees are calculated based on the total investment value. This stipulation has caused some difficulty particularly for companies which existed and invested prior to the introduction of the 2004 Environmental Impact Assessment Process Regulation. MICOA's 2006 Manual for Environmental Licensing seeks to clarify how total investment value is determined by requiring that it be established by the Ministry of Finance or by the applicant's nominated accountant who must be a government-registered accounts technician (*técnico de contas*).[47] However this does not answer the question as to whether it is based on the investor's social capital as stated in the company's articles of association, or whether it is based on the intended investment value as stated in for example a CPI (*Centro de Promoção de Investimentos* – Investment Promotion Centre) application.

As with all payments to government departments a receipt must be provided for any payment received. Increasingly it is also possible to make payments directly into the bank account of the department in question, using the deposit slip as proof of payment.

4.2.4 FAQs

- **How do I choose an environment consultant?**

Environment consultants must be registered with MICOA. The procedure for registration is provided in section 4.8 below. MICOA therefore has a list of registered consultants, both individuals and companies which they can provide for you. You then make your selection from the list. If you opt to choose a foreign environment consultant or consultancy to support you on your EIA or EAS, the foreigner must work together with locally registered environment consultants and must demonstrably comply with the

[44] [44] Decree 42/2008, Article 20, paragraph 3
[45] [45] Decree 42/2008, Article 20, paragraph 3
[46] [46] Decree 42/2008, Article 20, paragraph 3

[47] Procedures Manual for Environmental Licensing published by MICOA, October 2006

legal norms as established by the Ministry of Labour and Department of Immigration to be allowed to work in Mozambique. Recent changes to the environmental regulation (in Decree 42/2008) make it possible for MICOA's own staff to undertake EIA and EAS on behalf of companies, and while MICOA has privately distanced itself from this interpretation of the regulation, it has not expressly prohibited this activity either. Increasing pressure on companies to use MICOA staff is therefore expected.

- **How does MICOA calculate the licensing fee?**

As noted in section 4.2.3 above this issue is a complex one. The fees are based on investment value. However it is not entirely clear whether this is actual value invested to date, the share capital (social capital) stated in the company's articles of association, or proposed investment value based on for example a CPI registration. The decision in the recently published Manual for Environmental Licensing to specify that the investment value must be calculated by the Ministry of Finance or a government-registered *técnico de contas* suggests that the value to be used is the value invested to date, including but not limited to the company's social capital.

- **I have been told that I need to pay for a team from DPCA to visit my project before the AIA process can be started. Is this true?**

The simple answer to this is "no". Environment licensing is different from say the issuing of a land concession which requires one or more visits by government technicians to the site. The approval of a project by MICOA is not dependent on visits of their staff to the site. Indeed it is for this reason that environment consultants who undertake EIA and EAS are legally bound to declare conflicts of interest and are duly reminded in the legislation of the potential criminal and civil penalties associated with their activities. The environment consultant you appoint is in effect the eyes and ears of MICOA and is to visit the site and investigate, providing MICOA with the material on which to base its decision about the project.

However it has become increasingly common for DPCAs to refuse to accept AIA processes without visiting the site and being paid the transport and out of office fees associated with government technicians visiting projects. These visits and the associated payments are not governed by law though many investors report it is "easier" to make the payment and have the AIA process received. As with all payments to government departments a justification of the expenses requested and a receipt for payment must be provided. Another alternative open to applicants in this situation is a written appeal to hierarchical superiors within MICOA.

- **Can I get my provisional DUAT before I get my environmental license? What happens to my DUAT if there's a delay in issuing my environmental license?**

The issuing of a provisional DUAT for an area of land is not conditional on having an environmental license. Indeed the provisional DUAT must be submitted as part of the AIA process. However provisional DUATs are time limited with foreign DUAT holders having two years and national DUAT holders having five years to complete their development of the land, based on the usage plan submitted when applying for the DUAT. Development of the land may not begin without an environmental license. Investors note that environmental licensing may take some considerable time, which therefore reduces the time available to complete development before the provisional DUAT expires. However it is possible to extend a provisional DUAT, provided that the application to do so is submitted before the DUAT expires. A delay in environmental licensing is one of the justifications for extension accepted by the Ministry of Agriculture (the ministry responsible for issuing DUATs). For further details of the management of provisional DUATs see the booklet in this series "The Legal Framework for Obtaining Rights to Rural Land in Mozambique".

- **I have an existing activity which I think might need an environmental license. What should I do?**

You would be advised to seek legal counsel on this matter and you should prepare and submit an AIA process as soon as possible. This will determine which category your activity falls into and what type of licensing procedure you need to undertake. The fines for operating without a license are high and MICOA also has the right to either temporarily or permanently close down your activity for this infraction.

- **My application for pre-assessment has not been accepted for submission because my maps are not the correct size and scale. What size and scale should the maps be?**

There is no legal stipulation as to the size or scale of the maps to be submitted. Both the legislation and the form used to submit the pre-assessment documents state that the maps should be to a convenient scale (*a escala convenient*). Therefore it is to be presumed that the scale deemed convenient to the applicant is the one used. This may be because, in particular for some rural areas, accurate official maps are not available in a variety of scales. Investors report that this argument is sometimes used as a pretext for not receiving pre-assessment and indeed other documents (such as EIAs). This may be as a result of genuine misunderstanding or may be indicative of rent-seeking. Your best response is to appeal in writing to the hierarchical superior of the member of staff who refused to accept the documents, providing details of what took place.

- **My documents have been with MICOA for longer than the legally stipulated time periods. I have not received any communication that additional information is required. What should I do?**

If you have retained proof (perhaps in the form of copies of the documents submitted which have been stamped and dated by the department to which they were submitted) of the dates and times on which your documents were submitted, and of who received them you should write a letter to the head of the department where you submitted the documents, providing as much detail as possible and attaching copies of the proof of submission, and requesting further information about why the process has been delayed and when you can expect a response.

It is important to build a record of your interaction with the department (that goes for your interactions with any government department, not only MICOA), in the form of stamped and dated proof of submission of any and all documents and correspondence. This will assist you if you need to take the matter further, either by appealing to higher authority within MICOA or indeed taking recourse to an administrative legal process in order to secure a response to your application. Such instances are rare but it is good practice to retain a documentary record.

4.3 ENVIRONMENTAL IMPACT STUDIES

This section details the requirements for the various types of study required for environmental licensing. Not all requirements apply to activities in all categories.

4.3.1 EPDA

Activities in category A are obliged to undertake a Pre-feasibility Environmental and Scoping Study (*Estudo de Pré-Viabilidade Ambiental e Definição do Âmbito* - EPDA). The EPDA is to identify and evaluate the principal impacts, analyse the options for mitigation and define the scope of the EIA by identifying the environmental aspects which may be

affected by the proposed activity.[48] The EPDA should seek to determine fatal issues related to the implementation of the activity and the scope of the EIA and to develop the Terms of Reference for the same.[49]

The EPDA takes the form of a report with supporting data which must include:

- Non-technical summary;
- Identity of applicant and proposed team to undertake EIA;
- Details about the proposed area including location of activity (including maps), current land use and planning;
- Description of principal stages of activity including planning, construction demobilization etc.;
- Key aspects to be investigated in EIA including specialist studies to be undertaken.

The written decision which results from the pre-assessment indicates how many copies of the EPDA must be presented. The EPDA and supporting documentation must be presented in Portuguese. As with the pre-assessment, a technical committee is created by MICOA to study, revise and provide a final opinion on the EPDA report.

4.3.2 ToRs

Terms of Reference are required for both Category A and Category B activities[50].
ToRs for Category A activities must include:

- Identity of applicant;
- Identification of team responsible for EIA;
- Methodology to be used for EIA;
- Description of specialist studies to be undertaken as identified in the EPDA;
- Viable alternatives to be investigated;
- Description of public participation process;
- Other information to be required as part of the EIA.

ToRs for Category B activities must include[51]:

- Identity of applicant;
- Location of activity including maps;
- Description of how activity fits with current land use and planning;
- Description of proposed activity;
- Description of public participation process;
- Identification of environmental areas to be studied;
- Description of methodology to be used;
- Identification of team undertaking EAS.

The written decision which results from the pre-assessment indicates how many copies of the ToRs must be presented. The ToRs must be presented in Portuguese.

4.3.3 EIA

[48] Environmental Impact Assessment Regulation, Article 10, paragraph 1 and Article 1, paragraph 14.
[49] Environmental Impact Assessment Regulation, Article 10, paragraph 1, clauses a) and b).
[50] Environmental Impact Assessment Regulation, Article 11, paragraph 1
[51] Environmental Impact Assessment Regulation, Article 13, paragraph 2

A full EIA is required for Category A activities and for any other activity assigned to this category during the pre-assessment.

The EIA is a technical and scientific analysis of the possible consequences of the planned activity on the environment.[52] This study must be carried out by government-registered environment consultants[53], and is the sole responsibility of the applicant. The EIA must be conducted in accordance with the ToRs submitted to and approved by MICOA and with any general or specific directives issued by MICOA that may relate to the proposed activity.[54]

The EIA report and all supporting documentation must be provided in Portuguese. MICOA may request additional information to support the EIA report during the evaluation of the report. Specialist reports commissioned by the applicant as part of the EIA must be presented as annexes to the main report but in separate volumes.

The EIA must take into account not only the current environmental situation and impacts of the proposed activity but also potential impacts resulting from the closure of the activity. The written decision which results from the assessment of the EPDA and ToRs indicates how many copies of the EIA report and its annexes must be presented. For a detailed treatment of the requirements and contents of an EIA the reader should refer to MICOA's Directive for the Preparation of Environmental Impact Studies published as Ministerial Diploma 129/2006 of 19 July. We provide a summary of the contents of this diploma here.

The EIA report is evaluated by the same technical committee which evaluated the EPDA and ToRs. This committee provides a technical assessment and detailed opinion on the report with recommendations as to whether or not the proposed activity should go ahead. The committee may make recommendations as to specific requirements to be included in the environmental license.

