The Legal Framework

Legal Framework for Public Administration – a guide to the rights of the business citizen

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INTRODUCTION

For the last five years ACIS has cooperated with a series of partners including GIZ, USAID, Deloitte, SAL & Caldeira, CIP and CFJJ on the development of an innovative series of guides, known as "The Legal Framework", for investors and business people. The series has 16 titles and has been regularly updated in line with changes in legislation. The series has become a reference point for business and government, and its development has led to dialogue and discussion about policy and procedures.

The series focuses on the responsibilities of business in terms of legal compliance, for example issues around licensing, fiscal reporting and so on. In addition to responsibilities, corporate citizens (businesses and others) also have rights. It is important that company managers have an idea about both their responsibilities and their rights, since the two balance each other. Mozambique has developed a progressive and modern legal framework providing a variety of rights and recourses for its citizens, based on and subordinate to the Constitution.

In order for the Legal Framework series to fully represent the developments which have taken place it is important that, in addition to presenting the responsibilities which business must comply with, it also provides information about rights. In addition there is now a combined inspectorate of economic activities operating as a separate government institution with its own regulation, and the Ministry of Labour has introduced new regulations governing labour inspections, and a new law has recently been approved which regulated the will of the Public Administration and establishes the norms for defending the rights and interests of individuals. While in combination the legislation offers business certain rights, few businesses are aware of the changes or indeed of their rights before the Public Administration.

As a result of extensive dissemination of information about the responsibilities of business in recent years, to which the Legal Framework series has provided a significant contribution, companies are more aware now than they were 10 years ago, of the procedures they must comply with in order to ensure their legality. However business associations and representative bodies note that they receive complaints from members about perceived lack of service from the Public Administration and that few companies are aware of the recourse options available to them.

Given that the government has taken significant steps to modernize its Public Administration legislation, and professionalizing its business/economic inspection services, in order to more effectively render supervisory and inspection control of business, it is now incumbent on business to inform itself about the changes and what rights these confer. This guide aims to detail what business can expect in terms of service, how requests for information, licenses and other requests should be dealt with, and what to do if matters presented to the Public Administration are not addressed as they should be. In addition it includes details of how inspections are to be carried out in certain key sectors, what a business can expect during an inspection and after an inspection if a perceived infraction is identified, and what appeals mechanisms are available.

It is important to note that, both the law and Public Administration are dynamic. Some of the laws and procedures we describe may change in the near future. Additionally, we may have committed errors, in spite of our efforts to ensure that none were committed. We welcome you to tell us of any errors or omissions you may find, so that we can correct them in future editions. That being said we must disclaim liability for any errors or omissions in this edition. The use of this manual does not

preclude the need to consult relevant legislation, liaise with the competent authorities, and seek legal advice.

Some of the legislation cited in this manual is available in both Portuguese and English. This legislation and other manuals in the Legal Framework series are available to download from the ACIS website, at www.acismoz.com.

GLOSSARY OF TERMS

Note the terms below are listed in Portuguese alphabetical order, and many of the terms are subsequently referred to throughout the guide in Portuguese, since they are encountered on a day-to-day basis in this language.

ITEM	DEFINITION
Act (administrative)	A decision taken by any Public Administration body which, under the terms of public law, is designed to produce legal effect in an individual, concrete situation
Inspection Minute (*Acta de Fiscalização*)	A document issued at the conclusion of an inspection visit. It is a document by which inspectors inform business about the result of the inspection undertaken. It contains information such as the identity of the inspectors, the entity inspected, infractions found as well as the legal basis for these infractions
Economic Activity (*Actividade Económica*)	Includes any activity involving production, trade, or service provision including extractive activity such as agriculture, forestry, livestock and fisheries
Public Administration (*Administração Pública*) - "AP"	The group of bodies and public services which ensure the carrying out of administrative activities for the public good[1].
Warning Notice (*Auto de Advertência*)	A document by means of which inspectors recommend to business certain actions or to stop certain actions so that the business is legally compliant. This document is simply a warning and may be issued at the conclusion of an inspection visit, or sometime after an inspection visit
Information Notice *(Auto de Notícia)*	A preliminary notification, often issued at the end of an inspection, advising of any infractions identified and measures applied. *Autos de Notícia* take different forms depending on the entity issuing them but must include clear indications of any infractions based on law, and if fines are being applied, the legal justification for these, as well as details of how voluntary payment can be made, or an appeal lodged. *The Auto de Notícia* may not be the definitive decision about an infraction. The official issuing it may refer it to their superior who may waive the issuing of a fine, or may apply a more serious penalty. If the *Auto* is not the final document a *Notificação* is issued. Usually the *Auto* is a preliminary document, and there may in fact be no follow up to it
Tax Authority or Administration (*Autoridade Tributária de Moçambique ou Administração Tributária*) - AT	State body with administrative autonomy, headed by the minister responsible for finance

[1] Note that the state administration is divided into: direct administration, carried out by a group of bodies without legal personality which are integrated within the collective State Administration; and indirect administration which can be carried out by local authorities, for a specific public purpose or local interest, or by other decentralized bodies for a specific purpose or public interest, both of these having their own legal personality

Tax Area Directorate (*Direcção de Área Fiscal*)	The body responsible for collection of tax and registration of taxpayers within a specific tax area (commonly also known as "*Repartições de Finanças*"
Relevant tax area directorate, or relevant receiver of revenue or tax service (*Direcção da Área Fiscal Competente ou Recebedoria da Fazenda Competente ou Serviços Tributários Competentes*)	Ministry of Finance directorate located in the area where the taxpayer is headquartered, has their main office, or domicile
Suspending effect (*Efeito suspensivo*)	When there has been no decision, or when the relevant time period for a decision being taken has expired, the individual may not comply with the decision or recommendation given in the Information Notice or Warning Notice
Tax (*Imposto*)	A unilateral, compulsory monetary payment the objective of which is to generate resources to finance the provision of public services
Tax infraction (*Infracção tributária*)	Act, action or omission by the taxpayer, their substitute or representative, which is against the tax law. These can be crimes, offences, transgressions or contraventions
INAE	National Inspectorate for Economic Activities - *Inspecção Nacional de Actividades Economicas*
IGT	General Labour Inpsectorate (*Inspecção-Geral do Trabalho*). Body responsible for labour inspection
Integrated Inspection (*Inspecção Integral*)	An inspection of various matters
Partial Inspection (*Inspecção Parcial*)	An inspection of various specific matters
Ordinary or pre-notified Inspection (*Inspecção avisada ou ordinária)*	A type of inspection which is pre-notified to the organization to be inspected, usually as part of a planned programme of activities by the relevant authority
Extraordinary or Unannounced Inspection *(Inspecção não-avisada ou extraordinária)*	An unannounced inspection, usually taking place based on a complaint, or exceptional or unforeseen circumstances; it can take place at the request of a union committee or employers' body (in the case of labour inspections) or as a result of a decision from the inspectors' superiors
INSS	National Social Security Institute - *Instituto Nacional de Segurança Social*
Notification (*Notificação*)	A notification, usually of a fine, or as a warning or summons to appear before a Public Administration body. If an *Auto de Notícia* has been issued, for example as the result of an inspection, the content of the *Auto* may be checked by a superior and then the *Notificação* is issued. A *Notificação* may take different forms depending on the entity issuing it but must include clear indications of any infractions, clearly stating the basis in law, and if fines or other penalties are being applied, the legal justification for these must be included, as well as details of how voluntary payment can be made, or an appeal lodged
NUIT	Individual Tax Identification Number (*Número Único de*

	Identificação Tributária) used to identify the taxpayer to the AT and which must be used on all payments, including customs payments, and must be mentioned in declarations, invoices and any correspondence with AT
Omission	A failure to act or to take a decision
Ordem de Advogados de Moçambique (OAM)	The Bar Association, an organization which all qualified lawyers are members of and which regulates their activity
Administrative Procedure *(Procedimento Administrativo)*	An ordered series of acts and formalities which create and express the will of the Public Administration or the execution of said will
Power of Attorney *(Procuração)*	An authorisation granted by one person to another to represent him, usually for certain limited purposes, depending on the context.
Contestation (*Reclamação*)	Contesting an administrative act or decision to the person or organization which produced said act or decision with a view to having it revised or altered
Heirarchical Appeal (*Recurso hierárquico ou gracioso*)	Contesting an administrative act undertaken by a subordinate, to their respective hierarchical superior, with a view to having the act revoked or substituted
Judicial Appeal (*Recurso Contencioso*)	Juridical impugning of an administrative act by appeal to the administrative courts with a view to having said act annulled, declared invalid or legally nonexistent
Fiscal Representative (*Representante Fiscal*)	The person legally designated to represent a non-resident taxpayer
Taxpayer Responsible (*Responsável tributário*)	The taxpayer who is required to pay a tax debt on behalf of another, when such payment is not made on time
Petition / application *(Requerimento)*	A request or petition formulated in writing, usually following a standard format provided by the entity to which the *Requerimento* is addressed
Taxpayer Substitute (*Substituto tributário*)	The person legally obliged to comply with formal tax requirements on in place of the substituted taxpayer. The Taxpayer Substitute is a mechanism used for example in the withholding and subsequent payment to AT of tax owed by the substituted person
Taxpayer (*Sujeito Passivo*)	Those who, under the terms of the tax legislation, are required to make material or formal tax payments, these can be natural or legal persons, a constituted entity which obeys, or does not, the legal requirements, an asset, an organization in fact or in law or any other grouping of persons
National Territory (*Território Nacional*)	The area of land, maritime and air space delimited by the national borders

KEY LEGISLATION

- Constitution of the Republic of Mozambique (hereafter the "CRM");
- Law 16/2012, of 14 August, which approves the Public Probity Legislation (hereafter "Law 16/2012);
- Law 14/2012, of 8 February, which approves the internal structure of the Public Prosecutor's Office and the Status of Magistrates and Prosecutors and revokes Decree 22/2005, of 22 June (hereafter "Law 14/2012");
- Law 7/2012 of 8 February, which approves the Basic Law on the Organisation and Operation of the Public Administration (hereafter "Law 7/2012");
- Law 14/2011 of 10 August, which regulates the establishment of the will of Public Administration, establishes standards for the defence of individual rights and interests (hereafter "Law 14/2011");
- Law 25/2009 of 29 September, which approves the Organic Law for Administrative Jurisdiction;
- Law 14/2009 of 17 March, which approves the General Statute of Public Servants and Agents (hereafter "EGFAE");
- Law 7/2006 of 16 August, which establishes the scope of operation, statute, competency and operational procedures for the Justice Ombudsman;
- Law 2/2006 of 22 March, which approves the General Tax Law;
- Law 15/2002 of 26 June, which approves the Tax System Basis Law;
- Law 6/2004, of 17 June, which approves the legal framework for the combating of corruption and illicit economic acts (hereafter "Law 6/2004");
- Law 2/96 of 4 January, which regulates and disciplines the right to present requests, complaints and appeals to the competent authority;
- Decree-Law 47 344 of 25 November 1966, which approves the Civil Code, applied to Mozambique by Ministerial Order 22 869, of 4 September 1967;
- Decree-Law 44 129 of 28 December 1961, which approves the Civil Procedures Code with alterations introduced in Decree-Law 1/2005, of 27 December and Decree-Law 1/2009, of 24 April;
- Decree-Law 35007 of 20 October 1945, which approves the Penal Procedures Code;
- Decree 45/2010 of 2 November, which approves the Payment of Tax Debts in Installments Regulation;
- Decree 46/2010 of 2 November, which approves the Compensation of Tax Debts Regulation;
- Decree 62/2009 of 8 September, which approves the EGFAE Regulations;
- Decree 46/2009 of 19 August, which creates the National Inspectorate for Economic Activities – INAE;
- Decree 45/2009 of 14 August, which approves the Regulations for the General Inspectorate of Labour;
- Decree 18/2007 of 7 August, which approves the Tourism Accommodation Regulations;
- Decree 19/2005 of 22 June, which approves the Tax Oversight Procedures Regulations;
- Decree 46/2002 of 26 December, which approves the General Tax Infractions Regime;
- Decree 12/2002 of 6 June, which approves the Regulation of the Forestry and Wildlife Law;
- Decree 30/2001 of 15 October, which approves the Legal Norms governing the Functioning of the Public Administration with alterations introduced under Law 16/2012, of 14 August;
- Decree of 16 September 1886, which approves the Penal Code;

- Legislative Diploma 783 of 18 April 1942, which approves the Contributions and Taxes Appeals Regulation;
- Ministerial Diploma 19/2013, of 30 January, which approves the internal regulation of the National Economic Activities Inspectorate (*Inspecção Nacional das Actividades Económicas* – INAE);
- Ministerial Diploma 292/2012 of 7 November, which creates provincial delegations of INAE;
- Ministerial Diploma 124/2012 of 27 June which approves the Procedures for Operationalising Tax Debt Compensation;
- Ministerial Diploma 128/2006 of 12 July which approves the Statute of Forestry and Wildlife Inspectors;
- Ministerial Diploma 102/2002 of 3 July, which approves the Internal Regulation of the General Tourism Inspectorate;
- Resolution 9/2011 of 2 June, which approves the Internal Regulations of the INAE;
- Resolution 51/2004 of 24 November, which approves the Regulation of the Inspectorate of the Ministry of Industry and Commerce;
- Resolution 199/2004 of 24 November, which approves the Regulations for the Inspectorate of the Ministry of Industry and Trade;
- Dispatch of the Prime-Minister, dated 26 January 2010, naming José Rodolfo as the Inspector-General of INAE;
- Dispatch of the Minister of Finance dated 3 March 2011 which delegates to the President of the Tax Authority decision-making powers envisaged in Decree 46/2010

1. CONSTITUTIONAL RIGHTS

The Constitution of the Republic of Mozambique (hereafter "the Constitution" or CRM) is the main legal instrument regulating the State and guaranteeing the fundamental rights of individuals. The current Constitution was published on 22 December 2004.

Article 3 of CRM determines that the Mozambican State is "a State of Law based on pluralism of expression, political democracy, and the respect and guarantee of the fundamental rights and liberties of Man".

Based on CRM the Public Administration serves the public interest and its actions respect the fundamental rights and freedoms of the citizen.[2] In their actions Public Administration bodies obey the CRM and the law and must respect the principles of equality, impartiality, ethics and justice.[3]

The standards established in the Constitution prevail over all other legal matters[4]. Courts cannot apply laws or principles which offend the Constitution.[5] Therefore any discussion of rights must necessarily begin with an analysis of those rights provided in the Constitution and the respective guarantees of those rights. Note that for the purposes of this guide reference to citizens includes any natural individual legally resident within the country, and any legal person (e.g. company) legally registered and incorporated within the country.

Included within the fundamental objectives of the Constitution, and relevant to business are the following[6]:

- Promotion of balanced economic, social and regional development of the country;
- Development of the economy and progress in science and technology.

The principle rights considered here, as enshrined in the Constitution, and relevant to business persons, in the order in which they are found in CRM are as follows:

- *Freedom of expression and information*: All citizens have the right to freedom of expression (sharing their thoughts by legal means), to freedom of the press (freedom of expression and creation of journalists, professional confidentiality, to make newspapers, publications, etc) and to information.[7] In the scope of operation of the Public Administration, citizens have the right to be informed by the relevant service, whenever they ask, about the progress of their applications and to be notified of administrative acts within the legally established time period, with the respective legal basis for the act provided where applicable.

- *Right to assemble and protest, within the terms of the law*.[8]

[2] Constitution of the Republic of Mozambique (CRM), Art 249 para 1
[3] CRM, Art 249, para 2
[4] CRM, Art 2, para 4
[5] CRM, Art 214
[6] CRM, Art 11
[7] CRM, Art 48
[8] CRM, Art 51

- *Freedom of association*.[9]

- *Non-retroactivity*: Laws cannot produce retroactive effects unless these benefit the citizen and other collective persons.[10]

- *Right to indemnity and state responsibility*: The right to demand compensation for damages or losses caused by the violation of fundamental rights is a generally recognized one. The State is responsible for damages caused by illegal acts by its agents undertaking their work, without prejudice to the right of restitution in terms of the law.[11]

- *Right to freedom and security*: No one can be imprisoned or tried unless it is within the terms of the law, the citizen is presumed innocent until found guilty and may not be tried more than once for the same crime, or punished in a way not provided for in law. Criminal conviction can only take place if the act in question is legally constituted a crime at the time it was carried out. Preventive detention is only permitted in the situations and for the time periods provided for in law.[12]

- *Access to courts*: All citizens have the right to access the courts, to freely chose their defender, or should this be impossible, to have the right to legal aid provided by the state.[13] The decisions of the courts must be complied with and override decisions by any other authority.[14]

- *Inviolability of domicile and correspondence*: Private residence, correspondence and other methods of communication and inviolable, expect where permitted by law. Forced entry into a domicile is prohibited unless undertaken based on a legal order and such entry can never be carried out at night without the consent of the person in question.[15]

- *Right to impeach, contest and resist*: All citizens have the right to contest acts which violate their constitutional rights and to have recourse to the courts in defense of their rights and interests. All citizens have the right to present petitions, complaints and protests to the relevant authority to demand the restitution of their violated rights or in the general interest. Citizens have the right not to obey legal orders which offend their rights, freedoms and guarantees.[16]

- *Right to property*: Property can only be expropriated in case of public need or public interest (stated and with clear basis in law) and based on just compensation.[17]

[9] CRM, Art 52
[10] CRM, Art 57
[11] CRM, Art 58
[12] CRM, Arts 59, 60, para 1 and 64, para 1
[13] CRM, Art 62
[14] CRM, Art 215
[15] CRM, Art 68
[16] CRM, Arts 69, 70, 79 and 80
[17] CRM, Art 82

- Fiscal system: Taxes are created and altered by law, which defines their application, rate, benefits and guarantees of the taxpayer, and no obligation to pay can be imposed without due legal basis. Within the same fiscal period the taxation base or rate cannot be increased and the fiscal law can only have retroactive effect of the provision in question is more favourable to the taxpayer.[18]

- Publication of acts: Standard acts must be published in the government gazette, otherwise they may be deemed to have no legal effect, that is, they do not apply to those intended to be covered by the act in question.[19]

The Public Administration is the most common link between business people and the state and includes all parts of the public service, including national and local authorities, inspectorates and the police. Therefore this guide generally focuses on the Public Administration and the rights and guarantees of the business citizen in respect of said administration.

Therefore the fundamental rights enshrined in the Constitution guide all acts by both business citizens and the Public Administration, and therefore should be kept in mind while reading subsequent sections of this manual.

