

TECHNICAL INSTRUCTIONS

AID-656-TO-16-00005

Assist the Ministry of Industry & Commerce to Revise the Mozambican Commercial Code

Consultants and LOE: Maria Fernanda Lopes (Legal Specialist) – 35 days
Jose Romeu Garcia Do Amaral (Legal Specialist) – 45 Days

Dates: on/about July 24 – December 31, 2017

ACTIVITY DESCRIPTION & JUSTIFICATION

The Supporting the Policy Environment for Economic Development (SPEED+) project AID-656-TO-16-00005 was awarded on August 24, 2016. SPEED+ is a four-year project aimed at supporting economic and structural policy reforms across 4 components: (1) agriculture, (2) trade, business enabling environment, (3) power, water, and (4) biodiversity conservation.

Under Component 2, International Trade-Business Environment, and as part of the first-year work plan it is necessary to contract STTA to support the Ministry of Trade and Industry (MIC) in delivering reforms to the country's Commercial Code in order to facilitate the creation and operation of businesses.

Background

A modern Commercial Code should encompass important aspects for business such as: (i) types of business entities (focusing on most used worldwide forms like corporation, limited liability company, and solely owned enterprises); (ii) friendly rules for foreign investment (something that Colombia did very well); (iii) set of rules for issuance of securities by allowing all types of business to raise capital through debentures, bonds, notes, etc., as well as commercial paper, locally or internationally; (iv) set of rules for the commercial payment system; (v) set of rules for credit collaterals; (vi) set of rules for credit agent (trust) or fiduciary; and last but not least, (vii) bankruptcy laws (if not treated separately).

The Ministry of Industry and Commerce (MIC) is the government ministry responsible for leading business environment reform and public and private dialogue. MIC in coordination with the Ministry of Justice (MJ) and Confederation of Business Association of Mozambique (CTA), has requested SPEED+' assistance to review Mozambique's Commercial Code.

The Government amended the Commercial Code in 2009 (Decree-Law Nr. 2/2009 of April 24) to clarify aspects related to credit security and to remedy gaps and omissions in the Code which was originally promulgated in 2005. Among other things, the minimum capital requirement and the capital deposit required when incorporating a company, were eliminated. The 2009 reforms simplified procedures and reduced costs for companies but much remains to be done to bring the country's

Commercial Code in line with those of its competitors, based on the World Bank's Doing Business indicators.

MIC now plans to focus on a raft of new reforms by adapting the Commercial Code to improve two indicators in the Doing Business report: Starting a Business and Protecting Minority Investors

For Starting a Business Mozambique is 134th out of 190 economies. The Starting a Business indicator measures the procedures, cost, time and the paid-in minimum capital necessary for domestic entrepreneurs to register and formally operate a new limited liability company in Maputo. *Doing Business 2017* reported that entrepreneurs in Maputo go through 10 procedures, which take 19 days at a cost of 15.1 % of income per capita, while a minimum capital is not required. The following table shows Mozambique's current position:

<i>Doing Business</i> Indicator – Starting a Business	Mozambique	Regiona l average	Regional best performer	Global best performer
Procedures (number)	10	8.0	3 (Burundi, Burkina Faso, São Tomé and Príncipe)	1 (Macedonia FYR, New Zealand)
Time (days)	19	26.8	4 (Burundi)	0.5 (New Zealand)
Cost (% of income per capita)	15.1	53.4	0.3 (South Africa)	0 (Slovenia)
Paid-in Min. capital (% of income per capita)	0.0	45.1	0.0 (25 economies)	0 (121 economies)

The current position was achieved with a series of reforms undertaken between 2007 and 2009. The use of notaries was made optional, the provisional registration requirement was eliminated and flat registration fees were introduced in 2007. One year later, the minimum capital and bank deposit requirements were eliminated and more recently, a simplified licensing process was introduced. Analysis of the Doing Business reports shows that, as these reforms bit, between 2006 and 2016 the time taken to complete the process to start a business was reduced from 174 to 19 days and the number of procedures from 15 to 10.

