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The International Comparative Legal Guide to:

Employment & Labour Law 2017

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A practical cross-border insight into employment and labour law

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Chief Operating Officer
Dror Levy

Group Consulting Editor
Alan Falach

Publisher
Rory Smith

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Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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Country Question and Answer Chapters:

EDITORIAL

Welcome to the seventh edition of *The International Comparative Legal Guide to: Employment & Labour Law*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of labour and employment laws and regulations.

It is divided into two main sections:

Two general chapters. These chapters discuss the implications of Brexit on UK employment law, as well as global employment standards and corporate social responsibility.

Country question and answer chapters. These provide a broad overview of common issues in labour and employment laws and regulations in 35 jurisdictions.

All chapters are written by leading labour and employment lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Elizabeth Slattery and Jo Broadbent of Hogan Lovells International LLP for their invaluable assistance.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

Alan Falach LL.M.
Group Consulting Editor
Global Legal Group
Alan.Falach@glgroup.co.uk

Chapter 27

Mozambique

Inês Albuquerque e Castro

FCB Sociedade de Advogados

Patrícia Nunes Borges

1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The Constitution of Mozambique establishes in its Title III, Chapter V (Economic, Social and Cultural Rights, and Duties) a number of fundamental rights, such as freedom of association (Trade Unions), the right to work and the right to strike.

Additionally, Mozambican Employment Law (Law No. 23/2007, of 1 August 2007) is applicable to all employment relationships in Mozambique.

Employment relationships of foreign non-resident employees are governed by Decree No. 37/2016, of 31 August 2016 and Decree No. 63/2011, of 7 December 2011.

Furthermore, there is complementary legislation applicable to certain types of employment agreements, and other employment-related matters, such as the occupational accidents and illnesses regime (Decree No. 62/2013, of 4 December 2013). International conventions and treaties, to which Mozambique is party, as well as collective bargaining instruments, are also sources of employment law.

Finally, labour customs of each profession, sector or company are also a secondary source of labour law, provided they are not contrary to law or good-faith principles, except to the extent that individual or collective bargaining instruments render them inapplicable.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

Any person who carries out a productive activity, either in the context of an economically subordinated relationship, or when there is no opposition by the employer, is classified as an "employee" and, thus, protected by the Employment Law.

Notwithstanding, the Employment Law does not apply to employment relationships between Government, local councils and other public institutions and its employees. These employment relationships are governed by specific legislation.

Complementary legislation to the Employment Law sets forth special rules for certain types of activities and, therefore, certain types of agreements, such as domestic employees, work-at-home employees, miners, seafarers, dockworkers, artist and showmen, professional athletes, etc. Employees are thus distinguished primarily by the type of agreement entered into with their employer.

Another main factor of distinction is the employee's nationality. In fact, Mozambique Law is very protective towards national employees and thus imposes several limitations on the hiring of foreign employees – as foreseen both in the Employment Law, Decree No. 37/2016, of 31 August 2016, Decree No. 63/2011, of 7 of December 2011 and Decree No. 108/2014, of 31 December 2014.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

As a rule, employment agreements should be executed in writing and contain, at least, the following information: (i) identification of the parties; (ii) professional classification and professional occupational category of the employee; (iii) place of work; (iv) duration of the agreement and terms for its renewal; (v) amount, means and period of wages' payment and details of additional payments; (vi) hiring date; (vii) established agreement term and its justification (in the case of a temporary employment agreement); (viii) date of the agreement and, in the case of a fixed-term agreement, termination date; and (ix) signatures.

In the event that the agreement is not executed in writing, employees should be provided, in writing, with at least the above-mentioned statutory information.

In any case, the fact that there is no written employment agreement does not affect the validity of the employment relationship and the employee's acquired rights – *i.e.* for all legal purposes there will be an employment relationship even if there is no written employment agreement and the Employment Law provisions will apply.

As an exception, fixed-term employment agreements for a period of less than 90 days do not need to be executed in writing.