2. THE PRINCIPLES GOVERNING PUBLIC ADMINISTRATION

The Public Administration and its respective agents, officials and office holders are bound by the following principles, as stipulated by Law 14/2011 and by Decree 30/2001[20]: A reminder that references to "individuals" include both natural and legal persons, i.e. individuals and companies. Administrative acts are defined in the glossary and include decisions, notifications, and fines.

a. *Principle of legality*: which determines performance in accordance with the law and within the limits and purposes of the powers granted to the relevant official;

b. *Principle of pursuit of public interest*: which determines that the public interest shall be the principal aim of the Public Administration, without however setting aside respect for the protected rights and interests of individuals;

c. *Principle of equality and proportionality*: which prohibits any privilege or prejudice by virtue of subjectivity, or the official' individual or social convictions, and also determines the need to opt, at any time, for legal measures that carry less serious consequences for individuals;

d. *Principle of justice and impartiality*: which prohibits discrimination and participation in acts, contracts or decisions in which the official taking the decision has a personal interest or in which personal interests are in question, as indicated by law[21];

[18] CRM, Art 127
[19] CRM, Arts 143, 144, 158, 182 and 210
[20] Law 14/2011, Articles 4 to 17 and Decree 30/2001, Article 4 to 14
[21] The law indicates as cases of conflicts of interest those in which a Public Administration office holder, official or agent shall not participate in administrative procedures, in an act or an administrative contract, as well as the mechanisms for the declaration of impediment and sanctions for the absence of such declaration, which could include annulment of the procedure, act or contract in question, if no other sanction has been specifically determined

e. *Principle of good faith*: which determines that both the Public Administration and those interacting with it (i.e. individuals, or businesses) shall base their performance on mutual trust and on the fundamental values of justice;

f. *Principle of collaboration by the Public Administration with individuals*: which determines that the Public Administration shall be open to providing information and explanations to individuals, and to encouraging the participation of individuals;

g. *Principle of participation by individuals*: which determines that the Public Administration shall promote the participation as well as the defence of individuals in the decisions that affect them;

h. *Principle of decision*: which determines the obligation to take a decision about the questions presented by individuals, whether in the defence of their own or of general interests;

i. *Principle of effectiveness and efficiency and removal of bureaucracy*: which determines the need for an administrative structure that guarantees greater proximity to individuals and more rapid and effective responses;

j. *Principle of accountability of the Public Administration*: which determines that the Public Administration is accountable for the illegal acts of its bodies, officials and agents in the performance of their functions, where such acts result in damage to third parties;

k. *Principle of justifying administrative acts*: which determines that any act which expressly or implicitly result in the rejection of a request or the revocation, alteration or suspension of previous acts must be supported by a justification based on law;

l. *Principle of transparency*: which determines the need to publish administrative acts, regulations and other standards to inform individuals in a timely manner about the control and oversight to which the Public Administration is subjected and also includes the prohibition of accepting benefits in order to favour some parties to the detriment of others;

m. *Principle of cost*: which determines that, as a general rule, administrative procedures are free, unless the contrary is legally and explicitly stated. In addition if able to prove lack of funds the individual may be exempted from taxes, fees and other costs.

n. *Principle of access to justice and to the law*: which determines the right of access to the courts for the defence of the legitimate rights and interests of individuals;

Law 7/2012, defines the principles of the organization of the Public Administration, and includes the following principles which should also be taken into account:[22]

a. Principle of decentralization;
b. Principle of reduction of bureaucracy and simplification of procedures;
c. Principle of unified action and directive powers of the Government;
d. Principle of coordination and articulation of Public Administration bodies;

[22] Law 7/2012, Arts 4-7

e. Principle of control and supervision through administrative bodies;
f. Principle of oversight of Public Administration by the citizen (by means of consultations, public hearings, independent reports and studies, and the right to petition, denounce irregularities etc)
g. Principle of modernization, efficiency and effectiveness;
h. Principle of approximation of the Public Administration to the citizen;
i. Principle of citizen participation in Public Administration management;
j. Continuity of public service;
k. Principle of hierarchical structures (characterized by the power of instruction and order from a superior to a subordinate, as well as the right of superiors to request information, confirm, review, modify, suspend or revoke acts of their subordinates and apply disciplinary sanctions under the terms of the law); and,
l. Principle of personal liability (this principle provides for civil, criminal, disciplinary and financial responsibility of Public Administration office holders and agents for any illegal act or omission which they undertake in their role, without prejudice to the State's own responsibility in such matters. This principle also allows for programme-oriented contracts and the establishment of results-based management).

Individuals can therefore respond to violations of the Public Administration's guiding operational principles using the guarantees provided by the law for their protection as discussed in the following sections.

3. FUNCTIONING AND OPERATION OF THE PUBLIC ADMINISTRATION AND MECHANISMS FOR THE PROTECTION OF INDIVIDUALS

3.1 General rules for the functioning and operation of the Public Administration

The Public Administration has a number of responsibilities before the business citizen. These are directly related to the citizen's own rights.

Based on Law 14/2011 and Decree 30/2001 there are a number of basic requirements which the Public Administration must follow to facilitate the life of the business citizen. These follows a summary of a number of key rules and some practical considerations:

Working hours

a) The weekly number of hours to be worked by those in the Public Administration is 40 hours which are Monday to Friday 7.30 to 15.30. While the working period each day may be interrupted between 12 and 14.00 for a rest, breaks must be undertaken in such a way as to guarantee continuous provision of service to the public[23]; However such working hours do not apply to those providing essential services such as the Customs and Immigration services which must be available as required[24].

[23] Decree 30/2001, Art 30
[24] Decree 30/2001, Art 33

b) The reception and attendance sections of public offices must be open throughout the working day and the public must be attended with diligence, zeal and speed. Information provided must be clear, complete and precise, and observe the legal precepts in such a way as to facilitate a solution to the demands of the member of the public. Public Administration managers must designate one member of front line staff to make initial contact, this person is to be one who understands the structure of the organisation, and its general scope as well as someone who has a qualification in attending the public[25]. Those responsible for attending the public, either in person or by telephone must have specific training in public relations and in the areas of the respective service where they work. They must be equipped to provide the information required or to direct the citizen to the relevant authority[26].

Requesting information

a) Without prejudice to the next paragraph, individuals have the right, on request, to be informed by the Public Administration, about the progress of any processes in which they have a direct interest, and decisions taken about these. Such information includes which service is currently dealing with the process, due diligence undertaken, any deficiencies in the process which the individual must resolve, decisions taken among others. Information can only be withheld about aspects which, under law, are confidential or the knowledge of which by the individual could affect the outcome of the process or the rights of others involved, in which case the refusal to provide the information must be given in writing. Information requested must be provided within 10 days.[27]

b) During the preparatory phase when the Public Administration is preparing information and opinions in response to an application, individuals may only be given information about the legal formalities they need to comply with or complete, or about any doubts arising from their application which they need to clarify.[28]

c) Information requested in writing must be provided in writing as long as the request contains the full contact details of the person making the request. Any information which as a result of its technical complexity requires greater consideration, or which is not answerable for any number of reasons must be submitted to a higher authority[29].

d) The reception area of Public Administration offices must have the following on display[30]:

- Information on the location for the processing of the various different types of information.
- A table of costs of services.
- Telephone numbers of phones specifically for the public (green lines).
- Templates of types of letter and document which must be submitted.

[25] Decree 30/2001, Art 37
[26] Decree 30/2001, Art 43
[27] Law 14/2011, Art 67
[28] Law 14/2011, Art 93
[29] Decree 30/2001, Art 38
[30] Decree 30/2001, Art 39

e) The Public Administration must place at the disposal of the public one or more lines specifically for their use. These will be designated as "Green Lines". Green Lines must be installed in such a way that they cannot be used for making internal or external calls and as such are always available for the public. The existence of such lines must be widely communicated and must be published in the telephone directory[31].

Complaints books and identity of officials

a) Every Public Administration office must have available a book of complaints and suggestions which must be kept in the area where the public are attended and its existence must be clearly communicated to the public. The book must contain three detachable copies of different colours. Any citizen who does not know how to, or cannot write in the official language has the right to use the services of an official or other person, for free, to formulate their suggestion or complaint. The complainant must be given a copy of what is written in the book. The complaint must be answered within 30 days by the service which has been complained about[32].

b) Public Administration staff and officials must, while at work have a badge which is clearly displayed and which includes a government logo, with the sector, name, number and photograph of the official clearly visible[33].

Submission of documents and information

a) Business citizens should note that all documents presented to the Public Administration must be given a receipt or a copy of the original must be signed and dated with a declaration of receipt of the original. A receipt must be passed for any payment made to any part of the Public Administration. In addition the Public Administration must make it possible for payments to be made directly by the citizen through a bank deposit[34].

b) The verification of photocopies can be done for free at the department where they are to be submitted as long as the original is shown at the same time. The official who verifies the copy must declare in writing that they have seen the original and place their signature and the date on the document[35].

c) Wherever possible communication with the Public Administration should be undertaken in writing and the business citizen should retain copies of written communication with proof that it has been submitted, including date and name of the person who received any document submitted. Use of the "Green Line" is an exception to written communication, but it is worth following up any conversation undertaken with an official using a Green Line or other form of verbal communication, with a written summary of the conversation, so that a written record is maintained.

d) The law provides clear rules in respect of how communication between individuals and the Public Administration is to be managed, and what the business citizen can expect. Official

[31] Decree 30/2001, Art 44
[32] Decree 30/2001, Arts 45, 46 & 49
[33] Decree 30/2001, Art 41
[34] Decree 30/2001, Art 57
[35] Law 14/2011, Art 89 and Decree 30/2001, Art 56

communication between departments and between departments and individuals must be official and written. Official, titles must be used in correspondence with all persons who possess such a title[36].

e) All Public Administration bodies must wherever possible provide an email address for citizens to use to contact them, and make this information publicly available and ensure that the email address is managed. Correspondence exchanged by email has the same value as correspondence undertaken by other means and must be treated in the same way, except in the case of documents which require a notarized signature or authentication.[37]

Written correspondence by the Public Administration

a) Official internal Public Administration correspondence is undertaken using Official Notices for communication requiring a formal tone and Notes for simple communication usually addressed to individuals. Types of written communication which may be issued by the Public Administration include[38]:
   - Act-an instrument which registers facts or important occurrences for the Public Administration.
   - Certificate - an instrument which establishes an agreement or procedure.
   - Circular - official correspondence destined for a number of different destinations.
   - Decree - an instrument communicating information of general interest to the whole service.
   - Remittance advice - allows the sending of documents and materials.
   - Information - Instrument which clarifies and provides the necessary information to allow the emission of a dispatch.
   - Information/Proposal - That which gives the facts, data and basis necessary to issue or refuse a dispatch.
   - Memorandum - A simple and informal method of communication which may be used within the ranks of the Public Administration.
   - Order of Service - Formal instructions for a particular department issued by the head of the department, with the effect of an internal ruling.
   - Opinion - provides a technical opinion on a specific issue.
   - Report - analytical description of the facts, conclusions and proposals.

b) Without prejudice to those situations in which specific rules for certain services are established by regulation, in general written communication should normally deal with only one issue, be concise and clear and comprise the following:
   - The emblem of the Republic of Mozambique or logo of the institution, telephone and fax numbers, postal and email addresses;
   - The identity of the author and their respective position;
   - Signature or initial of the author, with an indication of their name, job title, or position;
   - Identification of the person to whom the correspondence is addressed;
   - Have a date and reference number;

[36] Decree 30/2001, Art 69
[37] Decree 30/2001, Art 75
[38] Decree 30/2001, Art 69

- Indicate any other entities that should have knowledge of the contents (for example by c.c.)
- Include the stamp or seal of the institution;

Among other legal requirements which may exist.[39]

c) Correspondence sent by the Public Administration may be sent by post with advice of receipt if its importance warrants this, or if there is a date by which it must be submitted, as in the case of notifications. The submission of other is to be made to the person for whom it is intended and submitted with either a protocol or a remittance advice which must be initialed and dated by the receiver[40].

3.2 General provisions for administrative procedures

Law 14/2011 and Decree 30/2001 establish the formalities for administrative procedures. Key rules are summarized below:

Beginning an administrative procedure:

a) An administrative procedure is begun by the Public Administration or in application by individuals.[41]
b) The following have the legitimate right to begin or intervene in an administrative procedure:
    - Those is possession of subjective rights or protected interests;
    - Associations or foundations defending such interests;
    - Citizens in respect of various general interests such as public health, housing, education, cultural resources among others, which may be prejudiced by the Public Administration's actions;
    - Residents in the administrative area or local authority area where the public good which may be affected by the action of the Public Administration is located.[42]

Contents of an application or initial request:

a) An administrative procedure begins officially with a request formulated in a written document (except in cases where an oral submission is allowed for and without prejudice to the need to record a note of the oral submission made, such note being then signed by the applicant). The initial request is formulated in a "*Requerimento*" (Request or petition) which must contain among other things[43]:

- The name of the department to which it is directed
- The identity of the petitioner by name, civil status, profession and place of residence
- An outline of the basis for the petition including if possible its foundation in law
- A clear and precise indication of what is being requested
- The signature and date of signature.

[39] Decree 30/2001, Arts 70, 71 and 72
[40] Decree 30/2001, Arts 78 and 79
[41] Law 14/2011, Art 61
[42] Law 14/2011, Art 60
[43] Law 14/2011, Art 80 and 81 and Decree 30/2001, Art 52

b) Each *requerimento* must only deal with one request, unless it is dealing with alternative or subsidiary requests. The *requerimento* and all subsequent documentation is to be written in correct, clear, concise and courteous terms and directed to the correct person to deal with such matters according to the law.

c) Specific sectors and procedures have their own formats for *requerimentos* which are normally described in the relevant sectoral legislation and per Decree 30/2001 Article 39 these should be displayed on the public noticeboard at the relevant office where the *requerimento* is to be presented.

Signature of the requerimento

a) The signature of the applicant on a *requerimento* can be verified free of charge at the office where the document is to be submitted, subject to presentation of an identity document. The number of this identity document will then be recorded on the document to be submitted. If the applicant has already lodged a document with a verified signature, related to the same matter at the same office, further verification of signatures on documents related to the same matter is dispensed with[44].

b) In the case of business citizens it is sometimes necessary to show a power of attorney (*procuração*) when submitting a *requerimento*, to demonstrate that the signatory has sufficient authority to be submitting the request.

Submission of the requerimento

a) Documents must be submitted at the relevant office of the correct department of the Public Administration except in cases where other legal provision is made. Documents directed to central government may be submitted at the corresponding district or provincial offices. When documents are to be submitted to an office or representation that does not exist in the area near the residence of the applicant, they can be submitted to the district administration. Documents submitted in this way must be passed on to the relevant department accompanied by any other relevant material, within 5 days by registered mail. Unless the law provides to the contrary individuals can opt to send the document themselves by registered post.[45]

b) The Public Administration will pass on any and all documentation accidentally addressed to it to the correct department or person, notifying the interested parties if necessary[46].

c) *Requerimentos* must be registered with an entry number, date, indication of objective, number of documents attached, and the name of the applicant. The registration number is added to the *requerimento* with the initials of the person who registered it.[47]

Passage of the requerimento through the Public Administration to a final decision

a) Submission of a *requerimento* having been made the entire process accompanied by all the necessary information must be passed to the person responsible for taking the decision on the

[44] Law 14/2011 Art 82 and Decree 30/2001, Arts 53 and 54
[45] Law 14/2011, Art 85
[46] Decree 30/2001, Art 55
[47] Law 14/2011, Art 88

application within 10 days counted from the date of submission, unless other periods are established in law. Non-compliance with the time frame given above must be approved by a relevant superior. The 10 day period does not include the time required to carry out any necessary external research or investigation required for the processing of the application. However if additional time is required the Public Administration must inform the applicant of the delay and of the advancement of the application.[48]

b) Every request submitted for dispatch must be accompanied by written information supplied by the relevant official and must contain the following information[49]:

- A summary of the material included in the application
- A summary of the applicable laws and precedents as they apply to the situation and to any analogous matters.
- Indication of aspects requiring resolution and a proposed decision.
- Date and signature of the official preparing the information.

c) During the preparation phase applicants may only be informed of the procedures being followed or required to supply any necessary clarification or extra information[50].

Time periods for decisions by the Public Administration

a) The information gathered by the Public Administration pursuant to the application is then submitted to the person responsible for making the decision, who will take a decision based on the information provided and issue a dispatch[51]. The communication of dispatch must be given in writing to the interested parties. Where the communication makes reference to another document the relevant section of said document must be transcribed or a copy attached to the dispatch. If for any reason communication is not in writing and a meeting is required with the applicant this must take place at the offices of the Public Administration within normal working hours[52].

b) Administrative procedures must be concluded within 25 days unless another time period is provided in law or exceptional circumstances apply. This time period may be extended to an additional 25 days with approval from the most senior official in the relevant body. Non-observance of the established time period for responses must be justified by the official responsible for the process, to the senior person within 5 days of the expiry of the time period and the justification for the delay must be communicated to the applicant, along with a provisional date for a decision being forthcoming.[53]

c) The relevant body must issue a final decision within 15 days, from the date of presentation of the document for dispatch.[54]

[48] Law 14/2011, Art 92
[49] Decree 30/2001, Art 61
[50] Decree 30/2001, Art 61
[51] As noted previously the dispatch must be delivered to the applicant either by registered post or physically with a registration document to demonstrate delivery per Decree 30/2001, Arts 78 and 79
[52] Decree 30/2001, Art 63
[53] Law 14/2011, Art 76
[54] Law 14/2011, Art 105

d) In general time periods are calculated in continuous calendar days, unless the legislation specifies differently.[55] See also section 3.3.5 below). The lack of a final decision within the time period indicated signifies the rejection of the application, unless the process has been stopped as a result of an action by the applicant, such as not providing additional information. Specific legislation described how tacti approval may be presumed from a lack of response.[56]

e) If the time period for issuing a dispatch expires the applicant has the right to request a certificate of dispatch or of non-dispatch, within 60 days. If the certificate is not issued within 10 days from the date of application for said certificate then the request contained in the initial *requerimento* is considered to have been rejected.[57]

Notifications

a) Without prejudice to legal exceptions individuals must be notified of administrative acts which: 1) decide on any intentions they have formulated; (ii) impose obligations, sanctions or cause prejudice; (iii) create, extinguish, increase or reduce legally protected rights and interests or affect the conditions of such rights.[58]

b) Notifications must include the full text of the administrative act, identifying the respective administrative procedure, the author of the act and the date as well as the body responsible for considering any legal challenge to the act, and the time period for any such challenge. [59]

c) Notifications can be made in person, or by written notification including by fax or telephone (telephone notification being subject to subsequent written confirmation, but the date of the telephone call being the date of notification for legal purposes), as convenient, or should any of these methods of communication be impossible or where the person or people to be notified are not known, or are many, then notification can be made by publication in at least two major newspapers most frequently read in the geographical area where those to whom it is addressed live or have their head office.[60]

3.3 Mechanisms for the protection and guarantee of individuals' rights and legitimate interests before the Public Administration

3.3.1 General framework

The law provides various ways in which a business person can establish relations with the Public Administration as well as ensuring the protection of their legitimate rights and interests, or vice-versa. These include: (i) requests for information; (ii) application for a service or procedure; (iii) inspection by the Public Administration and subsequent measures; (iv) complaints, appeals, either hierarchical or judicial, against decisions taken by the Public Administration; and (v) complaints and denunciations.

[55] Law 14/2011, Art 78, Law 9/2001, Art 31, Civil Code Art 279, applied in accordance with Law 9/2001 Art 30
[56] Law 14/2011 Arts 105 and 108 and Decree 30/2001, Arts 59 and 60
[57] Law 14/2011, Art 109 and Decree 30/2001, Art 65. Note that the individual can use various means at their disposal to repudiate the rejection of their request, see Section 3.3 of this manual
[58] Law 14/2011, Art 71
[59] Law 14/2011, Art 73
[60] Law 14/2011, Art 75

In most cases engagement with the Public Administration is trouble-free. However what are the business citizen's rights if, in such engagements they believe that their rights have been injured? The business citizen has various mechanisms at their disposal to protect against non-compliant acts by the Public Administration, at the levels of the Constitution, general legislation on the Public Administration and specific sectoral legislation dealing with procedures, such as for example legislation on labour inspections.

As mentioned above, the CRM establishes certain individual rights that are relevant to the business citizen, namely:

a) The right to State compensation and liability, recognised for all individuals, as a way to compensate for damages caused by the violation of fundamental rights, while the State shall be responsible for any unlawful act by its agents, in the exercise of their functions[61];

b) The right to contest those acts that violate the rights of individuals, as well as the right of appeal to the courts[62];

c) The right to present petitions, complaints or claims to the competent authority in the defence of violated individual rights or of the public interest[63];

d) The right of resistance, i.e., the right not to comply with orders that are unlawful or that infringe individual rights, freedoms and guarantees[64];

e) The right to popular action, which can be exercised personally or through associations for the defence of the interests in question, among others, in order to claim compensation to which they may be entitled[65].

