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DOING BUSINESS IN SÃO TOMÉ E PRÍNCIPE

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INTRODUCTION

São Tomé e Príncipe ("**STP**") is a small island nation in the Gulf of Guinea, off the west coast of Africa, centrally located in the Gulf of Guinea and surrounded by oil producing countries. STP has a land area of approx.1000 sq km, a maritime area of 160,000 sq km and a population of around 190,000 inhabitants. Its volcanic soil and abundant rainfall yield a great variety of flowers, fruits and vegetables. Cacao and coffee are currently its main exports. Tourism and fisheries are fast-growing economic sectors. STP intends to become a logical hub and financial services centre for the region. STP is a democracy, peaceful and has one of the highest literacy rates in Africa.

BASIC DATA

- Offical name: República Democrática de São Tomé e Príncipe (Democratic Republic of São Tomé e Príncipe)
- State form: Democratic; São Tomé e Príncipe has a semi-presidential system, in which the president occupies the functions of head of state while the prime minister serves as head of government
- Capital: São Tomé
- Location: In the Gulf of Guinea, off the west-central coast of Africa, 250 km from Gabon
- Currency: New Dobra. Pegged with Euro: 24.5 New Dobras equals one Euro

THE BUSINESS ENVIRONMENT

The investment priorities of STP are:

- Agriculture
- Fisheries
- Tourism
- Infrastructure
- Hub Function

Agriculture

Agriculture is the dominant sector in the São Tomean economy, at least as far as employment is concerned (perhaps 70%), although it accounts for less than 20% of GDP. São Tomean cocoa is prized for its high quality, and is often blended with lower quality cocoas to improve the overall product. There is also a growing "organic" cocoa sector. Other export products are coffee, vanilla, pepper, fruits as well as vegetables.

The potential for high-income agricultural produce in STP is considerable, given the soil and the rainfall. Markets for products can be found in its neighbouring countries and, in particular for the high value products, in Europe, Asia and North America.

Fisheries

STP has a vast sea territory of about 160,000 km2. Biodiversity studies suggest that its waters contain 185 species from 67 families. The most abundant fish species are sea bream, flying gurnard, squid, cornet fish, snapper, grouper and grunt.

Tourism

Tourism is a growing business. STP is a destination for conferences, short holidays for visitors from the region, as well as resort holidays for tourists from Europe, eco-tourism and agri-tourism.

Infrastructure

There is a need to create and improve infrastructure. Areas of interest are transport (roads, port and airport), energy (hydropower), water, sanitation and waste disposal.

In terms of power generation, the STP government is willing to enter into long term power purchase agreements with private energy producers and supports clean energy solutions, such as solar and hydro-power.

Hub Function

STP's central location in the Gulf of Guinea and the good relations it has with its neighbours makes STP an attractive hub for the provision of services in region, such as services for the maritime sector such as tank farms, bunkering terminals and shipyards, a regional airline or an aircraft MRO centre. The ACE Submarine Fibre Optic Cable System ensures fast and stable internet connections with mainland Africa, Europe and other parts of the world. ISTP could operate as a distribution centre for the region and support logistical activities. Other potential hub activities are financial services, healthcare and education.

INVESTMENT INCENTIVES AND PROCEDURES

Regulatory framework

There are two regulations that are intended to improve the conditions for investment in STP:

- Decree-law No 19/2016, including the investment code for private investment (the "**Investment Code**"); and
- Decree-law No 15/2016, including the tax benefits code (the "**Tax Benefits Code**").

The rules create a regime that takes account of the needs of STP as well as an investor that wishes to invest in STP. The Tax Benefits Code for example promotes private investment in public infrastructure through tax reductions. Equally, investments in key sectors for the economy of STP (such as agriculture, tourism and international commerce) as well as investments in lesser developed parts of the country are incentivised.

The procedural requirements for investments are set out in Decree-law No. 18/2017. STP's Trade and Investment Promotion Agency (*Agência de Promoção do Comércio e Investimento*; "**APCI**") has been given a supporting and coordinating role and operates as first point of contact for the investor.

Investment Code

Pursuant to the Investment Code, the government of STP must define and promote private investment policies for the sustainable development of STP and the economic, social and cultural well-being of STP's population.