The EIA report comprises three sets of documents of three levels of detail based on who will read them. These sets of documents are[55]:

- Non-technical summary
- Main report including annexes (including environmental management plan)
- Public consultation report

All references within the reports must be duly attributed and can either be footnoted or numbered and referenced in a detailed bibliography. Any maps and diagrams must also indicate the source of the data they contain. EIA reports must be presented in A4 format. Maps, drawings and diagrams must have legends where relevant. Scientific expressions must be presented in accordance with Mozambican and international norms. Measurements must follow international sizing norms. Technical and scientific data must be referenced and measurement or calculation methods must be provided. Each volume of the EIA report must have a front and back cover which contain the following:

- Cover – Main title of EIA report, title of specific volume, logo of applicant and environment consultant undertaking the EIA

[52] Environment Law, Article 1, paragraph 14 and Environmental Impact Assessment Regulation , Article 1, Paragraph 15
[53] Environment Law, Article 16, paragraph 1
[54] Environmental Impact Assessment Regulation, Article 12, paragraphs 1 and 2
[55] General Directive for the Development of Environmental Impact Studies, Part IV

- Back cover – Name and address of applicant, name and address of consultant undertaking the EIA, start and conclusion date of the EIA

a) Non-Technical Summary

This summary may not exceed 5 pages of text in arial font. It must include a simple map of the location of the planned activity with as much detail as necessary to enable a non-specialist to understand the activity and its area of influence. The non-technical summary must be written in clear, simple language to enable general understanding of the activity and its potential impacts by non-specialist readers. The summary may refer the reader to more technical detail elsewhere in the EIA.

b) Main Report

The main report should provide the reader with an analysis of the specialist studies undertaken and must include:

- Definition of the activity: identity of the applicant, justification of the necessity of the activity; alternatives to the activity and justification of the option selected; summary information about associated projects and activities.
- Description of the activity: location; characteristics; resource requirements; goods or services to be produced.
- Description of emissions and residues.
- Current environmental situation in the proposed location including biophysical, economic and social information and likely changes in the environmental situation with or without the planned activity.
- Positive and negative environmental impacts resulting from the activity, with particular attention to quality of life for surrounding population groups, safeguarding natural resources, interrelationships between different likely impacts, potential for mitigating negative impacts and environmental management plan.
- Risk analysis and accident and emergency plans for the activity.
- Comparative analysis of the alternatives for the activity including the advantages and disadvantages of each.
- Conclusions based on the analysis presented in such a way as to enable a decision to be made.
- Bibliography, maps, photographs, diagrams and any other diagrammatic representation needed to facilitate understanding of the main text.

Further detail on the contents of each section of the report are provided in MICOA's Directive for the Preparation of Environmental Impact Studies

In addition to these sections the report must contain a comparative analysis of the alternatives for the planned activity. The results of this analysis must be presented in both text and graphic form and should include a cost-benefit analysis. The following short or long term impacts should always be considered significant:

- Those which cause or lead to environmental damage;
- Those which cause or lead to imbalance in the existing environment;
- Those which are a risk to the survival of traditions, ways of life or cultures;
- Those which may affect the health and quality of life of population groups;
- Those which reduce the options for future development;
- Potentially major impacts the impact of which are unknown;
- Socially unacceptable risks;
- Those which may lead to social or institutional conflict.

The EIA must include fundamental elements of environmental accounting which allow for future monitoring and auditing of the activity.

Where gaps in knowledge exist these must be indicated in the EIA. This includes noting impacts that it may not be possible to mitigate against and identifying potential impacts about which there is insufficient knowledge. The report may define priority areas for future scientific or technical research and may also analyse lines of communication and the way in which information reaches users, recommending ways of improving administrative and information systems. If the report recommends further research it should provide terms of reference for specialists to undertake this research.

c) Environmental Management Plan

The environmental management plan comprises one of the annexes to the main EIA report and should include detailed information about proposed activities to mitigate against negative environmental impacts and plans to manage the environment affected by the activity. The plan should include four sections:

- Monitoring Programme – this should contain: monitoring objectives; environment policy and legal structure; scope; responsibilities and procedures; monitoring activities; effects of monitoring; internal environmental audits; socio-economic monitoring; anticipated outcomes and plans to readjust according to those results; environmental evaluation performance.
- Risk and Emergency Control Plan – this should include an analysis of the different accident risks including causes, consequences, frequency and probability. It should also include details of preventive measures and response plans. Special attention should be paid to high impact, high probability risks, and these should be analysed based on worst case scenario. Mitigation measures should include risk-cost analysis in order to justify the importance attributed to the different possible mitigation measures. Emergency plans must include reference to their fit within the institutional structure and must include measures to protect surrounding population groups, nature, and infrastructure. They must include details of roles and responsibilities and the actual and potential capacity to respond of those allocated the different responsibilities.
- Maintenance Action Plan – this should include details of potential impacts and plans to minimise risk from the maintenance of buildings and equipment related to the proposed activity.
- Environmental Education Programme – projects located near to environmentally sensitive areas, Protected Areas or Conservation Areas must ensure that people have access to information about their activities and the care that will be taken of the environment, and the EIA must include plans for an environmental education programme.

d) Public Consultation Report

The EIA must contain details of the public consultation undertaken. This takes the form of a separate report which includes an introduction, identification of the interested and affected parties, questions raised, responses to questions raised, outcomes and agreements reached and conclusions. Public consultation is dealt with further in section 4.4 below.

e) Annexes

Annexes are all those documents and reports which do not comprise the non-technical summary, main report and public participation report. They should be presented in separate volumes and submitted along with the EIA. The report must include an index of annexes.

4.3.4 EAS

An EAS is required for Category B activities and for any other activity assigned to this category during the pre-assessment.

The EAS is a simplified technical and scientific analysis of the possible consequences of the planned activity on the environment.[56] This study must be carried out by government-registered environment consultants[57], and is the sole responsibility of the applicant. The EAS must be conducted in accordance with the ToRs submitted to and approved by MICOA and with any general or specific directives issued by MICOA that may relate to the proposed activity.[58]

The EAS is similar in structure to the EIA, as outlined above, but as its name suggests is a simplified form of EIA. The EAS report must include[59]:

- Non-technical summary;
- Location and description of activity;
- Legal basis for activity;
- Environmental description and diagnostic;
- Identification and evaluation of impacts;
- Environmental management plan (including monitoring programme, environmental education programme, and accident contingency plan[60]);
- Identification of team that undertook the study;
- Public participation report (if required).

The EAS report and all supporting documentation must be provided in Portuguese. MICOA may request additional information to support the EAS report during the evaluation of the report. Specialist reports commissioned by the applicant as part of the EAS must be presented as annexes to the main report but in separate volumes. The EAS must take into account not only the current environmental situation and impacts of the proposed activity but also potential impacts resulting from the closure of the activity. The written decision which results from the assessment of the ToRs indicates how many copies of the EAS report and its annexes must be presented and also indicates whether or not a public consultation is required.

The EAS report is evaluated by the same technical committee which evaluated the ToRs. This committee provides a technical assessment and detailed opinion on the report with recommendations as to whether or not the proposed activity should go ahead. The committee may make recommendations as to specific requirements to be included in the environmental license.

4.3.5 FAQs

[56] Environment Law 20/97, Article 1, paragraph 14 and Environmental Impact Assessment Regulation, Article 1, paragraph 15
[57] Environment Law, Article 16, paragraph 1
[58] Environmental Impact Assessment Regulation, Article 13, paragraphs 1 and 2
[59] Environmental Impact Assessment Regulation, Article 13, paragraph 3
[60] Decree 42/2008 Article 24, paragraph 2

- **I have had a large number of specialist reports and scientific investigations prepared by foreign consultants for my EIA. These reports are in English. Do I need to have them translated?**

The short answer to this question is "yes". All supporting documentation for an EIA must be presented in Portuguese. Portuguese is the official language of Mozambique. The EIA is a public document which may not only be read by MICOA technicians but also by the public at large, and must therefore be accessible to them.

- **I have an environmental management plan. Do I need to update it? How can I check that we are following it correctly?**

An environmental management plan is a tool for you to use. It is a guide on which you should base your activities and the monitoring of those activities. It is good practice to review the management plan on a regular basis. Activities which fall into Category A and Category B may be required to submit a revised management plan as part of their license renewal application every five years. Activities in specific sectors may be required by sector-specific legislation to review their management plans on a regular basis. Mining activities are obliged to update their environmental management plans every five years and to submit an annual environment report.

An environmental audit (see below section 4.5) is one way to measure compliance with an environmental management plan and to ensure that it is reviewed on a regular basis. Your environmental management plan should also include details of how the plan is to be monitored. Your compliance with the plan and with the monitoring measures it contains can be checked through an environmental audit.

4.4 PUBLIC PARTICIPATION PROCESS

Both the Constitution and Environment Law establish the rights of citizens to have information about and participate in decision-making about activities which may affect the environment.[61] A public participation process identifies and consults with interested and affected parties (*Partes Interessadas e Affectadas* – PI&As).[62]

Public participation is required for Category A and is optional (based on instructions from MICOA to the applicant) for Category B activities. For a detailed treatment of the requirements and contents of a public participation process the reader should refer to MICOA's Directive for the Public Participation Process published as Ministerial Diploma 130/2006 of 19 July. We provide a summary of the contents of this diploma here. A public participation process must be carried out whenever the proposed activity implies the permanent or temporary relocation of people or communities, and the relocation of goods or assets or restrictions on the use of or access to natural resources.[63]

The public participation phase of the AIA is expected to identify the PI&As, disseminate information to them, manage a dialogue with the proponent of the activity, assimilate and take into account public comments received and feedback the outcomes of the dialogue and inputs so as to demonstrate how these have been taken into account in the design of the activity. Public participation is an integral part of the AIA and should not end with the issuing of the environmental license but should continue during the construction and operational phases of the planned activity.

[61] Environment Law, Article 4, clause e) and Article 19
[62] Environmental Impact Assessment Regulation, Articles 1, paragraph 27 and Article 14, paragraph 1
[63] Environmental Impact Assessment Regulation, Article 14, paragraph 5

The process of public participation includes public consultation and a public enquiry which must be carried out in compliance with directives issued by MICOA.[64] Public participation is divided into two phases, the first one running between the application for pre-assessment of the activity and the submission of the EIA or EAS report to MICOA, and the second running between the review of the ToRs by MICOA and the issuing of the environmental license. The first phase is the responsibility of the applicant and the second is MICOA's responsibility.[65]

4.4.1 Public Consultation – applicant's responsibility

The applicant must appoint a government-registered environment consultant. This consultant should manage the public consultation on behalf of the applicant. Public consultation begins with an exhaustive investigation of the area which may be affected by the proposed activity in order to identify the PI&As. The investigation should seek to obtain not only the names and contact details of people and organisations considered PI&As but also details of any plans, programmes or development activities which they may be undertaking within the affected area.

Having identified the PI&As the applicant must then disseminate information about the proposed activity and its potential impacts. This must be done in a way that is accessible and useful to each different type of PI&A, which may mean that information must be provided in the local language. Information should be made available in public locations so that interested parties can access it. Public meetings should be held in convenient locations to discuss the project. Such meetings must be called publicly (by communicating directly with PI&As and publishing advertisements in local news media) at least 15 days before the proposed meeting date.[66]

Public consultation meetings should begin with an explanation of the importance of the inputs of the PI&As into the proposed activity and should include an explanation of the activity and potential positive and negative impacts. Participants should then be invited to present their questions and concerns. All such meetings must be minuted and the minutes signed by those present, and lists of participants collected.

