



Corporate Immigration

in 30 jurisdictions worldwide

2013

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Mozambique

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Overview

1 In broad terms what is your government's policy towards business immigration?

Employers, whether local or foreign, may employ a foreign national with the authorisation of the minister of labour.

Employers may also, by way of a simple communication to the minister of labour, employ a certain number of foreign nationals in accordance with the following quotas:

- in large firms, up to 5 per cent of the total workforce;
- in medium firms, up to 8 per cent of the total workforce; and
- in small firms, up to 10 per cent of the total workforce – article 31(5) of the Labour Law, approved by Law 23/2007 of 1 August (the Labour Law).

Companies are classified as small, medium or large in accordance with the provisions of the Labour Law, as follows:

- a large company has more than 100 employees;
- a medium company has more than 10 and up to 100 employees; and
- a small company has up to 10 employees.

For investment projects that have been approved by the government and that stipulate a number of foreign workers that is greater or less than the quota indicated above, no authorisation is required. It is sufficient, in such cases, for the minister of labour to be informed of their employment within 15 days of the arrival of such workers in the country.

There are, nevertheless, certain conditions for and restrictions on the hiring of foreign nationals. A foreign national may only be hired if he or she has the academic or professional qualifications necessary for the position and if there are no Mozambican citizens with such qualifications, or if their number is insufficient.

That said, although the government of Mozambique understands the need for employees with technical skills and for expertise that is not available in Mozambique, it also recognises the need to limit the employment of foreign nationals and for it to serve as a means to train and develop Mozambican employees and protect the local workforce.

Short-term transfers

2 In what circumstances is a visa necessary for short-term travellers? How are short-term visas obtained?

A visa is needed to enter Mozambique, and to remain in the country for a short period, and is issued by the immigration authorities. A separate document, known as a short-term work authorisation, is required for the purposes of short-term work and is issued by the labour authorities.

Visas

In accordance with article 5 of Decree 38/2006 of 28 December, the following visas are available, inter alia:

- work visas;
- residence visas;
- visitor visas;
- tourism visas;
- border visas; and
- business visas.

In practice, these visas are issued and renewed at Mozambican consulates abroad, except for border visas, which are issued by the competent authority at international airports and borders in Mozambique.

Short-term authorisations

Normal regime

In terms of Decree 55/2008 of 20 December, foreign nationals may work in Mozambique for up to 30 consecutive or non-consecutive days per calendar year by means of a communication from the Mozambican employer (understood here to mean a Mozambican company or the foreign parent of a Mozambican company) to the minister of labour. This 30-day period can be extended for up to two further 30-day periods on application to the minister of labour. Extensions are granted at the discretion of the minister of labour.

Regime applicable to the oil and mining sectors

In terms of Decree 63/2011 of 7 of December 2011, which approved the Regulations on the Hiring of Foreign Citizens for the Oil and Mining Sectors, foreigners working in the oil and mining sectors may work in Mozambique for up to 180 consecutive or non-consecutive days per year, by means of a communication from the mining title holder, a concessionaire, an operator or a subcontractor, provided that such employer is legally registered in Mozambique.

3 What are the main restrictions on a business visitor?

As indicated above, visas do not allow a person to work in Mozambique, but only to enter and remain in the country for a short period of time.

Business visas may be valid for three months or for six months. Three-month business visas are more common and are issued as multiple entry visas. Six-month business visas are normally single entry visas, which means that if the holder leaves the country the visa expires automatically. However, on the applicant's request, the issuing entity may issue a six-month business visa that is valid for multiple entries, or for any number of specified entries.

The issuance of a six-month business visa is not common, as mentioned above, and is issued at the discretion of the competent authorities.

- 4 Is immigration permission needed to give or receive short-term training?

To give short-term training, a visa is required and the Ministry of Labour may also require that a short-term work authorisation is obtained. To receive short-term training, only a visa is required, which is normally issued as a student visa.

- 5 Are transit visas required to travel through your country? How are these obtained?

