

## MOZAMBIQUE

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# NEW LEGAL FRAMEWORK FOR FOREIGN CITIZENS

Law n.º23/2022, 29th December

*The new Foreign Citizen's Legal Framework, which sets the rules for entry, stay and leaving the country, as well as the rights, duties and guarantees of foreigners, aims to prevent, and combat illegal immigration and human trafficking.*

### ■ Introduction

On January 28, 2023, the new Legal Framework for the Entry, Stay and Leaving of Foreign Citizens, approved by Law No. 23/2022, of December 29<sup>1</sup>, came into force. This Law, which sets the rules for entry, stay and leaving the country, as well as the rights, duties and guarantees of foreigners, aims to prevent, and combat illegal immigration and human trafficking, especially given the challenges posed by the dynamics of controlling migratory movement. It also aims to strengthen the rules regarding the entry and departure of minors in Mozambique.

### ■ The amendments

The rules that determine the procedures and competences relating to administrative expulsion have been adjusted, including the possibility of objection either administratively or judicially. As in the previous law, the new legal framework applies without prejudice to special laws, bilateral or multilateral agreements, or international conventions to which the Mozambican state is a part of. The law also establishes the possibility that under certain circumstances, namely when the interest of the State justifies, the Government may exempt citizens of certain countries from presenting entry visas. Still within the scope of the general aspects of this Law, it is important to

mention that, concerning the special duties to which the foreign citizen is committed, in addition to those included in the previous legal framework, the foreign citizen must communicate the change of domicile and, immediately, communicate the loss or misplacement of documents.

Another relevant issue has to do with the means of subsistence available to the foreign citizen. In fact, although it is necessary to demonstrate the means of subsistence at the time the visa is requested, it has become mandatory to demonstrate it also when the foreign citizen is actually entering the national territory, and in cases where there is a term of responsibility issued by nationals or foreigners residing in Mozambique, this is the document that must be presented, but it is subject to acceptance by the migration services, which must ask the foreigner to prove the financial capacity of the person who issued the term of responsibility.

Regarding the Visas, significant changes have taken place, as described below:

1. **Entry visas:** the granting of visas by embassies and consulates in Mozambique requires prior authorization from the Migration Services,

<sup>1</sup> Even though the official gazette states the date of December 29, 2022, the law was not actually made available to the public until the third week of January 2023. Still, as the official attestation of publication is the official gazette, the date that should be considered is the one stated therein.

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except in the cases of diplomatic, courtesy and official visas which are issued by the Ministry that oversees the foreign policy area, which is currently the Ministry of Foreign Affairs and Cooperation.

- 1.1 Residence Visa:** this visa remains valid for a single entry and stays for a period of thirty days, extendable to sixty days.
- 1.2 Tourist Visa:** this visa continues to be granted to foreign citizens who come to the country for tourism or recreation and allows the holder to stay for a period of up to ninety days and, different from what was observed in the previous law, this visa now allows its holder to use it interpolatedly (and not just continuously), during a period of 12 months, respecting the limit of ninety days.
- 1.3 Business Visa:** in a merely indicative reference, this visa - which does not entitle its holder to work and much less to reside in Mozambique - establishes that it can be granted for business prospecting, scientific research, participation in meetings, conferences, workshops, general meetings, contacts with companies and other similar events. It is granted for a non-renewable period of 90 (ninety) days and is valid for multiple entries, which differs from what happened with the previous law, since the business visa was issued for a period of thirty days after which the holder had to proceed with the respective extension without exceeding a limit of 60 days, for a maximum stay of 90 days.
- 1.4 Border Visa:** regarding the granting of the border visa, under the new legal framework the holder of the border visa is entitled to two entries, different from what happened with the previous legal framework, since the permission was for one entry only.
- 1.5 Work Visa:** entitles their holder to dedicate themselves exclusively to the service of the employer that requested it, i.e., the employee cannot exercise an activity on behalf of another employer, even if it is unpaid. The extension of this visa, under the previous legal framework, took into account the specific period of the Work Permit and Employment Contract, since it was extended for an equal period, while under the new law, the extension is for a period not exceeding one year, even in

cases where the Work Visa has a longer duration.