The Investment Code applies to all investments in STP with a value of EUR 50,000 or more. Such investments will then also be eligible to incentives under the Tax Benefits Code.

The types of investment that are subject to the Investment Code are broadly defined. They should relate to economic activities that are developed by companies that are organised under the laws of STP or that are registered in STP. It applies to investment by domestic as well as foreign investors and provides for the usual guarantees for the protection of private investment.

The Investment Code provides that investment can be effected in one or more of the following ways:

- transfer of financial resources from abroad or the application of own funds
- the application of foreign currency kept in bank accounts in STP
- application in STP of funds (with originally foreign origin) by way of reinvestments
- import of machinery, equipment, accessories and other physical assets
- application of credit and other funds of private investors that are intended to be applied in entrepreneurial activities
- application of technology and knowhow

The Investment Code provides for three investment regimes: a simplified regime, a general regime and a special regime. The simplified regime applies to investments with a value between EUR 50,000 and EUR 249,999, the general regime for investments with a value between EUR 250,000 and EUR 4,999,999 and the special regime to investments of EUR 5,000,000 or more. The distinction can be relevant for the application and approval procedures in connection with the investment as well as the incentives that are available under the Tax Benefits Code.

The Investment Code provides that investments can benefit from the tax incentives set out in the Tax Benefits Code if the following conditions are met:

- the investor has at least 20% of the proposed investment amounts at its disposal
- the investor can demonstrate that it has a stable economic and financial situation for the realisation of the project
- the investor should not owe money to the STP government or the STP social security institutions

- the investor presents a feasibility study of the project, which is acceptable to the STP government, and which should demonstrate that the investment project creates permanent jobs, is directed towards the engagement of local staff and contributes to social responsibility
- the investor presents a report that analyses and demonstrates the economic impact of the investment on the country

The government can grant privileged treatment to certain types of investments, based on the economic sectors in which such investments are made, and to investments in so-called development zones. This privileged treatment is addressed in the Tax Benefits Code.

The Investment Code stresses that the investor must comply with applicable laws and regulations of STP and to observe the time limits that have been set for the import of capital and the implementation of the project.

An investor will have the right to expatriate the proceeds of its investments including dividends, profits, royalties and liquidation proceeds), subject to compliance with applicable tax and foreign exchange obligations.

The Investment Code provides that all private investment projects are subject to an investment agreement that is subject to administrative law. The Investment Code sets out the process for the conclusion of such an agreement and the information that needs to be provided by the investor. As mentioned earlier, this process is managed by APCI. APCI will also monitor compliance by the investor with the applicable investment conditions, and can take enforcement action in case of a breach.

In terms of dispute resolution, the Investment Code provides that disputes in relation to the Investment Code and its secondary regulations must be submitted to the courts of STP (unless international treaties that are binding on STP provide otherwise). Disputes in relation to investments of foreign investors must, unless otherwise agreed, be submitted to arbitration, with the following alternatives:

- STP arbitration law
- the rules of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965
- the arbitration rules of the International Chamber of Commerce in Paris

Tax Benefits Code

The incentives provided for in the Tax Benefits Code apply to investments that have been authorised in accordance with the Investment Code. Certain incentives are granted automatically while others require further action by the relevant investor and the authorities.

The Tax Benefits Code makes a distinction between general and special benefits.

General incentives are:

- exemption from import duties of goods and equipment used for new activities or the expansion of existing activities (provided that the relevant goods and equipment cannot be sourced in STP)
- a corporate income tax rate of 10% for investment projects intended to develop new activities
- accelerated depreciation and amortisation for investments in the tourism, education, health, new technologies and export sectors.
- tax deductions for investment in specialised equipment for the development of activities that are authorised under the Investment Code during the first five years of activity
- tax deductions for training costs of STP staff
- tax deductions during the first five years of activity, of costs relating to the construction and restoration of roads, water supply, electricity, energy, schools, hospitals and other public works for:
  - 150% if these activities are conducted in the districts of Cantagalo, Lembá, Lobata, Caué or in Príncipe; and
  - 100% if these activities are conducted in the other districts.

