

Labour Law

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PROJECT OF LABOUR LAW

Law nr./2007

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PROJECT OF LABOUR LAW
Law nr./2007

The dynamics of the social, economic and political situation call for a re-structuring of the legal framework governing labour, employment and social security. Therefore, pursuant to article 179 (1) of the Constitution of the Republic, the Assembly of the Republic determines:

CHAPTER 1
General Provisions

Section I
Object and scope

Article 1
(Object)

This law defines the general principles and establishes the legal framework applicable to individual and collective employment relationships, in respect of work rendered to an employer for remuneration.

Article 2
(Scope of application)

1. This law shall apply to the legal employment relationships between employers and employees, both national and foreign, in all fields of activity, who carry out their activity in Mozambique.
2. This law shall also apply to the legal employment relationships between public corporations and their employees, provided that these are not State employees or employees whose relationships are governed by specific legislation.
3. The following shall be governed by specific legislation:
 - a) Employment relationships of State employees;
 - b) Employment relationships of persons in the service of autonomous local authorities.
4. This law shall further apply, with the necessary changes, to associations, NGOs and the cooperative sector, as regards their salaried staff.

Article 3
(Special regimes)

1. The following relationships are governed by special legislation:
 - a) Domestic work;
 - b) Work in the home;
 - c) Mining work;
 - d) Port work;

- e) Maritime work;
 - f) Rural work;
 - g) Artistic work;
 - h) Sport;
 - i) Private security work;
 - j) Contract work;
 - k) Freelance work;
 - l) Work on a retainer basis.
2. The employment relationships referred to in the preceding paragraph, and those of other sectors whose activities require special regimes, shall be regulated by this law insofar as it is suited to their particular nature and characteristics.

Section II General principles

Subsection I Basic principles

Article 4 **(Principles and interpretation of labour law)**

1. This law shall be interpreted and applied in accordance with, among other principles, the principle of the right to work, of employment stability and job stability, of change in circumstances and of non-discrimination on grounds of sexual orientation, race or HIV/AIDS.
2. Where a contradiction arises between a rule in this law and other diplomas that regulate labour relations, the interpretation that is consistent with the principles defined herein shall prevail.
3. A culpable violation of any principle laid down in this law shall render the juridical act carried out in such circumstances null and void, without prejudice to civil and criminal liability incurred by the offender.

Subsection II Protection of the dignity of employees

Article 5 **(Right to privacy)**

1. Employers have an obligation to respect the personal rights of employees, in particular, the employees' right to keep their personal lives private.
2. The right to privacy relates to access to and dissemination of matters relating to the private and personal lives of employees, such as their family lives, personal relationships, sex lives, state of health and their political and religious convictions.

Article 6
(Protection of personal data)

1. Employers cannot, when appointing an employee or during the course of an employment contract, require the employee to provide information about his or her private life, except where, by virtue of the law or the practices of the occupation, the particular nature of the occupational activity so demands, and provided the reasons for the requirement are stated in writing beforehand.
2. The use of computer files and access relating to the personal data of a job applicant or employee shall be subject to specific legislation.
3. Personal data of an employee which has been obtained by an employer subject to a duty of confidentiality, as well as any other information the dissemination of which would breach the employee's privacy, shall not be supplied to third parties without the consent of the employee unless legal reasons so require.

Article 7
(Medical tests and examinations)

1. Unless a legal provision stipulates otherwise, employers may require job applicants or employees to undergo or submit medical tests or examinations for the purposes of admission or for the performance of an employment contract, in order to prove physical or psychological fitness.
2. The medical practitioner responsible for the medical tests or examinations shall not supply any other information to the employer which is not information relating to the employee's ability or inability to work.

Article 8
(Remote surveillance)

1. Employers shall not make use of remote surveillance facilities at the workplace, by employing technological equipment, for the purposes of monitoring the occupational performance of employees.
2. The provision of the preceding paragraph does not cover situations intended for the protection and safety of persons and property, or when the use is an integrated part of the productive process, in which case the employer must inform the employees of the existence and purpose of the facilities used.

Article 9
(Right to confidentiality)

1. The personal correspondence of an employee, using any means of private communication, in particular, letters and electronic messages, shall be inviolable except in the cases expressly provided for by law.
2. Employers may establish rules and limits on the use of information technology in the enterprise, namely, electronic mail and Internet access, or it may completely ban the use of these for personal purposes.

Subsection III
Protection of maternity and paternity

Article 10
(Protection of maternity and paternity)

1. The State guarantees the protection of parents or guardians in the exercise of their social duties of maintenance, education and health care of children, without prejudice to their working career.
2. Working mothers, fathers and guardians are guaranteed special maternity, paternity and child care rights.
3. The exercise of the rights provided for in this subsection by a pregnant, parturient or nursing employee depends upon notice of this condition being given to the employer, who may request proof of the condition.
4. For the purposes of exercising the rights established in this subsection:
 - a) *Pregnant employee*: means any female employee who informs her employer, in writing, about her state of pregnancy;
 - b) *Parturient employee*: means any female employee who is in childbirth and for a period of sixty days immediately following childbirth, provided that she informs her employer, in writing, about her condition;
 - c) *Nursing employee*: means any female employee who is breastfeeding her child and informs her employer, in writing, about her condition.

Article 11
(Special rights of female employees)

1. During the period of pregnancy and after childbirth, female employees shall be guaranteed the following rights:
 - a) Without loss of remuneration, not to perform work that is clinically inadvisable in her condition;
 - b) As of the third month of pregnancy, not to perform night work, exceptional work or overtime, nor be moved from her usual workplace, unless it is at her request or necessary for her health or the health of the child;
 - c) For a maximum of one year, to interrupt daily work in order to breastfeed the child, for two periods of half an hour each, or for a single one hour period when work is performed in a single unbroken shift, with no loss of remuneration in either case;
 - d) Not to be dismissed, without just cause, during pregnancy or for one year after the birth;
2. Employers are forbidden from giving female employees work that is harmful to their health or their reproductive functions.

3. Female employees shall be respected and any act against their dignity shall be punished by law.
4. Employees at the workplace who carry out acts against the dignity of a female employee shall be subject to disciplinary proceedings.
5. Employers are forbidden from dismissing, punishing or otherwise causing prejudice to a female employee for reasons of alleged discrimination or exclusion.
6. A female employee's absence from work for up to thirty days each year, to take care of her minor children in cases of accident or illness, shall be considered justified absence and shall not result in any loss of rights, except as regards remuneration.

Article 12
(Maternity and paternity leave)

1. In addition to normal holidays, female employees shall be entitled to maternity leave of sixty consecutive days, which may commence twenty days prior to the expected delivery date and which may be enjoyed consecutively.
2. The leave of absence of sixty days referred to in the preceding paragraph shall apply equally to cases of full term or premature births, regardless of whether it was a live birth or a stillbirth.
3. When there is a clinical risk to the female employee or the child, which prevents the employee from working, she shall be entitled to leave of absence before the birth, for such period as is necessary to avert the risk and has been medically prescribed, without prejudice to the maternity leave established in paragraph 1 of this article.
4. In the event that the mother or the child is admitted to hospital during the period of leave following the birth, this period shall be suspended for the duration of the hospitalisation, upon the employee notifying the employer.
5. The father shall be entitled to paternity leave for one day, every two years, and this day shall be taken on the day immediately following the birth.
6. An employee who wishes to take paternity leave shall inform the employer in writing, before or after the birth.

CHAPTER II
Sources of labour law

Article 13
(Sources of labour law)

1. The sources of labour law are the Constitution of the Republic, normative instruments enacted by the Assembly of the Republic and the Government, international treaties and conventions, as well as collective labour regulation instruments.
2. The practices of each occupation, sector of activity or enterprise that are not contrary to the law and the principle of good faith shall also constitute sources of labour law, unless the parties to individual or collective employment relationships agree that these practices shall not be applicable.

Article 14
(Codes of good conduct)

1. Notwithstanding the provisions of paragraph 1 of the preceding article, the parties to an employment relationship may establish codes of good conduct.
2. Codes of good conduct and internal regulations are not sources of law.

Article 15
(Collective labour regulation instruments)

1. Collective labour regulation instruments may be contractual or non-contractual.
2. Contractual collective labour regulation instruments comprise collective agreements, adhesion agreements and arbitral awards.
3. Collective agreements may take the form of:
 - a) *Company-level agreement*: when subscribed by a trade union organisation or association and by a single employer for a single enterprise;
 - b) *Multi-employer agreement*: when concluded between a trade union organisation or association and several employers for different enterprises;
 - c) *Association agreement*: when concluded between trade union associations and employer associations.
4. An *adhesion agreement* is entered into when a collective labour regulation instrument in force in an enterprise is wholly or partly adopted by both parties to a collective employment relationship.
5. An *arbitral award* is the decision of one or more arbitrators, which is binding on the parties to a dispute arising from an employment relationship.
6. Non-contractual collective labour regulation instruments comprise compulsory arbitral awards.

Article 16
(Hierarchy of the sources of labour law)

1. Higher sources of law shall prevail over hierarchically lower sources of law, except when the latter, without contradiction by the former, establish treatment more favourable to the employee.
2. Where a provision in this law states that it can be displaced by a collective labour regulation instrument, this shall not mean that it can be displaced by a clause in an individual employment contract.

Article 17
(Most favourable treatment principle)

1. Collective labour regulation instruments and employment contracts may depart from the provisions of this law only when they afford treatment that is more favourable to employees.

2. The provision of the preceding paragraph shall not apply when the rules of this law do not permit it, namely, when they are imperative rules.

CHAPTER III Individual employment relationships

Section I General provisions

Article 18 (Employment contract)

An employment contract is understood to be an agreement whereby one person, the employee, undertakes to perform his or her work for another person, the employer, under the authority and direction of the employer and in return for remuneration.

Article 19 (Presumption of employment relationship)

1. A legal employment relationship is presumed to exist when an employee is carrying out remunerated activity, to the knowledge of and without opposition from the employer, or when the employee is in a situation of economic subordination to the employer.
2. Employment relationship is the whole combination of the conduct, rights and duties established between an employer and an employee with respect to the work or the services performed or which should be performed, as well as the manner in which such performance should be rendered.

Article 20 (Contracts equivalent to employment contracts)

1. Contracts for the provision of services that put the service provider in a situation of economic subordination to the employer are considered as equivalent to employment contracts, even if the services are performed autonomously.
2. Service contracts for the performance of activities that correspond to vacancies in the staff of an enterprise shall be null, and converted into employment contracts.

Article 21 (Freelance work and retainers)

1. In addition to staff employees, employers may employ persons on a freelance or retainer basis.
2. Freelance work means work or duties that do not fill, but are performed within, normal working hours.
3. Work performed on a retainer basis means work or duties that are not part of the normal productive process or services, and do not fill the normal working hours.

Section II
Parties to individual employment relationships

Article 22
(Capacity for employment)

1. Capacity to enter into employment contracts is governed by the general rules of law and by the special rules in this specific law.
2. Where a certificate of occupational competence is required, an employment contract shall only be valid upon presentation of the certificate, in accordance with the terms of the following paragraph and specific legislation.
3. Employment contracts that are concluded contrary to the rules established in this article shall be null and void.

