

# The Legal Framework

## For Employment & Immigration in Mozambique



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## Introduction

This booklet comprises part of a series which is aimed at assisting investors, both new and existing, in opening, developing and operating their business in Mozambique. The booklet, available in Portuguese and English aims to provide an easy to follow guide based on Law n° 23/2007 of 01 August and related legislation.

It has been developed by ACIS in conjunction with SAL & Caldeira Advogados Lda, with the support of GIZ Pro-Econ (*Ambiente Propício para o Desenvolvimento Económico Sustentável*).

Where relevant the points made in the booklet are footnoted with references to the specific legislation mentioned. Much of the legislation you will need to support the information given below is available in both Portuguese and English from ACIS, and other booklets in the Legal Framework series are available from ACIS' website [www.acismoz.com](http://www.acismoz.com).

As we prepared this booklet, we found ourselves at times disagreeing over what was proper procedure in respect of certain matters. We learned that that was because, in some cases, the same matters were handled slightly differently in different areas of the country. Although the sources of law governing labor matters are national, local interpretation can generate distinct local practices. We took as our point of departure practice in Sofala Province.

While we have tried our best to be accurate, we may have made some mistakes and we certainly made some omissions. Also, law and public administration are dynamic subjects, and it is very likely that, in the near future, some law or regulation described herein will be changed. We hope to correct the mistakes and supply the omissions in further versions of the manual, so please do tell us of any that you find. In the meantime, prudence compels us to disclaim liability for any errors or omissions. In specific matters and cases of doubt, readers would do well to consult legal counsel.

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## Glossary of terms

Please find below a list (not exhaustive) of some of the terms you will encounter when dealing with labor and immigration issues.

<b>Alvará</b>	Company trading license.
<b>Assinatura Reconhecida</b>	Signature on a document compared to that in an identity document and stamped as correct by the <b>Notary</b> .
<b>Autorização de Trabalho</b>	Work authorization issued by Ministry of Labor to foreign employees. Ordinarily valid for 2 years.
<b>BI</b>	Mozambican Identity Card. Every Mozambican worker must have a current one.
<b>Boletim Individual de Alojamento</b>	Individual Accommodation Bulletin. A document completed by any non-resident foreigner staying in a hotel, guest house, private residence or other similar establishment.
<b>Caderneta de Controle Sanitário</b>	Health and Safety Inspection Book. Purchased then stamped by <b>CHAEM</b> . Must be available for inspection at company offices.
<b>Cartão de Contribuinte</b>	ID card provided by the National Social Security Institute ( <b>INSS</b> ) to each worker containing an individual number. A copy should be kept in the worker's personnel file.
<b>Cartão de Desemprego</b>	Provincial Labor Department registration document. Every new employee must have one.
<b>Certidão de Quitação</b>	Declaration issued by either the Ministry of Finance or INSS stating that a company is not in breach of its duty to pay taxes or social security. These documents are required for applications for work permits.
<b>CHAEM</b>	Provincial Health Department which inspects company premises for health and safety reasons prior to company opening, and carries out health checks on new employees. This department can inspect company premises at any time.
<b>Cópia autenticada</b>	Copy of a document compared to the original and stamped as correct by the <b>notary</b>
<b>Declaração de Saída</b>	Exit declaration – currently required for any applicant for a biometric residence document to leave the country during the time their application is being processed
<b>DIRE</b>	Foreigners' Registration Document, or residence permit issued on the basis of <b>Autorização de Trabalho</b> . Issued by Provincial Immigration Departments and renewable annually
<b>Direcção Provincial de Trabalho</b>	Provincial Labour Directorate. The provincial representative office of the Ministry of Labour.
<b>Folha de Salário</b>	Pay Schedule. This must be completed in duplicate with the worker signing both copies and also receiving a take home breakdown of his individual salary. The schedule must contain all deductions and is submitted monthly to the Provincial Labor Department by the 10 <sup>th</sup> .
<b>Horário de Trabalho</b>	Work schedule form outlining the hours between which the company will be open, approved by Provincial Labor Department and displayed at company offices
<b>INSS</b>	National Social Security Institute. All workers pay 3% deducted at source, to which the employer adds a 4% contribution. Payments must be made monthly by the 10 <sup>th</sup> .
<b>IRPS</b>	Personal income tax deducted at source from all employees listed on the pay schedule (national and foreign) payable by the employer by 20 <sup>th</sup> of month. Paid according to tax brackets.
<b>Notary</b>	The Provincial Registry and Notary Department, responsible for registration of companies, preparation of certain legal documents, authentication of signatures and documents, etc.

<b>NUIT</b>	Individual tax number applied for on a form Modelo 05.
<b>Plano de Ferias</b>	Company leave schedule prepared annually in accordance with the Labor law and displayed at company offices.
<b>Processo Individual</b>	Personnel File. Purchased at the official stationers, one must be held for each new employee, and should contain a photo, contract, <b>cartão de desemprego</b> , health certificate issued by <b>CHAEM</b> , as well as copies of any promotions or disciplinary processes etc.
<b>Procuração</b>	Power of Attorney, prepared by the <b>notary</b> , available in different “strengths” allowing the mandated party to carry out either broad or limited functions on behalf of shareholders or the company.
<b>Relação Nominal</b>	List of all employees (national and foreign including shareholders) on the company pay schedule including details of salary, grade, level, qualification etc. renewed annually, and displayed at company offices.
<b>Seguro Colectivo</b>	Workers insurance which must be paid by all companies for all employees and which covers work related accidents and other items not covered by <b>INSS</b> .
<b>Serviços de Migração</b>	Immigration Services. Represented in provincial capitals and at borders, ports and airports.
<b>Termo de Responsabilidade</b>	A declaration of responsibility. Issued by an employer or parent, guardian or spouse in respect of an application for a visa or residence application. The declaration states that the signatory assumes responsibility for the costs of maintaining the subject of the declaration in Mozambique and of repatriating them if necessary.

## SECTION 1 EMPLOYMENT

### 1. Overview of the Constitutional and Statutory Framework

For the purposes of this booklet, labor legislation in Mozambique includes:

- (i) the Constitution of the Republic of 2004 (the “Constitution”);
- (ii) international conventions to which Mozambique is a party;
- (iii) the Law n° 23/2007 of 01 August, (the “Labor Law”);
- (iv) Law n° 8/98 of 8 July (the “Law 8/98” in effect until 30 October 2007);
- (v) other laws and regulations, some of which predate the Labor Law but remain in effect, others of which are subsequent to the Labor Law and, usually in the form of decrees, that specifically regulate matters in that law; and
- (vi) Sector-specific legislation touching on labor questions.

The last category, including, for example, health and safety regulations in such areas as mining and petroleum products handling, is beyond the scope of this booklet.

The Constitution prohibits involuntary servitude except in the context of and as regulated by the penal code.<sup>1</sup> It provides that all workers have a right to a fair wage, rest and vacation, and to a safe and hygienic work environment.<sup>2</sup> Workers may be dismissed only in the cases and under the terms established by law. Workers have the right to organize in professional groups and unions, as regulated by law;<sup>3</sup> they have a guaranteed right to strike, and lock-outs may not be used against them.<sup>4</sup>

None of these general principles, widely if not universally accepted, are controversial in Mozambique. When workers and managers differ about the framework of the law, the instrument of reference is usually the Labor Law rather than the Constitution.

### 2. Overview of the Judicial and Administrative Framework

The judicial framework for labor relations in Mozambique is set out Law n° 18/92 of 14 October (the “Labor Courts Law”). The Labor Courts Law formally created the labor courts foreseen as distinct judicial institutions under Article 167, paragraph 1, clause g) of the Constitution.

The Labor Courts Law provides for district and provincial labor courts.<sup>5</sup> The qualifications generally applicable for judges and court officials in the courts of general jurisdiction apply to the Labor Courts.<sup>6</sup>

The jurisdiction of the Labor Courts covers “labor questions as well as those arising from occupational illness and workplace accidents,”<sup>7</sup> as well as questions arising from administrative

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<sup>1</sup> Constitution, Article 84, paragraph 2.

<sup>2</sup> Ibid.: Article 85, paragraphs 1 and 2.

<sup>3</sup> Ibid.: Article 86.

<sup>4</sup> Ibid.: Article 87.

<sup>5</sup> Labor Courts Law, Article 1.

<sup>6</sup> Ibid.: Articles 5, 6 and 7.

<sup>7</sup> Ibid.: Article 8, paragraph 1.

regulation of labor and social security, including appeals from fines imposed by the Labor Inspectorate.<sup>8</sup>

Claims under the Labor Law may be presented in writing or verbally to the Labor Court and there written down.<sup>9</sup> This measure is intended to make the Labor Courts more accessible to workers, who tend to be less literate and have fewer means with which to press a claim. Labor procedure in general is deliberately simpler than civil procedure, for similar reasons.<sup>10</sup> In general, the Code of Labor Procedure applies, but the Labor Courts have considerable latitude in applying procedures simpler still than those foreseen in that code in order to give effect to the principle of procedural simplicity.<sup>11</sup>

Labor Courts are supposed always to seek to conciliate the parties where possible before finally adjudicating their dispute.<sup>12</sup>

Except as otherwise provided in the law, the statute of limitations on labor claims is six months from the date either of the parties became aware of the facts underlying the claim.<sup>13</sup>

Until the Labor Courts begin to function, the courts of general jurisdiction continue to exercise jurisdiction in labor matters.<sup>14</sup> In fact, this provision remains very much in effect. As of this writing, no Labor Courts as such exist in Mozambique. In Maputo and Beira, there are sections of the provincial courts (four in Maputo and one in Beira) that are reserved exclusively for labor questions. Recently, the Ministry of Justice has begun to recruit and train administrative staff for the Labor Courts.

The administrative framework for labor relations in Mozambique is determined by a few instruments. In addition to the Labor Law itself, discussed in relevant detail below, and Decree n° 7/94 of 9 March, establishing the Consultative Labor Council, Ministerial Diploma n° 88/95 of 28 June (“DM 88/95”) supplies the organic structure of the Ministry of Labor. At the central level, the Ministry of Labor has the following units:

- National Directorate of Labor
- National Directorate of Planning and Labor Statistics
- Labor Inspectorate
- Department of Migratory Labor
- Department of Administration and Finance
- Department of Human Resources
- Office of Studies, and
- Office of the Minister.<sup>15</sup>

The roles and responsibilities of each are set forth in Ministerial Diploma 88/95 and correspond roughly to their titles. Of these units, the most directly involved in the day-to-day

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<sup>8</sup> Ibid.: paragraph 2.

<sup>9</sup> Ibid.: Article 16, paragraph 1.

<sup>10</sup> Ibid.: Article 21, paragraph 2.

<sup>11</sup> Ibid.: Article 31, paragraphs 1 and 2.

<sup>12</sup> Ibid.: Article 20, paragraph 1.

<sup>13</sup> Labor Law, Article 56, paragraph 1. This is the new default statute of limitations. The Labor Law expressly repeals Article 16, paragraph 2 of the Labor Courts Law. See Labor Law, Article 272, paragraph 2.

<sup>14</sup> Labor Courts Law, Article 28.

<sup>15</sup> Ministerial Diploma 88/95, Article 2, paragraph 1.



mediation of the relationship between labor and management is the National Directorate of Labor.

The Ministry of Labor also performs a supervisory role for a number of related but legally distinct institutions, namely:

- National Institute for Social Security (INSS)
- National Institute for Employment and Professional Training (INEFP)
- School of Labor Studies (*Instituto Alberto Cassimo*).<sup>16</sup>

The INSS is discussed in further below. INEFP is responsible, among other matters, for operating technical training centers. The Department of Migratory Labor has been delegated the responsibility for approving applications for the right to work by foreign workers in Mozambique. However since this department does not in fact exist in many provinces, this role which was previously taken by INEFP, is currently assumed by the Provincial Labor Departments.

There are also subordinate collegial bodies in the Ministry of Labor. These are:

- the Coordinating Council, and
- the Consultative Council.<sup>17</sup>

The former, under the direction of the Minister, is responsible for the coordination of the activities of the Ministry.<sup>18</sup> The latter, also under the direction of the Minister, is responsible for analyzing and issuing opinions with respect to “fundamental questions of the activity of the Ministry.”<sup>19</sup>

### **3. General Principles of the Labor Law**

The interpretation and application of the Labor Law are subject to the principles of the right to work, stability in employment and position, change of circumstances and non-discrimination on the basis of sexual orientation, race or HIV-positive status.<sup>20</sup>

Whenever there is a contradiction between a rule in the Labor Law and other instruments that govern labor relations, the content that results from interpretation in accordance with the principles defined in the Labor Law shall prevail.<sup>21</sup>

The deliberate violation of any principle defined in the law makes null and void the corresponding act, without prejudice to the civil and criminal liability of the violator.<sup>22</sup>

For the purpose of ensuring protection of workers’ dignity, the Labor Law grants workers certain rights.

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<sup>16</sup> Ministerial Diploma 88/95, Article 2, paragraph 2.

<sup>17</sup> Ibid.: Article 12.

<sup>18</sup> Ibid.: Article 13, paragraph 1.

<sup>19</sup> Ibid.: Article 14, paragraph 1.

<sup>20</sup> Labor Law, Article 4, paragraph 1

<sup>21</sup> Ibid.: paragraph 2.

<sup>22</sup> Ibid.: paragraph 3.

These include the worker's right to privacy. This obliges the employer to respect the personal rights of the worker and, in particular, the right to privacy in the worker's personal life.<sup>23</sup> Thus, the employer may not reveal to third parties information related to the personal life of the worker, including details of her family, romantic or sex life, state of health or religious and political beliefs.<sup>24</sup>

The Labor Law also grants protection for personal data. It prohibits the employer from obliging the worker, at the time of contracting or thereafter, to supply information regarding his private life except when particular requirements inherent to the professional activities so require, whether by law or custom in the profession. In such cases, the employer must supply the basis for the request in writing. Thus, a worker's personal data obtained under a duty of confidentiality as well as information the release of which would violate the worker's privacy right may not be given to a third party without the consent of the worker unless otherwise required by law.<sup>25</sup>

Employers may not use devices that monitor workers from a distance (e.g. closed-circuit television cameras) for the purpose of monitoring workers' performance; provided, that such devices may be used for the purpose of protecting people and property and when doing so is part of the production process. In such cases, the employer must inform the worker as to the existence and purpose of such devices.<sup>26</sup>

Under the Labor Law, workers' personal correspondence, carried out by any means of private communication and, specifically, electronic messages, is considered inviolable except as expressly provided otherwise by law. However, the employer may establish rules and limitations on the use of information technology in a company, including the use of e-mail and Internet access or, in the alternative, may completely forbid their use for private purposes.<sup>27</sup>

Employers are also permitted to require candidates for employment to present health certificates, unless this is contrary to legal provisions. The doctor responsible for the tests is not permitted to divulge any information other than the worker's fitness or otherwise for employment.

### **3.1 Protection of Maternity and Paternity**

The Labor Law<sup>28</sup> ensures working mothers and fathers certain rights in respect of maternity, paternity and childcare. The exercise of such rights depends on prior information being given to the employer regarding the worker's circumstances, and the employer may require that proof be supplied.

During pregnancy and after birth, the Labor Law ensures to women certain rights in respect of the tasks they may be assigned given their state of health, protection of their dignity and the right to return to their posts.<sup>29</sup>

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<sup>23</sup> Ibid.: Article 5, paragraph 1.

<sup>24</sup> Ibid.: paragraph 2.

<sup>25</sup> Ibid.: Article 6, paragraphs 1 and 3.

<sup>26</sup> Ibid.: Article 8, paragraphs 1 and 2.

<sup>27</sup> Ibid.: Article 9, paragraphs 1 and 2.

<sup>28</sup> Law 8/98, Article 74 et seq.

<sup>29</sup> Labor Law, Article 11.

The Labor Law grants women workers maternity leave of 60 consecutive days. Maternity leave may begin 20 days before the probable date of birth, and the days remain consecutive whether the worker carries to term or gives birth prematurely. This is in addition to regular leave. If the woman or her child is hospitalized during the period after the birth, the maternity leave is considered to be suspended for as long as the hospitalization continues; provided, that the employer is timely informed.<sup>30</sup>

Fathers have the right to paternity leave of one day, every two years, to be taken on the day immediately following the birth. The working father who wishes to take paternity leave must inform his employer, in writing, either before or after the birth.<sup>31</sup>

#### **4. Sources of Law and Codes of Conduct**

The main sources of law in labor matters are:<sup>32</sup>

- the Constitution of the Republic;
- normative acts (e.g., laws and decrees) of the Assembly of the Republic and the Government;
- international conventions and treaties to which Mozambique is party;
- collective regulatory instruments. These take various forms, including contracts of adhesion and arbitral awards in voluntary arbitration.<sup>33</sup>

Secondary sources of Labor Law include labor customs in each profession, sector or company that are not contrary to law or good-faith principles except to the extent that individual or collective bargaining agreements render them inapplicable.<sup>34</sup>

Companies are free to adopt codes of conduct; provided, that like internal regulations, such codes are not considered sources of law.<sup>35</sup> The Labor Law does not define “codes of conduct.”

Higher sources of law prevail over lower sources except when the latter, without contradicting the former, establish more favorable treatment for workers.<sup>36</sup>

With limited exceptions, the provisions of the Labor Law may only be derogated by collective regulatory instruments and employment contracts when these establish more favorable treatment for workers.<sup>37</sup>

#### **5. Subjects of Labor Law**

All persons capable of labor relations are subjects of labor laws. These include, among others, minors, handicapped persons, workers who are also students and foreigners.

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<sup>30</sup> Ibid, Article 12, paragraphs 1, 2 and 4.

<sup>31</sup> Ibid.: paragraphs 5 and 6.

<sup>32</sup> Labor Law, Article 13, paragraph 1.

<sup>33</sup> Ibid.: Article 15.

<sup>34</sup> Ibid.: Article 13, paragraph 2.

<sup>35</sup> Ibid.: Article 14.

<sup>36</sup> Ibid.: Article 16, paragraph 1

<sup>37</sup> Ibid.: Article 17, paragraphs 1 and 2

## 5.1 Minors

An employer may only employ a minor who is at least 15 years old and then only with the authorization of such minor's legal representative.<sup>38</sup> Employment must be preceded by medical exam to determine the minor's physical robustness, mental health and aptitude for the job.<sup>39</sup> The normal working period for minors between 15 and 18 is a maximum of seven hours per day, thirty eight hours per week.

## 5.2 Disabled Persons

Employers are encouraged to take measures to facilitate the employment of disabled persons. Such persons enjoy the same rights and have the same responsibilities as other workers.<sup>40</sup>

## 5.3 Workers who are also Students

When authorized by an employer to attend a course to improve her skills, a worker who is also a student has the right to be absent from work during the period that exams are held, without loss of pay. For the purpose, she must inform the employer at least seven days in advance. Keeping this right depends on achieving passing grades.<sup>41</sup>

## 5.4 Foreigners

Employers, whether national and foreign, may employ a foreigner by authorization of the Minister of Labor or an agency to which she delegates powers, on application.<sup>42</sup>

Employers may also employ, by simple communication to the Minister of Labor or an agency to which she delegates powers, up to the number of foreigners permitted under the following quotas:

- a) in large firms, up to 5% of the total number of workers;
- b) in medium firms, up to 8% of the total number of workers;
- c) in small firms, up to 10% of the total number of workers.<sup>43</sup>

In respect of investment projects approved by the Government that stipulate a number of foreign workers greater or lesser than the quota indicated above, no authorization is required. It is sufficient in such cases to inform the Minister of Labor within 15 days of the arrival of such workers in the country.<sup>44</sup>

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<sup>38</sup> Ibid.: Article 26, paragraph 1

<sup>39</sup> Ibid.: Article 24, paragraph 1.

<sup>40</sup> Ibid.: Article 28, paragraphs 1 and 2.

<sup>41</sup> Ibid.: Article 29.

<sup>42</sup> Ibid.: Article 31, paragraph 4 together with Article 33, paragraph 2.

<sup>43</sup> Ibid.: Article 31, paragraphs 4 and 5

<sup>44</sup> Ibid.: paragraph 6.

There are, nevertheless, certain conditions and restrictions on the hiring of foreigners. A foreigner may be hired only if he has the academic or professional qualifications necessary for the position and there are no Mozambican citizens with such qualifications or their number is insufficient.<sup>45</sup>

Foreigners who enter Mozambique on diplomatic, courtesy, official, tourism, visitors, student or business visas may not be employed. Moreover, foreign workers, with temporary residence, may not remain in Mozambique after the contract period based on which they entered the country has expired.<sup>46</sup>

The right of foreigners to enter and leave Mozambique is discussed in detail in Section II of this guide, which deals with immigration.

#### 5.4.1 *Procedures For Contracting Foreign Employees*

The process of contracting foreign employees is provided by Law n.º 23/2007 of 01 August (the Labor Law), and Decree n.º 55/2008 of 30 December (the Regulation on the Mechanisms and Procedures for Hiring of People of Foreign Nationality).

##### 5.4.1.1 Means of Employment of Foreigners

Under the terms of the Mozambican Labor Law, there are two means of employing foreigners in Mozambique:

- (a) *Obtaining the authorization of the Minister of Labor*: authorization is granted by the Minister of Labor on a case-by-case basis if the following prerequisites 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.<sup>47</sup> Authorization is the mechanism used when quota has been exceeded and also the required approach in cases of “specialized technical assistance” including such contexts as employment in NGOs, scientific research and teaching, among others.
- (b) *Communication to the Minister of Labor*, communication is the proper means in the following circumstances:
  - i. The number of foreign employees meant to be contracted is within established quotas,<sup>48</sup> namely:
    - 5% of the total number of employees in large enterprises (i.e. more than 100 people);
    - 8% of the total number of employees in medium-sized enterprises (between 11 and 100 people); and

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<sup>45</sup> Ibid.: Article 33, paragraph 1.

<sup>46</sup> Ibid.: Article 32, paragraphs 1 and 2

<sup>47</sup> Note that the authorization system is meant to be used only once the quota to which the company is entitled, as discussed above in 1.1, (b), is exhausted. It is also important to note that the hiring of managers, agents and representatives of employers is done under the quota system and, alternatively (once the quota is exhausted), under the authorization system.

<sup>48</sup> Note that, the above-mentioned quota corresponds to the number of foreign employees that a Mozambican employer is allowed to have without seeking authorization from the Minister of Labor.

- 10% of the total number of employees in small enterprises (10 or fewer people).
- ii. There is specific provision in the prospective employer's investment contract with the Government of Mozambique for an explicit percentage of foreign employees greater or lesser than the percentages set forth above.<sup>49</sup>
- iii. The prospective employee is to be hired for a short-term assignment, i.e., for a period up to 30 days, consecutive or interspersed. Under the terms of Decree 55/2008, foreigners may work in Mozambique for up to 30 days (consecutive or interspersed) per calendar year by means of communication from the Mozambican employer (understood here to mean a Mozambican company or the foreign parent of a Mozambican company) to the Minister of Labor. Such 30-day period can be extended, for up to two further 30-day periods, on application to the Minister of Labor. The extension is at the discretion of the Minister of Labor.<sup>50</sup>

Finally, it is important to remember that there is no impediment to an employee of a foreign company visiting Mozambique to conduct business as distinct from assuming employment.

#### 5.4.2 *Required Procedures and Documents*

##### 5.4.2.1 Authorization of the Minister of Labor

#### **General contracting:**

In instances in which the authorization of the Minister of Labor, referred to in 5.4.1.1 (a) above, is sought, the following procedures must be observed and documents supplied:

- (a) The prospective employer must submit an application in the prescribed form (in annex to Decree 55/2008) addressed to the Minister of Labor, at the relevant provincial department of labor. Such application must contain the following information:
  - From the company: name, headquarters and area of activity;
  - From the employee: name, passport number, country of birth, function to be exercised in Mozambique, indication of the period during which he or she is going to work in Mozambique and indication of the company's number of employees, detailing the number of national and foreign employees.
- (b) Three original copies of the employment agreement, which may not exceed 24 months;
- (c) Academic or professional qualification certificate and a further document confirming his or her professional experience. In the event the academic certificate was obtained outside Mozambique, a certificate of equivalence to be issued by the Ministry of Education and Culture (the application for which entails a distinct process involving

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<sup>49</sup> Note that if the employer is located in an Industrial Free Zone (*Zona Franca Industrial*), the special rules on hiring foreigner for such zones, set forth in Decree n.º 75/99 of 12 October, is applicable. Under that decree, the quota is 15% of the total of the workforce.

<sup>50</sup> In practice, the Ministry of Labor usually requires that the foreign employee performing work on a short-term assignment enter the country under a business visa.

the National Exams, Certification and Equivalence Council of the Ministry of Education);

- (d) Declaration (*certidão de quitação*) to be issued by the Mozambican tax authority stating that the company is not in breach of its duty to pay any taxes;
- (e) Declaration (*certidão de quitação*) to be issued by the National Institute of Social Security (INSS) stating that the company is not in breach of its duty to pay any social security contributions;
- (f) Opinion of the Labor Union Committee (which must expressly refer the “pertinence” of the request for the admission of the foreign employee); and
- (g) Proof of payment of the fee equivalent to 10 minimum (monthly) salaries for the applicant’s sector of activity (to be paid before submitting the application to the Ministry of Labor).

#### **Contracting “specialized technical assistance”:**

In instances in which the authorization of the Minister of Labor, referred to in second part of 7.4.1.1 (a) above, is sought, the procedure described above (in General Contracting) must be observed. In addition, however, the employer must attach to the application a positive opinion (*parecer*) of the entity that oversees the sector concerned.

#### *5.4.3 Communications to the Minister of Labor*

#### **Contracting within the established quotas:**

In instances of communication to the Minister of Labor, referred to in 5.4.1.1 (b) (i) above, the following procedure must be observed and documents supplied:

- (a) The prospective employer must submit an application in the prescribed form (in annex to Decree 55/2008) addressed to the Minister of Labor, at the relevant Provincial Department of Labor indicating the level of implementation of the quota reached after the admission of the prospective employee;
- (b) A letter of the company to the Minister of Labor (standard form) communicating the admission of the employee and the level of implementation of the quota (two copies);
- (c) Three original copies of the employment agreement, which may not exceed 24 months;
- (d) Declaration (*certidão de quitação*) to be issued by the Mozambican tax authority stating that the company is not in breach of duty to pay any taxes;
- (e) Declaration (*certidão de quitação*) to be issued by the National Institute of Social Security (INSS) stating that the company is not in breach of duty to pay any social security contributions;

- (f) Certified copy of the legally-required employee's list (*relação nominal*) of the year preceding the admission of the foreign employee duly stamped by the National Institute of Social Security (INSS), in respect of the first communication made;
- (g) Certified copy of the Passport or Identification Document for Residence of Foreigners (DIRE);
- (h) Proof of payment of the fee equivalent to three minimum (monthly) salaries for the applicant's sector of activity; and
- (i) The investment project (if applicable).