1.4 Are any terms implied into contracts of employment?

One of the most important implied terms is that every employment contract is performed in good faith, which demands a mutual obligation of trust and confidence between employer and employee.

Furthermore, some terms may be implied by an applicable collective bargaining instrument or by the Employment Law (for instance, permanent employment agreements will always be subjected to a 90-day probation period, unless the parties choose to reduce or exclude it).

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

The Employment Law sets down minimum employment terms

and conditions, namely, minimum wages, minimum employment conditions, holidays, duration of worktime, termination of employment agreements, etc., which shall prevail over employment agreements and collective bargaining instruments.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

The purpose of collective bargaining is to establish and stabilise collective employment relations. Hence, said regulation instruments typically govern the following matters: (i) relationship between employers and trade union bodies; (ii) reciprocal rights and duties; (iii) mechanisms for extra-judicial resolution of labour disputes; (iv) the applicable procedures, terms and notice periods for termination; and (v) territorial area of application.

These provisions operate to full extent, unless an employment agreement establishes more favourable conditions to the employee.

Collective bargaining instruments are more common at industry level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

Pursuant to the Constitution of Mozambique, employees shall have the freedom to organise professional associations or trade unions, in order to defend individual or collective interests.

Other rules regarding professional associations and trade unions are established in Chapter V (*Direitos Colectivos e Relações Colectivas de Trabalho*) of the Employment Law.

Trade union recognition is contingent upon registration of its statutes with the Employment Administration's central body, following a special procedure provided in the Employment Law.

2.2 What rights do trade unions have?

The Mozambican Employment Law establishes several forms of trade union structures, namely union shop stewards and union committees, trade unions, regional trade unions, trade union federations and general confederation. Either shop stewards and union committees are trade union subsidiary bodies within a company, depending on the size of the company.

Each trade union organisation (including the subsidiary bodies), has its own duties and rights. Overall, trade unions have the right to: (a) support their associates legally protected rights and interests; (b) participate in the drafting of employment legislation; (c) participate in the definition and execution of employment, vocational and further training, productivity, wages, safety, hygiene and protection at work and social security matters; (d) collude with the Labour Inspectorate on law and collective bargaining enforcement and monitoring; (e) comment on reports and other documents concerning regulatory instruments issued by the International Labour Organization; (f) meet at company level; (g) post notices and information related to union affairs at appropriate places within the companies; and (h) represent employees in employment litigations.

Above all, trade unions have the right to collective bargaining, possibly the most significant way of representation of its associates.

2.3 Are there any rules governing a trade union's right to take industrial action?

Yes. Even though the right to strike is a constitutional fundamental right, the Employment Law establishes the procedure for a strike to be declared.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

The implementation of a works council is a right that is solely attributed to employees. As such, employers will not be required to take any action regarding the setting up of works councils.

Works councils should be implemented at a company level, with the intent to represent the company's employees, whenever a trade union subsidiary body does not exist. As a result, their rights and responsibilities, though not expressly provided in the Employment Law, are those of a union shop steward or a union committee, notably: (i) to promote and defend employee's interests; (ii) to represent and assist all or any employment in any existing conflict with the employer; (iii) to represent employees upon industrial actions such as strikes; and (iv) to be consulted by the employer upon collective redundancies, restructuration processes and in the case of any alteration of the working conditions that might substantially affect the employees, etc.

Works councils representatives are elected in a General Employee's Assembly expressly convened for that purpose.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

Works councils, as well as trade unions, shall be consulted by the employers in a number of subjects regarding the company's employees. However, regardless of this consultation rights, works councils agreement on employers' proposals is not mandatory and thus they have no co-determination right.

2.6 How do the rights of trade unions and works councils interact?

On the one hand, trade union rights are to be exercised by trade union structures, even if subsidiary (union shop stewards and union committees). On the other hand, although a works council's main powers are those of a trade union's, the latter's rights will only be exercised, at a company level, whenever there are no trade union representation structures in said company. In other words, works councils are considered subsidiary to trade union stewards and union committees.