Note that as a general rule and without prejudice to provisions to the contrary, complaints and hierarchical appeals can be based on the illegality, or inconvenience of the act being appealed against. It is important to note that anyone who has expressly or tacitly accepted without reservation the act undertaken by the Public Administration is then prevented from subsequent complaint or appeal.[66]

Given its importance for the contestation of administrative acts there follows a description of what is meant by acts which are null or can be annulled. It is important to take into account that, as a result of the regime which applies and the serious legal consequences, annulment is only applicable in cases expressly provided for in law. Acts which are considered null produce no legal effect, independently of a declaration of nullity, and their nullity may be invoked at any time by any interested party.[67] However acts which can be annulled can only be challenged within the legally established time frame, this being the norm, unless the law establishes a different legal outcome.[68]

[61] CRM, Art 58
[62] CRM, Arts 69 and 70
[63] CRM, Art 79
[64] CRM, Art 80
[65] CRM, Art 81 Note that this right is not yet exercised due to general legislation on procedures for this type of action not having been approved. A draft of legislation exists but has never been approved by the National Assembly
[66] Law 14/2011, Art 156
[67] Law 14/2011, Art 130
[68] Law 14/2011, Art 132

Acts which can be annulled are therefore different to null or legally non-existent acts, in that they can be rectified, reformulated or converted.[69]

The law therefore considers these types of acts as follows:

a) Acts which are null: are those which fulfill any of the essential elements, or for which the law provides expressly for this type if invalidity. The following may be considered acts which are null:[70]
   i) Acts involving usurpation of powers (in cases where for example an administrative authority assumes attributes reserved for the legislative or judicial branches of government);
   ii) Acts requiring a legal basis, where such acts refuse, restrict or affect legitimate rights or interests, or impose or aggravate obligations, responsibilities or sanctions;
   iii) Acts outside the role and powers attributed to the body which has undertaken them;
   iv) Acts the objective of which is impossible, unintelligible or which constitute a crime;
   v) Acts which affect the essential content of a fundamental right;
   vi) Acts undertaken under physical or moral coercion;
   vii) Acts which absolutely require legal format;
   viii) Deliberations undertaken without quorum or necessary majority;
   ix) Acts which offend cases which have already been judged; and
   x) Acts consequent to administrative acts which have been annulled or revoked, when there is no counter-interest against the legitimate interest in maintaining the subsequent act.
b) Acts which can be annulled: are those which offend the applicable norms and principles and where there is no other legal sanction for the violation of these norms.[71]

3.3.2 ***Complaints Procedures***

Complaint is a contestation of an administrative act or decision made to the author of the act or decision in question.

A complaint is always possible, provided that revocation is within the power of the official who performed the act. Where this possibility does not exist, the refutation of the act or decision by the official is made in the presence of his immediate superior.

The period for lodging a complaint is 15 days from the date of notification of the act or knowledge thereof by the interested party. However, if the aim of the complaint is to suspend execution of the act while the complaint is analysed, this must be specifically requested within 5 days[72]. The request for suspension of the effect of the administrative act must be based on the possibility of irreparable damage, or damage which it would be difficult to recover from, occurring as a result of the act, and this must be sufficiently proved as part of the submission. Note that in addition to requesting a suspension of the application of the administrative act referred to here, individuals may also apply to the Administrative Court for a suspension (see Section 3.3.9 below).

[69] Law 14/2011, Art 133
[70] Law 12/2011, Art 129
[71] Law 14/2011, Art 131
[72] Law 14/2011, Arts 158 & 159

If an individual has submitted a complaint, the time period for appeal against the act to a hierarchical superior is suspended until such time as a decision on the complaint itself is provided.[73]

Unless a special legal provision exists the response to the complaint shall be given within 10 days[74]. If no decision is given within 30 days from the date of submission of the complaint[75], an implied rejection of the complaint must be assumed and the individual may then proceed to use other options as indicated below

3.3.3 Procedure for hierarchical appeal

Hierarchical appeal is a challenge to an act, or decision presented to the immediate superior of the official who has performed the act or taken the decision, requesting the revocation or replacement of that act or decision, whether because of its unlawfulness or due to its inconvenience or inopportuneness[76]. As a rule a hierarchical appeal is possible whenever the authority that performed the act or took the decision, is subject to the control and management power of senior authority, expect where the law explicitly excludes the possibility of this type of appeal.[77]

A hierarchical appeal shall be lodged within the following time periods[78]:

a. at any time, in cases of null or legally non-existent acts (see Section 3.3.1 above));
b. within 90 days from the date of notification, in cases of acts which can be annulled (see Section 3.3.1 above); or,
c. within 1 year, when, in the case of an act which can be annulled where an implied rejection also applies.

Hierarchical appeal suspends the effect of the act appealed against and the authority appealed to may revoke the previous decision or take a decision in the case of appeals relating to an omission.[79]

Anyone who may be affected by the appeal is invited to present their position within a period of 15 days.[80] The author of the act appealed against must provide their opinion within 10 days of notification of the other interested parties, or where no third parties exist, from the date of submission of the appeal. The author may opt to revoke, modify or substitute the act and communicate this to the hierarchical superior who is dealing with the appeal. Where this occurs the appellant must also be informed.[81]

[73] Law 14/2011, Art 160
[74] Law 14/2011, Art 161
[75] A copy of the document submitted, stamped by the relevant department receiving said document should be requested and retained as proof of the date of submission
[76] Law 14/2011, Art 163
[77] Law 14/2011, Art 162
[78] Law 14/2011, Art 164
[79] Law 14/2011, Art 166
[80] Law 14/2011, Art 167
[81] Law 14/2011, Art 168

The hierarchical superior responsible for deciding on the appeal must do so within 15 days of receipt of the appeal process from the author of the original act, as described in the previous paragraph. This time period may be extended to 30 days where additional information gathering is required.[82]

3.3.4 Judicial review

Judicial review is a challenge lodged with the Administrative Court or administrative courts responsible for the geographic area or sector covering the author of the act being submitted for review.[83] A judicial review is a legal action which declares a specific act to be null, annulled or to be legally nonexistent.[84]

A judicial review will only be accepted by the court if the act is final and executable, i.e., not subject to an obligatory hierarchical appeal, which the individual has not lodged.[85]

In general, the decisions of inspectors, for example are not final and executable, which implies that there a hierarchical appeal should always be used before starting a court case, on pain of the case being immediately rejected as a result of the appeal route not having been used, unless the law explicitly determines the contrary[86].

In cases where a judicial review is optional and the individual decides to follow this route it is important to note that the time period for submitting this type of appeal is not suspended, which means that a judicial review request should be started with the Administrative Court if they do not want to lose this option. If in the interim a hierarchical appeal decision is taken and is favourable to the appellant then the Administrative Court can be asked to cancel the request for judicial review. The rules about compulsory judicial review are diverse. In such cases the application for judicial review will be rejected out of hand if submitted before all other types of appeal, such as hierarchical appeal, have been exhausted before submission of the judicial review request.

Judicial review is based on the usurpation of power, comprising the inappropriate use of powers or delegated authority, not conferred by law, or which are in clear violation of the law; on lack of competence which comprises the undertaking of acts which are not permitted within the powers or role or delegated to the person undertaking the act[87]; abuse of form[88] (which includes lack of basis or lack of essential elements which the act must comply with); violation of the law and diversion of power.[89]

[82] Law 14/2011, Art 171
[83] Under the terms of Law 25/2009 de 28 September (organic Law on Administrative Justice) Arts 27 (a), 29 (a) and 50 there are administrative acts which may be appealed directly to the plenary of the Administrative Court, or to the litigation section of the Administrative Court, namely when the author of the act appealed against holds major office, is the Prime-Minister or a member of the Council of Ministers. In all other cases acts must be brought for review before provincial level administrative courts per Arts 51 and 52 of the same law.
[84] Law 9/2001, Art 26
[85] Law 9/2001, Art 27
[86] Law 14/2011, Art 162
[87] Decree 30/2001, Arts 21 - 26
[88] Decree 30/2001 Art 10 and Law 14/2011, Art 71
[89] Law 9/2001, Art 28

The time periods for initiating a judicial review must be strictly observed and are as follows[90]:

a) At any time, in cases of null or legally non-existent acts (see Section 3.3.1 above);
b) within 90 days from the date of notification, in cases of acts which can be annulled (see Section 3.3.1 above); or,
c) within 1 year, in cases of acts which can be annulled, when an implied rejection is involved, or in cases in which the appellant is the Public Prosecutor.

3.3.5 Time periods for appeals

In general, the time periods for appeals and contestations by complaint, hierarchical appeal and judicial review described above are calculated in calendar days. However sectoral legislation may stipulate specific rules. For the three options outlined above (complaint, hierarchical appeal and judicial review), the calculation of time periods is subject to the following general rules[91]:

a) The time period is continuous (calendar days);

b) In calculating the time period, the day on which the event occurred is not included;

c) If a time period that ends on a day on which the public service or court is not open to the public (Saturday, Sunday, public holiday or judicial vacations) the date of conclusion of the period is transferred to the subsequent working day[92];

d) The time period begins irrespective of any formalities, with the exception of a judicial review. The time period for a judicial review begins after the following have been verified, in accordance with the applicable act:
    i. Production of effects of the act/decision; or
    ii. Publication of the act/decision, where the law requires such publication; or
    iii. Notification of the act/decision when publication is not required.

e) In the case of judicial review, for acts whose publication and notification can be legally foregone, the time period starts from:
    i. the day on which the act is performed, in the case of a verbal act;
    ii. the day of effective or presumed cognisance of the act by the individual, or of the start of its execution, in the remaining cases.

3.3.6 Rules regarding execution of decisions in case of appeals

Note that for the three types of appeal referred to above the following general rules apply to execution of acts or decisions:

[90] EGFAE, Art 132 and Law 9/2001, Art 30
[91] Law 14/2011, Art 78; Law 9/2001, Art 31 and Art 279 of the Civil Code, applied by force of Law 9/2001, Art 30.
[92] In cases of complaint and the hierarchical appeal, the term can be extended for another 15 days, if the interested parties reside or are abroad or outside the area where the service is situated

a) A complaint does not suspend the execution of the act or decision, except where the law specifically provides for this, unless the individual requests such suspension based on irreparable prejudice (or damages from which it would be difficult to recover) that would result from the execution of the act or decision, attaching proof of this fact. This request must be submitted within 5 days from the date on which the individual receives notification of the act or decision[93].

b) In the case of a hierarchical appeal, unless otherwise indicated in law, the act or decision appealed against is suspended[94].

c) In the case of a judicial review, the act or decision is not suspended, except where a non-punitive surety payment is made[95].

3.3.7 Requirements for presenting an appeal

A complaint or a hierarchical appeal is made in writing and must include the following legal requirements:

a) the full identification and residence of the appellant;
b) the entity to which the complaint or appeal is addressed;
c) clear indication of the act/decision being appealed (attach a copy of the notification);
d) the facts and basis for the appeal; where possible, the legal basis including the legally protected right or interest that is being violated;
e) the date and signature of the appellant's representative.

Each application shall not contain more than one appeal[96]. It is important to verify whether or not sectoral legislation requires any additional elements in the appeal.

For a judicial review, given the specific requirements of this type of submission the individual would require legal support. A petition addressed to the court must include:

a) indication of the section or plenary court;
b) identification and address of the appellant;
c) indication of third parties, if applicable, which may be prejudiced by the appeal;
d) identification of the author of the act/decision appealed against, as well as if the author acted on the basis of delegation or subdelegation of powers;
e) narrative of the facts and legal reasons comprising the basis for the appeal;
f) clear presentation of the legal standards or principles infringed;
g) formulation of the petition to be considered by the court;
h) indication of the facts that are to be proven;
i) request for evidence;
j) indication of the documents attached to the petition (among which, confirmation of the act appealed against, other documents that prove the veracity of the declared facts, witnesses and

[93] Law 14/2011, Art 159
[94] Law 14/2011, Art 166 para 2
[95] Law 9/2001, Art 29
[96] Law 14/2011, Art 80 and EGFAE, Art 129

facts about which they will testify, as applicable, application for hierarchical review with proof of submission, if this is the case, power of attorney for use in court or equivalent and legal duplicates).

3.3.8 Other methods of contestation

In addition to the three most common options for challenging acts or decisions indicated above (contestation, hierarchical appeal and judicial review), the law also provides for:

a) *improper hierarchical appeal* – lodged to a body without supervisory power over the one that performed the act, within the same body but not within the direct administrative hierarchy of the one which undertook the act in question;[97]

b) *supervisory appeal* – challenge of an act or decision before the supervisory body responsible for the one which issued the act or took the decision. This is only relevant in cases in which the law explicitly provides for such a possibility and this type of appeal is in general optional, since supervisory powers are generally limited to what is explicitly determined by law[98];

c) *review appeal* – challenge of an administrative act when facts occur or evidence arises that are liable to prove the inexistence or inaccuracy of facts that influenced the original decision. A review appeal must be requested within 180 days from the date of cognisance of the new facts;[99]

d) *complaint or indictment* – (see Section 3.3.10.3 and Section 5.4);

3.3.9 Other appeal mechanisms before the Administrative Court

At judicial level and before the Administrative Court, as well as the judicial review described above, the law provides the following options which should be considered:

a) *Subpoena for information, consultation of a process or preparation of a certificate*: This can be used by an individual who needs to consult documents in a process or obtain documents from the Public Administration to pursue administrative or legal procedures and has not received a favourable response within 20 days from the date of presentation of the request, or the request in question has been refused, or a partially satisfactory response has been obtained[100]. It is important to note that one peculiarity of this method is that the time period for the use of administrative or litigious approaches are suspended as soon as a subpoena for information is submitted, until such time as a decision is handed down, the subpoena is rejected, or complied with.[101]

[97] Law 14/2011, Art 172
[98] Law 14/2011, Art 173
[99] Law 14/2011, Art 175
[100] Law 9/2001, Arts 93 & 94
[101] Law 9/2001, Art 95

b) *Suspension of effectiveness of administrative acts*: this is a supplementary procedure that can be lodged to safeguard the effectiveness of the appeal. It must include the following: indication of the possibility of damages that cannot be compensated or the whereby the compensation for these would be difficult if the act is executed (this requirement is not necessary for acts of a sanctioning nature, such as those carried out by public inspectors); indication that the suspension does not represent serious damage to the public interest pursued by the act; and indication that the process does not result in strong signs of unlawfulness of the appeal. The request for suspension can be made before lodging the appeal, simultaneous with or during the appeal. The law lays down the legal requirements that the application for suspension shall comply with[102].

c) *Warrant to abstain from certain behaviour*: this is also a supplementary procedure. It aims to require that the Public Administration cease the violation of a right or obligation. The violation can be actual, or simply expected[103].

d) *Actions aimed at administrative contract issues, liability of the Public Administration or of its agents and officials for prejudices caused, including acts of recovery for the benefit of the State and the recognition of legally protected rights and interests*. In general, these actions can be lodged at any time, without prejudice to exceptions that may be determined in special legislation[104]. The law also stipulates the terms under which individuals can request the execution of the decisions of the Administrative Court that are not executed by the Public Administration[105].

3.3.10 Disciplinary, Civil and Criminal Liabilities

In general, the violation of the rights of others as well as of the laws and other legal provisions aimed at the protection of the interests of others implies the (disciplinary, civil and/or criminal) accountability of the agent, official or office holder of the Public Administration, and the obligation to compensate the injured party for damages caused.

3.3.10.1 Disciplinary liability

State officials and agents are liable to disciplinary procedures and the application of disciplinary sanctions[106], without prejudice to civil or criminal liability that may occur when there is violation of their obligations, abuse of functions or any other action that prejudices the Public Administration[107]. Whenever the action or omission is of a fraudulent or culpable nature, a disciplinary sanction will be imposed, irrespective of the existence or not of prejudice to the service[108].

[102] Law 9/2001, Arts 108 - 119
[103] Law 9/2001, Arts 120 - 125
[104] Law 9/2001, Arts 98 - 99
[105] Law 9/2001, Arts Art 164 & subsections
[106] The right to start disciplinary proceedings expires after 3 years from the date of occurrence of the infraction, unless this term has been suspended by the institution of an inquiry or investigation – EGFAE, Art 80
[107] EGFAE, Art 78, para1
[108] EGFAE, Art 78, para 3. The agent or official is not liable if he is executing work-related orders or instructions from his immediate superior and if he has previously complained or requested in writing confirmation of the order or instruction. This exception will not be applied if following the order or instruction constitutes the practice of a crime, in which case the agent or official is not required to obey the order given – EGFAE, Art 79

The disciplinary sanctions that may be imposed are those established by law, namely[109]:

a) warning;
b) public reprimand (in the presence of other officials and agents of the same service);
c) variable fine equivalent to 5 to 90 days of salary of the official or agent in question;
d) demotion for 6 to 24 months;
e) dismissal from the state apparatus for 4 years; after this period readmission may take place, following the requirements laid down in the law; and,
f) definitive expulsion from the state apparatus, with loss of all rights acquired in the performance of his functions[110].

Demotion applies, among others, to cases of: (i) professional incompetence that cause damage to third parties; (ii) the abuse of power to obtain advantage, to bring to bear pressure or revenge; (iii) the practice of acts that favour outside interests; and (iv) the attendance of individuals with lack of good manners and respect[111].

Dismissal applies, among others, to cases of serious professional incompetence or repeated non compliance with the law[112].

Expulsion applies, among others, to cases of: (i) violation of professional confidentiality that cause material or moral prejudice to the State or to individuals; (ii) a long-term prison sentence or a prison sentence for serious crimes; (iii) the embezzlement of State funds or property; and (iv) the use of position to request or receive money or the promise of money or other advantage to which the official has no right, in exchange for the practice or omission of an act in violation of his obligations[113].

Written or verbal communications can be made by individuals about infractions by State officials and agents that will serve to initiate the relevant disciplinary proceedings, if there is found to be sufficient grounds for this[114].

3.3.10.2 Civil liability

Civil liability aims to place the injured party in the situation in which he would have been if the detrimental occurrence had not taken place, by means of compensation.

As indicated above, the CRM and the general performance standards of the Public Administration stipulate explicitly the issue of liability for damages caused to individuals by actions of State officials and agents.

In general, liability for damage or prejudice caused to others is demanded from the originator of the act that caused the damage. There are cases in which the law specifically stipulates that the entity responsible for the person who caused the damage, is liable, irrespective of whether or not the responsible entity intervened in the act that caused the damage. This is known as "liability of the

[109] EGFAE, Art 82, para1
[110] EGFAE, Art 81
[111] EGFAE, Art 86
[112] EGFAE, Art 87
[113] EGFAE, Art 88
[114] EGFAE, Art 100, paras 1 & 2

principal for the commissioner" or "vicarious liability", in civil legislation[115]. In such cases, the liability and compensation for damages is claimed from the entity responsible for the agent, irrespective of any fault of that entity itself.

In this respect, the CRM clearly states that "*The State shall be responsible for damages caused by the unlawful acts of its agents, in the performance of their functions, without prejudice to rights of appeal*"[116]. As can be inferred from this constitutional provision, the liability of the State is based on the same conditions and principles as those on which vicarious liability is based. It therefore follows that the individual require the imposition of civil liability on the State and consequent compensation for damage and prejudice suffered, as a result of illegal acts by public officials, it being the duty of the State to subsequently obtain from its officials whatever it has lost in terms of compensation for acts undertaken by them[117].

Law 7/2012 introduces a new approach[118], i.e., the introduction of a legal basis for public officials to be held civilly liable, i.e., to compensate directly or personally for damages caused through the principle of personal liability, without prejudice to the joint and several vicarious liability of the State.[119] The State also continues to have the right of recovery over the agent or official in question, in relation to what it has had to pay in compensation.