In addition applicants for environmental licenses may opt to hold smaller seminars with PI&As from specific sectors, or to hold individual or small group meetings at which individual or group concerns can be discussed and debated. All comments received, concerns expressed and suggestions made must be recorded. Any agreements reached or changes in the project based on requests or suggestions from PI&As must also be recorded. Note that it may be necessary to re-visit and meet with some groups more than once and applicants may opt for a concluding public consultation at which they present the outcomes of the public consultation process, agreements reached and any changes made in the proposed project. This final meeting also allows the applicant to prepare a basis for future dialogue with PI&As during the construction and operation phase of the activity.

The public consultation concludes with the preparation of a public consultation report, which is submitted as part of the EIA or EAS. This report must include:

- Name of activity;

[64] Environmental Impact Assessment Regulation, Article 14, paragraph 1
[65] Environmental Impact Assessment Regulation, Article 14, paragraphs 2 and 3
[66] Environmental Impact Assessment Regulation, Article 14, paragraph 6

- Name of applicant;
- Location and date of production of the report;
- Introduction including a summary of the consultation process;
- Details of consultation process including issues raised;
- Details of solutions agreed and any changes made based on the consultation.

4.4.2 Public Consultation – MICOA's responsibility

If MICOA deems it necessary having reviewed the ToRs (and EPDA in the case of Category A activities) it may undertake its own public consultation. This follows the same structure as that for public consultation undertaken by the proponent. More usually however MICOA may oversee a public enquiry requested by members of the public during the licensing process.

A public enquiry may be called for when the nature, characteristics and effects of the activity so justify. Public enquiries may be requested by individuals, local authorities, economic associations, and research and educational establishments any of which may have a direct or indirect interest in the proposed activity. Public enquiries follow similar rules to those of a public consultation, being advertised in the press and inviting minuted comments and suggestions. Public enquiry reports must include details of issues raised and contact lists of those who participated as well as signed minutes of each public enquiry meeting which took place.

4.4.3 FAQs

- **My activity requires a public consultation process. Who will organise it for me and do I have to be involved?**

The environment consultant that you have appointed should support you through the public consultation process. Indeed it is their responsibility to provide an independent report on the public consultation as part of their EIA or EAS report. Whether or not you have to be involved will depend on the structure of the public consultation. However it is usually a good idea to have at least one representative of your activity present at the public consultations.

These meetings provide an opportunity to explain your activity to those who may ultimately be your neighbours, and also provide a platform on which you can build future dialogue with the community around you. Open discussion and debate during the public consultation process are good ways to respond to questions and concerns before the activity begins rather than having to deal with complaints at a later stage. Public consultation and regular discussion with those affected by your activity should not be seen as a one-off activity, but should be something which is ongoing, based on relationships developed during the public consultation process.

- **We have undertaken a public consultation process and completed it, and submitted the public consultation report as part of the EIA. However we have now been contacted by a group which has concerns about the project and says it was not included in the public consultation process. What should we do?**

Firstly you should verify that all the stages required for setting up the public consultation process were fully complied with. For example you should check how the PI&As were identified and how invitations for public consultation were given. Check also that any advertising of public meetings complied with the requirement of 15 days notice being given. You may be asked to demonstrate that you complied with these requirements.

Secondly the group that approached you has several options open to it. It can approach MICOA and request a public consultation undertaken by the government. If it feels that its voice has still not been heard in certain legally defined situations, it has various avenues of legal recourse, which could include the temporary or permanent closure of your activity, depending on the nature of the complaint.
However it may also be possible for you to engage with this group even at this stage in the proceedings and begin a dialogue. This would likely be the most positive way to deal with the issue. As noted above public consultation is supposed to be an ongoing process, which begins with the official public consultation during the EIA but may continue for the life of the project. Therefore it is likely that, during the lifetime of the activity, groups and individuals will come forward as PI&As, but that were not included in the original public consultation. This being the case you could provide a forum for ongoing discussion which is widely publicised and gives just such groups an opportunity to enter into dialogue with you.

4.5 ENVIRONMENTAL AUDITING

The AIA is a preventative mechanism which applies to proposed activities, or activities that have not yet been implemented. The Environment Law also includes the requirement for Environmental Auditing (*Auditoria Ambiental* - AA) which is a mechanism to manage existing and ongoing activities that may result in environmental damage.[67] AAs are therefore undertaken after an activity has received its environmental license.

The AA is a management tool designed to ensure ongoing legal compliance and compliance with the environmental management plan submitted as part of the EIA or EAS. The AA also seeks to identify areas for improvement.[68] The purpose of the AA is to organise and interpret environmental monitoring data, to verify that monitoring is legally compliant, to compare actual impacts with those predicted in the EIA or EAS and management plan, evaluate the environmental management system in place and determine whether or not mitigation measures in use are satisfactory. The outcomes of the AA should be regular review of the environmental management plan and optimised environmental protection based on up to date information about best practice.

An AA may be public, when carried by a government authority, or private, when carried out by the environmental license-holder.[69] Public audits may be undertaken by MICOA whenever it deems it necessary to do so.[70] Private audits are undertaken in accordance with the company's environmental management plan.[71] The costs of a private AA are borne by the organisation undertaking the activity being audited.[72] The law is not clear on whether the organisation must also bear the costs when the AA is public. In the case of private AAs it is usual for companies to contract a government-registered environment consultant to provide this service, though companies with in-house environment staff may opt to undertake the process themselves.

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[67] Environment Law, Article 18, paragraph 1 and Environmental Impact Assessment Regulation, Article 24, paragraph 2
[68] Environmental Auditing Manual, published by MICOA, July 2001
[69] Decree 32/2003 (The Environmental Audit Regulation), Article 3, clauses a) and b)
[70] Environmental Audit Regulation, Article 6
[71] Environmental Audit Regulation, Article 7
[72] Environmental Audit Regulation, Article 9

The AA begins with a brief plan which defines the scope of the audit, the location where it will take place and the objectives of the audit. The plan also includes defining the specialists that will take part in the audit. The audit itself usually takes place in three phases:

- Pre-audit;
- Audit;
- Post-audit.

The pre-audit includes development of a more detailed audit plan and preparation of an audit questionnaire as well as analysis of background documentation and preparation of a list of documents and data required by the audit team. The pre-audit phase may also include a preliminary visit to the site of the audit to gather additional background information.

The audit proper begins with an opening meeting which presents the specialists, introduces the audit plan and raises any issues which may affect the outcome of the audit. Having reviewed any documents they require the audit team then embarks on a detailed inspection of the site and interviews with workers, and if necessary with PI&As. Based on its findings the audit team prepares an interim audit report which details activities undertaken and issues raised as well as any interim recommendations for discussion. This report is presented at a closing meeting during which the organisation being audited has the opportunity to comment on findings and agree any changes in its operations which may be required.

The post-audit includes the development of a final audit report containing details of the full audit process and outcomes. This report is circulated for comments before being finalised. Based on the final audit report a plan of action should be developed. This plan should include specific actions to be taken and should allocate responsibility for these actions. The action plan should include detailed time periods for implementation and procedures for monitoring and review of the plan.

Copies of all documentation relating to environmental audits should be held by the audited organisation and may be requested for inspection by MICOA.

4.5.1 FAQs

- **I would like to undertake an environmental audit. How can I find a consultant to do this for me?**

Environmental auditors, like environmental consultants, must be registered with MICOA (see section 4.8 below). MICOA holds a list of environmental auditors which they can provide for you. You should make your selection from this list.

- **MICOA sent a team to audit my activity. On the basis of their findings they have instructed me to close my activity. Can they do this?**

The short answer is “yes”. Depending on the findings of the audit you could be subject to temporary closure of your activity while you correct the issues identified. If the infractions and environmental damage found during the audit are sufficiently serious your activity may be closed permanently. However this is less usual, and normally you would be given the opportunity to correct the issues raised by the audit findings. You may also be subject to a fine for any infraction found by the auditors and for reparation for any environmental damage you are found to have caused. Reparation is calculated based on the findings of an environment expert (*périto ambiental*) appointed by MICOA.

As part of the audit you will have been provided with a copy of the audit report and findings which will determine your next steps. MICOA must also give you a written notification of their intention to close your activity, along with the reasons for doing so and their basis in law. You should work closely with MICOA to resolve the situation and to correct any infractions. If however you believe that you have been treated unfairly you have legal recourse open to you and you should seek legal counsel accordingly. Legal recourse would likely require you to undertake an independent audit and to argue the case from the point of view of the findings of the independent audit.

4.6 LEGAL INFRACTIONS & ENVIRONMENTAL DAMAGE

Environmental licensing, management and damage to the environment are treated with due seriousness under Mozambican Law. Anyone undertaking any activity which may be subject to environmental licensing would do well to ensure that they are fully legally compliant as the sanctions for non-compliance are high. A sample of key infractions and sanctions are outlined below. This sample is by no means representative and we encourage the reader to consult legal counsel if they believe themselves to be in breach of any of the environment legislation.

Mozambican law includes both criminal and civil responsibility for environmental damage. The 2004 Constitution introduced the right to class action.[73] It allows that citizens may seek indemnity for and the prevention, cessation or prosecution of offences against public health, consumer rights, and, of interest to us here, the protection of environmental and cultural heritage. Complementary legislation defining the procedures to be followed for class action has not yet been approved.

Under the Environment Law, any citizen who considers his rights (including the Constitutional right to a healthy and balanced environment mentioned in section 3.1 above) have been violated, or are threatened with imminent violation has standing to seek an injunction against such actual or prospective violation. If the violation resulted in damage to the claimant (whether personal or to his property), payment of damages or restoration of the environment to the state it was in before the violation may be required. In certain cases, those that claim they have been harmed may seek an administrative injunction causing the immediate suspension of the offending activity.

The Civil Code[74] includes the concept of civil responsibility for environmental damage. The Civil Code also provides for financial compensation which must take into consideration the actual situation of the injured party and the situation in which he would be had damages not been caused.[75] The Civil Code also includes the right of a neighbour to lodge a complaint against emission of fumes, noise or vibrations which prejudice his property[76] or to oppose construction or the storage of dangerous substances near his property.[77]

If the results of an AA confirm the existence of environmental damage, the costs resulting from the repair of such damage are to be assumed by the proponent of the activity.[78] The law establishes the concept of objective liability meaning that those found

[73] 2004 Constitution, Article 81
[74] Decree Law 47344 of 25th November 1966, applied in Mozambique through Edict 22869
[75] Civil Code, Articles 562 and 566
[76] Civil Code, Article 1346
[77] Civil Code, Article 1347
[78] Environment Law, Article 18, paragraph 2

responsible for causing environmental damage shall pay an indemnity to those affected, independent of the blame.[79] The government is responsible for evaluating environmental damage and establishing the value of the indemnity payable, based on the findings of an environmental expert (*perito ambiental*).[80] Whenever environmental damage is found to have occurred the government may take all necessary measures (including closing down an operation) in order to prevent further damage to the environment.[81] The government may seek costs for any actions it has to undertake to limit environmental damage from the proponent of the activity causing the damage.[82]

Any organisation carrying out an activity which runs the risk of causing serious environmental damage must have civil liability insurance.[83]

Operation without an environmental license may lead to a fine of double the fee payable for the issuing of the license and immediate closure of the activity.[84] The submission of an application for environmental licensing after beginning the activity in question, alteration of the licensed activity without giving prior notice and the non-implementation of measures recommended in the EIA or EAS are all liable for fines of between 24,000 and 240,000Mt.[85] The obstruction of environmental auditors may be subject to a fine of between 20,000 and 60,000Mt.[86] These fines may be increased if obstruction is carried out by a senior member of staff in the organisation being audited or in the case of repeat infractions. The non-renewal of environmental licenses, or the continuation of activity after the license has expired (applicable only to Category A activities) carries a fine of between 10,000 and 20,000Mt. [87]

4.7 SPECIAL FORMS OF ENVIRONMENTAL LICENSING

4.7.1 Land

Land in Mozambique is the property of the State.[88] It may not be sold, mortgaged or otherwise alienated. Land rights are sometimes referred to as "rights to use and enjoy land" based on the translation of the Portuguese term "*Direito de Uso e Aproveitamento de Terra" or* "DUAT".