In accordance with article 12 of Law 5/93 of 28 December, which sets out the legal framework applicable to foreign citizens (L5/93), as well as the respective rules for entering, remaining in and leaving the country, and relevant rights, duties and guarantees, transit visas are granted to those foreign citizens who need to enter the country to reach their country of destination.

Transit visas are granted following the presentation of a visa from the country of destination, and may be requested from the consular services at Mozambican embassies abroad, and from the immigration services at customs. These visas are granted for periods not exceeding seven days. A foreign citizen on a continuous journey, who does not have a transit visa at the time of a stopover or change of their means of travel, must comply with the instructions given to them by the competent authority.

Long-term transfers

- 6 What are the main immigration permission categories used by companies to transfer skilled staff?

In terms of the Mozambican Labour Law, there are two ways of employing foreign nationals in Mozambique:

- Obtaining an authorisation from the minister of labour: authorisations (also known as ‘work permits outside the quota’) are granted by the minister of labour on a case-by-case basis if the following preconditions are met: (i) there are no Mozambican employees qualified to do the particular job; or (ii) the number of qualified Mozambican employees is insufficient to meet the demand. Authorisation is also the required approach in cases of ‘specialised technical assistance’ including such contexts as employment in NGOs, scientific research and teaching, inter alia.
- Communication to the minister of labour: communications (also known as ‘work permits within the quota’) should be made use of if:
 - (i) the number of foreign employees intended to be contracted is within established quotas, namely:
 - 5 per cent of the total number of employees in large enterprises (ie, more than 100 people);
 - 8 per cent of the total number of employees in medium-sized enterprises (between 11 and 100 people); and
 - 10 per cent of the total number of employees in small enterprises (10 or fewer people); or
 - (ii) there is specific provision in the prospective employer’s investment contract with the government of Mozambique for the employment of a percentage of foreign employees that is greater or less than the percentages set out above.

Employees holding the work permits referred to above may apply for a work visa and subsequently a residence permit, which is valid for one year and can be renewed.

- 7 What are the procedures for obtaining these permissions?

Work authorisations are granted at the discretion of the Ministry of Labour. Before a work authorisation is granted, a certificate of equivalence must be obtained from the Ministry of Education. An

application for a certificate of equivalence requires the submission of diplomas and certificates – duly translated, if they were issued in a language other than Portuguese.

The submission of a communication to the minister of labour is an easier process and does not depend substantially on whether or not there are Mozambicans available for that post (or skilled staff), as must be assessed for the purposes of a work authorisation application. The submission of a communication to the minister of labour is dependent upon whether or not the company’s foreign employee quota has been used up.

For the residence permit, an application which includes a work visa, police clearance certificate, marriage certificate (if the employee is coming to Mozambique with his or her spouse and children), and an employment contract, inter alia, will be required.

- 8 What are the general maximum and minimum periods of stay granted under the main categories for company transfers?

The maximum period for which an employee of a company may work, in terms of a work authorisation or communication, is two years.

- 9 How long does it typically take to process the main categories?

The time required for the issuing of either a work authorisation or a communication depends largely on the time required to compile the documentation, and whether or not the documents available meet the required standards. Assuming that all of the documents received do meet the required standards, the drafting and submission of a communication under the quota and its acceptance by the competent authorities would take between one and three business days.

Assuming that all the documents received meet the required standards, work permits outside the quota take 15 days to be issued once the relevant applications have been submitted to the competent labour authorities.

The issuing of a certificate of equivalence currently takes between two weeks and three months from the date of the submission of an application to the Ministry of Education.

- 10 Is it necessary to obtain any benefits or facilities for staff to secure a work permit?

No.

- 11 Do the immigration authorities follow objective criteria, or do they exercise discretion according to subjective criteria?

Prior to the issuing of a work permit, the labour authorities will determine whether all of the legal requirements have been met. However, in some cases, such as for recently formed companies, the competent authority may exercise a degree of flexibility by requesting the submission of alternative documents to replace those that have not yet been obtained by the recently incorporated company.

In the case of business visas, the degree of flexibility exercised depends on each consular service abroad. For example, in the United States, the Mozambican authorities tend to be more flexible than in India for instance.

