

# MOZAMBIQUE

## COUTO, GRAÇA & ASSOCIADOS, LDA



### FIRM INFORMATION

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### COUNTRY INFORMATION

Mozambique has a 2 470 kilometre coastline and a total land area of 801 590 square kilometres. It is a tropical country with effectively two seasons, a hot and wet season from October to March, and a dry season from April to September. The country's official language is Portuguese. It has an estimated population of about 27.1 million with a growth rate of 3%. The official currency is the Metical. The use of the US Dollar, the South African Rand and the Euro in business transactions is facing restrictions from January 2016.

### POLITICAL SYSTEM

Multiparty Democracy.

### LATEST GDP FIGURES

Growth in Mozambique has eroded in 2016, with the latest forecast for real GDP growth downgraded to 3.7%. In 2017 it is expected to be between 6.9%. Once offshore gas projects start generating export revenues in the early 2020s, the economy is expected to significantly expand, potentially yielding some of the highest rates of real GDP growth in Sub-Saharan Africa. Growth could reach double digits after 2022, assuming gas projects become operational in 2023.

### INFLATION RATE

In 2015 the inflation rate was 10.6% (the Government's objective for 2015 was 5.0%). The metical has depreciated by approximately 70% against the US Dollar during 2016, the currency having already depreciated by 36% in 2015. The Bank of Mozambique's attempts to provide sufficient foreign exchange resources for the economy to continue functioning were not enough to limit inflationary pressure and volatility.

### INVESTMENT CLIMATE

Mozambique strongly encourages foreign direct investment and has enormous investment opportunities in sectors such as agriculture, fisheries and aquaculture, industry, tourism, public infrastructure, mineral resources and energy.

In recent years there has been an influx of foreign investment in the areas of public infrastructure, natural resources and

energy, particularly in relation to the construction of bridges and roads and power generation facilities and the development of Mozambique's extensive coal and natural gas resources.

The Constitution of the Republic of Mozambique guarantees foreign investment undertaken in terms of its economic policy. Foreign investment is allowed in all economic sectors. The State guarantees the right to property. Expropriation may only occur if in the public interest and if fair compensation is paid.

The investment law, its regulations and the Code of Fiscal Benefits constitute the general regulatory framework for national and foreign investments that are eligible for government guarantees and financial incentives. The guarantees comprise:

- legal protection of private property and rights, including intellectual property rights
- the right to transfer dividends and funds out of Mozambique which are connected with: (i) profits from investments eligible for export in terms of the Investment Laws; (ii) royalties or other remuneration for indirect investment relating to the transfer of technology; (iii) amortization of loans and payment of interest on loans granted in the international financial market for investment projects in the country; (iv) any compensation paid by the government; and (v) invested and re-exportable foreign capital
- dispute resolution by the International Centre for the Settlement of Investment Disputes (ICSID) or the International Chamber of Commerce (ICC)
- investment risk insurance from the World Bank's Multilateral Investment Guarantee Agency (MIGA) and the Overseas Private Investment Corporation (OPIC) (an independent agent of the United States' Government).

Investment projects approved under the legislation applicable to investment in Mozambique, are eligible for the following benefits, based on their location and/or activity: (i) guarantee of protection of ownership rights; (ii) guarantee of the transfer of funds (profits or dividends, royalties, amortizations and interest from loans and foreign capital invested and re-exportable) abroad; (iii) grant of tax benefits.

Tax benefits include: (i) exemption from custom duties and



Value Added Tax on the import of capital goods in class “K” of the Custom Tariff; (ii) tax credit for investment; (iii) accelerated depreciation and amortization; (iv) deductions from taxable income for investments in modernization and launching of new technology; and (v) deductions from taxable income for investments in vocational training.

Tax benefits are categorized as generic or specific. Most investments fall under the generic category.

The following are subject to specific tax benefits:

- The creation of basic infrastructures;
- Commerce and industry in rural areas;
- Manufacturing and assembly industries;
- Agriculture and fisheries;
- Hotel and tourism activity;
- Science and technological parks;
- Large-scale projects (representing an investment of more than 12 500 000 000 Meticals);
- Projects carried out in Rapid Development Zones;
- Projects carried out in Industrial Free Zones; and
- Projects carried out in Special Economic Zones.