#### **Contracting within established contractual quotas:**

In instances of communication to the Minister of Labor, referred to in 5.4.1.1 (b) (ii) above (established quotas in the employer's investment contract with the Government of Mozambique), the procedure and documents are the same as described above for contracting within established quotas. In addition, however, the employer must attach to the application a copy of the approved investment contract which provides the permitted quota.

#### **Short-term work assignment:**

In case of the communication to the Minister of Labor referred to in 5.4.1.1 (b) (iii) above (i.e., short-term work assignment), the procedure described below must be observed:

- (a) The prospective employer must submit a letter in the prescribed form communicating to the Minister of Labor: the identity of the employee; his or her qualifications; reason for hiring; tasks to be performed and precise indication of the start and end dates of the short-term employee's work in Mozambique;
- (b) Copy of the prospective short-term employee's passport; and
- (c) Copy of the prospective short-term employee's visa (which, in practice, must be a business visa).

It bears mention that the burden of ensuring the legality of the foreign worker (in terms of work and residence) falls on the employer, and the employer is obliged to inform the Ministry of Labor when the employment agreement terminates.

## **6. Types of Companies**

The classification of companies as small, medium and large is consequential under the Labor Law. Under it:

- a large company is one that has more than 100 employees;
- a medium company is one that has more than 10 and up to 100 employees; and
- a small company is one that has up to 10 employees.<sup>51</sup>

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<sup>51</sup> Ibid.: Article 34.



As seen above, company size has consequences in respect of contracting foreigners. As we will see below, it is also consequential in respect of the prerogative to use certain forms of contract.

## 7. Forms of Employment Contract

Chapter III of the Labor Law governs individual, as distinct from collective, labor relations. Under Chapter III, there are two forms of contract for full-time employment:

- the indeterminate period contract (*contrato por tempo indeterminado*); and
- the fixed term contract (*contrato a prazo*), which may be:
  - for a period certain (*a prazo certo*), or
  - for a period uncertain (*a prazo incerto*).

These are not interchangeable options.

The motivating principle of contracts as defined by Chapter III is of worker protection. Unless a contract specifically states to the contrary, the presumption made in any dispute is in the worker's favor.

For example, when a person is carrying out a task for which he is paid and is doing so without the explicit objection of the “employer”, or when the “worker” depends economically on the “employer,” it is presumed that the relationship is one of employment.<sup>52</sup>

An employment relationship does not have to be written down in order to be valid. The responsibility for having a written agreement is with the employer, and the rights of the worker are in no way affected by this contract being unwritten.<sup>53</sup> However, labor contracts for tasks that are executed immediately or that last less than 90 days need not be reduced to writing.<sup>54</sup>

A labor contract must be signed by both parties and must contain the following clauses:

- identification of the employer and the worker;
- professional category, tasks or activities agreed;
- workplace;
- duration of the contract and conditions for its renewal;
- amount, form and periodicity of remuneration;
- date on which performance under the contract shall begin;
- in the case of fixed term contracts (*contratos a prazo*), the term and the justification for the form of contract;
- date of signature of the contract and, in the case of a fixed term contract for a period certain, its termination date.<sup>55</sup>

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<sup>52</sup> Ibid.: Article 19, paragraph 1.

<sup>53</sup> Ibid.: Article 38, paragraph 6.

<sup>54</sup> Ibid.: Article 38, paragraphs 1 and 3

<sup>55</sup> Ibid.: Article 38, paragraph 1, clauses a through h).

It bears note that unless the contract expressly stipulates the date of its commencement, it is deemed to commence on the date on which it was signed.

## 7.1 Fixed Term Contracts

Fixed term contracts may only be used for specific and non-permanent tasks. The maximum duration of any fixed term contract is two years. All contracts that are not for an explicit fixed period are considered indeterminate period contracts. Fixed term contracts may be renewed twice; provided, that special, more liberal rules apply to small and medium companies.<sup>56</sup>

Contracts that do not explicitly indicate their duration are presumed to be indeterminate period contracts; provided, that the employer may seek to prove otherwise with reference to the nature of the tasks to be performed under the contract.<sup>57</sup>

The temporary tasks for which fixed term contracts may be used are:

- replacement of a worker who, for whatever reason, is temporarily unable or unavailable to work;
- tasks meant to address exceptional or abnormal increases in production, as well as seasonal activities;
- tasks that are not part of the permanent needs of the employer;
- carrying out works, projects or other defined temporary activities, including civil construction, public works and industrial repairs on a construction contract basis (*regime de empreitada*);
- services complementary to such works, projects or other temporary defined activities, namely, subcontracting and outsourcing; and
- non-permanent activities.<sup>58</sup>

When the term of any fixed term contract, with a maximum number of permitted renewals, is exceeded, that contract is taken to be an indeterminate period contract.<sup>59</sup>

Small and medium companies have the right freely to enter into and renew fixed term contracts during the first 10 years of activity.<sup>60</sup> To clarify, small and medium companies have the right to renew fixed term contracts more than twice, if the company is in its first ten years of activity but only if these contracts are used for specific and non-permanent tasks as provided by the Labour Law.

Fixed term contracts for periods uncertain are only admissible in cases in which it is not possible to foresee with certainty when the event or circumstances that justified use of that form of contract in the first place will end.<sup>61</sup>

## 7.2 Free service and retainer contracts

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<sup>56</sup> Ibid.: Article 40, paragraph 1, Article 42 paragraph 1,

<sup>57</sup> Ibid.: Article 41, paragraph 2.

<sup>58</sup> Ibid.: Article 40, paragraph 2.

<sup>59</sup> Ibid.: Article 42, paragraph 2.

<sup>60</sup> Ibid.: paragraph 3.

<sup>61</sup> Ibid.: Article 44.

The Labor Law permits the use of what may liberally be called “free service contracts” and “retainer contracts” (*contratos em regime livre e de avença*). Free service contracts may be used in situations where the activities or tasks in question do not fill the normal working period but are carried out simultaneously with it. Retainer contracts may be used for activities or tasks that are neither part of the normal production chain nor require a full day’s labor.<sup>62</sup>

### 7.3 Temporary Work Contracts

The Labor Law, in its Articles 79 to 83, permits a form of outsourcing. An employer may have in his service, by means of a utilization contract (*contrato de utilização*) between the employer and a licensed private employment agency (*agência privada de emprego*), workers on the staff of such agency.

A utilization contract (*contrato de utilização*) is fixed term contract entered into between the licensed private employment agency and the user (i.e. the company buying labor services) by means of which the former makes temporary workers available to the latter.<sup>63</sup>

In their turns, the worker and the licensed private employment agency enter into a temporary work contract by means of which the worker agrees temporarily to make his labor available to the user.<sup>64</sup>

Utilization contracts are only admissible in limited cases, the following of which bear particular mention:

- direct or indirect substitution of an absent worker or one unable, for any reason, to work;
- vacancy of a position, when the process of recruitment is ongoing;
- seasonal or other activities whose annual production cycle is irregular as a structural matter, including agriculture, and agro-industry and related activities;
- exceptional increases in company activity;
- carrying out of a work project or other temporary defined activity including construction, public works, industrial setup and repairs on a construction contract basis (*regime de empreitada*) or for one’s own account, including related activities;
- private security, maintenance, sanitation, cleaning, food service and other services that are complementary or social in nature and that are part of the ongoing activity of the employer;
- development of projects including conception, research, management and monitoring when not part of the ongoing activity of the employer;
- launch of a new activity the period of which is uncertain, as well as startup of a new company or new business unit (in this last case, the utilization contract must be for a limited period).<sup>65</sup>

### Frequently Asked Questions

- Can employers that invest in training workers (existing or new) bond those workers?

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<sup>62</sup> Ibid.: Article 21. Cf. Article 6 of the Law 8/98.

<sup>63</sup> Ibid.: Article 81, paragraph 1.

<sup>64</sup> Ibid.: Article 80, paragraph 1.

<sup>65</sup> Ibid.: Art. 82, paragraphs 1 and 2.

There is no explicit provision in the law for bonding workers who have received training. However, the goal of ensuring that workers who receive training at the employer's expense do not leave the firm before it has enjoyed some benefit from its investment can be met, in part, by designing appropriate rules in the labor contract or the internal regulation of the firm. For example, a rule whereby the employee must pay directly for some of the training he receives, and have that amount reimbursed gradually by the employer over the course of some years of further employment, can encourage an employee to remain and apply what he has learned.

## 7.4 Special Work Regimes

The Labor Law calls for more special work regimes than the Law 8/98. Specifically, there will be special regimes for domestic work, work in the home, mining, ports, merchant marine, rural, artistic, sports, private security, construction, and free service and retainer contracts. Many of these are yet to be specially regulated.<sup>66</sup>

### 7.4.1 Domestic Work

The Domestic Workers Regulation was introduced through Decree 40/2008 of 26 November. The legislation is drafted in a simple and easy to use manner. The regulation takes into account the economic capacity of the employer, leaving certain aspects of the work relationship open to negotiation, based on mutual respect, trust and agreement.

The regulation does not establish a minimum wage for domestic staff. However note that the basis for this provided in the introduction to the law is the economic capacity of employers, and that this does not provide for a form of exploitation. Therefore in practice we recommend that a salary not lower than the lowest national minimum wage is paid.

The regulation also allows for the inclusion of domestic workers in the INSS system, with domestic workers are being considered as “self employed” for the purpose.<sup>67</sup> This means that there is no requirement for the employer of the domestic worker to contribute to INSS on their behalf.

The following provides a brief summary of the domestic employment regulation:

The regulation does not apply to domestic workers paid by for-profit entities such as companies. Therefore if company staff have their domestic staff paid for as part of their employment package such domestic staff are considered to fall under the Labor Law and are company employees not domestic employees for the purpose.<sup>68</sup>

The decree provides a description of the type of work a domestic worker, employed under this regulation, may be expected to do. It does not include the work of guards who are employed directly rather than through a guard company.<sup>69</sup> Clarification is awaited on this matter.

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<sup>66</sup> Ibid.: Article 3. Cf Article 3 of Law 8/98.

<sup>67</sup> Decree 40/2008, Article 10, clause e) and Article 26, paragraph 6.

<sup>68</sup> Decree 40/2008, Article 2, paragraph 4.

<sup>69</sup> Decree 40/2008, Article 3.

The decree prohibits the employment of minors (under the age of 12 completely and between 12 and 15 only with permission of the parent or guardian).<sup>70</sup>

Section I of the decree deals with contractual obligations. The contract does not have to be reduced to writing.<sup>71</sup> However a written contract is a useful tool for managing the domestic employment relationship, registering clearly when the contract begins (and ends if this is the case) and any specific contractual terms agreed (work hours, payment etc) as well as providing security to both contracting parties. The regulation provides a simple model contract which can be used for the purpose.

Contracts can be for a fixed or indeterminate period. Fixed-term contracts can only be entered into for a maximum duration of two years, and can be renewed twice. If the domestic worker remains in service after the date of termination of the fixed term contract, said contract is considered to be renewed automatically. The same rules as apply in the Labor Law, with respect to indemnity are expected to apply in this regulation.<sup>72</sup>

Contracts may be agreed with or without food or lodging. In this case up to 25% of the salary may be given in kind, as food or lodging for example.<sup>73</sup> Contracts may be full or part time.<sup>74</sup>

Contracts are subject to a probation period of maximum of 90 days during which time either party may terminate the contract immediately without explanation or indemnity.<sup>75</sup> The probation period may be dispensed with or reduced as long as this is agreed in writing but the probation period may not be extended beyond that provided in the law.

Among the obligations of the employer are to provide medical assistance for work-related accidents or professional illness and pay the relevant indemnities in such cases<sup>76</sup> (such indemnities are presumed to be those found in the Labour Law itself since this is the hierarchically superior legislation in this case).

Disciplinary procedures are another area where the regulation is simple and easy-to-use.<sup>77</sup> There are only three types of disciplinary procedure – verbal or written warning and dismissal.<sup>78</sup> Both dismissal and a written warning must be in writing, and it is also good practice to keep a written record of a formal verbal warning.

Note also that Article 22 allows for unjustified absences to be deducted from leave but not if these absences are the subject of a disciplinary procedure, therefore it is likely a good idea to keep a record of all actions (such as reducing leave due to unjustified absence) that can be considered disciplinary.

The normal working period for domestic workers is 9 hours per day, to a maximum of 54 hours per week. Where lodging is provided the work time is only considered that period where the person is working, not the time when they are “on site”. The work schedule must be

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<sup>70</sup> Decree 40/2008, Article 4.

<sup>71</sup> Decree 40/2008, Article 6, paragraph 1

<sup>72</sup> Decree 40/2008, Article 7.

<sup>73</sup> Decree 40/2008, Article 25, paragraph 2.

<sup>74</sup> Decree 40/2008, Article 8.

<sup>75</sup> Decree 40/2008, Article 9.

<sup>76</sup> Decree 40/2008, Article 13.

<sup>77</sup> Decree 40/2008, Article 14.

<sup>78</sup> Decree 40/2008, Article 17.

agreed (and could, as a matter of good practice be included in the contract) and must include breaks and meal time which must total at least 30 minutes of the full time worked. The domestic worker must have one full day off per week. If the person works on this day then they must be given a day off in lieu or paid for the day.<sup>79</sup>

Article 24 addresses justified and unjustified absences. In addition to those aspects listed in the regulation the employer may concede additional rights or these may be established by law. Note that unjustified absences are unpaid and may also **either** result in disciplinary action **or** be deducted from leave. Once again, employers would do well to keep a record of all unjustified absences, and deductions both financial and from leave. The regulation also permits the employer to consider other types of absence as justified.

A domestic worker who abandons their workplace without warning is to pay indemnity to their employer. Note that in this context abandoning the workplace has a specific definition and specific burdens of proof which differ slightly from those in the Labor Law.<sup>80</sup>

Domestic workers have the right to paid leave as indicated in the regulation. Unjustified absences may be deducted from leave, as long as the unjustified absences have not given rise to a separate disciplinary action. As a matter of good practice employers would do well to keep a record of leave, unjustified absences and any leave reduction resulting from such absences. Leave can be “sold” but domestic workers must take at least 5 days leave per year. Domestic workers have the right to public holidays, unless it is agreed that they should work, in which case they must be paid for the day or given a day off in lieu.<sup>81</sup>

Domestic workers may be paid in cash or kind, as long as at least 75% of the salary is cash, while the remainder can comprise accommodation and/or food. In cases where indemnity is payable this must be paid in cash. Payment should be made at the end of the month unless otherwise agreed and can be based on an hourly, daily, weekly or monthly rate. Leave pay must be equivalent to what the domestic worker would have earned had they been at work during the leave period. On payment the employer may ask the employee to sign for the salary. In practice employers would do well to include payment calculations (as well as details of any in-kind payments) in the original contract and to use a simple pay slip or wage book where the salary and any discounts are recorded and signed for. The employer is not responsible for deducting any withholding tax and paying this over on behalf of the domestic worker – the domestic worker is therefore in this sense self-employed.<sup>82</sup>

If the employer decides to terminate the work contract with cause this must be done based on a written disciplinary procedure.<sup>83</sup> The domestic worker, finding their situation compromised by any of the circumstances listed in the regulation (including their employer moving house) also has the right to rescind the contract with cause. Indemnity is payable in certain cases, either by the worker or the employer.<sup>84</sup>

Domestic workers have the right to request a work certificate at the end of their employment. The certificate may **only** contain the names of employer and employee and the period during

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<sup>79</sup> Decree 40/2008, Articles 18-21.

<sup>80</sup> Decree 40/2008, Article 16.

<sup>81</sup> Decree 40/2008, Articles 22 & 23.

<sup>82</sup> Decree 40/2008, Article 25.

<sup>83</sup> Decree 40/2008, Article 15

<sup>84</sup> Decree 40/2008, Articles 30 & 31.

which the employee was employed. Any additional in the certificate must be requested in writing by the employee.<sup>85</sup>

Compliance with this regulation is to be ensured by the Labour Inspectorate and, where this is not represented, by local government (e.g. district administration). The authorities can only intervene based on a specific complaint lodged by a domestic worker.

## 7.5 Probationary Periods

The maximum probationary periods for new workers are as follows:

a) for the fixed-period contract:

- 90 days for contracts longer than one year;
- 30 days for contracts between six months and one year;
- 15 for contracts up to six months;
- 15 days for fixed-period contract for periods uncertain projected to last for 90 days or more.

b) for indeterminate period contracts:

- 90 days for most workers; but
- 180 days for medium and higher level technicians and employees in positions of management and direction.<sup>86</sup>

During each such period, unless the contract provides otherwise, a newly hired worker can be dismissed without cause and without severance; provided that the worker receives at least seven days' written notice of dismissal.<sup>87</sup>

Probationary periods can be reduced by collective regulatory instruments or individual labor contracts.<sup>88</sup>

If the contract is silent on the subject of probationary periods, the law presumes the parties intended not to have one.<sup>89</sup> For that reason, it is essential for employers to remember to stipulate the existence of the probationary period and its duration.

### **Checklist**

Fixed period contract:

- Maximum duration per contract = 2 years
- Maximum number of renewals = 2, though small and medium companies may renew them freely during the first 10 years of activity.
- Days probation =
  - 90 days for contracts longer than one year;

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<sup>85</sup> Decree 40/2008, Articles 32 & 33.

<sup>86</sup> Labor Law, Article 47.

<sup>87</sup> Ibid.: Article 50, paragraphs 1 and 2.

<sup>88</sup> Ibid.: Article 48, paragraph 1.

<sup>89</sup> Ibid.: paragraph 2.

- 30 days for contracts between six months and one year;
- 15 for contracts up to six months;
- 15 days for fixed period contract for periods uncertain projected to last for 90 days or more.
- Leave = one day per month in the first year; two days per month in the second year in 30 days per year from the third-year on.
- Termination = Severance based on time left until end of contract

Indeterminate period contract:

- Maximum duration = indeterminate
- Maximum number of contracts = not applicable
- Days probation =
  - 90 days for most workers; but
  - 180 days for medium and higher level technicians and employees in positions of management and direction
- Leave = one day per month in the first year; two days per month in the second year in 30 days per year from the third-year on
- Termination = highly variable. See severance tables, below. The severance regime for the employees hired when Law 8/98 was in effect will remain in effect for certain periods in respect of employees with rights vested thereunder.

## **8. Hours, Wages and Incentives**

### **8.1 Hours**

Working hours, or the normal working period, is governed by Chapter III, Section IX of the Labor Law. The work schedule includes the start and finish times as well as break periods. The normal working period is that during which the worker is expected to be at the employer's service.

As a general rule, the work week is no longer than 48 hours and the work day no longer than eight hours<sup>90</sup> calculated with reference to periods of six months, with compensation for previous additional time worked able to be made against reductions in daily or weekly working hours.

A number of exceptions to this rule exist. The work day can be extended to nine hours if an extra half-day of rest is given.<sup>91</sup> In addition, through collective bargaining agreements, a working day of 12 hours may be established; provided, that the working week does not exceed 56 hours. This limit does not include exceptional or extraordinary work undertaken as a result of force majeure.<sup>92</sup> In any case, the average of 48 hours of work per week should be measured with reference to hours worked during a maximum period of six months, compensating the worker through reduction of the hourly, daily or weekly schedule.<sup>93</sup>

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<sup>90</sup> Ibid.: Article 85, paragraph 1.

<sup>91</sup> Ibid.: Article 85, paragraph 2.

<sup>92</sup> Ibid.: Article 85, paragraph 3.

<sup>93</sup> Ibid.: Article 85, paragraph 4.



Industrial establishments, other than those that operate in shifts, may keep a 45-hour work week over five days.<sup>94</sup> A single work schedule (*horário único*) may also be introduced based on social and economic conditions.

The Labor Law permits further flexibility in the work period if the type of work is intermittent, if it requires the worker only to be present, or requires some preparation outside ordinary hours of service.<sup>95</sup>

The Labor Law foresees that productivity improvements may lead to a reduction in the hours worked by the employees, especially in the case of tasks that are physically or mentally taxing. Wages may not be reduced in this situation, either by the increase or decrease in the number of hours worked.<sup>96</sup> Such changes may be made directly by the Ministry of Labor and the sectoral line ministry or by means of a collective bargaining agreement.<sup>97</sup>

In general, employers are free to set the work schedule, in accordance with legal and conventional limits, but must first consult with the relevant union representatives. The work schedule must be approved by the Ministry of Labor and displayed in a prominent place.<sup>98</sup>

Allowance must be made for workers who are also studying or who have reduced capacity to work.<sup>99</sup>

Workers must be permitted a break no shorter than 30 minutes and no longer than 2 hours; break periods may be lengthened as part of collective bargaining agreements.<sup>100</sup>

Workers in management, inspection or other positions of responsibility may be considered exempt from the standard work schedule.

## 8.2 Exceptional work, overtime and night work

The Labor Law distinguishes between exceptional work and overtime work.

Exceptional work is work performed on a day that would otherwise be a weekly day of rest or a public holiday. In this case, the worker is entitled to a full day of rest (if five hours or more have been worked) or a half day of rest, within the following three days.<sup>101</sup>

Overtime work is time worked over and above the ordinary hours of the working day.<sup>102</sup> Workers may work up to 96 overtime hours per quarter; may not work more than 8 overtime hours per week; and may not exceed 200 overtime hours in a year.<sup>103</sup>

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<sup>94</sup> Ibid.: Article 85, paragraph 6.

<sup>95</sup> Cf. Labor Law, Article 86, paragraph 1 and Law 8/98, Article 29, paragraph 1.

<sup>96</sup> Labor Law, Article 86, paragraphs 2 and 4.

<sup>97</sup> Ibid.: paragraph 3.

<sup>98</sup> Ibid.: Article 87, paragraphs 2 and 3.

<sup>99</sup> Labor Law, Article 87, paragraph 4.

<sup>100</sup> Ibid.: Article 88, paragraphs 1 and 2.

<sup>101</sup> Ibid.: Article 89, paragraphs 1 and 4.

<sup>102</sup> Ibid.: Article 90, paragraph 1.

<sup>103</sup> Ibid.: Article 90, paragraph 3.

Night work is work that takes place between 20:00 and the beginning of the work day the following day except in the case of shift work. Collective bargaining agreements may define the period more strictly. Shift work is excluded from the definition of night work.<sup>104</sup>

In companies which have continuous operations as well as in those which have a normal operating period longer than the maximum limits established for the working day, shift work must be used. The duration of each shift may not exceed the maximum time limits for work established by law. In any event, work organized in shifts must follow the general rules on limitation of the working period.<sup>105</sup>

For the rules governing remuneration for these different types of hours worked, see below.

### 8.3 Time off

Time off from work is also regulated in the Labor Law. One full day per week (at least 20 hours) must be a day of rest. Normally, that day is Sunday.<sup>106</sup>

Legal or public holidays are also considered time off from work. Clauses of an individual labor contract or collective bargaining instrument that do not recognize public days or that establish other days in place thereof are invalid.<sup>107</sup>

If a legal or public holiday falls on a Sunday, the time off from work it confers falls on the following Monday.<sup>108</sup>

The Labor Minister, and only the Labor Minister, may declare a full- or part-day holiday known as a *tolerância de ponto*. This must be announced with at least two days' notice. The declaration of a *tolerância de ponto* allows the worker paid leave for the duration of the *tolerância de ponto*.<sup>109</sup>

Workers are also entitled to paid vacation. This is addressed in Section 11 below.

### Frequently Asked Questions

- Can a *tolerância de ponto* be declared by anyone other than the Minister of Labor?

No. Only the Minister of Labor has the power to declare *tolerâncias de ponto*,

- May employees work on a *tolerância de ponto* if they are paid voluntary overtime?

Yes. While employees cannot be obliged to work when a *tolerância de ponto* has been declared (except in respect of activities that “by their nature cannot be interrupted,” per Article 97, paragraph 3 of the Labor Law), by analogy to “exceptional work,” i.e., work performed on a

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<sup>104</sup> Ibid.: Article 91.

<sup>105</sup> Ibid.: Article 92.

<sup>106</sup> Ibid.: Article 95, paragraph 1

<sup>107</sup> Ibid.: Article 95, paragraph 2.

<sup>108</sup> Ibid.: , Article 96, paragraph 3.

<sup>109</sup> Ibid.: Article 97.

weekly rest day, extra rest day or public holiday (Article 89, paragraph 1), they may work if remunerated accordingly.

## 8.4 Payment for Work

Wages are regulated by Chapter III, Section XI of the Labor Law and by the Ministerial Order that establishes the minimum wage in any given year (discussed further below). Remuneration is composed of salary and any periodic, direct or indirect payments in cash or kind.<sup>110</sup> Any payment made in kind may not amount to more than 25% of the overall salary.<sup>111</sup>

Overtime work is paid at the rate of the normal hourly rate of the worker's base salary plus 50%, for overtime hours up to 20:00 (i.e., 1.5 times the normal rate), and at the rate of the worker's base salary plus 100% for overtime hours between 20.00 and the start of the following work day,(i.e., double the normal rate).<sup>112</sup>

Exceptional work is paid at a rate of the worker's base salary plus 100% (i.e., double the normal rate).<sup>113</sup>

Night work is paid at the normal hourly rate for the same work undertaken during the day plus 25%.<sup>114</sup>

The Labor Law allows for a number of additional payments based on exceptional conditions or results.<sup>115</sup> These include commonly occurring payments, such as transportation subsidy and a premium for night work, and less frequently made ones, such as seniority bonus, productivity bonuses, bonuses for work in difficult conditions and participation in the firm's equity capital.<sup>116</sup>

Participation in the firm's equity capital is directly analogous to employee stock option plans (ESOPs) in other jurisdictions.