For the issuing of residence permits, the competent immigration authorities are not flexible at all. Residence permits are not issued if any of the requirements have not been duly met.

- 12 Is there a special route for high net worth individuals or investors?

This is dependent on the conclusion of treaties with the government. There are cases in which a certain status or privilege is conceded, and in which the Ministry of Foreign Affairs and Co-operation

(MINEC) issues a residence card, on the submission of the following documents:

- a letter of offer of employment, indicating the admission of the employee to the company, and the duties conferred on them;
- a letter to MINEC, drafted by the institution, requesting the issuing of a residence card;
- four photographs;
- a specific form, completed in triplicate; and
- a passport copy.

For investors, an approved investment project may offer a more favourable quota, for work permit purposes.

Decree No. 63/ 2011 of 7 December also establishes a special regime for the hiring of foreigners in the mining and oil sector.

13 Is there a special route for highly skilled individuals?

No, there is no special route set out in labour legislation by which work permits or residence authorisations for skilled individuals may benefit from preferential treatment.

However, there are programmes for highly skilled individuals that may assist a foreign investor financed by these programmes to obtain a work permit for them, via a different route. The route to be followed can only be confirmed by these programmes. Please see www.amsc.org.

14 Is there a minimum salary requirement for the main categories for company transfers?

No, there is no minimum salary requirement. However the law requires the payment of a fee of:

- three minimum salaries applicable to the sector of activity of the company in question, for the issuing of a communication under the quota by the Labour Directorate;
- 10 minimum salaries applicable to the sector of activity of the company in question, for a work authorisation (outside the quota) – Decree 54/2008 of 20 December, which approved the Regulations on the Mechanisms and Procedures for the Contracting of Foreign Citizens, articles 6(g) and 16(f), and Decree 63/2011 of 7 December which approved the Regulations on the Mechanisms and Procedures for the Contracting of Foreign Citizens for the Oil and Mining Sectors, article 19 (1) and (2).

Short-term work authorisations are not subject to any government fee under the normal regime. However, short-term work authorisations for the oil and mining sectors are subject to the payment of a fee in the amount of 10 minimum salaries (Decree 63/2011 of 7 December, Article 19 (2)).

15 Is there a quota system or resident labour market test?

There is no legal provision which provides that the position should be advertised, although this is often the practice in the case of hiring of foreign nationals outside the quota, as a means to ensure that there are no Mozambican employees qualified for the specific job, or that the number available is insufficient meet the demand.

Also, in the case of specialised technical assistants to be employed by NGOs, in respect of whom a letter of opinion must be obtained from the NGO Department of MINEC, proof of the advertisement of the position may be requested, although this is not explicitly required by law.

A letter of opinion from the entity that oversees the sector of activity in which the company operates is one of the requirements for the issuing of a work authorisation by the competent labour entities. This document is frequently used as the document that shows that there are no Mozambican employees with the qualifications needed to fill the specific job vacancy.

16 What is the process for third-party contractors obtaining work permission?

In order for contractors to work in Mozambique, they will require a work permit. In practice, the companies to which they will provide services apply for their work permit by submitting the documents required for a work permit.

Once contractors have obtained work permits, they will be entitled to work at the premises of their employers or at any other place to which their employers send them, provided that the employment contract approved by the competent entity provides as such.

A contractor may only provide services to a company other than the company that applied for his or her work permit in the following situations:

- when there is a common organisational structure between the companies, provided that all companies, as well as the company that represents the others in performing the duties of the employer, in terms of the relevant employment contract, are identified in the employment contract that is submitted to the competent entity in application for the contractor's work permit – the Labour Law, article 35, paragraph 2; or
- there is an agreement between the employing entity and another company to transfer the employee, provided that the transfer is regulated by collective labour regulations and the requirements for the transfer, as set out in law, are met – the Labour Law, article 78.

Alternatively, the contractor may use the services of an employment agency, which will serve as his employer for purposes of the work permit.

17 Is assessment or recognition of skills and qualifications required to obtain immigration permission?

Not strictly for immigration permission. However, in order to obtain a work authorisation (outside the quota), an applicant must have a certificate of equivalence. A certificate of equivalence is applied for from the Ministry of Education, by submitting school certificates and academic diplomas, in accordance with the rules determined by this entity.