Regardless of their subsidiarity, under the legal provisions of the Employment Law, only trade union structures can represent employees in collective bargaining. The right to collective bargaining is, thus, exclusive of trade unions.

2.7 Are employees entitled to representation at board level?

No, they are not.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

Yes. Under the Constitution of Mozambique, all citizens have the same rights and duties, regardless of their skin colour, race, genre, ethnic origin, place of birth, religion, education, social status, parent's marital status, occupation or political conviction.

Furthermore, the Employment Law sets forth a principle of equality between foreign and national employees, as well as a general prohibition of discrimination amongst employees.

3.2 What types of discrimination are unlawful and in what circumstances?

Both direct and indirect discrimination are deemed unlawful. Although positive discrimination is encouraged, the Employment Law specifies some particular circumstances where negative forms of discrimination are prohibited. Thus, equal opportunities and equal treatment must be assured in access to employment, vocational training, career promotion and working conditions, and no employee may be privileged or prejudiced due to ascendancy, age, genre, sexual orientation, marital status, economic situation, education, origin or social status, reduced working capacity, disability, chronic disease, nationality, ethnic origin, race or skin colour, religion, political beliefs, trade union membership and strike support.

3.3 Are there any defences to a discrimination claim?

When facing a discrimination claim, the employer may defend itself before the court by arguing that the treatment is justified, and thus, non-discriminatory.

Defence against discrimination claims may differ depending on whether the employee sued over a direct or indirect discrimination. Against direct discrimination claims, the employer may argue, for instance, that the nature of the activity or the context of its performance requires a different treatment. This argument goes for the principle of what is different should be treated differently. Against indirect discrimination claims, defences by arguing the pursuit of a certain justifiable goal by the employer may be deemed successful, provided that the given different treatment is necessary, adequate and proportional to the pursued objective.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Employees may defend themselves before the competent authorities and employers can settle before or after a claim is filed.

3.5 What remedies are available to employees in successful discrimination claims?

Successful discrimination claims entitle employees to a compensation for both material and non-material damage.

Nevertheless, if the discriminatory treatment led to termination of the employment agreement, the dismissal will be deemed null and void, thus entitling the employee to the right to claim damages and to be reinstated or, if he/she chooses so, duly compensated. Also, employees may terminate their agreements with just cause, being entitled to a proper compensation.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

The law protects every employee in equal terms. No additional protection is granted to said "atypical" workers.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Female employees are entitled to 60 consecutive days' maternity leave, which may begin 20 days before the estimated date of birth.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

Female employees on maternity leave are entitled to a maternity allowance paid by Social Security. Moreover, women on maternity leave, and until one year after giving birth, are entitled to protection against termination, unless a serious disciplinary offence which determines the immediate impossibility of maintaining the employment relationship is committed.

4.3 What rights does a woman have upon her return to work from maternity leave?

Upon their return from maternity leave, the employee will maintain her prior rights. Additionally, maternity protection in the Employment Law entitles pregnant, those that have recently given birth and breastfeeding employees to special protection against dismissal, until one year after giving birth.

4.4 Do fathers have the right to take paternity leave?

Fathers are entitled to a one-day paternity leave, every two years, which shall be enjoyed on the day immediately following the childbirth.

4.5 Are there any other parental leave rights that employers have to observe?

During pregnancy, women have the right not to perform any tasks that may risk their medical condition. Moreover, from the third month of pregnancy, women have the right not to perform night or overtime work and not to be transferred from their usual place of work.

Furthermore, women in their breastfeeding period (which must be informed, in writing, to the employer) are entitled to interrupt their work schedule to breastfeed for two half-hour periods, or a one-hour period in the case of an uninterrupted work schedule, until a maximum of one year after the birth and without loss of remuneration.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Women are entitled to 30 days per year of justified absence in the case of illness or accident of children under 18 years old.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

As a rule, on a business sale, by means of an asset transfer, the position of the employer (the seller) in the employment agreement is automatically transferred to the buyer.