Claims for compensation and civil liability against the State are presented to the Administrative Court as described above). To determine the existence of civil liability and the consequent charge against the public official who undertook the act or omission, proof of damage is necessary, before anything else. This damage must have a demonstrable causal link between the act (or omission) of the public official and the prejudice suffered. In addition the fact that resulted in the damage must be unlawful, i.e., have violated legally protected rights or interests.

Evidence is required to support the facts or rights asserted by the injured party. The injured party is responsible for presenting such evidence to the court or other relevant body in order for a decision to be taken or judgment given. Evidence can comprise: witnesses (witness evidence); documents (documentary evidence); and experts (expert evidence). In addition the Administrative Court can require the presentation of any evidence it considers relevant.

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[115] Civil Code, Art 500

[116] CRM, Art 58, para 2

[117] The same principle of accountability is applied in the State's private relationships i.e., the State may be held civilly liable for damage caused by acts of its bodies, agents or representatives in the performance of private management activities. Compensation demanded within the scope of private management acts is granted in accordance with the civil law, i.e., cases are brought before the civil courts

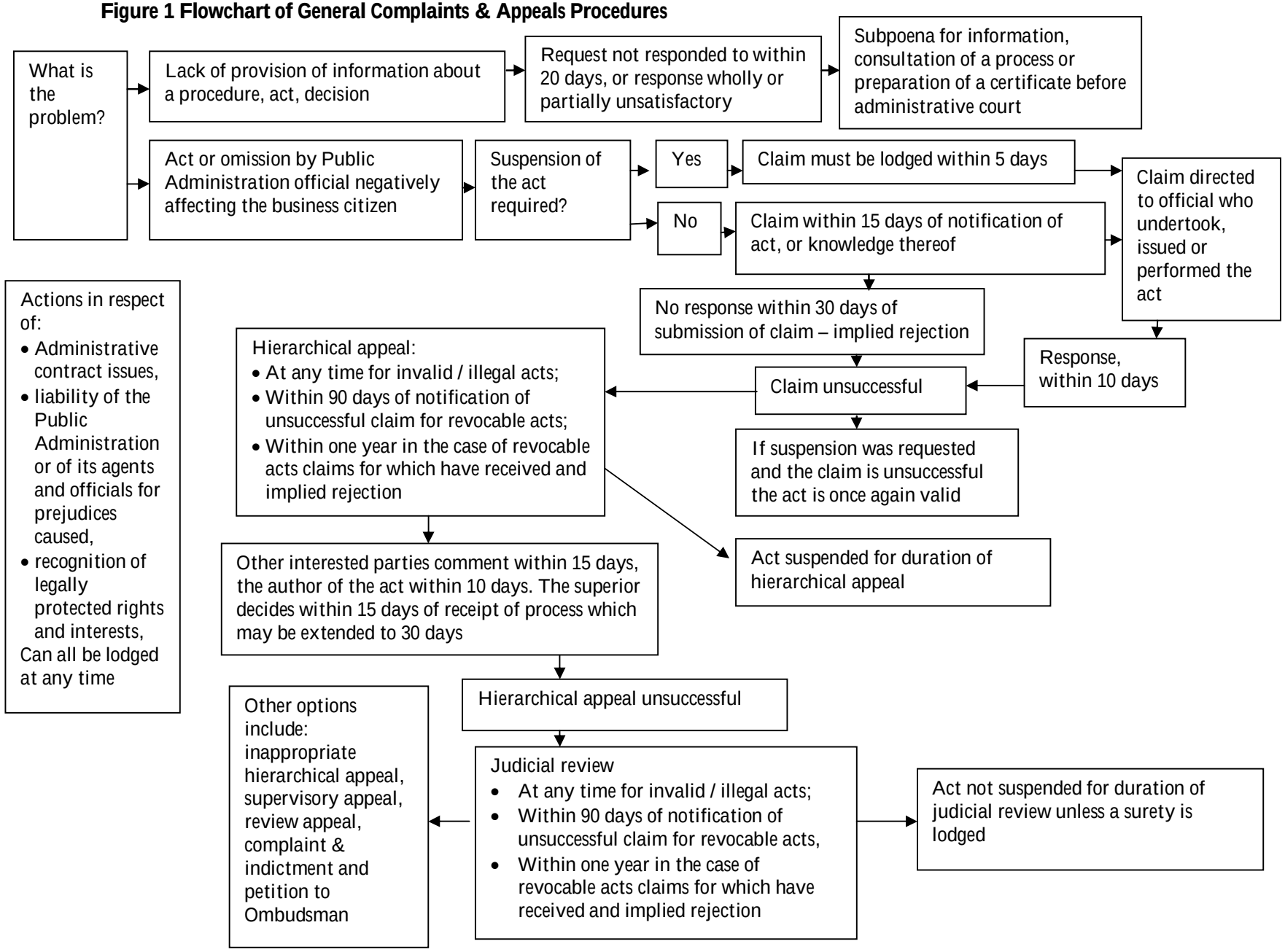
[118] Law 7/2012 Art 17, para *1. The office holders of Public Administration bodies, their officials and other agents bear civil, criminal, disciplinary and financial liability for the legal acts and omissions they perform in the exercise of their duties, without prejudice to the liability of the State, in accordance with the Constitution and other applicable legislation.*

2. To establish personal liability, the Public Administration can use programme contracts and results-oriented management mechanisms.

3. Without prejudice to the internal administrative control standards, the financial liability is established by the Administrative Courts."

[119] The principle of personal liability responds to the concerns raised, specifically that compensation does not apply only in situations of "illegal acts" (as envisaged in the CRM), but also in respect of "illegal omissions" which also cause damage to individuals

Figure 1 Flowchart of General Complaints & Appeals Procedures



3.3.10.3 Criminal liability

Criminal liability is always personal. This is so because under the law only persons having the necessary mental state and liberty to act can be criminals[120], even if they act on behalf of collective entities. Criminal liability falls exclusively and individually upon the perpetrators of crimes and transgressions[121].

Thus, business citizens should pay attention to acts by officials, agents and office holders of the Public Administration which may constitute a crime, so that they can report these to the relevant authorities in order that criminal proceedings may be instituted.

Criminal acts are defined in the Penal Code and supplementary legislation. Examples include, corruption, violation of the obligation of secrecy, embezzlement, extortion, abuse of position or function, and the abusive use of goods or services, among others.

The question which always arises when a crime occurs is if any member of society can present a criminal complaint. A criminal process requires that not only the sequence of actions, but also the nature of the crime must be known, that is, is it a public, semi-public or individual crime, and therefore what sort of proceeding should be instituted.

For each case there is a sequence of procedures, which often differ from case to case, some being more serious, some having longer time periods and different procedures, other types of case being less serious and having fewer procedures and shorter time periods.

Any criminal process begins with a Criminal Notification (*notícia do crime*) which is an essential component for the beginning of an investigation by the public prosecutor's office, unless the crime in question is against an individual, independent of whether or not the suspicion falls on the person accused of the crime.[122] It is essential that the suspicion coincides with a specific type of crime or else the case will be shelved.[123]

At times in order for the public prosecutor to bring a criminal proceeding[124] there needs to be a criminal complaint, or the party against whom the crime was committed must make a representation. For clarity the different types of representation are described as follows:

a) Criminal complaint (*queixa-crime*)

This is a written complaint presented as a *requerimento* using the legally prescribed format, indicating that they wish to proceed in laying a criminal charge against someone for the practice of a particular crime. For semi-public and individual crimes, the presentation of the criminal complaint is an essential condition for the public prosecutor to act.[125]

[120] Penal Code, Art 26
[121] Penal Code, Art 28
[122] Criminal Procedure Code, Art 160
[123] Criminal Procedure Code, Art 25
[124] Criminal Procedure Code, Arts 3 and 6
[125] Criminal Procedure Code, Art 3

In cases of semi-public crimes where the person is caught in the act, they are only detained if the person legally affected makes a criminal complaint. The following have the right to make a criminal complaint in respect of semi-public and individual crimes:[126]

- The victim, that is the possessor of the interests which the law specifically intended to protect by defining a specific act as a crime;
- If the victim dies without presenting a criminal complaint and has not renounced their right to do so, then the right passes to their heirs as legally defined, unless one of these participated in the crime;
- The public prosecutor if the victim is unable to understand their rights, and does not have a legal representative, or where the criminal complaint cannot be presented because the right to do so rests with the person who committed the crime.

A criminal complaint may be made against unknown persons when the person or persons who committed the crime are not known.

A criminal complaint must be presented to the public prosecutor, which is the entity responsible for receiving and acting on such complaints.[127] However a criminal complaint is considered to have been passed to the public prosecutor as long as it is presented to any authority, such as the police for example, which has the responsibility for passing such complaints along.

A criminal proceeding can expire at the end of the time period allowed for its conclusion or as a result of expiry of the rights of the person who presented the complaint. Proceedings may end due to, among others:

- Death of the victim;
- Conclusion of the criminal process;
- Amnesty;
- Partial pardon, or legal renunciation of complaint;
- Voluntary oblation, in crimes punishable by a fine;
- After the statute of limitations expires

The right to present a criminal complaint expires after two years, for crimes for which the sentence of imprisonment applies and after one year for crimes to which a correctional sentence applies, with time periods beginning on the date the crime was committed.[128]

Criminal proceedings may also end if the complainant ends them, thus ending the public prosecutor's involvement.[129] In the case of semi-public and public crimes proceedings cannot be ended by the complainant desisting in their complaint.[130] Where the complainant wishes to end their complaint they must expressly do so.

b) Denunciation / Reporting

[126] Criminal Procedure Code, Arts 6 and 7
[127] CRM, Art 236
[128] Criminal Procedure Code, Art 125, subsections 3 and 4
[129] Criminal Procedure Code, Art 7 subsection 2
[130] Criminal Procedure Code, Art 3, single subsection

Reporting is the communication of a crime to the public prosecutor, using the legally approved method, in order to institute a criminal proceeding.[131] The public prosecutor exercises penal action *ex oficio*, in other words, as part of its functions, meaning that in public crimes, no participation by a victim is required, it is sufficient merely to have knowledge of the occurrence for a criminal proceeding to be started.[132]

A report may be made in writing or verbally. If done verbally it is immediately reduced to writing by the authority receiving the information and by the person making the report. If the complainant cannot write then he may be substituted for the purpose by two trustworthy witnesses[133] and the written report must contain:

- Succinct description of the facts and circumstances;
- Indication of the person who carried out the alleged infraction, or a description to facilitate identification;
- The identity of the victim if known;
- Names and addresses of witnesses;
- A declaration that the person making the report is willing to be constituted as an "assistant" to the process – whenever the criminal proceeding depends on an individual accusation;

In the case of a written report, this must be signed by the person submitting it, or be signed on their behalf if they cannot write.[134]

A report may be made by anyone, to the public prosecutor, to a judge, or to the police as long as the law provides for this.[135]

There are certain bodies, which must pass reports to the public prosecutor directly, namely:[136]

- The police, about any infraction they have knowledge of; and
- Public officials, when they come to have knowledge of an infraction as a result of their job.

Therefore whenever a member of the Public Administration, during their work, comes to have knowledge of a crime for which reporting is compulsory (a public crime), they must write a report which must include:[137]

- The facts which constitute the crime
- The day, time, location and circumstances in which the crime was committed.

If the crime in question is public or semi-public, the person reporting it may declare in their report that they would like to be constituted an "assistant". If it is an individual crime then this declaration is compulsory.[138] The lack of constitution of an "assistant" in such cases will result in the report not being taken forward for investigation, even if the report itself is received.

[131] Criminal Procedure Code, Art 6
[132] Criminal Procedure Code, Art 1
[133] Criminal Procedure Code, Art 9 subsection 1
[134] Criminal Procedure Code, Art 9 subsection 2
[135] Criminal Procedure Code, Art 359
[136] Criminal Procedure Code Art 254 single subsection and Art 359
[137] Criminal Procedure Code, Art 7
[138] Criminal Procedure Code, Art 9 subsection 3

4. INSPECTIONS OF BUSINESS

4.1 General Overview

Apart from requests for information, and applications for services the most common form of engagement between the Public Administration and the business citizen is inspections of the business by inspectors from the Public Administration. The general rules provided in the Constitution and Public Administration legislation apply to all inspectors, regardless of the department for which they work.

A public inspector is a State agent[139], an official who by legal ties performs activities in the Public Administration. In the performance of his or her functions, the public inspector performs administrative acts, i.e., performs acts ensuing from his functions and powers, with respect to the body, institution or service to which he is attached[140].

The powers of State bodies and institutions, as well as those of their agents, are defined by law. In their work public inspectors are obliged to follow the law and the guiding performance principles for Public Administration, especially, respect for legally protected individual rights and interests[141], within the limits and powers granted by law[142].

The objective of the regulation of performance principles for Public Administration and its agents is to oblige the Public Administration itself, and its agents to respect legitimate individual rights and interests, as well as other guarantees for individuals. Thus, as the public inspectors are State agents, their powers are defined by law and they are obliged to perform within the limits and powers granted by law. The powers of public inspectors are laid down in accordance with the sector of activity or the area of inspection to which they are attached. Nevertheless, irrespective of their area of performance, the public inspectors may not make use of their authority and powers to pursue goals that are different from those stipulated by law[143].

The Public Administration shall serve the public interest. Thus, the law grants it powers of authority so that it can perform its functions with the necessary speed. Nevertheless, in order that these powers are not used in a manner that is abusive or prejudicial to individuals, the law also establishes principles and other limits that comprise the basis of the performance and formation of the will of Public Administration. The proven violation of these principles results in legal consequences, which may give rise to the act in question being considered null, in addition to the possibility of civil, criminal and disciplinary liability, according to the case at issue, under the law. Thus, it is important to remember that the Public Administration and its respective agents, officials are required to follow the principles of Public Administration laid out in foregoing sections.

The specific rules which apply to certain key sectoral inspectorates are discussed below. However the reader is strongly encouraged to familiarize themselves with any sectoral requirements which apply to

[139] Decree 30/2001, Art 1, clause b).
[140] Note that an inspector can be an agent or official attached to a specific inspection or oversight directorate or an official who has been specifically indicated for a certain inspection activity without necessarily having such category or irrespective of his or her professional career
[141] "Individuals" meaning natural or legal persons
[142] Law 14/2011, Art 4, para 1
[143] EGAFE, Art 4, paras 1 and 2 and Art 5 para1

their own sector of activity, since rules, requirements, and time periods may vary depending on the sector to which inspectors are attached.

4.2 Combined National Economic Inspectorate

4.2.1 General framework

The Combined National Economic Inspectorate (*Inspecção Nacional de Actividades Economicas* – INAE) was created through Decree 46/2009 of 19th August and Ministerial Diploma 19/2013 of 30 January provides its internal regulation.

The purpose of creating INAE, according to its internal regulation is "to make inspection a single act and thus contribute to improvement of the business environment"[144]. The role defined for INAE includes inspection and oversight of all activities related to the ministries of industry & commerce, tourism, health, environment, energy, transport and communication, education and culture, mineral resources and youth & sports.

In order for INAE to operate Decree 46/2009 defines the following key aspects:

a) The inspection functions of the ministries listed above are expressly handed to INAE;[145] and
b) The staff currently working within the inspectorates of the ministries mentioned are to be transferred to INAE based on joint ministerial dispatches of the Ministry of Industry & Commerce and the relevant line ministry, along with the resources and authority previously held by the inspectorates of these line ministries, which must also be approved by joint ministerial dispatch of the Ministries of Industry & Commerce and Finance.[146]

Currently these dispatches have not been published though inspection activities are being undertaken.[147]

INAE is headed by an Inspector-General nominated by the Prime-Minister, per dispatch of the 26th January 2010.

INAE's internal regulation determines that the national directors that will manage each of the specialized directorates within INAE, along with the heads of local operations are to be appointed by the Minister of Industry & Commerce in consultation with the Inspector-General of INAE. There are

[144] Ministerial Diploma 19/2013, introduction
[145] Decree 46/2009, Art 7.
[146] Decree 46/2009, Arts 5 & 7.
[147] An article on this matter by lawyer entitled "*Inspecções Feitas pelos Inspectores da Inspecção Nacional das Actividades Económicas – INAE, Passíveis de Anulação*", was published in the 10th Newsletter of the Bar Association in February 2013 and is available from http://www.oam.org.mz/wp-content/bi/BoletimInformativo-10Edicao.pdf. This article discusses the legality of inspections undertaken by inspectors from the line ministries whose inspection functions fall within INAE during the period in which the dispatches required to integrate the inspection system have not been published and speculates that the inspections undertaken could be considered illegal since the inspectors undertaking them do not have the authority to do so, meaning that the results of such inspections could potentially be legally null.

to be provincial delegations which are created in accordance with Ministerial Diploma 292/2012 of 7th November[148].

INAE does not have its own specific rules and requirements for inspections, instead relying on the powers provided under the Public Administration legislation described above and on the legislation related to the sector of activity of the business being inspected, taking into account the inspection rules of the various sectors mentioned above, which have not been changed. It is incumbent on business citizens to be aware of the specific sectoral requirements which apply to their business and to the areas which can be inspected and measures which can be taken by the inspectorate. By way of an example below is a summary of the measures that can be taken by INAE in its inspection of industrial and commercial premises and tourism-related premises.

4.2.2 Industrial and Commercial Sectors

Legal Basis:

Companies in the industrial and commercial sectors should take into account Resolution 199/2004 of 24 November, which approves the Regulations for the Inspectorate of the Ministry of Industry and Trade. These Regulations deal with the principles and methodology for inspections, requirements for notification, procedures in the event of seizure of assets among other matters. As mentioned above the inspectoral role of the Ministry of Industry & Commerce now resides with INAE.

Procedures:

Inspections can be notified in advance (*inspecção avisada*) or without notification (*inspecção não-avisada*)[149].

An *inspecção avisada* must give 10 days' notice and is designed to educate the business citizen about the legal requirements in their sector[150] while an *inspecção não-avisada* usually takes place in response to reported or suspected irregularities[151].

In either case, as a rule inspections must primarily be educative and to orient the business citizen about the law[152]. Where irregularities are detected a time period is to be given for these to be corrected, before further action is taken[153]. If no correction is made, or if the business provides false information further action is then taken[154].

If an infraction is detected an *auto de notícia* must be prepared by the inspector which contains the time, date and place, details of the complainant (if one exists), details of the business against which the *auto* is being made, details of the infraction, the law which has been contravened and the

[148] Provincial heads of delegation are nominated by the Minister of Industry & Commerce. Heads of provincial departments are nominated by the Provincial Governor in consultation with the Provincial Delegate
[149] Dip Min 199/2004, Art 1
[150] Dip Min 199/2004, Art 1, clause b)
[151] Dip Min 199/2004, Art 1, clause c)
[152] Dip Min 199/2004, Art 6, para 2
[153] Dip Min 199/2004, Art 6, para 3
[154] Dip Min 199/2004, Art 6, paras 4 & 5

signature of the person responsible for the business in question[155]. If necessary as proof of the infraction the inspectorate may seize goods at the time of issuing the *auto*[156].

A business found to be fully legally compliant may be issued with an exemption certificate or conceded other benefits to encourage companies to comply with their legal obligations[157].