Article 23
(Employment of minors)

1. Employers shall, in conjunction with the relevant trade union body, adopt measures aimed at affording minors working conditions that are appropriate for their age, health, safety, education and vocational training and preventing any damage to their physical, psychological and moral development.
2. Employers shall not give minors under the age of eighteen work that is unhealthy, dangerous or which requires great physical strength, as defined by the competent authorities, after consultation with trade union and employer organisations.
3. The normal working hours of minors between the ages of fifteen and eighteen shall not exceed thirty-eight hours per week, up to a maximum of seven hours a day.

Article 24
(Prior medical examination)

1. Minors may be employed only after they have been given a medical examination to assess their physical strength, mental health and ability to do the work that they will be assigned, and presentation of the respective certificate of fitness for the work shall be compulsory.
2. The certificate of fitness may be issued for one job or for a group of jobs or occupations that carry similar health risks, according to the classification made by the competent authority.

Article 25
(Medical inspection)

1. The fitness of minors for work shall be subject to an annual medical inspection, and the Labour Inspectorate may require medical examinations of minors in order to certify whether the work which they are obliged to perform is, by its nature or by the conditions in which it is performed, harmful for their age or to their physical, moral or mental health.
2. In cases where work is performed in conditions that are particularly dangerous to the health or morals of a minor, the minor shall be transferred to another job.

3. Where the transfer provided for in the preceding paragraph is not possible, the minor may rescind his or her employment contract with just cause, subject to the compensation calculated in the terms of article 128 of this law.
4. The medical examinations referred to in this and the preceding article shall not be charged to the minor or the minor's family, but shall be carried out at the expense of the employer.

Article 26
(Employment of minors)

1. Employers may only engage minors who have attained fifteen years of age, and only with permission from their legal representatives.
2. The Ministers of Labour, Health and Education shall issue a legal diploma establishing the nature and the conditions of work that may be performed, in exceptional circumstances, by minors of between twelve and fifteen years of age.

Article 27
(Contract of employment of a minor)

1. An employment contract entered into directly with a minor of between twelve and fifteen years of age shall only be valid with written authorisation from the minor's legal representative.
2. Opposition by the minor's legal representative or revocation of the authorisation given pursuant to the preceding paragraph may be declared at any time, and shall become effective after a period not exceeding thirty days.
3. The remuneration of a minor shall be established according to the quantity and the quality of the work the minor performs, and in no event may it be lower than the minimum wage in force in the enterprise.
4. Minors have the capacity to receive the remuneration for their work.

Subsection II
Employment of persons with disabilities

Article 28
(Employment of persons with disabilities)

1. Employers shall promote the adoption of appropriate measures that allow employees with disabilities or chronic illness to have the same rights and duties as other employees, with respect to access to employment, vocational training and promotion, as well as suitable working conditions to enable them to perform socially useful activities, taking into account the specific circumstances of their impaired working capacity.
2. The State, in coordination with trade union and employer associations and organisations representing people with disabilities shall, in order to promote employment and taking into account the means and resources available, stimulate and support actions leading to the vocational rehabilitation of persons with disabilities and to their placement in jobs suited to their residual capacities.
3. Special measures to protect persons with disabilities, namely, with respect to promotion and access to employment and the creation of conditions for the performance of work suited to

their abilities, may be established by law or collective labour regulation instruments, except where such measures impose disproportionate costs on the employer.

Subsection III Student employees

Article 29 (Student employees)

1. Student employees are employees who work under the authority and direction of an employer, and have permission from their employer to attend a course at an educational establishment to develop and improve their skills, particularly their technical and occupational skills.
2. Maintaining student employee status is conditional upon successful school results, in the terms set down in specific legislation.
3. Student employees have the right not to attend work during examination periods, without loss of remuneration, provided they shall give their employer advance notice of least seven days.

Subsection IV Migrant workers

Article 30 (Migrant workers)

1. In the context of the free movement of persons and their settlement in foreign territories, migrant workers are entitled to protection from the competent national authorities.
2. Migrant workers have the same rights, opportunities and duties as other workers in the foreign countries where they work, within the framework of governmental agreements signed on the basis of independence, mutual respect, reciprocal interests and harmonious relations between the respective peoples.
3. Within the framework of its foreign relations with other countries, the State shall be responsible for defining the legal regime for migrant labour.
4. The State and public or private institutions shall be responsible for creating operational and suitable services responsible for providing migrant workers with accurate information about their rights and duties abroad and travel facilities, as well as the rights and guarantees they have on their return to Mozambique.

Subsection V Foreign workers

Article 31 (Foreign workers)

1. Employers should create conditions for placing qualified Mozambicans in the more highly skilled jobs and in positions of management and administration of enterprises.
2. Foreigners performing occupational activities in Mozambique shall have the right to equal treatment and opportunities in relation to Mozambican workers, within the framework of the

rules and principles of international law and in compliance with the reciprocity provisions agreed to between Mozambique and any other country.

3. Without prejudice to the preceding paragraph, the Mozambican State may reserve exclusively for national citizens certain functions or activities that are within the framework of those whose exercise by foreigners is restricted on grounds of public interest.
4. With the exception of the cases specified in the following paragraph, employers, whether national or foreign, may employ foreign nationals, even if unremunerated, when they have the relevant authorisation from the Minister of Labour or from entities to which the Minister has delegated this competency.
5. Employers may employ foreign nationals by giving notice of the employment to the Minister of Labour or an entity to whom the Minister has delegated this competency, subject to the following quotas and according to the enterprise classification established in article 34 hereof:
 - a) 5% of the total number of employees, in large enterprises;
 - b) 8% of the total number of employees, in medium-sized enterprises;
 - c) 10% of the total number of employees, in small enterprises.
6. In investment projects approved by the Government which contemplate the employment foreign nationals in a smaller or greater percentage than foreseen in the preceding paragraph, work permits shall not be required, and it shall be sufficient for notice to be given to the Minister of Labour within fifteen days after the foreign national enters Mozambique.

Article 32

(Restrictions on the employment of foreigners)

1. Without prejudice to the legal provisions under which foreign citizens are allowed to enter and remain in Mozambique, the employment of foreign nationals who entered the country on diplomatic, courtesy, official, tourism, visitor, business or student visas is forbidden.
2. Foreign employees with temporary residence permits shall not remain in the national territory after the expiry of the period of validity of the contract under which they entered Mozambique.
3. The rules laid down in this subsection shall apply to the employment of stateless persons in Mozambican territory.

Article 33

(Conditions for employing foreigners)

1. Foreign employees shall have the necessary academic or vocational qualifications and may only be employed when there are no nationals having the same qualifications, or where such nationals are insufficient in number.
2. In cases where authorisation from the Minister of Labour is required for the employment of a foreign national, the employer shall make an application stating the employer's name, head office and field of business, the identity of the foreigner to be employed, the duties they are to perform, the expected remuneration, their vocational qualifications with evidence thereof, and the duration of the contract. The contract shall be in writing and shall comply with the formalities laid down in specific legislation.

3. The mechanisms and procedures for employing foreign nationals shall be regulated by specific legislation.

Subsection VI Enterprises

Article 34 (Types of enterprise)

1. For the purposes of this law:
 - a) *Large enterprise*: is an enterprise employing more than 100 employees;
 - b) *Medium-sized enterprise*: is an enterprise employing more than 10 but not more than 100 employees;
 - c) *Small enterprise*: is an enterprise employing up to 10 employees.
2. Small enterprises may apply to be transferred, for the purposes of the application of this law, to the scheme for large and medium-sized enterprises.
3. For the purposes of paragraph 1 of this article, the number of employees is the average number existing during the preceding calendar year.
4. In the first year of activity, the number of employees shall be the number on the day when activity begins.

Article 35 (Multiple employers)

1. An employee may undertake to work for several employers under a single employment contract, provided that the employers have a relationship with each other or share a common organisational structure.
2. For the provision of the preceding paragraph to apply, each of the following requirements must be met:
 - a) The employment contract shall be in writing and shall state the activity the employee undertakes to perform, the place and the normal working hours;
 - b) All the employers shall be identified;
 - c) The employer who represents the others in performing the duties and exercising the rights arising under the employment contract shall be identified.
3. The employers who benefit from the work performed shall be jointly and severally liable for the obligations arising under the employment contract entered into in the terms of the preceding paragraphs.

Section III Formation of employment contracts

Article 36

(Contract of promise of employment)

1. Parties may enter into a contract of promise of employment, which shall only be valid if it is in writing and if it unequivocally expresses the intention of the promissor or promissors to be bound to enter into a definitive employment contract, and specifies the type of work to be performed and the applicable remuneration.
2. Non-fulfilment of the promise of employment shall give rise to civil liability in general terms of the law.
3. The provisions of article 830 of the Civil Code shall not apply to promises of employment.

Article 37

(Adhesion contracts)

1. Employers may manifest their contractual intention by means of internal work regulations or a code of good conduct, and employees may manifest theirs by expressly or tacitly adhering to the said regulations.
2. Where a written employment contract is concluded which stipulates that internal regulations are in place in the enterprise, the employee is presumed to accept the provisions of those internal regulations.
3. This presumption is rebutted where the employee or his or her legal representative makes a written objection to the regulations, within thirty days after performance of the employment contract begins or the regulations are published, whichever occurs later.

Article 38

(Form of employment contracts)

1. Individual employment contracts must be in writing, be dated and signed by both the employer and the employee and contain the following clauses:
 - a) Identification of the employer and the employee;
 - b) Occupational grade, duties or activities agreed on;
 - c) Place of work;
 - d) Duration of the contract and conditions for renewal;
 - e) Amount, form and timing of wage payments;
 - f) Date when performance of the contract begins;
 - g) The term of the contract and the grounds justifying it, if it is a fixed term contract;

- h) Signature date of the contract, and its termination date if it is a fixed term contract.
2. For the purposes of subparagraph (g) above, the statement of the grounds justifying the fixed term shall make express reference to the facts on which the justification is based, and shall establish a link between the justification relied upon and the term set.
3. Fixed term employment contracts need not be in writing where they are for work to be carried out over a period not longer than ninety days.
4. The following contracts must be in writing:
 - a) Contracts of promise of employment;
 - b) Fixed term contracts for terms longer than ninety days;
 - c) Employment contracts with multiple employers;
 - d) Employment contracts with foreign nationals, unless a legal provision stipulate otherwise;
 - e) Part time employment contracts;
 - f) Contracts for secondment of employees to other employers;
 - g) Temporary assignment contracts;
 - h) Contracts for work in the home;
 - i) Works contracts.
5. Unless the contract expressly stipulates the date of its commencement, it is deemed to commence on the date on which it was signed.
6. Failure to reduce the contract to writing shall not affect the validity of the contract or the rights acquired by the employee, and this failure is presumed to be attributable to the employer, who shall automatically be subject to all its legal consequences.

Article 39
(Ancillary clauses)

1. Suspensive or resolutive terms or conditions may be attached, in writing, to employment contracts, according to the general terms of law.
2. Ancillary clauses providing resolutive conditions shall determine whether an employment contract is for a fixed or an unspecified term.

Article 40
(Fixed term contracts)

1. Fixed term employment contracts may only be entered into for the performance of temporary duties, for as long as is strictly necessary for this purpose.