Nevertheless, the business sale may determine the termination of the employment agreement provided that: (i) the employee agrees with the seller (first employer) to stay at his service; (ii) the employee has reached the retirement age and requests it; (iii) the employee has well-founded fear or lack of confidence in the buyer; and (iv) the buyer intends to alter or actually alters, within the following 12 months, the company's object, provided that such alteration substantially affects the employees' working conditions.

The sale of shares does not have any direct impact on the employment agreements.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

In the event of a business sale, the new employer undertakes the contractual position assumed by the previous employer. Therefore, employees shall maintain their previous employment rights and duties, and the applicable collective agreement shall uphold.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

The Employment Law establishes the procedure to be followed in the event of a business sale. Both seller and buyer shall inform and consult with the trade union representatives within the company or works council (in the case there are no trade union bodies) of the date and reasons for the business sale, as well as its foreseeable consequences.

5.4 Can employees be dismissed in connection with a business sale?

Employees can be dismissed not as a result of the business sale itself, but in connection with it. The business sale may provide the employer (either the seller or the buyer) with structural, economical or technological grounds for a collective dismissal or a termination of the employment agreement with prior notice.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

In general, the new employer is required to provide the same terms and conditions of employment to the transferred employees as established in the respective employment agreements. However, employers may amend existing employment agreements by mutual agreement, provided that such agreement does not breach the general rules.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

In general, termination by serving notice to the employee is not allowed.

Termination of employment agreements by the employer varies depending on whether the agreement is permanent or temporary (fixed or unfixed term).

Fixed-term contracts can be terminated before the end of the agreed term or of its renewal provided the employee is given prior notice. Unfixed-term agreements can be terminated once the circumstances that led to the temporary employment take place.

As for permanent employment agreements, they can only be terminated within specific cases set forth in the Employment Law and described below in question 6.6. The general notice period is 30 days, although the contract or the collective bargaining agreement may establish a longer period.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

The Employment Law of Mozambique does not foresee the possibility of "garden leave".

However, it is possible to agree with employees that, during the notice period, they will not have to attend work, provided that the salary continues to be paid.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

The employer may only dismiss an employee in the cases described below in question 6.5 and specific procedures must be followed by the employer, depending on the grounds for dismissal.

An employee is treated as being dismissed if the employer unilaterally terminates the employment relationship. For instance, a termination agreement and the expiry of a fixed-term employment agreement are not considered as dismissals.

Third party consent is not required for dismissals; although in some cases, trade unions or works councils may have to be consulted.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Maternity protection in the Employment Law entitles pregnant, new mothers and breastfeeding employees to special protection against dismissal, until one year after giving birth.

Furthermore, works council or trade union body members cannot be dismissed without just cause for any grounds concerning their performance of their rights, duties and responsibilities.

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

1. The employer is entitled to dismiss for reasons related to the individual employee when there is cause for dismissal, i.e., fault in the conduct of the employee, which due to its seriousness precludes the possibility of maintaining the employment relationship. Pursuant to the Employment Law, the employer shall be entitled to dismiss the employee with just cause in the following cases:

(a) manifest inaptitude of the employee for the job, only discovered after the probation period has ended;

(b) culpable conduct on the part of the employee, sufficiently serious to justify dismissal (disciplinary dismissals);

(c) arrest or imprisonment of the employee if, by the nature of his/her tasks, the arrest or imprisonment affects his tasks; and/or

(d) economic reasons which may be technological, structural or market-related (dismissal for objective reasons).

Dismissals on the grounds of (a), (b) or (c) do not entitle the employee to compensation, but only to the credits arising from the termination of the employment contract.

2. The employer is entitled to dismiss for business-related reasons when there are objective reasons (technological, structural or market-related) that may affect not only an individual employee, but also a number of them, causing a series of individual redundancies or a collective dismissal (see question 6.9 below).

Compensation payable to an employee on a fixed-term agreement corresponds to the salaries between the dismissal and the date on which the contract was due to terminate.