INAE must produce a written document about any penalty imposed.[158] If it is the first infraction found at that particular establishment in a given calendar year, a fine may be replaced with a warning.[159] In the event of recurrence of the same infraction by the same business within six months, the minimum and maximum limits for fines are trebled.[160]

The time period for voluntary payment of fines is 20 days, counting from the date of notification (note that this is not the date on which the business receives the notification, it is from the date on which the notification was issued).[161] If the fine is not paid voluntarily, with proof of deposit in INAE's bank account, the process is passed to the courts for collection.[162] Note that it is important to retain a copy of documents proving payment of the fine and proof of submission of proof of payment to INAE. Businesses which are fined have the right of appeal.[163] Appeals and contestations are discussed in more detail below. The values of fines are divided between the person who applied the fine (25%), the inspection services (25%) and the State budget (50%).[164]

The lifting of a suspension of activity or closure of a business must take place within a maximum of 5 working days after communication to the licensing authority of correction of the maters which led to the suspension or closure.[165]

4.2.3 Tourism

Legal basis:

Ministerial Diploma 102/2002 of 3 July approved the Internal Regulation for the General Tourism Inspectorate. INAE inspects all forms of tourism and restaurant facilities throughout the country.[166]

Law 4/2004, of 17 June approves the Tourism Law and Decree 18/2007, of 7 August approves the tourism, restaurants, bars and dance halls regulation. Both contain information relevant to inspections in this sector.

Procedures:

[155] Dip Min 199/2004, Art 14
[156] Dip Min 199/2004, Art 15
[157] Dip Min 199/2004, Art 16
[158] Decree 18/2007, Art 270
[159] Decree 18/2007, Art 272
[160] Decree 18/2007, Art 273
[161] Decree 18/2007, Art 274
[162] Decree 18/2007, Art 274
[163] Decree 18/2007, Art 277
[164] Decree 18/2007, Art 278
[165] Decree 18/2007, Art 275
[166] Decree 46/2009, Art 4 clause a)

Inspections can be "ordinary" that is, within the scope of a planned series of inspection visits, or "extraordinary" when they are undertaken for specific cases. Inspections are undertaken by teams of, a minimum of two inspectors.[167]

The team must present itself to the person responsible for the tourism establishment, who must indicate a representative to accompany the inspectors, and the team must advise at the end of its inspection of the conclusions it has reached, and if irregularities are detected it must issue and *auto de notícia*.[168]

The *auto de notícia* must include the following: name; type and classification of establishment; identity of the person who accompanied the inspectors; irregularities detected; legal basis for the findings; signature of the owner, manager or representative of the business or, alternatively a declaration that this person refused to sign the *auto*.[169]

INAE must provide a written document for any sanction imposed[170]. If the infraction is the first at that establishment within a calendar year a fine can be replaced with a written warning[171]. If there is a repeat of the same issue within six months the minimum and maximum fine limits are trebled[172].

The time period for voluntary payment of a fine is 20 days from date of notification[173]. If voluntary payment is not made by bank deposit into INAE's account the process is sent to the courts[174]. Proof of payment should be retained by the company receiving the fine and proof should also be given to INAE. There is a possibility for appeals[175] which is discussed in greater detail below. Fines are divided between the person who issued them (25%), the inspection services (25%) and the state budget[176].

The lifting of an instruction to suspend operations or close an establishment takes place within a maximum of five working days of communication to the authorities of correction of the issue which led to the suspension or closure[177].

Sanctions:[178]

The Tourism Law provides for the following sanctions to be applied in the case of any infraction of that legislation[179]:

- Warning;
- Fine;
- Temporary suspension of activity;

[167] Min Dip 102/2002, Art 19
[168] Min Dip 102/2002, Art 20
[169] Min Dip 102/2002, Arts 21-23
[170] Decree 18/2007, Art 270.
[171] Decree 18/2007, Art 272.
[172] Decree 18/2007, Art 273.
[173] Decree 18/2007, Art 274.
[174] Decree 18/2007, Art 274.
[175] Decree 18/2007, Art 277.
[176] Decree 18/2007, Art 278.
[177] Decree 18/2007, Art 275.
[178] See also section 4.2.2 above
[179] Law 4/2004 of 17 June, Art 24

- Closure of the establishment;
- Revocation of license;
- Administrative embargo;
- Demolition.

The sanctions are graduated according to the severity of the offence and whether it is a re-incidence. Principal infractions under the tourism regulation are provided in Annex IX of Decree 18/2007 of 07 August as follows:

Infraction	Penalty	Fine (Mt)
Illegal construction in inappropriate location	Demolition	50,000 – 100,000
Illegal construction in appropriate location	Embargo	20,000 – 50,000
Operating without alvará		20,000 – 50,000
Non compliance with time periods for updating documents (*averbamento*) – tourism accommodation		10,000
Non compliance with time periods for updating documents (*averbamento*) – eating/drinking establishment		5,000
Use of unauthorized name for the premises – tourism accommodation		20,000
Use of unauthorized name for the premises – eating/drinking establishment		15,000
Violation of health & safety, food hygiene and cleanliness requirements	Suspension for up to six months	5,000 – 30,000
Violation of fire safety requirements		15,000 – 50,000
Repeat occurrences of any infraction which puts users of the premises at risk	Closure	
Violation of the rights and responsibilities provided in the Tourism Law		10,000 – 50,000
Other infractions under the tourism legislation		5,000 – 10,000

4.2.4 Inspectorate of the Ministry of Labour

Legal basis:

Labour inspection is undertaken by the General Inspectorate of Labour (*Inspecção-Geral de Trabalho* – IGT) with the objective of improving working conditions through the oversight and inspection of compliance with legislation and regulations in the area of labour relations. The IGT is a State service operating within the scope of the Public Administration, and directly subordinate to the Ministry of Labour, though it has administrative, technical and operational autonomy. It is responsible for ensuring employment legality.[180]

[180] Decree 45/2009, Art 2 para 2

IGT operates in the area of all subordinate employment relationships established between employers and employees, including national and foreign employees, and operates throughout the country. It is responsible for oversight of all types of employment relationship except those between the State and its employees.[181]

IGT's activities are regulated by Decree 45/2009 of 14 August, which approves the Regulations for the General Inspectorate of Labour. These regulations deal with the powers of the inspectorate, the principles that govern inspection activities, the nature of intervention, the powers and obligations of the inspectors, the procedures to be followed for notification, the time period for submission of contestations and appeals including hierarchical appeal and the effects of such contestations, among others relevant provisions discussed below.

The IGT ensures compliance with working conditions, prevention of work-related risks, compulsory social security, employment of foreigners and other types of oversight as defined by law.[182]

In its work the IGT is to give precedence to the education of employers and workers and to voluntary compliance with the labour legislation, giving both employers and employees, or their respective representative bodies, in the workplace or outside, technical advice, and recommendations about the correct way to apply the law.[183]

The role of IGT includes, among others:

- ensuring that the rights of workers representatives within the workplace are guaranteed;
- ensuring that companies comply not only with the law but with their internal regulations and collective bargaining agreements;
- overseeing health and safety in the workplace;
- ensuring appropriate first aid facilities and capacity;
- ensuring consultation and availability of information and instructions, and training for workers and their representatives;
- overseeing the legal requirement for professional training and transfer of knowledge by foreign employees to local staff;
- ensuring compliance with INSS (Instituto Nacional de Segurança Social – social security institute); intervention in labour conflicts[184].

Inspectors are required to: (i) work for the defence and promotion of safe working conditions; (ii) investigate the cause of work-related accidents where these are particularly serious, or fatal; (iii) inspect workplaces; (iv) take the necessary action to evaluate working conditions; (v)give opinions as part of the business licensing process; and (vi) begin proceedings where infractions are found.[185]

Procedures:

When going about their work, labour inspectors must be duly identified with a badge and uniform[186]. Inspectors must, in most cases, advise the employer or their representative of their arrival on site, as

[181] Decree 45/2009, Art 2
[182] Decree 45/2009, Art 2 para 1
[183] Decree 45/2009 Art 7, paras 1 and 2
[184] Decree 45/2009, Art 4
[185] Decree 45/2009, Art 11
[186] Decree 45/2009, Arts 33 & 35

well as advising the workers' representative, unless by so doing this will compromise the effectiveness of the inspection, and the employer and his representatives must provide such assistance as is requested by the inspectors.[187]

Inspections can be "integrated" or "partial" depending on whether they are dealing with a specific issue or are a more general inspection to ensure overall legal compliance. Inspections can also be "ordinary" as part of a scheduled series of inspections, or "extraordinary" when exceptional circumstances have been reported, and an inspection requested by a union or employers' body, or as the result of a complaint or an instruction from the inspectors' superior.[188]

Inspections must not take place in a manner which disrupts the order and discipline required in the workplace.[189]

Inspectors powers include the rights to:

- inspect unannounced any work premises;
- be accompanied by union and employers' body representatives on such inspections;
- speak to any person found at the workplace on any matter related to the labour legislation; requisition records and information necessary for their work;
- take photographs, measurements or film;
- request information about the composition of products in use, or take these for analysis;
- be accompanied by the police in certain circumstances;
- notify employers to make modifications to ensure the implementation of health, safety and security measures within a given timeframe;
- take immediate steps, including suspension of workers or work, in the case of serious and imminent danger to life, limb or health of workers[190].

The inspection service is required to furnish those entities which are the subject of inspection with information and clarifications requested[191].

Employers are not allowed to refuse to present any documents requested by the Labour Inspectorate, and any refusal is subject to a fine[192].

Inspectors must, in most cases, advise the employer of the outcome of the inspection prior to leaving site, unless it is not possible to do so, for reasons not imputable to the inspection team itself, in which case a written report must be provided subsequently[193]. In practice at the end of an inspection inspectors prepare an inspection minute which includes the date of the inspection, the names of the inspection team, the business inspected, the business' representative that accompanied the inspectors, infractions detected, and their legal basis, the time period in which the company will be notified of the outcome of the inspection, which is usually 30 days.

[187] Decree 45/2009, Art 13 paras 1 and 2
[188] Decree 45/2009, Art 14
[189] Decree 45/2009, Art 13 para 3
[190] Decree 45/2009, Art 12
[191] Decree 45/2009, Art 6, para 2
[192] Decree 45/2009, Art 47
[193] Decree 45/2009, Art 13, para 4

When the inspectors consider that the infraction detected can be corrected or has caused only minor harm the inspectors can give a written notification at the end of the inspection, or within the time period indicated in the inspection minute. In practice this warning (*advertência*) is given in a written document known as an *auto de advertência* indicating the infraction, the correction required and establishing a time period for compliance[194].

If the infraction detected is considered sufficiently serious the inspectors have the right, within the time period indicated in the inspection minute, give formal notifications (*autos de notícia*) which may imply the application of fines, which may have to be confirmed by the inspectors' superiors.[195] As well as applying fines, the *autos de notícia* may recommend measures for the correction of irregularities found, and establish time periods for compliance or implementation of these measures. If the employer does not comply with these recommendations within the time period given, new fines may be applied, and in such cases will be double those initially applied.[196]

If on the other hand the infractions found are sufficiently serious to endanger life or limb, the inspectors may take immediate measures including suspension of the activity of the entity being inspected.[197]

Autos de notícia are prepared in quadruplicate, with one copy being given to the employer. Along with the auto de notícia a notification is issued giving 15 days for the employer to pay the fines or amounts owing to INSS or to the workers, whatever the case may be, along with the respective deposit slips for the payments. This *notificação* can be served on the employer or on anyone present at the workplace at the time the document is served.[198]

On receiving a *notificação* the employer may: (i) pay the fine; or (ii) appeal, in writing, to the person who confirmed the *auto*. The appeal can request the annulment or revision of the sanction applied. The appeal must be in writing, within 20 days of the date of notification to pay the fine, and in it the employer must provide fact and legal reasons demonstrating why the fine has been unfairly applied. The appeal suspends the time period in which the fine has to be paid, in other words the fine cannot be levied while an appeal on the same matter is pending. Appeals must be answered within 20 days of receipt by the Inspectorate. If, after 20 days, no reply has been received the appeal is understood to have been rejected and the time period for payment of the fine recommences. In the case of appeals which are successful or where the value of the original fine is reduced or increased as a result of the appeal, the time period for payment begins again on the day immediately after the decision on the appeal is given.[199] If the employer does not agree with the outcome of the appeal, the case can be submitted for hierarchical appeal, to a person hierarchically above the one who took the decision on the first appeal, which would also have the effect of suspending the process, following the same rules as for the first appeal. Judicial reviews are also permitted and must be directed to the relevant court.[200]

Sanctions:

[194] Decree 45/2009, Art 7, para 3
[195] Decree 45/2009, Art 16 para 3 and Art 18 para 2
[196] Decree 45/2009, Art 8
[197] Decree 45/2009, Art 10
[198] Decree 45/2009, Arts 17 and 18
[199] Decree 45/2009, Art 24
[200] Decree 45/2009, Art 25

As mentioned above, inspectors are expected to give priority to educating employers and workers, without prejudice to prevention or correction of their conduct as appropriate.[201]

In order to ensure legal compliance and promote improvements in working conditions, inspectors can sanction employers as follows: (i) issue a warning (*auto de advertência*) giving a time period for correction of the matters raised; (ii) apply fines; or (iii) apply immediate measures such as suspending workers or operations.

The measures taken by the Labour Inspectorate must be proportionate and suitable to the infractions detected[202]. Employers must comply with the recommendations given by the IGT within the time period given.

Inspectors only have the power to apply the minimum level of fine for any given infraction during a labour inspection. However if the employer appeals, the inspectors' superior who evaluates the appeal has the right to both lower and raise the fine applied.[203]

Payment of fines must be made within 15 days of receipt of the *notificação*, and, if the fine is for not submitting documents or making compulsory communications these too must be made within the same 15 day period, the fine only being considered paid when it is proven that these obligations have also been fulfilled within the given time period[204]. In general time periods are calculated in continuous calendar days unless sectoral legislation provides otherwise[205]. Decree 45/2009 does not provide otherwise.[206]

Noncompliance with the measures required or recommendations made within the time period given may lead to a new fine, corresponding to double the initial fine.[207] Where fines have been levied and if the employer has not provided proof of payment or bank deposit of the values in question, the case is submitted to the courts.[208]

In the case of fines applied due to payments owed to workers or to INSS, these outstanding payments are to be lodged in an account indicated by the Ministry of Labour and, in the case of payments owed to workers, the employer is then required to inform the worker in writing that this is the case, so that the worker can then contact the Ministry of Labour to receive the money[209].

Other aspects:

[201] Decree 45/2009, Art 7 para 1
[202] Decree 45/2009, Art 47
[203] Decree 45/2009, Art 16 para 2
[204] Decree 45/2009, Art 20
[205] Law 14/2011, Article 78; Law 9/2001, Article 31 and Article 279 of the Civil Code, applied by force of Law 9/2001, Article 30
[206] In terms of the Civil Code Art 279 (e) in conjunction with the Civil Process Code, Art 144 para 3, when the time period for submission of a complaint or hierarchical appeal ends on a Saturday, Sunday or public holiday, the respective time period is transferred to the next working day
[207] Decree 45/2009, Art 8 para 2
[208] Decree 45/2009, Art 20 para 3
[209] Decree 45/2009, Art 21

Labour inspectors are not permitted to undertake work in their individual capacity which may be incompatible with their work as an inspector[210].

The labour inspectorate is responsible for paying its own transport costs, and costs for food and accommodation[211].

Employers must notify the Labour Inspectorate of start of activity and of any changes to the information contained in that notification (including company name, type of activity, NUIT, headquarters and any other workplaces, articles of association, residence of managers, administrators or directors, and number of workers) within 15 days of this change taking place[212].

Inspectors are required to, among other things, investigate the cause of work-related accidents and deaths. Employers must notify the Labour Inspectorate of any accident or work-related illness within 48 hours of these coming to the employer's attention[213]. Employers must inform the Labour Inspectorate quarterly of any work-related illness or accident which has resulted in a worker being off work for more than one day within the quarter to which the report refers.[214] This report must be presented by the 10th of the month following the end of the quarter to which the report refers[215].

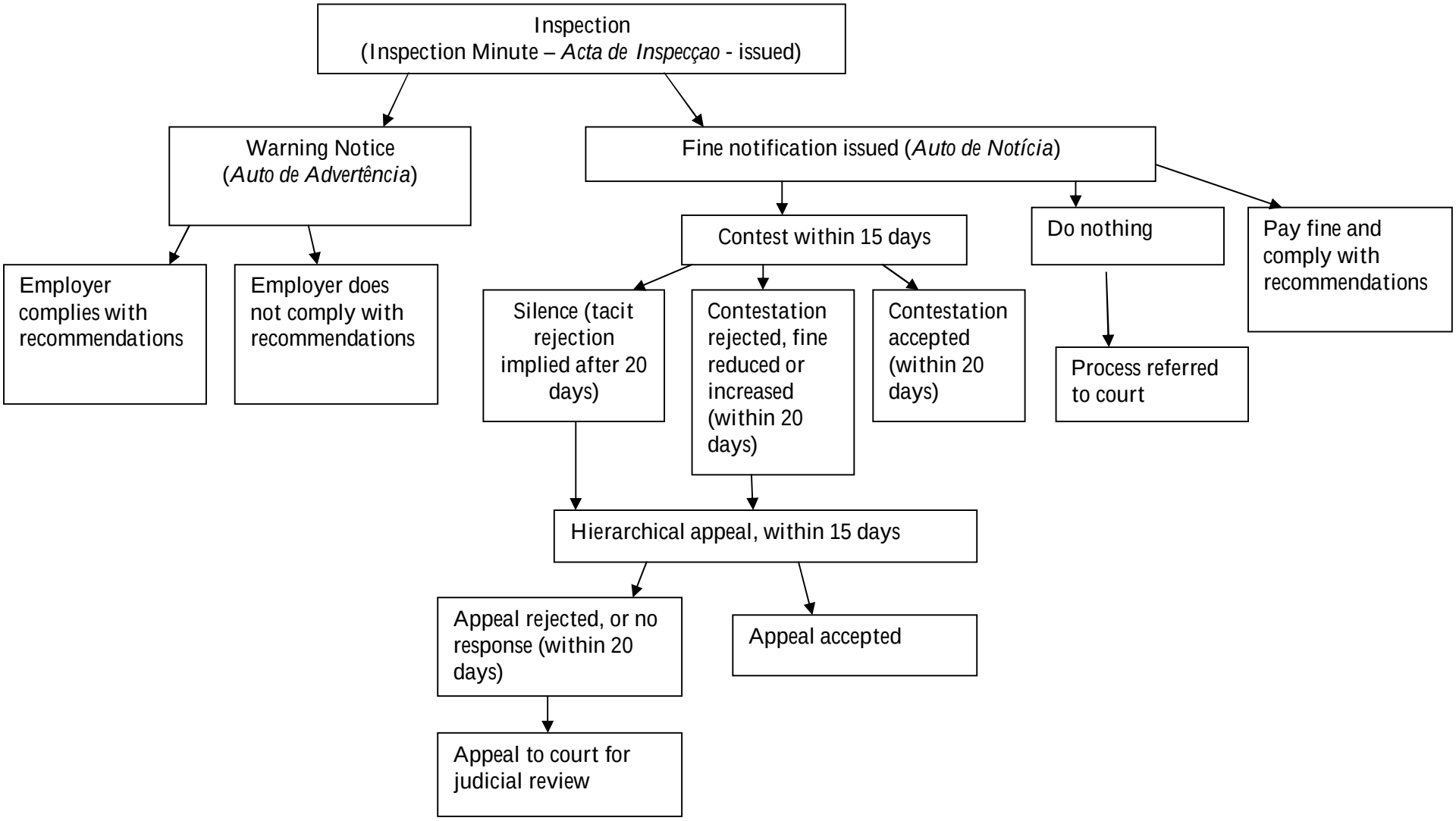
Employers must retain copies of all *autos* and *notificações* for a minimum of two years and present these to inspectors on request[216].

Employers notified to appear before the Labour Inspectorate can designate a representative, but this person must be duly provided with the relevant documents to enable them to be considered a legal representative. If an employer is notified to appear and fails to do so and does not present a valid written justification of why they did not appear, within five days after the date scheduled for the appearance, legal sanctions will be applied[217].