Large-scale land use, clearance of land and development on land may all be subject to environmental licensing (see Annex 5.1 for further details). Further details of how a DUAT may be obtained are included in a booklet in this series entitled "The Legal Framework for Obtaining Rights to Rural Land in Mozambique". An environmental license is not a pre-requisite for obtaining a DUAT but DUAT-holders would do well to undertake an AIA process to determine whether or not the development they are undertaking on the land for which they hold DUAT requires an environmental license.

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[79] Environment Law, Article 26, paragraph 1
[80] Environment Law, Article 26, paragraph 2. An environmental report is an investigation undertaken by a group of recognized experts with the purpose of evaluating the seriousness and cost of damages caused to the environment (Law 20/97, Article 1, paragraph 20)
[81] Environment Law, Article 26, paragraph 3
[82] Environment Law, Article 26, paragraph 3
[83] Environment Law, Article 25
[84] Environmental Impact Assessment Regulation, Article 26, paragraph 3
[85] Environmental Impact Assessment Regulation, Article 26, paragraph 2, paragraph 4
[86] Environmental Audit Regulation (Decree 32/2003 of 20 August), Article 14, paragraph 1
[87] Environmental Impact Assessment Regulation, Article 26, paragraph 2
[88] Constitution of the Republic of Mozambique, 2004, Article 109

4.7.2 Water

The principal legislation governing water is the Water Law (Law 16/91 of 03 August). While the Water Law does not have a regulation providing procedures for its application, a draft regulation does exist and is used on occasion as though it were already passed.

Water use may be "common" (for domestic, family or personal use, in which case use is considered free in terms of cost and access) or "private". Private water use may be undertaken as follows:

a) rights conferred under law (the law permits that holders of the right to use and enjoy land – which is to say DUAT-holders, can use water sources on their land without requiring a license, as long as the use is for domestic or agricultural purposes, unless the volume to be used is such that a license or concession is required);[89]
b) licensed rights; or
c) water rights concession.[90]

The Water Law also determines priorities for the use of water, with the provision of water for consumption and sanitation by the population being the main priority.[91] Private consumption is not permitted if it in any way prejudices the amounts of water required for environmental stability. In the case of water conflicts, private usage may not be authorized if the socio-economic benefits of the activity in question do not justify private use.[92]

The transmission of a title for the use and enjoyment of land (DUAT) and of the activities being undertaken on the land implies the transfer of the private water usage rights if such rights have been granted.[93] Independently of the transfer of other rights, water rights may be transferred between persons if authorization is given by the relevant government institution.[94]

A license or a concession for the use of water may be given to any natural or legal person, public or private, national or foreign if:

a) the applicant is legally authorized to be in Mozambique (i.e. has the relevant registration and licenses); and
b) the concession does not damage environmental and ecological equilibrium.

Licenses for water use are managed by the Regional Water Administration (*Administração Regional de Água* – ARA) [95], where use is not permanent and does not alter the structure (banks, shores etc.) of the water source. The following are also subject to licensing:

a) prospecting, capturing and using underground water in a protected area;
b) installation of reservoirs, planting of crops or felling of trees on the beds or shores of a water source; and
c) removal of sand or clay on the banks or shores of a water source.[96]

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[89] Water Law, Article 23, paragraphs 1 and 2
[90] Water Law, Article 21 paragraphs 1 and 3
[91] Water Law, Article 26 paragraph 1
[92] Water Law, Article 26 paragraph 2 and 3
[93] Water Law, Article 29 paragraph 1
[94] Water Law, Article 29 paragraph 2
[95] Water Law, Article 18. To date the following have been created: ARA Sul, ARA-Centro, ARA-Zambeze, ARA Centro Norte and ARA-Norte.
[96] Water Law, Article 18 paragraph 3 line c) and Article 32 paragraph 2

Water use licenses are valid for five years and are renewable. However, the license is revoked if a water concession is requested in the same area.[97] Licenses, being temporary and revocable cannot form the basis for opposition to a concession request.

In any situation not covered above, a concession is required. Concessions are also given by the ARA, are valid for 50 years and are renewable.[98] A concession application must be based on economic and technical reasons.[99] A water concession is also required for water used for treating or cleaning minerals and for other industrial processes.[100] If the industry in question is subject to concession, as in the case of mining for example, then harmonization of the periods of the concessions for industrial and water usage is required.[101] Concession fees are calculated based on the average or estimated volume to be used, the type of user and the likelihood of contamination.[102]

The Water Law also requires the avoidance of contamination. Activities which directly or indirectly result in water contamination, build up of solid waste or other contaminants may only be undertaken with special authorization.[103]

4.7.3 Natural Resource Management, Protected Areas & Heritage

The management of forestry and wildlife resources on the basis of concession agreements is dealt with more fully in a booklet in this series entitled "The Legal Framework for Obtaining Rights to Rural Land in Mozambique". Environmental licensing is usually a pre-requisite for the issuing of a concession title for forestry or wildlife management.

Mozambique has national legislation which protects certain species and ecosystems and is signatory to several international conventions on environments protection. The Forestry & Wildlife Law and its regulation (Law 10/99 of 22 December and Decree 12/2002 of 25 March, respectively) provide for the creation of protected areas (national parks and reserves, and areas of historic or cultural value). This legislation includes requirements for sustainable use of the country's forestry and wildlife resources and includes lists of protected species. The protected species list is updated as more is learned about the resources available. The most recent update is reflected in Decree 96/2003 of 28 July.

Human – animal conflict, uncontrolled poaching and the burning of areas for slash and burn agriculture continue to pose problems for the management of natural resources in Mozambique.

The Environment Law foresees the establishment of environmental protection areas to ensure the protection and preservation of natural resources, as well as the maintenance and improvement of ecosystems with recognized ecological and socio-economic value.[104]

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[97] Water Law, Article 33 paragraphs 1 and 2
[98] Water Law, Article 18 paragraph 3 line c), Article 35 and Article 36, paragraph 1
[99] Water Law, Article 37
[100] Water Law, Article 48 paragraph 1
[101] Water Law, Article 48 paragraph 3
[102] Water Law, Article 42 paragraph 1 and Article 43
[103] Water Law, Article 53
[104] Law 20/97, Article 13

The Forestry & Wildlife Policy recognizes the legal establishment of 21 conservation areas, including parks, reserves and official game hunting reserves. Some ecological systems are not covered by existing conservation areas.[105] The Forestry & Wildlife Law does not specifically define the concept of conservation areas, only defining conservation as "the sustainable management of forestry and wildlife resources without putting at risk biodiversity".[106]

The Forestry & Wildlife Law allows for the creation of buffer zones around protected areas which are designed to provide a transitional area between the protected zone and multiple use areas in order to control and reduce the impacts of human activity on the protected zone.[107] Buffer zones are not yet regulated but legislation is in the process of being drafted and will likely impact the environment licensing of activities within buffer zones.

National parks are defined as areas destined for the preservation of natural ecosystems, areas of great scenic beauty, and which are representative of the national heritage.[108] National parks are "totally protected areas".[109] Management of national parks is subject to the presentation of a management plan based on requirements provided by the Ministry of Tourism, which is responsible for parks and protected areas and the Ministry of Agriculture, which is responsible for forestry and wildlife resources.

Activities in national parks and national reserves are also subject to environmental licensing. Certain activities are prohibited in these areas, and these include hunting, forestry, agriculture, mining, livestock farming, survey and prospecting and some types of construction[110]. However, in contradiction to this prohibition paragraph 8 of article 10 of the Forestry & Wildlife Law allows for the possibility that the Council of Ministers, for reasons of public interest, can, exceptionally, authorise certain activities in protected areas. It is not clear if in such cases an environmental license would also be required. Also, in contradiction with paragraph 2 of article 11 of the Forestry & Wildlife Law, article 19 of the Environment Regulation for Mining Activities (Decree 26/2004) appears to permit mining activities in national parks and reserves.

Given the history of Mozambique, and particularly of its coastal areas it is possible that anyone developing land may encounter areas or items of archaeological or cultural significance on the area over which they hold DUAT. Both cultural and archaeological areas and finds are regulated by law.

Archaeological heritage is regulated by the Archaeological Heritage Protection Regulation (Decree 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".[111]

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

[105] Resolution 8/97, Section 1.2.3, paragraph 21
[106] Forestry & Wildlife Law (Law 10/99 of 22 December), Article 1, paragraph 6
[107] Forestry & Wildlife Law, Article 1, paragraph 38
[108] Land Law, Article 1, paragraph 28
[109] Land Law, Article 7 and Forestry & Wilflide Law, Article 11 paragraph 1 and Article 12 paragraph 1
[110] Forestry & Wilflide Law, Article 11 paragraph 2
[111] Archaeological Heritage Protection Regulation (Decree 27/94 of 20 July), Article 2

nearest local authority (district administration or municipal council) within 48 hours.[112] Depending on the type of excavation taking place and the discovery made, work must 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. Where archaeological heritage exists this must be taken into consideration in EIA and EASs.

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 People.[113] 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. Activities which may affect cultural heritage are subject to environmental licensing.

