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CONVENTION ON SOCIAL SECURITY BETWEEN PORTUGAL AND MOZAMBIQUE



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Decree 19/2011 of 6 December has been published in the official gazette, *Diário da República*. This Decree approves the Convention on Social Security between the Portuguese Republic and the Republic of Mozambique which was signed in Lisbon on 30 April 2010 (the "Convention").

With a view to promoting cooperation between the Portuguese State and the Mozambican State in the area of social security, the only object of the Convention is the creation and application of measures to coordinate the social security systems of both countries. It does not seek to make any changes to these systems or to any international agreements entered into previously. The aim of the Convention is, therefore, to guarantee and strengthen social protection for emigrant workers and their families¹, under conditions of equality and reciprocity between the two countries, promoting their integration into host societies.

Accordingly, and in a similar way to other instruments of international coordination

of legislation on social security, the text of the Convention follows a number of basic principles including:

- (i) The principle of equal treatment, under which workers who are nationals of one of the States and resident in another State benefit from the rights and are subject to the obligations provided for in the legislation of the host State under the same conditions as for the nationals of the said State.
- (ii) The principle of retention of acquired rights, which avoids the loss of rights of nationals of one State when they move to another State.
- (iii) Retention of rights in the course of being acquired through the aggregation of periods of insurance or periods treated as such that have been completed under the national legislation to which the worker is subject²;
- (iv) Workers are only subject to the legislation of a single State, so as to avoid them being simultaneously subject to the legislation of a number

¹ Workers who are or have been subject to the social security legislation of the Contracting States and are nationals of one of those States, stateless persons or refugees resident in one of the States as well as their family members and survivors are covered by the personal scope of this Convention.

² In other words, if a worker was successively or alternately subject to the legislation of both States, the periods of insurance completed under the terms of the legislation of one of the States will be taken into account by the other State, if necessary and as long as they are not incompatible, as if they had been completed under the latter State's own legislation.

of States. The Convention provides that the worker is exclusively subject to the legislation of the country in which he or she carries on their professional activity³.

With the aim of coordinating social security between Portugal and Mozambique, the Convention includes some specific provisions relating to different categories of benefits so as to make the application of the legislation of the two States in this area compatible.

Accordingly, whether in the area of unemployment or in the area of accidents at work and occupational diseases, the Convention immediately provides for Portuguese legislation to be applicable. This means that Mozambican workers who are covered by Portuguese legislation are entitled to unemployment benefits or benefits for accidents at work or occupational diseases provided for in this legislation under the same conditions as Portuguese nationals.

In turn, in the area of invalidity, old-age and survivor pensions, the Convention governs the means of calculation and payment of the respective benefits so as to determine the total amount, taking into account the insurance periods completed in each of the States. In the first place, the relevant institutions of each State will determine, each one under its own legislation, whether the interested party meets the conditions to be entitled to the benefits. Following this, if the interested party meets the conditions to receive the benefits, it will necessary to make the following distinction:

(i) in relation to the Portuguese Republic, the Social Security services will calculate the amount of the benefit in accordance

³There are some exceptions to this rule, specifically in the case of workers who do salaried work in one of the States and are posted by their employer to do specific work in the other State. In this case, and as long as the foreseeable duration of the work for which they were posted does not exceed 24 months, the said workers will continue to be subject to the legislation of the first State. Special rules were also established for travelling staff in the service of air transport companies, ships' crew, public employees and the staff of diplomatic missions and consular posts (see articles 9 and 10 of Decree 19/2011 of 6 December).



with Portuguese legislation and exclusively on the basis of the insurance periods completed under this legislation;
 (ii) in relation to the Republic of Mozambique, the benefit will be calculated on the basis of the total period and by establishing the proportion of the period completed under its own legislation and the total period⁴.

The total amount of the benefit will correspond to the sum of the values calculated under the terms set out above .

In the area of benefits provided for in Portuguese legislation relating to the system of social protection for citizens and in the Mozambican legislation relating to social protection of persons not covered by the social security contribution system, the Convention establishes that nationals of a State who are resident in another State, will

⁴ If the sum of the benefits to be paid by the relevant institutions of the States does not reach the minimum amount established by the State in which the interested party is resident, that party will have the right, for the period in which he or she lives there, to a supplement equal to the difference between the two amounts, to be paid by the relevant institution of the State of residence.

have the right to the benefits provided for in the legislation of the latter State while they reside there and as long as they meet the other conditions in place there for the benefits to be granted⁵.

In the area of benefits for family expenses and expenses related to disability and dependence, the workers who are covered by Portuguese legislation will benefit, in relation to relatives who are resident in the Republic of Mozambique, from the family benefits provided for under this legislation as if they were resident in Portugal and as long as the conditions for them to be granted are met.

⁵ This means that nationals of the Republic of Mozambique who are resident in Portugal, and while they live there, will have the right to benefits (i) from the welfare sub-system in the event of disability, old-age and death and (ii) from the family protection sub-system in the event of family expenses, expenses related to dependants, as long as they meet the conditions laid down for such benefits in the Portuguese legislation that grants them. Portuguese nationals who are resident in Mozambique, and while they live there, will have the right to social protection for persons not covered by the social security social security contribution system to be set up under Mozambican legislation, as long as they meet any other conditions that may be required by the legislation that grants the rights.

The text of the Convention also includes a number of provisions aimed at promoting and strengthening the duties of communication and cooperation, including technical and administrative cooperation, between the Portuguese State and the Mozambican State. In the same way, the Convention seeks to encourage a reduction in red tape in procedures for the award of benefits in the area of social security⁶. The procedures for compensation for advance payments, for the recovery of undue payments and for collection of contributions and of amounts unduly paid by the relevant institutions of one of the Contracting States, among others, have also been simplified.

The Convention on Social Security between the Portugal and Mozambique signed in Lisbon on 30 April 2010 will come into force on the 1st day of the 2nd month following the date of receipt of the last notification that all the necessary requirements of the internal law of the Contracting States have been met. The Convention will remain in force for one year and is tacitly renewable for successive periods of equal duration.

For more information in Portugal you should contact the social security services at www.seg-social.pt or by phone on 808 266 266 (from abroad the number is (+351) 272 345 313) and in Mozambique, the National Institute of Social Security, (*Instituto Nacional de Segurança Social*), at www.inss.gov.mz⁷ or by phone on (+258) 21 403 010.

⁶ By way of example, it is established that requests, declarations or appeals that must be presented under the legislation of a Contracting State by a specific deadline to an authority, institution or body of this State may be presented in within the same period to the corresponding authority, institution or body of the other Contracting State. It is also established that the benefit of the exemptions from or reductions in rates, stamps, notary's or registration fees provided for in the legislation of one Contracting State apply to any analogous acts or documents that are presented under the legislation of the other Contracting State or under the provisions of this Convention. The acts or documents to be presented for the purposes of this Convention do not have to be legalised by the diplomatic and consular authorities of the Contracting States.

⁷ As the respective site is currently under construction, the address of CIPS – Centro de Protecção Social (the social protection centre for information and exchange on the extension of social protection in Portuguese-speaking countries): www.cipsocial.org.mz should be used until the website is completed.

This newsletter was prepared by a multidisciplinary team made up of mozambican lawyers from GLM – Gabinete Legal Moçambique and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.