

Law on Social Protection

Law nr 4/2007 of 7 February

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Law on Social Protection

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As there is need to establish a legal framework for social protection suited to the social and economic situation, the Assembly of the Republic, pursuant to article 179 (1) of the Constitution of the Republic, determines the following:

CHAPTER I

General provisions

Article (Object)

This law lays the foundations on which social protection is based and organises the social protection system.

Article 2 (Objectives)

The objective of social protection is to alleviate the conditions of absolute poverty of the people, to guarantee subsistence to workers in situations of incapacity or diminished capacity to work, as well as to their surviving relatives in the event of the death of the said workers and to give them additional means of survival, inasmuch as the economic situation of the country allows.

Article 3 (Principles of social protection)

Social protection is governed by the following principles:

- a) The principle of universality – enshrines the right of all citizens to be protected against the same risks and in the same conditions;
- b) The principle of equality – within the scope of the contributory system, workers enjoy the right to a fixed rate and in the same proportion;
- c) The principle of solidarity – social protection recognises the commitment of society towards the neediest in overcoming their limitations and in the transfer of resources between generations;
- d) The principle of decentralisation – social protection is undertaken by institutions governed by public law and institutions or organisations governed by private law duly authorised by the public authorities.

**Article 4
(Definitions)**

The definitions are contained in the attached glossary, which forms an integral part of this law.

**Article 5
(Structure of social protection)**

1. The social protection system is organised at three levels, namely:
 - a) Basic social security;
 - b) Compulsory social security;
 - c) Complementary social security.
2. Social protection consists of the benefits that are incorporated therein and the social protection institutions that manage the system.

**Article 6
(Right to social protection)**

Citizens have a right to social protection irrespective of colour, race, ethnic origin, place of birth, religion, level of education, social position, marital status of parents or occupation.

**CHAPTER II
Basic social security**

**Section I
Common provisions**

**Article 7
(Scope of application to persons)**

Basic social security covers national citizens unable to work and without the means necessary to meeting their basic needs, namely:

- a) Persons in conditions of absolute poverty;
- b) Children in difficult circumstances;
- c) The elderly in conditions of absolute poverty;
- d) Persons with disabilities in conditions of absolute poverty;

e) Persons with chronic and degenerative illness.

Article 8
(Scope of application to benefits)

1. Basic social security shall be achieved by means of the following:
 - a) Risk allowances;
 - b) Social support benefits.
2. Risk allowances may be in cash or in kind, in the form of primary health care and the provision of minimum benefits.
3. Social support shall be allocated in the form of the provision of community development services, programmes and projects directed towards individuals or groups with specific needs in terms of housing, shelter, food and means of compensation, among others.
4. The involvement of beneficiaries and families in the resolution of their problems is encouraged in the provision of social support by promoting community participation and mechanisms of mutual aid.

Section II
Financial organisation

Article 9
(Revenue)

The following constitute the revenue of basic social security:

- a) The appropriations or subsidies allocated by the State budget;
- b) The contributions, donations, grants or subsidies from national or foreign public or private entities;
- c) Other revenue obtained in any legally permitted way.

Article 10
(Expenditure)

Benefits and other charges related to these shall constitute the expenditure of basic social security.

CHAPTER III

Compulsory social security

Section I

Common provisions

Article 11

(Composition)

Compulsory social security comprises the schemes and the relevant management body, and it shall be carried out in the form of the benefits provided for in articles 19 and 21 of this law.

Article 12

(Benefits)

1. Benefits may be in cash or in kind.
2. Cash benefits shall be reviewed periodically, taking account of wage fluctuations and the financial capacity of compulsory social protection.
3. Cash benefits are exempt from personal income tax.

Article 13

(Health and social action)

Health and social action programmes will be undertaken within the scope of compulsory social security.

Article 14

(Registration)

1. Registration in compulsory social security extends to national and foreign and self-employed persons and employees residing in Mozambican territory, and to the employers of those employees.
2. Employers must register workers in their employ.
3. Self-employed persons must register themselves.
4. Mozambican workers abroad who are not covered by international agreements may register in compulsory social security and the scheme for self-employed persons will be applicable to them.
5. The obligation to register in compulsory social security does not apply to resident foreign workers employed in the Republic of Mozambique,

provided they prove they are covered by a social security system in another country, without prejudice to what may be laid down in bilateral agreements.

