



The Legal 500 & The In-House Lawyer
Comparative Legal Guide
Mozambique: Bribery & Corruption

This country-specific Q&A provides an overview to bribery & corruption law in Mozambique.

It will cover the definition of bribery, regulation, compliance, liability and enforcement as well as insight and opinion and any upcoming legal changes planned for their respective country.

This Q&A is part of the global guide. For a full list of jurisdictional Q&As visit <http://www.inhouselawyer.co.uk/practice-areas/bribery-corruption/>

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1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

HRA: The applicable legal framework is as follows:

- Criminal Code (Law no. 35/2014, of December 31st);
- Public Probity Law (Law no. 16/2012, of August 14th);
- Law to fight crimes of corruption and illegal economic participation (Law no. 6/2004, of June 17th); and
- Code of Criminal Procedure (Decree No. 16 489 of March 19th, 1931).

2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?

HRA: The competent authority for the investigation of crimes of corruption is the Central Anti-Corruption Office (Gabinete Central de Combate à Corrupção or “GCCC”), an agency reporting to the General Public Prosecutor Office, as provided in the Organic Law of the Public Ministry (Law no. 22/2007, of August 1st, as amended by Law no. 14/2012, of February 8th).

The GCCC's tasks are to prevent and fight crimes of corruption, embezzlement, illicit economic participation, influence peddling, unlawful enrichment and related crimes. At the same time, the Criminal Investigation Police, at a stage prior to the proceedings, is responsible for conducting the investigation under the direction of the General Public Prosecutor's Office (see article 2 of Decree No. 106/2014 of December 31st).

3. How is bribery defined?

HRA: Under Mozambican law, bribery is defined as active corruption. The elements of the crime of active corruption include:

1. The offer or promise of offer made by the agent or by interposed person, with his consent or ratification, to an official or other third party, of a patrimonial or non-patrimonial advantage, which is not due; and
2. As a counterpart, an employee's practice of (i) an act that implies the violation of the duties of the office or the omission or delay of an act which the official is obliged to perform (active corruption for an illegal act) or (ii) acts that are not contrary to the duties of the office (active corruption for lawful act).

4. Does the law distinguish between bribery of a public official and bribery of private persons? If so, how is ‘public official’ defined? Are there different definitions for bribery of a public official and

bribery of a private person?

HRA: The law does distinguish between bribery of a public official and bribery of a private person. The term used in foreseeing crimes of corruption is that of "public servant". According to the Criminal Code, public servant can be defined as a person who has a mandate, position, job or function in a public entity, by virtue of election, appointment, hiring or any other form of investiture or bond, even if in a transitory form or without remuneration.

The terms "employee", "agent of the State", "public employee", "municipal agent" or any other similar term that is used to identify a person acting in a public body should be understood as synonyms to the term "public servant".

However, there are not different definitions of bribery for each case and the provisions of the Criminal Code relating to crimes of corruption apply both to the public sector and to the private sector. The only difference relates to the penal frameworks to be applied, which differ from one sector to another.

5. What are the civil consequences of bribery in your jurisdiction?

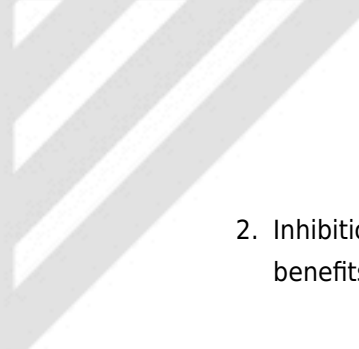
HRA: Civil consequences are not prescribed for bribery in Mozambican jurisdiction. However, if the act performed as a result of a bribe is a violation of one's duties, the perpetrator of that act may be held civilly responsible for any damages caused by that act in the general terms of the law.

6. What are the criminal consequences of bribery in your jurisdiction?

HRA: The criminal consequences provided for the crime of bribery are the application of fines and imprisonment.