Other reforms include the revision of labour laws and the Commercial Code, comprehensive judicial reform and the creation of a commercial court to facilitate the settlement of commercial disputes, the liberalization of the financial sector (including the creation of an independent central bank, the Bank of Mozambique), civil service reform and improved Government budget making and auditing.

Although most sectors of Mozambique’s economy are open to foreign investment, and foreign investors generally receive the same treatment as domestic investors, some restrictions remain.

The private ownership of land is restricted and mining and management contracts are subject to specific performance requirements. Foreign ownership or control of companies is however not restricted.

The Government’s Investment Promotion Centre (CPI) assists investors to obtain approvals from applicable government authorities. A comprehensive investment guide is available on the internet at [www.cpi.co.mz](http://www.cpi.co.mz). Investments within the ZEEs are regulated by another government agency, GAZEDA. The Council of Ministers has recently approved a Decree establishing the Investment and Trade Agency to replace the Investment Promotion Center (CPI), the Office of Economic Zones for Accelerated Development (GAZEDA) and the Institute for Promotion of Exports (IPEX). The newly created Agency is a public institution whose purpose is the promotion and facilitation of investment, merging agencies to promote public and private investment and exports, the optimisation of resources and the creation of greater synergies in the country’s economy. To date the Decree has not yet been published in the Official Gazette. This is a condition for its entry in force.

It should be noted that the mining and oil & gas sectors are each subject to a specific investment regime which allows for tax benefits.

It is also important to note that undertakings covered by the Mega-Project Law (public-private partnerships, large scale projects and business concessions) currently in force are subject to specific investment, operating and financial requirements.

## FORMS OF BUSINESS

- Private limited liability company
- Public limited liability company
- Unincorporated joint venture
- State owned companies
- Individual trader
- Foreign company by means of a foreign commercial branch or representative office of a foreign company.

## INCORPORATION OF A COMPANY

Companies must:

- reserve the company’s name at the Legal Entities Registrar Offices
- prepare a standard draft of the articles of association of the company
- request for prior authorization for importation of funds before the Mozambique Central Bank
- open a bank account with a local bank to deposit the share capital
- execute a public deed or a private deed of incorporation of the company
- formalize the company registration at the Legal Entities Registrar Offices
- publish the incorporation of the company and its articles of association on the Official Gazette
- register the company with the relevant Tax Department to obtain a taxpayer number (NUIT)
- obtain licenses from the relevant authorities for the intended area of business activity;
- present the declaration of beginning of business before the relevant Tax Department.

## INCORPORATION PROCEDURES OF FOREIGN COMPANIES IN MOZAMBIQUE (BRANCH)

- Tax Registration before the relevant Tax Department
- Request for an opinion from the entity/authority that supervises the activity to be carried out<sup>1</sup>
- Submission of an application addressed to the Minister of Industry and Trade, for the licensing and inspection of the branch
- Inspection
- Issuance of the License
- Registration of the branch at the Legal Entities Registrar
- If applicable, obtain the competent license by the entity that supervises the activity<sup>2</sup>
- Declaration of beginning of activity before the relevant Tax Department

## EXCHANGE CONTROLS

Most other forms of importation or exportation of capital,



as well as other transactions between residents and non-residents, or between non-residents, regarding assets situated in Mozambique require the prior authorization from the Bank of Mozambique and must also be registered.

Failure to comply with the exchange control provisions and regulations will prevent any outflow of funds from Mozambique and may result in penalties and fines varying from ten thousand Meticaís to one million Meticaís as well as forfeiture of the assets or values involved in the illegal transaction.

The import and export of goods and services, and certain foreign payments are permitted provided that payments are not deferred for more than two years and that the transaction is registered.

## TAXATION

Corporate income tax (CIT) is a direct tax levied on income obtained by legal persons during the relevant tax period (usually the calendar year) over the global annual value of the income (if the taxpayer is resident) or income derived from activities in Mozambique (if the taxpayer is non-resident). The basic test of residence is whether the taxpayer has headquarters or effective management in Mozambican territory. Commercial companies with a head office or effective management in Mozambique are subject to a general CIT rate of 32%. However, for agricultural and farming activities this was reduced to 10% for a period ending on 31 December 2015. Non-residents earning income in Mozambique, or related to activities in Mozambique may be subject to CIT. This tax is collected by withholding it at source at the flat rate of 20% of the income, or 10% in the following cases:

- Income from telecommunications and international transport, as well as income arising from the assembly and installation of equipment;
- Income from the construction and regeneration of infrastructures for the production, transport and distribution of electricity in rural areas in connection with public projects of rural electricity supply;
- Income from the chartering of seagoing vessels for fishing or cabotage purposes
- Income from securities listed on the Mozambican Stock Exchange.