2. The following, among others, are temporary needs:
 - a) The replacement of employees who, for whatever reason, are temporarily unable to perform their duties;
 - b) The performance of duties aimed at responding to an exceptional or unusual increase in production, and the performance of seasonal work;
 - c) The performance of duties that are not aimed at meeting permanent needs of the employer;
 - d) The performance of a single piece of work, a project or other specific, temporary activity, including the performance, direction and supervision of civil construction works, public works and industrial repairs on a works-contract basis;
 - e) The provision of services in activities that are incidental to those referred to in the preceding paragraph, namely, subcontracting and tertiarization of services;
 - f) The performance of non-permanent activities.
3. The permanent needs of an employer comprise job vacancies that are contemplated in the staff structure of the enterprise, or those which may not be so contemplated but which correspond to the normal cycle of production or operation of the enterprise.

Section IV
Duration of the employment relationship

Article 41
(Duration of the employment contract)

1. Employment contracts may be permanent, or they may be entered into for a fixed term or an unspecified term.
2. Employment contracts whose duration is not indicated are presumed to be permanent, although the employer may rebut this presumption by giving evidence of the temporary or transient nature of the duties or activities to which the contract pertains.

Article 42
(Restrictions on fixed term contracts)

1. Fixed term contracts may be entered into for a period of up to two years, and this period may be renewed twice by agreement between the parties, without prejudice to the rules applicable to small and medium-sized enterprises.
2. A fixed term employment contract shall be considered a permanent contract if it exceeds the maximum periods of duration or the number of renewals permitted under the preceding paragraph, in which case the parties may opt for the regime provided for in paragraph 4 of this article.
3. Small and medium-sized enterprises shall be free to enter into fixed term contracts during their first ten years of activity.

4. Where a fixed term contract is entered into outside the cases specifically contemplated in article 40 herein, or in breach of the limits set down in the provisions of this article, the employee shall be entitled to compensation in the terms set down in article 128 herein.

Article 43

(Renewal of fixed term contracts)

1. Fixed term employment contracts shall be renewed, at the end of the term agreed upon, for such period as the parties have expressly stated in the contract.
2. In the absence of the express statement referred to in the preceding paragraph, fixed term employment contracts shall be renewed for the same period as the original term, unless there is a contractual stipulation to the contrary.
3. A fixed term employment contract whose original term is renewed pursuant to paragraph 1 above shall be considered as a single contract.

Article 44

(Unspecified term contracts)

Contracts for an unspecified term shall only be allowed where it is not possible to predict, with certainty, the period within which the reasons justifying the term, namely, the situations referred to in article 40(2) herein, will cease.

Article 45

(Denunciation of unspecified term contracts)

1. In order for the denunciation referred to in the following paragraph to take effect, the notice period to which the denunciation is subject must have expired and, in any case, there must have occurred an event to which the parties have attributed extinctive effect.
2. An employee employed for an unspecified term shall be considered as employed permanently if he or she continues in the employer's service after the date when the denunciation takes effect. Where there is no denunciation, the employee shall also be considered as a permanent employee if he or she continues in the employer's service seven days after the return of the person whom he or she was substituting, or after termination of the contract by completion of the activity, service, work or project for which the employee was hired.

Section V Probationary periods

Article 46

(Concept)

1. A probationary period is the initial period of execution of an employment contract, and its duration shall follow the rules laid down in the following article.

2. During the probationary period, the parties shall act in such a way as to enable them to adjust and become acquainted with each other, in order to evaluate their interest in maintaining the employment contract.

Article 47

(Duration of probationary periods)

1. Permanent employment contracts may be made subject to probationary periods, which shall not exceed:
 - a) Ninety days for employees not included in the following subparagraph;
 - b) One hundred and eighty days for intermediate and higher level technicians, and employees who hold leadership and management positions.
2. Term employment contracts may be made subject to probationary periods, which shall not exceed:
 - a) Ninety days for fixed term contracts for longer than one year, which period shall be reduced to thirty days in the case of contracts for a term of between six months and one year;
 - b) Fifteen days for fixed term contracts for up to six months;
 - c) Fifteen days for unspecified term contracts, when the term is expected to be ninety days or more.

Article 48

(Reduction or exclusion of probationary period)

1. The duration of probationary periods may be reduced by collective labour regulation instruments or by individual employment contracts.
2. In the absence of a stipulation in writing as to the probationary period, it is presumed that the parties intended to exclude such period from the employment contract.

Article 49

(Running of the probationary period)

1. The probationary period shall run from the beginning of the execution of the employment contract.
2. During the probationary period, days of absence, including justified absence, licence or leave, as well as days of contract suspension, shall not be considered for the purposes of the employee's assessment, without prejudice to his or her rights to remuneration, length of service and holidays.

Article 50

(Denunciation during the probationary period)

1. During the probationary period, either of the parties may denounce the contract without having to show just cause and without any right to compensation, save as agreed otherwise.

2. For the purposes of the preceding paragraph, either contracting party is obliged to give a minimum of seven days' advance notice in writing to the other party.

Section VI
Invalidity of the employment contract

Article 51
(Invalidity of the employment contract)

1. Clauses in individual employment contracts, collective labour regulation instruments or other sources of employment relationships that are contrary to the imperative provisions of this law or of other legislation in force in the Republic of Mozambique shall be void.
2. An employment contract shall not be rendered wholly invalid by virtue of the existence of clauses that are void or have been avoided, unless it is shown that the contract would not have been concluded but for the contravening part.
3. Void clauses shall be replaced by the regime established in the applicable rules of this law and other legislation in force in Mozambique.

Article 52
(Rules on invoking invalidity)

1. The invalidity of an employment contract may be claimed only within the period of six months following the date of signature thereof, except where the object of the contract is unlawful, in which case its invalidity may be claimed at any time.
2. An employment contract that has been declared void or avoided shall have all the effects of a valid contract if it is actually performed and throughout the duration of the performance.

Article 53
(Validation of the employment contract)

1. An invalid employment contract shall be considered validated *ab initio* if, during the performance of the contract, the ground for the invalidity ceases.
2. The provision of the preceding paragraph shall not apply to contracts whose object or purpose is contrary to the law or public order or *contra bonos mores*, in which case the contract will only have effect once the relevant ground of invalidity has ceased.

Section VII
Rights and duties of the parties

Subsection I
Rights of the parties

Article 54
(Rights of employees)

1. All employees are guaranteed equal rights at work, regardless of their ethnic origin, language, race, sex, marital status, age within legally established limits, social condition, religious and political ideals and membership or non-membership of a trade union.

2. Measures that benefit certain disadvantaged groups, namely, by reason of their sex, reduced capacity to work, disability or chronic illness, for the purpose of guaranteeing the exercise of the rights established in this law on an equal footing and to correct a factual situation of inequality in social life, shall not be considered discriminatory.
3. Employees shall have rights that cannot be the subject of any transaction, renunciation or limitation, without prejudice to the rules on the modification of contracts based on change of circumstances.
4. The State shall ensure the effectiveness of preventive and coercive measures that hinder and provide civil and criminal punishment for all violations of employees' rights.
5. Employees shall have the following rights, in particular:
 - a) To be assured of a job according to their abilities, their technical and vocational preparation, the requirements of the workplace and the national economic development possibilities;
 - b) To be assured of job stability, whilst performing their duties under the terms of their employment contracts, collective labour regulation instruments and the applicable legislation;
 - c) To be treated correctly and respectfully, all acts against the honour, good name, public image, private life and dignity of employees being punishable by law;
 - d) To be paid according the quantity and the quality of their work;
 - e) To compete for access to higher positions, according to their qualifications, experience, work results, assessments and the requirements of the workplace;
 - f) To be guaranteed daily and weekly rest periods and paid annual holidays;
 - g) To enjoy suitable measures of protection, safety and hygiene at work, capable of ensuring their physical, moral and mental integrity;
 - h) To benefit from medical and medicinal aid, and to receive compensation for accidents at work or occupational illness;
 - i) To go to the Labour Inspectorate or to authorities with labour jurisdiction, whenever their rights are threatened;
 - j) To associate freely in professional organisations or trade unions, in accordance with the Constitution of the Republic of Mozambique;
 - k) To enjoy adequate assistance in the event of disability and old age, in accordance with the law.

Article 55
(Length of service of employees)

1. The length of service of an employee shall be counted from the date of admission until the date of termination of the employment contract.
2. The following periods shall count towards the length of service of an employee:

- a) The probationary period, without prejudice to article 49 (2) of this law;
- b) Periods of apprenticeship, when the apprentice is admitted as a member of staff in terms of article 249 of this law;
- c) Periods of fixed term employment contracts, when the work is performed for the same employer;
- d) Compulsory military service;
- e) Secondments and special work assignments
- f) Periods of paid leave of absence;
- g) Holidays;
- h) Justified absences;
- i) Preventive suspension pursuant to disciplinary proceedings, provided that the final decision is in favour of the employee;
- j) Preventive imprisonment provided that, at the end of the proceedings, there is either no charge against the employee or he or she is acquitted.

Article 56

(Prescription of rights under employment contracts)

1. All rights arising under employment contracts and rights arising as a result of the breach or termination of such contracts shall expire after a period of six months from the date of termination, save as otherwise provided for by law.
2. The period of prescription shall be suspended when the employee or the employer has instituted a judicial action or arbitration proceedings with the competent authorities, for breach of the employment contract.
3. In addition, the period of prescription shall be suspended for a period of fifteen days:
 - a) When the employee lodges a complaint or hierarchical appeal, in writing, with the competent body in the enterprise;
 - b) When the employee or the employer lodges a complaint or appeal, in writing, with the labour administration office.
4. All the periods referred to in this law shall be counted in consecutive calendar days.

Subsection II Duties of the parties

Article 57

(Principle of mutual collaboration)

Employers and employees have a duty to respect and ensure respect for the provisions of the law, collective labour regulation instruments and codes of good conduct, and to work together towards high levels of productivity in the enterprise and human, occupational and social advancement in respect of work.

Article 58

(Duties of employees)

Employees are, in particular, subject to the following duties:

- a) To go to work regularly and punctually;
- b) To perform their work with zeal and diligence;
- c) To respect and treat with propriety and loyalty their employer, their hierarchical superiors, their work colleagues and all other persons who are in contact or come into contact with the enterprise;
- d) To obey the lawful orders and instructions of the employer, the employer's representatives and the employee's hierarchical superiors, and to perform all other obligations arising from the employment contract, except those that are illegal or are contrary to their rights and guarantees;
- e) To use properly and keep in good condition the work-related property and equipment entrusted to them by the employer;
- f) To respect professional confidentiality and in no case disclose information regarding the organisation, production methods or business of the enterprise or establishment;
- g) Not to use the workplace or the equipment, property, services or tools of the enterprise for personal or non-work related purposes, without authorisation from the employer or the employer's representative;
- h) To be loyal to the employer, in particular, not to compete with the employer either directly or for the account of a third party, and to contribute to improving the system of safety, hygiene and health at work.
- i) To protect the property of the workplace and the production output against any damage, destruction or loss.

