

THE NEW ADVERTISING CODE



AMINA ABDALA
INTERNACIONAL SENIOR ASSOCIATE
amina.abdala@tta-advogados.com



TÉLIO MURRURE
TRAINEE LAWYER
telio.murrure@tta-advogados.com

The new Advertising Code (“Ad Code”) has been approved by Decree no. 38/2016 of 31 August, which also repeals the previous law, Decree no. 65/2004 of 31 December. This is the second piece of legislation to address advertising and the fact it has been updated relates, to a great extent, to the need to adapt it to the current situation in advertising, which has resulted from economic development and from the growth in the advertising industry. This background is set out in the preamble to the new Ad Code.

The new Advertising Code (“Ad Code”) has been approved by Decree no. 38/2016 of 31 August, which also repeals the previous law, Decree no. 65/2004 of 31 December.

Advertising activity is defined as the set of operations involved in producing an advertising message for a target audience, and to the legal and technical relationships arising from that production between advertisers, advertising agencies and advertising media. It includes the processes of conceiving, creating, producing, planning and distributing advertising (Definition b) of the Ad Code Glossary). As a result, advertising agencies and anyone else involved in the advertising circuit will be subject to the regulations established in the Ad Code when engaging in their advertising activities. Advertising also be subject, on a subsidiary level, to the provisions of civil and commercial law, and to criminal legislation in certain cases.

The recently approved Ad Code is wider-ranging and longer than the previous piece of legislation. It has 65 articles compared with the 38 articles of the previous code. It also has 16 definitions in its Glossary, against 8 definitions in the previous one.

This is the second piece of legislation to address advertising and the fact it has been updated relates, to a great extent, to the need to adapt it to the current situation in advertising, which has resulted from economic development and from the growth in the advertising industry.

The new Ad Code introduces a number of innovations, including:

■ **Broadening the scope of application of the Ad Code**

The new Ad Code now covers political and religious propaganda, when demonstrably purchased from the broadcaster. It also applies, with any necessary changes, to engaging in other forms of business communication.

■ **Strengthening the principle of lawfulness**

The principle of lawfulness concerns the question of prohibiting advertising which, because of its form, subject matter or aim, offends values, principles and institutions. The new Ad Code has broadened the prohibition to advertising that uses the body of a man or woman when there is no connection with the product it intends to advertise, or which associates the image of the man or woman with stereotypically discriminatory behaviour.¹

¹ Further, under the principle of unlawfulness, the Ad Code authorises the exceptional use of words or expressions in foreign languages when they are necessary to achieve the effect intended by the conception of the message, as long as they do not offend Mozambican culture, usage and customs.

■ **Responsibility for advertising**

Under the new Ad Code, advertising must have a sense of social responsibility. Therefore, advertising must avoid any disparaging accentuation of social differences resulting from the greater or lesser purchasing power of the groups to which it is directed or which it may reach. Advertising must also respect the principles of competition and be in harmony with the objectives of economic development, and the development of education and national culture.²

■ **Rigour and objectivity in advertising**

The information contained in the advertising by way of text or visual presentation must not – directly or indirectly, by implication, omission, exaggeration or ambiguity – mislead the target, user or consumer as to the product being advertised, or as to the advertiser or its competitors, or as to: (i) the nature of the product, (ii) its origin, whether domestic or foreign, (iii) its composition, and (iv) its purpose.

■ **Respect for copyright and associated rights**

The new Ad Code provides that advertising activity must respect copyright and connected rights³. In principle, any issues relating to copyright and connected rights in the Mozambican legal system are governed by Law no. 4/2001 of 27 February. At the same, the new Ad Code provides that advertising agencies and other parties involved in the advertising process are under an obligation to respect copyright laws.

■ **Ban on misleading advertising**

The new Ad Code expressly bans misleading advertising, which is advertising that – by any means, including its presentation, and due to its deceptive nature – misleads or is capable of misleading the group it is targeted at, or may cause harm to a competitor.

² The Ad Code also establishes that advertisers, advertising agencies, advertising media, participants in the advertising process and all those involved in advertising activity must respect ethical standards of conduct. The advertiser, the advertising agency and the advertising media are responsible for the advertising message.

³ The Ad Code provides that advertising must not use background music, samples or excerpts of compositions by Mozambican or foreign composers without respecting copyright, except in the case of the works that have passed into the public domain. Any advertising based on plagiarism or imitation is prohibited, except in cases when the imitation is demonstrably a deliberate and obvious creative device.

■ **Electronic advertising**

The new ad code Ad Code regulates (i) digital and electronic advertising, (ii) electronic advertising and marketing, and (iii) audio text services and value-added services. These must be clearly identifiable, so that the advertising is easily understood by the ordinary consumer. The regulation of these areas resulted from recognition of the fact that electronic platforms are now the most commonly used channels, and that advertising activity must be addressed in this context.

■ **The work of advertising agencies**

The new ad code Ad Code regulates (i) digital Advertising agencies are commercial companies licensed to engage in advertising activity. The new Ad Code establishes that their activities consist of: (i) studying the concept, ideas, trademarks, products or services to be advertised, (ii) identifying and analysing targets or potential markets, (iii) identifying and analysing the ideas, trademarks, products or services of competitors, (iv) examining the distribution and sales system, (v) preparing the communication plan, including the conception of key messages, among other issues.

The recently approved Ad Code is wider-ranging and longer than the previous piece of legislation. It has 65 articles compared with the 38 articles of the previous code. It also has 16 definitions in its Glossary, against 8 definitions in the previous one.

■ **Supervision, application of fines and sanctions**

The new Ad Code provides that the National Inspectorate of Economic Activities (*Inspecção Nacional das Actividades Económicas* – INAE) will be responsible for supervising advertising activities, and for applying any ancillary fines and sanctions⁴. Appeals may be brought against its decisions under the general terms of the law.

In conclusion, in terms of innovations, the new Ad Code essentially makes provisions to (i) increase respect for ethical and moral issues on the part of the various parties involved in the advertising process, as a way to reduce the excesses that have been witnessed on the part of both advertisers and advertising agencies; (ii) reconcile and bring advertising activity into line with other areas of the law including consumer law and copyright; (iii) ensure that advertising activity keeps up-to-date with the rapid growth in information and communication technologies, also taking into account the establishment of e-commerce.

The new Ad Code provides that the National Inspectorate of Economic Activities (Inspecção Nacional das Actividades Económicas – INAE) will be responsible for supervising advertising activities, and for applying any ancillary fines and sanctions.

This newsletter is intended for general distribution to clients and colleagues and the information contained herein is provided as a general and abstract overview. It should not be used as a basis on which to make decisions and professional legal advice should be sought for specific cases. The contents of this newsletter may not be reproduced, in whole or in part, without the express consent of the author. If you should require further information on this topic, please send an email to tta.geral@tta-advogados.com.

Edifício Millennium Park, Torre A, Avenida Vladimir Lenine, n. 174, 6º Dtº, Maputo, Moçambique
T. (+258) 84 3014479 . F. (+258) 21 303723 . E. tta.geral@tta-advogados.com . www.tta-advogados.com