4.7.4 Mining

The environment as it relates to mining activities is governed by specific legislation, Decree 26/2004 of 20 August, the Environmental Regulation for Mining Activities and by the Basic Standards for Environmental Management for Mining Activities approved by Ministerial Diploma 189/2006 with particular focus on Level 1 mining activities, as well as by the standard environment legislation discussed elsewhere in this guide. The environmental aspects of mining are directly linked by this legislation to the concession and ongoing use of a license to mine. Environmental aspects can result in the requirement to revise a project or indeed ultimately to the cancellation of a mining title. The Mining Law and the Environmental Regulation for Mining Activities classify mining activities into three levels, depending on the scope of operations and the complexity of equipment used, the documentary requirements for environmental compliance, and the associated costs.[114]

Level 1 mining activities basically equate to activities which the Environmental Impact Assessment Regulation classes as Category C. Level 2 mining activities are broadly similar to Environmental Impact Assessment Regulation Category B and Level 3 mining

[112] Archaeological Heritage Protection Regulation, Article 2 paragraph 2. In such cases, the discovery must be communicated within 48 hours to the district administration or to the city council (Archaeological Heritage Protection Regulation, Article 10 paragraph 1 and Law 10/88 of 22 December, Article 6, paragraph 3 which defines the Legal Protection of Mozambique's Cultural Heritage)

[113] Law 10/88 of 22 December, Article 3, paragraph 1

[114] Mining Law (Law 14/2002, of 26 June), Article 37, paragraph 1 and Environmental Regulation for Mining Activities (Decree 26/2004 of 20 August), Article 1, paragraphs 1, 2 and 3. The regulation provides as follows: Level 1: activities undertaken by individuals or cooperatives and including reconnaissance, prospecting and survey; Level 2: quarrying, excavation of mineral products for construction, mechanized prospecting and survey and pilot projects; Level 3: All other activities

activities broadly equate to Category A activities. That is to say, Level 1 mining activities must follow basic environmental norms; Level 2 mining activities must follow an environmental management plan and Level 3 mining activities require an AIA.[115]

While the Environmental Regulation for Mining Activities does not stipulate that Level 1 and Level 2 activities should submit their request for a license in accordance with Section 4.2 above, it is to be presumed that all activities which may result in some environmental damage have to undergo a pre-assessment in order to determine their category and type of license required. Therefore Level 1 mining activities, which will likely fall within Category C, must still apply for their license (see Sections 4.2 and 4.2.3 above).

The environmental impact assessment (EIA) which forms part of the environmental licensing process is the same as that detailed above in section 4.3. The EIA must be begun during the feasibility phase of the mining project.[116] The applicant for an environmental license first submits the terms of reference for the environmental consultants and the periods and procedures for the public consultation process.[117] As with standard EIAs, the report must include an environmental management plan. However in the case of mining the Environmental Regulation for Mining Activities, requires that, as part of the environmental management plan, the applicant for an environmental license presents a "program for the rehabilitation of the affected area and closure of the mine".[118]

To ensure that mine closure will be undertaken in accordance with environmental requirements, a financial bond must be put up during the closure phase to cover the costs of installation removal and rehabilitation for both Level 2 and Level 3 activities.[119] The bond is calculated based on the estimated cost of rehabilitation or removal of the mining installation.[120] In the case of Level 3 mining activity the estimation of this cost must be included in the environmental management plan, based on information obtained during the Environmental Impact Assessment.[121]

The environmental management plan must cover a period of at least five years, at the end of which a new plan must be submitted for approval. The environmental management plan for mining activities must also include risk and emergency management plans. In the case of mining, the EIA and environmental management plan are reviewed not only by MICOA but also by MIREM (Ministry of Mines and Energy).[122]

Having approved the EIA, MICOA issues an environmental license which is valid for the same period as the mining license or concession, but must be reviewed every five years.[123] The holder of a mining environmental license must also submit an environmental management report annually. This report must include the results of environmental, biophysical, socio-economic and cultural monitoring.[124]

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[115] Environmental Regulation for Mining Activities, Article 5
[116] Environmental Regulation for Mining Activities, Article 8 paragraph 3 and Article 9 and 10
[117] Environmental Regulation for Mining Activities, Article 8 paragraph 3
[118] Environmental Regulation for Mining Activities, Article 11, paragraph 4, Clause e)
[119] Environmental Regulation for Mining Activities, Article 24, paragraph 1
[120] Environmental Regulation for Mining Activities, Article 24, paragraph 2
[121] Environmental Regulation for Mining Activities, Article 24, paragraph 3
[122] Environmental Regulation for Mining Activities, Article 8, paragraph 3 and Articles 9 and 10
[123] Environmental Regulation for Mining Activities, Article 13
[124] Environmental Regulation for Mining Activities, Article 14

The fee for environmental licensing of mining activities is as that for standard environment licensing.[125] In addition the Environmental Regulation for Mining Activities includes the following fees for the review and update of environmental management plans:[126]

- Prospecting and survey: 750Mt
- Pilot projects: 1,000Mt
- Minerals for use in construction: 1,500Mt

As with the sanction for other activities, if a mining activity which is subject to environmental licensing is undertaken without the correct license the proponent may be fined up to double the cost of licensing, and have activity immediately suspended.

The Environmental Regulation for Mining Activities also encourages mining operators to enter into memoranda of understanding with national and provincial governments and with local communities. Such memoranda would include methods and procedures for the management of environmental, socio-economic, cultural and biophysical issues both during operations and following deactivation.

Though there is a lack of detail, the mining legislation includes generic obligations to restore the environment in the area where mining activity took place and if necessary in adjacent areas found to have been affected. The proponent of the mining activity is expected to put forward a proposal for environmental management as part of the environmental licensing process, and the relevant government bodies will then approve or request changes, or indeed decline to approve the request for an environmental license. Where the legislation is silent on specific details, the terms of the environmental license itself will supply the details of obligations imposed based on the AIA.

While not strictly related to the environment, proponents of mining activities would also do well to consider Ministerial Diploma 96/81 of 16 December, the Technical Safety for Mining Activities Regulation and the Technical Safety and Health Regulation for Geological and Mining Activities approved under Decree 61/2006 of 26 December which include health and safety aspects such as the parameters for gas emissions, environmental ventilation, air quality control, prevention of explosions, the storage use and transport of explosives. There is a variety of other legislation which applies to the mining sector (some of which is listed in Annex 5.3), and when in doubt we would encourage the proponent of a mining activity to seek specialist legal counsel.

4.7.5 Effluents & Emissions

Effluent emissions are regulated by the Environmental Quality and Effluent Emission Norms (Decree 18/2004 of 02 June). This legislation must be taken into account during the AIA process described above and in the development of mitigation measures as part of the EIA and environmental management plan.[127]

The legislation considers two types of norms for standard emissions: primary norms which establish upper limits for the protection of public health (including sensitive

[125] Environmental Regulation for Mining Activities, Article 22 paragraph 2 and Decree 45/2004, Article 25, paragraph 1
[126] Environmental Regulation for Mining Activities, Article 22
[127] Environmental Impact Assessment Regulation Article 8, paragraph 2, and Environmental Quality and Effluent Emission Norms, Article 3

members of the public such as children, the elderly and those suffering from respiratory diseases) and; secondary norms which establish limits for public wellbeing, including damage to livestock, crops and buildings.[128] Parameters are established for atmospheric, water, and soil pollution as well as for noise pollution.

The legislation also deals with extraordinary emissions resulting from accidents or other unusual circumstances.[129] In such cases, and in accordance with the principle of "polluter pays", the organization responsible for the emission is required to obtain a license from MICOA and pay a fee.[130]

4.7.6 Fisheries

The Fisheries Law (Law 3/90, of 26 September) and its regulations (Decree 16/96 of 28 May) describe fisheries licensing. Recreational and sport fishing is regulated by the Regulation of Recreational and Sport Fishing (Decree 51/99 of 31 August). Fishing is subject to licensing and payment of fees. Closed seasons are legislated for specific species.

Certain areas are established by this legislation for the protection and conservation of marine species. These are the National Marine Parks, the National Marine Reserves and the Protected Marine Areas. In each of these areas, the practice of both commercial and recreational and sport fishing is restricted, and is only authorized in partial natural marine reserves.[131]

The practice of recreational and sport fishing is also subject to time limits. Surface fishing can take place day or night while submarine fishing (such as spear fishing) can only take place from dawn to sunset.[132]

The species and number of fish brought to land are also regulated, depending on the type of fishing. The fishing of protected species is prohibited. These protected species are established in an annex to the regulations.[133]

The legislation is not clear on the specific application of environmental licensing to fishing operations. However organisations undertaking either commercial or recreational fishing, particularly those operating in or near partial marine reserves would be advised to request an AIA to determine their status in respect of environment licensing.

Over and above this, the Inspection and Quality Guarantee of Fisheries Products Regulation approved under Decree 17/2001 of 12 June requires, (in its article 28, paragraph 2 clause b), item x), the obligatory presentation of an EIA in relation to treatment of liquid and solid waste resulting from land-based fisheries processing.

4.7.7 Pesticides

[128] Environmental Quality and Effluent Emission Norms, Article 1, paragraphs 14 and 15
[129] Environmental Quality and Effluent Emission Norms, Article 22, paragraph 1
[130] Environmental Quality and Effluent Emission Norms, Article 22, paragraph 2 and Article 23, paragraph 1
[131] Decree 16/96, Articles 95, 96, 97 and 98
[132] Decree 51/99, Article 12, paragraphs 1 and 2
[133] Decree 51/99, Articles 13 and 14

The management and use of pesticides is regulated by Ministerial Diploma 153/2002 of 11 September which is a joint diploma issued by the Ministries of Agriculture, Health, and Environment. The use of pesticides is subject to their prior product registration with the Ministry of Agriculture.[134] The Ministry of Health establishes permissible levels of pesticide residue in food stuffs based on FAO guidelines.[135]

Pesticides must be clearly labelled and identified[136] and are colour-coded depending on their level of toxicity.[137] The use, storage, handling, sale and removal or destruction of pesticides may be subject to environment licensing.[138]

4.7.8 Licensing of Environmental Consultants

Article 16 of the Environment Law establishes that EIAs must be undertaken by consultants registered with MICOA.

Registration as an environment consultant requires proof that the applicant is a mid or high level technician.[139] Consultants may register as individuals, companies or consortia.[140] Team leaders must have at least five years experience.[141] Foreign individuals, or companies that are not registered entities in Mozambique may only undertake EIAs in conjunction with locally registered consultants, and must demonstrate contractual proof that they are working with local consultants as well as presenting CVs of proposed consultants.[142]

Applicants for registration as environment consultants must provide:[143]

- Bio data (name, nationality, contact details)
- Educational qualifications
- CV
- Tax number (NUIT)
- Proof of registration and incorporation (in the case of companies)
- Proof of professional insurance

Foreign consultants must also demonstrate that they have complied with the legal requirements to enable them to work in Mozambique.