Article 59

(Duties of employers)

Employers are, in particular, subject to the following duties:

- a) To respect the rights and guarantees of employees and to comply fully with their obligations arising under the employment contract and the rules that govern it;
- b) To guarantee the observance of rules on hygiene and safety at work, as well as to investigate the causes of work accidents and occupational illnesses and to take appropriate preventive measures;
- c) To respect employees and treat them with propriety and politeness;
- d) To provide employees with good physical and moral conditions at work;
- e) To pay employees fair remuneration, in accordance with the quantity and the quality of their work;
- f) To assign employees to occupational grades suited to the tasks and activities they perform;
- g) To maintain the employee's occupational grade, and not to lower it except in such cases as are expressly provided for by law and by collective labour regulation instruments;
- h) To maintain the same working hours and the same workplace, except in those cases established by law, collective labour regulation instruments and individual employment contracts;
- i) To allow employees to carry out trade union activities, and not to prejudice an employee for performing trade union duties;
- j) Not to compel employees to acquire goods or use services supplied by the employer or by a person designated by the employer;
- k) Not to operate refectories, canteens, crèches or any other work related establishments or supply goods or services to employees, for making a profit.

Subsection III Powers of the employer

Article 60 **(Powers of the employer)**

Within the limits established under the contract and the rules that govern it, the employer or a person appointed by the employer shall have the power to set, direct, regulate and discipline the terms and conditions on which work should be performed.

Article 61 **(Regulatory power)**

1. The employer may draw up internal working regulations containing rules on the organisation and discipline of work, employee social support schemes, rules on the use of the enterprise's premises and equipment, as well as those relating to cultural, sporting and recreational activities. These internal regulations are compulsory for large and medium-sized enterprises.
2. Internal regulations that address the organisation and discipline of work shall enter into force only after consultation with the enterprise's trade union committee or, in absence of one, the

relevant trade union body, and these regulations are also subject to communication to the relevant labour administration office.

3. The entry into force of internal regulations that establish new working conditions shall be considered as a proposal for adhesion by employees who were hired before the publication of these regulations.
4. The internal regulations shall be displayed at the workplace, in order that the employees may be given adequate knowledge of their contents.

Article 62
(Disciplinary power)

1. The employer has disciplinary power over its employees and may apply the disciplinary penalties laid down in the following article.
2. Disciplinary power may be exercised directly by the employer or by the employee's hierarchical superior, on terms established by the employer.

Article 63
(Disciplinary penalties)

1. The employer may apply the following disciplinary penalties, within legal limits:
 - a) Verbal reprimand;
 - b) Written reprimand;
 - c) Suspension from work with loss of pay, for up to ten days for every disciplinary offence and up to thirty days per calendar year;
 - d) Fine of up to twenty days' wages;
 - e) Demotion to an occupational grade immediately below, for a period not exceeding one year;
 - f) Dismissal.
2. It shall not be lawful to apply any other disciplinary sanctions or to aggravate those listed in the preceding paragraph in collective labour regulation instruments, internal regulations or employment contracts.
3. Apart from the purpose of deterring certain conduct of an employee, the application of disciplinary penalties is aimed at discouraging the commission of further offences within the enterprise, and at educating the targeted employee and other employees to comply with their duties voluntarily.
4. The penalty of dismissal shall not result in the loss of rights arising from the employee's registration with the social security system if, on the date when the employment relationship ceases, the employee meets the requirements for receiving benefits under any arm of the system.

Article 64

(Graduation of disciplinary measures)

1. The application of the disciplinary measures contemplated in article 63 (1) (c) to (f) must be duly founded on proper grounds, and the decision may be challenged within a time limit of six months.
2. Disciplinary measures shall be proportionate to the gravity of the offence, and shall take into consideration the degree of culpability of the offender, the professional conduct of the employee and, in particular, the circumstances in which the events occurred.
3. No more than one disciplinary penalty may be applied in respect of the same disciplinary offence.
4. The application of one disciplinary penalty accompanied by a duty to make good the losses caused by the employee's willful or culpable conduct shall not be considered as more than one penalty.
5. Disciplinary offences are considered particularly serious when they are committed repeatedly and intentionally and when they compromise the fulfilment of the tasks assigned to the employee, cause damage to the employer or to the national economy, or otherwise threaten the subsistence of the employment relationship

Article 65

(Disciplinary proceedings)

1. The application of any disciplinary penalty, other than those in article 63 (1) (a) and (b), shall be preceded by the institution of disciplinary proceedings, which shall consist of a notification to the employee of the acts of which he or she is accused, the employee's eventual response and the opinion of the trade union body. The latter two of these shall be produced within the time limits established in article 67 (2) (b) of this law.
2. The period of prescription for disciplinary offences shall be six months counting from the date on which the offence occurred, except where the acts or events also constitute a crime, in which case the criminal prescriptive periods shall apply.
3. Disciplinary penalties cannot be applied without the employee being given a prior hearing.
4. Without prejudice to the right to take judicial or extra-judicial action, the employee may lodge a complaint to the entity that took the decision or appeal to this entity's hierarchical superior, in which case the period of prescription shall be suspended in the terms of article 56.
5. Disciplinary sanctions must be executed within ninety days following the decision delivered in the disciplinary proceedings.

Article 66

(Disciplinary offences)

1. Disciplinary offences comprise all culpable behavior of the employee, which breaches his or her occupational duties, namely:
 - ii) Failure to comply with the working hours schedule and work assignments;

- iii) Failure to come to work, without valid justification;
 - iv) Absence from the job or workplace during working hours, without proper authorisation;
 - v) Disobedience to lawful orders or instructions arising under the employment contract and the rules that govern it;
 - vi) Lack of respect towards hierarchical superiors, work colleagues and third parties, or lack of respect by hierarchical superiors towards their subordinates, at the workplace or in the performance of work duties;
 - vii) Offence, physical injury, ill treatment or threat committed against another person at the workplace or in the performance of work duties;
 - viii) Culpable breach of work productivity;
 - ix) Abuse of office or the use of one's position to obtain unlawful advantages;
 - x) Breach of professional confidentiality or of production or work secrets;
 - xi) The misappropriation of equipment, property, services and other work tools for personal purposes or non-work related purposes, or the improper use of the workplace;
 - l) Culpable damage, destruction or deterioration of the property of the workplace;
 - m) Lack of austerity, or wastage or squandering of the material or financial resources of the workplace;
 - n) Drunkenness or being under the influence of drugs, and the consumption or possession of drugs, at work post or in the workplace or in the performance of one's duties;
 - o) Theft, robbery, breach of trust, embezzlement and other fraudulent acts committed at the workplace or during the performance of work duties;
 - p) Job abandonment.
2. Harassment, including sexual harassment, which interferes with the stability of employment or with the career progress of the offended employee, shall be treated as a disciplinary offence, whether it is committed in or out of the workplace.
3. Where the conduct referred to in the preceding paragraph is committed by the employer or the employer's agent, the offended employee shall be entitled to compensation in an amount of twenty times the minimum wage, without prejudice to any judicial cause of action under the applicable law.

Subsection IV Disciplinary proceedings

Article 67

(Dismissal for a disciplinary offence)

1. Culpable behavior on the part of an employee, the gravity and consequences of which make the subsistence of the employment relationship immediately and practically impossible, shall entitle the employer to terminate the employment contract by dismissal.
2. The application of the disciplinary penalty, in the terms of article 65 (1) of this law, must be preceded by disciplinary proceedings, which shall comprise the following stages:
 - ii) **Accusation stage:** after the date upon which the offence has become known, the employer shall have thirty days, without prejudice to the prescriptive period for the offence, to remit a written note of accusation to the employee and to the trade union body in the enterprise. The note of accusation shall contain a detailed description of the facts and circumstances regarding the time, place and method of the commission of the offence imputed to the employee;
 - iii) **Defence stage:** within fifteen days after receipt of the note of accusation, the employee may respond in writing and, if he or she so wishes, attach documents or request a hearing or the production of evidence. After the expiry of this time limit, the case shall be remitted to the trade union body for its opinion, to be given within five days;
 - iv) **Decision stage:** within thirty days after the deadline for submission of the opinion of the trade union body, the employer shall communicate its decision in writing to the employee and the trade union body, describing the evidence produced and stating, with reasons, which facts in the note of accusation were considered to have been proven.
3. When the perpetrator of the offence or the offence itself is not known, the disciplinary proceedings may be preceded by an inquiry, which shall not exceed ninety days, in which case the prescriptive period for the offence shall be suspended.
4. Disciplinary proceedings are deemed to commence for all legal purposes on the date when the note of accusation is delivered to the employee.
5. Where the employee's presence in the enterprise could jeopardise the normal course of the disciplinary proceedings, the employer may suspend the employee preventively without loss of remuneration when the note of accusation is served.
6. If the employee refuses to receive the note of accusation, the refusal shall be confirmed in the note of accusation itself by the signature of two employees, of whom one shall preferably be a member of the trade union body in the enterprise.
7. Where disciplinary proceedings are instituted against an absent employee whose whereabouts are unknown, who is presumed to have abandoned his or her post, or where an employee has refused to receive the note of accusation, a notice shall be posted at a customary location in the enterprise for fifteen days. This notice shall summon the employee

To receive the note of accusation and warn that the time limit for the employee's defence runs from the date of publication of the notice.

8. It shall be forbidden to summon employees to answer to disciplinary proceedings by notice published in a newspaper, magazine or any other mass media.

Article 68

(Causes of invalidity of disciplinary proceedings)

1. Disciplinary proceedings shall be invalid when:
 - a) There has been a failure to observe any legal formality, namely, failure to fulfil the requirements of the note of accusation or to serve it on the employee, failure to give the employee a hearing if requested, failure to publish the notice in the enterprise, where applicable, failure to remit the case file to the trade union body, and failure to provide grounds for the final decision in the disciplinary proceedings;
 - b) There has been a failure to conduct inquiries for the production of evidence requested by the employee;
 - c) The prescriptive period for the disciplinary offence or the time limits for responding to the note of accusation or pronouncing the decision have been breached.
2. The causes of invalidity of disciplinary proceedings set down in this article may be cured up until the close of the proceedings or up to ten days after the cause became known, with the exception of the expiry of the prescriptive period of the offence and breach of the time limit for announcing the decision.
3. Without prejudice to the rules on the transmissibility of evidence, disciplinary proceedings shall be independent from criminal and civil proceedings for the purposes of the application of disciplinary penalties.
4. Where the defence of an accused employee is rendered impossible because the employee did not have notice of the note of accusation, either by service in person or by publication where applicable, this shall constitute an incurable nullity in disciplinary proceedings.

Article 69

(Action for unlawful dismissal)

1. A dismissal may be declared unlawful by the employment court, or by an employment conciliation, mediation and arbitration body, in an action brought by the employee.
2. The action against the dismissal must be brought within a period of six months following the date of the dismissal.
3. If the dismissal is declared unlawful, the employee shall be reinstated without prejudice to his or her length of service, and shall receive the remuneration payable from the date of the dismissal for up to a maximum of six months thereafter.
4. As a preliminary plea in the action against dismissal or while the action is pending, the employee may, within thirty days of the date of termination of the contract, request the interim remedy of suspension of the dismissal.

5. Where the employee expressly so chooses or where circumstances objectively make the employee's reinstatement impossible, the employer shall pay compensation to the employee calculated in terms of article 128 (2) of this law.

