

MOZAMBIQUE CORRUPTION LEGISLATION

Penal Code, Chapter IX

Article 318 on bribery and corruption by public servants stipulates:

All public officials who commit the crime of bribery and corruption by accepting a donation or gift, for themselves or for a third party with their authorisation and approval, to perform a task which forms part of their duties, and should such a task have been executed and its performance have been unjust, shall be punished with a prison sentence of two to eight years and a fine corresponding to one year. However, should such a task not have been executed, such persons shall be suspended for three months and liable for the payment of the same fine.

Article 319 prohibits corruption by members of the judiciary by stating that:

Judges or members of a jury, who accept a bribe to pass a judgement either for or against a specific person in a criminal case, before or after the indictment, shall be sentenced to a prison term of eight to 12 years.

Article 321, based on **Active Corruption** says:

Any persons who corrupt a public official through gifts, presents or promises in order to obtain a favour, buy a vote or to ensure a specific result shall be punished with the same sentence as that which applies to the public official who accepted this form of corruption, except that the requirements of dismissal or suspension shall be replaced by suspension.

Article 322 states:

The provisions of article 318 shall be applicable to public officials who, on their own behalf or on behalf of others, accept an offer or promise to receive a gift or present from a person requesting a decision or order, or whose business or objectives depend on the exercise of the respective public functions.

Anti-Corruption Act, Law 6 of 2004

Article 7 of Law 6 of 2004 provides for the offence of **passive corruption**. In terms of **Article 7(1)** any person who, on his or her own or through another person with such other person's consent and approval, receives money or any other asset not due to him or her, in return for performing an act that "implies the violation of his or her duties" commits an offence.

NOTE: **Article 24 of Law 6 of 2004** repeals all provisions contrary to this Law.

Article 9(1) of Law 6 of 2004 prohibits **active corruption**. In terms of this Article it is an offence for any person who gives or promises to give to any other person, mentioned in paragraph 2.1.5, either personally or through another, money or any material or non-material privilege not due to that other person, in return for performing an act that does not imply the violation of his or her duties and forms part of his or her tasks.

Article 10(1) of Law 6 of 2004 prohibits any act or omission by a public official in the discharge of his or her duties for the purpose of illicitly obtaining benefits for himself or herself or for a third party.

Article 2(1) of Law 6 of 2004 provides for corruption in the private sector, but under circumstances where private companies are outsourced to provide public services.

Article 2 of Law 6 of 2004 provides for participation in corruption activities, as either the principal, co-principal, agent, instigator, accomplice or accessory after the fact in commission of an offence.

- *Article 14* of the Penal Code stipulates that: All persons involved in actions that led to the perpetration of the crime are held criminally liable provided that these actions are foreseen in the law.

Article 4(1) of Law 6 of 2004 provides that every person holding or exercising a public office with decision-making powers [...] must submit a declaration of their assets, which must be kept by such services.

Article 6 of Law 6 of 2004 provides for the inclusion of an anti-corruption clause in public contracts.

Article 2 of Law 16 of 1997 provides that the Administrative Court is the supreme independent body responsible for external control over the legality of **public revenue and expenditure**, the appraisal of accounts submitted to it by law, and the enforcement of financial liability for financial offences.

Article 13(1) of Law 6 of 2004 provides for the protection of witnesses and stipulates that no informant or complainant may be subjected to disciplinary procedures, or prejudiced as regards his or her professional career, or be harassed in any way as a result of the complaint or accusation concerning crimes pursuant to the Law.

Article 19(1) of Law 6 of 2004 provides for the establishment of a Central Anti-Corruption Office within the Office of the Public Prosecutor. This Office is answerable to the Public Prosecutor. In terms of Article 19(2) the Central Anti-Corruption may, among others —

- (i) carry out inquiries and investigations of complaints and accusations where crimes of corruption are suspected to have occurred;
- (ii) through the judicial authorities summons people to present information in writing concerning their assets in the country and abroad, specifying the dates on which such assets were acquired and how they were acquired;
- (iii) conduct preliminary investigations, for which it may request documents, information, account statements, registers and other details of the person suspected of having committed the crimes set out in the Law;
- (iv) order the detention of people so summonsed and ensure that they appear before the investigative judge;
- (v) carry out searches in any place to obtain incriminating evidence;
- (vi) enjoy free access, without prior warning, to Public Administration institutions, government entities, and administrative services of local authorities, for purposes of conducting investigations.

EXTRADITION

Article 103(1) of the Constitution states that extradition may only take place by court decision, and in terms of Article 103(3) no Mozambican citizen may be expelled or extradited from the national territory.

MUTUAL LEGAL ASSISTANCE

Article 62 of the Constitution, states that the Republic of Mozambique, as a non-aligned country, shall establish relations of friendship and cooperation with other states on the basis of the principles of mutual respect for sovereignty and territorial integrity, equality, non-interference in internal matters and reciprocity of benefits.

According to *Article 153(1)(f)* of the Constitution, the Council of Ministers shall have power to prepare the signing and formalisation of international treaties and sign, ratify, adhere to and terminate international agreements.