The Labor Law allows piece work and hourly work as well as a mixture of the two.<sup>117</sup>

Piece work is no longer based on rigid criteria and is less difficult to adopt than it was under Law 8/98.<sup>118</sup>

Piece work is therefore more flexible and is done as a function of concrete results obtained, with payment determined based on the nature, quantity and quality of work produced. This mode of remuneration may be used when the nature of the work, business custom, the type of activity or a previously established rule allow for it.<sup>119</sup>

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<sup>110</sup> Ibid.: Article 108, paragraph 2.

<sup>111</sup> Ibid.: Article 113, paragraph 1, clause a).

<sup>112</sup> Ibid.: Article 115, paragraph 1.

<sup>113</sup> Ibid.: Article 115, paragraph 2.

<sup>114</sup> Ibid.: Article 115, paragraph 3.

<sup>115</sup> Ibid.: Article 109, paragraph 1.

<sup>116</sup> Ibid.: paragraph 2.

<sup>117</sup> Ibid.: Article 110, paragraph 1.

<sup>118</sup> Article 51, paragraph 2 of Law 8/98 defined situations in which piece work could be used. These criteria no longer exist in the Labor Law.

<sup>119</sup> Labor Law, Article 111.

Remuneration for hourly work is in accordance with the time effectively worked.

Mixed remuneration is calculated as a function of both time and productivity.<sup>120</sup>

Wages must be paid on a regular basis, whether weekly, biweekly or monthly.<sup>121</sup> Wages must be paid in cash; provided, that up to 25% of an employee's wages may be paid in kind if so agreed with the worker, using goods appropriate to the circumstances of the worker and her family and valued at prices current in the region.<sup>122</sup>

The only deductions permitted from an employee's wages are for Social Security, other payments to the State (such as IRPS, personal income tax), as a consequence of disciplinary action taken by the employer, or as a result of a judicial order (e.g. child support).<sup>123</sup> The total amount withheld from any payment of salary must never exceed one third of the amount due.<sup>124</sup>

In the event an employer is insolvent or declared bankrupt, workers who are owed salary are classified as privileged creditors in relation to any other unsecured, general creditors; only the State has higher priority.<sup>125</sup>

### **8.5 Minimum Wage**

The minimum wage is set annually, usually as the result of a tripartite negotiation between the Government, representatives of the private sector and the unions in the Labor Consultative Committee (the *Comissão Consultiva de Trabalho*, or "CCT," discussed further in Section 22, below).<sup>126</sup> Different minimum wages are set for eight different sectors, including agriculture, industry, financial services, non-financial services, construction, and fisheries. The determination of which sector companies fall into is not clearly defined by legislation, and continues to be a matter of debate for companies in areas such as agro-processing.

Annual minimum wage increases only apply to those workers earning the minimum wage. The salaries of workers earning above minimum wage are not increased by the same percentage as the minimum wages increased, or at all as a matter of law.

## **9. Vacation and Leave Time**

Vacation and leave time are governed by Chapter III, Section X of the Labor Law. Mozambique is also party to two relevant ILO conventions: Convention n° 14 on weekly rest periods in industrial establishments, and Convention n° 52 on paid annual leave.

The Labor Law introduces an innovation in respect of vacation time. Under this law workers have the right to:

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<sup>120</sup> Ibid.: Article 110, paragraph 2, Article 111 and Article 112.

<sup>121</sup> Ibid.: Article 113, paragraph 1, clause c).

<sup>122</sup> Ibid.: Article 113, paragraph 2..

<sup>123</sup> Labor Law, Article 114, paragraph 2.

<sup>124</sup> Ibid.: Article 114, paragraph 4.

<sup>125</sup> Ibid.: Article 120, paragraph 1.

<sup>126</sup> Under the terms of Article 108, paragraph 5 of the Labor Law, the Government, after consultation with the CCT sets national minimum wage (or wages) for groups of employees whose employment conditions warrant that measure.

- one day of vacation for each month of effective service during the first year of work;
- two days of vacation for each full month of effective service during the second year of work;
- 30 days of vacation of leave for each full year of effective service from the third year.<sup>127</sup>

Effective service for the purpose of calculation of leave includes the time during which the worker is at work or available to the employer, public holidays, weekly days off and justified absences.

Vacation time includes weekends and is 30 consecutive days and not 30 working days.<sup>128</sup> In the event a national holiday falls on a vacation day, that day is not counted as vacation.<sup>129</sup>

The same is true if the employee falls ill during the vacation: the period of illness is not counted as vacation when the illness duly certified during the vacation and the employer is informed immediately. The employee may resume vacation on recovering from the illness unless the employer establishes another time at which the vacation may be resumed.<sup>130</sup>

Note that the vacation time for workers on fixed term contracts of more than three months and less than one year corresponds to one day for each full month of effective service.<sup>131</sup>

Employers may in exceptional circumstances “purchase” a certain amount of the employee’s vacation time, meaning that the worker will remain at work and be paid for his time, if mutually agreed by the parties. However, the worker must take at least six vacation days.<sup>132</sup>

The employer may opt, in consultation with the union, to have collective leave.

It is important to reiterate here that the Labor Law expressly states in Article 56, paragraph 4 that all time periods mentioned in the law are consecutive calendar days unless otherwise specified.

## Frequently Asked Questions

- Is compulsory group leave permitted?

Yes. The Labor Law states in Article 100, paragraph 3 that where the nature and organization of work and the conditions of production make it necessary or possible, the employer may, after consulting the relevant trade union body, decide that all employees shall take their leave at the same time.

- May leave be carried from one year to the next?

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<sup>127</sup> Labor Law, Article 99, paragraph 1.

<sup>128</sup> As with the time periods mentioned in Article 56, paragraph 4 of the Labor Law leave is calculated based on calendar days. An exception to this is the six days of vacation an employee is required to take when both employee and employer agree to trade accumulated vacation for additional remuneration, under Article 98, paragraph 3.

<sup>129</sup> Labor Law, Article 102, paragraph 1

<sup>130</sup> Ibid.: Article 102, paragraphs 2 and 3.

<sup>131</sup> Ibid.: Article 99, paragraph 3.

<sup>132</sup> Ibid.: Article 98, paragraph 3.

Yes. According to Article 101, paragraph 1, the employer may postpone all or part of an employee's leave until the leave period in the following year, provided that no more than 60 days of leave may be accumulated in any one year (Article 101, paragraph 3).

- Vacation is accumulated based on the employee's "effective service." How is "effective service" calculated?

"Effective service" is the aggregate of the following elements: (1) the time during which the employee is effectively performing services for the employer or is at the disposal of the employer, (2) public holidays, (3) weekly days of rest, (4) vacation days, and (5) justified absences (Article 99, paragraph 2 and Article 84, paragraph 2).

## 9.1 Justified absences

The Labor Law permits workers to be absent from their posts for a variety of reasons; these forms of leave are classified as "justified absences."<sup>133</sup> Each such category, and the maximum number of days permitted in each case, per year, is as follows:

- a) five days, for marriage;<sup>134</sup>
- b) five days, for the death of the employee's spouse, father, mother, children, step children, siblings, grandparents, step father or step mother;<sup>135</sup>
- c) two days, for the death of the employee's parents-in-law, uncles, aunts, cousins, nieces, nephews, grandchildren, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law;<sup>136</sup>
- d) in cases where the worker cannot work through no fault of his own, such as through illness or accident;<sup>137</sup>
- e) when employees, as parents, accompany their own children or other minors under their care who are admitted in hospital;<sup>138</sup>
- f) periods of convalescence for female employees, in cases of abortions up to 7 months prior to their due date;<sup>139</sup>
- g) maternity leave (60 days, which may begin up to 20 days before the due date);<sup>140</sup>
- h) Breastfeeding for two daily periods of half an hour each, or a single period of one hour, for up to one year after the birth of the child;<sup>141</sup> and
- i) other absences previously or subsequently authorized by the employer, such as for participation in sporting or cultural activities.<sup>142</sup>

Any absence not covered by one of the foregoing reasons is considered unjustified.<sup>143</sup>

In order to be justified, even when covered by the situations listed in paragraph 3 of Article 103, the employer must be informed of the reason for the absence in accordance. Given that the Labor Law in its Article 106, paragraph 2 states that "the use of a justification which is proven to be false may be the basis for a disciplinary proceeding," it may be presumed that

<sup>133</sup> Cf. Labor Law, Article 103, paragraph 1 and Law 8/98 Article 43

<sup>134</sup> Ibid.: Article 103, paragraph 3, clause a).

<sup>135</sup> Ibid.: Article 103, paragraph 3, clause b).

<sup>136</sup> Ibid.: Article 103, paragraph 3, clause c).

<sup>137</sup> Ibid.: Article 103, paragraph 3, clause d).

<sup>138</sup> Ibid.: Article 103, paragraph 3, clause e).

<sup>139</sup> Ibid.: Article 103, paragraph 3, clause f).

<sup>140</sup> Ibid.: Article 12 paragraph 1.

<sup>141</sup> Ibid.: Article 11, paragraph 1, clause c).

<sup>142</sup> Ibid.: Article 103, paragraph 3, clause g),

<sup>143</sup> Ibid.: Article 103, paragraph 4,

when one of the legally justified reasons for absence is given, the employer may check that the reason given is genuine.

Justified absences must, wherever foreseeable, be communicated at least two days in advance.<sup>144</sup> Where this is not possible the employer must be informed as soon as possible after the event.

Justified absences do not, in principle, result in the loss of remuneration, seniority and vacation time of the employee.<sup>145</sup> Unjustified absences however do result in loss of remuneration, and may result on loss of seniority, and leave depending on the outcome of a disciplinary process.

### Frequently Asked Questions

- Are workers eligible for 5 days' justifiable absence for each death of a close relative, even if the deaths occur during the same year?

Yes. The rule is five days' justifiable absence for the death of each of a spouse, parent, child, step-child, sibling, grandparent or step-parent. (Article 103, paragraph 3, clause a).

### 9.2 Sick leave

In Mozambique, sick leave is not strictly calculated by a pre-determined number of days absent. A worker may be absent from work ill indefinitely, subject to the discussion below.

After the worker is absent for illness for 15 consecutive days, or more than 5 days in a quarter, the employer may have the worker examined by the Health Board (*Junta de Saúde*) or other duly licensed body to determine if he is fit to return to work.<sup>146</sup> The reference to "other duly licensed bodies" allows that at some future point private clinics and individual doctors may be licensed to determine workers' aptitude for work.

During a period of sick leave the worker is not remunerated by the employer – instead, in theory, he is supposed to receive an amount for temporary disability from the National Institute for Social Security (INSS).<sup>147</sup>

Leave taken by parents taking children under their care to hospital may be discounted proportionately from their vacation up to a limit of 10 days in each year of effective service or from their remuneration, as the employee prefers.<sup>148</sup>

In order to prove sick leave the worker must present a hospital receipt for the first day and a medical certificate (*atestado médico*) for all subsequent days.

### Frequently Asked Questions

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<sup>144</sup>Ibid.: Article 103, paragraph 5.

<sup>145</sup>Ibid.: Article 105, paragraph 1.

<sup>146</sup>Ibid.: Article 104, paragraphs 1 and 2.

<sup>147</sup>Ibid.: Article 105, paragraph 3.

<sup>148</sup>Ibid.: Article 105, paragraph 2.

- What can an employer do if a worker does not return to work after the Health Board (*Junta de Saúde*) has found him fit to work?

If the employee is absent for any reason not listed in Article 103, paragraph 3 (the exhaustive list of justified absences), the employer can consider the absence unjustified. The employee loses her pay for the days of unjustified absence; those days are also discounted from her vacation and deducted from the period of service of the employee. In addition to the foregoing consequences, if the unjustified absence lasts for three consecutive days or six days over a quarter, the employer may start disciplinary proceedings and impose sanctions. Unjustified absence for more than 15 days creates the presumption that the employee has abandoned her post, and can also lead to disciplinary proceedings (and the sanction imposed may include dismissal). See Article 105.

- What if the employee was found fit to work by the Health Board but actually is too sick to work?

The employer may resubmit the employee to the Health Board (or, in the future, some other duly licensed body), to obtain a ruling on the employee's lack of capacity to work. If the employee is absent from work, the employer may proceed as described in the preceding question.

## 10. Disciplinary Measures and Disciplinary Procedures

Disciplinary power is attributed to the employer and permits the use of sanctions including dismissal. This power is designed to enable employers to deal with issues of disciplinary responsibility, in other words, behavior by the worker that violates the employment contract or other obligations under the law.

Disciplinary procedures are governed mainly by Chapter III, Section VII, subsection III of the Labor Law. Employers may discipline workers for a broad variety of offenses, including, absenteeism, culpable failure to perform appointed tasks, drunkenness, theft and sexual harassment (whether committed on or off the work premises).<sup>149</sup> There are six disciplinary measures employers may take, in ascending order of severity:

- verbal warning;
- written reprimand;
- suspension from post with loss of pay (up to 10 days for each offense and 30 days in any calendar year);
- a fine of up to 20 days of salary;
- demotion to the immediately lower professional category, for a period not greater than 12 months; and
- dismissal.<sup>150</sup>

The application of other disciplinary sanctions or the increase in severity of those described above through internal regulations, contracts or collective bargaining agreements is forbidden.

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<sup>149</sup> A full list of violations that may give rise to disciplinary action is provided in the Labor Law, Article 66, paragraph 1.

<sup>150</sup> Labor Law, Article 63, paragraphs 1 and 2.



Disciplinary measures must be proportional to the offense. Employers are required to take into account such factors as the gravity of the offense, the degree of guilt of the worker, the professional conduct of the worker and, in particular, the facts of the case.<sup>151</sup> The Labor Law differs from the Law 8/98 in that it does not require the employer to take into account the economic situation of the worker.<sup>152</sup>

In addition to curbing bad conduct by workers, disciplinary sanctions are imposed to discourage further violations in the workplace, and to educate the offending and the remaining workers to voluntarily comply with their obligations.

All disciplinary measures more severe than the verbal warning and the written reprimand are subject to the commencement of an internal disciplinary proceeding as detailed in Article 67 of the Labor Law which includes notifying the worker of what s/he is accused, the worker's response and input from the union.

The disciplinary proceeding has three phases: accusation, defense and decision. They are described below.

**Accusation phase** – The employer must, within 30 days of learning of the violation, prepare a disciplinary notice (*nota de culpa*) which is given to the employee and to the union committee.<sup>153</sup> The *nota de culpa* must contain a detailed explanation of what the worker is thought to have done.

**Defense phase** – Within 15 days of receiving the disciplinary notice the worker may respond in writing or may request a hearing or discovery proceeding (*diligência de prova*). At the end of this period, the file is given to the union committee which must give its opinion within five days.<sup>154,155</sup>

**Decision phase** – Thereafter, within 30 days from the time limit for the union committee to present its opinion, and taking into account the discovery proceeding, and based on the general proof gathered to support the alleged facts, both as stated in the accusation and in the defense, the employer provides its decision.<sup>156</sup>

For legal purposes, the disciplinary proceeding is deemed to have started and the time periods are counted from the date on which disciplinary notice was presented to the worker. However, the disciplinary proceeding may be preceded by an inquiry period of not more than 90 days.<sup>157</sup>

If the worker refuses to receive the disciplinary notice, this must be confirmed in writing on the disciplinary notice itself, by the signature of two other workers, of whom one should preferably be a member of the union committee.<sup>158</sup>

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<sup>151</sup> Ibid.: Article 64, paragraph 2.

<sup>152</sup> Cf. Law 8/98, Article 23, paragraph 1.

<sup>153</sup> Labor Law, Article 67, paragraph 2, clause a).

<sup>154</sup> Ibid.: Article 67, paragraph 2, clause a). The Labor Law does not provide procedures for discovery proceedings. In general, the parties have the right to request any documentary or other proof pertaining to the alleged act.

<sup>155</sup> Law 8/98 allowed the worker and union committee a common period of 10 days to present a defense. Under the Labor Law, these time periods are separated and made autonomous, with the worker and union committee each having their own obligation, the total time for defense being 20 days.

<sup>156</sup> Labor Law, Article 67, paragraph 2, clause c)

<sup>157</sup> Ibid.: Article 67, paragraph 3.

<sup>158</sup> Ibid.: Article 67, paragraph 6.

Having given the disciplinary notice the employer may suspend the worker – on full pay – whenever the worker’s presence in the workplace may hinder the normal conduct of the disciplinary proceeding.<sup>159</sup>

If a disciplinary proceeding is started against a worker whose whereabouts are unknown and who is presumed to have abandoned the workplace, or should the worker refuse to receive the disciplinary notice, the employer must prepare a notice (*edital*) which must be displayed in a prominent place in the workplace. This notice should invite the worker to receive the disciplinary notice and advise that the time period for presentation of the defense runs from the date of publication and display of said notice. The current practice used by some employers of summoning workers to receive disciplinary notices through newspaper advertisements is specifically prohibited under the Labor Law.<sup>160</sup>

The Labor Law lists the following as reasons for a disciplinary proceeding being declared invalid:

- non-observance of the legal formalities, namely not fulfilling the requirements for, or not giving, a disciplinary notice; not giving the worker a hearing if requested to do so; not publishing a notice if required; failing to send to the file to the union committee; and a final decision taken without basis;
- not undertaking the discovery proceeding requested by the worker;
- violation of any of the time periods provided for the disciplinary procedure.<sup>161</sup>

The causes of invalidity of the disciplinary proceeding (except the statute of limitation on the violation and the deadline for communicating a decision) may be corrected before the end of the disciplinary proceeding or within 10 days of the problem coming to light. However, the disciplinary proceeding is considered null if the worker has not been informed of it either by service of the disciplinary notice or by publication of a notice in the workplace, as appropriate.<sup>162</sup>

## Frequently Asked Questions

- In addition to a disciplinary proceeding, can an employee be obliged to pay for damage caused?

Yes, if the loss was caused by the willful or culpable conduct of the employee. According to Article 64, paragraph 4, disciplinary sanctions are distinct from the obligation to make good such losses.

## 11. Rescission of Contract

The rescission of contracts (*rescisão de contrato*) and the procedures to be followed are set forth in Chapter IV, Section II of the Labor Law. The Labor Law provides the following means of rescission at the initiative of the employer:

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<sup>159</sup> Ibid.: , Article 67, paragraph 5.

<sup>160</sup> Ibid.: Article 67, paragraphs 7 and 8.

<sup>161</sup> Ibid.: Article 68, paragraph 1.

<sup>162</sup> Ibid.: Article 67, paragraphs 2 and 4.

- unilateral rescission of the labor contract by the employer for just cause (Article 127 of Labor Law); and
- unilateral rescission of the labor contract by the employer with prior notice (Article 130 of Labor Law).

Unilateral rescission of the labor contract by the employer for just cause can be based on any one of four grounds considered sufficiently serious to make the contractual relationship morally or materially impossible:

- manifest inaptitude of the employee for the job, discovered after the probationary period has ended;
- culpable conduct on the part of the employee, sufficiently serious to justify dismissal;
- the arrest or imprisonment of the employee if, by the nature of the employee's tasks, that arrest or imprisonment operates to hinder the functioning of the employer;
- economic reasons which may be technological, structural or market-related.<sup>163</sup>

Subject to certain conditions, unilateral rescission by the employer for one of the reasons listed above does not require the payment of severance to the worker.<sup>164</sup>

As noted above, unilateral rescission by the employer with prior notice is based on technological, structural or market-related motives, and it must be shown that such measures are essential for competitiveness, economic reasons, of administrative or process restructuring.<sup>165</sup>

At least 30 days before the contract is to end, the employer must communicate its intentions and reasons to each affected worker, the union committee (or if one does not exist to the workers committee, or the relevant local union) and the Ministry of Labor.<sup>166</sup> In such cases, the employer is obliged to clarify the matters and supply the information regarding its economic restructuring requested by the Labor Inspectorate.<sup>167</sup>

The severance to be paid in such circumstances is determined as a function of the following variables:

- type of contract (indeterminate or fixed period);
- the worker's salary (including any seniority bonus), expressed as a multiple of national minimum salaries (*salários mínimos*, or "SMs");
- length of service; and
- how long after the entry into effect of the Labor Law the rescission occurs.

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<sup>163</sup> Article 127, paragraph 4 of the Labor Law defines structural reasons as those which require the restructuring or reorganization of production, change of activity or a lack of economic or financial resources that could lead to an excess of the number of work posts. Technological reasons are those related to the introduction of new technology, new procedures or work methods or computerization that could result in a reduction in personnel numbers. Market-related reasons are those which have to do with the difficulty of placing goods or services on the market or with reduced activity in the company (see also Article 130, paragraph 2).

<sup>164</sup> See Labor Law, Article 127, paragraphs 7 and 8. A worker dismissed for manifest inaptitude for the job discovered after the probationary period has ended must have first received training for the purpose. Similarly, a worker dismissed for arrest or imprisonment must be reinstated if she is eventually acquitted of the crime of which she is accused.

<sup>165</sup> Labor Law, Article 130, paragraph 2.

<sup>166</sup> Ibid, Article 131, paragraphs 1 and 2.

<sup>167</sup> Ibid., paragraph 3.

This last criterion is particularly relevant since the levels of severance applicable under Law 8/98 will remain in force for a number of years to come.<sup>168</sup>

The severance payable to a worker on a fixed period contract corresponds to the amount that would have been earned between the date of rescission of the contract and the date on which the contract was due to terminate.<sup>169</sup>

Severance payable to a worker with an indeterminate period contract is calculated under the Labor Law based on the following table. Note, however that these are valid only after the date indicated in the third column of the table.<sup>170</sup>

	<b>Base wage</b>	<b>Severance payable</b>	<b>Date at which this comes into force</b>
1	Between 1-7 SMs	30 days for each year of service	31 October 2022
2	Between 8-10 SMs	15 days for each year of service	31 October 2017
3	Between 11-16 SMs	10 days for each year of service	31 October 2012
4	More than 16 SMs	3 days for each year of service	30 April 2010

If an indeterminate period contract is rescinded before a relevant date on the table above comes into force, the severance owed is calculated as follows:<sup>171</sup>

	<b>Period of service</b>	<b>Severance payable</b>
1	Between 3 and 6 months	45 days' salary
2	More than 6 months but less than 3 years	3 months' salary
3	More than 3 years	3 months' salary for each 2 years worked or fraction thereof

Employers must take special care to comply with all the legal formalities required in respect rescission of contracts and to ensure sufficient funds are available to pay the workers on the date of termination of the contract. The rescission must be communicated in writing and must include the facts which constitute the basis for rescission. This communication must be given to the worker and sent to the union committee and Ministry of Labor with at least 30 days' notice.<sup>172</sup> During this period the employer must provide any clarification requested by the Labor Inspectorate.<sup>173</sup> Severance must be available for the worker on the date on which the contract ceases.<sup>174</sup>

Note that receiving severance only creates a presumption of acceptance of the rescission of the contract by the employee. This presumption may be rebutted if the just cause on which

<sup>168</sup> Labor Law, Article 270, paragraph 4 .

<sup>169</sup> Ibid.: Article 131, paragraph 4. This principle remains unaltered from Law 8/98, Article 68, paragraph 5.

<sup>170</sup> Labor Law, Article 130, paragraph 3 and Article 270.

<sup>171</sup> LaborLaw 8/98, Article 68 paragraph 6

<sup>172</sup> Labor Law, Article 131, paragraphs 1 and 2. Note that the notice period under the Law 8/98 is 90 days – see Article 6, paragraph 3 of the LaborLaw 8/98.

<sup>173</sup> Labor Law, Article 131, paragraph 3.

<sup>174</sup> Ibid.: Article 131, paragraph 4.

the rescission is based is held to be invalid.<sup>175</sup> As a practical, matter, therefore, the employer cannot be sure that the rescission has “taken” until six months have passed.<sup>176</sup>

Distinct procedures apply to the rescission of 10 or more contracts, which is classified as collective rescission.<sup>177</sup>

If the rescission is found to be legally invalid the worker must be reintegrated to his work post and paid what he would have earned between the date of rescission and the date of reintegration, up to a maximum of six months’ salary. The value of severance paid is deducted from this amount.<sup>178</sup>

If however reintegration is not possible or the worker does not want to be reintegrated, the employer must pay severance of 45 days for each year of service for indeterminate period contracts or the remuneration outstanding until the date on which the contract would have terminated in the case of fixed period contracts.<sup>179</sup>

Under the previous Labor Law (in its Article 68, paragraph 8), receipt of severance entailed acceptance by the worker of the rescission of the contract. Under the current Labor Law, even in the context of rescission by mutual agreement, the worker may retract his rescission by communicating in writing to the employer within 7 days thereof (though he must also return the indemnity payment received in its entirety).<sup>180</sup>

Whenever an employment relationship ceases, for whatever reason, the employer must provide the worker with a certificate of employment (*certificado de trabalho*) which must include the time worked, level of professional capacity attained and post or posts in which the worker was employed. The certificate must not contain any other reference unless specifically requested in writing by the employee. If the worker is not satisfied with the contents of the certificate, he has 30 days to take the matter to the proper authority (most like the local labor administration office) to require the appropriate changes to be made.<sup>181</sup>

## Frequently Asked Questions

- Does the rule of double severance for termination without cause still apply?

The question of whether double severance applies under the new Labor Law in the event of termination without cause has not yet been clarified either by jurisprudence or doctrine. Nevertheless, there is a strong probability that courts will find that that principle (carried over from Article 70, paragraph 4 of Law 8/98) does apply in respect of employment contracts entered into under Law 8/98 and that remain in effect, as set forth in the table above.

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<sup>175</sup> Ibid.: Article 131, paragraphs 6 and 7.

<sup>176</sup> Ibid.: Article 135, paragraph 4. Note however that Article 127, paragraph 2 provides the period for contesting as three months. This appears to be a contradiction. Probably, the courts will apply the longer period invoking the principle under which workers’ rights are to be favored.

<sup>177</sup> Labor Law, Articles 132 and 133

<sup>178</sup> Ibid.: Article 135, paragraph 2

<sup>179</sup> Ibid.: Article 135, paragraph 3. Note again that receipt of severance only creates a presumption of acceptance, which may be rebutted if the just cause for rescission is found to be invalid – Article 131, paragraphs 6 and 7.

<sup>180</sup> Labor Law, Article 126, paragraph 3.

<sup>181</sup> Ibid.: Article 136.

By contrast, double severance for termination without cause does not apply in respect of employees with contracts signed under the Labor Law. There are still, however, substantial penalties to employers for termination without cause.

- In the case of collective dismissal must each worker be informed individually?