Section VIII
Modification of the employment contract

Article 70
(General principle)

1. Employment relationships may be modified by agreement between the parties or by unilateral decision of the employer, within legally established cases and limits.
2. Where an employment contract is modified pursuant to a unilateral decision of the employer, prior consultation with the enterprise's trade union body and notification to the relevant labour administration office shall be mandatory.

Article 71
(Grounds for modification)

1. Modification of employment relationships may be based on:
 - a) Professional re-qualification of the employee arising from the introduction of new technology, new work methods or the need to reoccupy the employee, in order to make use of his or her residual capacity in the event of accident or occupational illness;
 - b) Administrative or productive reorganisation of the enterprise;
 - c) Change in the circumstances on which the decision to hire the employee was based;
 - d) Geographical relocation of the enterprise;
 - e) An event of *force majeure*.
2. Where an employee disagrees with the grounds for modifying the contract, the onus shall be on the employer to prove the existence of such grounds to the relevant labour administration office or judicial or arbitration body.

Article 72
(Alteration of the object of the contract)

1. The employee should perform the duties defined in the contract and should not be placed in an occupational grade lower than that to which admitted or promoted, except where the grounds provided for in this law exist or where the parties have agreed otherwise.
2. Without prejudice to the aforesaid and save as otherwise agreed on an individual or collective basis, the employer may, in cases of *force majeure* or unforeseeable production requirements, assign tasks to the employee that are not included in the contract, for as long as necessary but not for longer than six months, provided, however, that such a change shall not involve a reduction in the employee's remuneration or hierarchical position.

Article 73

(Alteration of working conditions)

1. Working conditions may be modified by agreement between the parties on grounds of a change of circumstances, where this is necessary for the subsistence of the employment relationship, or if it contributes to improving the situation of the enterprise by means of more appropriate organisation of its resources, which places it in a better competitive position in the market.
2. In no event will a modification of working conditions be allowed on grounds of a change in circumstances if the modification involves a reduction in the employee's remuneration or hierarchical position.

Article 74

(Geographical relocation of the employer)

1. The geographical relocation of all or one part or sector of an enterprise shall be permissible.
2. The total or partial relocation of an enterprise or establishment may involve the transfer of its employees to a different workplace.

Article 75

(Transfer of employees)

1. The employer may temporarily transfer an employee to another workplace, when there are exceptional circumstances connected with the administrative or productive organisation of the enterprise. The employer shall notify the relevant labour administration office of such a transfer.
2. An employee may be definitively transferred only in the event that the enterprise or establishment where the employee works is relocated in whole or in part, unless there are contractual provisions to the contrary.
3. The definitive transfer of an employee to another workplace located outside the employee's ordinary place of residence requires mutual agreement, where such a move would result in serious detriment, such as the separation of the employee from his or her family.
4. In the absence of the mutual agreement provided for in the preceding paragraph, the employee may rescind the employment contract unilaterally, with a right to the compensation established in article 130 of this law.
5. The employer shall bear all expenses incurred by the employee as a direct result of the transfer, including expenses incurred as a result of the change of residence of the employee and the employee's household.

Article 76

(Change of ownership of the enterprise or establishment)

1. When the ownership of an enterprise or establishment changes, the employees may transfer to the new employer.
2. The change of ownership of an enterprise may result in the rescission or denunciation of employment contracts or relationships, if there is just cause, when:

- a) The employee makes an agreement with the transferor to remain in the transferor's employment;
 - b) Having reached retirement age or having otherwise met the requirements for taking retirement at the time of the transfer, the employee asks to retire;
 - c) The employee does not have confidence in the transferee or has reason to doubt the transferee's integrity;
 - d) The transferee plans to change or changes the object of the enterprise within the following twelve months, if such a change involves a substantial change in working conditions.
3. Where an enterprise or establishment is transferred from one employer to another, the rights and obligations under existing employment contracts and collective labour regulation instruments, including those arising from an employee's length of service, shall pass to the new employer.
 4. The new owner of the enterprise or establishment is jointly and severally liable for those obligations of the former owner which accrued during the productive unit's last year of activity preceding the transfer, even if such obligations relate to employees whose contracts had already terminated in terms of the law at the time of the transfer.
 5. The rules on the transfer of an enterprise or establishment shall apply, with the necessary changes, to transfers of part of an enterprise or establishment, mergers and demergers of enterprises, assignments of the operation of an establishment or leases of an establishment.
 6. For the purposes of this law, an enterprise, establishment or part thereof means any productive unit capable of carrying on an economic activity.

Article 77
(Procedure)

1. The transferor and the transferee shall first consult and inform the trade union bodies in each of the enterprises or, in the absence of these, the workers commission or the representative trade union association, about the date and the reasons for the transfer and the expected consequences thereof.
2. Both the transferee and the transferor shall have a duty to inform, and each of them may post notices at the workplaces informing employees that they have a right to claim credits owing to them within a period of sixty days, under pain of forfeiture of their right to make such claims.
3. In the case of rescission of an employment contract on grounds of confirmed serious loss or detriment arising from the change of ownership of the enterprise or establishment, the employee shall be entitled to the compensation provided for in article 130 of this law.

Article 78
(Secondment to another employer)

1. A contract for the secondment of an employee to another employer is one under which an employee of the transferring employer is temporarily made available to a transferee employer

on an occasional basis, whereupon the employee becomes legally subordinate to the transferee employer but maintains the contractual bond with the transferor.

2. The secondment of employees to another employer shall only be permitted if regulated by collective labour regulation instruments or by the terms of specific legislation or the following paragraphs.
3. The performance of work on a secondment basis may only take place when all of the following conditions are met:
 - a) There shall be an employment contract between the transferring employer and the seconded employee;
 - b) The purpose of the proposed secondment shall be to deal with increases in work or relocation of employees;
 - c) The seconded employee shall have consented in writing;
 - d) The secondment shall not exceed three years and, in the case of fixed term contracts, it shall not extend beyond the term of the contract.
4. Employees are seconded to another employer by means of an agreement between the transferor and the transferee, and this agreement shall express the consent of the employee, who shall return to the transferor's enterprise as soon as the agreement or the activity of the transferee ceases.
5. If the requirements of paragraph 3 of this article are not fulfilled, the employee shall be entitled to elect to join the staff of the transferee enterprise, or to receive compensation calculated in the terms of article 128 of this law, payable by the transferee.

Article 79

(Private employment agency)

1. A private employment agency is any individual or corporate undertaking governed by private law, whose purpose is to supply one or more employees temporarily to user enterprises, under temporary employment contracts and user contracts.
2. Prior authorisation from the Minister of Labour or a person to whom the Minister has delegated authority shall be required for the pursuit of private employment agency business, in the terms established in specific legislation.

Article 80

(Temporary employment contract)

1. A temporary employment contract is an agreement entered into between a private employment agency and an employee, under which the employee undertakes to perform work for a user enterprise, temporarily and for remuneration.
2. Temporary employment contracts shall be in writing and be signed by the private employment agency and the employee, and they shall adhere to the requirements and contain certain mandatory provisions established in specific legislation.

3. Temporary employees belong to the staff of the private employment agency, and shall be included in the agency's employee list drawn up in accordance with the labour legislation in force.
4. Temporary employment contracts shall only be permitted in the situations provided for in article 82 of this law.

Article 81
(User contract)

1. A user contract is a fixed term contract for services, entered into between a private employment agency and a user enterprise, under which the agency undertakes, for remuneration, to make available to the user one or more temporary employees.
2. User contracts must be in writing and shall contain the following among other mandatory clauses:
 - a) The reasons for using temporary labour;
 - b) The social security registration number of the user enterprise and the private employment agency, as well as the number and date of the agency's licence to carry out its activity;
 - c) A description of the position to be filled and, where applicable, the appropriate professional qualifications;
 - d) The normal working hours and workplace;
 - e) The fee payable to the employment agency by the user enterprise;
 - f) The commencement and duration of the contract;
 - g) The signature date of the contract.
3. If a temporary employment contract is not in writing or fails to state the reasons for using temporary labour, the contract shall be considered void and the employment relationship between the user enterprise and the employee shall be considered permanent.
4. In place of the provisions set down in the preceding paragraph, the employee may, within thirty days after the commencement of work for the user enterprise, elect to receive compensation in the terms of article 128 of this law, which shall be payable by the user.
5. The signature of a user contract with an unlicensed private employment agency shall render the agency and the user enterprise jointly and severally liable for the rights of the employee arising from the employment contract and from the breach or termination thereof.

Article 82
(Justification for user contract)

1. The temporary needs of a user enterprise shall comprise the following, namely:
 - a) Direct or indirect replacement of an employee who is absent or is temporarily unable to work for any reason;

- b) Direct or indirect replacement of an employee in respect of whom there is an action pending to evaluate the lawfulness of the employee's dismissal;
 - c) Direct or indirect replacement of an employee on leave of absence without pay;
 - d) Replacement of a full time employee who becomes a part time employee;
 - e) Needs arising because posts have fallen vacant, when the recruitment process to fill the positions is already under way;
 - f) Seasonal or other activities the annual production cycle of which is irregular due to the structural nature of the particular market, including agriculture, agro-industry and activities incidental thereto;
 - g) Extraordinary increase in the activity of the enterprise;
 - h) Performance of casual duties or a specific and transient service;
 - i) Performance of a single piece of work, a project or other specific, temporary activity, including the execution, direction and supervision of civil construction works, public works and industrial assemblies and repairs, whether they are contracted out or administered directly, including the respective projects and other incidental monitoring and follow-up activities;
 - j) Provision of security, maintenance, hygiene, cleaning and catering services and other incidental or social services that are part of the day to day activity of the employer;
 - k) Development of projects, including design, research, direction and supervision, which are not part of the day to day activity of the employer;
 - l) Intermittent labour requirements resulting from fluctuations in activity for certain days or parts of days, provided that the use of temporary labour does not exceed one half of the user enterprise's normal working hours per week;
 - m) Employees having to provide direct family support of a social nature from time to time, on certain days or parts thereof.
2. In addition to the situations contemplated in paragraph 1 above, a user contract may be entered into for a fixed term in the following cases:
- a) When a new activity of uncertain duration is launched, and when the working of an enterprise or establishment starts up;
 - b) Employment of young persons.

Article 83

(Rules applicable to temporary employment contracts and user contracts)

1. The rules governing term contracts shall apply, with the necessary changes, to temporary employment and user contracts.
2. With respect to all matters not dealt with in this law, the two types of contract referred to in the preceding paragraph shall be governed by special legislation.

3. During the execution of a temporary employment contract, the employee shall be subject to the employment rules applicable to the user enterprise with respect to the place, manner, duration, suspension and performance of work, discipline, safety, hygiene, health and access to the user's social facilities.
4. The user enterprise shall inform the private employment agency and the employee about the health and safety risks involved in the job to which the employee is appointed, as well as about the need, if any, for appropriate professional qualifications and specific medical supervision.
5. The user enterprise shall draw up a working hours schedule for the temporary employee, and shall schedule the employee's holidays, if these are to be taken whilst in the service of the user.
6. The private employment agency may grant the user enterprise the power to exercise disciplinary authority, other than for the purposes of dismissal.
7. A temporary employee may be assigned to more than one user enterprise, subject to observance of the employment conditions arising under the respective contract.