Value Added Tax is levied at a fixed rate of 17% on the sale of goods and services in Mozambique, and on imported goods. Exports are VAT exempt.

Specific taxation regimes apply to certain economic sectors such as mining and oil and gas.

Laws governing the oil and gas and mining sectors provide for capital gains tax to be paid on the transfer of oil and mining participating interests and other assets by non-residents, at a

rate of 32%.

Specific rules were set out in relation to the calculation of gains, taxable income, deductible costs and amortization. Income from the provision of services rendered by non-resident entities to Mozambique oil and mining companies is subject to withholding tax at the rate of 10% of the gross amount paid.

The oil and gas tax regime provides tax stability for a period of up to 10 years, from the date of production or approval of a development plan (without affecting the assumptions of feasibility and profitability) and may be extended up to the termination of the primary concession, subject to the additional payment of 2% of the Production Tax.

The Corporate Income Tax liability of companies holding concession contracts is calculated separately for each concession contract. This means that a separate tax return must be submitted for each concession (oil and mining activities are subject to a ring-fencing principle).

Exemptions from custom duties are granted for a period of five fiscal years for the import of equipment and goods for oil and mining operations (to the extent that they are not precluded on the local market). Value Added Tax exemptions are not granted anymore on the import of equipment and goods.

Mining companies are obliged to have their accounts audited by independent auditors.

The Mining Law expressly provides that indirect transfers of participating interests, titles and/or mining rights, by way of change of control of any license holder, are considered as a transfer of rights and obligations under a mining license and, therefore require prior governmental approval. Non-compliance with any transfer requirements will result in any such transfers being void.

Under the Corporate Income Tax Code, transactions between non-residents regarding shareholding interests or rights concerning assets in Mozambique are taxable if such transactions relate directly to Mozambique companies irrespective of where the transaction occurred.

## COMPETITION LAW – MERGER CONTROL LEGAL FRAMEWORK

The Competition Law is applicable to all economic activities (in both private and public sectors) in or which have an effect in Mozambique. The law focuses primarily on regulated prohibited conduct, anti-competitive practices as well as enterprise concentrations in order to avoid distortions or restrictions of healthy and fair competition.



<sup>1</sup>In case the activity that will be carried it is not under the scope of the Ministry of Industry and Trade, it should be requested an opinion before the entity that supervises such activity in order to support the licensing application.

<sup>2</sup>In case the scope of activity of the branch is under the supervision of certain entities other than the Ministry of Industry and Trade it must be obtained the competent license in order to carry out such activity.

<sup>3</sup>Although the CIT rate for agriculture and farming activities has been reduce to 10% for the period ending in 31 December 2015, in practice the reduce rate still applies for present year.

Under the Competition Law, all transactions that result in concentrations of enterprises are subject to control by the Competition Regulatory Entity (the “ARC”). Filing with the ARC is mandatory for those transactions that exceed a certain market share, business volume (based on global turnover) or annual turnover. Such filing must be made within seven working days after the conclusion of the transaction agreement or the project that gives rise to the concentration. The thresholds for market shares are:

- as the execution of such transaction results in a share equal to more than 50% being acquired, created or reinforced in the national market for certain goods or services, or a substantial part of it;
- the execution of such transaction results in a share equal to or more than 30% but less than 50% being acquired, created or reinforced in the national market for certain goods or services, or a substantial part thereof, as long as the business volume individually made in Mozambique by at least 2 of the enterprises participating in the transaction is more than 100 million Meticaís, net of taxes directly related with such business; and
- the companies participating in the concentration transaction have jointly made in Mozambique, a volume of business of approximately USD 12.35 million, net of taxes directly related to such business.