6. The effects of registration shall not be extinguished by the passage of time.

Article 15
(Principle of acquired rights)

1. The principle that acquired rights and rights in formation are preserved is applicable to compulsory social security.
2. Beneficiaries maintain their right to compulsory social security cash benefits paid in Mozambique in national currency, even if they change their residence from Mozambican territory, except as provided for in international conventions.

Article 16
(Voluntary maintenance in the system)

All wage workers who cease to pursue their working activity as employees may voluntarily remain in compulsory social security, if they so wish.

Article 17
(Coordination of systems)

1. Coordination between compulsory social security for employees and self-employed persons and that for public servants is guaranteed.
2. When a worker transfers from one system to the other, each system assumes the respective responsibility for the recognition of the worker's rights, in terms to be regulated.

Section II
Employee scheme

Article 18
(Scope of application to persons)

1. The following persons are obligatorily covered by the scheme laid down in this section:
 - a) National and foreign employees resident in Mozambique;
 - b) Dependent relatives of the workers referred to in the preceding subparagraph.

2. Mozambican workers abroad, who are not registered in any compulsory system in the country where they work, are covered by the provisions on compulsory social security, in the terms of agreements concluded on the matter or by joining the scheme for self-employed workers.
3. The compulsory social security of public servants and of employees of the Central Bank will be governed by specific legislation.

Article 19
(Scope of application to benefits)

1. Compulsory social security comprises benefits in the event of sickness, maternity, invalidity, old age and death.
2. The Council of Ministers may extend the scope of application in respect of benefits inasmuch as the social, economic and administrative conditions permit.

Article 20
(Contributory obligation)

1. Contributions to compulsory social security shall be apportioned between the employers and the workers, according to percentages to be fixed by the Council of Ministers. The share ascribed to the worker may not in any case exceed fifty per cent of the amount of such contributions.
2. The employer is responsible for the payment of the contributions due to the compulsory social security management body, including the share of the worker, which is to be deducted from the worker's earnings.
3. Workers may not oppose the deductions to which they are subject.
4. The contributions of the employer are the employer's full and exclusive responsibility, and any agreement to the contrary shall be null and void.

Section III
Self-employed persons scheme

Article 21
(Scope of application to persons)

Self-employed persons working on a freelance or a retainer basis are obligatorily included in this scheme, on conditions to be defined in a specific diploma.

Article 22
(Scope of application to benefits)

Compulsory social security of self-employed persons comprises benefits in the event of sickness, invalidity, old age and death or others to be defined in a specific diploma.

Article 23
(Contributory obligation)

Contributions to the system shall be borne in full by the self-employed persons and shall be calculated according to rules to be defined by the Council of Ministers.

Section IV
Financial organisation

Article 24
(Revenue)

1. The following constitute revenue of compulsory social security:
 - a) The contributions of employees and of their respective employers registered in the compulsory social security scheme;
 - b) The contributions of self-employed persons;
 - c) Default interest due for delays in the payment of contributions;
 - d) Fines for infringements of the legal provisions;
 - e) Income from investments;
 - f) Transfers from the State and other public and private entities;
 - g) Transfers from foreign organisations;
 - h) Contributions provided for in the law;
 - i) Gifts, legacies or bequests;
 - j) Other legally permitted revenue.
2. The revenue of compulsory social security shall be collected and administered by the compulsory social security management body.

**Article 25
(Expenditure)**

The following constitute expenditure of compulsory social security:

- a) Benefits;
- b) Social health action;
- c) System administration;
- d) Investments;
- e) Other expenditure legally provided for.

**Article 26
(Investments)**

1. The reserve funds of compulsory social security shall be invested under conditions to be regulated by the Council of Ministers, although they must be invested according to principles of safety, yield and liquidity.
2. The application of reserve funds in risky activities or businesses, namely games of chance and fortune, is prohibited.

**Article 27
(Budget)**

1. The activity of the compulsory social security management body is dependent on an annual budget of revenue and expenditure, subject to approval by the supervising minister.
2. Without prejudice to measures of recovery and reorganisation that must immediately be taken, if a budget deficit is found, the Council of Ministers may determine that compulsory social security expenditure be borne by transfer within the framework of the State Budget Law.
3. The compulsory social security accounts must be published in the largest-circulation newspaper in the country.

**Article 28
(Contribution rates and base)**

1. The rate of contribution shall be set so that it covers the total cost and expenses arising from the system.
2. Wages and salaries and regular and periodical additional payments shall be subject to contributions.