Compensation values for employees on a permanent employment agreement should be as follows:

1. 30 days of wages per each year of service, if the employee's base wage is equivalent to one to seven times the national minimum wage;
2. 15 days of wages per each year of service, if the employee's base wage is equivalent to eight to ten times the national minimum wage;
3. 10 days of wages per each year of service, if the employee's base wage is equivalent to eleven to sixteen times the national minimum wage; or
4. three days of wages per each year of service, if the employee's base wage is equivalent to more than sixteen times the national minimum wage.

However, it is important to take into consideration that there are transitional provisions set forth in the Employment Law, depending on the date in which the contract was entered into.

Different compensation values can be established either in the employment agreement or in a collective bargaining agreement, provided they are more favourable to the employee.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

Disciplinary dismissals, or dismissals with just cause by the employer, must be preceded by a disciplinary procedure, otherwise, they will be deemed null and void. The statute of limitation to bring a disciplinary action against the employee is six months after the misdemeanour.

1. Accusation phase: the disciplinary procedure must be initiated within 30 days of the fault being identified. It begins with a written communication (the Indictment Note) to the employee, and to the trade union subsidiary or to the works council, with a full description of all facts allegedly carried out by the employee. Upon the delivery of the indictment note, the employer may choose to suspend the employee until the decision of the disciplinary procedure is made.
2. Defence phase: within the following 15 days, the employee may present his/her written defence, attaching any document or requesting any evidence (for instance, witness testimonial) that may be considered relevant.

   Once the production of evidence is completed, trade union bodies or works councils have a right to counsel, within five days.
3. Decision phase: thereafter, within 30 days, the employer must issue the final decision. The decision must include reasoning, arguments and gathered evidence, and refer to all grounds for the disciplinary sanction (in this case: the dismissal). A copy of the decision must be sent to the employee, the union and the Ministry of Employment within the same deadline.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

Employees are free to challenge either the procedure or the grounds of their dismissal. In the case of an unlawful dismissal, the employee may request: (i) damages caused by the dismissal; (ii) salaries regarding the period during which the proceeding was pending (with a limit of six months); and/or (iii) reinstatement or alternatively compensation corresponding to 45 days' wages per each year of seniority.

Such actions must be filed within six months of the employer's decision to terminate the employment.

6.8 Can employers settle claims before or after they are initiated?

Yes, employers may settle claims either before or after they are filed at court.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

The Mozambican Employment Law provides two main types of redundancy procedure: collective dismissal and individual redundancy.

On the one hand, a redundancy occurs whenever the employer faces economic, technological or structural circumstances which determine the need for a reorganisation or conversion of the company, or a reduction or closure of activities, which makes it necessary to eliminate or significantly alter some jobs.

On the other hand, a dismissal of more than 10 employees based on structural, technological or market reasons is deemed a collective dismissal. The intention to proceed with a collective redundancy must be disclosed, in writing, to the employees, trade union representatives or works council and the Ministry of Employment before the negotiation process.

Within the collective redundancy, the negotiation and consultation procedure between the employer and the employees' representatives cannot last more than 30 days and should essentially cover the following matters: (i) grounds for the dismissal; (ii) possibilities

of avoiding or, at least, mitigating its effects; and (iii) measures to be taken in order to mitigate its impending consequences. The burden of proof of structural, technological or market reasons for the dismissal lies with the employer.

Both cases of redundancy give every dismissed employee the right to a 30 days' prior notice plus a compensation calculated as described above in question 6.5.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Mass or collective redundancies can be challenged at either judicial or an arbitration court.

Should the court find the dismissal unlawful or unjustified, the employee will be entitled to be reinstated within the company or, if he/she prefers, to be duly compensated. The employee will always have the right to the unpaid salaries during the period between the dismissal and the court's decision, with a maximum of six months' salary.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

The Employment Law does not include any specific provision regarding restrictive covenants. Considering that the Constitution of Mozambique acknowledges the right to work as a fundamental right, any restrictive covenant must not infringe the constitutional right's core.