A response to the application must be provided within 10 days of receipt.[144] Registration must be renewed every three years.[145] Fees are payable for both registration and renewal as follows:[146]

- Application (individual) – 10,000Mt
- Application (company) – 30,000Mt
- Renewal (individual) – 5,000Mt
- Renewal (company) – 15.000Mt

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[134] Pesticides Regulation, Article 3
[135] Pesticides Regulation, Article 10
[136] Pesticides Regulation, Article 11
[137] Pesticides Regulation, Article 9
[138] Pesticides Regulation, Articles 25, 26 and 29
[139] Environmental Impact Assessment Regulation Article 21, paragraph 2
[140] Environmental Impact Assessment Regulation Article 21, paragraph 3
[141] Environmental Impact Assessment Regulation Article 21, paragraphs 4 and 5
[142] Environmental Impact Assessment Regulation Article 21, paragraph 6
[143] Environmental Impact Assessment Regulation Article 21, paragraphs 7 and 8
[144] Environmental Impact Assessment Regulation Article 21, paragraph 9
[145] Environmental Impact Assessment Regulation Article 21, paragraph 10
[146] Environmental Impact Assessment Regulation Article 21, paragraph 12 and Article 25, paragraphs 2 and 3

Unlicensed consultants may be fined between 24,000 and 240,000Mt.[147]

Consultants are responsible for ensuring the quality and accuracy of their work and may be held criminally and civilly responsible.[148] They are also required to present a declaration that they have no conflict of interest with respect to the applicant for an environmental license for whom they are contracting.[149]

Environmental Auditors must also be registered.[150] Their application requires submission of:

- Bio data (name, nationality, contact details)
- Educational qualifications
- CV
- Tax number (NUIT)
- Proof of professional insurance

No further stipulations are made and it is not clear whether or not a foreigner can register as an environmental auditor. The response to a request for registration as an environmental auditor must be given within ten days.[151] The registration fee is:[152]

- Application (individual) – 1,000Mt
- Application (company) – 5,000Mt

Environmental Auditors are also responsible for ensuring the quality and accuracy of their work and may be held criminally and civilly responsible for their work.[153]

Note that Decree 42/2008 of 04 November removed the requirement that environmental consultants and auditors prove that they do not work for MICOA.

4.8 CHECKLIST

4.8.1 Pre-assessment

You submit:

- Written description of activity;
- Justification of activity;
- Legal status of activity (this includes for example documentary proof of registration of a company such as the certidão comercial, a provisional land title or DUAT or other authorisation demonstrating that the activity has been approved at sectoral level for example an alvará);
- Socio-economic and environmental information about area in which the activity will be undertaken;
- Current land use in area;
- Information on stages to be covered during the AIA such as Terms of Reference (ToR) for the environmental consultant, pre-feasibility and scoping activities (*Estudo de Pré-viabilidade Ambiental e Definição do Âmbito* - EPDA), Environmental Impact Assessment (EIA) or simplified EIA (EAS);
- Completed form (the form is available free of charge from both MICOA and DPCA, a copy is included in Annex 5.2). While the law is silent on this matter

[147] Environmental Impact Assessment Regulation Article 26, paragraph 4
[148] Environmental Impact Assessment Regulation Article 23
[149] Environmental Impact Assessment Regulation Article 23
[150] Decree 32/2003 of 20 August, Article 11 – under Article 14, paragraph 2 of the same decree, the fine for acting as an unlicensed auditor is 20,000Mt
[151] Decree 32/2003 of 20 August, Article 11 paragraph 4
[152] Decree 32/2003 of 20 August, Article 12
[153] Decree 32/2003 of 20 August, Article 13

those receiving the form may sometimes request that the applicant's signature is notarised (assinatura reconhecida).

Note that any supporting documents submitted (such as the certidão commercial or alvará of the company) should be submitted in the form of notarised copies. Originals should not be submitted. The applicant should take a copy of the application form and have it stamped and dated by the member of staff that receives the application. This serves as proof of submission and enables the applicant to verify that responses are provided within the legal time limits provided.

You receive:
A written response to your application. This is provided within 5 or 8 working days, depending on which category your activity falls into. The written response includes details of the number of copies of ToRs and EPDA to be submitted, where relevant.

4.8.2 Category A activities

You submit:
Following the pre-assessment you submit the number of copies of the EPDA and ToR defined in the written response to the pre-assessment to the relevant department.

The EPDA takes the form of a report with supporting data which must include:

- Non-technical summary;
- Identity of applicant and proposed team to undertake EIA;
- Details about the proposed area including location of activity (including maps), current land use and planning;
- Description of principal stages of activity including planning, construction demobilization etc.;
- Bio-physical and sócio-economic description of the proposed location;
- Identification and evaluation of fatal issues;
- Indication of potential environmental impacts;
- Key aspects to be investigated in EIA including specialist studies to be undertaken.

ToRs for Category A activities must include:

- Identity of applicant;
- Identification of team responsible for EIA;
- Methodology to be used for EIA;
- Description of specialist studies to be undertaken as identified in the EPDA;
- Viable alternatives to be investigated;
- Description of public participation process;
- Other information to be required as part of the EIA.

Both sets of documents must be submitted in Portuguese.

You receive:
A written response within 30 working days. This response details the number of copies of the EIA to be submitted.

You submit:
An EIA report which includes:

- Non-technical summary including the main issues conclusions and proposals;
- Main report including annexes (including environmental management plan)
- Legal status of the activity

- Description of the activity
- Delimitation and geographic representation and current and future environmental situation
- Identification and evaluation of the impacts and mitigation measures
- Environmental management plan
- Identities of the team undertaking the EIA
- Public consultation report

The number (and format – hard or electronic copy) of copies to be submitted is guided by the written response to the EPDA and ToR. All documents must be submitted in Portuguese.

You receive:
A written communication of approval or rejection of your project. This is provided after the 45 working days to review the EIA, and must be provided within 5 days of a decision by the EIA review committee.

You submit:
Payment for the environmental license, calculated at 0.1% of your investment value as verified by the Ministry of Finance or your *Técnico de Contas*.

You receive:
An environmental license valid for 5 years, which may include a number of stipulations and requirements based on the outcome of the EIA review process. This license is issued within 8 working days of presentation of proof of payment.

4.8.3 Category B activities

You submit:
Following the pre-assessment you submit the number of copies of the ToR defined in the written response to the pre-assessment to the relevant department
ToRs for Category B activities must include:

- Identity of applicant;
- Location of activity including maps;
- Description of how activity fits with current land use and planning;
- Description of proposed activity;
- Description of public participation process;
- Identification of environmental areas to be studied;
- Description of methodology to be used;
- Identification of team undertaking EAS.

Documents must be submitted in Portuguese.

You receive:
A written response within 15 working days. This response details the number of copies of the EAS to be submitted.

You submit:
An EAS report which must include:

- Non-technical summary;
- Location and description of activity;
- Legal basis for activity;
- Environmental description and diagnostic;
- Identification and evaluation of impacts;

- Environmental management plan;
- Identification of team that undertook the study;
- Public participation report (if required).

The number (and format – hard or electronic copy) of copies to be submitted is guided by the written response to the ToR. All documents must be submitted in Portuguese.

You receive:
A written communication of approval or rejection of your project. This is provided after the 30 working days to review the EAS, and must be provided within 5 days of a decision by the EAS review committee.

You submit:
Payment for the environmental license, calculated at 0.1% of your investment value as verified by the Ministry of Finance or your *Técnico de Contas*.

You receive:
An environmental license valid indefinitely, which may include a number of stipulations and requirements based on the outcome of the EAS review process. This license is issued within 8 working days of presentation of proof of payment.

4.8.4 Category C activities

You submit:
Following the pre-assessment you provide proof of payment for the environmental license, calculated at 0.01% of your investment value as verified by the Ministry of Finance or your *Técnico de Contas*.

You receive:
An environmental license valid indefinitely, which may include a number of stipulations and requirements based on the environmental norms you are expected to follow. This license is issued within 8 working days of presentation of proof of payment

5 ANNEXES

ANNEX 5.1 AIA CATEGORIES (PER ENVIRONMENTAL IMPACT ASSESSMENT REGULATION ANNEXES I, II & III)

Category A Activities

Activities related to or located in areas with the characteristics listed below are considered "Category A":

a) Areas and ecosystems meriting special protection under national or international law such as: coral reefs; mangroves; native forest; small islands; areas at risk of imminent erosion including dunes; areas exposed to desertification; protected areas; marshland; areas with flora, fauna or ecosystems on the verge of extinction; unique areas or ecosystems; areas of cultural, archaeological or historical importance; sources of rivers and other water supplies.
b) Populated areas which would require resettlement.
c) Densely populated areas where the proposed activity would present unacceptable levels of pollution or disturbance for the surrounding population.
d) Areas of high development where conflicts exist as to the use and distribution of resources.
e) Areas near water courses or areas used as water sources by the community.
f) Areas with valuable resources such as aquatic, mineral or medicinal plant resources.

Also included in this category are:

1. Infrastructure:

a) Any activity requiring population resettlement;
b) Urban land allocation or development exceeding 20ha;
c) Tourism establishments outside urban areas or in areas without urban plans, with capacity of more than 150 beds or of more than 10ha;
d) Campsites for more than 650 users or covering more than 5ha;
e) Industrial sites of more than 15ha;
f) Establishment or expansion of large recreational areas such as golf courses of 5ha or more;
g) Marinas or docks with more than 50 berths;
h) Main roads outside urban areas and the construction of new roads;
i) Road and rail bridges of more than 100m in length;
j) Railway lines of more than 5km in length;
k) Airports, aerodromes and heliports with runways more than 1800m in length;
l) Water pipelines more than 0.5m in diameter and more than 10km long;
m) Oil, gas or mineral pipelines and submarine cables more than 5km long;
n) Establishment or expansion of ports and port installations for ships of over 4,000GT;
o) Dams and walled water storage with a flooded area of more than 5ha;
p) Scrap storage facilities of more than 5ha;
q) Use of subterranean water resources including the production of geothermal power, using more than 500m3/h or 12,000m3/day
r) Dredging of new port channels.

2. Forestry

a) Clearance, or use of the native vegetation on individual or cumulative areas of over 100ha;

b) Any deforestation activity covering more than 50ha, reforestation or aforestation of areas covering more than 250ha.

3. Agriculture

a) Areas of over 350ha under irrigation or over 1,000ha without irrigation;
b) Conversion of agricultural land for commercial, urban or industrial use;
c) Re-conversion of areas of more than 100ha that have not been cultivated for more than 5 years to intensive agricultural use;
d) Introduction of new crops and exotic species;
e) Irrigation systems covering more than 350ha;
f) Aquaculture or mariculture producing more than 100 tonnes per year or covering more than 5ha;
g) Intensive livestock activities of more than: 100,000 poultry; 3,000 pigs or 100 breeding pigs; 500 head of cattle or individual or cumulative areas less than 2,000ha (4ha/animal);
h) Arial spraying in individual or cumulative areas of more than 100ha.

4. Industry

5.

4.1 Production or transformation of metals

a) Production and processing of metals with production of more than 2.5 tonnes per day;
b) Surface treatment of metals and plastics using chemical or electrolyte processes the total volume treated being greater than 30m3;
c) Construction and assembly of engines and vehicles;
d) Boat workshops of more than 5ha or which occupy more than 150m of coastline;
e) Manufacture of railway equipment.

4.2 Chemicals

a) Treatment and manufacture of dangerous, carcinogenic or toxic substances;
b) Manufacture of pesticides;
c) Manufacture of pharmaceuticals;
d) Manufacture of paints and varnishes;
e) Manufacture of elastomeres;
f) Manufacture of peroxides;
g) Production or processing of fertilisers.