However the process of incorporation remains somewhat complex and minority shareholders have limited protection, and both of these affect both the business environment and the country's Doing Business rank.

In 2015, at the request of the Mozambican government, the World Bank Group's International Finance Corporation (IFC) identified areas of reform that would have an impact on the Doing Business assessment of the country. The IFC's analysis recommended a number of reforms. The Government, through MIC, now wants to implement some of them by revising the Commercial Code to introduce these reforms.

SCOPE OF WORK

Tasks& Activities

The selected consultant will work closely with MIC and relevant stakeholders to identify reforms that can simplify the procedures for starting a business and ensure protection for minority investors. The reforms identified should take account of the recommendations made by the IFC, and the criteria used by the World Bank in developing the Doing Business report for Mozambique.

Possible reforms include:

1. Removing the requirement that business persons have face-to-face meetings with the notary to obtain notarial recognition of signatures affixed to company agreements;
2. Clarifying the requirements as regards the share capital deposit to ensure that it is not mandatory at the time of incorporation;
3. Introducing mechanisms to ensure the protection of minority shareholders, with particular reference to following aspects:
 - a. Introducing greater accountability of managers and members of the managing bodies to the benefit of minority shareholders;
 - b. Provision of additional means of reimbursing parties negatively affected in a transaction;
 - c. Ensuring greater disclosure of relevant information to minority shareholders in order to create transparency and protection;
4. Increasing mandatory disclosure of information in annual reports and requiring external audits before the approval of accounts or before carrying out operations that encumber or reduce the assets of the commercial company.
5. Other reforms, as deemed necessary through consultations with stakeholders (e.g., language on informal traders, etc.).

The specific tasks are:

- a) Present a work schedule for revision of the Commercial Code;
- b) Undertake a careful review of the Mozambique Commercial Code;
- c) Consult with government entities (including the Ministry of Justice, Constitutional and Religious Affairs, the Ministry of Economy and Finance, the Ministry of the Interior, the Ministry of Science and Technology, the Mozambican Tax Authority, the Investment Promotion Center, the Office of the Accelerated Economic Development Zones, etc.).
- d) Consult with private sector representatives including the Confederation of Economic Associations of Mozambique, the Commercial and Industrial Association of Mozambique, the Order of Accountants and Auditors of Mozambique, the Mozambican Bar Association, the Institute of Directors of Mozambique, the Center for Public Integrity
- e) Consult with cooperation partners (Private Sector Working Group);
- f) Study global best practice in the areas where reform is required (incorporation and protection of minority shareholders) with particular attention to Mozambique's direct competitor countries;
- g) Identify a list of possible reforms to the Mozambique Commercial Code, taking into account suggestions 1-5 above and any additional input from consultations with local stakeholders, as well as experience from consultant and other country best practices, in order to produce a modern Commercial Code.

- h) Deliver a detailed report of the work carried out and present findings in a workshop to Government and other stakeholders where recommendations are discussed;
- i) Define and seek agreement with MIC and USAID on Commercial Code Reforms to be drafted;
- j) Present a draft of the Decree-law incorporating the agreed measures for the revision of the Commercial Code, including any necessary legal drafting and language.

Coordination

The consultants will coordinate closely with USAID, including the SPEED+ COR, Amanda Fong and with the SPEED+ Team, Sergio Chitara and Ashok Menon, as well as a SPEED+ Business Environment Portfolio Manager Alima Hussein.