Special tax incentives apply for investments in the agriculture, agro-constructional, cattle raising and fisheries sectors. These include a 50% reduction of the corporate income tax rate for the first seven years of the project's implementation, a reduced stamp duty tax on banking operations in connection with the import of foreign capital and an exemption on income tax on the application of capital.

The tourism sector can also benefit from special incentives. These focus on the restoration, construction, expansion or modernisation of hotels and related establishments and the development of rural and eco-tourism.

The Tax Benefits Code further provides that investments in enterprises that are active in local and international trading are exempt from import duties or goods and equipment if they cannot be sourced in STP. The enterprises that are active in local trading can benefit during the first five years of their activities from a 50% reduction on the corporate or personal income tax rate. Enterprises involved in international trading are subject to a flat income tax rate of 5%.

The Tax Benefits Code provides that investments that are subject to the simplified regime receive 50% of the incentives described in the Tax Benefits Code. Additional incentives are available for projects that are of great dimension (more than USD 10,000,000) and those that are located in the districts of Cantagalo, Lembá, Lobata, Caué or in Príncipe (and other zones designated by the government for this purpose).

TAXES

Set out below is a summary of the most important taxes and duties that are levied in STP. Deductions and exemptions may apply.

Taxes on income

Personal Income tax is levied on all domestically earned income, in cash and in kind, and on all individuals, including non-residents, with STP income. There is a progressive rate of 0% - 25%. Salaries are subject to withholding tax.

Corporate income tax is levied on all domestic income from any commercial, industrial, service, or agricultural business or independent profession. There is a flat rate of 25%. Certain income, such as royalties, dividends and management fees, is subject to a withholding tax of 20%.

Taxes on property

Urban property tax is levied on all urban property, including permanent buildings intended for housing, commercial, or industrial purposes (other than the exploitation of land, and the land on which the buildings are located) and amounts to 0.1 percent of the registered value.

There is a property transfer tax (SISA) of 8% of the value of the property.

Other taxes

Stamp duty is payable in connection with the execution of documents and transactions and the issuance of invoices and receipts.

STP further charges import duties on imported goods and excise taxes on certain consumer goods.

The STP Customs Code of 2009 describes the requirements for the import and export of goods in and from STP. There are various exemptions for re-export transactions as well as activities relating to free-zones.

LAND OWNERSHIP AND REAL ESTATE

For historical reasons, much of the land is owned by the state. Depending on the circumstances, the state can sell real estate or grant concessions. There is also land that was privately owned in colonial times and that was not nationalised after the country's independence.

There are in principle no restrictions on land ownership by or the granting of concessions to foreigners, although it may in certain cases be necessary to hold the land or concession through an STP incorporated company.

There is a land register in which land ownership, mortgages and other entitlements to land are registered. It still operates on a manual basis but is currently in the process of being digitalised.

It is possible to rent houses and land. The use of the land may be restricted by law (for example, for the purpose of preservation of the environment or because of the location of the land) and any construction on the land will require authorisation from the district in whose territory the land is located.

The government can, as part of the investment that are available under the private investments law, grant concessions to investors for the use of land and buildings that are owned by the state.

INTELLECTUAL PROPERTY RIGHTS

STP has legislation in relation to industrial intellectual property and patents can be registered with the national service for industrial intellectual property. Copyright is protected under the 1972 Copyright Code. STP is a member of the World Intellectual Property Organisation.

COMPANIES

Although the STP company law identifies four types of companies, the following three are the most prevalent in the country:

Sociedade por quotas (limited liability company)

A limited liability company must have a minimum of two members (individuals or companies). This form is most commonly used for incorporating small or medium-sized enterprises. The minimum capital requirement is 150,000 New Dobras.

Sociedade anónima (joint stock corporation)

A joint stock corporation must have a minimum of ten shareholders (individuals or companies). Such companies may be public joint stock corporations (where share capital is offered for public subscription) or private joint stock corporations (where share capital is privately held). The company must have a minimum capital of 350,000 New Dobras. However, for companies that are active in certain sectors a different minimum capital requirement applies.

Sociedade unipessoal (single member private limited company)

A single member private limited company is basically a limited liability company, which can be established by one sole member (individual or legal entity), who will hold the entire share capital. The minimum capital requirement is 20,000 New Dobras.