Extensions and variations

18 How can short-term visas be converted into longer-term authorisations?

Short-term visas cannot be converted into longer-term authorisations. Visas are different documents, and follow different procedures, from work permits. Visas can also not be converted into residence permits, as different requirements apply to residence permits. Moreover, short-term work authorisations also cannot be converted into work communications or work authorisations, as new requirements would apply. This does not mean an individual cannot start with one (short-term work authorisation) and then move to the other (work authorisation). Simply, it will entail a new process, which is separate and independent from the other.

19 Can long-term immigration permission be extended?

Yes, long-term immigration permission (residence authorisations) can be extended as many times as required, provided that the requirements for extensions are met.

20 What are the rules on and implications of exit and re-entry for work permits?

There are no implications that we are aware of.

21 How can immigrants qualify for permanent residency or citizenship?**Permanent residency**

A person may qualify for a residence authorisation on the basis of any one of the following:

- being the holder of a work permit;
- being married to a holder of a work permit;
- being in a factual ('common-law') union with a Mozambican, for more than one year;
- being in a factual ('common-law') union with a foreign citizen who holds a work permit, for more than one year;
- being dependent on a foreign national who holds a work permit; or
- being married to, or being a dependant of, a national.

The first type of residence authorisation one can obtain is a 'precarious' residence authorisation. Only after five consecutive renewals of a 'precarious' residence authorisation can one obtain a temporary residence authorisation. After 10 consecutive renewals, one may then obtain permanent residence, which is valid for five years and renewable for equal periods. – D38/06, article 25(1).

Citizenship

The ways in which Mozambican nationality may be acquired are as follows.

By birth

The acquisition of nationality by birth may be consanguineous (*via jus sanguinis*) or territorial (*via jus soli*).

Acquisition of nationality *via jus sanguinis* is possible in the case of an individual who is the child of a Mozambican mother or father, and acquisition *via jus soli* is possible in the case of an individual who, while not being the child of a Mozambican mother or father, was born in Mozambique.

It should be noted that children of Mozambican mothers or fathers who were born in a foreign country, and citizens of foreign mothers and fathers in the service of the country of citizenship of either one of them, born in Mozambique after independence, may be Mozambicans if, being older than 18 years, they declare that they wish to be Mozambicans, or, if they are minors, such a declaration is made by their legal representative.

By marriage

In order to acquire Mozambican citizenship by marriage, the following requirements must be met:

- the individual must have been married to a Mozambican for at least five years;
- the individual must declare that he or she wishes to acquire Mozambican nationality; and
- legal requirements must be met and prescribed guarantees provided.

By naturalisation

Mozambican nationality may be acquired by naturalisation by an individual who is older than 18 years, has resided habitually and regularly in Mozambique for at least 10 years, speaks Portuguese or a Mozambican dialect, has the means to look after him or herself and to provide for his or her own subsistence, is upstanding, and meets the requirements and provides the guarantees required by law.

By blood relationship

Following naturalisation, Mozambican nationality may be conferred on the children of a citizen with acquired nationality, provided that they are unmarried and younger than 18 years of age.

By adoption

An individual fully adopted by a Mozambican national acquires Mozambican nationality.

By reacquisition

The Constitution also allows for the reacquisition of Mozambican nationality by those who, having lost (renounced) it, establish their place of domicile in Mozambique and meet the requirements and provide the guarantees set out in the law.

It also states that a Mozambican woman who has lost her nationality because of marriage may reacquire it on application to the competent entities.

It is worth mentioning that it is permissible, in light of the Constitution – which enshrines the fundamental rights of Mozambican citizens – to acquire other foreign nationalities, and that foreign citizens are permitted to obtain Mozambican nationality in one of the manners described in the Constitution without having to renounce other nationalities, provided that the requirements of the law are met and the only nationality that can be used and recognised while in Mozambique is the Mozambican nationality.