- 1.6 Temporary stay Visa:** this visa is granted to the foreign spouse and to minors or incapable children of the foreign citizen who holds an Work Visa or Visa for Investment Activity and allows its holder multiple entries and stay for a maximum period of one year, extendable while the reasons for its granting persist. The innovations in relation to the granting of this Visa has to do with the fact that, under the terms of the revoked legal framework, it was only granted to dependents of the holder of the Work Visa, not counting the fact that it can now be granted to citizens who come to the country to exercise religious or volunteer activities, as well as for medical treatment.
- 1.7 Visa for Investment Activity:** it is granted to the foreign citizen investor, representative, Directors of the investing company, observing the legal formalities of hiring foreign labor by the Diplomatic and Consular Missions of the Republic of Mozambique and is intended to allow its holder's entry into national territory for the purposes of implementing investment projects worth 500 thousand US Dollars or more, approved by the competent entity. It is important to highlight that the minimum amount of investment has changed, because, under the old law, this visa was granted for investment projects whose value was equal or higher than 50 million Meticaís. The visa for investment activities allows its holder to stay in Mozambique up to 2 (two) years, extendable for an equal period, while the reasons for its concession persist, in the case of the implementation of investment projects worth 500,000.00 USD (five hundred thousand US dollars) or more. In cases of investment projects worth USD 50,000,000.00 (fifty million US dollars) or equivalent, the holder of the visa for investment activity can stay in Mozambique for up to 5 (five) years, extendable for an equal period, while the reasons for granting the visa persist. The holder of the visa for investment activity may, if so desired, request for the respective household authorization to reside in Mozambique, which is valid for two or five years, renewable for an equal period, while the reasons for its concession persist, if the value of the investment is equal or higher than USD 500,000.00 (five hundred thousand US

dollars) and USD 50,000,000.00 (fifty million US dollars) respectively. Therefore, there are two new aspects: the first concerns the fact that it is now possible to have a visa valid for 5 (five) years, which was not accepted by the previous legal framework, and the second has to do with the fact that the investor can request a residence visa for his family for as long as his investment visa is valid.

- 1.8 Visa for humanitarian assistance:** Through invitation from government authorities, non-governmental organizations, and international organizations, for the purposes of non-profit humanitarian work, within the scope of the state of emergency or public calamity situation and others declared under the terms of the Constitution and the law, diplomatic and consular missions of the Republic of Mozambique may grant entry visas for humanitarian assistance. It is to be noted that under previous legislation, namely Decree No. 108/2020 of 15 December, which has since been revoked by Decree No. 13/2022 of 11 April, non-governmental organizations were not entitled to invite foreign citizens for the purpose of issuing entry visas for humanitarian assistance. The Ministry of Interior no longer has the competence to authorize the granting of visas for humanitarian assistance. The visa for humanitarian assistance can also be issued at the crossing point upon presentation of a document issued by the entity responsible for disaster risk management and reduction. With a visa for humanitarian assistance, the foreign citizen can stay for ninety days in Mozambique without extension - while the previous legal framework only fixed thirty days extendable to ninety - valid for multiple entries, extendable for the same period, but does not have the right to establish residence. Once the visa for humanitarian assistance has been issued, the foreign citizen cannot apply for a visa to work for non-governmental organizations. With the cessation of the reasons that justified the granting of the visa for humanitarian assistance, the foreign citizen has fifteen days to leave Mozambique.

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## 2. Visa Cancellation

The Migration Services are responsible for cancelling the visa when the holder is in national territory, and the diplomatic or consular missions of Mozambique must be informed. Before the visa holder enters the national territory, the cancellation of a visa is the responsibility of the Mozambican diplomatic or consular missions. It is also a ground for cancellation of a visa if its holder has been declared *persona non grata* (which is only verified in residence permits), as well as if the visa has been issued in an irregular manner.