Yes. Under Article 131, paragraph 1, when an employer intends to rescind an employment contract, it must inform “each employee covered.” This principle applies as much to collective dismissals (rescissions of labor contracts of more than 10 employees at the same time) as it does to the rescission of the labor contract of a single employee.

## 12. Collective Rights and Instruments of Collective Regulation

Under the Constitution, workers and employers have the right to organize themselves in professional associations and unions, as regulated by law.<sup>182</sup> Workers are guaranteed the right to strike, and lock-outs may not be used against them.<sup>183</sup>

These principles are also found in the Labor Law. Unions and employers’ groups may organize into higher level organizations or may affiliate in federations and confederations.<sup>184</sup>

Employers’ organizations and unions have the legal authorization to carry out collective bargaining and to work with the State to develop labor legislation and define and apply policies in respect of many workplace issues.<sup>185</sup>

Unions and professional organizations must be democratically organized, with internal elections for periods of limited duration, for which the whole membership is eligible to vote.<sup>186</sup>

The Labor Law does not place any limit on the number of unions permitted in respect of any particular industry.

Workers’ rights to organize and carry out some union activities on the premises of the employer are guaranteed.<sup>187</sup> At the shop floor level, the unit of union representation is called the union committee (*comité sindical*).<sup>188</sup>

The union committee represents workers at the level of the production unit in the negotiation of collective bargaining agreements with the firm, and in the discussion of particular workplace problems.<sup>189</sup> It also represents the union at the production unit level to both management and the workers.<sup>190</sup>

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<sup>182</sup> Constitution, Article 86.

<sup>183</sup> Ibid.: Article 87.

<sup>184</sup> Labor Law, Article 137.

<sup>185</sup> Ibid.: Article 139, paragraph 1, clauses b) and d).

<sup>186</sup> Ibid.: Article 141, paragraph 2.

<sup>187</sup> Ibid.: Article 159, paragraph 1.

<sup>188</sup> Ibid.: Article 153, paragraph 2, clause b).

<sup>189</sup> Ibid.: Article 155, paragraph 1, clause a).

<sup>190</sup> Ibid.: Article 155, paragraph 2, clause b).

The members of the union committee are elected by the workers at the production unit level.<sup>191</sup>

Unions and their subordinate bodies are permitted to hold meetings on the premises after work hours or during work hours if the employer agrees.<sup>192</sup> Both employers and workers are to be given at least 24 hours' notice of any meeting.<sup>193</sup>

Unions have the right to post notices related to union matters in a prominent place on the premises of the production unit.<sup>194</sup> Other facilities, such as time and the physical space to carry out union activities, are the subject of bargaining between unions and employers.<sup>195</sup>

No worker may be compelled to be a member of a union or be in any way penalized for being a union member.<sup>196</sup> Workers may not be compelled to pay dues to a union to which they do not belong.<sup>197</sup>

Union dues may only be deducted from a worker's salary if that worker has signed a written authorization for such a discount.<sup>198</sup> If such a declaration has been signed then the employer is responsible for deducting the dues and paying them to the union.

The law does not specify the percentage of a firm's workforce that must be unionized before an employer may be obliged to negotiate with the union. Collective bargaining applies to firms of any size.<sup>199</sup>

Once a collective bargaining agreement is reached, it applies to all the workers in the firm, whether or not they are members of the union.<sup>200</sup>

Members of the union leadership, whether of the union committee or of other bodies, may not be transferred from the production unit without prior consultation of the union, and may not be treated less favorably as a result of their roles in the union.<sup>201</sup> Their work contracts may not be rescinded without cause and never based on their union role.<sup>202</sup>

Employers and their professional associations may not promote, maintain or subsidize union organizations or in any way interfere in the conduct of their affairs.<sup>203</sup>

Mozambique subscribed to two relevant ILO conventions, namely, Convention n° 87 on freedom to organize unions and union rights, and Convention n° 98, on rights to organize and to collective bargaining.

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<sup>191</sup> Ibid.: Article 155, paragraph 2.

<sup>192</sup> Ibid.: Article 159, paragraphs 1 and 4.

<sup>193</sup> Ibid.: Article 159, paragraph 5.

<sup>194</sup> Ibid.: Article 160.

<sup>195</sup> Ibid.: Article 159, paragraph 2.

<sup>196</sup> Ibid.: Article 143.

<sup>197</sup> Ibid.: Article 144, paragraph 1.

<sup>198</sup> Ibid.: Article 144, paragraphs 2 and 3.

<sup>199</sup> Ibid.: Article 166.

<sup>200</sup> Ibid.: Article 176.

<sup>201</sup> Ibid.: Article 161, paragraph 1.

<sup>202</sup> Ibid.: Article 161, paragraph 2.

<sup>203</sup> Labor Law, Article 138, paragraph 1.

There are various forms of collective bargaining agreements, from those between a union and a single employer, to those between multiple unions and multiple employers.<sup>204</sup>

The Labor Law provides a formal process for collective bargaining.<sup>205</sup> Either unions or management may take the initiative by sending a written proposal to the other, specifically referring to the subjects proposed to be the object of negotiation.<sup>206</sup> The party receiving the proposal then has 30 days to respond. This period may be extended if the parties agree.<sup>207</sup>

The response is supposed to indicate which elements of the proposal are accepted and, for those that are not, a counterproposal.<sup>208</sup> If no response is given, the proposing party may immediately request mediation by public or private mediation, conciliation and arbitration entity.<sup>209</sup>

In principle, direct negotiations are to begin within 10 days after receipt of the counterproposal.<sup>210</sup> The first order of business is the establishment of a negotiating schedule and whatever other rules the parties want to govern the negotiations.<sup>211</sup> Negotiations are considered confidential though union representatives are free to transmit information to their hierarchically superior organization,<sup>212</sup> and both sides may seek the assistance of experts.<sup>213</sup>

Collective bargaining agreements must obey certain minimum requirements; specifically, they must:

- make the rights and privileges of the respective parties explicit;
- state the period they are to remain in effect;
- state how and when one party may inform the other of its intention to end the agreement; and
- be signed and dated by authorized representatives of the parties.<sup>214</sup>

The original copy of the agreement must be deposited with the Ministry of Labor within 20 days of signature.<sup>215</sup> If the Ministry makes no pronouncement on the document deposited within 15 days of receipt then it is considered a valid agreement and should then be posted prominently at the company premises with both employers and union representatives promoting an understanding of its contents among the workforce.

While a collective bargaining instrument is in effect, management and unions may not adopt any conduct which could breach it, nor may unions resort to a strike as a means of forcing the amendment of the agreement.<sup>216</sup>

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<sup>204</sup> Ibid.: Article 15, paragraph 3.

<sup>205</sup> For simplicity of exposition, the discussion below uses the terms “union” and “management” without reference to whether negotiations are taking place between a company and a union or an employers’ association and a union federation. This is possible because the mechanics are basically the same at each level, though the complexity of the negotiations will increase as the number of parties covered thereby increases.

<sup>206</sup> Labor Law, Article 168, paragraph 1.

<sup>207</sup> Ibid.: Article 169, paragraph 1.

<sup>208</sup> Ibid.: Article 169, paragraph 2.

<sup>209</sup> Ibid.: Article 169, paragraph 6.

<sup>210</sup> Ibid.: Article 170, paragraph 1.

<sup>211</sup> Ibid.: Article 170, paragraph 2.

<sup>212</sup> Ibid.: Article 165, paragraphs 2 and 3.

<sup>213</sup> Ibid.: Article 168, paragraph 4.

<sup>214</sup> Ibid.: Article 171, paragraphs 1 and 2.

<sup>215</sup> Ibid.: Article 173, paragraph 1.

<sup>216</sup> Ibid.: Article 177, paragraphs 3 and 4.



In addition, the rules established by the collective bargaining agreement may not be modified by individual employment agreements, unless the modification is more favorable to the workers.<sup>217</sup>

### Frequently Asked Questions

- What size must a company be before it is obliged to have a union?

Association in unions or other organizations of their choice is a right recognized to all employees for the defense of their rights and interests. The law is silent in respect of the size (by number of employees) at which a company must have a union. Indeed, note that under Article 138, an employer can neither promote nor hinder the organization or operation of a union.

- What should a company do in regard to the various procedures that require union consultation if it doesn't have a union?

Article 153, paragraph 3 states that in companies or units where there is no trade union body, union rights shall be exercised by the trade union body “immediately above” or by a workers’ commission elected at a general meeting convened specifically for that purpose by at least twenty per cent of the employees.

### 13. Strike Procedures

Strike procedures in Mozambique are governed by Articles 194 through 215 of the Labor Law.

As noted above, the right to strike is constitutionally protected, and this principle is reaffirmed in the Labor Law.<sup>218</sup>

If a collective bargaining agreement is in effect, workers are not supposed to resort to a strike except in a case of “serious violations” of that agreement by the employer and after other means to settle the conflict have been exhausted.<sup>219</sup>

In a production unit with union representation, a strike is called by the union, after consultation with the workers.<sup>220</sup> In those without unions, it is called on the vote of a general meeting of workers provided that the meeting is called by at least 20% of the workers, attended by at least two-thirds of the workers, and the decision to strike is agreed by an absolute majority of those present.<sup>221</sup>

After a vote to strike has been taken, the union<sup>222</sup> must notify the employer and the Ministry of Labor, in writing, of the strike, at least five days before it is scheduled to begin.<sup>223</sup>

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<sup>217</sup> Ibid.: Article 165, paragraph 4.

<sup>218</sup> Ibid.: Article 194.

<sup>219</sup> Ibid.: Article 197, paragraph 4.

<sup>220</sup> Ibid.: Article 197, paragraph 1.

<sup>221</sup> Ibid.: Article 197, paragraph 2.

<sup>222</sup> Again, to simplify things, we refer only to “unions” in the description below. The same requirements apply to striking workers in plants without unions, with the necessary changes.

<sup>223</sup> Labor Law Article 207, paragraph 1. For strikes in companies providing essential services the notice period is seven

The written notice must specify the place at which the strike will take place, the period of time for which work will be suspended, how long the strike is planned to go on for and the basis for the decision to strike.<sup>224</sup>

At that point, the Ministry of Labor or the mediation, arbitration and conciliation body may seek to conciliate the parties, either based on their own decision to intervene or at the request of the employer or the union.<sup>225</sup> If the conciliation does not succeed, the strike proceeds as indicated in the notification given and in accordance with the law.<sup>226</sup>

Workers on strike are not permitted to block access to the plant by non-striking workers, or otherwise intimidate or coerce them to suspend work.<sup>227</sup>

The strike has certain effects on the rights of workers and employers. In respect of workers on strike, while the strike is in effect, rights and duties under the employment agreement are suspended. Striking workers are neither paid nor obliged to follow the instructions of management. The exception to this are any rights which do not depend on the provision of work such as payment of INSS, payments owing due to accident or work-related illness and the duty of loyalty.<sup>228</sup>

However, if the underlying reason for the strike was the “manifest violation” of the collective bargaining agreement by the employer, then striking workers do not lose (even temporarily) their right to pay or other rights.<sup>229</sup> And while rights generally are suspended during a strike, workers do not lose seniority.<sup>230</sup>

A strike ends when the union and management reach agreement, by an arbitration panel’s decision given during the notice period, by decision of the union, after consulting with the workers, or as stated in the original notice to strike.<sup>231</sup>

Even during a strike, workers are obliged to supply the minimum services necessary to ensure the security of plant and equipment.<sup>232</sup>

Lock-outs are prohibited, but an employer may close down a firm in order to secure plant and equipment as well as the safety of workers or third parties.<sup>233</sup>

In principle if the strike is legal the employer may not replace striking workers with third parties that do not work for the company at the time of the notification of intention to strike. However, if the legal formalities associated with calling a strike have not been complied with, the employer may substitute workers as long as the opinion of the Ministry of Labor as to the legality of the strike has first been sought.<sup>234</sup>

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<sup>224</sup> Ibid.: Article 207, paragraph 3.

<sup>225</sup> Ibid.: Article 208.

<sup>226</sup> Ibid.: Article 209.

<sup>227</sup> Ibid.: Article 199.

<sup>228</sup> Ibid.: Article 210, paragraphs 1 and 2.

<sup>229</sup> Ibid.: Article 210, paragraph 3.

<sup>230</sup> Ibid.: Article 210, paragraph 5.

<sup>231</sup> Ibid.: Article 212.

<sup>232</sup> Ibid.: Article 202.

<sup>233</sup> Ibid.: Article 203 together with Article 204, paragraph 1.

<sup>234</sup> Ibid.: Article 202, paragraph 8, together with Article 204, paragraphs 3 and 4.

## 14. Occupational Health and Safety

Occupational health and safety in Mozambique is governed in the first instance by Paragraph 2 of Article 85 of the Constitution, in the second instance by the Labor Law and finally by an ample body of subordinate legislation, much of it of colonial origin.

Mozambique is subscribed to ILO Convention n° 17, regarding compensation for workplace accidents, and ILO Convention n° 18, regarding compensation for occupational illnesses.

Article 85 of the Constitution provides that all workers have a right to a fair wage, rest and vacation and to a safe and hygienic work environment.

Articles 216 through 236 of the Labor Law govern worker health and safety. All workers have the right to work under hygienic and safe conditions.<sup>235</sup> Employers have the obligation to create such conditions and to inform the workers regarding the risks associated with the particular jobs they perform.<sup>236</sup>

Whenever necessary, they are required to provide appropriate safety equipment and work clothing in order to prevent accidents and negative effects on workers' health.<sup>237</sup>

Regulations and instructions regarding health must be rigorously followed both by employers and by workers.<sup>238</sup>

Any company that has a high risk of accidents or occupational illnesses is obliged to create a workplace safety committee.

The purpose of workplace safety committees is to ensure compliance with health and safety norms, investigate the causes of accidents and organize preventive measures. The Labor Law does not define rules for the creation of such committees, stating only that they must include representatives of both the employer and the workers.<sup>239</sup>

Industry-specific regulations on health and worker safety may be established by ministerial diploma, by the Minister of Labor, the Minister of Health or the Minister in charge of the specific sector.<sup>240</sup> The Labour Law encourages employers bodies and unions to develop codes of conduct around this material.

Large companies (those with more than 100 employees) and companies that engage in work that is strenuous, unhealthy or highly dangerous must have a health post on site.<sup>241</sup> Medical professionals are supposed regularly to examine workers to determine, among other things, if they are well enough to do the work called for in their contracts.<sup>242</sup> HIV/AIDS tests are not included in such examinations.

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<sup>235</sup> Labor Law, Article 216, paragraph 1.

<sup>236</sup> Ibid.: Article 216, paragraph 2.

<sup>237</sup> Ibid.: Article 216, paragraph 5.

<sup>238</sup> Ibid.: Article 216, paragraph 6.

<sup>239</sup> Ibid.: Article 217.

<sup>240</sup> Ibid.: Article 218, paragraph 1.

<sup>241</sup> Ibid.: Article 219

<sup>242</sup> Ibid.: Article 221, paragraph 1. As made clear in Section 18, below, these tests does not extend to HIV status.

In accordance with sector-specific legislation, health checks can be arranged through CHAEM and are compulsory for workers dealing with food and beverages, such as in restaurants and hotels. Companies are obliged to adopt effective measures for the prevention of accidents and occupational illnesses.<sup>243</sup>

Articles 222 through 225 define the concepts of work accidents and occupational illnesses. A work accident is one which takes place at the work place during working hours and results in death or injury to the worker. This definition may change depending on circumstances such as work undertaken outside the workplace or outside working hours, such as on the way to or from work, or if the accident results from the actions of the worker, force majeure etc.

Occupational illnesses are clinical issues of biological or toxic nature arising directly from the work undertaken and may include among others, lead poisoning and poisoning attributable to exposure to industrial gases or vapors.<sup>244</sup>

Industries likely to cause occupational illnesses are supposed to be specifically regulated.<sup>245</sup> Workers who suffer from occupational illnesses have a right to compensation. This right includes a right to be given work compatible with their residual capacity as a result of such occupational illness.<sup>246</sup>

Work accidents or occupational illness give rise to the requirement to provide medical assistance and medicines, and this right may continue along with the right to indemnity if the illness arises after the conclusion of the work contract.

Companies (without explicit regard to size) are required to insure against workplace accidents and occupational illnesses.<sup>247</sup> Such insurance must cover the particular risks to which workers may be exposed,<sup>248</sup> being either normal risk or aggravated risk insurance.

The INSS does not cover workers in the event of workplace accidents and occupational illnesses. This cover is provided by the employers, who are free to contract with private insurance companies.

Workers who are incapacitated as a result of an occupational illness are entitled to a pension, if the incapacitation is permanent and indemnification if it is temporary.<sup>249</sup> If a workplace accident or an occupational illness results in death, the worker's survivors are entitled to a pension.<sup>250</sup>

The main source of detailed and generally applicable health and occupational safety regulations is contained in Annex III to Diploma Legislativo n° 3057 of 12 December 1970. Although the greater part of this instrument was repealed by means of the contemporary

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<sup>243</sup> Labor Law, Article 226, paragraph 1.

<sup>244</sup> Ibid.: Article 224, paragraph 2.

<sup>245</sup> Ibid.: Article 224, paragraph 4.

<sup>246</sup> Ibid.: Article 229, paragraphs 1 and 2.

<sup>247</sup> Ibid.: Article 231.

<sup>248</sup> Ibid.: Article 232.

<sup>249</sup> Ibid.: Article 233, paragraph 1.

<sup>250</sup> Ibid.: Article 233, paragraph 3.

regulation for the licensing of industrial activities,<sup>251</sup> its Annex III remains in force. Annex III sets forth, in broad terms, the conditions that should obtain at industrial sites.

Its general conditions govern such matters as the state and location of the buildings in which people work, lighting and ventilation, and general rules of the hygiene and cleanliness (e.g., one shower per ten workers who end shift simultaneously).<sup>252</sup> Special conditions apply in certain industrial establishments in respect of sanitary facilities, cafeterias and first aid and medical treatment.<sup>253</sup>

Annex III's Chapter II on safety in the workplace governs such matters as, among others, storage of combustible or explosive materials, fire prevention, emissions of dangerous or toxic fumes and individual worker protection.<sup>254</sup>

More detailed rules of hygiene and safety in the workplace are supplied by Legislative Diploma n° 48/73 of 5 June 1973 (the "Hygiene and Safety Regulations"). These regulations are more specific than the general regulations set forth in Annex III to Legislative Diploma n° 3057. Their main purpose is the mitigation of occupational risk and the promotion of hygiene in the workplace.<sup>255</sup>

Legislative Diploma n° 1706 of 19 October 1957, Chapter 1 allocates legal responsibility for workplace accidents and occupational illnesses between workers and employers. The annex of the diploma lists those industries considered to be directly related to a list of occupational illnesses.<sup>256</sup>

In respect of such industries, if a worker can prove that he has a listed occupational illness, and that he habitually worked in one of the listed industries, the law presumes a causal link between his work and his illness.<sup>257</sup>

Chapter II of Legislative Diploma n° 1706 of 19 October 1957 gives administrative procedures in the event of an accident. Chapter III contains the rules of emergency assistance and treatment.

Chapter IV sets forth the pensions and indemnities to which the survivors of a worker killed in an accident are entitled. Chapter VII establishes that it is obligatory (in most cases) for employers to obtain insurance against workplace accidents and occupational illnesses. Chapter VIII provides fines for non-compliance.

As a complement to Legislative Diploma n° 1706 of 19 October 1957, Edict n° 21 769 of 3 January 1966 sets forth the method of calculating the indemnification due to an injured worker, including numerous tables to assist in making the calculation.

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<sup>251</sup> Decree n° 39/2003 of 26 November.

<sup>252</sup> Legislative Diploma n° 3057 of 12 December 1970, Annex III, Section B - I, paragraph 28.3.

<sup>253</sup> Ibid.: paragraphs 28 through 39.

<sup>254</sup> Ibid.: Sections IV, V and VI.

<sup>255</sup> Legislative Diploma n° 48/73 of 5 June 1973, Article 1.

<sup>256</sup> Legislative Diploma n° 1706 of 19 October 1957, sole annex.

<sup>257</sup> Ibid.: Article 9.

## 15. Employment Promotion

Professional training is a fundamental right of citizens and workers, and the State and employers must permit the exercise of this right through actions they take.<sup>258</sup>

In order to promote employment the law permits the use of fixed term contracts for recently-trained young people. Fixed-term employment contracts can be entered into with such candidates for employment, and such contracts can be freely renewed for up to eight years with the same employer, except in the case of small and medium companies within their first 10 years of activity.<sup>259</sup>

Employers who take in final year students from any level of education as pre-professional trainees for pay are supposed to receive tax benefits to be established under separate legislation. Employers may also sign agreements with educational institutions to enable students to undertake unpaid pre-professional training and work experience as well as signing apprenticeship contracts.<sup>260</sup>

The Labor Law specifies that whenever a worker enrolled in INSS fulfills the eligibility requirements for a retirement pension, the worker must retire. The rationale behind this is that compulsory retirement will free up jobs for young job-seekers.<sup>261</sup>

## 16. Tests, medical examinations and HIV/AIDS

The Labor Law allows for medical examinations in two cases.

Medical tests are permitted when the employee is admitted into the company or when the contract comes into force, and employers may request that candidates for employment present the outcome of medical tests to demonstrate their physical and psychological aptitude,<sup>262</sup> except where such tests may not legally be requested, as is the case with HIV/AIDS testing.

Throughout the duration of the contract the medical staff responsible, in those companies which have private health posts, must regularly examine workers to verify that:

- workers are sufficiently physically robust to undertake the jobs defined in their contract;
- any worker with an infectious disease does not put at risk the health of other workers (see below for a discussion of HIV/AIDS in the workplace); and
- any worker with a mental illness is not employed in an unsuitable position.<sup>263</sup>

In the case of employment of minors, the test prior beginning work and annual tests are compulsory and must be paid for by the employer.

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<sup>258</sup> Labor Law, Article 238, paragraph 1

<sup>259</sup> Ibid.: Articles 241 and 42.

<sup>260</sup> Ibid.: Articles 243 and 249.

<sup>261</sup> Ibid.: Article 125, paragraph 2, together with Article 242.

<sup>262</sup> Labor Law. Article 7.

<sup>263</sup> Ibid.: Article 221.

The medical professional responsible for undertaking the examinations, either at the start of the contract or on an ongoing basis, may not communicate any information other than that which directly relates to the capacity or lack thereof of the worker for a given position.<sup>264</sup>

The HIV/AIDS pandemic in Mozambique is regulated by Law n° 5/2002 of 5 February (the “Law for the Protection of Workers with HIV/AIDS”) and Law n° 12/2009 of 12 March (the Law for Rights and Responsibilities of those Living with HIV/AIDS).

Law 5/2002 applies to all workers including domestic workers and candidates for employment. The main purpose of Law 5/2002 is to ensure that workers and candidates for employment do not suffer discrimination because of their HIV-positive status.<sup>265</sup> (The term “worker” below also covers a candidate for employment, where appropriate. The rights of the two are very similar).

Under Law 5/2002, it is prohibited to test workers for HIV without their consent, or to make such testing a condition for access to training or promotion<sup>266</sup>

A worker cannot be obliged to reveal her HIV status.<sup>267</sup> Nor may a worker be discriminated against, in terms of workplace rights, training or promotion, on the basis of HIV status. This confidentiality is reinforced in the Labour Law as part of the worker’s right to privacy and confidentiality.

A worker who is exposed to the HIV virus in the workplace and thereby contracts the disease has a right to compensation and to full medical treatment to deal with the effects of the disease, including such drugs as have been approved for treatment by the National Health Service, at the cost of the employer.<sup>268</sup>

There is at least one course of anti-retroviral drugs that is now an approved treatment for HIV/AIDS in Mozambique. Under one interpretation of the law, employers are obliged to provide them to all infected employees.<sup>269</sup>

A worker sick with AIDS cannot simply be replaced. Employee absences due to AIDS are justifiable absences under the terms of the Labor Law.<sup>270</sup>

A worker with HIV/AIDS who can no longer work at a particular job must be given another, less exacting job in keeping with his residual capacity.<sup>271</sup>

Once the worker can no longer work, it appears that the right to continuing medical treatment at the expense of the employer<sup>272</sup> continues. This is as distinct from a worker disabled for other reasons, who becomes the charge of the INSS.

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<sup>264</sup> Ibid.: Article 7, paragraph 2.

<sup>265</sup> Law for the Protection of Workers with HIV/AIDS, Article 2.

<sup>266</sup> Ibid.: Article 4, paragraphs 1 and 2.

<sup>267</sup> Ibid.: Article 6.

<sup>268</sup> Ibid.: Article 8, paragraphs 1 and 2.

<sup>269</sup> Ibid.: Article 10, paragraphs 1 and 2.

<sup>270</sup> Law for the Protection of Workers with HIV/AIDS, Article 11.

<sup>271</sup> Ibid.: Article 9.

<sup>272</sup> Ibid.: Article 10.

Sanctions are applied to employers who dismiss a worker with HIV/AIDS. Dismissal for that reason is considered to be without just cause and the worker is entitled to double damages and to reinstatement.<sup>273</sup>

A candidate for employment who is not given a job as a result of having HIV/AIDS is entitled to damages equal to six months' salary at the rate applicable for the job applied for.<sup>274</sup>

A range of fines for violations, ranging from 50 to 150 minimum wages, applies.<sup>275</sup>

Mozambique's Law for the Protection of Workers with HIV/AIDS closely follows International Labor Organization (ILO) guidelines and Southern Africa Development Community (SADC) guidelines on the subject.<sup>276</sup>

Law 12/2009 reinforces a number of requirements established in respect of workers in Law 5/2002, and also establishes additional requirements, such as that requiring all companies implement programs designed to combat HIV/AIDS, in the workplace.<sup>277</sup> This requirement is due to be regulated. Law 12/2009, as well as fines, includes a number of criminal sanctions including prison as well as civil responsibility. Further information about the legislation and HIV/AIDS workplace programmes is available from [www.acismoz.com](http://www.acismoz.com)

## 17. Dispute Resolution

Dispute resolution in the labor field in Mozambique is mainly governed by a combination of laws. In addition to the relevant provisions of the Labor Law (Articles 180 through 193), dispute resolution is governed also by the Labor Courts Law, and Law n° 11/99 of 8 July (the "Arbitration Law"). The Labor Procedure Code (*Código do Processo de Trabalho*), Civil Procedure Code (*Código do Processo Civil*) and Civil Code (*Código Civil*) also apply.

