



Legal Opinion on Transport of Out of Gauge Loads

Prepared by



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A D V O G A D O S

Sponsored by:



LEGAL OPINION REPORT

TO: ACIS

ATT: CARRIE

SUBJECT: LEGAL OPINION

DATE: 14 FEBRUARY 2011

Dear Sirs,

ACIS has requested a Legal Opinion report, in order to clarify some questions in the Mozambican law concerning to the road transportation, license, fees and costs related to police escort.

Pursuant to your request for a Legal Opinion report we are pleased to advise as follows:

1. Legal framework

Preparing this report, we have considered the following legislation:

- 1.1. Traffic Code;
- 1.2. Decree nº 14/2008, 25 June 2008 -Regulation of weights, dimensions, combinations and arrangement of cargo on vehicles and trailers;
- 1.3. Decree nº 51/2009, 29 September 2009 -Regulation of traffic signs;
- 1.4. Decree nº 11/2009, 29 May 2009 - Regulation of automobile transportation;
- 1.5. Ministerial Diploma nº 10/2002, 30 January 2002 – Regulation of custom transit;
- 1.6. Bilateral Agreement on road transport of goods between the government of Mozambique and South Africa;
- 1.7. Bilateral Agreement on road transport of goods between the government of Mozambique and Swaziland;
- 1.8. Bilateral Agreement on road transport of goods between the government of Mozambique and Malawi;
- 1.9. Bilateral Agreement on road transport of goods between the government of Mozambique and Zimbabwe;
- 1.10. Ministerial Diploma nº 260/2005, 29 December 2005- Fees charged for services provided by INAV;
- 1.11. Law nº 121/1971.

1.12. Please note that :

1.12.1. Our advice is limited to the conclusions specifically set forth herein.

1.12.2. This report presupposes the completeness and accuracy of the documents we have examined, as set out above.

1.12.3. In preparing this report we have relied on the relevant provisions of the legislation and further information given by public institutions ANE, INAV, and Ministry of Home Affairs (Traffic Department). Any such changes could affect the validity of our conclusions. We will not update our advice for subsequent changes or alterations to the law unless we are requested to do so.

1.12.4. This document does not bind the Mozambican authorities, including any court, and no assurance can be given that a position different to that expressed in this opinion will not be stated by any Mozambican authority and ultimately sustained by a court or other authority.

2. **Definitions**

- ANE- National Traffic Administration;
- INAV- National Institute of Traffic.

3. **Legal Opinion**

1. **What legislation applies to the movement of wide, long and heavy loads by road?**

The specific legislations applicable are:

- Traffic Code;
- Decree nº 14/2008, 25 June 2008 -Regulation of weights, dimensions, combinations and arrangement of cargo on vehicles and trailers.
- Ministerial Diploma nº 260/2005, 29 December 2005 - Fees charged for services provided by INAV;
- Law nº 121/1971.

2. What constitutes a wide, long or heavy load (or any load outside what is considered the normal gauge for road transportation) – what measurements are used to calculate when a load falls into this category?

There is an axle weight limit established by law and for this reason when the weight and dimension exceeds this limit for a given combination of vehicles, the load shall be considered abnormal.

- Weight

The maximum weight of vehicles should not exceed the following:

- a) Vehicles:
 - two-axle 16 tons
 - three or more axles-26 tons

- b) Articulated vehicle (tractor semi-trailer) to:
 - three-axle 25 tons
 - four-axle 34 tons
 - five-axle 42 tons
 - six-axle 48 tons
 - seven or more axles-56 tons

- c) Vehicle combination of:
 - four-axle 34 tons
 - five-axle 42 tons
 - six-axle 48 tons
 - seven or more axles-56 tons

- d) Trailer:
 - one axle-8 tons
 - two-axle 16 tons
 - three or more axles-24 tons

- e) Tow tractors for:
 - one axle-8 tons
 - two or more axles-16 tons

The gross weight of the trailer should not exceed the gross vehicle weight load or the tare weight of a passenger car that is coupled.

The weights above referred will be monitored by competent authorities, using fixed or portable scales, and any other equipment that were approved by ANE.