Section IX Duration of work

Article 84 (Normal working hours)

1. Normal working hours are considered to be the number of hours of actual work that the employee undertakes to perform for the employer.
2. Time of actual work is considered to be the time during which the employee is effectively performing services for the employer or is at the disposal of the employer.

Article 85 (Limits on normal working hours)

1. Normal working hours shall not exceed forty-eight hours per week and eight hours per day.
2. Without prejudice to the provisions of the preceding paragraph, the normal daily working hours may be extended to nine hours per day, provided that the employee is given an extra half day of rest per week, over and above the weekly day of rest prescribed by article 95 hereof.
3. Under collective labour regulation instruments, normal daily working hours may be increased in exceptional cases by up to a maximum of four hours, provided the weekly working time shall not exceed fifty-six hours. Only exceptional work and overtime performed for reasons of *force majeure* shall not count towards this limit.
4. The average weekly working time of forty-eight hours shall be calculated using a reference period not exceeding six months.

5. When calculating the average weekly working time mentioned in the preceding paragraph, the hours that an employee has worked previously may be offset by reductions in the employee's daily or weekly work schedule.
6. Establishments engaged in industrial activity, with the exception of those that work shifts, may adopt a normal working week of forty-five hours, spread out over five days in the week.
7. All establishments, except those whose services or activities are directed at meeting the essential needs of society referred to in article 205 hereof, and those which sell directly to the public, may, for economic or other reasons, adopt a single, uninterrupted work schedule.
8. Employers shall inform the nearest local labour administration office of the implementation of new working hours, by the 15th day of the month following the month in which they are introduced, in accordance with the rules established in this law and other legislation on the matter.

Article 86

(Increases or reductions in the maximum limits on normal working hours)

1. The maximum limits on normal working hours may be extended for employees whose duties are highly intermittent or consist of the mere presence of the employee, as well as for preparatory or complementary work that must be performed outside normal working hours for technical reasons, without prejudice to the periods of rest prescribed by this law.
2. The maximum limits on normal working hours may be reduced whenever an increase in productivity permits and, provided there is no inconvenience of an economic or social nature, when priority is given to work involving greater physical or intellectual fatigue or increased risks to the health of employees.
3. Without prejudice to the provisions of the preceding paragraph, increases or reductions in the maximum limits on normal working hours may be established either by joint diploma issued by the Minister of Labour and the minister that oversees the sector of activity in question, or by collective labour regulation instruments.
4. The increases or reductions referred to in the preceding paragraphs must not cause any economic disadvantage to the employee or unfavourable changes in his or her working conditions.

Article 87

(Schedule of working hours)

1. The working hours schedule shall mean the times established for the commencement and the end of the normal working day, including rest periods.
2. Employers shall, after prior consultation with the relevant trade union body, establish a working hours schedule for their employees. The respective timetables shall be endorsed by the relevant labour administration office and shall be displayed at a visible location in the workplace.
3. In establishing working hours schedules, employers are, in particular, restricted by the legal or contractual limits on normal working hours and by the business hours of the enterprise.
4. To the extent that the requirements of the production process or the nature of the services provided so permit, employers shall establish a working hours schedule that is compatible

with the interests of employees, particularly those who attend school or vocational training courses or whose working capacity is impaired.

5. The following employees may be exempt from the working hours schedule:
 - a) Those in leadership or management positions, or positions of trust or supervision;
 - b) Those whose duties are such that the performance thereof justifies such a regime.

Article 88
(Intervals)

1. The normal working day shall be interrupted by an interval of at least half an hour, but not longer than two hours, without prejudice to work performed in shifts.
2. Collective regulation instruments may establish rest intervals of greater duration and frequency than those provided for in the preceding paragraph.
3. Where the work schedule is a single uninterrupted shift, an interval of at least half an hour shall be mandatory, and this interval shall be counted as actual working time.

Article 89
(Exceptional Work)

1. Work performed on a weekly rest day, extra rest day or public holiday is considered exceptional work.
2. Employees may not refuse to perform exceptional work in cases of *force majeure* or foreseeable harm to the national economy, in the event of an accident that has occurred or is imminent or to carry out urgent and unforeseen work on machinery and materials needed for the normal functioning of the enterprise or establishment.
3. Employers must keep a register of exceptional work, in which relevant notes shall be recorded before the exceptional work begins and after it ends, and the reasons for the exceptional work shall be expressly stated and confirmed by the employee who performed it.
4. An employee who has performed exceptional work on a weekly rest day, additional rest day or public holiday shall be entitled to a compensatory full day of rest on one of the following three days, unless the exceptional work does not exceed five consecutive or intermittent hours, in which case the employee shall be compensated with a half day of rest.

Article 90
(Overtime)

1. Work performed over and above the normal daily working hours is considered overtime.
2. Overtime may be performed only:
 - a) When employers are faced with workload increases that do not justify the admission of employees under term contracts or permanent contracts;
 - b) When there are material reasons.

3. Each employee may perform up to ninety-six hours of overtime per quarter, but no employee shall perform more than eight hours of overtime per week nor exceed 200 hours per year.
4. In all cases, employers shall keep a register of overtime in a specific book.

Article 91
(Night work)

1. Night work is work performed between eight o'clock at night and the time when normal working hours begin on the following day, with the exception of shift work, which is provided for in the following article.
2. Collective regulation instruments may consider as night work, work performed during seven of the nine hours between eight o'clock at night and five o'clock in the morning of the following day.

Article 92
(Shift work)

1. In enterprises where work is continuous and in those whose business hours are longer than the maximum limits on normal working hours, employers shall arrange shifts of different staff.
2. The length of each shift may not exceed the maximum limits on normal working hours established in this law.
3. Shifts shall always function in rotation, so that employees are replaced successively in regular periods of work.
4. Shifts performed where work is continuous and shifts of employees whose work cannot, because of its nature, be interrupted shall be arranged so that employees receive a compensatory rest period over and above the normal weekly rest period.

Article 93
(Part time work)

1. Part time work is where the number hours that the employee is obliged to work each week or day does not exceed 75% of the normal working hours for full time work.
2. The percentage threshold referred to in the preceding paragraph may be reduced or increased by collective labour regulation instruments.
3. The number of days or hours of part time work shall be established by written agreement and, save as stipulated otherwise, the work may be performed on all or just some days of the week, without prejudice to the weekly rest period.
4. Part time employment contracts shall be in writing, and shall state the normal daily or weekly working hours, with a comparative reference to full time work.

Article 94
(Performance of part time work)

1. Part time work shall be governed by the regime established in this law or in collective labour regulation instruments, provided the activities to be performed do not, by their nature, imply that the work is full time work.

2. Part time employees may not be treated less favourably than full time employees in comparable situations, unless there are material reasons to justify this.

Section X
Interruption in the performance of work

Article 95
(Weekly rest)

1. All employees are entitled to a weekly rest period of at least twenty-four consecutive hours on a day that shall normally be Sunday.
2. The weekly day of rest may be on a day other than Sunday in the following cases:
 - a) For employees who are required to ensure the continuity of services which cannot be interrupted;
 - b) For employees in establishments engaged in sales to the public or the provision of services;
 - c) For staff that perform cleaning services or preparatory or complementary work that should be carried out on the rest day of the other employees;
 - d) For employees whose activity should, by its nature, be performed on Sundays.
3. In the cases referred to in the preceding paragraph, an alternative weekly day of rest shall be allocated, preferably in a systematic manner.
4. Employers shall, whenever possible, give the same weekly day of rest to employees that are members of the same household.

Article 96
(Mandatory public holidays)

1. Mandatory public holidays are those days that are considered as such by law.
2. Clauses in collective labour regulation instruments or individual employment contracts purporting to establish public holidays on days other those assigned by law, or which fail to recognise those assigned by law, shall be void.
3. Whenever a public holiday falls on a Sunday, work shall be suspended on the following Monday, except in cases where the work, by its nature, cannot be interrupted.

Article 97
(Grant of permission not to attend work)

1. The Minister of Labour shall have the power to grant permission not to attend work, which shall in all cases be announced with advance notice of at least two days.
2. On days of permission not to attend work, employees have the right to suspend the performance of work without loss of pay.

3. The right to suspend work shall not extend to activities that, because of their nature, cannot be interrupted.

Article 98
(Right to annual holidays)

1. The right of employees to take paid holidays cannot be renounced nor can it be refused in any circumstances.
2. Without prejudice to the provisions of article 100 hereof, annual holidays should be taken during the course of the following calendar year.
3. In exceptional cases, holidays may be substituted by additional remuneration, where this is convenient for the employer or the employee and where they both agree, provided that the employee shall take holidays of at least six working days.

Article 99
(Duration of annual holidays)

1. Employees shall be entitled to the following periods of paid annual holidays:
 - a) One day for every month of actual service, during the first year of service;
 - b) Two days for every month of actual service, during the second year of service;
 - c) Thirty days for every year of actual service, from the third year onwards.
2. Actual service is considered to be the time referred to in article 84 (2) hereof, together with public holidays, weekly days of rest and holidays, as well as justified absences and absences referred to in article 103 (5) hereof.
3. Persons employed for a fixed term of more than three months but less than one year shall be entitled to holidays of one day for every month of actual service.
4. The holiday periods referred to in this article shall cover the days referred to in article 101 hereof.

Article 100
(Schedule of annual holidays)

1. The employer, in co-ordination with the trade union body, shall draw up a schedule of annual holidays.
2. The employer may allow employees in the same occupational grade to exchange the periods or the start dates of their holidays with each other.
3. Where the nature and organisation of work and the production conditions make it necessary or possible, the employer may, after consulting the relevant trade union body, decide that all employees shall take their holidays at the same time.
4. Spouses who work in the same enterprise, albeit in different establishments, shall be given the opportunity to take their holidays at the same time.

5. Employees have the right to take their holidays in one uninterrupted period. The employer may split the period into parts, provided that the employee agrees and that each part is not less than six days, otherwise the employer shall be liable to compensate the employee for the damages proved to have been caused as a result of the interrupted holidays.

Article 101

(Advance, postponement and accumulation of holidays)

1. The employer may postpone all or part of an employee's holidays until the holiday period in the following year, for compelling reasons connected with the enterprise, or to meet the essential and indispensable needs of society or national economic interests, provided that the employee, the trade union body and the minister who oversees the area of labour have been notified beforehand.
2. The employer and the employee may agree, in writing, to the accumulation of up to fifteen days of holidays for every twelve months of actual service, provided that the accumulated holidays shall be taken during the year following that in which the limit stipulated in the following paragraph has been reached.
3. No more than thirty days of holidays may be taken in advance and no more than sixty days of holidays may be accumulated in any one year, under pain of forfeiture.

Article 102

(Public holidays and sick days during periods of annual holidays)

1. Public holidays falling within a period of annual holidays shall not be counted as days of holiday.
2. Sick days shall not be counted towards holidays, provided that the illness is duly certified by a competent body, is declared by the employee during the holiday period, and the employer is informed immediately.
3. In the case referred to in the preceding paragraph, the employee shall resume his or her holidays after discharge from hospital, unless the employer sets a different date for the resumption of holidays.