3. Default interest will be due when the contributions due are not paid within the specified time limit.

**Article 29
(Declaration of earnings)**

1. The employer shall declare monthly and for each worker in its employ the total wages, salaries and additional payments in respect of which contributions to compulsory social security are payable each month.
2. Self-employed persons shall regularly submit the data necessary to establish the reference earnings, on which contributions and benefits are based.

**Article 30
(Periods of limitation)**

1. Contributions due to compulsory social security expire after a period of ten years.
2. The right to benefits lapses after a period of three years, counting from the day they become payable or from the date of the event giving rise to the entitlement.

**CHAPTER IV
Complementary social security**

**Section I
Common provisions**

**Article 31
(Scope of application to persons)**

Complementary social security, which is optional in nature, covers persons registered in the compulsory social security system.

**Article 32
(Scope of application to benefits)**

The purpose of complementary social security is to reinforce the benefits of compulsory social security by methods that are subject to approval by the supervisory body, at the proposal of the management body.

Article 33
(Private and complementary entities and mechanisms)

1. Private institutions and mechanisms complementary to compulsory social security are licensed by the minister who oversees the area of finances, in consultation with the minister who oversees compulsory social protection.
2. The private and complementary institutions and mechanisms referred to in the preceding paragraph are in the nature of pension funds and others, which are in the form of autonomous funds applied exclusively to the objectives for which they have been constituted.
3. A relationship with private and complementary institutions and mechanisms does not remove the obligation to register in compulsory social security.

Section II
Financial organisation

Article 34
(Revenue)

The following constitute revenue of complementary social security:

- a) Contributions of workers or of workers and their employers;
- b) Other contributions, under conditions to be defined by agreement with the management body or legally provided for.

Article 35
(Expenditure)

The following constitute expenditure of complementary social security:

- a) Benefits;
- b) Administration;
- c) Investments;
- d) Other expenditure legally provided for.

Article 36
(Budget and accounts)

The budget and the annual accounts of complementary social security entrusted to the management body of compulsory social security shall be subject to approval by the supervising minister.

CHAPTER V Bodies and powers

Article 37 (Labour Consultative Committee)

1. The Labour Consultative Committee is the government's consultative and advisory body on matters of social protection.
2. The composition and functioning of the Labour Consultative Committee shall be set by the Council of Ministers and must include the following parties:
 - a) Members from government;
 - b) Members representing employers;
 - c) Members representing workers;
 - d) Members from civil society.

Article 38 (Powers)

Within the scope of this law, the Labour Consultative Committee shall, in particular:

- a) Link and coordinate information from the public authorities, by issuing opinions and recommendations on matters in respect of social protection;
- b) Monitor the operation of social protection, checking whether the objectives and purposes are being achieved and, in this regard, issuing recommendations to the Council of Ministers.

Article 39 (Social security management)

1. Basic social security shall be managed by the minister who oversees the area of social action, with the participation of non-government entities with social purposes and of other services of the State administration.
2. Compulsory social security shall be managed by the National Social Security Institute.
3. The social security of public servants shall be managed by the minister who oversees the area of finances.
4. The social security of employees of the central bank shall be managed by the Bank of Mozambique.

5. Complementary social security shall be managed by entities of a private or public nature, the constitution and functioning of which shall be regulated by the Council of Ministers.

Article 40
(Tax exemptions)

The compulsory social security management body enjoys tax exemptions recognised by law for the State and others that may be defined.

Article 41
(Religious institutions and non-governmental organisations)

1. The State recognises and values the actions undertaken by religious institutions and non-governmental organisations in the pursuit of objectives of basic social security.
2. The State shall exercise supervision of religious institutions and non-governmental organisations with the aim of promoting compatibility among social security activities, ensuring compliance with the law and the defence of the interests of beneficiaries.
3. The pursuit of the objectives of social security by religious institutions and non-governmental organisations shall be regulated by the Council of Ministers.

Article 42
(Supervisory bodies)

1. The minister who oversees the area of social action is in charge of basic social security management bodies.
2. The minister who oversees the area of labour is in charge of the compulsory social security management body.
3. The minister who oversees the area of finances is in charge of the social security of public servants.

CHAPTER VI
Guarantees and disputes

Article 43
(Claims, complaints and administrative appeals)

1. Acts performed by the compulsory social security management body may be the subject of claims and complaints, without prejudice to the right to appeal to a court.