## 3. Refusal of entry into Mozambique

Failure to pay fines on previous occasions for violation of migration laws is one of the grounds for refusing entry to the national territory. Public health has also become a ground for refusal of entry. Carriers or individuals transporting foreign citizens who do not meet the conditions that would entitle them to enter the national territory are obliged to ensure their return, in the shortest possible time, to the point where they began using the means of transport.

As long as no repatriation has taken place, carriers or individuals are subject to the payment of food and assistance expenses deemed necessary, including those for repatriation.

## 4. Residence permit

The temporary residence permit, which is valid for more than ten consecutive years, entitles the holder to a permanent residence permit, as long as the reasons that justified the first concession are maintained. Permanent residence is granted upon request by the foreign citizen and is valid for five years, renewable for equal periods.

## 5. Termination of the residence permit

In addition to other reasons duly established in the law, the residence permit ceases in cases of absence of the foreign national from the national territory for a period of more than ninety days, in the case of the holder of temporary residence, without prior written notification to the competent authorities, and absence of the foreign national from the

national territory for a period of more than one year, in the case of the holder of permanent residence, without prior written notification to the competent authorities.

## 6. Administrative expulsion

The law foresees, among others that were already foreseen in the previous Legal framework, the following reasons for administrative expulsion:

- i) to hold a work visa and to be bound to another employer different from the one that hired the employee;
- ii) having been sanctioned with a fine and has not paid within the established period;
- iii) has failed to comply with the notification of voluntary departure from national territory within the stipulated period; and
- iv) has been sentenced to an additional penalty of deportation and has re-entered the country irregularly.

The decision to expel the person concerned must state the reasons for the expulsion and mention a ban on entering national territory for a period of not less than ten years, and the person concerned may appeal to the Administrative Court against this measure, although this appeal will not suspend the effects of the decision.

## 7. Judicial expulsion

Without constituting an innovation, the penalty of deportation will be applied additionally:

- i) to the foreign citizen not residing in the country who has been convicted, by a Mozambican court, of an intentional crime in the penalty of more than six months of imprisonment;
- ii) to a foreign citizen who has resided in the country for less than five years and has been sentenced to more than one year in prison;
- iii) to the foreign national who has resided in the country for more than five and less than fifteen years and has been sentenced to more than two years in prison;
- iv) to the foreign citizen who has resided in the country for more than fifteen years, sentenced to a longer prison term.

A foreign citizen whose expulsion expenses, whether administrative or judicial, have been incurred at the expense of the Mozambican State and who is allowed to re-enter national territory is

obliged to reimburse the State at double of the amount spent.

## 8. Entry and Departure of Minors in Mozambique

Foreign citizens under 18 years of age, when not accompanied by their parents, must only enter or leave the national territory with written authorization, notarized by the parents or by whoever exercises parental power recognized by the competent authorities. In cases where the minor intends to enter or leave the national territory accompanied by one of the parents, it is required to present the authorization, with notarized recognition, expressing the other parent's consent regarding the minor's trip. The above-mentioned authorization must be translated into Portuguese.

## 9. Prosecution of migration offenses

For the purposes of imposing a fine, an official report is drawn up and the offender is notified to, within five days from the date of notification, pay voluntarily, complain or contest the account made. It is important to mention that the new legal framework added infractions that can be imputed to foreigners staying in the country. In effect, in addition to the offenses that are provided for in the previous legal framework, namely (i) clandestine migration, (ii) document forgery, (iii) lack of visa and accommodation form, (iv), change of domicile without communication and (v) failure to communicate changes in identification elements, the new legal framework provides for the following offenses:

- i) Failure to report to the migration or police authorities the loss of a passport or residence permit;
- ii) Failure to renew migratory documents within the time limits established by law;
- iii) Failure to communicate changes in identification elements;
- iv) Concealment of a citizen in an irregular migratory situation;
- v) Employment of a citizen in an irregular migratory situation;
- vi) Making false statements for the purpose of issuing an entry visa or residence permit to a foreign national; and
- vii) Failure by the carrier to report data on passengers of foreign nationality.