The filing of foreign mergers is mandatory to the extent that they have an effect in Mozambique and exceed the above thresholds even if none of the enterprises involved in the transaction are established in Mozambique

## MONETARY POLICY

The main objective of monetary policy in Mozambique is to reduce inflation. Since 2004 the Bank of Mozambique has implemented reforms to strengthen monetary management through daily liquidity forecasting and the use of foreign exchange and Treasury bill sales. The government’s tight control of spending and the money supply combined with financial sector reform successfully reduced inflation from 70% in 1994 to 4.21% in 2009.

## LEGAL SYSTEM

Mozambique’s legal system is based on Roman-Germanic law (ie a civil law system).

There are two main regulatory bodies: the Parliament (which approves the laws) and the Council of Ministers (which approves decrees).

The courts have exclusive jurisdiction to settle disputes by judicial means unless the parties have agreed to submit a dispute to arbitration. The courts operate according to the principle of separation of powers and are classified as sovereign bodies under the Constitution of the Republic. The law differentiates between judicial courts, administrative courts and other special courts like the customs court and tax court.

The courts include the Supreme Court, The Supreme Appeal Courts, the Provincial Courts and the Districts Courts. The

administrative court has special jurisdiction to hear disputes in legal administrative relationships, litigation appeals lodged against the decisions of state bodies and agents and appeals lodged against tax and customs’ court decisions.

The Arbitration Law expressly provides that arbitral awards rendered in Mozambique pursuant to the Arbitration Law should be treated and enforced in the same manner as a judgement of the Mozambican courts. In cases of non compliance with any arbitral award, enforcement proceedings must be commenced in the Mozambican courts.

Mozambique ratified the New York Convention on 11 June 1998 (subject to reciprocity) and this entered into force on 9 September 1998. The Mozambican courts are prima facie required to give effect to an arbitration agreement and recognize and enforce arbitral awards made in other New York Convention States against the assets of a party located in Mozambique. The enforcement of foreign arbitral awards in Mozambique is subject to consideration and recognition by the Mozambican Supreme Court.

## INTELLECTUAL PROPERTY

Protection of Intellectual Property is guaranteed by law. Mozambique employs an IP strategy known as “Estratégia da Propriedade Intelectual-2008-2018” enacted at the XXIII Meeting of the Ministries Council on 28 August 2007. It identifies the international Conventions and Treaties which Mozambique has ratified or acceded to as follows:

- Copyright
- Berne Convention for the Protection of Literary and Artistic Works (1886)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994)
- SADC Protocol on IP.

## INDUSTRIAL PROPERTY

- Harare Protocol on Patents and Industrial Designs within the framework of the African Regional Intellectual Property Organization (ARIPO)
- Madrid Agreement (1891) and Protocol (1989) concerning the International Registration of Marks
- Nice Agreement on the International Classification of Goods and Services for the Purposes of the Registration of Marks (1957)
- Paris Convention for the Protection of Industrial Property (1883)
- Patent Cooperation Treaty - PCT (1970) for the international registration of patents and utility models
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994).

## MEMBERSHIP OF INTERNATIONAL IP ORGANIZATIONS

- World Trade Organization
- World Intellectual Property Organization (WIPO)
- African Regional Intellectual Property Organization (ARIPO).



## TREATIES AND BILATERAL AGREEMENTS

Mozambique has signed investment promotion and reciprocal protection agreements with Algeria, Belgium, China, Cuba, Denmark, Egypt, Finland, France, Germany, India, Indonesia, Italy, Mauritius, Netherlands, Portugal, South Africa, Spain, Sweden, Switzerland, United Kingdom, USA, Vietnam and Japan. Mozambique has also signed bilateral treaties to prevent double taxation and tax evasion on income tax with Portugal, Mauritius, United Arab Emirates, Macau, Italy, Botswana, India, Vietnam and South Africa.

On 10 June 1998 Mozambique became a signatory to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

## MEMBERSHIP OF INTERNATIONAL AND REGIONAL ORGANIZATIONS

Mozambique is a member of the Southern African Development Community (SADC), African Union (AU), United Nations (UN), Community of Portuguese Language Countries (CPLP), British Commonwealth, African Countries of Portuguese Official Language (PALOP), International Monetary Fund (IMF), World Bank, Food and Agriculture Organisation (FAO), World Trade Organisation (WTO), World Tourism Organisation and the International Labour Organisation (ILO).