The net effect of these three main laws is as follows:

- the collective conflict resolution regime is applicable, with the necessary adaptation, to disputes arising from individual employment relationships; provided, that extrajudicial resolution of disputes arising from individual employment contracts is always voluntary;<sup>278</sup>
- except in cases of interlocutory injunctions, all disputes must be mediated before being submitted to arbitration or to the Labor Courts; arbitration bodies or courts which receive cases which have not been subject to mediation must notify the parties to comply with this requirement;<sup>279</sup> and
- in relation to dispute resolution through arbitration, where the Labor Law procedures are incomplete, subsidiary procedures established in the Arbitration Law are applicable.

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<sup>273</sup> Ibid.: Articles 12 and 13.

<sup>274</sup> Ibid.: Article 13, paragraph 2.

<sup>275</sup> Ibid.: Article 16. Calculated at the exchange rate of MT 24,000: US\$1.

<sup>276</sup> See International Labor Office. HIV/AIDS and the World of Work. (Geneva: International Labor Organisation), 2002, and SADC Employment and Labor Sector Coordinating Unit. Code of Conduct on HIV/AIDS and Employment in the Southern African Development Community. (Lusaka: SADC).

<sup>277</sup> Law 12/2009, Article 43.

<sup>278</sup> Labor Law, Article 182.

<sup>279</sup> Ibid.: Article 184.



The creation of labor arbitration, conciliation and mediation services is to be regulated by specific legislation, which is currently under discussion. Some provinces have already established mediation commissions, which must be used in the first instance, in most disputes. However the functioning of these bodies is not yet regulated and their capacity to deal with disputes has yet to be fully tested.

Labor disputes arising from collective labor relations in Industrial Free Zones (IFZs) must be adjudicated by arbitration.<sup>280</sup>

## 18. Labor Inspection

The Ministry of Labor includes among its subordinate departments the Labor Inspectorate. The main purpose of the Labor Inspectorate is to ensure compliance with the terms of the Labor Law.<sup>281</sup>

The main instruments governing labor inspection are Decree n° 32/89 of 8 November (“Decree 32/89”) and Ministerial Diploma n° 17/90 of 14 February (“MD 17/90”). Mozambique also subscribed to ILO Convention n° 81, governing labor inspection in industry and trade.

The Labor Inspectorate is a powerful department. In order to be able to carry out its functions, it is permitted free access to any premises of an employer and may demand to see any records it considers necessary.<sup>282</sup> An updated regulation governing labor inspections is currently being prepared.

Failure to grant access or information on the spot is a criminal offense.<sup>283</sup> Labor inspectors are considered deputed to perform their functions at all times on any day of the week.<sup>284</sup>

If a Labor Inspector finds a violation that is not minimal (and therefore the subject of a warning notice), he must draw up a notification indicating the violation and the fine imposed.<sup>285</sup> Once the notification is confirmed with his superior, it may not be cancelled; the matter must be adjudicated to its conclusion.<sup>286</sup>

Once a notification has been served, the employer has 10 days to either pay or appeal the fine. Appeals are made in writing.<sup>287</sup> An appeal suspends the fine which need not be paid until the appeal is finally adjudicated.<sup>288</sup>

Appeals are supposed to be decided within 30 days; in the absence of any notification within that period, it is presumed that the appeal has been rejected.<sup>289</sup> Within 10 days of the end of

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<sup>280</sup> Decree 75/99 of 12 October, Article 9, paragraph 2

<sup>281</sup> See Ministerial Diploma n° 88/95 of 28 July, supplying the structure of the ministry and the functions of its subordinate departments and, in particular, Article 6, clause b) thereof.

<sup>282</sup> Decree 32/89, Article 4, paragraph 1.

<sup>283</sup> Ibid.: paragraph 2.

<sup>284</sup> Ibid.: paragraph 1.

<sup>285</sup> Ibid.: Article 9, paragraphs 1 and 2.

<sup>286</sup> Ibid.: paragraph 5.

<sup>287</sup> Ministerial Diploma 17/90, Article 23, paragraph 1 and Article 26, paragraph 1.

<sup>288</sup> Ibid.: Article 26, paragraph 2.

<sup>289</sup> Ibid.: Article 26, paragraph 2.

that previously mentioned 30-day period,<sup>290</sup> the employer may then appeal the matter to the Labor Court of competent jurisdiction.

Labor Inspectors are also empowered to issue immediate corrective orders to an employer if they find an imminent threat to the life, health or security of the workers.<sup>291</sup>

Under the Labor Law, Labor Inspectors may only set fines at the minimum level, and the employer may then conclude the process by paying the fine in full or by appealing to the Inspector's superior. On appeal, the Inspector's superior may increase the fine up to its maximum level.<sup>292</sup>

## Frequently Asked Questions

- What if a Labor Inspector enters company premises without any form of identity document?

According to Article 2 of Decree 32/89 Labor Inspectors have an identification card to identify themselves while on a mission. If a person declares himself to be a Labor Inspector but does not have a card identifying himself as such, the employer may remove him from the premises as she would any trespasser.

Note, however, that, according to Article 4, paragraph 2 of Decree 32/89, once the Inspector has identified himself, the refusal of access or denial of any element required is a criminal offense.

## Checklist

Below is a list of items commonly checked by labor inspectors.

- Work schedule
- Leave plan
- Legally required list of workers by name (*relação nominal*)
- Employment contracts
- Individual employee files, including health certificates, employment certificates and disciplinary processes
- Proof of social security payment
- Proof of payment of collective workers' insurance
- Declaration of start of activity made to the Provincial Labor Department
- Work permits for foreign employees

## 19. Social Security

Articles 256 through 258 of the Labor Law govern social security, providing that all detail be supplied in specific legislation. This legislation is Law 4/2007 of 07 February (the "Social

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<sup>290</sup> Ibid.: Article 26, paragraph 5.

<sup>291</sup> Decree 32/89, Article 11, paragraph 1.

<sup>292</sup> Labor Law, Article 267, paragraph 2.

Protection Law” which provides the basis for social security and reorganizes the social security system. The Social Protection Law is regulated by Decree 53/2007 of 03 December.

The social security system is intended, taking into consideration the economic situation of the country, to mitigate the absolute poverty in which much of the population lives, to ensure minimum subsistence and security to its member workers in the event of illness or incapacitation, an old age pension, and family benefits in the event of a member worker’s death.<sup>293</sup>

Social protection is divided into basic social security, compulsory social security and complementary social security.<sup>294</sup> There are various levels of responsibility for management of the system.

Basic social security is managed by the ministry responsible for social action. Compulsory social security is managed by INSS. Complementary social security is managed either publicly or privately based on regulations to be approved by the Council of Ministers.<sup>295</sup>

All employers must be registered for social security. Employers are legally required to register all workers, national and foreign, for social security.<sup>296</sup>

However, employers need not register foreign workers registered in the social security systems of their home countries if they can prove that they are so registered.<sup>297</sup> While the law does not specify how this should be proven, in practice the presentation of a certificate or declaration from the social security entity in the country of origin is the norm. A specific exemption certificate must be requested from INSS by each foreigner, and a copy of this must be held on the employee’s file for inspection by the Labor Inspectorate.

Employers and employees are both obliged to contribute towards a member worker’s social security.<sup>298</sup> The legally required contribution to social security is 7% of a worker member’s monthly salary, 4% from the employer and 3% percent from the worker.<sup>299</sup>

Employers are obliged to withhold both their own and their workers’ contributions at the source and pay over the corresponding amount monthly to the INSS.<sup>300</sup> Payment must be made by the 10<sup>th</sup> of the following month.

Note that INSS does not take responsibility for workers with work-related temporary disabilities. This is the responsibility of the employer, which is required to have workers insurance to cover this risk.

INSS is responsible for the material subsistence of temporarily or permanently incapacitated workers when such incapacity is not the result of work-related illness or injury, or has not been intentionally caused by the worker.

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<sup>293</sup> Social Protection Law, Article 2.

<sup>294</sup> Ibid.: Article 5.

<sup>295</sup> Ibid.: Article 39, paragraphs 1, 2 and 5.

<sup>296</sup> Ibid.: Article 14, paragraphs 1 and 2.

<sup>297</sup> Ibid.: Article 14, paragraph 5.

<sup>298</sup> Ibid.: Article 20, paragraph 1

<sup>299</sup> Decree 4/90, of 13 Abril, Article 2 which established the social security contribution at 7%

<sup>300</sup> Social Protection Law Article 20, paragraph 2.

It is necessary to differentiate the permanent nature of an illness and the permanent or temporary nature of the pensions and subsidies available from INSS. For example, a disability pension is always given on a temporary basis and later replaced by a retirement pension, which is permanent.

It is also important to note that retirees do not have the right to receive their pension as a lump sum. Therefore, if a pensioner returns to live in his place of origin he must return monthly to the nearest INSS office, usually in a provincial capital, to collect his pension.

A number of changes have been made to the benefits structure for workers who are contributory members of INSS by Decree 53/2007. The following is a summary of the key aspects of this regulation:

The decree regulates compulsory social security regimes for those in an employment relationship and for the self-employed.<sup>301</sup> This regulation applies to all employees, national or foreign, resident in Mozambique, independent of the sector in which they work. It also applies to those in part time work, those on probation periods and those on paid work placements or apprenticeships.<sup>302</sup>

For the purposes of INSS, employees are also considered to be<sup>303</sup>:

- Administrators and managers; members of the Board of an organization where these have an employment contract; owners, managers or members of the board of one-person companies;
- One person company owners either where these have employees or a fixed place of work;
- Stevedores contracted by a stevedoring company or by an employment agency;
- Professionals working for transporters;
- Workers for state institutions and state-owned enterprises except where covered by the General State Employees Statute;
- Seasonal workers;
- Employees of political parties, unions, associations, social organizations and NGOs.

Coverage of domestic workers, sportspeople, artists and agricultural sector workers will be introduced gradually based on Ministerial Diplomas of the Labour Ministry, as the capacity of INSS to absorb these categories grows.

The response to any requests submitted to INSS must be provided within 30 days. Where requests are denied, the response to the request must include the legal basis for this decision. Where a reply is not given within 30 days, tacit approval of the request is presumed. If the request was in respect of a payment owed, and where such payment is not made within 10 days of the date on which tacit approval is assumed to have taken place, the applicant has the right of appeal to higher authority within INSS.<sup>304</sup>

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<sup>301</sup> Decree 53/2007, Article 1.

<sup>302</sup> Decree 53/2007, Article 4.

<sup>303</sup> Decree 53/2007, Article 4.

<sup>304</sup> Decree 53/2007, Article 2.

The requirement to enroll in the Mozambican INSS system does not apply to foreigners who can demonstrate that they are enrolled in a social security system in another country, without prejudice to future alterations of legislation in this respect.<sup>305</sup>

Compulsory social security for employees provides the following benefits<sup>306</sup>:

- A sickness or hospitalization subsidy;
- A maternity subsidy;
- An invalidity pension;
- An old-age pension;
- A death subsidy, funeral subsidy and survivor's pension.

Employers must register with INSS within 15 days of their start of activity or acquisition of a company. Registration is to be done using the form provided. The following documents must be annexed to the form<sup>307</sup>:

- Copy of *alvará* or proof of licensing;
- Copy of *Modelo 6* – proof of registration with the fiscal authorities;
- Copy of the ID documents of the person/s with powers to operate the organization.

After registration INSS will provide a contributor registration number. This number must be used on all payments and in all correspondence with INSS.

Employees are registered with INSS using the form provided. The form must be accompanied by proof of identity which can be in the form of a BI, *cédula* or birth certificate. The employee registration form must be validated by the stamp and signature of the employer. The employee must complete the form and the employer is responsible for sending it to INSS within 30 days of the date of start of contract. If the employee does not complete the form the employer must do so using the data available. The updating of information contained in the employee's registration document is the responsibility of the employee. INSS will provide an employee registration number within 30 days of receipt of the form. The enrolment of the employee dates from the first day of the first month in which a contribution was paid on his behalf.<sup>308</sup>

The admission of an employee already enrolled in the system does not require the submission of a new form as long as the employee's registration number is included on the payment form submitted monthly. It is the duty of the employee to advise INSS of change of employer.<sup>309</sup>

Contributions are payable based on basic salary and any additional bonuses, commissions or payments of this nature which are made regularly, as well as management bonuses.<sup>310</sup>

Employers must, by the 10<sup>th</sup> of the subsequent month, submit a list of employees and their earnings used as a basis for calculation of social security payments. This information is to be submitted on a form approved by INSS. When the 10<sup>th</sup> falls on a Saturday, Sunday or public holiday, the date for submission falls on the next working day.<sup>311</sup>

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<sup>305</sup> Decree 53/2007, Article 5.

<sup>306</sup> Decree 53/2007, Article 6.

<sup>307</sup> Decree 53/2007, Article 7.

<sup>308</sup> Decree 53/2007, Article 8.

<sup>309</sup> Decree 53/2007, Article 9.

<sup>310</sup> Decree 53/2007, Article 10.

<sup>311</sup> Decree 53/2007, Article 11.

If a salary list is not submitted INSS may demand payment based on the totals of previously-submitted lists. If such lists are not available payment is calculated based on the accounts of the employer in question. If the accounts do not provide sufficient information the payment demand is based on the average paid by other employers in the same sector.<sup>312</sup>

Payments of INSS are made based on the legally established percentages. Payments are due from the date of start of contract to the date of termination of the same. Payments must be made by 10<sup>th</sup> of the subsequent month using the approved proof of deposit. The obligation in respect of payment terminates 10 years after the date on which the last payment was due.<sup>313</sup>

Employers ceasing their activities must inform INSS in writing at least 10 days prior to the planned cessation date. Non-communication will lead to a debt being accrued in the name of the employer until such time as the communication is made.<sup>314</sup>

Sickness pay is available for all aspects of sickness which lead to temporary incapacity of the employee, except those attributable to work-related sickness or sickness resulting from intentional acts by the employee. Temporary incapacity includes time away from work to accompany a minor for medical treatment when such treatment requires hospital admission or during periods of convalescence from such treatment where the doctor responsible acknowledges the need for special care to be provided.<sup>315</sup> Minors are considered those under 15. No age limit is applied when the ill person has a physical or mental illness. In case of sickness the employee has the right to a sickness subsidy and a hospitalization subsidy where relevant.<sup>316</sup>

In order to qualify for sickness subsidy the employee must fulfill the following criteria: six months worth of payments made within the last twelve months, at least one of which must have been made within two months of the start of the sickness.<sup>317</sup>

Subsidy is not payable for the first 3 days of absence in the case of sickness. The first day of absence is not counted if the employee received salary for that day. The waiting period does not apply in cases of hospitalization, contagious illness attested to by a doctor and medically certified absence in pregnancy. The first day of absence in the case of sickness is the first day confirmed as such by a doctor.<sup>318</sup>

The daily sickness subsidy corresponds to 65% of the average salary of the affected worker.<sup>319</sup> Sickness subsidy is payable up to a maximum of 365 continuous days. If illness continues after this time the worker passes onto invalidity pension, if they have completed the contributions required to qualify. The opinion of a medical board is required in such cases.<sup>320</sup>

Impediment from working due to sickness is proven by presentation of the Health Service's approved form duly signed by a doctor or medical technician, and authorized by the health post responsible for the area in which the sick employee resides. The form includes details of

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<sup>312</sup> Decree 53/2007, Article 12.

<sup>313</sup> Decree 53/2007, Article 13.

<sup>314</sup> Decree 53/2007, Article 16.

<sup>315</sup> Decree 53/2007, Articles 17 & 19.

<sup>316</sup> Decree 53/2007, Article 18.

<sup>317</sup> Decree 53/2007, Article 20.

<sup>318</sup> Decree 53/2007, Article 21.

<sup>319</sup> Decree 53/2007, Article 22. This article also includes the basis for calculation of average salary

<sup>320</sup> Decree 53/2007, Article 23.

the number of days of absence to date and the likely number of days for which the worker will be unable to work. The form is completed in duplicate with one copy being sent to INSS and one copy for the employee. The employer must pass its copy to INSS within 5 working days. In case of hospitalization a different form with similar information is used and processed in the same manner.<sup>321</sup>

Hospitalization subsidy is payable for non-work related accidents or when the worker accompanies a hospitalized minor. The payment is made directly to the hospital based on the daily rates in force within the health service. Payment is made after presentation to INSS of the relevant invoice from the hospital. Minors are considered to be those under the age of 15 except in special cases authorized by a doctor.<sup>322</sup>

Maternity subsidy is payable for 60 days and may be claimed up to 20 days before the due date. The subsidy is payable monthly.<sup>323</sup> This article provides further details of calculation of this subsidy.

Old age pension is payable at age 55 for women and 60 for men as long as the following have been complied with: have been enrolled in the system for at least 20 years prior to the date of eligibility for pension; have completed 10 years (120 months) of contributions. In addition irrespective of age the employee that has been enrolled for 30 years and has 25 years (300 months) of contributions is eligible for an old-age pension. Old-age pensions are calculated based on the formula provided.<sup>324</sup>

Eligibility for old-age pension signifies the end of the work contract. INSS is responsible for communicating to the employee the date from which the pension will start.<sup>325</sup>

Eligibility for invalidity pension is based on medical certification that the employee has suffered mental or physical injury, illness or accident which renders his unable to work. Employees certified as invalids before reaching 55 for women and 60 for men are eligible for invalidity pension having fulfilled the following criteria: been enrolled for at least 5 years before the date of invalidity; paid 2.5 years (30 months) of contributions within the preceding five years; reached the end of the applicable period for sickness benefit. Invalidity pension is automatically commuted to old-age pension when the relevant age is reached. Those benefiting from invalidity pension must be evaluated by a medical board every six months. The beneficiary can appeal the decision of the medical board within 8 days of that decision being given. Invalidity pension is calculated based on the criteria provided and must be applied for using the relevant form.<sup>326</sup>

If the employee or pension beneficiary dies their heirs are eligible for various benefits. These are payable as a once-off payment as long as the employee has been contributing to INSS for 3 years and has made six months worth of payments in the 12 months preceding his death. Payments are calculated and made to heirs based on the criteria provided. Funeral subsidy is payable if the employee has been enrolled for at least 3 months and has 3 months worth of

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<sup>321</sup> Decree 53/2007, Article 24.

<sup>322</sup> Decree 53/2007, Articles 25 & 26.

<sup>323</sup> Decree 53/2007, Article 27. This article provides detail on how the subsidy is calculated.

<sup>324</sup> Decree 53/2007, Articles 28, 29 & 30.

<sup>325</sup> Decree 53/2007, Article 31.

<sup>326</sup> Decree 53/2007, Articles 32 – 36.

contributions paid. Eligibility for funeral subsidy is based on the criteria provided as is eligibility for a survivor's pension.<sup>327</sup>

As a transitional measure Decree 53/2007 allows for a "bonus" of 60% of the average monthly salary over the past five years to be paid to those who do not fulfill the requirements outlined above.

INSS has the power to submit non-payments to the relevant court to recover the amounts outstanding. An appeal in such cases on the grounds of wrongly-calculated debt suspends the process but in cases where the debt is found to be correct the debtor pays 0.5% of the value owed per month during which the suspension was in place.<sup>328</sup>

The following are considered non-compliance with the regulation<sup>329</sup>:

- Non-submission of proof of identity of the employing entity for registration purposes;
- Late submission of proof of identity of the employing entity for registration purposes;
- Non-submission by the employer of documents for the registration of each employee;
- Late submission by the employer of documents for the registration of each employee;
- Non-submission or late submission of documents requiring changes in the original registration of the employer or employee;
- Non-submission or late submission of monthly lists of employees and payments made to them;
- Omission of the name of an employee or incorrect statement in respect of the declaration of the amount paid to employees;
- Non-payment or late payment of contributions;
- False declarations by either the employer or employee.

Non compliance is subject to fines of between 1-5 minimum wages depending on the infraction without prejudice to the requirement to pay interest.

Non-payment is subject to interest payments of 1% of the total value owed for each month or part thereof. Interest must be paid within 5 years. In cases where an appeal has gone to court interest payments continue to accrue. In cases of demonstrable force majeure employers may appeal to INSS to reduce interest payments.

Non-payment to INSS of amounts deducted from employees, and the refusal to provide documents demanded by INSS are punishable as a crime.

Defrauding the system is punishable as a crime.

Compliance with social security obligations is inspected by the Labour Inspectorate.<sup>330</sup>

## Frequently Asked Questions

- Are seasonal workers covered by INSS?

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<sup>327</sup> Decree 53/2007, Articles 37-47.

<sup>328</sup> Decree 53/2007, Articles 90-93.

<sup>329</sup> Decree 53/2007, Articles 94-100

<sup>330</sup> Decree 53/2007, Article 101.



Under Law 4/2007, the definition of employees subject to social security obligations is broadly stated as “workers who work for others” (*por conta de outrem*). This definition clearly captures seasonal workers in its scope. Decree 53/2007, Article 4 provides that seasonal workers are considered to be employees, however in practice some INSS delegations are not yet accepting payments on behalf of seasonal workers, and Decree 53/2007 also provides that contributions by agricultural workers (some of which may be expected to be seasonal) will be phased in. No further clarification on this matter has yet been forthcoming from the Ministry of Labor, and the reader is recommended to seek written confirmation of how to proceed from their local Provincial Labour Department.

- Are foreigners obliged to pay social security contribution?

Under Article 18 paragraph 2, of Law 4/2007, foreigners are only obliged to pay INSS if they are not enrolled in the social security system of another country.

## 20. Consultative Labor Council (CCT)

The Consultative Labor Council (*Comissão Consultiva de Trabalho*, or “CCT”) is governed by Decree nº 7/94 of 9 March (“Decree 7/94”). Mozambique is also a subscriber to ILO Convention nº 144, governing tripartite consultation intended to promote fulfillment of international rules on labor.

The main purpose of the CCT is dialogue and social agreement in matters related to the economic, social and labor policies of the Government.<sup>331</sup>

It is a tripartite body, composed of the Government (represented by the Minister of Labor and other ministers with responsibility for economic areas); six members from organizations representing management; and six from organizations representing labor.<sup>332</sup>

Normally, the Minister of Labor presides over meetings of the CCT though the Prime Minister may preside whenever she considers it necessary.<sup>333</sup>

The CCT is both an advisory group and a forum for negotiation. It issues opinions in respect of the Government’s economic policies when asked, and may make proposals to the Government.<sup>334</sup>

Its role as a negotiating forum covers, in theory, a broad range of issues, including wages and prices, employment and training, occupational health and safety and social security.<sup>335</sup> In practice, the main matter negotiated at the CCT, annually, are the national sectoral minimum wages.

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<sup>331</sup> Decree 7/94, Article 1, paragraph 1.

<sup>332</sup> Ibid.: Article 3, paragraph 1.

<sup>333</sup> Ibid.: paragraph 2.

<sup>334</sup> Decree 7/94, Article 2, paragraph 1, clause a).

<sup>335</sup> Ibid.: clause b).

The CCT meets in plenary session ordinarily twice a year and extraordinarily at the request of any of its members.<sup>336</sup> Its deliberations are submitted to the Prime Minister for consideration by the Government.<sup>337</sup>

The Government recently issued a tender for a consultancy to revise the structure and mode of operation of the CCT.

## 21. Labor-Management Consultation

The forms of labor-management consultation are not, generally, driven by the terms of the labor legislation. The CCT operates on a macro level, and does not have a role in respect of negotiations between a union and a single firm or groups of firms. It is not common in Mozambique for significant negotiations to take place at the level of industry associations and unions. With the exception of the annual minimum wage negotiations, the level on which consequential consultation takes place is the firm and the union.

At this level, the key player on the side of labor is the union committee (*comité sindical*). Depending on the size of the firm, the union committee may in turn be composed of sectoral subcommittees that supply information to and collect feedback from the members in different departments of the operation.

The union committee and management meet periodically with a regular agenda. Unless a collective bargaining agreement dictates specifically, the meetings can be monthly, quarterly or less frequent still.

These meetings, however, need not be and often are not the only organized consultation between labor and management. It is also practice in Mozambique to have periodic meetings of all the workers with management.

In some companies these are conducted by representatives of both management and the union committee. Consultation is also often taking place through the medium of contact between the workers and the department of human resources, in those firms big enough to have such a department.

Finally, it is common in Mozambican enterprises to have a suggestion box in which anyone may leave a record of a concern or a recommendation. Suggestion boxes are a means of direct but non-hierarchical consultation between labor and management.

## 22. Personal Income Tax

The Personal Income Tax Code (*Código do Imposto sobre o Rendimento das Pessoas Singulares - "IRPS"*) requires that employers withhold income tax at the source. Having done this the employer pays the tax over to the relevant tax department.

All individuals residing in Mozambique and those who do not reside in Mozambique but receive income there are subject to IRPS.

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<sup>336</sup> Ibid.: Article 12, paragraph 1.

<sup>337</sup> Ibid.: Article 13, paragraph 1.

IRPS is payable monthly. All those on the company payroll are required to pay tax. At the end of the Mozambican tax year (31 December), companies must also provide a statement of earnings including IRPS deductions for each employee, in order to enable employees to complete personal income tax declarations (*Modelo 10*).

Each new employee must complete an IRPS registration form (*Modelo 11*), and also request an individual tax number (*Modelo 5*) unless already he already has one.

Further details of how the IRPS system works can be found in the booklet in this series entitled “The Legal Framework for Tax – Component 3 – IRPS” available in Portuguese and English to download from [www.acismoz.com](http://www.acismoz.com)

## **23. Management of Essential Documents**

When beginning operations, or on an annual basis there are a number of documentary requirements to be complied with in terms of the Ministry of Labor. These are detailed below.

### **23.1 Individual employee files (*Processo individual*)**

Companies must use this system for maintaining their workers personnel records. The *Processo Individual* is a folder which may be purchased at any stationer and contains details about the worker including name, age, marital status, qualifications etc. as well as a photograph. The file should also contain copies of the worker’s contract, INSS membership card, personal tax registration form and any disciplinary processes as well as details of promotions and salary increases.