Article 103

(Concept and types of absence)

1. When an employee is absent from the workplace during the period in which the employee is obliged to work, this is considered an absence.
2. Absences may be justified or unjustified.
3. The following are considered justified absences:
 - a) Five days, for marriage;
 - b) Five days, for the death of the employee's spouse, father, mother, children, step children, siblings, grandparents, step father or step mother;

- c) Two days, for the death of the employee's parents-in-law, uncles, aunts, cousins, nieces, nephews, grandchildren, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law;
 - d) When it is impossible for the employee to attend work for reasons outside his or her control, such as illness or accident;
 - e) When employees, as parents, accompany their own children or other minors under their responsibility who are interned in hospital;
 - f) Periods of convalescence for female employees, in cases of abortions or miscarriages occurring more than seven months before the expected birth;
 - g) Other absences previously or subsequently authorised by the employer, such as for participation in sporting or cultural activities.
4. All periods of absence not provided for in the preceding paragraph shall be considered as unjustified.
 5. When justified absences are foreseeable, it shall be compulsory to give the employer at least two days advance notice of them.

Article 104

(Submission to the health board)

1. Where an employee is absent for an uninterrupted period of more than fifteen days, the employer may submit the employee to the health board or other duly licensed body, to obtain a ruling on the employee's capacity to work.
2. An employer may, on its own initiative or at the employee's request, submit to the health board or other duly licensed body for the same purposes as referred to in the preceding paragraph, employees whose earning capacity is affected for health reasons or who are intermittently absent due to illness for a total of more than five days in one quarter.
3. The government shall have the power to create and regulate the functioning of private entities for the purposes of certifying the working capacity of employees.

Article 105

(Effects of justified absence)

1. Justified absences shall not result in loss of or prejudice to the employee's rights to remuneration, length of service and holidays.
2. Periods of absence justified in the terms of article 103 (3) (e) hereof may be offset either by deducting an equivalent number of days from the employee's holidays, up to a maximum of ten days for each year of actual service, or, if the employee so chooses, by discounting them from the employee's remuneration.
3. Without prejudice to provisions on social security, no remuneration shall be paid for periods of absence justified in the terms of article 103 (3) (d) and (e).

Article 106
(Effects of unjustified absences)

1. Unjustified absences shall always result in a loss of pay for the period of absence, and this period shall in addition be discounted from the employee's annual holidays and length of service, without prejudice to possible disciplinary proceedings.
2. Unjustified absences for three consecutive days or on six intermittent days in any half-year period, or absences justified on grounds proven to be false, may be subject to disciplinary proceedings.
3. Unjustified absences on fifteen consecutive days give rise to the presumption that the employee has abandoned his or her job, which shall be grounds for disciplinary proceedings.
4. In cases where an employee is absent without justification for fewer than the normal working hours required of him or her, the respective times will be added up to determine the shortfall in normal working hours, and these shall be discounted from the employee's remuneration.

Article 107
(Unpaid leave)

At the duly justified request of the employee, the employer may grant the employee unpaid leave for such period as the parties may agree, provided that the employee has already taken the annual holidays to which the employee is entitled in that calendar year.

Section XI
Remuneration for work

Subsection I
General remuneration rules

Article 108
(Concept and general principles)

1. Remuneration is that to which the employee is entitled in return for his or her work, in the terms of the individual employment contract or collective labour agreement and customary practice.
2. Remuneration comprises the basic wage and all regular and periodic payments made directly or indirectly, in money or in kind.
3. All employees, whether nationals or foreigners, without distinction based on sex, sexual orientation, race, colour, religion, political or ideological convictions, family background or ethnic origin, have the right to receive a wage and to enjoy equal benefits for equal work.
4. Employers shall promote the increase of employees' wage levels according to growth in production, productivity, work output and economic development in the country.
5. The Government, in consultation with the Consultative Commission on Employment, shall set the national minimum wage or wages applicable to categories of employees whose employment conditions are such that the protection of these employees is warranted.

Article 109

(Payments in addition to basic wages)

1. Payments in addition to basic wage shall be made, on either a temporary or a permanent basis, on the basis of contractual provisions or collective labour regulation instruments, or when there are exceptional working conditions or output, or when warranted by specific circumstances.
2. Payments in addition to wages shall comprise, namely:
 - a) Amounts received by way of cost allowances, travel allowances, costs due to the transfer of the employee, and other similar amounts;
 - b) Meal allowances and cash-handling allowances [shortfall allowances given to employees who handle cash];
 - c) Bonuses of an extraordinary nature, given by the employer;
 - d) Payments for the performance of night work;
 - e) Payments for the performance of work in abnormal working conditions;
 - f) Bonuses paid according to work efficiency indicators;
 - g) Bonuses for length of service;
 - h) Company equity;
 - i) Payments due for other exceptional conditions.
3. The basis for calculating compensation for termination of employment shall comprise only basic wages and length of service bonuses, unless the parties have agreed to include other additional payments.

Article 110

(Modes of remuneration)

1. Remuneration may be given according to:
 - a) Output;
 - b) Time;
 - c) Combined time and output.
2. Combined remuneration is remuneration given on the basis of time, together with a variable portion based on the employee's output.

Article 111

(Remuneration according to output)

1. Remuneration according to output bears a direct relation to the actual results produced by the employee's work, determined on the basis of the nature, quantity and quality of the work performed.
2. This mode of remuneration is applicable when such is permitted by the nature of the work, the practices of the occupation or branch of activity or a previously established norm.
3. Piecework or works contracts may be remunerated according to output.

Article 112

(Remuneration according to time)

Remuneration according to time is based on the time actually spent at work.

Article 113

(Form, place, time and method of payment)

1. Remuneration shall be paid:
 - a) In money or in kind, provided that the non-pecuniary portion, calculated on the basis of current regional prices, shall not exceed twenty five per cent of the entire remuneration;
 - b) At the workplace, during working hours or immediately thereafter, save as stipulated otherwise;
 - c) At regular weekly, fortnightly or monthly intervals, according to the provisions of the individual employment contract or collective labour regulation instrument.
2. Payments in kind shall be appropriate for the interests and personal use of the employee or the employee's family, and shall be established by agreement.
3. Payments shall be made directly to the employee, in money that is legal tender in the country or by cheque or bank transfer.
4. Upon payment of the remuneration to the employee, the employer should deliver to the employee a document stating the full names of both of them, the employee's occupational grade, the period in respect of which payment is being made, details of the amounts representing basic wage and additional payments, any discounts and the net amount receivable.

Article 114

(Deductions from remuneration)

1. During the course of an employment contract, no deductions shall be withheld or made from the remuneration of an employee, other than those that the employee has authorised expressly, in writing.
2. The preceding provision shall not apply to deductions in favour of the State, Social Security or other entities, provided that such deductions are prescribed by law, by final court decision

or by arbitral award, or pursuant to fines applied for disciplinary offences under article 63 (d) of this law.

3. Without prejudice to paragraph 1 above, employers and employees may agree to other deductions, in collective labour regulation instruments.
4. The total amount of deductions shall in no event be greater than one third of the employee's monthly remuneration.

Subsection II Special remuneration regimes

Article 115

(Remuneration for overtime and exceptional work and night work)

1. Overtime performed until eight o'clock at night shall be paid at the normal wage rate plus fifty per cent, and overtime performed between eight o'clock at night and the start of the normal working hours of the following day shall be paid at the normal wage rate plus one hundred per cent.
2. Exceptional work shall be paid at the normal wage rate plus one hundred per cent.
3. Night work shall be paid at the wage rate for the corresponding work performed during the day plus twenty five per cent.

Article 116

(Remuneration for part time work and traineeships)

1. Part time work entitles the employee to remuneration that corresponds to the employee's occupational grade or duties and is proportionate to the amount of time actually spent at work.
2. Recently qualified persons shall, during their post-qualification traineeship, be paid the equivalent of at least seventy five per cent of the remuneration for the respective occupational grade.
3. Without prejudice to the provisions of the preceding paragraph, if recently qualified persons were already working as employees, they shall receive the same remuneration as they were already receiving, wherever the trainee's remuneration would be lower.

Article 117

(Remuneration for positions of leadership or trust)

1. Employees appointed to positions of leadership or trust shall be remunerated according to the functions of that position until they cease to perform such functions, after which they shall be remunerated according to the position that they held previously or come to hold subsequently.
2. For the purposes of the preceding paragraph, positions of leadership or trust are understood as those to which appointments are made on a discretionary basis and which, by the nature of their functions, are filled by selection from among employees who meet certain prerequisites and who are appropriately qualified for the job.

3. Whenever an employee is, by virtue of his or her professional qualifications, entitled to remuneration equal to or higher than that attributable to the position of leadership or trust to which he or she has been appointed, then the employee shall receive his or her previous remuneration, increased by at least twenty per cent, while he or she holds the new position.

Article 118

(Remuneration of employees exempt from the working hours schedule)

1. Employees who are exempt from the working hours schedule in the terms of article 87 (5) hereof, other than those in leadership or management positions, shall be entitled to additional remuneration.
2. The criteria for setting the remuneration of employees who are exempt from the working hours schedule shall be established in an individual employment contract or collective labour regulation instrument.

Article 119

(Remuneration in case of substitution and accumulation of functions)

1. An employee who performs functions on a substitute basis for a period of forty-five days or more shall be entitled to the remuneration attributable to the category that corresponds to those functions, throughout the period of performance, unless the employee has already been earning higher remuneration, in which case he or she shall be entitled to an increase agreed between the parties.
2. Accumulation of leadership functions occurs when an employee performs more than one function for a period of forty-five days or more, where substitution is not possible or where another employee cannot be assigned to the job. In this case, the employee's remuneration shall be supplemented by at least twenty five per cent of the remuneration attributable to the functions while he or she is performing them.

Subsection III

Protection of remuneration

Article 120

(Wage guarantee)

1. In the event of the bankruptcy or judicial liquidation of an enterprise, its employees shall be considered as preferential creditors in respect of the remuneration owing to them for the period preceding the declaration of bankruptcy or liquidation.
2. Remuneration referred to in the preceding paragraph, which constitutes a preferential claim, shall be paid to the employees in full before ordinary creditors, with the exception of the State, can claim their dividends.

Article 121

(Non-waiver of the right to remuneration)

Clauses by which employees waive their right to be remunerated, or which provide for the performance of work without reward, or which make remuneration conditional upon an uncertain event, shall be void.

CHAPTER IV
Suspension and termination of employment relationships

Section I
Suspension of employment relationships

Article 122

(Suspension of the contract for reasons concerning the employee)

1. Individual employment relationships shall be considered suspended in cases where the employee is temporarily unable to work for reasons not attributable to the employee, provided that the impediment lasts for more than fifteen days, specifically, in the following cases:
 - a) During the performance of compulsory military service;
 - b) During a period when the employee is provisionally deprived of his or her liberty, provided the employee is subsequently cleared from criminal proceedings or acquitted.
2. The employee is under an obligation to inform the employer, personally or through a third party, of the employee's inability to work, under pain of the rules on unjustified absence being applied.
3. In case of detention, the public authorities that ordered the detention of the employee shall be under a duty to inform the employer of this.
4. During the period referred to in paragraph 1 above, the parties' rights, duties and guarantees that are inherent to the effective performance of work shall cease, but the duties of mutual respect and loyalty shall remain.
5. The suspension shall commence as soon as it is certain or foreseeable that the impediment will last for more than fifteen days, even if fifteen days have not yet elapsed.
6. The employee's right to his or her job shall be preserved, and the employee must appear at his or her workplace as soon as the impediment has come to an end or, when justified, within three working days, or within a period of not less than thirty calendar days after the date of completion of compulsory military service.
7. The provisions of this article shall not prevent the expiration of a fixed term contract, where the expiry date occurs during the period of suspension.
8. In the event that the employer does not reinstate the employee under the rules on suspension of employment relationships, in the terms established in this article, this shall be treated as a tacit dismissal without just cause, unless reinstatement is objectively impossible on the grounds provided in article 130 of this law.