- Dimensions

Surrounding the contour of the vehicles, including cargo and all accessories, except the mirrors and indicators of change of direction, should not exceed the following:

- a) Length:
- vehicles two or more axles-13 meters
 - articulated vehicles of three or more axles-18 meters
 - conjunct-trailer vehicle 22 meters
 - trailers with one or more axles-13 meters
 - trailers for agricultural tractors:
 - an axis-seven meters
 - two or more axles-10 meters
- b) Width- 2.60 meters
- c) Height (measured from the ground) - 4.3 meters
- d) Articulated vehicles specially adapted and approved by INAV for transporting containers, the maximum length will be 16.50 meters.
- e) INAV may authorize the transit of vehicles for the transportation of indivisible objects within the limits. The absence of authorization or non-observance of conditioning will be punished by a penalty of 5000, 00 Mt (five thousand meticaís), and the vehicle will be immobilized in the nearest town to be granted the necessary authorization to complete the course, otherwise qualified disobedience.

3. What are the procedures to be followed when moving such loads, in terms of requesting licenses or any other form of permission? Which authorities are responsible for issuing such licenses / documents?

There are two entities involved in the process of licensing:

- ANE;
- INAV.

The procedures to be followed for the moving of loads are:

1. Firstly, the holder of the vehicle of loads should request an Opinion from ANE presenting information regarding the design, length, width, height, weight per axle, route and activity to be developed;
2. Secondly, if the Opinion issued by ANE is favorable, the same should be remitted to INAV requesting the issuance of a license.

4. What fees apply to the issuing of any documents required for the movement of such loads?

According to the Ministerial Diploma nº 260/2005, 29 December 2005 (Fees charged for services provided by INAV), for the issuance of the license above referred, the fee charged by INAV is 398, 234 Mt (three hundred and ninety eight meticais and two hundred and thirty four cents) for each way. In other words, the licenses are allocated for travel, which means that for each round trip it will be required two licenses and must be indicated the specific date or period in which they will make such transportation.

5. What legislation applies to the requirement to have a police escort for wide, long or heavy loads moved by road?

The legislations that applies to the requirement to have a police escort are the Traffic Code, the Decree nº 14/2008, 25 June 2008 (Regulation of weights, dimensions, combinations and arrangement of cargo on vehicles and trailers), Law nº 121/1971 and the procedures established by ANE and INAV.

Depending on the characteristics and vehicle situation (excess of weight, length, width, load size, etc.) it may be required on the Opinion issued by ANE and license issued by INAV, monitoring by police escort to ensure safety, since the trafficability on certain roads, bridges or routes can create a hazard to other users of the same. Thus, whenever a vehicle cargo transit these routes the police escort should create conditions so that the vehicle shall circle alone due to the weight, width and length and absence of security.

6. What are the procedures for applying for a police escort?

Depending on the type of load it will be determine the need and type of police escort, which should be defined by ANE and INAV. The title holder of the vehicle must apply for a police escort and shall pay the charge at the police command.

However, if the license issued by INAV not indicates the need to the police escort does not occur.

7. Is there a legal provision for the number of police to accompany a wide, long or heavy load and if so what is it?

No, the numbers of police escort to accompany the loads are defined by ANE and INAV, depending on the type of intervention that is necessary.

8. What fees can be charged by the police for accompanying such loads? Do these fees include food, accommodation, and return transportation for the officer/s involved or must these costs be assumed in addition, and if so what criteria determine what must be paid?

The Law 121/71, in the articles 4º and 5º (law from the colonial era) established the fees to be charged to the police escort. This law already has a draft amendment to suit it to today's reality.

Fees are charged according to the category of police (who goes from intern to police inspector general- sergeant is more common), and are daily rates range from 250.00 Mt to 450.00 Mt.

Besides the fee above referred, are also charged values through the length of the course:

- in towns, 25.00 Mt per km, plus food and accommodation;
- outside the towns, 50.00 Mt per km, plus food and accommodation.

It should be noted that in cases where the police escort is carried out by the police car, the above referred values are compounded, however, the most common is the police monitor the vehicles in their transportation of cargo.

9. Is there any discretion in the legislation for different authorities in different provinces to levy different charges for the same service in respect of such loads? If so how is this legislated?

No, the law is the same for all the Mozambican territory.

10. In the case of loads which cross provincial boundaries what is the procedure, must payments be made and documents and an escort are requested in each province or only in the province of origin of the load?

The license is valid for any route regardless of the provinces through which they pass.

Please feel free to contact us, should any further clarification be required.

Best regards,

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Lawyers

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