4.3 Food

a) Manufacture of animal feed of more than 2,000 tonnes per month;
b) Production of animal oils and fats (more than 75 tonnes per day) or vegetable fats (more than 300 tonnes per month);
c) Sugar including the cultivation of sugar cane.

4.4 Textiles, leather, wood and paper

a) Manufacture of paper and cardboard;
b) Cleaning, bleaching, or dying of fibres and textiles;
c) Tanning;
d) Production and treatment of cellulose.

4.5 Rubber

a) Manufacture and treatment of elastomere-based products

4.6 Extractive industries

a) Extraction and processing of minerals;
b) Extraction, storage, transport, processing and production of hydrocarbon derivatives;
c) Factories and industrial complexes and agro-processing industries such as cement factories, steelworks

4.7. Energy

a) Hydroelectric, thermal, geothermic or nuclear power stations;
b) Surface and underground gas storage facilities;
c) Processing and storage of radioactive waste;
d) Surface storage of combustible liquids, fossils or solids;
e) Manufacture of fuels in the form of briquettes, and lignites with capacity of more than 150 tonnes per day;
f) Power transmission cables of 110KV of over 10km in length.

4.8 Treatment and disposal of solid and liquid waste

a) Municipal dumps with capacity of more than 500 tonnes per day;
b) Storage, transport, treatment and disposal of industrial waste;
c) Storage, transport, treatment and disposal of hospital waste;
d) Installations for the disposal or treatment of waste water with capacity of more than 150,000 inhabitants.

4.9 Conservation areas

a) Creation of national parks, reserves, hunting concessions, wildlife management areas and buffer zones;
b) Commercial use of natural flora and fauna resources;
c) Introduction of exotic flora and fauna.

Category B Activities

Activities in this category differ from those in Category A principally in respect of the scale of their impacts. These are activities which do not generally affect human populations or environmentally sensitive areas. Any negative impacts they may have are for a short duration, lower intensity, smaller scale and magnitude than those classified as Category A and few of their impacts are irreversible. The impacts which result from these activities allow the definition and application of relatively simple mitigation measures and therefore only require an EAS. This category includes those activities which do not fall within Categories A and C.

Category C Activities

These are activities which do not normally require an EIA or EAS since their negative impacts are negligible, insignificant, minimal or non-existent. There are no irreversible impacts in this category and the positive impacts are clearly greater or more significant than the negative ones.

This category includes:

a) Vehicle maintenance activities;
b) Irrigation schemes which individually or cumulatively cover between 50 and 100ha;
c) Hotels, motels, and guest houses in cities or towns;

d) Indoor livestock raising of poultry with capacity for between 1,000 and 1,500 animals;
e) Transformation or removal of native vegetation on un-irrigated areas of between 100 and 200ha;
f) Telecommunication towers less than 15m tall;
g) Use of underground water for the production of geothermal power implying the extraction of not more than 200m3/year;
h) Installation of equipment in existing rail and port areas;
i) Consolidation of railway lines;
j) Repair of fixed port and rail equipment;
k) Construction of parking areas;
l) Timber processing factories;
m) Manufacture of cakes, biscuits and sweets;
n) Bakeries;
o) Fuel supply infrastructure;
p) Tyre re-treading;
q) Storage, treatment, transport and disposal of hospital waste from health posts and private clinics;
r) Preservation and processing of fruits and vegetables with production not greater than 300 tonnes per day;
s) Manufacture of panels, wood fibre and laminated timber;
t) Manufacture of animal feed with capacity of less than 1,000 tonnes per month;
u) Water supply and drainage systems;
v) Cashew processing facilities;
w) Refrigeration installations;
x) Water purification factories.

ANNEX 5.2 AIA FORM (ANNEX IV TO ENVIRONMENTAL IMPACT ASSESSMENT REGULATION)

Preliminary Environmental Information Form

1. Name of activity
2. Type of activity
   a) Tourism Industrial Farming and Livestock Other (specify)
   b) New Renovation Expansion
3. Identity of applicant
4. Address, contact details
5. Location of activity

Administrative location (Street, town, locality, district, province, GPS coordinates)

Type of area: urban rural

6. Zoning information

Residential Industrial Service Green

7. Description of activity

Infrastructure, size and installed capacity (electrical). Where possible attach written and diagrammatic information

Associated activities

Brief description of technology required for construction and operation

Principal and complementary activities

Type, origin and quantity of labour

Type, origin and quantity of raw material

Chemical products (cited scientifically) to be used

Type, origin and quantity of water and electricity to be used

Origin and quantity of fuels and lubricants to be used

Other resources required

8. Land holding (legal status of physical area required)
9. Alternative locations (reason for choosing the proposed location and indication of at least two alternative locations)
10. Brief environmental description of the area and region

Physical characteristics

Plain Plateau Valley Mountain

Predominant ecosystems

River Lake Sea Land

Zone

Coast Interior Island

Predominant vegetation

Forest Savannah Other (specify)

Land use (based on land use plan or other policy in force)

Smallholding Residential Industrial Protected Other (specify)

Principal infrastructure in the area

11. Supplementary information in the form of maps and diagrams:
    - Area map (relevant scale)
    - Map showing location of activity within the given area (relevant scale)
    - Other information deemed relevant
12. Date and signature of applicant

ANNEX 5.3 LIST OF ENVIRONMENT LEGISLATION AND SECTORAL LEGISLATION WITH ENVIRONMENTAL IMPLICATIONS

- Constitution of the Republic of Mozambique 2004 (approved 16 November 2004);
- Resolution 5/95 of 03 August, the National Environment Policy;
- Law 20/97 of 01 October, The Environment Law;
- Decree 13/2006, of 15 June, the Residue Management Regulation;
- Decree 18/2004 of 02 June, the Environmental Quality and Effluent Emission Norms;
- Decree 11/2006, of 15 June, the Environmental Inspection Regulation;
- Decree 45/2004 of 29 September, the Environmental Impact Assessment Process Regulation;
- Decree 32/2003 of 12 August, the Environmental Audit Process Regulation;
- Decree 12/2006, of 15 June, which defines the responsibilities for the implementation of the Clean Development Mechanism, within the scope of the Kyoto Protocol;
- Decree 42/2008 of 04 November, which modified the Environment Regulation;
- Ministerial Diploma 198/2005, of 28 September, sectoral coordination for the effective implementation of the Environmental Impact Assessment Process Regulation;
- Dispatch of 27 July 2005 concerning the issuing of environmental licenses for investments of more than one million US dollars;
- Decree 26/2004, of 20 August, the Environmental Regulation for Mining Activity;
- Ministerial Diploma 189/2006, of 14 December, The Basic Standards for Environmental Management of Mining Activities
- Decree 45/2006, of 30 November, the prevention of pollution and protection of the marine and coastal environment regulation;
- Ministerial Diploma 1/2006, of 04 January which approves the Norms for the Application of Fines and Sanctions Envisaged under the Environmental Legislation;

In addition to specific environmental legislation, there is also sector-specific legislation which impacts on environmental questions, as follows:

- Law 4/96, of 04 January, the Maritime Law;
- Law 16/91 of 03 August, the Water Law;
- Decree 15/2004, of 15 July, the water distribution and waste residue management for buildings regulation;
- Ministerial Diploma 180/2004, of 15 September, water quality for human consumption regulation;
- Resolution 8/97, of 01 April, Forestry & Wildlife Policy and Strategy;
- Law 10/99, of 07 July, the Forestry and Wildlife Law;
- Decree 12/2002, of 06 June, the Forestry and Wildlife Regulation;
- Decree 11/2003 of 25 March which alters the Forestry and Wildlife Regulation;
- Resolution 10/95, of 17 October, the National Land Policy and Strategy;
- Law 19/97, of 01 October, the Land Law;
- Decree 66/98 of 08 December, the Land Law Regulation;
- Decree 1/2003, of 18 February, which introduces alterations to the Land Law Regulation;

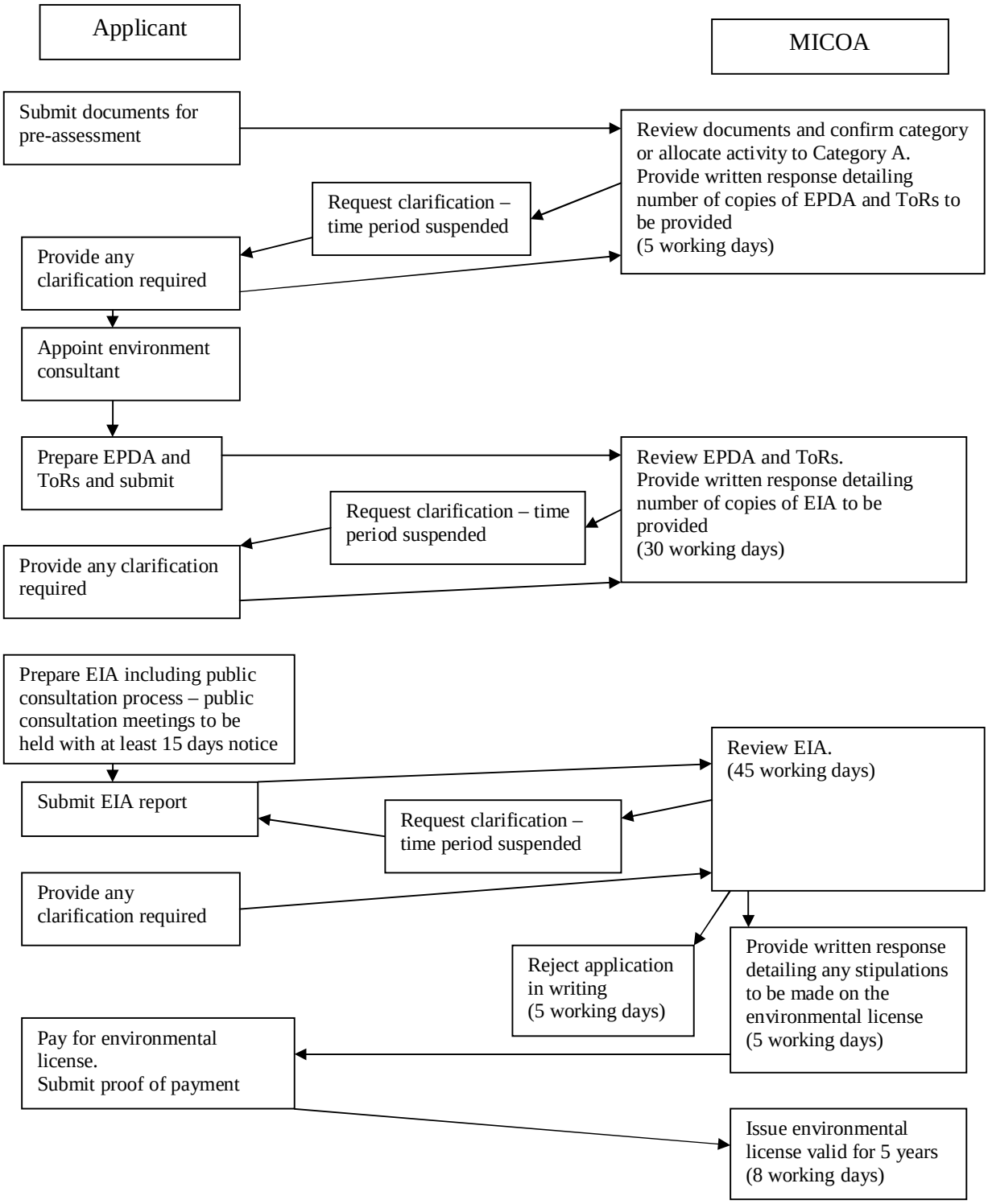
- Decree 60/2006, of 26 December, the Urban Land Regulation;
- Ministerial Diploma 29/2000-A, of 17 March, Technical Annex to the Land Regulation;
- Law 10/88, of 22 December which determines the Legal Protection of Mozambique's Cultural Heritage;
- Decree 27/94, of 20 July, the Archaeological Heritage Protection Regulation;
- Law 14/2002, of 26 June, the Mining Law;
- Decree 28/2003, of 17 June, the Mining Law Regulation;
- Decree 24/2004, of 20 August, Petroleum Operations Regulation;
- Decree 44/2005, of 29 November, Regulation of the distribution and sale of natural gás (includes compulsory insurance against environmental damage);
- Decree 61/2006, of 26 December, Technical health and safety regulation for geological and mining activities;
- Edict 18 891, of 27 September 1965, approving the Regulation for the Transport, Handling and Transit of Dangerous Cargo through Mozambican Ports;
- Legislative Diploma 48/73, of 05 June, approves the health and safety in industrial workplaces regulation;
- Legislative Diploma 3057, of 12 December 1970, established general industrial health and safety requirements for industrial workplaces;
- Decree-Law 47344, of 25 November 1966 applied in Mozambique by Edict 22869, the Civil Code;
- Ministerial Diploma 153/2002, of 11 September, the Pesticides Regulation.