Restrictive covenants such as non-compete or non-soliciting are known to be particularly hostile to constitutional rights regarding employment relationships. However, and considering that the employment law has not yet expressly foreseen such possibility, it is arguable that under the Civil Code, said covenants are not prohibited. In any case, those clauses must be assessed on a case-by-case basis.

7.2 When are restrictive covenants enforceable and for what period?

Please see question 7.1 above.

7.3 Do employees have to be provided with financial compensation in return for covenants?

The Employment Law is virtually silent on the matter. However, if parties agree on said clauses under the general civil rules, it is safe to say that one way of avoiding an infringement of the constitutional right to work is to duly compensate the employee for any restrictive covenant there might be.

7.4 How are restrictive covenants enforced?

Please see question 7.1 above.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship? Can an employer transfer employee data freely to other countries?

Mozambique does not yet have any specific data protection law. Nevertheless, the Constitution of Mozambique sets forth some rules for the protection of data, making clear reference to personal privacy and the right to inviolability of correspondence or other private data or information. Furthermore, the Employment Law reinforces employees' rights to privacy.

Hence, regarding employment relationships, employers' power to collect and process personal data is restricted by the employee's fundamental right to privacy.

As per the above, there are three stages to consider regarding data protection: collecting; processing; and transferring.

Firstly, the sole collection of personal data needs to comply with the fundamental principle of proportionality – *i.e.* it is necessary to assess whether the information to be collected is suitable, adequate and justified to achieve legitimate and specific purposes (*e.g.* see question 8.3 below).

In respect of the processing of the employee's data, it is paramount that it cannot be used for purposes other than, or at least incompatible with, the purpose that justified its initial collection.

With regard to the free transfer of data to other countries, the law does not provide a straight answer to this issue. Nevertheless, under the Employment Law, employee's personal data obtained by the employer is subjected to confidentiality and hence cannot be provided to unauthorised third parties, without the employee's consent, unless legal provisions so determine.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Taking into account that such information is personal, the employee has the right be informed on and to access his/her personal data.

Moreover, it is also arguable that employees must have the right to access and to rectify their personal data. Therefore, employees do have the right to obtain copies of their personal information being held by the employer.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

Employers may only carry out the pre-employment checks deemed fundamental, *i.e.*, those containing information that is strictly necessary and relevant according to the specific job to be performed. In other words, there has to be a "need to know" connection between the information required and the specific function for which the prospective employees are being hired. For instance, if a candidate will be in a position that directly handles money, it would be justifiable to request information about prior convictions to confirm whether or not the applicant was convicted on corruption, extortion or fraud crimes.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

The Employment Law admits that the employer may set forth rules for the use of company's equipment, within which IT equipment and IT tools are included. Moreover, under the Employment Law, the employer can prohibit the use of company's equipment for personal matters.

However, monitoring of employee communications is not expressly established neither in the Constitution, nor in the Employment Law. Therefore, such possibility must be seen and carefully analysed on a case-by-case basis. Notwithstanding, the constitutional protection of the employee's right to privacy must never be infringed. In other words, there must always be a balance between employee's privacy rights and the powers given to the employer by the Employment Law, bearing in mind that the first has constitutional dignity.

To conclude, the monitoring of an employee's communications through any means or tools provided by the employer is possible, though with some constraints: (i) the employee must be made aware of the possibility of his/her communications being monitored; (ii) the employee's right to privacy must be protected (for example, the content of a personal email cannot be accessed, which means only the topic can be monitored; regarding telephone calls, it is enough to assess if the call was for personal or professional matters); (iii) the decision to monitor must be suitable, adequate and necessary for the purposes pursued by the employer; and (iv) the processing of the monitored information must follow the terms described in question 8.1.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

The Employment Law does not establish any special rules regarding the protection or monitoring of employee's social media accounts. Therefore, the same principles described above in questions 8.1 and 8.4 are applicable.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

Considering that provincial and district labour courts are not yet fully operational, labour disputes fall under the jurisdiction of the competent provincial and district judicial courts. Whenever a claim is filled with the court, the Public Attorney's Office shall conduct a mandatory conciliation hearing trying to reach an agreement between the parties.