The perpetrators of corruption offenses are also subject to the following accessory measures:

1. Loss, in favour of the State, of assets or amounts unlawfully received or accrued to his property or interposed person, in the case of crimes committed by public servants; and

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2. Inhibition of contracting with the State or with public companies or to receive tax or credit benefits or incentives for 10 years from the date of the conviction.

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

HRA: Bribery and corruption crimes are established with reference to “patrimonial or non-patrimonial advantages which are not due”. The term "undue advantages" also covers the facilitation of payments, granting gifts and hospitality. Thus, an official who, in the exercise of his functions or because of them, by himself or by interposed person, with his consent or ratification, requests or accepts, for himself or for third parties, patrimonial or non-patrimonial advantages which are not due (in which we can include hospitality, travel and entertainment expenses), is incurring in the crime of acceptance of an offer or promise, provided for in Article 509 of the Criminal Code.

8. Are political contributions regulated?

HRA: Political contributions are not specifically regulated for the purposes of bribery and corruption, and shall fall within the general regime.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

HRA: Facilitation payments are not specifically regulated for the purposes of bribery and corruption, and shall fall within the general regime.

10. **Are there any defences available?**

HRA: As a general rule, the person being investigated for a crime of bribery or corruption can defend himself with both procedural and substantive arguments. The person also enjoys, in particular, at any stage of the process, and subject to exceptions provided for in the law, the rights of:

- being present in proceedings that directly concern him;
- being heard by the court or the investigating judge whenever these may have to take a decision that will personally affect him;
- being informed of the allegations made against him prior to making any declarations before any entity;
- not answering questions made by any entity regarding the allegations made against him and about the contents of the declarations that he may make thereon;
- appointing a lawyer or requesting the appointment of a public defender.
- being assisted by an attorney in all proceedings in which he takes part and, when detained, and to communicate privately with said attorney;
- intervening in the inquiry and in the finding of facts by providing evidence and requesting the evidence-obtaining measures that he may deem necessary; and
- being informed by the judicial authority or by the criminal police body before which he may be required to appear of his rights, as well as to appeal against unfavourable decisions.

11. **Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?**

HRA: There is no express provision in the Mozambican legal system that establishes the existence of compliance programs, as a mitigating factor of the liability of legal persons for crimes of corruption. However, in view of Article 30.2 of the Criminal Code, that determines the exclusion of responsibility of the legal person when the agent has acted against orders or express instructions from a relevant body, it is arguable that the existence and implementation of compliance programs with certain characteristics may result in the exclusion of the liability of the legal person for acts of corruption and bribery committed by its employees or any other person acting on its behalf and/or

representing such entity.

12. Who may be held liable for bribery? Only individuals, or also corporate entities?

HRA: Both individuals and corporate entities can be held liable for bribery and corruption. Legal persons are criminally liable for the commission of crimes, whenever they are carried out by the holders of their bodies or their representatives, in their name and interest. Note that the liability of legal persons does not exclude the individual liability of the perpetrators.

Determining who committed a crime is divided in three categories:

- Perpetrator, whoever executes the act or takes direct part in its execution by agreement or together with another or with others;
- Accomplice, whomever directly advises or instigates another person to commit a crime, or who directly participates to facilitate or prepare its execution in such cases where, if there was no such assistance, the crime might not have been committed; and
- Accessory, whomever (i) alters or disrupts evidence of a crime to prevent or hinder the constitution of the corpus delicti; (ii) conceals or destroys evidence, a crime's instruments or objects, trying to get impunity; (iii) being forced thereto, conceals or alters the truth of the facts as found through the examination requested from him, for the purpose of helping the alleged perpetrator of a crime; or (iv) harbours the perpetrator of a crime or facilitates his escape for the purpose of evading justice.

13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?

HRA: The Mozambican government has not yet published any guidance regarding anti-corruption, other than that provided for in the law.