The following should be included in an employee’s individual file:

- copy of ID document
- employment contract and any addenda
- Copy of work permit or authorization for foreign staff if applicable
- Dire or work visa if applicable
- copy of INSS registration card
- IRPS registration form
- Results of medical examinations undertaken when admitted (and monthly ones for employees in the food and beverage sector)
- Letter or card issued by the Provincial Labor Department indicating that the employee was unemployed before being hired by the company
- photos
- records of any disciplinary proceedings, or other documents (certificates, training plans etc.)
- Proof of leave undertaken and any leave “sold”
- Proof of absences, justified or otherwise

### **23.2 List of employees by name (*Relação nominal*)**

This is a list of those employed. It must be completed annually in four copies on forms issued by government stationers (an electronic version of this form, approved by the Ministry of Labour is available from ACIS). The form must be submitted by the end of March. In the case of companies which begin operation later in the year, the form for the first year may be submitted at any time.

When the form is submitted, two of the four copies are returned to the company. The following year one of these copies must be submitted with the new list as proof of compliance.

The list must be displayed prominently at company offices. Fines for non-compliance are heavy.

This list is used to calculate the quote of foreign employees for which a company is eligible.

### **23.3 Vacation plan (*Plano de férias*)**

A vacation plan for all workers must be prepared by the end of January, and displayed at the company office. See above for details of vacation allocations.

### **23.4 Work schedule (*Horário de trabalho*)**

Before beginning operations a company must have a work schedule approved by the Provincial Labor Department following consultation with the union. The schedule is prepared in duplicate on a form purchased from the government stationers. Working hours are filled in as per the information given above. The company director signs before submitting the forms to the Provincial Labor Department along with a formal request letter and copy of the company's *alvará*. Here they are approved and a copy is returned to the company, where it must be displayed in a prominent position.

### **23.5 Internal regulation (*Regulamento interno*)**

Medium and large companies must have an internal regulation,<sup>338</sup> sometimes negotiated between unions and management. The internal regulation provides the organizational and disciplinary norms which apply in the company, the social support regime for workers and norms regarding the use of company premises and equipment. The adoption of an internal regulation must be based on agreement between the employer and workers and must be communicated to the Provincial Labor Department. Its entry into force is taken as a proposed contract of adhesion in respect of employees hired before its publication.<sup>339</sup> The regulation must be prominently displayed and available to consult. Employees whose contracts specify that they adhere to the internal regulation are presumed to do so unless they express themselves in writing against the regulation within 30 days of its publication.<sup>340</sup>

## **Frequently Asked Questions**

- Do internal regulations require approval by the Ministry of Labor?

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<sup>338</sup> Labor Law, Article 61, paragraph 1.

<sup>339</sup> Ibid.: Article 61, paragraphs 2 and 3.

<sup>340</sup> Ibid.: nº 2 e 3 do art. 37.

No. Internal regulations are only subject to communication to the relevant labor administration office, according to Article 61, paragraph 2.

### **23.6 Payroll (*Folha de salários*)**

Every worker must receive a full breakdown of her salary. This must include any deductions made, taxes and social security payments made as well as fines and bonuses.

## SECTION 2 IMMIGRATION

### 24. Background to Immigration in Mozambique

A number of pieces of legislation provide the legal context and background for the immigration system in Mozambique. These include the 2004 Constitution of the Republic, and the Immigration Law and its Regulation. In addition other areas of legislation such as the Labour Law also impact on immigration procedures. Certain aspects of this legislation are complex, and while we have endeavoured to simplify where possible, we encourage the reader to seek advice from legal counsel in cases of doubt. The costs and prices mentioned are those in force at the time of publication and are subject to change, therefore we recommend the reader to check with the Immigration Service. The time periods listed are in working days. This guide provides limited guidance on certain immigration procedures as they affect nationals and foreigners working in Mozambique, it is not a comprehensive guide.

### 25. Constitution

The 2004 Mozambican Constitution establishes various fundamental legal precepts which are relevant to an understanding of immigration issues, particularly when the role of the immigration authorities in issuing passports for Mozambican citizens is taken into consideration.

The Constitution establishes that Mozambican nationality can be held based on origin or can be acquired. The requirements for attribution, loss, acquisition and re-acquisition of nationality are provided in the Constitution and regulated by law<sup>341</sup>.

In respect of nationality the Constitution establishes the following:

Provided that they were born in Mozambique, the following persons are considered Mozambican by origin<sup>342</sup>:

- a. Persons born in Mozambique after the proclamation of independence;
- b. Children of a father or a mother who was born in Mozambique;
- c. Children whose parents are stateless, or of undetermined nationality;
- d. Those that were domiciled in Mozambique at the time of independence and did not choose any other nationality, either explicitly or tacitly;
- e. Children of a Mozambican expatriate father or mother on duty for the Mozambican State even if born abroad;
- f. Children of a Mozambican father or mother even if born abroad, provided that they have expressly declared, either on their own behalf, if over eighteen years of age, or through their legal representatives, if under eighteen, that they wish to be Mozambican.

The nationality rule in (a) above does not apply to children born to a foreign father and a foreign mother, if either of them is in Mozambique in the employ of the government of his or her country. Children born in this situation only have the right to Mozambican nationality if

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<sup>341</sup> Constitution of the Republic of Mozambique, 2004, Article 5

<sup>342</sup> Constitution, Articles 23 and 24

they declare, for themselves if over 18 years of age, or through their legal representatives, if under eighteen, that they wish to be Mozambican.

Those who have met the requirements for nationality by origin but have not obtained such nationality by virtue of a choice made by their legal representatives, can obtain Mozambican nationality when they are over eighteen years of age, but they must comply with a time limit which allows them one year from turning eighteen to personally declare that they want to be Mozambican<sup>343</sup>.

Under the Constitution Mozambican nationality can also be acquired in various ways. These include:

- a) By marriage<sup>344</sup> - A foreigner who has been married to a Mozambican citizen for at least five years, acquires Mozambican nationality, except in cases of statelessness, provided that he or she declares that he or she wishes to acquire Mozambican nationality and that he or she meets the requirements and offers the guarantees prescribed by law. Nationality acquired through marriage is not prejudiced by the annulment or dissolution of the marriage.
- b) By naturalization<sup>345</sup> – at the time of their request foreigners must meet all the following conditions: have resided habitually and regularly in Mozambique for at least ten years; be over 18 years old; know Portuguese or a Mozambican language; are responsible for their own person and are capable of ensuring their own subsistence; have civic probity; meet the requirements and offer the guarantees required by law. Certain of these conditions may be waived for foreigners who have rendered relevant services to the Mozambican State, in the terms provided by law.
- c) By affiliation<sup>346</sup> – This is nationality provided to the unmarried children under the age of 18 of a foreigner who has acquired nationality by naturalization.
- d) By adoption<sup>347</sup> – This is nationality provided to a child fully adopted by a Mozambican national.

Certain restrictions apply to those who have acquired nationality. They may not, for example, be deputies in the national assembly, be members of government, or have careers in the Mozambican diplomatic corps or military<sup>348</sup>.

Mozambican nationality is considered to have been lost under the following conditions<sup>349</sup>:

- a) Declaration that the person, holding nationality of another State, does not want to be Mozambican;
- b) Having been given Mozambican nationality as a minor by declaration by a legal representative, within one year of reaching majority the person declares that he or she does not want to be Mozambican, provided that he or she can demonstrate possession of another nationality.

Having been lost, nationality may be reacquired in the following circumstances<sup>350</sup>:

- a) A request is made;

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<sup>343</sup> Constitution, Articles 24 and 25

<sup>344</sup> Constitution, Article 26

<sup>345</sup> Constitution, Article 27

<sup>346</sup> Constitution, Article 28

<sup>347</sup> Constitution, Article 29

<sup>348</sup> Constitution, Article 30

<sup>349</sup> Constitution, Article 31

<sup>350</sup> Constitution, Article 32

- b) The person establishes domicile in Mozambique;
- c) The relevant requirements are met and guarantees provided as stipulated in law.

A woman who has lost her nationality as a result of marriage to a person of another nationality may reacquire Mozambican nationality by requesting this.

Whether or not a person holds additional nationality over and above their Mozambican nationality, it is the Mozambican nationality that prevails under Mozambican legal jurisdiction<sup>351</sup>.

Any person who does not hold Mozambican nationality is a foreigner, and as such is subject to the requirements for entry into, stay in and departure from Mozambique as provided principally in the immigration legislation discussed below.

The Constitution also provides that Mozambique shall offer asylum to anyone persecuted in the struggle for democracy and human rights<sup>352</sup>. In addition the Constitution allows for extradition only under certain circumstances, and based on a court decision<sup>353</sup>. Mozambican citizens may not be extradited.

The acquisition of nationality is outside the scope of this publication.

## 26. Immigration Legislation

The Mozambican Immigration Law (Law 5/93 of 28 December) was passed in 1993. It was recently regulated by the Immigration Regulation (Decree 38/06 of 27 September). In addition specific aspects of the legislation are regulated by Decree 38/2000 of 17 October, which allowed for the issuing of certain visas at borders, and Decree 26/99 of 24 May which regulated work visas. Together these pieces of legislation, along with the Labour Law and subordinate legislation (described below) provide the framework for the entry into, stay in and departure from Mozambique of any person who is not a Mozambican national (i.e. a foreigner).

Ministry of the Interior is the government institution responsible for immigration-related issues. Provincial Immigration Services (*Serviços Provinciais de Migração*) are the local representatives of the Ministry with responsibility for immigration-related matters. These immigration services have offices in provincial capitals and are also represented at any international borders and international airports within a given province.

The Immigration Law establishes norms of entry into, stay in and departure from the country, and the rights, duties and guarantees that pertain to foreign citizens in Mozambique<sup>354</sup>. Foreign citizens in Mozambique have the same rights and guarantees and are subject to the same obligations as Mozambican citizens<sup>355</sup>. Obligations include<sup>356</sup>:

- a) Respect for the Constitution (with the exception of political rights and others specifically reserved for Mozambican nationals);
- b) Respect for law and order and prompt compliance with legal requirements;

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<sup>351</sup> Constitution, Article 33

<sup>352</sup> Constitution, Article 20

<sup>353</sup> Constitution, Article 67

<sup>354</sup> Immigration Law, Law 5/93 of 28 December, Article 1

<sup>355</sup> Immigration Law, Article 4

<sup>356</sup> Immigration Law, Article 4



- c) Declaration of place of residence;
- d) Provision of information about their personal status as required, and when such information is altered from previous declarations made<sup>357</sup>.

The Immigration Law requires that foreigners enter and leave through recognised border posts<sup>358</sup>. Foreigners must be in possession of a legally valid passport or other legally recognised travel document, and must hold a visa or other document which allows them to enter, remain in and leave the country<sup>359</sup>. It is the norm that to be considered valid for the purposes of entering Mozambique, a passport must have at least 4 blank pages and be valid for at least 6 months after the date of entry into the country. In addition in the case of holders of a collective passport, the passport bearer must be present, and in the case of minors their legal representative must either be present or provide written permission for the minor to enter and leave the country<sup>360</sup>.

The Immigration Law provides various types of visa which can be issued to foreigners<sup>361</sup>. Visas can be issued by the Ministry of Foreign Affairs (*Ministério de Negócios Estrangeiros*), the Immigration Service (*Serviços de Migração*) or by Mozambican Embassies, High Commissions or Consulates<sup>362</sup>.

When applying for a visa the foreigner must be able to demonstrate that he or she has a valid reason for the application, means to guarantee subsistence in Mozambique, and means to ensure their return or outward journey from Mozambique<sup>363</sup>. Alternatively the applicant must have a notarized letter from a Mozambican adult citizen individual declaring responsibility for the person requesting the visa<sup>364</sup>. To be eligible for a visa the applicant must also not have been previously expelled from the country, or undertake activities in Mozambique which could lead to expulsion.

An entry visa must be used to enter the country within 60 days of having been issued, and is then valid for the period written on the visa<sup>365</sup>. Visas are generally issued for relatively short periods. For those foreigners planning to spend longer in Mozambique, and to effectively reside in the country Residence Authorisation is required<sup>366</sup>. The requirements for residence are dealt with below.

Certain exemptions apply either with respect to the documents required for a visa application, or from the need to have a visa, and are provided in the Immigration Law<sup>367</sup>.

Places of temporary accommodation (such as hotels, motels, camp sites, guest houses etc) must communicate the fact that they have a foreign guest staying to the Immigration Service using an “individual lodging form”. The departure of these guests must also be communicated

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<sup>357</sup> Immigration Law, Articles 4 and 24 – changes to information originally provided must be communicated in writing to the Immigration Service within 30 days of the change having taken place.

<sup>358</sup> Immigration Law, Article 5

<sup>359</sup> Immigration Law, Article 6

<sup>360</sup> Immigration Law, Article 16

<sup>361</sup> Immigration Law, Article 7

<sup>362</sup> Immigration Law, Article 8. Mozambique is a member of the Commonwealth and as such, in other Commonwealth countries has High Commissions rather than Embassies.

<sup>363</sup> Immigration Law, Article 9

<sup>364</sup> Immigration Law, Article 16

<sup>365</sup> Immigration Law, Article 17

<sup>366</sup> Immigration Law, Chapter III, Articles 20 - 22

<sup>367</sup> Immigration Law, Articles 16 and 18

using the same form<sup>368</sup>. Any non-resident foreigner staying in his own accommodation is responsible for informing the Immigration Service of his whereabouts and that of any other foreign citizen who may be cohabiting with him<sup>369</sup>.

The Immigration Law also deals with the prevention of departure of foreigners, expulsion of foreigners from Mozambique and refugees<sup>370</sup>, as well as the right to inspect vessels and aeroplanes<sup>371</sup>. It provides a range of sanctions for non-compliance with the legislation<sup>372</sup>.

The regulations which are subordinate to the Immigration Law provide details of how the specific aspects defined in the law are to be applied in practice. These form the basis for the description of specific immigration procedures in the sections below.

## 27. Visas

### 27.1 TYPES OF VISA

The Immigration Law provides for various types of visa as follows<sup>373</sup>:

- a) Diplomatic visa
- b) Courtesy visa
- c) Official visa
- d) Residence visa
- e) Tourist visa
- f) Transit visa
- g) Visitors visa
- h) Business visa
- i) Student visa

These have subsequently been added to with the following visas<sup>374</sup>:

- j) Work visa
- k) Border visa

The procedures for issuing those types of visa relevant to business are described in detail below.

Please note that by their nature visas are issued outside Mozambique, and in the majority of cases while the Immigration Services in Mozambique are able to renew or extend the time period for which visas apply, they cannot issue visas. Therefore when entering Mozambique it is essential that you do so on the correct type of visa, it is not possible for example to enter Mozambique on a tourism or border visa and then when inside the country to apply for a work or residence visa. In this case the applicant must leave the country, apply for the new type of visa and then re-enter the country.

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<sup>368</sup> Immigration Law, Article 25

<sup>369</sup> Immigration Law, Article 25

<sup>370</sup> Immigration Law, Chapter V, Articles 26-37

<sup>371</sup> Immigration Law, Articles 38-40

<sup>372</sup> Immigration Law, Chapter VII, Articles 41-51

<sup>373</sup> Immigration Law, Article 7

<sup>374</sup> Decree 26/99 of 24 May – work visas and Decree 38/2000 of 17 October, which allows for the issuing of certain visas at borders

Mozambique is moving towards the introduction of biometric documents for nationals and foreigners, this includes biometric passports, residence permits and visas. Currently the fees charged for visas vary depending on whether or not the facility exists in the place where the application is made, to issue a biometric visa.

## 27.2 BORDER VISA

A border visa may be issued at international borders with Mozambique<sup>375</sup>. This includes land borders and international airports. The visa is intended to be available to those who do not have Mozambican embassies or consulates in their country, and that are entering the country for a short time<sup>376</sup>. It may also be issued to tourists who have not obtained a tourism visa<sup>377</sup>. Not all land border posts are equipped to issue these types of visa and visitors would do well to check whether or not the border they plan to enter through is permitted to issue this type of visa, particularly when entering through remote border posts. Certain border posts are now issuing biometric visas, at higher cost to their non-biometric equivalents, and travellers would also do well to check this. The roll-out of biometric facilities is taking place at the time of writing meaning changes in charges at border posts will change as the biometric machines are installed.

The visa is valid for 30 days, and may be renewed once for the same period – i.e. a total stay of 60 days<sup>378</sup>. Renewal may be carried out in-country at the Immigration Service, and must take place before the visa has expired.

Application for the visa is made by presenting the applicant's passport and arrival form along with the fee to the Immigration Officer at the point of entry into Mozambique. The standard requirements (passport valid for at least 6 months, guarantee of means of subsistence in Mozambique and payment of a fee) apply<sup>379</sup>. In the case of the border visa the guarantee of means of subsistence may be constituted by the funds the visitor has available, the fact that they have a pre-arranged hotel reservation or can provide the contacts of friends with whom they are staying. An onward ticket out of Mozambique may also be required for those arriving by air.

The visa is inserted into the passport and the dates of validity written onto it. Visitors would do well to check the dates on the visa issued before leaving the presence of the Immigration Officer. Visitors should also check that their date of entry has been stamped into their passport, and that this date is correct.

Renewal of the visa is undertaken by the applicant presenting themselves along with their passport at the closest Immigration Service, completing a form and paying a fee. As mentioned above, the same cautions apply with respect to checking the dates on the renewed visa. The fines for overstaying the time allowed on a visa are costly.

The cost of non-biometric visa is 375Mt, US\$25 or Rand 170 and renewal costs 150Mt. Costs for biometric visas are as follows in Meticais:

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<sup>375</sup> Immigration Regulation, Article 1

<sup>376</sup> Decree 38/00 of 17 October, Article 2

<sup>377</sup> Decree 38/00 of 17 October, Article 4

<sup>378</sup> Decree 38/00 of 17 October, Article 1

<sup>379</sup> Immigration Regulation, Article 11

Designation	Fee	Surcharge	Total
Single entry 1-30 day	1,350	450	1,800

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries

### 27.3 BUSINESS VISA

A business visa is conceded to a foreign citizen who comes to the country in connection with a planned or existing business or economic activity. This visa must be applied for at an embassy or consulate before travelling to Mozambique.

Applications are submitted on the form provided<sup>380</sup>. The embassy or consulate receiving the application consults with the Immigration Service before issuing the visa<sup>381</sup>.

The standard requirements for visa applications apply. These requirements are<sup>382</sup>:

- Passport or other legal travel document valid for at least 6 months;
- Guarantee of means of subsistence when in Mozambique;
- Form, duly completed;
- Payment of a fee.

An additional requirement which is usually required is the presence of the applicant at the office of the authority issuing the visa<sup>383</sup>. In addition the applicant may be required to provide details of their planned business activities in Mozambique, though once again this is not specifically regulated<sup>384</sup>.

Letters submitted in support of applications are generally expected to have notarised signatures, and in the case of letters provided by a company or other organisation a copy of the power of attorney or other document giving the signatory the right to sign the letter may also be demanded. These requirements are not provided in law, but in practice are often demanded by embassies and consulates.

Please note that any documents submitted should be notarised copies rather than originals. It is good practice to keep a copy of any documents submitted, including forms, and where possible to have the copy signed, dated and stamped with an official stamp by the recipient.

The visa is valid for 30 days, and may be renewed twice for the same period – i.e. a total stay of 90 days<sup>385</sup>. Renewal may be carried out in-country at the Immigration Service, and must take place before the visa has expired.

The visa is inserted into the passport and the dates of validity written onto it. Applicants would do well to check the dates on the visa issued before leaving the presence of the Issuing Officer. Applicants should also check that their date of entry has been stamped into their

<sup>380</sup> Immigration Regulation, Articles 6 and 10

<sup>381</sup> Immigration Regulation, Article 6

<sup>382</sup> Immigration Regulation, Article 11

<sup>383</sup> Immigration Regulation, Article 17

<sup>384</sup> Immigration Law, Article 9

<sup>385</sup> Immigration Law, Article 14

passport, and that this date is correct. An entry visa must be used to enter the country within 60 days of having been issued, and is then valid for the period written on the visa<sup>386</sup>.

Renewal of the visa is undertaken by the applicant presenting themselves along with their passport at the closest Immigration Service, completing a form and paying a fee. As mentioned above, the same cautions apply with respect to checking the dates on the renewed visa. The fines for overstaying the time allowed on a visa are costly.

The visa is considered a single entry visa and costs for non-biometric ones are:

- Normal 90 days – 213.58Mt
- Urgent 36 days – 320.37Mt
- Very urgent 15 days – 373.77Mt
- Express 5 days – 427.16Mt

And renewal costs 427.16Mt

Costs for biometric visas are as follows in Meticais:

Designation	Fee	Surcharge	Total
Single entry 1-30 day	1,350	450	1,800

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries

## 27.4 WORK VISA

A work visa may be granted to a foreigner who comes to Mozambique to render services to a third party in either a paid, or unpaid capacity<sup>387</sup>. It should be noted that voluntary work is subject to the same requirements as paid employment.

Applications are submitted on the form provided<sup>388</sup>. The embassy or consulate receiving the application consults with the Immigration Service before issuing the visa<sup>389</sup>.

The standard requirements for visa applications apply. These requirements are<sup>390</sup>:

- Passport or other legal travel document valid for at least 6 months;
- Guarantee of means of subsistence when in Mozambique;
- Form, duly completed;
- Payment of a fee.

In addition the following requirements apply for work visa applications<sup>391</sup>:

- Medical certificate;
- Guarantee of board and lodging in Mozambique (usually in the form of a letter provided by the employer);
- Documents that prove earnings if the applicant wishes to live from his private earnings;

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<sup>386</sup> Immigration Law, Article 17

<sup>387</sup> Immigration Regulation, Article 1

<sup>388</sup> Immigration Regulation, Articles 6 and 10

<sup>389</sup> Immigration Regulation, Article 6

<sup>390</sup> Immigration Regulation, Article 11

<sup>391</sup> Immigration Regulation, Article 15

- Contract;
- Work authorization issued by the Ministry of Labour;
- Authorization from the Mozambican Ministry of Justice and term of responsibility from the organization to which the applicant belongs, in the case of applicants intending to undertake an activity within a religious organization;

An additional requirement which is usually required is the presence of the applicant at the office of the authority issuing the visa<sup>392</sup>.

Letters submitted in support of applications are generally expected to have notarised signatures, and in the case of letters provided by a company or other organisation a copy of the power of attorney or other document giving the signatory the right to sign the letter may also be demanded. These requirements are not provided in law, but in practice are often demanded by embassies and consulates.

Please note that any documents submitted should be notarised copies rather than originals. It is good practice to keep a copy of any documents submitted, including forms, and where possible to have the copy signed, dated and stamped with an official stamp by the recipient.

The visa is valid for 30 days, and may be renewed once for the same period – i.e. a total stay of 60 days<sup>393</sup>. Renewal may be carried out in-country at the Immigration Service, and must take place before the visa has expired.

The visa is inserted into the passport and the dates of validity written onto it. Applicants would do well to check the dates on the visa issued before leaving the presence of the Issuing Officer. Applicants should also check that their date of entry has been stamped into their passport, and that this date is correct. An entry visa must be used to enter the country within 60 days of having been issued, and is then valid for the period written on the visa<sup>394</sup>.

Renewal of the visa is undertaken by the applicant presenting themselves along with their passport at the closest Immigration Service, completing a form (see annex 8.3) and paying a fee. As mentioned above, the same cautions apply with respect to checking the dates on the renewed visa. The fines for overstaying the time allowed on a visa are costly.

The visa is considered a single entry visa and the costs for the non-biometric version are:

- Normal 90 days – 213.58Mt
- Urgent 36 days – 320.37Mt
- Very urgent 15 days – 373.77Mt
- Express 5 days – 427.16Mt

and renewal costs 544Mt

Costs for biometric visas are as follows in Meticais:

Designation	Fee	Surcharge	Total
Single entry 1-30 day	1,350	450	1,800

<sup>392</sup> Immigration Regulation, Article 17

<sup>393</sup> Decree 26/99 of 24 May, Article 1

<sup>394</sup> Immigration Law, Article 17

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries

#### 27.4.1 Requirements for working in Mozambique

The Immigration Regulation was introduced prior to the introduction of the new Labour Law and therefore makes reference to the requirement, which existed under the previous decree regulating employment of foreigners to provide either a *Permissão* or an *Autorização de Trabalho* as part of the application process for a Work Visa..

In practice the application procedure for a Work Visa can be time-consuming and complex, and applicants would do well to allow sufficient time between submission of their application and their planned date of travel to ensure that all requirements can be met. It is essential that anyone planning to work in Mozambique enters the country on the correct visa. Not doing so is in contravention of both the immigration and labour laws. Having entered on a different type of visa, a work visa can only be issued if the applicant leaves the country and takes the documents described above to the nearest Mozambican embassy or consulate.

#### 27.5 RESIDENCE VISA

A Residence Visa is issued to a foreigner intending to establish residence in Mozambique<sup>395</sup>. The request for residence may be extended to the spouse and children of the applicant. The Residence Visa is a necessary precursor to the application for a residence document, as described below. The Residence Visa allows the bearer to enter Mozambique and there to obtain a residence document. It should be noted that this visa is valid for only one entry into the country.

Applications are submitted on the form provided<sup>396</sup>. The embassy or consulate receiving the application consults with the Immigration Service before issuing the visa<sup>397</sup>.

The standard requirements for visa applications apply. These requirements are<sup>398</sup>:

- Passport or other legal travel document valid for at least 6 months;
- Guarantee of means of subsistence when in Mozambique;
- Form, duly completed;
- Payment of a fee.

In addition the following requirements apply<sup>399</sup>:

- Police clearance certificate issued by the relevant authority in the country of origin of the applicant or country in which the applicant has been resident for the last two years;
- Medical certificate;
- Guarantee of board and lodging in Mozambique (usually in the form of a letter provided by the employer for example);
- Documents that prove earnings if the applicant wishes to live from his private earnings;

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<sup>395</sup> Immigration Law, Article 10, and Immigration Regulation, Article 1

<sup>396</sup> Immigration Regulation, Articles 6 and 10

<sup>397</sup> Immigration Regulation, Article 6

<sup>398</sup> Immigration Regulation, Article 11

<sup>399</sup> Immigration Regulation, Article 14

- Term of responsibility in the case of a minor or dependant (including spouse);
- Contract or work permit.

An additional requirement which is usually required is the presence of the applicant at the office of the authority issuing the visa<sup>400</sup>.

Letters submitted in support of applications are generally expected to have notarised signatures, and in the case of letters provided by a company or other organisation a copy of the power of attorney or other document giving the signatory the right to sign the letter may also be demanded. These requirements are not provided in law, but in practice are often demanded by embassies and consulates.

Please note that any documents submitted should be notarised copies rather than originals. It is good practice to keep a copy of any documents submitted, including forms, and where possible to have the copy signed, dated and stamped with an official stamp by the recipient.