2. Before being submitted to the competent judicial organ, claims lodged against decisions of the compulsory social security management body shall be submitted to its administrative appeals body.

Article 44
(Appeal to a court)

Disputes arising from the application of legislation on compulsory social security shall be settled by the competent courts.

Article 45
(Executory title)

1. In the event of failure to pay contributions within the time limit set, the compulsory social security management body shall issue an executory title and notify any third-party guarantor, in addition to criminal proceedings, where appropriate.
2. An executory title shall be treated as a final court decision.
3. Opposition shall have suspensive effect, provided that it is made on grounds of the absence or inaccuracy of the debt. However, the opposing party will become liable for 0.5% of the total value of the debt for every month of suspension, if the existence or accuracy of the debt is proven in court, irrespective of the costs and other charges of the proceedings.

Article 46
(Lien)

1. Without prejudice to the provisions on the law of companies, the compulsory social security management body has a lien over claims that a debtor to the compulsory social security may have against third parties.
2. In the same way, the compulsory social security management body has a lien over the salary or claims that the representative of the debtor company, namely the owner, manager, agent or person in charge in any capacity whatsoever, may have against third parties, provided that the representative performed these functions at the time the debt was formed or during the time it was maintained.

Article 47
(Priority claims)

The compulsory social security management body enjoys the same priority with respect to its claims to contributions as the priority enjoyed by the Treasury, ranking immediately after claims of the State.

Article 48
(Liability of third parties)

1. The compulsory social security management body shall be fully subrogated to the actions of a worker or the worker's relatives against a liable third party, for the amount of the benefits awarded or the corresponding capital resources.
2. The worker or his relatives maintain the right to claim redress against the liable third party for losses caused, according to the ordinary rules of law.
3. An amicable agreement between the worker or his relatives and the liable third party is enforceable against the compulsory social security management body only if such body was invited to participate in this agreement.

Article 49
(Immunity of claims and assets from attachment)

1. The claims and assets of the compulsory social security management body are non-attachable.
2. In case of non-performance by compulsory social security management body, a person holding an executory title may request the minister responsible that appropriations necessary to meet the debt be included in the budget.

Article 50
(Non-transferability of benefits and immunity from attachment)

The benefits that comprise basic and compulsory social security are non-transferable and non-attachable.

Article 51
(Supervision and control)

1. Social security auditors and labour inspectors will ensure supervision and monitoring of compliance with the duties of employers and of workers.
2. Social security auditors and labour inspectors are subject to professional secrecy, and on presentation of their identification, they have the right to enter places of work, to monitor staff and to examine all documentation and records relating to compulsory social security.
3. Opposition by the employer and the beneficiary to supervision and control constitutes a crime of contempt, punishable in the terms of criminal legislation.
4. When social security auditors and labour inspectors detect an offence they shall draw up reports that will be taken as reliable evidence until proof to the contrary.

5. The Council of Ministers will create the social security audit office and establish its operating rules.

Article 52
(Breach and sanctions)

1. The following situations are breaches of the obligations in respect of compulsory social security:
 - a) Failure to submit or late submission of the employer identification document that serves as the basis for registration;
 - b) Failure to submit or late submission of the identification document suitable for the registration of each employee;
 - c) Failure to submit or late submission of the identification document suitable for the registration of self-employed persons;
 - d) Failure to submit or late submission of changes to the abovementioned identification document of the employer or the employee;
 - e) Failure to submit or late submission by the employer of the declaration of earnings;
 - f) Omission of the employee's name or inaccuracy of the declaration of his/her earnings;
 - g) Failure to pay or late payment of contributions;
 - h) The employer making false or inaccurate declarations for the purpose of obtaining unlawful benefits for itself or third parties;
 - i) The employee making false or inaccurate declarations for the purpose of obtaining unlawful benefits for him/herself or third parties.
2. In addition to the obligation to reimburse the benefits obtained unlawfully in the situations referred to in the preceding paragraph, employers or employees shall be subject to fines, to be set by the Council of Ministers.
3. The retention by employers of contributions deducted from the earnings of their employees shall be punished as a crime of breach of trust.
4. Unjustified refusal by an employer or worker to hand over or show supporting documents for the basis and computation of contributions and for the entitlement to and value of benefits shall be punished as a crime of contempt.

CHAPTER VII

Transitional and final provisions

Article 53 **(Expanded scope of application to persons)**

The Council of Ministers may decide to expand the scope of application to persons of this law, inasmuch as economic and financial conditions permit.