22 Must immigration permission be cancelled at the end of employment in your jurisdiction?

Although in practice this not enforced consistently, a general principle set out in the Labour Law is that a foreign citizen with a temporary residence permit may not remain in the national territory after the expiry of the period of validity of the contract – the Labour Law, article 32, paragraph 2.

23 Are there any specific restrictions on a holder of employment permission?

There are some specific restrictions relating to working for another employer on the basis of the same work permit.

An employee may only work for a company other than his or her employer in the specific situations described in question 16, above.

Other than the restriction referred to above, we are not aware of other restrictions. It is worth noting that the Labour Law provides for a principle of equality and non-discrimination between local and foreign workers – the Labour Law, article, 31, paragraph 2.

Dependants**24** Who qualifies as a dependant?

In accordance with the Portuguese Dictionary, a dependant is one who depends or is subordinate; who is subject. A dependant is thus a person who does not have his or her own resources, and lives at the expense of another. Law 5/93 does not expressly indicate who may be deemed to be dependent, merely stating, in article 10(3), the following: 'A residence visa application may extend to children without capacity, who are the responsibility of the applicant, as well as to his/her spouse.' From the above-mentioned legal provision, and taking into account the spirit of the law, we may conclude that a residence visa for a foreign citizen may extend to those who live with them, at their expense.

The Mozambican legal system does not recognise the marriage or common-law marriage of a couple of the same sex.

Marriage is defined by law as 'a voluntary and particular union between a man and a woman, with the purpose of creating a family, by living in full partnership' – the Family Law, approved by Law 10/2004 of 25 August, article 7.

The Mozambican legal system acknowledges common-law marriage, which is defined as being a particular connection of a stable and long-term nature, existing between a man and a woman who, although being legally able to conclude a marriage, have not done so. A common-law marriage presupposes that this man and woman have lived in full partnership for a period of more than one year, without interruption – the Family Law, article 202.

An unmarried opposite-sex partner of a work permit holder is generally allowed to enter and reside in Mozambique as a dependant of a work permit holder. At the time of the filing of the dependant's residence permit application, which begins with an application for a work/residence visa, the unmarried opposite-sex partner will have to provide a document proving the existence of their relationship.

Same-sex relationships are not recognised by Mozambican law. A same-sex spouse or partner of a work permit holder is not permitted to enter and reside in Mozambique as a dependant of a foreign work permit holder.

25 Are dependants automatically allowed to work?

No, dependants are not automatically allowed to work. As indicated above there is no difference between the type of work authorisation required for the spouse or partner of a work permit holder, and that required for the work permit holder him or herself.

26 What social benefits are dependants entitled to?

Not applicable.

Other matters

27 Are prior criminal convictions a barrier to obtaining immigration permission?

The general requirements and conditions for the acquisition of any visa are contained in articles 11 and 16(1) of L5/93. There is no mention, in any of these lists, of a criminal record certificate.

However, in order for a residence visa to be granted, a criminal record certificate is required. This certificate must be applied for and issued by the competent authority in the country of nationality of the applicant, or the place in which he or she was last resident for at least two years, as set out in article 14(a) of the Regulations on Law 5/93 of 28 December.

The said Law sets out the conditions on which a foreign national may be banned from entering or leaving the country. Thus, foreign nationals may be banned from entering or leaving the country when the border authority receives official information that a request for the banning of entry has been issued, by the competent authority, against any traveller or immigrant – Law 5/93, article 19.

Equally, any foreign national may be banned from leaving the country when the competent authority receives official information that a request for arrest, or for the banning of exit, has been issued by an authorised entity, against a traveller or emigrant – Law 5/93, article 27.

A foreign national may be banned from entering the country, when:

- they have been expelled from the country;
- they have been found guilty by a Mozambican court of a crime for which a prison sentence may be imposed;
- the border authority has received official information that a request for the banning of their entry exists against them;
- they perform any activities that, when conducted in Mozambique, imply their expulsion;
- there is sufficient indication that they may cause disruption to order and public safety, or other unwanted problems, whether internally, regionally or internationally;
- they are a vagrant or homeless person, do not have means of subsistence, or are deemed not to be in a state to raise such means;
- they are sought by the authorities of other countries, unless the prior authorisation of the competent entity is obtained;
- they have been fined, on prior occasions, for the violation of immigration laws, and have not paid the respective fines; or
- they have behaved in a manner contrary to the nature of purpose for which their visa was granted to him – D38/04, article 34.