14. Does the law provide protection to whistle-blowers?

HRA: Yes, the protection regime is set out in Law no. 15/2012, of 14 August, which regulates the rights and legitimate interests of victims, whistle-blowers, witnesses, declarants or experts and subjects especially vulnerable in criminal proceedings, when their life, physical or mental integrity, personal or patrimonial freedom can be endangered by the contribution they are prepared to give to the criminal investigation or the production of evidence in court.

In accordance with the referred law, whistle-blowers, after the verification of certain assumptions essentially related to the existence of risk or danger to the life of such persons, may benefit from the following measures of protection:

- secrecy of the beneficiaries' identity;
- hide the image, distortion of the voice, or both, where the beneficiary of these measures makes warranties and statements in public proceedings subject to the adversarial system;
- use of teleconference, to avoid recognition of the beneficiary of these measures;
- anticipated production of evidence due to reasons related to the age of the deponent or declarant, with his health conditions, with his imminent travel abroad, or any other reason that will justify it;
- police protection of the beneficiary, as well as of his family members and dependents;
- allocation of means that will ensure the safety of the beneficiary, as well as of his family members and dependents;
- supply of vehicles of the State (which may comprise escorts) to ensure visits to the place where the proceedings will take place;
- availability of a special room in court or police facilities where the beneficiary may have to go and where he may remain without the company of other participants in the proceedings;
- creation of conditions in the prison to keep the beneficiary separated from the remaining inmates;
- change of provisional domicile or accommodation to a place providing better safety conditions; and
- special safety program for the beneficiary (including his family members and dependents) applicable in certain cases (for instance, high degree of risk or danger to human life, physical or psychological integrity), such as change of identity, change of physiognomic or physical appearance, granting of new housing (in the country or abroad), granting of a

monthly subsidy or the creation of conditions to raise the means of subsistence

15. **How common are government authority investigations into allegations of bribery?**

HRA: Due to recent events relating to hidden debt, it has become very common for the governmental authority to investigate allegations of bribery. However, the procedures do not usually result in any actual convictions.

16. **What are the recent trends in investigations and enforcement in your jurisdiction?**

HRA: Recently, investigation and enforcement in Mozambique is being very influenced by the public opinion and major media channels.

17. **Is there a process of judicial review for challenging government authority action and decisions?**

HRA: Yes, all parties to the criminal process may challenge decisions that are unfavourable to them by way of appeal to a higher court.

18. **Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?**

HRA: We are not aware of any planned reforms or developments.

19. To which international anti-corruption conventions is your country party?

HRA: Mozambique is party to the following conventions:

- Protocol against Corruption of the Southern African Development Community, of 2001;
- United Nations Convention against Corruption, of 2003; and
- African Union Convention on Prevention and Control of Corruption, of 2003.

20. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

HRA: We do not have lawyer-led investigations, and, hence, there is no such concept of legal privilege. However, when investigations are conducted against a lawyer or a law firm, they are granted special rights regarding the secrecy of their documents and workplaces.

21. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

HRA: It is commonly known that Mozambique system is very influenced by corruption and bribery and, therefore, it has become a very important task of the Government to prevent and stop corruption in order to ensure foreign investors and donors.

22. Generally how serious are organisations in your country about

preventing bribery and corruption?

HRA: Unfortunately, organisations are not fully aware of the need to prevent bribery and corruption and, hence, do not take serious precautions.

23. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

HRA: We are not very familiar with the investigation and prosecution details, but believe that the major challenge is the fact that corruption is set in all sector and levels of the Mozambican society, which makes it difficult to tackle when the entity is acting solo.

24. What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

HRA: Nowadays, businesses are quite accustomed to corruption in Mozambique and have created several ways to elope from such scenarios. The biggest challenges will be establishing effective compliance programs and enforcement to ensure proper anti-corruption measures.

25. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

HRA: Our opinion is that the legal framework is adequate and accompanies the international trends. The improvements are needed in the enforcement field, by creating more specialized forces, less subject to corruption and bribery themselves.