Article 54 **(Reduction of the guarantee period for the award of pensions)**

Workers who were not covered by the social security system when law 5/89 of 18 September was in force and on the date when this law enters into force are over 50 years of age, if they are men, or over 45 years of age, if they are women, and who make at least six months of contributions during the year following the said date, will benefit from a bonus of six months for each year between the age of 50, for men, and the age of 45, for women, and their age on the date mentioned, up to a limit of three years.

Article 55 **(Own and complementary mechanisms)**

1. Employers with their own social security mechanisms are included in compulsory social security.
2. The provision of the preceding paragraph shall not prejudice the allocation by the employer of more favourable benefits than those awarded within the framework of compulsory social security.
3. The employer shall remain liable for old age, invalidity and survival pensions that it is paying on the date of publication of this law.
4. The pensions referred to in the preceding paragraph may be taken over by the compulsory social security management body, provided that the company transfers the corresponding mathematical reserves, calculated on the basis of the appropriate table.
5. The amounts and the conditions for the transfer of values that guarantee the preservation of acquired rights and rights in formation shall be set by the Council of Ministers.

Article 56 **(Regulations)**

The Council of Ministers shall set the methods of registration of employers and workers, of collection of contributions, interest and fines, of payment of benefits

and the obligations in general of employers and workers as regards the operation of compulsory social security, as well as the establishment of benefits and the methods and forms of awarding them in the context of basic and complementary social security.

**Article 57
(Repeals)**

Law 5/89 of 18 September and all legal provisions contrary to this law are hereby repealed, provided that acquired rights or rights in formation under that law are safeguarded.

**Article 58
(Entry into force)**

This law shall enter into force 180 days after its publication.

Approved by the Assembly of the Republic on 11 December 2006.

The Speaker of the Assembly of the Republic. Eduardo Joaquim Mulémbwè

Promulgated on 10 January 2007.

The President of the Republic, Armando Emílio Guebuza

Glossary

For the purposes of this law:

Health and social action means the set of benefits in kind (goods or services) that the compulsory social protection management body grants to its beneficiaries and their families;

Auditor means the official of the compulsory social protection management body who by law is given the authority and power to monitor and enforce compliance with the compulsory social protection legislation;

Beneficiary means a worker registered in compulsory social protection;

Field of application to benefits means the set of risks covered and the benefits foreseen for each risk;

Field of application to persons means the set of persons and employers included in compulsory social protection;

Contributor means the employer in compulsory social protection;

Payroll means the monthly record that must be sent to the compulsory social protection management body, with the identification of the beneficiary, wages and other relevant information that play a part in the classification of the beneficiary's contributory situation;

Maintenance of voluntary registration means the beneficiary being able to choose to contribute after ceasing to be employed by an employer registered in compulsory social protection;

Absolute poverty means individuals, families and communities being unable, through incapacity and/or lack of opportunity, to have access to the basic minimum conditions, according to the norms and dynamics of society;

Benefits mean the benefits to which the beneficiaries of any of the forms of social protection are entitled;

Additional benefits mean payments over and above the basic wage;

Risk benefits mean the set of support activities in cash or in kind aimed at mitigating risks;

Benefits in kind mean benefits given in the form of things or products or in the form of services to those entitled;

Minimum benefits mean the set of support activities in cash or in kind aimed at ensuring the survival of the needy;

Cash benefits mean benefits payable in cash;

Social protection means a system equipped with means suitable to meeting social needs, based on sharing income within a framework of solidarity between members of society;

Retirement means the state of a beneficiary who, by meeting the legal requirements, is qualified to receive an old-age pension or invalidity pension, as the case may be;

Risks mean future harmful, uncertain and unintentional events;

Basic social security means that which is intended to prevent situations of want and to foster social integration by means of special protection to more vulnerable groups. The foundation of basic social protection is national solidarity, which reflects distributive characteristics and is essentially financed by the State budget;

Complementary social security means that which is intended to protect wage-workers and self-employed persons and their families, optionally providing additional benefits to those of compulsory social security;

Compulsory social security means that which is intended for wage-workers and self-employed persons and their families, with the aim of protecting them in situations of incapacity or diminished capacity to work, maternity, old age and death. Compulsory social security assumes group solidarity, equitable in nature and based on logic of social insurance;

Self-employed person means anyone who pursues a productive human activity without being subject to a contract of employment.