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## Article on Important and Practical Tax & Legal COVID-19 Measures

The current COVID-19 Pandemic created new and unforeseen issues the world over, and the months ahead are expected to be quite volatile and dynamic.

Government measures continue to be gradually approved and introduced since the State of Emergency was declared. It is important to mention that these measures may look different from those implemented in other parts of the world – for instances where some of the parent companies of Mozambican registered companies are based.

As many African countries – including Mozambique – lack financial strength and struggle with human and healthcare resources, their ability to respond to this crisis is somehow limited to what is – or eventually becomes – readily available to them. Thus, the constant upgrading of the measures and policies and subsequent changes to legislation.

Companies with businesses operations in Mozambique need to understand how the Government is reacting and/or responding to the crisis, and the implication of those responses on their people and businesses.

In this note – which reflects our outlook as of April 2020 – we offer some relevant insights on the COVID-19 Pandemic measures approved and being implemented in Mozambique, both from a legal and a practical standpoint. This includes analysis to legal instruments enacted by the President, Parliament, Government/Council of Ministers and by the different subordinated public departments (to which we will generally refer to as “Government”), and our understanding of how these measures should be implemented.

Aspects to be covered in this note include:

- Access to Justice
- Corporate
- Health & Safety in Business Operations
- Employment & Social Security
- Immigration
- Tax & Customs
- Banking & Finance
- Public Services

Some perspectives here may soon be out of date, and we will update it regularly as the crisis evolves.

## Overview

The President of the Republic of Mozambique has declared a State of Emergency – the first since the country's independence in 1975. The State of Emergency is currently running for 30 days – up to the 30 April, but there is a possibility that it will be extended for up to two 30-day terms. Even if it is not extended, the impact and consequences of the Pandemic will continue to challenge the country and be felt in months – if not years – to come.

### Access to Justice

- The State of Emergency Presidential-Decree establishes that the courts will be open, although only operating a limited scope of acts and procedures.
- Procedural acts and judicial procedures will be governed by the leave regime applicable to courts under the Law, without prejudice to urgent acts, namely, protective measures and those in which fundamental rights are in jeopardy (i.e. defendants in prison and under-age individuals at risk).
- Interpellations, constitutions of arrears and execution suits are currently without effect.
- The deadlines for administrative, disciplinary and labor lawsuits are suspended and shall be transferred to the first business day after the State of Emergency ends.

The Supreme Court has recommended the implementation of the measures by the courts, including: i) the court room may only be open to the interested parties, their attorneys, witnesses and other intervening parties in the suit; ii) suspension of the mediation services carried out by the Maputo City Judicial Court; and iii) only one trial can be scheduled for the same time.

The Administrative Court has also adopted similar temporary

healthcare measures to control the spreading of the Pandemic in the courts.

### Corporate & Commercial

No specific measures were introduced yet, regarding statutory obligations of companies. However, depending on the scope of business and licenses held by the companies, as well as commercial and finance agreements entered into, certain reporting obligations are already established by Law and by contractual provisions concerning alteration of circumstances, force majeure and other events that may cause breach of contracts. These matters have to be analyzed and considered on a case-by-case basis, but the parties must always bear in mind that negotiations shall follow the principle of good faith and the stakeholders can make use of the Principle of Autonomy of the Parties as provided for under the Civil Code.

Nevertheless, the Government has introduced a special expeditious licensing regime for the importation of food supplies, biosafety material, diagnosis testing kits and other essential products.

*“stakeholders can make use of the Principle of Autonomy of the Parties as provided for under the Civil Code”*

### Health & Safety in Business Operations

- 14 days self quarantine for individuals entering the country in the previous 2 weeks, or, that have been in direct contact with infected individuals. Health officials can also put certain individuals under surveillance.
- Individuals 60 years and older, pregnant women and individuals suffering from illnesses considered a risk to be more easily infected enjoy special protection, including, priority for remote work (from home).
- Certain public events, entertainment venues and sports activities are canceled, prohibited or closed, as the case may be.
- Limitation of entry and exit of individuals to and from the country, including closure of some borders, airports and ports.

Public and private entities will continue to operate but shall comply with the following preventive measures:

- Interpersonal distance of 1.5m;
- Cough etiquette;
- Frequent hand washing;
- Disinfection of installations and equipment, and airing of premises;
- No sharing of personal utensils;
- Decrease of the number of employees working at a company's premises or installations, by maintaining the workforce in no more than 1/3, with rotation of teams every 15 days. This rule is not applicable to essential industries, being those which

produce food, cleaning and hygiene products, chemicals and healthcare supplies, as well as those that support the essential industries and those that are critical for the functioning of the country's economy (i.e. banks);

- Use of masks as recommended by health officials.

*“suspension of employment contracts is currently the preferred option of employers”*

### Employment & Social Security

The termination of employment contracts based upon the absence of employees from the workplace due to the preventive measures imposed by the Government is not allowed. However, this does not include the termination of employment due to other factors (market, technology and financial issues faced by the companies) and with just cause, as applicable.

