



July, 2017

Teresa Empis Falcão | tef@vda.pt
Guilherme Daniel | gdd@guilhermedaniel.com
José Miguel Oliveira | jmo@vda.pt
Andreia Tilman Delgado | atd@vda.pt

PROJECTS – INFRASTRUCTURES, ENERGY & NATURAL RESOURCES

MOZAMBIQUE | REGULATIONS ESTABLISHING THE LEGAL FRAMEWORK FOR THE USE OF THE TERRITORIAL SEA

The Council of Ministers recently approved the Regulations establishing the Legal Framework for the Use of the Territorial Sea (hereinafter “**RJUEM**”). Enacted by Decree 21/2017, of 24 May 2017, the RJUEM entered into force on the same date and along with other actions and initiatives for industry it represents a clear Government investment in sea governance and sustainable use of the Territorial Sea (“**TS**”) – as defined in the United Nations Convention on the Law of the Sea (UNCLOS) – as regards its social, economic and environmental components. It is therefore a fundamental framework for the country that thrusts Mozambique to the forefront of ocean governance at regional level.

Scope

The RJUEM applies to all activities and uses subject to private title, including those carried out in areas under the jurisdiction of port authorities. The RJUEM further applies to processes of private occupancy of the TS predating its entry into force; any acts performed by the relevant holders will remain effective following compliance with the rights of information and participation set forth therein. Any rights and duties arising from private use of TS concession and/or allocation acts must be updated and incorporated in a TUPEM to be issued to that end.

Spatial Planning and Management Instruments

The RJUEM sets forth two distinct TS spatial planning and management instruments: the Status Plan, which has a political nature, and the Allocation Plan, which has a legal nature.

The Status Plan represents and identifies the geographical and spatial and time distribution of existing and potential values, uses and activities to be developed in the TS, and is accompanied by two reports: one characterizes the area and/or volume of occurrence and another the environmental matrix. The Allocation Plan is the instruments whereby TS areas or volume are allocated to uses and activities not identified in the Status Plan and which, when approved, become an integral part of that Plan. The Status Plan may only be prepared by a public entity, while Allocation Plan(s) may be prepared on public initiative or at the request of any interested (private) parties, provided that certain obligations are satisfied. Status and Allocation Plans are approved by the Government and binding on all public entities, citizens, local communities and corporate persons under private law.

The RJUEM also sets up the Register of Uses and Activities in the Territorial Sea, which serves the following main purposes: (i) classify data of holders of the right to use the private maritime area, and (ii) be a basis for the TS spatial planning and for distribution of its uses.

Use of the Territorial Sea

The TS may be used as both public and private domain. Public domain use includes all uses of the TS that do not entail a reservation of maritime area or volume reservation, while private domain use entails the reservation of an area or volume aimed at the exploitation of the maritime area, its marine resources or ecosystems services greater than can be gained by common use and that results in an advantage of public interest. Private use of the TS is subject to a Private Use Title (“**TUPEM**”).

Issue of TUPEM

In the event of use or activity set out in the Status Plan, TUPEM may be issued at the request of the interested party or through a public tender procedure launched by the Minister tasked with supervising the maritime sector. For uses or activities not contemplated in the Status Plan, issue of the TUPEM is subject to the prior approval of an Allocation Plan. TUPEM are issued by the Minister tasked with supervising the maritime sector.

Private Use Right: Concession, License or Authorization

The right of private use of the territorial sea may be granted through a concession, license or authorization.

If private use is continuous for a period equal to or greater than 1 year it is subject to concession – which may have a maximum duration of 50 years. The Council of Ministers is tasked with approving the contracts for any concession areas in excess of 100 km², while concession areas below 100 km² can be approved by the Minister tasked with supervising the maritime sector.

Private use of the TS for a period of under 1 year or seasonal use is subject to a license, which may be issued for a maximum of 25 years by the Minister tasked with supervising the maritime sector through the relevant TUPEM.

Private use of the TS for scientific research projects and pilot projects in connection with new uses or technologies, or for non-commercial activities is subject to an authorization with a maximum duration of 10 years.

The annual fee is only payable in the case of concessions and licenses for the private use of the maritime area, as the RJUEM releases holders of an authorization from that particular obligation.

Main obligations inherent to the issue, transfer or expiry of the TUPEM

Issue of TUPEM is subject to the provision of a guarantee, save where otherwise provided for in the RJUEM.

TUPEM holders must effectively use the maritime space and ensure that the required measures are taken to secure and maintain the marine environment in good environmental condition. TUPEM holders must also execute and maintain in place a third party liability insurance policy to cover damages caused to any third parties by the activity.

As for the transferability of the TUPEM, it is allowed following effective completion of the use or activity. Transferees are under an obligation to notify the transfer to the Ministry tasked with supervising the maritime sector.

Lastly, in the event of relinquishment or expiry of the relevant title, TUPEM holders must do all things required to restore any environmental conditions changed and that do not bring about any benefits.

Expiry of the right to use the TS

The right to the private use of the TS expires at the end of the period set out for that purpose in the relevant TUPEM on occurrence of any of the following events: (i) failure to comply with the requirements set out for issue of the instrument; (ii) no effective use of the TS for a period of 18 months as from the date of issue of the TUPEM; (iii) no use/exploitation of the TS for a period of 24 months; (iv) fees outstanding and overdue for more than 6 months; (v) use of the TS for any purpose other than as established in the TUPEM; (vi) failure to maintain the required bank guarantee, insurance bond or similar financial instrument or insurance policy in force, on the relevant terms and conditions; (vii) occurrence of natural causes that jeopardize the safety of persons and assets or the environment; and (viii) upon closure of the legal entity holding the TUPEM.

Sectorial Impact

The Mozambican Government is currently working (i) on the statute that will enact the Policy of the Sea and relevant Implementation Strategy, and (ii) on the Plan of Action for the Development of Aquaculture (PADA). Coupled with the RJUEM and Law 4/96, of 4 January 1996 (Law of the Sea), these statutes will greatly contribute towards the reinforcement of the exercise of the State's sovereignty over its territorial sea and for the development of sustainable aquaculture in the social, economic and environmental areas. This new legal framework and the latest amendments to the private investment framework will most definitely position Mozambique as a very attractive country for international investors seeking to invest in Sea Economy.