28 What are the penalties for companies and individuals for non-compliance with immigration law? How are these applied in practice?

The law classifies the applicable penalties in accordance with the offence:

- Absence of visa – a foreign citizen who remains in the country for a period exceeding that which is authorised is subject to a daily fine of 1,000 meticaís, without prejudice to the payment of fees that they would have had to pay, had they been duly authorised.

Whenever the above transgression is discovered on the departure of the foreign citizen from the national territory the fine is increased by 50 per cent.

- Absence of residence permit – punishable by way of a daily fine of 1,000 meticaís, plus additional fees.

A foreign citizen who allows their residence permit to expire may renew it by paying a fine of 100 meticaís per day, plus additional fees for costs in the case of repatriation. Public or private companies and commercial companies who have foreign citizens in their service are liable for the costs of their repatriation, in terms of this law.

- Clandestine and undocumented foreign citizens – companies, shipping agents and individuals who transport undocumented or clandestine foreign citizens into the country are liable for all of their expenses, including their return, in addition to a fine of 6,000 meticaís, should they disembark.
- Loss of and damage to documents – a foreign citizen who, through their own negligence, loses or does not look after immigration documents, and so causes total or partial damage to such documents, or the deletion of information or details contained therein, may acquire second copies of such documents by paying double the fee required for obtaining the first copy.

Law 5/93, articles 42 to 47, and D38/06 of 27 December, articles 45 and 50.

29 Are there any minimum language requirements for migrants?

Legislation on immigration does not refer to any need for immigrants to have knowledge of Portuguese, or any other Mozambican language, as a *conditio sine qua non* for the acquisition of a visa. However, for the purposes of obtaining Mozambican nationality, an applicant must have a minimum knowledge of Portuguese or a Mozambican language, as provided for in article 27(1) of the Constitution of the Republic of Mozambique.

30 Is medical screening required for obtaining immigration permission?

Article 6 of Law 12/2009 of 12 March, which sets out the rights and duties of a person living with HIV/AIDS, provides that it is the right of a person living with HIV/AIDS not to be obliged to reveal their serological status. Article 16 of the same law provides that discrimination against, and the maltreatment of, any person living with HIV/AIDS, is prohibited. In addition, article 25 states that the performance of any tests for the purpose of diagnosing HIV, without the consent of the person concerned, is prohibited, except in certain exceptional cases, which are listed in the same article. Any person infringing these legal provisions may be sentenced to a prison term of up to three months, and a corresponding fine – articles 46 and ff.

From the above, it is clear that immigrants are not required to undergo HIV/AIDS testing for the purposes of obtaining visas or residence permits.

However, Ministerial Diploma 237/2009 of 14 October states that for the purposes of acquiring a visa, citizens of certain countries must be vaccinated against yellow fever. The Diploma also states which countries are potential transmitters of yellow fever, and where a yellow fever vaccination is a condition for the acquisition of a visa. These countries are: Angola, Benin, Bolivia, Brazil, Burkina Faso,

Cameroon, Chad, Colombia, the Democratic Republic of the Congo, Ecuador, Ethiopia, Gabon, Ghana, Guinea, Guinea-Bissau, the Ivory Coast, Niger, Nigeria, Panama, Peru, Rwanda, Senegal, Sierra Leone, Tanzania, Trinidad and Tobago, Uganda, and Venezuela.

Update and trends

Decree 63/2011 of 7 December, which approved the Regulations on the Mechanisms and Procedures for the Contracting of Foreign Citizens for the Oil and Mining Sectors, requires clarification as regards certain articles, so that these regulations can be properly implemented. Notwithstanding the above, the said legislation has created a favourable regime for the hiring of foreigners in the oil and mining sectors. This new legislation was passed so as to improve the business environment in Mozambique.



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