## ENERGY

Mozambique's vast energy resources have the capacity to satisfy most of its domestic energy needs. They include hydropower (the Cahora Bassa Dam), natural gas, coal, biomass, solar and wind power. The country has considerable hydropower potential (especially in the Zambezi River basin at sites such as Cahora Bassa and Mphanda Nkuwa) with an estimated capacity of 12 500 MW with an annual energy generation potential of 60 000 GWh.

The country has expanded its energy generation capacity to more than 16 000 MW. This is a result of the commercial extraction of natural gas (the Pande gas fields), the rehabilitation and construction of new hydroelectric dams and the exploitation of alternative and renewable energies such as solar, oleic and biofuels (bioethanol, biodiesel and biogas).

According to information with the information provided by the Investment Promotion Center (CPI), foreign investments in the energy sector amounted to 45.6% of all foreign investments in 2014.

Mozambique is a key player in the development of regional energy infrastructure. Mozambique's Southern African Power Pool (SAPP) interconnections offer opportunities for trading electricity regionally.

There is an urgent need on a short, medium and long-term basis to promote the construction of additional and alternative sources of energy and the creation of transmission infrastructures to deliver power to load centers with cost effective rates

It should be noted that under electricity legislation, the production, transport, distribution, sale, import and export of electricity, as well as the construction, operation and management of electrical facilities by individuals or by private and public entities require, as a rule, the grant of a concession by the Government. Moreover, power projects must be undertaken under a Public-Private Partnership regime.

## MINING, OIL AND GAS

Mozambique has significant investment opportunities for the exploration, extraction, processing and utilisation of natural gas, coal, gold, titanium, ilmenite, zircon, rutile, tantalite, marble, graphite and precious stones.

The Strategic Plan for the Concession of Areas for Petroleum Operations published on 8 June 2009 states that the sedimentary basins of Mozambique have great potential for oil. The Mozambique Basin, which has an area of 300,000km<sup>2</sup>, has a density of about one well per 8,000km<sup>2</sup> onshore and one well per 17,000km<sup>2</sup> offshore, while the Rovuma Basin, which has an area of 60,000km<sup>2</sup>, has a density of one well per 17,000km<sup>2</sup> onshore and none offshore. In 2012, Mozambique emerged as a new giant in natural gas with discoveries of more than 100 trillion cubic feet in Areas 1 and 4 of the offshore Rovuma Basin.

Under the Mining Law, a prospective investor may obtain Exploration Licenses (*licença de prospecção e pesquisa*), Mining Concessions (*concessão mineira*) and Mining Products commercialization Licenses (*licença de comercialização de produtos minerais*).

Exploration Licenses govern any exploration and prospecting activities and will be valid for:

- 2 Years for mineral resources being supplied for the construction industry, renewable once for the same period; or
- 5 Years for other mineral resources, including mineral water, and may be renewed once for an additional 3 year period.

Mining Concessions grant the concessionaire (which must be incorporated and registered under Mozambican laws the right to extract, develop and process mineral resources discovered under an Exploration License. Mining Concessions will be valid for 25 years and may be extended by another 25 years.

Mining Products Commercialization Licenses govern the sale and purchase of mineral products sourced from outside Mozambique. Mining Products Commercialization Licenses may be awarded to Mozambican nationals in addition to legal entities.

All concession contracts for oil and gas exploration and production activities must be granted by way of public tender, while concession contracts for other petroleum activities (e.g. infrastructure concession contract) may result from public tender or direct negotiation.

The four types of concession contracts prescribed in the new



Petroleum Law are:

- Reconnaissance concession contracts,
- Prospection and production concession contracts;
- Oil or gas pipeline system concession contracts;
- Infrastructure concession contracts.

The new Petroleum Law also contains a new provision in respect of gas liquefaction, providing that the Government may authorise concessionaires who have discovered deposits of oil and non-associated gas to develop onshore or offshore projects for the design, construction, installation, ownership, financing, operation, maintenance, use of wells, installations and ancillary equipment for the production processing, liquefaction, delivery and sale of gas in the domestic or foreign markets. It is therefore now clear that liquefaction activities, either onshore or offshore, can be undertaken under EPCC's, subject to Government approval but without the need for a separate agreement. The Government reserves the right to participate in petroleum operations in which any legal entity is involved. The Government may also decide to participate in any project at any stage under terms which will be established by contract between the Government and the holder of the rights.