The visa is valid for 30 days, and may be renewed once for the same period – i.e. a total stay of 60 days<sup>401</sup>. Renewal may be carried out in-country at the Immigration Service, and must take place before the visa has expired.

The visa is inserted into the passport and the dates of validity written onto it. Applicants would do well to check the dates on the visa issued before leaving the presence of the Issuing Officer. Applicants should also check that their date of entry has been stamped into their passport, and that this date is correct. An entry visa must be used to enter the country within 60 days of having been issued, and is then valid for the period written on the visa<sup>402</sup>.

Renewal of the visa is undertaken by the applicant presenting themselves along with their passport at the closest Immigration Service, completing a form and paying a fee. As mentioned above, the same cautions apply with respect to checking the dates on the renewed visa. The fines for overstaying the time allowed on a visa are costly.

The visa is considered a single entry visa and the non-biometric version costs:

- Normal 90 days – 213.58Mt
- Urgent 36 days – 320.37Mt
- Very urgent 15 days – 373.77Mt
- Express 5 days – 427.16Mt

and renewal costs 427.16Mt

Costs for biometric visas are as follows in Meticaís:

Designation	Fee	Surcharge	Total
Single entry 1-30 day	1,350	450	1,800

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries

<sup>400</sup> Immigration Regulation, Article 17

<sup>401</sup> Decree 26/99 of 24 May, Article 1

<sup>402</sup> Immigration Law, Article 10



## 27.6 TOURISM VISA

A tourism visa may be granted to those foreigners coming to Mozambique for tourism or recreation<sup>403</sup>.

Applications are submitted on the form provided<sup>404</sup>. The embassy or consulate receiving the application consults with the Immigration Service before issuing the visa<sup>405</sup>.

The standard requirements for visa applications apply. These requirements are<sup>406</sup>:

- Passport or other legal travel document valid for at least 6 months;
- Guarantee of means of subsistence when in Mozambique;
- Form, duly completed;
- Payment of a fee.

An additional requirement which is usually required is the presence of the applicant at the office of the authority issuing the visa<sup>407</sup>.

Letters submitted in support of applications are generally expected to have notarised signatures, and in the case of letters provided by a company or other organisation a copy of the power of attorney or other document giving the signatory the right to sign the letter may also be demanded. These requirements are not provided in law, but in practice are often demanded by embassies and consulates.

Please note that any documents submitted should be notarised copies rather than originals. It is good practice to keep a copy of any documents submitted, including forms, and where possible to have the copy signed, dated and stamped with an official stamp by the recipient.

In the case of the tourism visa the guarantee of means of subsistence may be constituted by the funds the visitor has available, the fact that they have a pre-arranged hotel reservation or can provide the contacts of friends with whom they are staying. An onward ticket out of Mozambique may also be required for those planning to arrive by air.

The visa is usually valid for 30 days though it may be issued for longer periods if the tourist can demonstrate that their itinerary requires this. The visa may also be renewed for a total stay of 90 days<sup>408</sup>. Renewal may be carried out in-country at the Immigration Service, and must take place before the visa has expired.

The visa is inserted into the passport and the dates of validity written onto it. Applicants would do well to check the dates on the visa issued before leaving the presence of the Issuing Officer. Applicants should also check that their date of entry has been stamped into their passport, and that this date is correct. An entry visa must be used to enter the country within 60 days of having been issued, and is then valid for the period written on the visa<sup>409</sup>.

Renewal of the visa is undertaken by the applicant presenting themselves along with their passport at the closest Immigration Service, completing a form and paying a fee. As

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<sup>403</sup> Immigration Law, Article 11, and Immigration Regulation, Article 1

<sup>404</sup> Immigration Regulation, Articles 6 and 10

<sup>405</sup> Immigration Regulation, Article 6

<sup>406</sup> Immigration Regulation, Article 11

<sup>407</sup> Immigration Regulation, Article 17

<sup>408</sup> Immigration Law, Article 11

<sup>409</sup> Immigration Law, Article 17

mentioned above, the same cautions apply with respect to checking the dates on the renewed visa. The fines for overstaying the time allowed on a visa are costly.

This visa is considered a single entry visa and may be valid for 30, 60 or 90 days depending on the duration of the planned visit and the non-biometric version costs:

Procedure / No working days for issuing	Validity 30 days/Mt	Validity 60 days/Mt	Validity 90 days/Mt
Normal 90 days	213.58	427.16	640.74
Urgent 36 days	320.37	640.74	961.11
Very urgent 15 days	373.77	747.53	1,121.30
Express 5 days	427.16	854.32	1,281.48

and renewal costs 427.16Mt.

Costs for biometric visas are as follows in Meticais:

Designation	Fee	Surcharge	Total
<b>Normal Issuing</b>			
Single entry 1-30 day	1,350	450	1,800
Single entry 31-60 day	1,350	1,575	2,925
Multiple entry 61-90 day	1,350	3,825	5,175
Multiple entry 91-180 day	1,350	8,325	9,675
Multiple entry 181 – 365 day	1,350	17,325	18,675
<b>Express Issuing</b>			
Single entry 1-30 day	1,350	735	2,085
Single entry 31-60 day	1,350	2,140	3,490
Multiple entry 61-90 day	1,350	4,950	6,300
Multiple entry 91-180 day	1,350	10,575	11,925
Multiple entry 181 – 365 day	1,350	21,825	23,175

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries

#### FREQUENTLY ASKED QUESTIONS

- The Mozambican Embassy has insisted that the documents I have submitted are translated into Portuguese. Is this right?

Yes, Portuguese is Mozambique’s official language and as a result official documents must be submitted in Portuguese. Documents such as police clearance certificates must be translated by a recognised translator – i.e. one that is duly licensed or recognised by the Mozambican authorities. The Embassy should be able to provide a list of these translators near you. You should then provide the translator with the original of the document to be translated, they will return this to you with their translation. These two documents will be affixed to one another and sealed with the translator’s official seal. You should retain one or more notarised copies of the official translation you have prepared for submission, as you may need these copies for other documentary procedures later.

- The Immigration Service is unable to accept my documents because the signatures on them are not “notarised”. What does this mean?

A “notarised signature” or recognised signature (*assinatura reconhecida*) is when the signature on a document is compared to that in the identity document of the signatory and stamped as corresponding thereto, by a Notary. The law allows that various Mozambican government departments (including embassies and consulates) can recognise signatures on documents<sup>410</sup>. This service should be provided free of charge. However in practice this rarely takes place with departments referring signatories to the nearest Notary office.

Procedures at Notarial offices in Mozambique vary, with some being prepared to recognise signatures on the basis of being presented with the signed identity document of the signatory and others requiring the signatory to be personally present.

A fee is payable for the services of the Notary in recognising the signature.

In other legal jurisdictions the service of recognising a signature may be provided by a lawyer or other similar person. Where this is the case, in respect of documents being submitted to Mozambican embassies, consulates or the Immigration Service, the right of the lawyer to do this must also be demonstrated. In practice this may mean requesting the Ministry of Justice responsible for the jurisdiction to provide a statement that the person who recognised the signature is entitled to have done so. This statement must then be officially translated into Portuguese. This procedure is often complex, costly and time-consuming. Therefore wherever possible it is preferable to either have signatures recognised in Mozambique, or by a notary or similarly entitled person at a Mozambican embassy or consulate. Whatever the case, where applying for a visa which requires submission of documents with *assinatura reconhecida* you should allow sufficient time to comply with the procedural requirements, before needing to travel.

- I made a payment but I was not given a receipt. Is this OK?

No, in the case of any payment to any government department you have the right to receive, and in fact should request a receipt. In practice, in the case of the Notary, for small amounts such as the cost of notarizing signatures it is common not to receive a receipt. But most departments of government that you deal with will have a system of “urgency” payments for documents needed in a hurry, and receipts are also given for these. The law requires that each government department have a bank account and payments may be made directly into that account<sup>411</sup>. Where possible it is preferable to use this system rather than to pay cash. In the case of the Immigration Service, where you may be required to submit your passport, other legal travel document or your Mozambican residence document for renewal, the receipts you receive constitute proof that you are legally entitled to be in the country, and should be treated with the same care as any other legal travel or identity document.

- I entered Mozambique on a tourism visa, but I have now been offered a job and would like to stay. What should I do?

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<sup>410</sup> Decree 30/01 of 15 October, Article 53

<sup>411</sup> Decree 30/01 of 15 October, Article 57

The Labour Law<sup>412</sup> is quite clear in respect of the fact that anyone entering Mozambique on a tourism visa (or indeed a diplomatic, courtesy, official, visitor, business or student visa) may not be legally employed. In this case you must leave the country and your employer must provide you with the necessary documentation to apply for a work or residence visa.

- I entered Mozambique on a border visa, but plan to stay and live with my boyfriend. What should I do?

The Immigration Services inside Mozambique do not have the authority to change the type of visa on the basis of which you have entered the country. This can only be done outside the country. Therefore you must leave the country and travel to the nearest Mozambican embassy or consulate, taking with you all the necessary documentation, and there apply for a residence visa. When you return to Mozambique you can then use this visa as the basis for an application to reside in Mozambique for a longer period, using a residence document.

- In addition to the documents you list above, for my visa application I am being asked for a lot of additional documents. Can the authorities do this?

The Immigration Law provides that the authorities can request any additional information they deem necessary to support your application<sup>413</sup>. Therefore, yes, they are permitted by law to ask for any additional information which will help them make an informed decision about your application.

- I work for an NGO. Do I need to comply with all the requirements listed when applying for my visa?

Certain exemptions are provided for those working for NGOs, government bodies, and public institutions<sup>414</sup>. These include not having to demonstrate the means to subsist when in Mozambique and not having to have a declaration of responsibility issued by a Mozambican citizen. In addition certain other requirements apply to those working for faith-based organizations. As a matter of good practice it is best to check with your local Mozambican Embassy or Consulate to see what documents they require from you.

## **28. Residency**

### 28.1 TYPES OF RESIDENCY

A Foreign Resident in Mozambique is a foreigner with the appropriate authorisation to reside in the country<sup>415</sup>. Foreign residents have access to many of the same rights and are subject to many of the same responsibilities as Mozambican citizens<sup>416</sup>. The Immigration Law provides for two types of residence status, and this was extended by the Immigration Regulation to three types. These are<sup>417</sup>:

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<sup>412</sup> Labour Law, Article 32

<sup>413</sup> Immigration Law, Article 16, paragraph 1, clause g)

<sup>414</sup> Immigration Law, Article 16, paragraph 2

<sup>415</sup> Immigration Regulation, Article 1

<sup>416</sup> Immigration Law, Article 4, Immigration Regulation, Article 31

<sup>417</sup> Immigration Law, Chapter III, Immigration Regulation, Article 1

- Non-permanent Residence – issued on application to a foreigner staying in Mozambique for more than 90 days and less than 5 years;
- Temporary Residence – issued on application to a foreigner that has held non-permanent residence status for more than 5 years;
- Permanent Residence – issued on application to a foreigner holding Temporary Residence for more than 10 years.

Each of these types of residence status is subject to obtaining the relevant Residence Authorisation<sup>418</sup>. The procedures for obtaining each type of residence authorisation are described in detail below.

Non-permanent and Temporary Residence Authorisations are valid for one year and are renewable for the same period as long as the conditions for them having been granted continue to exist<sup>419</sup>. Permanent Residence Permits are valid for five years and renewable as long as the conditions for them having been granted continue to exist<sup>420</sup>. Change of residence or departure from the country for more than 90 days by a foreigner holding residence authorisation must be communicated to the Immigration Service with at least 8 days notice of the planned change<sup>421</sup>. Communication of absence must be in writing and must include the reasons for absence and the planned period that the person will be out of the country. This period must not exceed the period of validity of the residence authorisation document<sup>422</sup>. The communication of absence does not exempt the holder of a residence authorisation from the need to renew said authorisation<sup>423</sup>.

Residence status may be lost by being declared “persona non grata”, by not communicating an absence of more than 90 days, by not renewing the authorisation or if facts come to light about the application for residence which demonstrate that the authorisation should not have been granted<sup>424</sup>. In the case of permanent residence, this may be lost through a declaration of “persona non grata”, by being absent from the country for more than 5 years without having communicated the fact previously to the Immigration Service or if facts come to light about the application for residence which demonstrate that the authorisation should not have been granted<sup>425</sup>.

## 28.2 PROCEDURES FOR OBTAINING RESIDENCY

Visas in general can only be issued outside Mozambique by embassies and consulates, while residence authorisation can only be issued inside the country and is the responsibility of the Immigration Service.

A number of standard requirements apply to an application for residence authorisation and these are<sup>426</sup>:

- Holding a residence visa;

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<sup>418</sup> Immigration Law, Article 20

<sup>419</sup> Immigration Law, Article 21 and Immigration Regulation Article 28

<sup>420</sup> Immigration Law, Article 21 and Immigration Regulation Article 28

<sup>421</sup> Immigration Law, Article 22

<sup>422</sup> Immigration Regulation, Article 30, paragraph 3

<sup>423</sup> Immigration Regulation, Article 30, paragraph 4

<sup>424</sup> Immigration Law, Article 23, Immigration Regulation, Article 30

<sup>425</sup> Immigration Law, Article 23, Immigration Regulation, Article 30

<sup>426</sup> Immigration Law, Articles 6, 16 and 20 and Immigration Regulation, Chapter IV

- Passport or valid travel document (passport with at least 4 blank pages, and 6 months validity);
- In the case of a collective passport, the bearer must be present;
- Be considered an adult in terms of the law, or in the case of a minor have written permission from the parent or legal guardian;
- Not be forbidden to enter Mozambique or have been expelled or declared “*persona non grata*”;
- Not undertake activities which when practiced in the Republic of Mozambique carry the penalty of expulsion;
- Prove that they possess the necessary means of subsistence or have a declaration of responsibility from a citizen resident in the country, the signature of which letter must have been notarised and the citizen be proved to be of age;
- Anything else deemed to be necessary by the issuing authority;
- In the case of application for residence with the intent to work the applicant must also provide documentary proof of the right to do so;
- In the case of applicants for authorisations based on economic or wage earning activity a declaration from the Mozambican tax authorities stating that the person or their employer has no fiscal debt is also required<sup>427</sup>. This declaration is known as a “*certidão de quitação*” and must be applied for in writing from the tax authority

The Immigration Regulation provides that applicants for temporary residence must appear personally before the issuing authority<sup>428</sup>. While this is not a legal requirement in respect of the issuing of non-permanent, and permanent residence authorisations it is increasingly the practice at most Immigration Service offices.

The costs and prices mentioned are those in force at the time of publication and are subject to change, therefore we recommend the reader to check with the Immigration Service. The time periods listed are in working days.

### 28.2.1 Non-Permanent Residence

Non-permanent residence is issued to the foreigner wanting to reside in Mozambique for between 90 days and one year<sup>429</sup>. It is issued subject to submission of sufficient justification for the granting of the authorisation to reside<sup>430</sup>. It must be applied for within 60 days of the applicant having entered Mozambique<sup>431</sup>. The application for the authorisation or its renewal must be submitted to the Immigration Service responsible for the area in which the applicant resides in Mozambique<sup>432</sup>. The non-permanent residence authorisation allows the holder to exercise only those activities stipulated on the authorisation itself and only for the time period stipulated on the authorisation<sup>433</sup>. Non-permanent residence takes the form of a biometric document. It is valid for one year and may be renewed as long as the reasons for granting it remain valid<sup>434</sup>.

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<sup>427</sup> Immigration Regulation, Article 23, paragraph 5

<sup>428</sup> Immigration Regulation, Article 26, paragraph 3

<sup>429</sup> Immigration Regulation, Article 23

<sup>430</sup> Immigration Regulation, Article 23

<sup>431</sup> Immigration Regulation, Article 23, paragraph 2

<sup>432</sup> Immigration Regulation, Article 23, paragraph 3

<sup>433</sup> Immigration Regulation, Article 23, paragraph 4

<sup>434</sup> Immigration Regulation, Article 28, paragraph 1

While the immigration legislation provides no additional requirements for an application for a non-permanent residence authorisation than those standard requirements listed above, in practice the Immigration Service applies the requirements provided by the Immigration Regulation for issuing temporary residence authorisation. These requirements are<sup>435</sup>:

- Completion of a form purchased from the Immigration Service for a fee;
- Passport and notarised photocopy of passport (in the case of renewal the copy must also include a copy of the passport page bearing the previous non-permanent residence authorisation);
- Notarised photocopy of passport page bearing the Residence or Work visa - please note that a non-permanent residence authorisation cannot be issued based on any other type of visa, and neither the work nor residence visas can be issued in Mozambique by the Immigration Service. It is therefore essential that the applicant enters the country on the correct visa;
- Proof of means of subsistence (for example a letter from an employer);
- Business license (*alvará*), in the case of business people or their mandate holders (in practice this requirement also extends to applications by company employees);
- Certificate issued by the finance department stating that all fiscal obligations have been fulfilled (*certidão de quitação* – this may be issued in respect of the individual, or in the case of employees is more commonly issued in respect of the company which employs the applicant);
- Work Permit, in the case of applicants working with or without remuneration;
- Police clearance certificate with validity not exceeding ninety days. This certificate must be translated into Portuguese by an official translator and is issued by the country of origin of the applicant or country in which the applicant has been resident for the last two years<sup>436</sup>;
- Other documents that the applicant considers relevant in support of the application;
- Declaration of responsibility (*termo de responsabilidade*) for minors, spouses and/or dependants provided by the principal applicant<sup>437</sup>.

An additional practical requirement which is usually required is the presence of the applicant at the office of the authority issuing the authorisation, though in fact this legal requirement only applies to the issuing of visas and temporary residence authorisations<sup>438</sup>.

In the case of spouses and dependants where these do not intend to work in Mozambique, the application for residence is based on the approval of the application by the principal applicant. This application having been approved the applications for authorisation for spouses and dependants is made on the basis of a notarised copy of the principal applicant's authorisation, and a *termo de responsabilidade* written by the principal applicant. This *termo de responsabilidade* must have a notarised signature. In certain cases, while it is not a requirement stipulated in the law, the application for authorisation may also require submission of proof of relationship – documents such as a marriage certificate for example.

Please note that all documents submitted must be in Portuguese, or have been officially translated into that language. It is generally advisable not to submit original documents. Wherever possible notarised copies of documents should be submitted.

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<sup>435</sup> Immigration Regulation, Article 26

<sup>436</sup> Immigration Regulation, Article 14

<sup>437</sup> The principal applicant is, for example the employee requesting the non-permanent residence authorization in order to work in Mozambique.

<sup>438</sup> Immigration Regulation, Article 17 and Article 26

Letters submitted in support of applications are generally expected to have notarised signatures, and in the case of letters provided by a company or other organisation a copy of the power of attorney or other document giving the signatory the right to sign the letter may also be demanded. These requirements are not provided in law, but in practice are often demanded by the Immigration Service.

It is good practice to keep a copy of any documents submitted, including forms, and where possible to have the copy signed, dated and stamped with an official stamp by the recipient.

The non-permanent residence authorisation has dates and conditions (such as right to work) of validity written onto it. Applicants would do well to check the dates and conditions before leaving the presence of the Issuing Officer.

Renewal of the non-permanent residence authorisation is undertaken by the applicant following the same procedures as for the initial application, presenting themselves along with their passport at the closest Immigration Service, completing a form and paying a fee. Presentation of the police clearance certificate is waived for renewal of authorisations. As mentioned above, the same cautions apply with respect to checking the dates on the renewed authorisation. The fines for overstaying the time allowed on an authorisation are costly.

The issuing or renewal of the non-permanent residence authorisation is subject to payment of a fee which is made on application. The documents are biometric and the fee as follows, in Meticais:

Designation	Fee	Surcharge	Total
Non-permanent DIRE (precário)	14,400	4,800	19,200

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries

Payments for the issuing of authorisations take the form of a receipt which includes the date on which the authorisation can be collected. The receipt serves as the legal proof of the right of the applicant to be in Mozambique. It is therefore essential that this receipt is retained and can be produced on demand by the relevant authorities. If delays occur in the issuing of the authorisation, and the date on the receipt is no longer valid the holder may be considered to be in Mozambique illegally. Currently in addition those needing to leave the country while the biometric document is being processed are required to apply for (and in some instances pay for) an exit declaration (*declaração de saída*). This document must be applied for in writing and can take up to a week to issue, therefore as a matter of good practice it is as well to have a valid one on hand for emergencies. Efforts are being made to resolve the issues related to validity of receipts, and exit declarations, due to delays of up to six months in issuing biometric documents, please contact ACIS for the latest information on this matter.

Residents are obliged to communicate to the Immigration Service any change in their status which affects the details the Immigration Service has registered<sup>439</sup>. These changes must be communicated within 30 days of having taken place<sup>440</sup>. This can include change of nationality, residential address, change of marital status and change of employer or profession. Alterations

<sup>439</sup> Immigration Law, Article 24 and Immigration Regulation, Article 31

<sup>440</sup> Immigration Law, Article 24



are communicated using a form purchased from the Immigration Service and each alteration is subject to the payment of a fee equal to the cost of issuing a new document.

### 28.2.2 Temporary Residence

A Temporary Residence Authorisation is granted following application by a foreign citizen that has held a Non-Permanent Residence Authorisation for no less than five years.

The Temporary Residence Authorisation is valid for one year and may be renewed for equal periods<sup>441</sup>. The application for a Temporary Residence Authorisation may be extended to minors in the care of the applicant. In case of minors born in Mozambique, the application for a Temporary Residence Permit must be submitted within 90 days of the date of birth.

Application for a Temporary Residence Authorisation, is made at the Immigration Service responsible for the area where the applicant resides<sup>442</sup>. The application includes the following<sup>443</sup>:

- Completion of a form purchased from the Immigration Service for a fee;
- Passport and notarised photocopy of passport (including copies of each of the passport pages bearing the previous non-permanent residence authorisations);
- Notarised copies of previously held Temporary Residence Authorisation and the original document;
- Proof of means of subsistence (for example a letter from an employer);
- Business license (*alvará*), in the case of business people or their mandate holders (in practice this requirement also extends to applications by company employees);
- Certificate issued by the finance department stating that all fiscal obligation have been fulfilled (*certidão de quitação* – this may be issued in respect of the individual, or in the case of employees is more commonly issued in respect of the company which employs the applicant);
- Work Permit, in the case of applicants working with or without remuneration;
- Police clearance certificate with validity not exceeding ninety days. This certificate must be translated into Portuguese by an official translator and is issued by the country of origin of the applicant or country in which the applicant has been resident for the last two years<sup>444</sup>;
- Work or residence visa;
- Other documents that the applicant considers relevant in support of the application;
- Declaration of responsibility (*termo de responsabilidade*) for minors, spouses and/or dependants provided by the principal applicant<sup>445</sup>.

An additional requirement is the presence of the applicant at the office of the authority issuing the authorisation<sup>446</sup>.

The introduction of the Immigration Regulation in 2006 brought with it the new concept of the non-permanent residence authorisation. The regulation provides that the Temporary Residence Authorisation is the culmination of five years of having had non-permanent residence authorisations. However the regulation also appears to require that the Temporary

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<sup>441</sup> Immigration Regulation, Article 28

<sup>442</sup> Immigration Regulation, Article 26

<sup>443</sup> Immigration Regulation, Article 26

<sup>444</sup> Immigration Regulation, Article 14

<sup>445</sup> The principal applicant is, for example the employee requesting the temporary residence authorization in order to work in Mozambique.

<sup>446</sup> Immigration Regulation, Article 26

Residence Authorisation, application process is a completely new one, requiring as it does documents such as police clearance certificates and work or residence visas. In practice to date a police clearance and visa have only been required for an initial application for residence, and the requirement is not re-visited in applications for renewal. Given the recent nature of the changes it is not yet clear whether after 5 years of holding non-permanent residence authorisation the applicant for a Temporary Residence Authorisation, will be required to seek a Mozambican police clearance certificate (having been resident in Mozambique for more than 2 years) and re-apply for a work or residence visa outside the country prior to submitting the application. We have sought clarification on this issue and as it becomes available this publication will be updated to reflect the information we receive.

In the case of spouses and dependants where these do not intend to work in Mozambique, the application for a Temporary Residence Authorisation is based on the approval of the application by the principal applicant. This application having been approved the applications for Temporary Residence Authorisation for spouses and dependants is made on the basis of a notarised copy of the principal applicant's Temporary Residence Authorisation, and a *termo de responsabilidade* written by the principal applicant. This *termo de responsabilidade* must have a notarised signature. In certain cases, while it is not a requirement stipulated in the law, the application for a Temporary Residence Authorisation may also require submission of proof of relationship – documents such as a marriage certificate for example.

Please note that all documents submitted must be in Portuguese, or have been officially translated into that language. It is generally advisable not to submit original documents. Wherever possible notarised copies of documents should be submitted.

Letters submitted in support of applications are generally expected to have notarised signatures, and in the case of letters provided by a company or other organisation a copy of the power of attorney or other document giving the signatory the right to sign the letter may also be demanded. These requirements are not provided in law, but in practice are often demanded by the Immigration Service.

It is good practice to keep a copy of any documents submitted, including forms, and where possible to have the copy signed, dated and stamped with an official stamp by the recipient. The document issued contains various personal details of the applicant and the dates of its validity. Applicants would do well to check the details, dates and conditions before leaving the presence of the Issuing Officer.

Renewal of the Temporary Residence Authorisation is undertaken by the applicant following the same procedures as for the initial application, presenting themselves along with their passport at the closest Immigration Service, completing a form and paying a fee. Presentation of certain document such as the police clearance certificate and visa are waived for renewal.

As mentioned above, the same cautions apply with respect to checking the dates and details on the renewed Temporary Residence Authorisation. The applicant should always leave sufficient time between the submission of the application and the expiry date of the document, or any planned travel, and should also allow sufficient time to gather the necessary supporting documentation – the *certidão de quitação* for example can take considerable time to be issued. The fines for overstaying the time allowed on a Temporary Residence Authorisation are costly.