Deliverables:

- 1. Draft Report and First Draft Proposal for the Revision of Commercial Code, including:**
 - a. This report should contain key recommendations on the way forward in revising the Commercial Code and explain the solutions presented, noting where these have been agreed upon and any that have not, as well as likely impacts on the Doing Business indicators.
- 2. Workshop to Present and Discuss the Draft Report and First Draft Proposal of the Commercial Code**
 - a. Present and discuss the Draft Report and the First Draft of the Proposal for the Revision of the Commercial Code;
 - b. Incorporate inputs and observations made at the workshop into the final report.
- 3. Decree-Law for the Revision of Commercial Code and Final Report**

All working documents are to be submitted in Portuguese, with the final report and Decree-Law to be provided in Portuguese and English.

In addition, the consultant shall provide input into the following activities:

- Presentations and discussions of report findings to USAID, SPEED+ and counterparts.
- At least one short text article (blog) in English or Portuguese, to be posted on the SPEED+ site, describing the work undertaken and lessons learned. Blogs should be written in plain, simple language and be engaging. Further orientation will be provided by the SPEED+ Communication Manager.
- Reporting: Weekly bullet points of activities and exit report.
- Input to the monitoring and evaluation plan.
- Consideration of gender implications of reforms.
- Considerations of environmental impacts of reforms.

NAME	Jose Romeu Garcia Do Amaral
PROPOSED POSITION	Legal Specialist
CITIZENSHIP	Brazil
EDUCATION	Ph.D., Commercial and Corporate Law, University of São Paulo School of Law (Candidate) M.L., Commercial and Corporate Law, University of São Paulo School of Law LL.M., Pritzker School of Law, Northwestern University M.B.A., Corporate Management, UNICAMP Post-Degree, Commercial and Corporate Law, Mackenzie University
LANGUAGES	English, Italian, Portuguese, Spanish
COUNTRIES OF WORK EXPERIENCE	Brazil, United States

SUMMARY OF PROFESSIONAL EXPERIENCE

Mr. Amaral has over 15 years of experience in commercial and corporate operations. He currently holds a number of positions. He is currently an Assistant Professor at the University of Sao Paulo School of Law, an Executive Officer and Member of the Editorial Board at the Brazilian Corporate and Securities Law Journal, a Partner at J.R.Amaral Sociedade de Advogados, and a Professor at The Institute of Education Research (INSPER) in Sao Paulo.

In addition to Commercial and Corporate Law, Mr. Amaral also has experience in the Legal Aspects of Corporate Finance, and Mergers and Acquisitions while serving as a professor at INSPER and IICS respectively.

Mr. Amaral is also a current member of the Brazilian Corporate Law Institute and the Board of Directors of the Lawyers' Defense Movement in Brazil.

EXPERIENCE RECORD

Assistant Professor (Commercial, Corporate and Bankruptcy Laws Courses), University of São Paulo School Of Law, Brazil, 2017-Current

Executive Officer and Member of the Editorial Board, Brazilian Corporate and Securities Law Journal, Brazil, 2015-Current

Partner (Commercial and Corporate Areas), J.R.Amaral Sociedade De Advogados, Brazil, 2012-Current

Professor (Legal Aspects of Corporate Finance), Instituto De Ensino E Pesquisa (INSPER), Brazil, 2012-Current

Partner (Corporate and M&A areas), Bichara, Barata & Costa Advogados, Brazil, 2011-2012

General Counsel (All Commercial and Corporate Matters, Worldwide), JBS S.A., Brazil, 2010-2011

General Counsel (All Commercial and Corporate Matters, Worldwide), Sadia S.A. (BRF – Brasil Foods S/A), Brazil, 2003-2010

Foreign Attorney (Corporate/Capital Markets, Greenberg Traurig, LLP, United States, 2008)

Professional Experience:

- Currently advises Magazine Luiza S.A. on several shareholders' meetings as secretary
- Advised Centrais Hidroelétricas de Centroamérica, S.A. on the sale of its subsidiary in Nicaragua (2016)
- Advised Rouar (Eletrobras) on corporate finance of energy plant in Uruguay (2015)
- Advised a Brazilian company on structuring Project of a hydropower plan in Central America (2012 – 2015)
- Advised a Brazilian company on the sale of its distribution operation to Tommy Hilfiger (2012)
- Advised a Brazilian company on the sale of its educational unit to a Portuguese company (2011)
- Coordinated post-merger activities at JBS S.A. (2010)
- Advised BRF S.A. on a public offering (R\$5,6B)
- Lead the legal aspects of the merger between Sadia S.A. and Perdigão S.A. - currently BRF S.A. (2009)
- Advised Sadia S.A. on structuring a distribution operation in Saudi Arabia (2008 - 2009)
- Advised Sadia S.A. on the sale of its industrial operations in Russia (2008)
- Advised Sadia S.A. on structuring a industrial complex in Lucas do Rio Verde – MT (2004/2005)

PUBLICATIONS

“Proteção aos Credores nas Sociedades Anônimas e a Responsabilidade dos Administradores”, from José Romeu Garcia do Amaral In: Governança Corporativa – Avanços e Retrocessos. QuartierLatin Editora, 1st edition, 2017.

“Regime Jurídico das Debêntures”, from José Romeu Garcia do Amaral, Almedina Editores, 2nd edition, 2016.

“Conceito de Oferta Pública como Valor Mobiliário”, from José Romeu Garcia do Amaral e Erik F. Oioli. In: Revista de Direito das Sociedades e dos Valores Mobiliários. Almedina Editores, 2º Volume, May 2016.

“Sobre as Notas Comerciais”, from José Romeu Garcia do Amaral. In: Revista de Direito das Sociedades e dos Valores Mobiliários. Almedina Editores, 1º Volume, November 2015

“Quórum na Nova Sociedade Limitada”, from José Romeu Garcia do Amaral. In: Sociedade Limitada Contemporânea. QuartierLatin Editora, 1st edition, 2013.

NAME	Maria Fernanda Lopes
PROPOSED POSITION	Legal Specialist
CITIZENSHIP	Mozambique
EDUCATION	B.A., Law, Universidade Catolica Portuguesa, Portugal
LANGUAGES	English, Portuguese
COUNTRIES OF WORK EXPERIENCE	Mozambique, Portugal

SUMMARY OF PROFESSIONAL EXPERIENCE

Ms. Fernanda Lopes is currently a Lawyer and Managing partner at Fernanda Lopes & Associados since 1995. She graduated from Universidade Catolica Portuguesa in Lisboa and has been practicing Law ever since. She is Fluent in Portuguese, being her native language, and has an average level of proficiency in English.

Before working at her current Law Firm, Ms. Fernanda Lopes was a Partner and Manager of the Law Office J. Henriques da Silva & Associados from 1995-1998, a Junior Lawyer at the Bank of Portugal in 1988 until 1989, and a Trainee Lawyer in the Legal Department of Entrepосто Group from 1986-1988.

Alongside her professional career, Ms. Lopes published two books titledCodigo de Processo Civil Anotado, in 2007, and Das Sociedadespor quotas no Codigo Comercial de Mocambique, on 2011

EXPERIENCE RECORD

Partner and Managing Partner of the Law office Fernanda Lopes & Associados. Maputo, Mozambique, 1995- Present

Partner and Manager of the Law office J. Henriques da Silva & Associados, Lisbon, Portugal, 1998-1995

Junior Lawyer, Banco de Portugal, Portugal, 1988-1989

Trainee Lawyer, Legal Department of Entrepосто group, 1986-1988

SELECT PUBLICATIONS

“Código de Processo Civil Anotado”, from Fernanda Lopes and Fernanda Lopes & Associados Advogados, Texto Editores, 1st edition 2007

“Das Sociedades Por Quotas no Código Comercial de Moçambique”, from Fernanda Lopes, Alcance Editores, 1st edition, January 2011

REFERENCES

Mr. Rui Lemos

CPMZ

+258 82321 6040

Mr. AquilRajahussen

GS Group

+258 844230958