## TELECOMMUNICATIONS

Although the State owned TDM (Telecommunication de Mozambique) still enjoys a monopoly, the telecommunications sector was liberalised in 2004 and the mobile sub-sector has experienced significant growth.

The new Telecommunications Law passed by the Parliament (Law nr. 4/2016, of 3 June) entered into force on 3 August 2016 and repealed the old Telecommunications Law nr. 8/2004, of 21 July. This law applies to natural and legal persons licensed for the establishment, management and operation of telecommunications networks and services.

The new law introduces an innovation by setting out the conditions under which diplomatic missions may set up and operate private telecommunications networks and radio equipment. Another new concept was introduced under which licensees, whenever requested by the Regulatory Authority, shall cooperate and provide all information related to their activities (including financial and regarding future developments in their networks and services). The telecommunications operators should classify information they consider confidential and the Communications Regulatory Authority / (INCM) is prohibited from disclosing such confidential information.

The new law allows the owner of a private network to resell the existing available capacity of its facilities and to assign, transfer or dispose of the rights to use such facilities in favor of a telecommunications operator. The new law also states that the setting, management and operation of networks and provision of telecommunications services is subject to the allocation of a unified license or a license by class and that the use of radio frequency spectrum is subject to a license. The licensing process has become more complex. The award of telecommunications or radio communications licenses involving the use of radio frequencies, numbering or other scarce resources, is subject to a public tender process or

auction on terms to be set out by the Government.

The sharing of telecommunications infrastructures between operators is mandatory. This is aimed at fostering competition and decreasing the investment required for the building and maintenance of networks, in contrast with the previous law which only required that operators should allow access to their infrastructure.

Operators of networks or public telecommunications service providers should connect with each other. Connection is defined as the physical connection of telecommunications networks used by the same or different operators in order to allow access and communications between different consumers of the services provided.

The new law also imposes new obligations on telecommunications operators which offer roaming services and international roaming, to inform customers of the applicable prices and tariffs, to provide voice, data and special message tariffs for roaming and international roaming services, to inform customers about roaming and international roaming services through free messages, and to provide detailed billing for roaming and international roaming services whenever requested by the customer.

The new law provides that every telecommunications operator must have an operational and efficient system for the legal interception of communications for the purposes of criminal investigations. However, interceptions may only be authorised by a criminal court judge.

Lastly, the new law provides for a gateway system (a system or network intermediate node used to convert information flows from different telecommunications networks) so that operators can carry out the setting up, the establishment and operation of networks for their domestic and international telecommunications services and the Government may use telecommunications traffic control devices.

## AGRICULTURE

Agriculture is one of the sectors that could easily be developed in Mozambique as the country has much potentially usable arable land along with access to river water for irrigation in many areas, particularly in central and northern Mozambique. Agribusiness is accordingly an important potential investment opportunity in Mozambique.

Mozambique exports baby-corn, flowers, citrus, cashew nuts, various fruits, pepper and paprika. There are also opportunities for the production of cereals, fruit, flowers and vegetables for the local and export market.

## LABOUR RELATIONS

There are laws which regulate employment relations and the employment of foreign workers. The 2007 labour law instituted significant reforms, although some difficulties still exist



especially in relation to dismissal procedures. The registration of employees and their employers with the National Security System is mandatory. Contributions to social security must be deducted by the employer from the employees' remuneration. The employee pays 3% and the employer 4% of the social security contributions. Foreign workers may be exempted from making Mozambican social security payments provided that they can prove they make social security payments in their home country.

Newly approved regulations on the employment of foreign workers have recently come into force (Decree 37/2016 of 31 August). These regulations provide that, as a general rule, foreign workers shall have the right to the same treatment as Mozambican workers. However, there are certain quotas applicable to the number of foreign workers that a company (whether Mozambican or foreign) can employ in Mozambique:

- large enterprises employing more than 100 employees, the maximum percentage for foreign workers is 5%;
- medium enterprises, the maximum percentage for foreign workers is 8%; and
- small enterprises, the maximum percentage for foreign workers is 10%.