Establishment

In general terms, the following steps are required to establish a company:

- verification of whether the proposed company name is available;
- execution before a notary public of the company's deed of incorporation, including the company's memorandum and articles of association;
- deposit of required initial share capital at a bank, with evidence of deposit;
- publication of the company's memorandum and articles of association in the Official Gazette (Diário da República);
- registry of the company at the commercial registry office;
- request for authorisation to conduct commercial activities;
- request for a corporate tax identification number;
- statement of commencement of business to be filed with the tax directorate; and
- registration of employees at the social security office.

STP has a single portal (*Guichet Único*) for company formation. This should enable the setting up of a company within three to five business days (or one business day in urgent cases). It is also intended to speed up the administrative procedures for other company and business related administrative activities.

CURRENCY

The import and export of foreign currency is to a large extent liberalised. Registered importers can pay in foreign currency without limitation. Registered exporters that receive foreign currency can dispose of such foreign currency. Foreign exchange transactions for import and export transactions must involve local commercial banks.

Payments in foreign currency for invisible operations, such as services are not subject to any restrictions, other than as set out below, but must involve local commercial banks.

The purchase of foreign currency for the following transactions is subject to prior approval of the Central Bank, although it is expected that these rules will be liberalised in the foreseeable future:

- transactions involving real estate
- granting and receiving loans and other forms of credit (personal and commercial)
- issuance of guarantees that are not linked to normal business operations
- other capital operations

LABOUR LAW

Labour relationships in STP are subject to regulation. Employment contracts can be oral or in writing. Special rules apply to the employment conditions of minors and pregnant women.

An employment contract can be entered into for a fixed or an indefinite term. If a fixed term contract (including extensions) continues for three years or more, it will be considered a contract for an indefinite term.

An employment contract can be terminated for cause, if agreed between the parties or for economic reasons. If the agreement is terminated for economic reasons, the employee is entitled to one month salary for each year of employment (with a minimum of three months). In case of unfair dismissal, the employee can request reinstatement in his or her employment position or request compensation on the same basis as described above.

The regulations provide for a minimum salary. Working hours may not extend beyond 8 hours per day and 45 hours per week. An employee is entitled to additional compensation for extra hours and for night shifts.

An employee is entitled to one day of rest per week and is further entitled to a 30 (consecutive) days' paid holiday. An employee is normally not obliged to work on public holidays and can request unpaid leave for medical treatment abroad of the employee, spouse or children.

Both employer and employee are obliged to make social security contributions. The contribution for the employee is set at 4% and that of the employer at 6% of the employee's salary.

DISPUTE SETTLEMENT

There are three methods for the resolution of investment-related disputes in STP: (i) the judicial system, (ii) domestic arbitration and (iii) international arbitration. The third option is only available to foreign investors whose initial contract with the government stipulates that any dispute will be resolved through international arbitration.

The local judicial system divides the country in three different judicial regions with each of them a lower court. The Supreme Court is the (unique) appellate court.

The 1997 Portugal-STP bilateral investment treaty allows an investor from one country to resolve a dispute with the other country (i) by negotiation between the two parties or, failing this, (ii) through the International Centre for Settlement of Investment Disputes ("**ICSID**"). STP is a an ICSID Contracting State and, therefore, the dispute settlement provisions of the ICSID Convention are directly applicable to disputes involving STP or nationals of STP.

The remaining option is domestic arbitration. The relevant legislation creates an arbitration centre, which operates in the city of São Tomé, with a minimum of three judges appointed by the STP Chamber of Commerce, Agriculture and Industry. However, arbitration is not possible for all types of disputes. All arbitral judgments are enforced through the court of first instance.

INTERNATIONAL TREATIES

STP signed a bilateral investment treaty with Portugal in 1995, which came into force in 1997. The treaty adopted the principles of the General Agreement on Tariffs and Trade (GATT), national treatment and most favoured nation status. STP has not concluded any other investment treaties yet. STP has concluded and ratified a double taxation treaty with Portugal.

STP is not a member of either the World Trade Organisation (WTO), although it has signed several bilateral trade agreements, including those with Angola, Gabon and Nigeria. STP is a member of the Economic Community of Central African States. STP has preferential access to the European Union and the United States.

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