If an employer has in his possession unclaimed salaries, or has levied a fine on any worker, these funds must be lodged with the Ministry of Labour[218].

[210] Decree 45/2009, Art 39
[211] Decree 45/2009, Art 46
[212] Decree 45/2009, Art 40
[213] Decree 45/2009, Art 41
[214] Decree 45/2009, Art 43
[215] Decree 45/2009, Art 43
[216] Decree 45/2009, Art 19
[217] Decree 45/2009, Art 31
[218] Decree 45/2009, Art 23

Figure 2 Flowchart of Appeals Procedures, Inspectorate of Labour



4.2.5 Inspectorate of the Ministry of Finance

Legal basis and scope:

Taxes are created and altered by laws, which determine who is taxable, rates, fiscal benefits and guarantees. No requirement for compulsory taxation can be created unless it is created in law. Neither the tax base nor the tax rate can be increased during a fiscal year, and tax law can only be retrospective when its result for the taxpayer is more favourable than that of the legislation it replaces.[219]

Tax inspection comprises the exercise of powers conferred by the legislator on the Tax Authority (*Autoridade Tributária de Moçambique* – AT), so that this agency can ensure that taxpayers are compliant with their obligations, under the terms of Articles 24, 52 and subsequent articles of Law 15/2002 of 26 June, the Tax System Basis Law (hereafter *Lei de Bases do Sistema Tributário* – LBST).

Taxpayers' obligations include presenting declarations to AT of income obtained through their activities, within the time periods and terms and conditions established by law. The AT is then responsible for confirming the veracity of the declarations made, the declarations being the basis for tax payments to be made or rebates owed.

Given the sensitive and complex nature of tax collection, and the need for a rigorous, fair and transparent framework within which such collection can take place, the legislator has created a single piece of legislation which forms the basis for the relationship between the tax inspectorate and taxpayers. This is Decree 19/2005 of 22 June, Tax Oversight Procedures Regulations (*Regulamento do Procedimento da Fiscalizaçao Tributária* – hereafter RPFT).

The RPFT includes details of how inspections take place, the powers of inspectors, guarantees of impartiality, dates and times on which inspections can take place and other important information.

Tax inspections are undertaken to determine the fiscal reality, and compliance with legal obligations by the taxpayer, and to prevent infractions.[220]

Inspections can include not only the taxpayer but also any related person or institution, including tax substitutes, those responsible for the payment of the taxes, shareholders, or any other person that may have been involved in a suspected transgression against the tax legislation.

Article 50 of Law 2/2006, of 22 March (Law on General Taxation) defines taxpayer´s rights as:

- not to pay taxes not established in harmony with the Constitution;
- to submit claims or hierarchical appeals, request revisions or submit contentious appeals for any acts or omissions by the tax authorities that were harmful to the legally protected rights or interests of the taxpayer. These must be made within the time period and based on the justifications established in Law 2/2006;
- to be informed by the Tax Department on the interpretation of the tax laws and the most convenient and reliable way to comply with them;
- to be informed about their correct taxable situation.

[219] CRM, Art 127
[220] RPFT, Art 2

Procedures:

A: Inspection Phase

In accordance with the RPFT, tax inspection is to verify the fiscal reality, compliance with tax obligations and to prevent infractions. Inspections must comply with the principles of material reality, proportionality, contradiction and cooperation.

The principle of contradiction allows for the participation of the taxpayer in the inspection process and the taxpayer's right to contest the procedure at any point. The principle of cooperation requires that the AT's and taxpayer's representatives involved in an inspection must mutually cooperate.[221] Refusal to cooperate or opposition to the inspection are, if not legitimate, subject to disciplinary proceedings against the taxpayer, which may be procedural or criminal depending on the situation.[222]

The procedural objectives of a tax inspections are:

- *Proof and verification*: confirmation of compliance of the taxpayer with their various tax obligations;

- *Information*: confirmation of compliance with legal requirements to provide information to which the AT is legally entitled.[223]

In terms of location inspections can either be:

- *Internal*: undertaken at the AT's own offices, including formal analysis and assessment of documents presented;

- *External*: totally or partially at the premises of the taxpayer, or other parties who have economic relationships with the taxpayer, or any other location deemed necessary.[224]

The scope of inspections can be:

- *General*: when looking at the overall tax situation, or overall obligations which the taxpayer has;

- *Partial*: when looking at one or more specific taxes, or one or more specific instance.[225]

Inspections can begin at any time up until the conclusion of the time period for the settlement of taxes which is five years, or up until the conclusion of the period for paying a fine. However this does not limit the right to also inspect documents within the same period or for a period going back ten years, since taxpayers are obliged to retain their records for 10 years.[226] The five year time period

[221] RPFT, Arts 7 and 8
[222] RPFT, Art 28 para 1
[223] RPFT, Art 10 para 1
[224] RPFT, Art 11 para 1
[225] RPFT, Art 11 para 2
[226] RPFT, Art 32 in conjunction with LBST Article 31, Law 2/2006, of 22 March Arts 48 and 86, and IRPC Code, Art 75 para 5

referred to is counted from the beginning of the subsequent tax year to the one in which the tax debt arose.[227]

When an inspection involves the verification of accounts, hand-written accounting ledgers or other documents related to the taxpayer's activities, the inspection is undertaken at the place where these documents are legally required to be held.[228] Inspections can take place in another location of the taxpayer requests this and provides sufficient justification and if the change of locations does not materially affect the inspection procedure.[229]

Inspections take place during the normal working hours of the taxpayer's business, and must not negatively affect the taxpayer's normal operations.[230] If the taxpayer or other affected third parties agree, in exceptional circumstances, inspections may take place outside normal working hours.[231] Inspections undertaken outside normal working hours without the taxpayer's approval require a court order.[232]

Inspections have the following phases:

- Collection of information about the taxpayer;
- Notification of intention to inspect;
- Inspection;
- Preparation of a Note of Findings (*Nota de Constatações*);
- Hearing of the taxpayer;
- Preparation of a Final Report.

Preparation includes the gathering of all available information about the taxpayer, and is an internal AT procedure aimed at equipping the inspectors with sufficient information to undertake the inspection.[233]

The taxpayer must be notified of the start of the "external" phase of the inspection with a minimum of two and a maximum of five days' notice.[234]

The notification which begins the inspection process is made by means of a standard letter, with proof of delivery, which includes:

- Identification of taxpayer;
- Scope of inspection to be undertaken;
- Indication of the legal basis for the taxpayer's rights, obligations and guarantees in respect of inspections.[235]

There is no requirement to give notification in advance if:

- The inspection is taking place as a result of a reported infraction or suspected fraud;

[227] Law 2/2006, of 22 March Art 86 para 2
[228] RPFT, Art 30 para 1
[229] RPFT, Art 30 para 2
[230] RPFT, Art 31 para 1
[231] RPFT, Art 31 para 2
[232] RPFT, Art 31 para 3
[233] RPFT, Art 40 para 2
[234] RPFT, Art 44 para 1
[235] RPFT, Art 44 para 2

- The objective is a verification of available cash, assets, or sampling, or any other urgent inspection undertaken to preserve evidence;
- The purpose of the inspection is to inspect goods in transit and their respective accompanying documents;
- The inspection is of unregistered taxpayers;
- A decision is taken, with due legal basis, not to notify due to the need to undertake an urgent inspection;
- The purpose of the visit is merely to consult, collect or cross-check documents.[236]

Before beginning to collect and inspect documents the inspection team must present a copy of the document (*credencial*) proving that they have the right to undertake the inspection to the taxpayer or their representative, for signature. The refusal to sign will not prevent the inspection taking place.[237]

The *credencial* must include:

- Order number, date of issue, identification of the body responsible for the inspection, telephone number of the contact person at that body;
- Scope of the inspection;
- Identity of the inspector(s);
- Identity of the taxpayer being inspected.[238]

A *credencial* is not provided when the inspection:

- Is to collect, consult or cross-check documents;
- Is to inspect goods in transit;
- Is of unregistered taxpayers.[239]

When a *credencial* is not required, the dispatch authorizing the inspection must include the objectives, identity of inspectors and the date by which the inspection must take place.[240]
Taxpayers may legitimately oppose an inspection where the inspectors do not have the necessary *credencial*, in cases where a *credencial* is required.[241]

Inspections are undertaken to confirm that a taxpayer is compliant with their obligations. It is important to note that there are procedures which the AT must follow in order to comply with this mission. The collection of information during an inspection must comply with the following objective criteria:

- Mention and identification of documents and their respective registration in the accounts, using wherever possible the date and number on which they were entered into the accounts, their accounts classification and the value;[242]

[236] RPFT, Art 45, para 1
[237] RPFT, Arts 41, 42 and 46
[238] RPFT, Art 41 para 3
[239] RPFT, Art 41 para 4
[240] RPFT, Art 41 para 3
[241] RPFT, Art 42
[242] RPFT, Art 50

- Transcription of statements given, with the identity of the person making the statement, their job title, and where statements are given verbally these must be reduced to writing;[243]

- Photocopies or other forms of copy must be made in the place where the books or documents are located. If this is not possible the books or documents may only be taken away for a maximum of three working days, and a receipt must be given for any documents removed. If inventory or other forms of physical verification of goods and assets are undertaken, these must be in writing and be signed by the taxpayer or their representative, who can add observations if necessary.[244]

When the information collection is complete the taxpayer must be notified in writing in a Note of Findings (*Nota de Constatações*), which includes details of what has been done and the legal basis for any findings.[245]

This notification must establish a time period of between eight and fifteen days for the taxpayer to respond to the findings as indicated in the *Nota de Constatações.*[246] If the taxpayer is not able to respond in writing they may respond verbally and their response must be reduced to writing by the AT.[247]

Within five days of receipt of the taxpayers response, the AT must provide its final report.[248] Any changes in the taxpayer's tax status must be notified within 10 days of completion of the final report by the AT, in order to rectify or systematise the issues indicated, in respect of tax law.[249] The final report is signed by the inspector(s) and must include the opinion of their supervisor who coordinated the inspection process, if such supervision took place, as well as approval by a superior for the report's conclusions.[250]

The final report may conclude that: (i) an infraction has been committed and an additional amount of tax is owed; (ii) that only an additional tax amount is owed; or (iii) that the questions which gave rise to the inspection have been clarified and no infraction was committed and no tax is owed. In this last case, the inspection process is then filed by AT and no further action is taken. In respect of numbers (i) and (ii) further action is required and is discussed below.

B: Initiation of Procedures in Respect of Transgressions

As discussed above, if an internal or external inspection by the AT finds that an infraction has been committed then a Transgression Notice (*auto de transgressão*) is prepared based on Article 2 of Decree 46/2002, of 26 December, the General Tax Infractions Regime (*Regime Geral das Infracções Tributárias* - hereafter RGIT) in conjunction with Article 8 and subsequent of Legislative Diploma 783 of 18 April 1942, which approves the Contributions and Taxes Appeals Regulation (*Regulamento do Contencioso das Contribuições e Impostos* – hereafter RCCI). When an *auto de transgressão* has been

[243] RPFT, Art 50
[244] RPFT, Art 52
[245] RPFT, Art 54 para 1
[246] RPFT, Art 54 para 2
[247] RPFT, Art 54 para 3
[248] RPFT, Art 54 para 4
[249] RPFT, Art 56 para 1
[250] RPFT, Art 56 para 5

issued, the taxpayer is notified, taking into account their distance from an AT office, to pay the tax and/or fine, or to contest. The Notification sent must be prepared in accordance with Articles 53 – 85 of Law 2/2006, the General Tax Law, and the subsection of Article 8 of the RCCI.[251] The *auto de transgressão* includes an indication of the transgression, the article of law transgressed, and is signed by two witnesses and the taxpayer, or if the taxpayer cannot write, by the person who submits the *auto*.[252]

If the taxpayer opposes the finding, then he must contest in a written document addressed to the Tax Court and the AT must provide a response to the contestation to the same tax court, and submit all the relevant preceding documents which led to the findings, for consideration of the court.

Transgressions are only those envisaged in and punishable by law, so that for example in the case of payments of income tax, transgressions are only the lack of payment of the two types of corporate income tax (*pagamento por conta* and *pagamento especial por conta*) and the lack of withholding, or lack of paying over tax which has been withheld.

C: Procedures to Follow in Acts which are not Infractions

In the case of inspections which find that non-payment is not an infraction, the taxpayer is notified to make the payment of the outstanding tax amount, or contest the payment within the time periods established.

Having received the notification, and if the taxpayer disagrees with the finding, the finding can be contested. Contestation is addressed to the author of the notification and must take place within sixty days, as provided for in the General Tax Law (Law 2/2006, arts 126, 127 and 128).

If the contestation is rejected or the amount owed is revised, this decision can be appealed to the hierarchical superior of the author of the original notification, within ninety days under articles 138 and 139 of the General Tax Law. In this case the hierarchical appeal must be undertaken before the case can be referred to court, under the "principle of exhaustion".[253]

If the hierarchical appeal is rejected the taxpayer has ninety days to refer the matter to court.[254]

Neither the initial contestation to the author of the notification, nor the hierarchical appeal automatically suspend the time period for payment of the outstanding tax amount, unless the taxpayer puts up a guarantee.[255] Therefore while the appeals process is ongoing if the time period for voluntary payment expires, the process will be referred to the court for execution unless a guarantee has been put in place by the taxpayer.

D: Procedures in the Case of Appeals to Court

If the decision of the hierarchical superior is not acceptable to the taxpayer, they can take the matter to court.

[251] RCCI, Art 11 subsection 1. Note that in practice usually a time period of 30 days is given
[252] RCCI, Art 9
[253] Law 2/2006, Arts 52, 126, 138, and 141 and Law 2/2004 Art 7
[254] Law 2/2006, Art 141
[255] Law 2/2006 Arts 129 and 138 para 3

The Court Appeal process begins with an initial petition which is submitted to the Tax Court. This must be done within 90 days of the final decision in the hierarchical appeal process described above.

Suitable bases for a Court Appeal include:

- Nonexistence or cessation of the facts on which the tax was based;
- Mistake in calculating the amount to be taxed or the tax value;
- Mistaken designation of buildings, people, facts or amounts;
- Duplication or omission in the registration of the taxpayer or in the description of the facts subject of the notification;
- Application of a different tax rate, or error in calculation;
- Double taxation;
- Illegality in the tax being claimed;
- The agent levying the tax not having sufficient powers or authorization to do so;
- The court to which the matter is referred not having sufficient powers to decide the case.[256]

Appeals can also be undertaken based on any other illegality in the process.

Court Appeals only suspend the time period for payment if the taxpayer lodges a guarantee.[257]

The Tax Court is a court of first instance for tax appeals.[258]

If the taxpayer's case is not successful at the first instance before the Tax Court, the right of appeal to the Administrative Court, as second instance, must be taken up within eight days.[259]

Second instance appeals to the Administrative Court only suspend the period for payment if the full value in question is deposited as a guarantee. If a guarantee is not put up then the outcome of the case, is successful will merely require the return of the amount which has been paid.[260] This means that the AT has the prerogative to demand payment for the amount owed before being required to repay it.

If the appeal in the second instance to the Administrative Court is unsuccessful the final instance appeal is to the full Administrative Court sitting in plenary. This appeal must be made within ten days of the notification of the unsuccessful second instance appeal. However as a practical matter, unless it is a particularly urgent case, appeals of this nature can be submitted within fifteen days of the taxpayer receiving notification of the outcome of the second instance appeal.[261] As with the second instance appeal a guarantee of the full value being contested must be put up if the appeal is to have the effect of suspending the requirement to pay.

[256] RCCI, Art 34
[257] As a practical matter a guarantee may not be required by the Tax Court but is definitely required if the case is appealed to the Administrative Court
[258] Law 2/2004 Art 13, para 1, c)
[259] RCCI, Art 18
[260] Law 9/2001, Art 29
[261] Law 9/2001, Art 141

Sanctions:

Decree 46/2002 of 26 December, the General Tax Infractions Regime (*Regime Geral das Infracções Tributárias* – hereafter RGIT), establishes the penalties applicable for infractions against the tax legislation.

Tax infractions are any act, action or omission against the tax legislation by the taxpayer or their substitute or representative.[262] Infractions are classified as either crimes or transgressions.[263] Transgressions are formal infractions divided into simple and serious and punishable by fines which are graded according to the gravity of the infraction, the responsibility of the transgressor, the economic situation of the taxpayer, the taxable value owed, and fines must wherever possible exceed the value of the economic benefit the taxpayer derived from the transgression.[264] Simple transgressions are punishable with fines of up to 70,000Mt.[265] Serious transgressions are punishable with a fine over 70,000Mt are those transgressions which the law explicitly indicates as being "serious transgressions".[266]

For serious transgressions Decree 46/2002 includes not only fines but additional sanctions such as deprivation of the right to receive state subsidies, suspension of fiscal benefits, temporary suspension from participation in state-run events such as markets, fairs and auctions, and participation in public procurement processes, closure of the establishment, removal of licenses or concessions, suspension of authorizations, and publication of the findings of the inspection at the cost of the transgressor.[267]

Unless the tax legislation explicitly provides for mutual responsibility between taxpayers, the responsibility is subsidiary.[268] Responsibility includes the tax debt, interest,[269] fines and any other legal costs.[270]
In accordance with Decree 46/2002, the RGIT, legal persons may be held responsible for the actions of their constituent bodies or representatives, of administrators, managers or other persons involved in the administration of the legal person, when as a result of the actions of these individuals the legal person has insufficient assets to pay its fiscal debts.[271] This does not preclude individual responsibility of the individual agents or managers listed.[272] In reality, and within certain legal limits, administrators, directors, managers and others who carry out administrative functions, even if in name only, within limited liability quotahold companies, cooperatives and public companies are both jointly and severally liable in certain circumstances for the tax liability or infractions of the legal person if:

[262] Decree 46/2002, Art 2 para 1
[263] Decree 46/2002, Art 2 para 2
[264] Decree 46/2002, Art 2 para 2 and Art 14
[265] Decree 46/2002, Art 12 para 1
[266] Decree 46/2002, Art 12 para 2
[267] Decree 46/2002, Art 15
[268] Law 2/2006, Art 22 para 1
[269] Calculated using the 12 month MAIBOR rate, in force on the day the tax is paid, increased by 2 percentage points
[270] Law 2/2006, Art 22 para 3
[271] Decree 46/2002, Art 7 para 1
[272] Decree 46/2002, Art 7 para 3

- They did not undertake the actions necessary and within their power to ensure that the tax obligations were met, or consented to noncompliance with the tax obligation by someone reporting to them;
- Adopted agreements which made the infractions possible.[273]

Fines for transgressions of the tax law, levied on companies or other legal persons, even where these persons are not legally constituted, cannot exceed 2,500,000Mt.[274] Fines on natural legal persons cannot half of this amount.[275] The minimum fine in any respect is 3,000Mt.[276] These fines may however be doubled when applied to a legal, collective person, whether or not duly constituted, in certain circumstances as provided for in law.[277] Decree 46/2002 also envisages certain circumstances where formal transgressions have taken place where fines may be graded according to pre-established tables, such as fines for not conserving documents or not presenting them on request, or submission outside the established time period where fines range between 3,000 and 65, 000Mt.[278]

Fines may be reduced at the request of the taxpayer, where this request is presented before the formal process of documenting the transgression begins, in the following cases:

- If the request for voluntary payment is presented within 30 days of the infraction having taken place and where no *auto de notícia* has been written up and no complaint received, the fine can be reduced to 50% of the minimum legal limit;

- If the request for voluntary payment is made after the time period indicated above, but as yet no *auto de noticia* has been prepared and no inspection stared or complaint received then the legal minimum is applied.