To soften the financial burden of the Pandemic upon businesses – where still possible – companies can resort to the suspension of employment contracts (which is currently the preferred option of employers in the country), and collective leave (which may be challenged in one way or the other) in the future and reduction of salaries based on force majeure - by amendment to the employment contracts.

Nonetheless, it is of vital importance to complement the administrative measures imposed, with the labor legislation in force, as well as with the Principle of Autonomy of the

Parties established under the Civil Code, which is important to consider when negotiating a contract or termination thereof.

Subject to compliance with specific labor requirements and procedures, termination of employment contracts can follow the period of suspension of the contracts.

In case of termination, the ideal case scenario would be the entering of revocatory agreements with the affected employees.

Once a company makes a decision to either suspend contracts or reduce salaries, it should not go back on its approach, at least for a considerable amount of time, as this may jeopardize its position in court later, in case of a lawsuit. Although courts are only partially operating at this time, they will eventually open, and it is expected that a considerable number of lawsuits will be initiated. And, the burden of proof lies with the employers, at least in cases of termination by the employer.

*“In case of termination, the ideal case scenario would be the entering of revocatory agreements with the affected employees”*

Remote work shall be implemented whenever possible and its rules shall be defined by the employer.

The Government has recently approved regulations that establish the pardoning of fines and interest currently due by the companies for lack of compliance with the legal contributions to the Social Security Institute.

However, this measure does not mean that the payment of the past due contributions itself is waived.

One important aspect to be looked at by employers and perhaps negotiated with their insurance companies, is the workmen's compensation insurance, which does not usually cover remote work and/or working from home, but it is relevant to do so at this stage.

### Immigration

Renewal of visas in the provincial Directorates of Immigration are now allowed for those holding:

- Business, visitor and tourism visas;
- Short term employment visas;
- Border visas expired and individuals were unable to exit the country before the expiration dates.

Foreign nationals that are currently outside the country, holding expired Residence Permits may renew their permits upon returning to the country, as long as they can prove that they were not able to return to the country at an earlier date.

During the State of Emergency, the issuance and cancelation of entry visas is temporarily suspended, as well as agreements for suppression of visas.

### Tax & Customs

Thus far, the following measures were introduced:

- Suspension of issuance of tax ID numbers;
- An exceptional customs regime for the importation of food supplies, medication and other essential goods. However, duties

are still payable, post importation procedure;

- New rules for the payment of taxes by bank transfer (details to be obtained at each relevant Tax Department);
- Suspension of tax and customs auditing procedures.

It is expected, however, that these procedures resume after the State of Emergency ends, but possibly not in the short term.

Exceptional rules in terms of extended timeframes for the payment of municipal taxes and/or waiver of fines have also been introduced, by the municipalities themselves.

*“Suspension of tax and customs auditing procedures – it is expected, however, that these procedures resume after the State of Emergency ends, but possibly not in the short term”*

### Banking & Finance

As previously mentioned, interpellations, constitution of arrears and execution lawsuits due to breach in compliance with financial obligations as a result of the COVID-19 measures, have no effect during the State of Emergency. Meaning that, there must be a proven cause and effect relation between the impact of the Pandemic measures with the reason for the breach of contract.

Important is to note that in whatever existing financing arrangements between banks and their clients, practical aspects –

namely notification obligations on alteration of circumstances or the occurrence of force majeure events, breach of the contract’s covenants, cross defaults and waivers – shall be thoroughly assessed. And the Principle of Autonomy of the Parties is here once again considered relevant for the restructuring and/or novation of financing agreements.

The Bank of Mozambique has introduced the following measures aiming at supporting businesses and families to comply with their financial obligations under various financing arrangements:

- Line of funding to banks and concession of special conditions for the renegotiation of financing arrangements with their clients, in foreign currency to the Interbank Foreign Exchange Market participating institutions, in the amount of \$500,000,000 for a period of 9 months as of 23 March 2020;
- Authorize the non constitution of additional provisions by the credit institutions and financial entities in case of renegotiation of financing contracts, before their expiry date;
- Reduction of the provisional reserves on deposits in commercial banks by their clients, in local and foreign currency, to 11.5% and 34.5%, respectively;
- Decrease of the MIMO rate to 11.25%.

*“the Principle of Autonomy of the Parties is here once again considered relevant for the restructuring and/or novation of financing agreements”*

### Public Services

If expired during the State of Emergency period, the following documents shall remain in force until the 30 June 2020:

- ID documents;
- Drivers licenses
- Residence permits and temporary visas;
- Customs entry dispatches for imported vehicles.

The issuance of the following official documents is suspended:

- Travel documents;
- Civil identification documents, with the exception of birth and death certificates;
- Marriage certificates;
- Property registration certificates;
- Police clearance certificates
- Certificates of legal entities;
- Drivers licenses;
- Vehicle registration documents;
- Tax ID numbers; and
- Other similar documents.

During the State of Emergency period, any licenses and business authorizations or any other similar or related administrative acts remain valid irrespectively of their expiry date.

As the Pandemic quickly evolves, so will its impact, thus, more aggressive and challenging measures may be implemented. Even if the State of Emergency is not extended, most of these measures may continue in practice.

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