The issuing or renewal of a Temporary Residence Authorisation is subject to payment of a fee which is made on application. The documents are biometric and the fee as follows, in Meticaís:

Designation	Fee	Surcharge	Total
Temporary DIRE	14,400	4,800	19,200

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries

Residents are obliged to communicate to the Immigration Service any change in their status which affects the details the Immigration Service has registered<sup>447</sup>. These changes must be communicated within 30 days of having taken place<sup>448</sup>. This can include change of nationality, residential address, change of marital status and change of employer or profession. Alterations are communicated on a form purchased from the Immigration Service and each alteration is subject to the payment of a fee equal to the cost of issuing a new document. For alterations to be made the residence authorisation must be submitted to the Immigration Service. The cautions noted above in respect of receipts for documents submitted and payments made, and the time required for alterations to be made apply.

Payments for the issuing of a Temporary Residence Authorisation take the form of a receipt which includes the date on which the Temporary Residence Authorisation can be collected. For the time before the initial Temporary Residence Authorisation is issued or while it is held for renewal by the Immigration Service, the receipt serves as the legal proof of the right of the applicant to be in Mozambique. It is therefore essential that this receipt is retained and can be produced on demand by the relevant authorities. If delays occur in the issuing of the authorisation, and the date on the receipt is no longer valid the holder may be considered to be in Mozambique illegally. Currently in addition those needing to leave the country while the biometric document is being processed are required to apply for (and in some instances pay for) an exit declaration (*declaração de saída*). This document must be applied for in writing and can take up to a week to issue, therefore as a matter of good practice it is as well to have a valid one on hand for emergencies. Efforts are being made to resolve the issues related to validity of receipts, and exit declarations, due to delays of up to six months in issuing biometric documents, please contact ACIS for the latest information on this matter.

### 28.2.3 Permanent Residence

A Permanent Residence Permit may be granted by the Immigration Services to foreign citizens that have held a valid Temporary Residence Authorisation for the last ten or more consecutive years, on proof of merit<sup>449</sup>. The time period for the purpose of application for a Permanent Residence dates from the authorization of the first temporary residence<sup>450</sup>. Prior to the introduction of the Immigration Regulation, Permanent Residence was available to those who had resided in the country continuously for more than 10 years. Under the Immigration Regulation Permanent Residence will be available to those who have resided in the country for 15 years (5 years of non-permanent residence and 10 years of temporary residence). While not

<sup>447</sup> Immigration Law, Article 24 and Immigration Regulation, Article 31

<sup>448</sup> Immigration Law, Article 24

<sup>449</sup> Immigration Regulation, Article 27

<sup>450</sup> Immigration Regulation, Article 27

stipulated in the legislation, the Immigration Services indicate that Permanent Residence is not available to contracted employees.

A foreign citizen who fulfils the requirements may apply for Permanent Residence which takes the form of Document of Identification and Residence for Foreigners (*Documento de Identificação e Residência para Estrangeiros* – commonly known by its abbreviation of DIRE)<sup>451</sup>. Prior to the introduction of the Immigration Regulation this DIRE was differentiated from the one representing temporary residence by its colour, a permanent residence DIRE being black. The Permanent Residence Permit is valid for 5 years and may be renewed for equal periods<sup>452</sup>. It may be granted in perpetuity to applicants over 65 years old on application<sup>453</sup>. However with the introduction of biometric documents it is no longer clear whether in fact permanent residence documents will also have to be renewed annually though indications suggest this may be the case.

The application for a Permanent Residence Permit, or its renewal, is presented to the Immigration Services responsible for the area in which the applicant resides and is accompanied by the following documents<sup>454</sup>:

- Application addressed to the Director of Immigration Services requesting Permanent Residence status;
- Valid passport;
- Valid Temporary Residence Permit;
- Other documents considered necessary depending on the applicant's situation.

These other documents likely correspond to the requirements for application or renewal of the Temporary Residence Authorisation, particularly in the case of those who are working in Mozambique.

In the case of spouses and dependants where these do not intend to work in Mozambique, the application for a Permanent Residence can be expected to be based on the approval of the application by the principal applicant.

Please note that all documents submitted must be in Portuguese, or have been officially translated into that language. It is generally advisable not to submit original documents. In the case of renewal of a DIRE, the passport must be shown but does not need to be submitted as the DIRE takes the form of a separate identity document. Wherever possible notarised copies of documents should be submitted.

Letters submitted in support of applications are generally expected to have notarised signatures, and in the case of letters provided by a company or other organisation a copy of the power of attorney or other document giving the signatory the right to sign the letter may also be demanded. These requirements are not provided in law, but in practice are often demanded by the Immigration Service.

It is good practice to keep a copy of any documents submitted, including forms, and where possible to have the copy signed, dated and stamped with an official stamp by the recipient. The same is true of a DIRE submitted for renewal – a notarised copy should be retained by the applicant.

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<sup>451</sup> Immigration Regulation, Article 27, paragraph 3

<sup>452</sup> Immigration Regulation, Article 28, paragraph 3

<sup>453</sup> Immigration Regulation, Article 28, paragraph 4

<sup>454</sup> Immigration Regulation, Article 29

The DIRE contains various personal details of the applicant, conditions under which the DIRE is held (for example whether or not the bearer is permitted to work) and the dates of its validity. Applicants would do well to check the details, dates and conditions before leaving the presence of the Issuing Officer.

Renewal of DIRE is likely to be undertaken by the applicant following the same procedures as for the initial application, presenting themselves along with their passport at the closest Immigration Service, completing a form and paying a fee.

As mentioned above, the same cautions apply with respect to checking the dates and details on the renewed DIRE. The applicant should always leave sufficient time between the submission of the application and the expiry date of the document, to gather the necessary supporting documentation – the *certidão de quitação* for example can take considerable time to be issued. The fines for overstaying the time allowed on a DIRE are costly.

The issuing or renewal of DIRE is subject to payment of a fee which is made on application. The documents are biometric and the fee as follows, in Meticaís:

Designation	Fee	Surcharge	Total
Permanent DIRE	14,400	7,800	22,200
Life DIRE	14,400	7,800	22,200

The surcharge is not paid by anyone holding a passport from one of the CPLP (Lusophone Community) countries. Note the legislation is silent on the difference between a permanent DIRE and a Life DIRE

Residents are obliged to communicate to the Immigration Service any change in their status which affects the details the Immigration Service has registered<sup>455</sup>. These changes must be communicated within 30 days of having taken place<sup>456</sup>. This can include change of nationality, residential address, change of marital status and change of employer or profession. Alterations are communicated using a form purchased from the Immigration Service and each alteration is subject to the payment of a fee equal to the cost of issuing a new document.. For alterations to be made the residence authorisation must be submitted to the Immigration Service. The cautions noted above in respect of receipts for documents submitted and payments made, and the time required for alterations to be made apply.

Payments for the issuing of a DIRE take the form of a receipt which includes the date on which the DIRE can be collected. For the time before the initial DIRE is issued or while it is held for renewal or alteration by the Immigration Service, the receipt serves as the legal proof of the right of the applicant to be in Mozambique. It is therefore essential that this receipt is retained and can be produced on demand by the relevant authorities. If delays occur in the issuing of the authorisation, and the date on the receipt is no longer valid the holder may be considered to be in Mozambique illegally. Currently in addition those needing to leave the country while the biometric document is being processed are required to apply for (and in some instances pay for) an exit declaration (*declaração de saída*). This document must be applied for in writing and can take up to a week to issue, therefore as a matter of good practice it is as

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<sup>455</sup> Immigration Law, Article 24 and Immigration Regulation, Article 31

<sup>456</sup> Immigration Law, Article 24

well to have a valid one on hand for emergencies. Efforts are being made to resolve the issues related to validity of receipts, and exit declarations, due to delays of up to six months in issuing biometric documents, please contact ACIS for the latest information on this matter.

## FREQUENTLY ASKED QUESTIONS

- I entered Mozambique on a border visa and would now like to apply for non-permanent residence. Can I?

In order to apply for non-permanent residence you will need to leave Mozambique and apply for a residence or work visa at the nearest Mozambican Embassy or Consulate, complying with the requirements for this visa application. You should then re-enter Mozambique on the new visa and submit your residence application.

## 29. OTHER IMMIGRATION ISSUES

### 29.1 DEPARTURE

The departure from Mozambique must take place through an authorised border post and is dependent on presentation of the documents which authorised entry into and stay in Mozambique – i.e. a valid visa or residence document and following the completion of legal formalities<sup>457</sup>. Departure may be prevented when the Immigration Service has official knowledge that an authorised body has requested the capture or apprehension of the respective traveller<sup>458</sup>. A foreign citizen may be required to leave the country by virtue of extradition or expulsion under the terms of the applicable legislation<sup>459</sup>. Any foreigner finding themselves in a situation of being prevented from leaving or being extradited or expelled is encouraged to seek advice from legal counsel and the local representation (embassy or consulate) of their home country.

### 29.2 OTHER TYPES OF DOCUMENTATION AND PROCEDURES

Hotels, motels, camp sites, guest houses and similar establishments as well as other places that provide lodgings to foreign citizens, or rent, sublet or cede in any way accommodation to a foreigner have the duty to communicate that fact to the Immigration Services within five days using an “individual accommodation bulletin” (*boletim individual de alojamento*), or when Immigration Services are not available, to the police or the local administration<sup>460</sup>. Any non-resident foreigner staying in their own accommodation is responsible for informing the Immigration Service of this fact whether this is in relation to themselves or to any other foreigner cohabiting with them. This communication is also made using a *boletim individual de alojamento*. The permanent departure of guests or visitors who are foreigners must also be communicated to authorities using the *boletim individual de alojamento* within 5 days of their departure<sup>461</sup>.

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<sup>457</sup> Immigration Law, Article 26

<sup>458</sup> Immigration Law, Article 27

<sup>459</sup> Immigration Law, Article 28, Immigration Regulation Articles 35 and 36

<sup>460</sup> Immigration Law, Article 25 and Immigration Regulation Articles 32 and 33

<sup>461</sup> Immigration Regulation, Articles 32 and 33

The *boletim individual de alojamento* must contain, without initials or abbreviations, the full name of the foreigner, their marital status, profession, place of birth, nationality, date of birth, and the place from which they arrived and their onward destination. The *boletim individual de alojamento* may be substituted by lists or computerized reports. Electronically produced lists or information must contain the same data as listed above<sup>462</sup>.

### 29.3 NON-COMPLIANCE AND FINES

As noted above the fines for non-compliance with the immigration legislation can be costly, and therefore foreigners should take care to ensure that their documents are legally valid at all times. Principal fines are as follows:

Overstaying visa period<sup>463</sup>

- Daily penalty of 1,000Mt.
- When the overstay is detected on attempted departure the fine is increased by 50%.

Lack of *boletim individual de alojamento*<sup>464</sup>

- Daily penalty of 500Mt.

Lack of Residence Authorisation<sup>465</sup>

- Daily penalty of 1,000Mt.
- When the lack of authorisation is detected on attempted departure the fine is increased by 50%.

Late renewal of Residence Authorisation<sup>466</sup>

- Daily penalty of 100Mt.
- When the lack of renewal is detected on attempted departure the fine is increased by 50%.

Change of address or aspects related to personal identity without communication<sup>467</sup>

- Monthly penalty of 1,000Mt for change of address.
- Daily penalty of 100Mt for changes related to personal identity.

Repatriation

- Companies or organisations employing foreigners are responsible for the cost of repatriating them, should this be necessary.

Illegal entrants or foreigners without documents<sup>468</sup>

- Companies, shipping agents and individuals who allow in foreigners without documents or illegal entrants are responsible for all costs related to this including their return fare augmented by a fine of 6,000Mt.

Each of the foregoing penalties may be subject to additional costs for the issuing of new documents etc. Should legal non-compliance be proven to have been caused by justifiable reasons the Director of the Immigration Services may pardon the fine.

Documents issued by the Immigration Services confer upon the bearer the right to enter, stay in, depart from and identify himself in Mozambique, and should be presented to any authority that asks for them<sup>469</sup>. Foreign citizens that by negligence lose, or allow, by improper handling,

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<sup>462</sup> Immigration Regulation, Article 32 and 33

<sup>463</sup> Immigration Law, Article 42

<sup>464</sup> Immigration Law, Article 42

<sup>465</sup> Immigration Law, Article 43

<sup>466</sup> Immigration Law, Article 43

<sup>467</sup> Immigration Law, Article 44 and Article 47

<sup>468</sup> Immigration Law, Article 46

<sup>469</sup> Immigration Regulation, Article 49

total or partial damage of immigration documents, or whose documents have illegible data or elements of reference in them, may acquire new ones, issued as copies, on payment of double the normal fee due for the first issuance of such document<sup>470</sup>.

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<sup>470</sup> Immigration Regulation, Article 50



## SECTION 3                      ANNEXES

### 30.      MAIN LABOUR LEGISLATION CONSULTED

<b>Constitution of the Republic of Mozambique, 2004</b>
<i>Laws</i>
<b>Law n° 12/2009, of 12 March</b> (the Law of Rights and Responsibilities of those living with HIV/AIDS)
<b>Law n° 23/2007, of 01 August</b> (the Labor Law)
<b>Law n° 33/2007 of 31 December</b> , IRPS, Income Tax law
<b>Law n° 4/2007</b> (the Social Protection Law)
<b>Law n° 5/2002, of 13 February</b> (Law for the Protection of Workers with HIV/AIDS)
<b>Law n° 11/99 of 8 July</b> , (Arbitration Law)
<b>Law n° 8/98, of 8 July</b>
<b>Law n° 18/92 of 14 October</b> (the Labor Courts Law)
<b>Law n° 5/89, of 18 September</b> (Social Security Law)
<i>Decrees</i>
<b>Decree n° 38/2006 of 27 September</b> regulating the entry into, stay in and departure from the country of foreign citizens
<b>Decree n° 53/2007 of 03 December</b> (the Social Security Regulation)
<b>Decree n° 55/2008 of 30 December</b> (the Regulation of the Employment of Foreigners)
<b>Decree n° 40/2008 of 26 November</b> (the Domestic Employment Regulation)
<b>Decree n° 75/99 of 12 October</b> (IFZ Labor Regulation)
<b>Decree n° 61/99 of 21 September</b> (IFZ Law)
<b>Decree n° 26/99 of 24 May</b> (Work Visas)
<b>Decree n° 57/2003 of 24 December</b> (Contracting Foreign Workers)
<b>Decree n° 7/94, of 9 March</b> (Consultative Labor Council)
<b>Decree n° 4/90, of 13 April</b> (Establishing 7% contribution to Social Security)
<b>Decree n° 46/89, of 28 December</b> (Social Security Regulation)
<b>Decree n° 32/89, of 8 November</b> (Labor Inspection)
<b>Provincial Decree n° 61/73 of 20 November</b> (Extending occupational health and safety regulations to Mozambique)
<i>Ministerial Diplomas</i>
<b>Ministerial Diploma n° 75/2008</b> which creates committees for the extra-judicial resolution of labour conflicts in each province
<b>Ministerial Diploma n° 88/95 of 28 June</b> (Organic structure of the Ministry of Labor)
<b>Ministerial Diploma n° 45/90 of 9 May</b> (Social Security Procedures)
<b>Ministerial Diploma n° 17/90 of 14 February</b> (Labor Inspection Regulation)
<i>Legislative Diplomas</i>
<b>Diploma Legislativo n° 57/73 of 29 November 1973</b> (Complement to the Hygiene and Safety Regulations )
<b>Diploma Legislativo n° 48/73 of 5 June 1973</b> (Hygiene and Safety Regulations)
<b>Diploma Legislativo n° 3057 of 12 December 1970, Annex III</b> (Occupational Health and Safety Rules)

<b>Diploma Legislativo n° 1706 of 19 October 1957</b> (Treatment of Workplace Accidents and Occupational Illnesses)
<i>Edicts</i>
<b>Portaria n° 87/70</b> (Applies the Labor Procedure Code to Mozambique)
<b>Portaria n°21 769 of 3 January 1966</b> (Method of Calculating Indemnification due to an Injured Worker)

31. ANNEX 2 MODEL EMPLOYMENT CONTRACT (REVISED)

**Note: All forms in this Annex 2 should be used in practice only in the original Portuguese-language form. The purpose of this Annex 2 is to provide the English-language reader with a translation of those forms.**

**Individual Employment Contract**

Between

\_\_\_\_\_, a Mozambican commercial company, with headquarters at \_\_\_\_\_, represented in this act by \_\_\_\_\_, hereinafter designated the **Contracting Party**,

and

the **Contracted Party**, better identified in the Annex, this individual employment contract is executed and mutually agreed, to be governed by the following clauses:

- 1. Objective** – The Contracted Party hereby agrees to undertake, under the authority of the Contracting Party, the job described in the Annex, for the remuneration and duration therein indicated. The Annex referred to is an integral part of this contract.
- 2. Adhesion** – The Contracted Party adheres to the internal regulation currently in force and as may be in force from time to time in the Contracting Party as well as the general obligations established in the Labor Law and other applicable legislation.
- 3. Duration** – This contract is entered into for the term indicated in the Annex.
- 4. Place of Work** – The services object of this contract are to be performed at the premises of the Contracting Party or in another location indicated thereby.
- 5. Remuneration** – The Contracted Party shall receive the remuneration indicated in the Annex, payable on the last working day of each month worked. The Contracting Party shall deduct from that amount the legal contributions and any others which may be established by law.
- 6. Work Schedule** – The normal working period shall be indicated by the Contracting Party and shall obey the legal limits on working hours.
- 7. Conflict Resolution** – Any conflict arising from this contract shall in the first instance be resolved by mediation.
- 8. Entire Agreement** – This contract constitutes the entire agreement between the contracting parties in respect of its content and replaces any previous understandings or agreements between them.
- 9. Entry into force** – This contract enters into force from the date indicated in the Annex as the start date.

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

**The Contracting Party**

**The Contracted Party**

\_\_\_\_\_  
Name:  
Position:

\_\_\_\_\_  
Name:

## Annex to the Individual Employment Contract

Specifications	Description
<b>Contracted party</b>	
<b>ID number</b>	
<b>Job description</b>	
<b>Contract duration</b> (choose one)	<input type="checkbox"/> <b>Indeterminate period</b> <input type="checkbox"/> <b>Fixed period, uncertain time</b> <input type="checkbox"/> <b>Fixed period until</b> _____ <input type="checkbox"/> Renewable for _____ <input type="checkbox"/> Non-renewable
<b>Justification</b> (for fixed period contracts, whether for periods certain or uncertain)	
<b>Probation period</b> (choose one)	<b>Indeterminate period contract:</b> <input type="checkbox"/> 180 days (senior and mid-level technicians and posts of management or direction) <input type="checkbox"/> 90 days <b>Fixed period, period uncertain (for 90 days or longer)</b> <input type="checkbox"/> 15 days <b>Fixed period, period certain</b> <input type="checkbox"/> 90 days (contracts of more than 1 year) <input type="checkbox"/> 30 days (contracts of between 6 months and 1 year) <input type="checkbox"/> 15 days (contracts of up to 6 months)
<b>Remuneration</b>	MT _____ <input type="checkbox"/> Cash <input type="checkbox"/> Kind (up to 25% at regional price)
<b>Contract start date</b>	
<b>Other conditions</b>	During the period of this contract the Contracted Party is forbidden to enter into employment or service provision contracts which may directly prejudice capacity to meet the requirements of this contract.
<b>Responsibilities</b>	The Contracting Party shall not be responsible for any malicious or culpable action by the Contracted Party when in violation of this contract or of the law, nor shall said party be held responsible for any damage the Contracted Party suffers as a result. The Contracted Party must comply with the health and safety measures determined by the Contracting Party and is responsible to use of protective equipment provided.

**The Contracting Party**

**The Contracted Party**

\_\_\_\_\_  
 Name:  
 Position:

\_\_\_\_\_  
 Name:

32. ANNEX 3 MODELS OF DISCIPLINARY PROCEEDINGS FORMS  
(REVISED)

**Verbal Warning Form**

*Instructions: Under the terms of Article 63, paragraph 1 and Article 65 paragraph 1, of the Labor Law, a verbal warning does not require a disciplinary proceeding. All that is required is recording that measure on this form for the purpose of a complete record).*

Name of Worker: \_\_\_\_\_

Date of verbal warning: \_\_\_\_\_

On the above-mentioned date I verbally warned the above-named worker as a result of the worker having done the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

The person responsible

\_\_\_\_\_  
Name:

## Written Reprimand Form

*Instructions: Under the terms of Article 63, paragraph 1 and Article 65 paragraph 1, of the Labor Law, a written reprimand does not require a disciplinary proceeding. All that is required is recording that measure on this form.*

Name of Worker: \_\_\_\_\_

Date of written reprimand: \_\_\_\_\_

On the above-mentioned I register the following written reprimand against the above-named worker as a result of the worker having done the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In addition, I advised the worker above-named worker that if the same violation is committed again or any other disciplinary breach is committed, a disciplinary proceeding will be opened.

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

The person responsible

\_\_\_\_\_  
Name:

## Disciplinary Notice

In accordance with Article 65, paragraph 1 and Article 67, paragraph 2, clause a) of the Labor Law a disciplinary proceeding is hereby started against worker \_\_\_\_\_, who is accused of having done the following:

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The worker indicated above has 15 (fifteen) days from receipt of this disciplinary notice to respond.

On receipt of this disciplinary notice and in accordance with Article 67, paragraph 5 of the Labor Law, the worker (*indicate one*):

- is preventively suspended without loss of pay; or
- is not suspended and must come to work as usual.

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

The person responsible

\_\_\_\_\_  
Name:

I hereby confirm receipt of the disciplinary notice.

\_\_\_\_\_  
Name:

We confirm that the abovementioned worker refused to accept this disciplinary notice.

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

## Notice

In accordance with Article 67, paragraph 7 of the Labor Law, this serves to notify the worker \_\_\_\_\_ to receive a disciplinary notice as part of a disciplinary proceeding taking place within this company.

The time period for presentation of a defense in respect of this disciplinary proceeding is 15 days counted from the date of publication of this notice.

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

The person responsible

\_\_\_\_\_  
Name:



## Submission of Disciplinary Proceeding

In accordance with Article 67, paragraph 2, clause b) of the Labor Law, this serves to submit for the consideration and opinion of the union body the disciplinary proceeding against

\_\_\_\_\_.

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

The person responsible

\_\_\_\_\_  
Name:

Annexes:

- Disciplinary notice
- Worker's response (if any)
- Other: \_\_\_\_\_

### Submission of Decision

In accordance with Article 67, paragraph 2, clause c) of the Labor Law, this serves to submit the decision taken in the disciplinary proceeding against \_\_\_\_\_ to such worker as well as to the union body.

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

The person responsible

\_\_\_\_\_  
Name:

I confirm receipt of the decision taken.

\_\_\_\_\_  
Name:

## Decision

Having followed the disciplinary proceeding initiated against worker \_\_\_\_\_, and taken the following measures to produce evidence (*indicate one or more measures taken*):

- employee hearing;
- testimony of witnesses;
- analysis of documents;
- other \_\_\_\_\_,

this serves to state:

### 1. The Facts

We consider proven (*check one*):

- all the charges contained in the corresponding disciplinary notice;
- the following charges contained in the corresponding disciplinary notice:

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based on: (*indicate justification*)

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or

- none of the charges contained in the corresponding disciplinary notice.

### 2. The Law

Having analyzed the concept and list of disciplinary violations contained in Annex 1, in accordance with Article 66, paragraphs 1 and 2 of the Labor Law, we find that the worker (*check one*):

- committed the disciplinary violations contained in numbers \_\_\_\_\_ of Annex 1; or
- did not commit any violation listed in Annex 1.

### 3. The Disciplinary Measures

Taking into consideration the facts and the law described above, as well as the list of possible disciplinary measures foreseen in Article 63, paragraph 1 of the Labor Law and included in Annex 2, and bearing in mind that not more than one disciplinary measure may be applied for each violation, we have decided:

to apply to the worker the following disciplinary measure (*check one*):

suspension for \_\_\_\_\_ days with loss of pay;

fine of \_\_\_\_\_ days' pay;

demotion to the immediately lower professional category for \_\_\_\_\_ months;

dismissal.

or

not to apply any disciplinary measure included in Annex 2.

The decision is based on the gravity of the offence, the degree of culpability of the worker, the professional conduct of the employee and, in particular, the circumstances in which the events occurred, as well as the evidence produced as described above.

\_\_\_\_\_ [place] on \_\_\_\_\_ [date] \_\_\_\_\_ [year]

The person responsible

\_\_\_\_\_  
Name:

### Annex Disciplinary violations possible under Article 66, paragraph 1 of the Labor Law

<ol style="list-style-type: none"> <li>1. Non-compliance with work schedule and work assignment;</li> <li>2. Non-appearance at work without justification;</li> <li>3. Absence from the workplace during work time without permission;</li> <li>4. Disobeying legal instructions or instructions based on the employment contract and the rules that regulate it;</li> <li>5. Lack of respect for superiors, colleagues and third parties, or by a superior to their subordinate in the workplace or when carrying out work;</li> <li>6. Injury, bodily harm, mistreatment or threat in the workplace or when carrying out work;</li> <li>7. Willful lapse of productivity;</li> <li>8. Abuse of office or of position for illegitimate gain;</li> <li>9. Breach of professional confidentiality or industrial espionage;</li> </ol>	<ol style="list-style-type: none"> <li>10. The use of company equipment, goods, services or other work-related items for personal ends or for inappropriate purposes</li> <li>11. The damage, destruction or willful deterioration of items in the workplace;</li> <li>12. Lack of austerity, or the waste of material or financial resources of the workplace;</li> <li>13. Drunkenness, being in a drugged state, consuming or possessing drugs in the workplace or while working;</li> <li>14. The theft, abuse of confidence, fraud or other malpractice in the workplace or while working;</li> <li>15. Abandonment of workpost;</li> <li>16. Sexual harassment in the workplace or outside it which interferes with the stability of the employment or for the professional progress of the injured party.</li> </ol>
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### Annex Disciplinary measures possible under Article 63, paragraph 1 of the Labor Law

<ol style="list-style-type: none"> <li>1. Verbal warning;</li> <li>2. Written reprimand;</li> <li>3. Suspension with loss of pay for up to 10 days per violation, up to a maximum of 30 days in each calendar year;</li> </ol>	<ol style="list-style-type: none"> <li>4. Fine of up to twenty days' pay;</li> <li>5. Demotion to the professional category immediately below the current one for not more than twelve months;</li> <li>6. Dismissal.</li> </ol>
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33. FLOWCHART ON PROCEDURES FOR HIRING FOREIGNERS IN MOZAMBIQUE

The flowchart on the page that follows summarizes the procedures and documents set forth in the sections on employment of foreigners above.