In cases where the fine is based on the value owed, the minimum value of the fine is 5% or 10% of the value owed if payable by a natural person or a legal person respectively.

Whenever the situation to be regularized does not involve an outstanding payment, the submission of the missing document is sufficient to motivate the reduction of the fine.

The right to a reduced fine depends on:

- Payment within fifteen days of submission of the request for reduction, or within 15 days of notification of a fine to pay or an amount outstanding;
- Resolution of the matters which gave rise to the original fine within the same time period;
- No additional sanction having been applied.

Transgressions expire for certain legal effects, five years after the transgression has taken place.[279]

Other aspects:

[273] Law 2/2006, Art 29 para 1
[274] Decree 46/2002, Art 13 para 1
[275] Decree 46/2002 Art 13 para 2
[276] Decree 46/2002, Art 13 para 3
[277] Decree 46/2002, Art 13 para 4
[278] Decree 46/2002, Art 25 para 1
[279] Decree 46/2002, Art 19 para 1

Decree 45/2010 of 02 November approved the Regulation for the Payment of Tax Debts by Installments and the Regulation of Tax Debts Offset approved by Decree 46/2010 of 02 November bring into play the possibility of the taxpayer paying in installments or being compensated for debts owed by the AT in line with the provisions of the General Tax Law.

This Regulation establishes the procedures through which tax liabilities resulting from individual and corporate income tax can be paid in installments. Tax liabilities (which include fines, interest and other local charges, if applicable) can now be paid in installments either voluntarily or as part of a court process to garner the relevant amounts.[280]

However, this procedure does not suspend interest payments or other additional legal additional penalties due.[281] Payment in installments must be applied for in writing within the deadline provided for the payment of the relevant tax, fine or interest.[282] Applications must include: identification of the applicant, tax identification number (NUIT); nature of the tax liability to which the application refers; number of installments requested.[283]

Installments must be consistently paid on a monthly basis. The number of authorized installments is 12 when the payment is made voluntarily and 24, in when the debt is as consequence of a tax execution process.[284] The non-payment of any installments results in the immediate maturity of the remaining installments and the immediate execution of proceedings to recover the value owed.[285]

Decree 46/2010 establishes procedures for total or partial settlement of tax debts against credits recognized by the Public Administration or by a court of law and to which the taxpayer is entitled, for example in the case of tax overpayments.[286]

Compensation may be made against any tax debt, except where the law does not provide for this.[287] The regulation therefore only provides for compensation where there is no specific regulation to the contrary.

In order to clarify exactly what is and is not subject to compensation Ministerial Diploma 124/2012 of 27 June establishes the Procedures for Compensation of Tax Debt, clearly indicating in its Article 2 paragraph 3 that any tax debt is included except for those related to VAT which have their own legislation. Therefore since VAT has its own regulation it is explicitly not possible to use VAT rebates to compensate against other amounts owed.

Where total or partial cancellation of taxes, customs duties and other tax paid is determined, the Director of the respective Tax Department shall issue a credit note, stating the amount of credit that

[280] Decree 45/2010, Art 2 para 1
[281] Decree 45/2010, Art 2 para 4
[282] Decree 45/2010, Art 2 para 1
[283] Decree 45/2010, Art 3 para 2
[284] Decree 45/2010, Art 7
[285] Decree 45/2010, Art 8 para 1
[286] Decree 46/2010, Art 1
[287] Decree 46/2010 At 3 para 3

the taxpayer is entitled to.[288] The credit note can then be used to offset the debts of the relevant taxpayer, either in existence prior to the credit note being issued or subsequent to its issuance.[289]

Offsetting tax debts can occur at the initiative of Tax Authority or of the taxpayer and can be made against any outstanding tax, except for those cases where special rules of compensation exist.[290]

The offset is carried out in accordance in the following sequence:

- Debts of the same nature, and if they relate to regular taxes, primarily those relating to the same tax year, and then those relating to different tax years;
- Debts from withholding taxes or legally passed on to third parties and not returned;
- Debts from other taxes.[291]

If the amount of credit is insufficient to offset the principal total tax liabilities and additional charges, the credit is applied successively in the following sequence:

- Default interest;
- Other legal charges;
- Fines;
- Tax debt, including compensatory interest.[292]

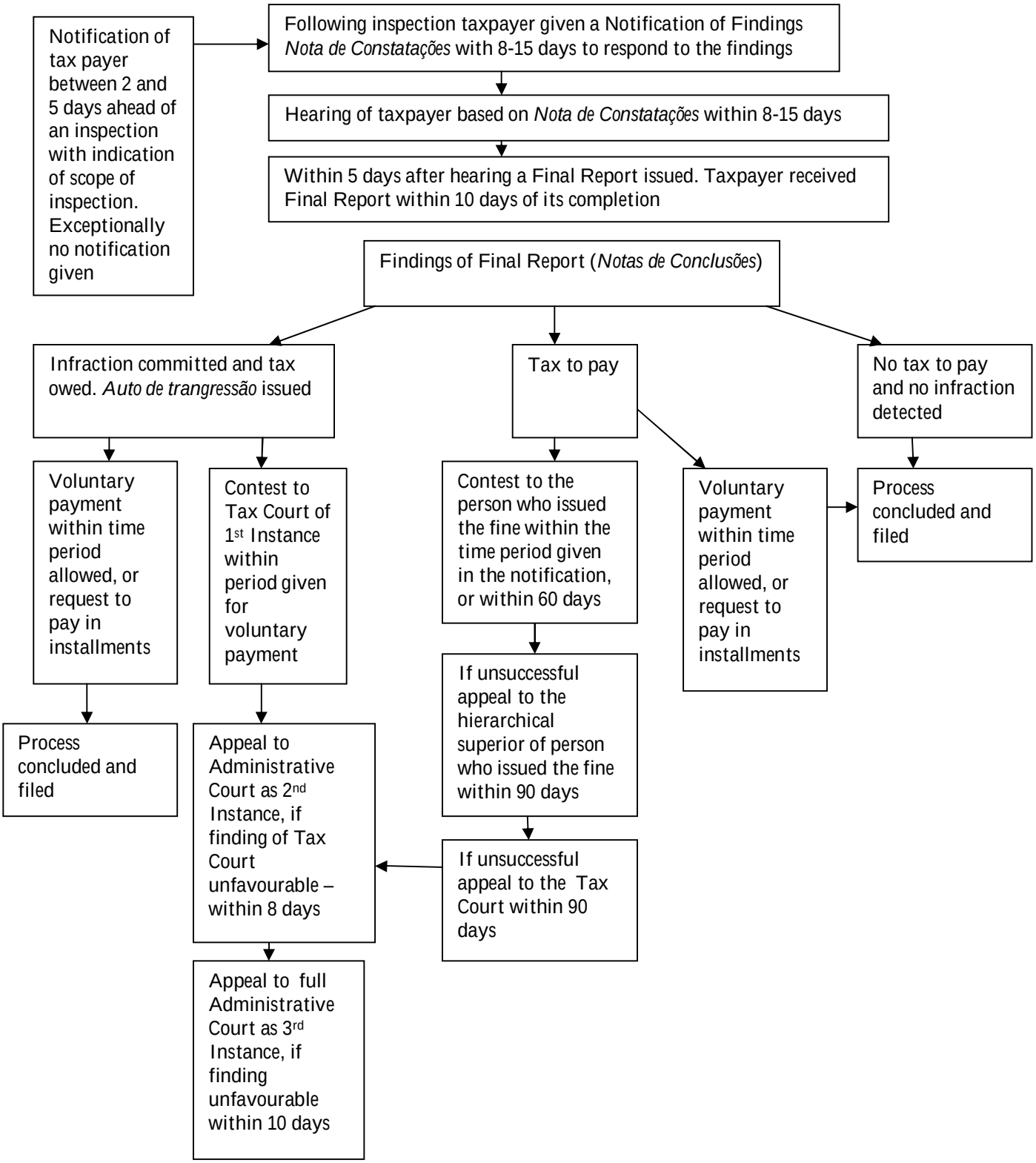
It is important to note that Decree 46/2010 allows that internal tax debts may be compensated with rebates owed for external trade, for example customs duties.

However even though this provision is established in the decree, this can only happen when the taxpayer's current account with the tax department is created.[293] The system of current accounts is expected to take some time to be created, and requires its own legislation in order to become operational.

Credit notes expire if not claimed within one year after notification that they are available. Credit notes are valid for 5 years from the date of issue. The corresponding value can be reimbursed in cash by application to the Minister of Finance within 30 days, before the expiration of the credit note.

[288] Decree 46/2010, Art 8 para 1
[289] Decree 46/2010, Art 8 para 2
[290] Decree 46/2010, Art 3 para 2
[291] Decree 46/2010, Art 5 para 1
[292] Decree 46/2010, Art 5 para 2
[293] Decree 46/2010, Art 14 para 2

Figure 3 Flowchart of Appeals Procedures, Inspectorate of Finance



OTHER RELEVANT ISSUES RELATED TO PUBLIC ADMINISTRATION

4.3 Anti-Corruption Framework

Corruption is defined by the World Bank as "the abuse of public power for private gain". The provisions of Law 6/2004 of 17 June (The Anti-Corruption Law or Law 6/2004) indicate that corruption occurs in: the requesting, giving or promising of any type of benefit by a member of the public administration to undertake, or to omit to undertake any act which implies the violation of their position (passive corruption through an illicit act); the requesting, giving or promising of any type of benefit by a member of the public administration to undertake, or to omit to undertake any act which does not imply the violation of the obligations of their position (passive corruption through a licit act); giving or promising any form of benefit to which they are not entitled, to a member of the public administration in exchange for undertaking or omitting to undertake any act whether or not such act comprises part of their duties (active corruption)[294]. Law 6/2004 also mentions "illicit economic participation" which is a situation in which a member of the public administration with an illicit economic interest damages the national interest which comprises part of their function[295].

Mozambique has ratified the UN Anti-Corruption Convention and the African Union Convention on the Combating of Corruption and the SADC anti-corruption protocol[296]. Internally key legislation includes Law 6/2004 of 17 June, the anti-corruption law which is regulated by Decree 22/2005 of 22 June[297]; Law 22/2007 which governs the public prosecutor's office, with alterations provided in Law 14/2012 of 08 February which provides new responsibilities for the Anti-Corruption Office; Law 15/2012 of 14 August which establishes the rights and protection of victims, complainants and witnesses; and Law 16/2012 of 14 August, the public probity law.

While Law 6/2004 aims at criminalizing and punishing corruption and introduces mechanisms for this purpose, it is important to reiterate what the basis for the punishment of corruption continues to be the 1886 Penal Code (articles 318 and subsequent of which are due to be altered in a proposal currently before parliament).

It should also be noted that for business citizens whose home country is not Mozambique that in 1997 the OECD presented its landmark "Combating Bribery of Foreign Public Officials in International Business Transactions." This convention captured international attention. It was the first global tool developed for fighting corruption in cross-border business deals. Since its inception the OECD Anti-Bribery Convention, as it is known, has been ratified by all OECD countries and a number of others. Over 30 countries have enacted legislation based on the convention, meaning that in those countries bribery of a foreign official is a crime. Should a multi-national or an individual from one of those countries bribe an official in a third-party state, this offence is punishable by law in his home country. The OECD Convention applies to multi-nationals and to individual passport holders from signatory countries. However the OECD itself estimates that only 1 in 5 senior managers of international companies stationed in emerging markets is aware of the convention. Foreign nationals working for businesses should take note that corrupt practice undertaken in Mozambique puts them at legal risk in their home countries. The following countries are among the OECD Convention signatories: Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France,

[294] Law 6/2004, Arts 7 - 9.
[295] Law 6/2004, Art 10.
[296] Resolution 33/2004, of 09 de July.
[297] Resolution 30/2006, of 02 de August.

Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, the UK, and the USA. Five non-members are also signatories - Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic.

New anti-corruption legislation currently being debated in Mozambique, and developments in this area will be included in future versions of this manual. For now a brief overview of the current legislation is provided.

Law 6/2004 of 17 June approved the legal framework for the fight against crimes of corruption and illicit gain (the Anti-Corruption Law) which applies to managers, officers or employees of the State, or local authorities, public companies, private companies with State shareholding and companies which hold concessions to provide State services. The legislation applies not only to those people listed but also to anyone who contributes to crimes of corruption or illicit gain.[298]

The anti-corruption law establishes that indemnity should be made for damages to public or private property or interests resulting from acts or omissions made by government functionaries[299]. It is thus a further statement of the rights provided in the legislation described in the foregoing sections.

The request for indemnity is made against State officials who, for corrupt or illicit financial motives have undertaken acts or made omissions which have materially damaged public or private property or interests.

Action may be taken by the injured party before the Administrative Court. The time taken for a process depends on how busy the court is, and costs are calculated according to a table of costs published in Decree 28/96 of 9th July.

Those holding public office as referred to in Law 16/2012 article 58[300] are required to present asset declarations including all earnings, shares or other goods or values in their possession both within the country and abroad, and such declarations must be regularly updated[301]. These declarations are to be audited by the public prosecutor's office, or the Administrative Court (in the case of staff of the public prosecutor's office themselves), and can be used as evidence in corruption investigations and subsequent prosecutions. The declarations must also include information about holdings of spouses, family members and legal dependents.

All those with decision-making roles in the state apparatus are required to present declarations of assets (which include fixed and non-fixed assets both within and outside the country. These must be

[298] Law 6/2004, Art 2

[299] Law 6/2004, Art 3, para 2

[300] Those covered by this requirement include those holding public Office by election or nomination, judges and magistrates, managers at local and central government levels, members of the reserve bank board and reserve bank administration, senior managers of the tax authority, managers of public assets belonging to the armed forces and police, managers of public institutions, funds, foundations or parastatal companies, and public sector managers in companies with partial state ownership.

[301] Law 16/2012, Art 57

submitted before taking office and must be regularly updated[302]. Such declarations are to be regularly reviewed and may be used as evidence in anti-corruption investigations.

The anti-corruption law reiterates that administrative acts and decisions must be justified. The legislation requires that any administrative act which; either wholly or partially negates, restricts or otherwise affects rights; increases obligations, responsibilities or sanctions; affects legally protected interests; gives a decision on complaints or appeals; decides in any way against what the applicant has requested; decides contrary to the standard interpretation and application of legal precepts; or implies the revoking, modification or suspension of a previous administrative act must be justified with a clear indication of the motivation for the decision and include clear legal support for the decision taken. Any verbal decision of this nature given must be reduced to writing and presented within 7 days[303] As noted above complaints on this type of issue are taken before the Administrative Court.

The sanctions envisaged in Law 6/2004 include detention, imprisonment and fines as well as loss of goods and values illicitly obtained, which revert to the State, expulsion from the Public Administration, prohibition from contracting with the State and public companies, or receiving benefits, tax incentives etc without prejudice to the requirement to pay damages.

An administrative or criminal process may be brought by any person. To begin the process a document containing all supporting information (facts of the case, proof) should be prepared. The document may be signed or may be anonymous. The complaint should be directed to the relevant administrative authority (in practice, the Anti-Corruption Office at national or provincial level, or the department in which the functionary being complained against is employed), the police[304].

In accordance with Article 79 of the CRM any citizen can take a petition before the relevant authority which includes the Assembly of the Republic, including petitioning on cases of corruption. For more details see Section 5.4 below.

A number of useful contacts, as well as the anti-corruption legislation and commentary on it are available in the ACIS "Combating Business Participation in Corruption Toolkit" which is available in Portuguese and English on request from acis@acismoz.com

4.4 State Procurement – Appeals and Complaints Procedures

Owing to its nature, and often to the values involved, procurement is, unfortunately an area in many countries where corruption may be found.

In Mozambique State procurement of goods, services and public works, including concessions and consultancies, is regulated by Decree 15/2010 of 24 May (the Procurement Regulation).

[302] Law 6/2004 Art 4, Decree 22/2000, Art 3
[303] Law 6/2004, Art 5
[304] Law 6/2004, Art 12

Transparency and ethics are considered fundamental principles guiding the implementation of the Procurement Regulation[305]. In addition the application of the regulation is supported by Mozambique's anti-corruption legislation and legislation governing the behaviour of officials in the Public Administration (see above). Both State officials and bidders may be subject to sanction for infractions under the Procurement Regulation[306].

If however a bidder believes that a procurement process has not been conducted fairly the Procurement Regulation provides a right of appeal. Bidders may appeal against the classification or declassification of bidders in a given process. This must be done in writing within three days of notification of the classification or declassification. During the period in which appeals can be made all bidders have the right to openly inspect the bids submitted. The Tender Committee must forward the complaint and their opinion on it to the entity which launched the tender within three days of receiving the appeal. This entity then makes a decision within three days of having received the appeal. While an appeal is pending the tender process is suspended[307]

In order for the appeal to be accepted the complainant must put up a guarantee of up to 0.25% of the estimated contract value as stipulated in the tender document, up to a maximum value of 125,000Mt. If the appeal is successful the guarantee is returned to the complainant, and if the appeal is not, the value deposited is forfeit in favour of the entity which launched the tender[308].

In cases where the norms of the Procurement Regulation, or the contents of the tender document are believed to have been violated or where there is thought to have been an abuse of administrative law the complainant may appeal within three days to the hierarchical superior of the entity which launched the tender. This must be done within three days of the entity which launched the tender communicating the result of the tender process. The appeal suspends the contracting of the winning bidder for five days. In this case the hierarchical superior (usually the line ministry responsible for the sector) may request support from UFSA (*Unidade Funcional de Supervisão das Aquisições* The government body responsible for oversight of the Procurement Regulation - The Unit for the Supervision of Acquisitions) to resolve the matter. As with an appeal to the entity which launched the tender in order for the appeal to be accepted the complainant must put up a guarantee of up to 0.25% of the contract value as stipulated in the tender document, up to a maximum value of 125,000Mt. If the appeal is successful the guarantee is returned to the complainant, and if the appeal is not, the value deposited is forfeit in favour of the entity which launched the tender[309].

The decision provided by the hierarchical superior is subject to legal recourse through the courts. In this situation a formal complaint must be lodged with the Administrative Court within ten days of the date of notification of the decision about the outcome of the appeal[310].