Mozambique is also signatory to a number of international conventions and treaties on environmental issues such as:

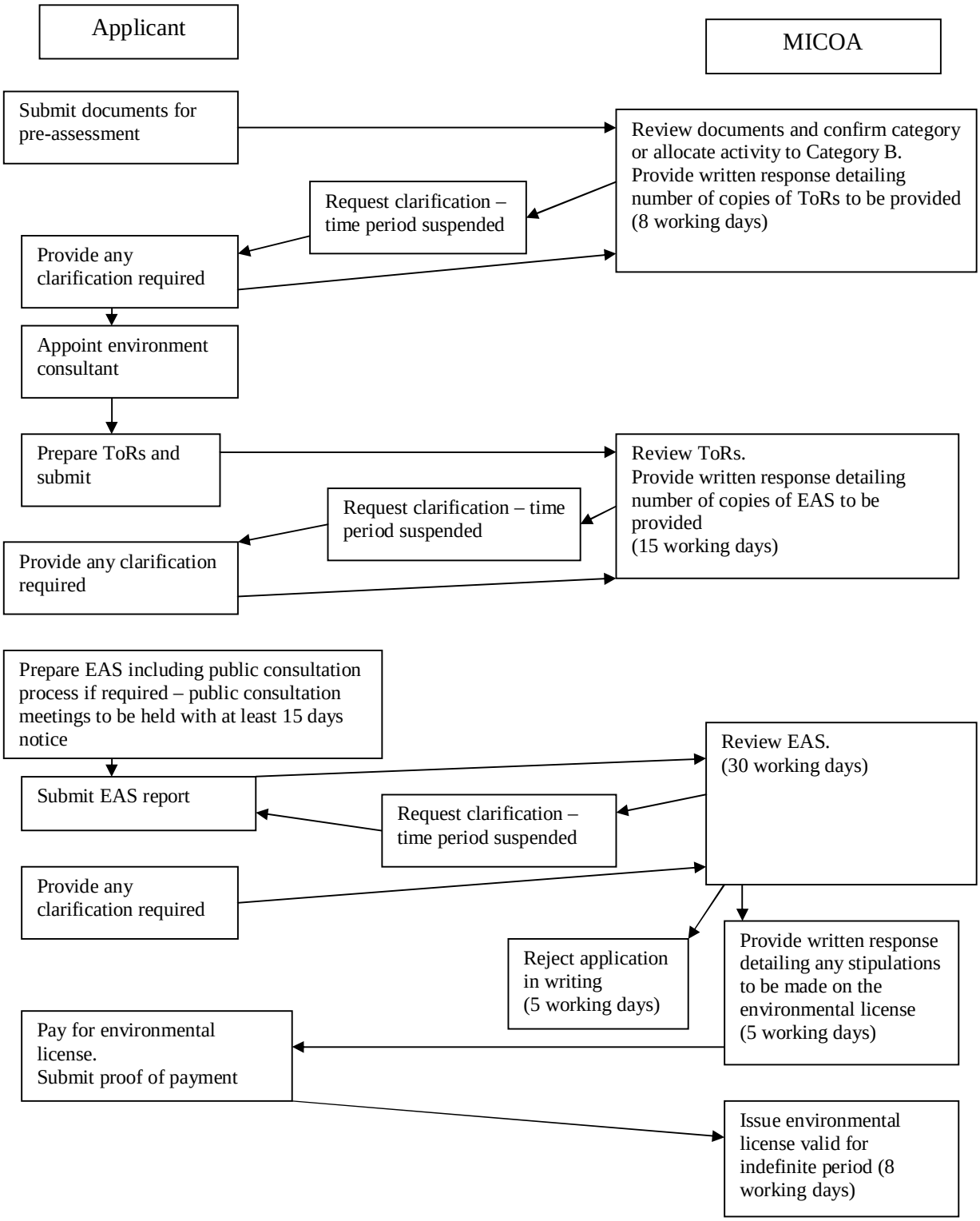
- Resolution 18/81, of 30 December, ratifying the African Convention of Nature and Natural Resource conservation;
- Resolution 8/93, of 08 December, ratifies the Vienna Convention on Ozone Protection of 22 March 1985 along with the London and Copenhagen amendments;
- Resolution 1/94, of 24 of August, ratifies the UN Climate Change Convention of June 1992;
- Resolution 2/94, of 24 August, ratifies the UN Convention on Biological Biodiversity;
- Resolution 17/96, of 26 November, ratifies the East Africa Marine Protection, Management and Development Convention;
- Resolution 52/2001, of 6 November, ratifies the International Convention and Protocol on Civil Responsibility for Hydrocarbon Pollution;
- Resolution 5/2003, of 18 February, ratifying the International Convention for the Prevention of Pollution by Shipping 1973 and Protocol 1978 – MARPOL 1973-1978;
- Resolution 6/2003, of 18 February ratifying the International Convention on the Preparation, Combat and Cooperation against Hydrocarbon Pollution, 1990-OPRC 90;
- Resolution 45/2003, of 05 November, the Convention on Tropical Areas of International Importance with serve as Habitats for Aquatic Birds;
- Resolution 10/2004, of 28 July 2004, ratifies the Kyoto Protocol on Climate Change;
- Resolution 56/2004, of 31 December Ratifies the Stockholm Convention on Persistent Organic pollutants.

6 FLOW CHART OF PROCESSES

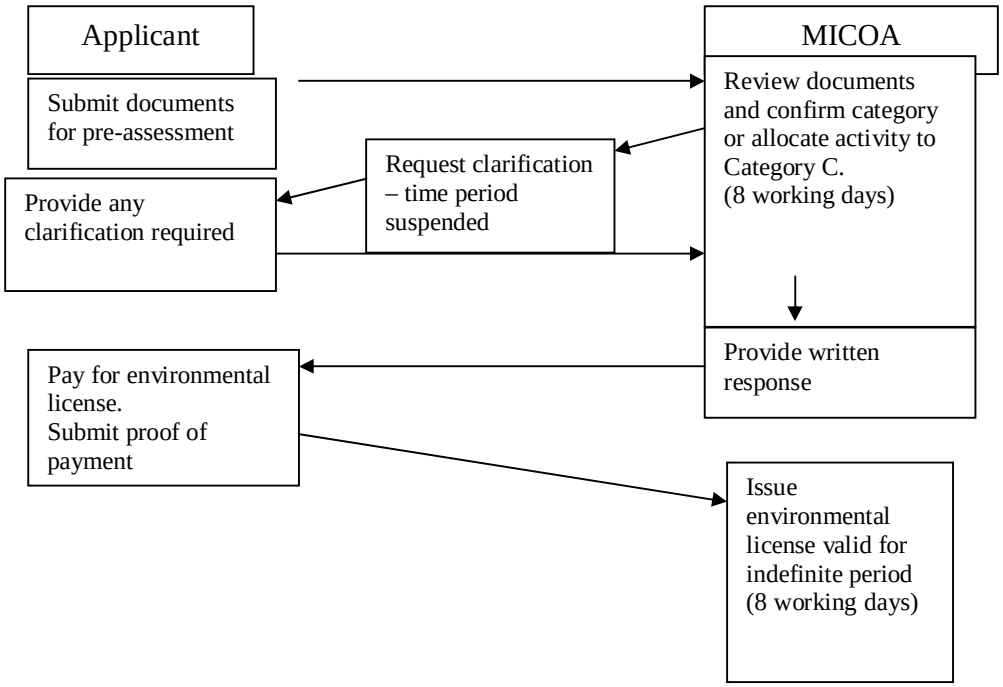
6.1 Category A Activities



6.2 Category B Activities



6.3 Category C Activities



7. BIBLIOGRAPHY

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 is included below. We recommend that anyone wanting to obtain a deeper understanding of the issues around the environment in Mozambique obtain these works:

- Colectânea de Legislação do Ambiente – Carlos Serra Jr, CFJJ, Maputo 2006
- Directiva Geral para a Elaboração de Estudos de Impacto Ambiental – MICOA, Maputo 2006
- Directiva Geral para o Processo de Participação Pública – MICOA, Maputo 2006
- Lei de Terras Anotada e Comentada – André Jaime Calengo, CFJJ, Maputo 2005
- Manual de Auditoria Ambiental – MICOA, Maputo 2001
- Manual de Direito da Terra – Maria da Conceição de Quadros, CFJJ, Maputo 2004
- Manual de Legislação de Florestas e Fauna Bravia, volumes I e II – Ministério de Agricultura, Maputo 2005
- Manual de Metodologia da Pré-avaliação e Revisão de relatório de Estudo de Impacto Ambiental – MICOA, Maputo 2001
- Manual de Procedimentos para o Licenciamento Ambiental - MICOA, Maputo 2006
- Recursos Naturais – Guião de Direitos das Comunidades Locais – CFJJ, Maputo

And the following report:

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