Additionally, arbitration agreements will also be valid and enforceable, provided that there is an arbitration clause.

Mediation is mandatory and shall take place before a mediator appointed by the labour mediation and arbitration body.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

Dispute resolution in employment matters is governed by several different statutes: the Employment Law (Articles 180 to 193); the Mediation and Arbitration Act (Law No. 11/99, 8 July); the Labour Procedure Code; the Civil Procedure Code; and the Civil Code.

The collective conflict resolution regime, set forth in the Employment Law, with the necessary adaptation, applies to disputes arising from individual employment relationships. Therefore, although conciliation is optional, mediation is mandatory, before submitting the claim to arbitration or to the labour courts, except for interlocutory injunctions.

The arbitration procedure is governed by the Employment Law. Arbitration is always optional, unless the employer is a state company, or a company that provides for basic needs services and the Commission for Mediation and Arbitration so determines.

If and when the claim is filed with the court, the employee and the employer are given notice to attend a mandatory conciliation hearing with the purpose of reaching an agreement. The judicial phase begins only if no agreement is reached. The only fees to be paid by the employee in order for a claim to be submitted are the court fees. Nevertheless, in certain situations, the employee may be exempted from this payment, upon submission of a duly substantiated request.

The Labour Procedure Code also establishes special procedures regarding occupational accidents and illnesses.

9.3 How long do employment-related complaints typically take to be decided?

The timescale for completion varies on a case-by-case basis, also depending on the court's workload. The average timescale for first-instance proceedings is six months.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Appeals must be filed with the competent Mozambican Appeal Court. The law does not establish the possibility of a second appeal. However, practice tends to show that decisions of the Appeal Court can be challenged before the Employment Section of the Supreme Court. The timescale for these proceedings varies on a case-by-case basis, also depending on the court's workload. However, the average timescale is one year.

Inês Albuquerque e Castro
FCB Sociedade de Advogados
Avenida da Liberdade n.º 249, 1.º
1250-143 Lisbon
Portugal

Tel: +351 21 358 75 00
Email: ic@fcblegal.com
URL: www.fcblegal.com/en

- Degree in Law in 1998 from the University of Lisbon School of Law. Joined FCB in 2015 to coordinate the Employment, Benefits and Pensions Department.
- In 2001, attended a postgraduate course in Labour Law, at the University of Lisbon School of Law, and also a Post-Graduate course in European Criminal Law at Faculdade de Direito da Universidade de Coimbra.
- In 2008, also attended a postgraduate course in Public Law and Employment at the Faculdade de Direito da Universidade de Coimbra.
- Has written several articles on Labour Law for Portuguese publications and is the author of a chapter in the 3rd Volume of the book compilation entitled "*Estudos do Instituto de Direito Laboral*".
- Is a regular speaker at conferences, seminars and workshops about Labour Law. Inês' work is recommended by the most important international directories (i.e. *Chambers & Partners*).

Patrícia Nunes Borges
FCB Sociedade de Advogados
Avenida da Liberdade n.º 249, 1.º
1250-143 Lisbon
Portugal

Tel: +351 21 358 75 00
Email: pnb@fcblegal.com
URL: www.fcblegal.com/en

- Degree in Law in 2005 from the Universidade Católica Portuguesa.
- Joined FCB in 2005 and became an Associate Lawyer in 2007.
- Integrates the Employment, Benefits and Pensions Department. Also works in the Corporate, Commercial and M&A Department.
- In 2009, attended a postgraduate Course in Labour Law at the Faculdade de Direito de Lisboa.
- Has attended several seminars and conferences, both as a speaker and as a participant, regarding labour and employment matters.

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glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.co.uk