4.5 Procedures for petitioning the Justice Ombudsman

[305] Decree 15/2010 of 24 May, Procurement Regulation, Arts 129 - 139
[306] Procurement Regulation, Arts 146 & 147
[307] Procurement Regulation, Art 140
[308] Procurement Regulation, Art 141
[309] Procurement Regulation, Arts 142 & 143
[310] Procurement Regulation, Art 144

Articles 256-261 of the CRM provide for a Justice Ombudsman. Law 7/2006 of 16 August defines the scope, statute and role of the Justice Ombudsman. The Justice Ombudsman is a state body responsible for guaranteeing the rights of citizens, the defence of legality and justice in respect of the actions of the Public Administration, at all levels. This includes national, provincial, district, and municipal levels, as well as police and security services, public institutions, public companies, concession holders supplying public services, commercial companies with majority state ownership and those managing state assets.[311]

Citizens can, either individually or jointly, present petitions, complaints or appeals to the Justice Ombudsman at any time, either orally or in writing. If in writing the document should include the person's name and address or workplace, and if possible, be signed.[312] Representation may be made directly to the Justice Ombudsman or to the National Assembly, the public prosecutor, or to Mozambique's embassies or consulates, and these will pass the information to the Justice Ombudsman.[313]

The Justice Ombudsman does not have decision-making power but presents findings or opinions to the relevant authorities where the prevention of injustice is found to be required.[314] The Justice Ombudsman cannot annul, revoke or modify any act undertaken by the Public Administration, nor does the intervention of the Ombudsman suspend time periods during appeals processes.[315] However the Ombudsman can present recommendations and call on the Public Administration to provide clarification, and if these instructions are not obeyed, this may give rise to a disciplinary proceeding under the crime of disobedience.[316] When the Ombudsman recommends corrective measures, the affected entity has sixty days in which to make the correction recommended. If this is not done then the Ombudsman may go to the hierarchical superior, and if this person does not respond, take the matter to the National Assembly.[317]

The Ombudsman also has the power to: (i) indicate deficiencies in legislation and recommend alteration or revocation; (ii) issue opinions on request of the National Assembly; (iii) request a declaration of unconstitutionality or illegality from the Constitutional Council; (iv) disseminate legislation; and (v) intervene to protect various interests.[318] The Ombudsman presents an annual report to the National Assembly, including indicating what level of cooperation has been received from the public administration, in respect of matters brought before the Ombudsman's office.[319]

A petition to the Ombudsman must include:

a) Precise indication of the facts;
b) Date on which the occurrence happened;
c) Identity wherever possible of the agent who made the act or omission in question;
d) Indication of the relevant institution where the matter occurred;

[311] CRM, Art 226 and Law 7/2006, Art 1
[312] Law 7/2006, Art 21 para 1
[313] Law 7/2006, Art 21
[314] Law 7/2006, Art 3
[315] Law 7/2006, Art 18
[316] Law 7/2006, Art 26
[317] Law 7/2006, Art 31
[318] Law 7/2006, Art 15
[319] Law 7/2006, Art 19

e) Any proof.[320]

4.6 The Right of Petition

Law 2/96 of 4 January defines the legal framework for the presentation of petitions, appeals and complaints to the relevant authorities, with the exception of the courts, for reestablishment of rights which have been violated or in the defence of the general public interest.[321]

A petition may be about: (i) submission of a request to any institution within the Public Administration; (ii) the presentation of proposed measures to be adopted; (iii) complaint or appeal against any act, measure or decision; (iv) presentation of an opinion on a specific subject.[322] The right of petition may be used in conjunction with other legal methods for the defence of legitimate rights and interests of individuals.[323]

There are a series of requirements in respect of a petition – it must have a sound basis for example. The petition then passes through a series of stages, including discussion by a committee, and at this stage proof may be gathered, or information may be added. The petition may be accepted, archived for future consideration of rejected.

The right of petition is free of charge and is not subject to any specific procedure, but must be in writing and must be signed.[324] Petitions are presented to the bodies to which they are addressed, they may be posted, handed in at district administrations which must pass them on within fifteen days, or at Mozambican embassies or consulates abroad.[325] The relevant body must answer within forty five days of receipt of the petition.

When directed to the National Assembly, petitions are addressed to the President of the Assembly. If the petition is considered relevant it will be directed to the relevant parliamentary committee for analysis and comment, and then returned for discussion in parliamentary plenary session. The petitioner is advised of the Assembly's position on the matter, within a time period established by the standing committee. The Assembly may opt to (i) send the petition to the relevant authority for a decision; (ii) propose measures to be adopted; or (iii) archive the petition.[326]

4.7 Participation of individuals in administrative regulation

Due to the relevance for business citizens of engagement in administrative regulation, this section presents three specific rights for individuals introduced by Law 14/2011, as follows:

Right to propose administrative regulation: Interested parties can present the relevant authorities with requests for the development, modification or revocation of regulations, accompanied by the

[320] Law 7/2006, Art 22
[321] Law 2/96, Art 1
[322] Law 2/96, Art 2
[323] Law 2/96, Art 3
[324] Law 2/96, Arts 7 and 8
[325] Law 2/96, Arts 9 and 18
[326] Law 2/96, Arts 13 - 15

necessary supporting information. The relevant authority must advise the interested parties of decisions taken in respect of the proposal submitted, as well as the basis for the decision taken.[327]

Right to consultation during the development of regulations: wherever proposed regulations include the imposition of obligations, or responsibilities, and it is not against the public interest to do so, bodies representing the interests of those affected must be heard by the body proposing the regulations. Those entities consulted must be mentioned in the introduction to the regulation.[328]

Right to public participation in the development of regulations: over and above that indicated in the preceding paragraph, as a rule and providing that the contents of the regulation so permit, a wider scope of consultation should be undertaken with the regulation submitted for public analysis and collection of suggestions. Participation should be undertaken by adequate means, including meetings, seminars, conferences, telephone conferences, and so on. Interested parties must submit their comments in writing within 30 days of publication of the draft legislation. The introduction to the legislation must include details of the public consultation undertaken.[329]

5. FREQUENTLY ASKED QUESTIONS (FAQS)

The following derives from questions commonly raised by business citizens with whom ACIS has contact. It does not necessarily represent a sample of the problems faced by business in respect of their rights, merely those which are most commonly presented to the association.

a) You suggest that I consult a lawyer, but how do I find one, especially as I am outside Maputo, and how do I know that the one I have found is qualified?

A number of reputable law firms are members of ACIS and their contacts can be found on www.acismoz.com on the "members" page. The Mozambican Bar Association (*Ordem de Advogados* - OAM) is able to provide a list of lawyers.[330] All lawyers registered with the OAM have had their qualifications verified and to be admitted must have passed a clerkship period supervised by the OAM. If you have a complaint or concern about the services provided by your lawyer this can also be referred to the OAM. The OAM's website also includes its articles of association and the standards which regulate the provision of legal services in the country.

[327] Law 14/2011, Art 113
[328] Law 14/2011, Art 115
[329] Law 14/2011, Art 116
[330] Ordem de Advogados de Moçambique:
Avenida Vlademir Lenine, 1935, R/C
Maputo, Moçambique
Tel.: +258 21 414 743
Fax.: +258 21 214 474
Celular: +258 82 303 8218
Email: info@oam.org.mz
Website: www.oam.org.mz

If the businessperson does not have sufficient financial means to pay for a lawyer, they can seek free legal advice from the Legal Aid Institute – *Instituto de Patrocínio Jurídico* – IPAJ.[331]

b) A person has come to my business claiming to be an inspector, they have a uniform but no other form of identification. They have said I have to pay a fine of 2,000Mt immediately. What should I do?

Firstly, regardless of whether or not a person is wearing a uniform, any representative of the Public Administration must, in accordance with Decree 30/2001, Art 41, be wearing a badge which is clearly legible, has their photo, individual number, identification of the service for which they work and their name. Without this badge you have no evidence that they are an inspector and should request that they return when duly identified.

Secondly, no fine, charge or other "punishment" can be applied unless reduced to writing. When in writing it must include details of the infraction for which the punishment is being applied, reference to the law, including article and paragraph number to which the infraction refers, and reference to the law, including article and paragraph number under which a fine or charge is being applied. In cases where the fine has been multiplied the document must also indicate why this decision has been taken. It must also indicate how long you have to pay the fine, the contestation procedure open to you with relevant time period, and must clearly indicate which department is issuing the document, and the name of the individual issuing it.

Without a written statement which clearly indicates the infraction you are accused of, and how the fine was calculated, and by whom, you should make no payment.

c) I have been issued a fine for an infraction which my company has committed. I accept that the fine is correct. I have been told I must pay in cash to the inspector who levied the fine. Is this correct?

This is not correct. All Public Administration bodies must make available details of a bank account into which any payments to that body can be made. You should request the details of the bank account, deposit the money accordingly and provide a copy of the deposit slip, along with a written notification to the department in question that the fine has been paid. The letter should include as much detail as possible such as the number of the fine notification document, the date on which payment was made, the deposit slip number and the amount paid. You should retain a stamped copy of the letter and the deposit slip as proof of payment.

d) I have been invited to provide goods to the State as part of a tender process. However I have been told that I should pay a commission in cash or in goods to the person

[331] IPAJ:
Avenida Vladimir Lenine, 291, 1.º Andar, Porta 2
Maputo, Moçambique
Tel.: +258 21 309 340
Fax.: N/A
Celular: +258 84 389 9944
E-mail: N/A
Website: N/A

awarding the tender, and that the cost of this can be included in the price that I quote. Is this correct?

This is not correct. The price that you quote on a tender should include only the price of the goods or services requested in the tender document. No commissions are payable and no goods or services should be given to individual officials as part of a tender process. You may also wish to pursue this matter based on the anti-corruption legislation, in which case you will need proof, for example a witness to the request that was made.

e) My company was inspected and I was told that the infractions we were committing were so serious that the company had to be closed down. I appealed the finding and was successful but I lost one week of production while the company was closed and the matter was widely reported in the national press, damaging my company's reputation. What can I do?

As indicated above you may have recourse to civil action against the individuals who ordered the closure of your business whereby the State may be held liable, with the right to subsequently recoup its own liability from the agent(s) in question. Defamation is also considered a serious matter, and the publication of confidential information about your company, or about a process being undergone between your company and the State, without your permission is particularly serious, since confidentiality is a fundamental principle of the Public Administration.

However before you can take action you will require evidence which proves what happened, and you will need to establish a causal link between the actions of the Public Administration and/or its officials, and the damage or loss that your company suffered. It would also be necessary to attempt to quantify the loss suffered, which would presumably be possible in the case of lost production, in order to potentially claim damages. The purpose of damages is not punitive, it is to restore you to the point at which you were before the damage took place.

f) My company's vehicle was delivering goods to a client when it was stopped by the Transit Police. The company driver who was driving the vehicle has a standard driving license. I was told that he is not allowed to undertake deliveries in a company vehicle using a standard license and I was issued a fine. Is this correct?

There are two distinct issues which need to be considered when discussing transport: the type of transport and the license it may require; and the driver and type of license a driver may require for the type of transport in question.

The Regulation of Automotive Traffic (*Regulamento de Transito Automóvel* - RTA – Decree 11/2009 of 29 May) deals with public and private transport of people and goods. Article 15 deals with the types of licenses and documents to be carried in vehicles engaged in public transport.

Private transport of goods undertaken by natural or legal persons (i.e. individuals or organizations such as companies) fulfilling the following criteria:

- The goods being transported are the property of the entity transporting them, or have been sold, bought, given or rented, produced, extracted, transformed or repaired by the entity transporting them, and transport is an accessory activity to the normal activity of the entity transporting the goods. (Art 5.1 a))

- The vehicles used are the property of the entity transporting the goods, or are under financing or have been hired as a rental without driver, and the vehicle is driven by the owner, the person hiring the vehicle or by someone working for them. (Art 5.1 c and d)
- Private transport of goods is further considered to be the transport in a vehicle belonging to the entity undertaking the transport of goods which belong to them; goods which are the objective of the entity's commercial, industrial or agricultural activity whether through purchase and sale or whether they have been given over for repair or transformation (Art 5.3 a) and b));
- The following is considered private transport of passengers, whether remunerated or not, as long as it is within the scope of the commercial or industrial activity of the entity transporting the people and the vehicle belongs to said entity (Art 5.2): Transport of guests and their luggage between railway stations, ports, airports and hotels; Employees travelling between home and work; people who are ill being transported to hospital. (Art 5.2 a), b) and d)).

Forms of transport of people and goods outside of this definition may be classed as public transport and subject to the necessary licensing. Under Article 6 of the RTA vehicles engaged in private transport are exempt from licensing with the following important exception:

Transport of workers between their residence and work place – this type of transport MUST be licensed (Art 6.1). A fee is payable and the RTA indicates that this fee is provided in Annex I of the RTA, however the fee tables provided in the annex do not clearly indicate which fee applies in this case, it is arguably "*Autorizaçao para Transporte Ocasional*" which costs 1,000Mt. This license must be applied for and at the time of application proof of third-party insurance and vehicle inspection must be provided (Art 6.2).

The driver, must also be correctly licensed to drive the type of vehicle, because driving licenses can b for light or heavy vehicles (which vary in classification depending on size, and goods or passengers being transported), public passenger service, transport of dangerous cargo and other types of load as defined in Article 125 of Decree-Law 1/2011 of 23 March, which approves the Road Code.

Therefore it is necessary to verify the exact situation and the legal clauses indicated as having been infringed, in order to see whether or not the fine has been correctly applied.

g) I have requested information from a government department. I presented my request in writing. However two months have passed and I have not received a response. What can I do?

Firstly you should verify that the sector to which you addressed your request does not have specific legislation granting it extended time periods to respond to certain types of request, or that the type of request you submitted is not considered to be tacitly rejected if no answer is received within a certain time period. Assuming that this is not the case, Law 14/2011 and Decree 30/2001 provide guidance on the time periods within which requests must be responded to. It also indicates that requests presented in writing must be responded to in writing.

Not responding to a request within the legally stipulated time period is considered an "omission" and thus is subject to the various mechanisms described above, and you could for example present a subpoena for information. However as a practical matter recourse to law is complex and costly, and

taking an aggressive approach may not in practice result in you receiving the assistance you require. Therefore an initial option would be to present a further request in writing, for a response to your original submission, or to request a meeting with the person responsible for answering you and their immediate superior, to understand what the delay is in providing the response.

h) I applied for an approval from a government department and my request was rejected. However no reason was given. I would like to know why the request was rejected so that I can plan accordingly. What can I do?

Law 14/2011 requires that any administrative decision rejecting, or in any way limiting the legitimate of individuals, must include an indication of the legal basis on which the decision was taken. Lack of providing this legal basis for the decision is an "offence of form", which allows for contestation, hierarchical appeal or judicial review without prejudice to other measures which may be at your disposal, as discussed above.

As a practical matter your first option could be to write to the relevant department and ask them to clarify the basis for their decision. If no response is forthcoming, you could then consider requesting the hierarchically superior person to answer, as applicable.

i) My company's driver was driving the company vehicle to collect some goods from a supplier and he was stopped by the transit police for speeding. He was told he must immediately pay a fine. He did not contest that he had been speeding but did not have money available to pay the fine so his license, and the company vehicle and its contents were seized by the police. Is this correct?

In terms of liability the Road Traffic Code (Decree-Law 1/2011 of 23 March) (RTC) provides that liability for offences when driving fall on the driver of the vehicle (Art 140, para 1, clause a)), however the vehicle owner (in your case, your company) may also be held vicariously liable for the payment of fines, unless the driver was using the vehicle without permission for example[332].

A driver's license may only be seized in certain very specific circumstances as described in the RTC, Articles 159 and 160, which include that the license is suspected to be false, or has expired. It cannot simply be seized for not immediately paying a fine.

Similarly a vehicle may only be seized in certain very specific circumstances as described in the RTC Article 162, which include that the registration number of the vehicle appears to be fraudulent, the registration document is not legally compliant, the vehicle does not have third-party liability insurance and so on. Vehicles cannot be simply seized because a fine is not paid immediately.

RTC, Article 170 provides that when any traffic officer witnesses a transgression of the RTC they must draft an incident report including the details of the infractions, the name of the officer and the person committing the infraction. This constitutes a legal document which can later be used in a court proceeding if necessary. The report should also include any proof obtained by instruments used by the police such as speed measuring devices and breathalysers.

[332] Road Traffic Code, Art 140, para 8

In practice the incident report usually comprises a fine notification, but this document must contain details of the time and place of the incident, an indication of the law transgressed and the justification of the penalty applied under law (i.e. it must clearly indicate what part of the law was deemed to have been broken, what proof exists, and how the fine is calculated). The notification must also include information about how and where the fine can be paid and how an appeal can be made[333].

While it is possible to pay fines on the spot, it is not a legal necessity. The RTC, Article 172 allows for voluntary compliance in the payment of fines, or for appeals. Fines can be paid voluntarily within 15 working days of the date of notification, and can be paid at any Provincial Traffic Department of the Police of the Republic of Mozambique, or Provincial Vehicle Delegation, i.e. the fine does not have to be paid on the spot or at the issuing officer's base police station but can be paid anywhere in the country. If the fine exceeds 10,000Mt the person committing the infraction may request in writing to pay the fine in installments[334].

Therefore, since your driver is not contesting the fine you have 15 working days in which to pay it, or to request payment in installments. The seizure of the driver's license and of the vehicle is illegal and should be challenged in writing. You may wish to use a lawyer to do this. The procedures described in section 5.1 will assist you, and you may also wish to claim for damages as a result of the time in which your company vehicle was unavailable for your use.

j) Following an inspection by the Tax Authority my company has received a fine, can I contest this?

Any organisation that has been inspected and is not in agreement with the conclusions of the AT has the legal right to appeal the decision. You must comply with the time periods established in law to appeal against each specific matter you do not agree with. If the issue is an irregularity which is not considered an actual infraction then you can appeal to the person who issued the fine, or to their superior. If the matter is considered to be an actual infraction / transgression as defined by law, then you can appeal to the Tax Court.

k) My company received a fine from the Tax Authority after an inspection. We don't agree with the fine but if we appeal and the decision goes against us will the fine be doubled?

Any taxpayer that has been inspected and has received an arbitrary fine as a result, can appeal that fine. It is important to note that in appealing the AT will reopen the matter and reanalyze the basis on which the fine was issued. As a result of this the fine may be cancelled, reduced or increased. However any decision to increase the value of the initial fine must have a legal basis, which must be communicated to you. As a practical matter the increase of a fine could be as a result of new facts coming to light which were not found during the initial inspection, situations which may have led to you committing the same transgression again, after the inspection was completed and so on. However any increase must be explained to you and you must be given the opportunity to respond.

It is also important to note that if you delay in paying the fine or any tax owed, interest is applied in addition to the tax owed and the fine itself. Interest is calculated at the 12 month MAIBOR rate on the date on which you pay the tax plus two percentage points.

[333] Road Traffic Code, Art 174
[334] Road Traffic Code, Art 183

However, in conclusion. The mere act of contesting and losing a contestation does not automatically give rise to the doubling of a fine.

6. CONCLUSION

Public officials are State agents who, in the performance of their function, are limited to the exercise of powers explicitly bestowed upon them by law, as well as by the principles of performance and formation of the will of Public Administration.

Damage caused by public officials in the performance of their duties must be duly verified and confirmed by the Administrative Court. If it is, then compensation is due, and is to be provided by the State, which then has the right to recover this from the official in question, in accordance with the law.

In accordance with Law 7/2012, and the Anti-Corruption Law, in addition to the principle of Public Administration or State accountability for illegal acts performed by its agents, officials and office holders, there is also be a principle of personal liability, which determines that said agents, officials and office holders of the Public Administration can be held individually accountable for illegal acts and omissions, while the State is called upon to participate jointly and severally in such liability.

The individual (both natural and legal) has various mechanisms at his disposal for the defence of his legitimate rights and interests, but must comply with the relevant legal requirements to ensure that such mechanisms are valid. This includes compliance with time periods and following the necessary legal provisions to determine other types of liability such as disciplinary and criminal liability. This can be done by recourse to the different types of complaint, appeal and indictment described above.

To assist business citizens in improving the defence of their rights and interests against illegal acts, in addition to knowing their own legal obligations and ensuring that these are complied with, they need to:

- Know and understand the existing mechanisms for protecting their rights, as provided by law;
- Know the power and scope of the various public authorities that are relevant to their sector of activity;
- Know what procedures and requirements exist for collaboration with public authorities as well as the limits of these. And know what procedures must be followed by State agents such as for example, the presentation of credentials, notifications, the information that must be provided and information which does not necessarily have to be provided, among other aspects, and that they prepared to identify illegal acts or threats thereof and react accordingly;
- Either individually or jointly make use of the available legal provisions, thus developing the practice of denouncing cases of illegality and enforcing respect for the law, whenever this is necessary; and,
- Obtain legal counsel for specific appeals or contestations of administrative acts, in order to ensure that the essential elements, time periods, evidentiary requirements and so on are complied with.

In summary, the law provides a series of tools that can be used by the business citizen in defence of their rights. These tools only have value if they are used and tested. It is therefore incumbent on the business citizen to know and comply with their legal responsibilities in respect of their business, and at the same time to know and be prepared to defend their rights so that their business can grow and develop, thus contributing to the development of the national economy.

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