Article 123

(Suspension of the contract for reasons concerning the employer)

1. The employer may suspend employment contracts for economic reasons, which are understood to mean reasons attributable to the market, technological reasons, disasters and other events that affect or may foreseeably come to affect the normal business of the enterprise or establishment.

2. The employer shall give each affected employee written notice of the grounds for the suspension and shall indicate the date of commencement and the duration of the suspension. The employer shall simultaneously remit copies of such notices to the ministry that oversees the area of labour and to the enterprise's trade union body or, in its absence, to the representative trade union association.
3. The provisions of paragraphs 4 and 7 of the previous article shall, with necessary changes, apply to the suspension referred to in this article.
4. During the period of suspension, the Labour Inspectorate offices may stop the suspension from applying to all or certain employees, where it is found that the grounds invoked do not exist or that new employees have been admitted to positions or functions that could have been filled by the suspended employees.
5. During the period of suspension referred to in paragraph 1 of this article, the employees shall be entitled to seventy five per cent, fifty per cent and twenty five per cent of their respective remuneration for the first, second and third months, provided that such remuneration shall in no event be less than the national minimum wage.
6. However, should the impediment persist beyond three months, the payment of remuneration shall be suspended and the parties may agree to terminate the employment contract or relationship, without prejudice to the compensation to which the employee is entitled.
7. On the date of termination of the employment contract, the employer shall make monetary compensation available to the employees, calculated in the terms of article 128 of this law, and this compensation may be divided into three parts by agreement between the parties.

Subsection II
Termination of the employment relationship

Article 124
(Ways of terminating the employment contract)

1. Employment contracts may be terminated by:
 - a) Expiry;
 - b) Revocation by mutual agreement of the parties;
 - c) Denunciation by either of the parties;
 - d) Rescission by either of the contracting parties based on just cause;
2. Termination of the employment relationship shall result in the extinguishment of the parties' obligations with respect to performance of the employment relationship and, in cases especially provided for by law, the creation of rights and duties.
3. Termination of the employment contract shall have legal effect once the other contracting party has notice of the termination by means of a written document.

Article 125
(Grounds of expiry)

1. Employment contracts shall expire in the following cases:

- a) Upon the expiry of the contractual term or completion of the work for which the contract was established;
 - b) In the event of supervening total and permanent inability to work or, if the inability is only partial, when the employer is unable to accommodate it, except if the inability is attributable to the employer;
 - c) Upon the death of the employer where the employer is a sole trader, unless his or her successors continue the business;
 - d) Upon the retirement of the employee;
 - e) Upon the death of the employee.
2. Where an employee who is registered with the social security system fulfils the conditions for receiving his or her pension, the employment contract must, compulsorily, expire by reason of retirement.

Article 126

(Revocation by mutual agreement of the parties)

1. The agreement to terminate an employment contract shall be set down in a document signed by both parties, which shall state expressly the date on which the agreement was entered into and the date on which it shall become effective.
2. The employee may send a copy of the agreement to terminate the employment relationship to the enterprise's trade union body or to the labour administration office, for appraisal.
3. The employee may cancel the effects of the agreement to terminate the employment contract, by giving the employer notice of this in writing within a period of no more than seven days, for which purpose the employee shall immediately return the full amount he or she has received by way of compensation.

Article 127

(Just cause for rescission of the employment contract)

1. Just cause for the rescission of an employment contract shall generally be considered to be material facts or circumstances that render the existence of the established contractual relationship morally or materially impossible.
2. Either the employer or the employee may invoke just cause to rescind an employment contract, in which case the other party shall be entitled to dispute the just cause within three months following the date on which notice of the rescission was given, subject to the provisions of article 56 (3) of this law.
3. Just cause invoked by an employer shall extinguish the employment relationship by individual or collective dismissal.
4. In particular, the following shall constitute just cause on the part of the employer:
 - a) The manifest inaptitude of the employee for the contracted work, discovered after the probationary period;
 - b) Culpable and material breach of the employment duties of the employee;

- c) Arrest or imprisonment, if, due to the nature of the employee's functions, it would be harmful to the normal course of work;
 - d) Rescission of the contract for economic reasons related to the enterprise, which may be technological, structural or market related, as referred to in article 130 of this law.
5. In particular, the following shall constitute just cause on the part of the employee:
- a) The need to perform any legal obligations that are incompatible with continuing with the work, in which case there shall be no right to compensation;
 - b) Conduct by the employer, which culpably violates the employee's legal and contractual rights and guarantees.
6. Rescission of the employment contract under the terms of paragraph 4 of this article shall be preceded by the formalities laid down in article 131 (1) to (4) of this law, failing which proof of just cause shall not be admissible.
7. Rescission of the employment contract based on the manifest inaptitude of the employee, referred to in paragraph 4 (a) of this article, shall only be admissible if the employee has first undergone vocational training for this purpose, and it shall not give rise to a right to compensation.
8. Rescission of the employment contract on the basis of paragraph 4 (c) of this article shall be allowed only if the circumstances referred to in the last part of article 122 (1) (b) of this law do not apply, and it shall not give rise to a right to compensation.
9. Whenever one party is forced to rescind an employment contract for reasons attributable to the other party, the rescission shall be considered based on just cause.
10. Rescission of an employment contract on the basis of the preceding paragraph gives the employee a right to compensation under article 128 of this law.

Article 128

(Rescission with just cause on the initiative of the employee)

- 1. The employee may rescind the employment contract with just cause in the terms of article 127 of this law, by giving the employer prior notice of at least seven days, with an express and unequivocal statement of the facts on which the rescission is based.
- 2. Rescission of a permanent employment contract by the employee, with just cause, shall entitle the employee to compensation in an amount equal to forty five days of wages for every year of service.
- 3. Rescission of a fixed term employment contract by the employee, with just cause, shall entitle the employee to compensation equal to the remuneration that the employee would have earned between the date of termination and the contractual expiry date of the contract.
- 4. An employee who fails to comply with the time limit established in paragraph 1 of this article shall pay the employer a fine equal to twenty days' wages, which shall be deducted from the compensation to which the employee is entitled.

Article 129

(Denunciation of the contract by the employee)

1. The employee may denounce the employment contract by giving prior notice of termination, without the need to rely on just cause, provided that the employee shall communicate his or decision to the employer in writing.
2. Save as stipulated otherwise, denunciation of a fixed term employment contract by the employee shall require prior notice of at least thirty days, failing which the employer shall be entitled to compensation for the losses and damages incurred, in an amount equal to a maximum of one month of remuneration.
3. Save as stipulated otherwise, denunciation of a permanent employment contract by the employee shall require prior notice in accordance with the following time periods:
 - a) Fifteen days, where the period of service is greater than six months but not more than three years;
 - b) Thirty days, where the period of service is greater than three years.
4. The periods of prior notice referred to in the preceding paragraph shall be counted in consecutive calendar days.
5. Employees who breach the provisions of paragraph 3 of this article shall compensate the employer in an amount equal to the remuneration they would have earned during the period of prior notice.

Article 130

(Rescission of the contract on the initiative of the employer, with prior notice)

1. Employers may rescind one or more employment contracts, with prior notice, provided that the rescission is founded on structural, technological or market related reasons, and that it is essential to the competitiveness, economic restructuring or the administrative or productive reorganisation of the enterprise.
2. In particular, it is considered that:
 - a) *Structural reasons*: are reasons related to the reorganisation or restructuring of production, changes in activity or lack of economic and financial resources, which may result in a surplus of jobs;
 - b) *Technological reasons*: are reasons related to the introduction of new technology, new work processes or methods, or the computerisation of services, which may make it necessary to downsize the staff;
 - c) *Market related reasons*: are those concerning difficulties in placing goods or services on the market or a fall in the activity of the enterprise.
3. Rescission of an employment contract on the grounds referred to in the preceding paragraph shall entitle the employee to compensation equal to:
 - a) Thirty days of wages for every year of service, if the basic wage of the employee, including the length of service bonus, corresponds to an amount between one and seven times the national minimum wage;

- b) Fifteen days of wages for every year of service, if the basic wage of the employee, including the length of service bonus, corresponds to an amount between eight and ten times the national minimum wage;
 - c) Ten days of wages for every year of service, if the basic wage of the employee, including the length of service bonus, corresponds to an amount between eleven and sixteen times the national minimum wage;
 - d) Three days of wages for every year of service, if the basic wage of the employee, including the length of service bonus, corresponds to an amount greater than sixteen times the national minimum wage.
4. Individual employment contracts and collective labour regulation instruments may provide for other criteria or bases for the calculation of compensation more favourable to the employee than those provided for in the preceding paragraph.
 5. Rescission of an employment contract founded on structural or technological reasons may result in the extinguishment of one or more contracts.
 6. The judicial authorities or mediation and arbitration bodies shall have the power to declare that the regime for rescission of employment contracts founded on structural, technological or market related reasons has been used abusively or applied without the requisite grounds.

Article 131 (Formalities)

1. In the event of rescission of an employment contract, the employer shall give notice in writing to each affected employee, to the trade union body or, in its absence, the workers' commission or the representative trade union association, and to the ministry that oversees the area of labour.
2. The notices referred to in the preceding paragraph shall be given at least thirty days in advance of the expected date of termination of the employment contract.
3. During the period of prior notice, the employer shall be under a specific obligation to give such clarifications and information as the Labour Inspectorate may request.
4. On the date of termination of an employment contract which is a fixed term contract, the employer shall pay the affected employee monetary compensation equivalent to the wages that the employee would have earned between the date of termination and the contractual expiry date.
5. In the case of permanent contracts, the compensation shall be paid in the terms of article 130 (3) of this law, unless the regime set down in article 133 applies.
6. Receipt by the employee of the compensation referred to in paragraphs 4 and 5 of this article shall give rise to a presumption that the employee has accepted the rescission and the grounds for it, and that the employee's rights have been satisfied, unless the parties agree upon reinstatement.
7. This presumption may be rebutted where just cause for the rescission is disputed.

Article 132
(Collective dismissal)

Collective dismissal occurs when the termination of employment affects more than ten employees at any one time.

Article 133
(Procedure for collective dismissal)

1. When an employer foresees a collective dismissal, it shall notify the trade union bodies and the affected employees, and shall inform the ministry that oversees the area of labour before the negotiation process begins.
2. The notice to the employees shall be accompanied by:
 - a) A description of the reasons invoked for the collective dismissal;
 - b) The number of employees affected by the process.
3. The consultation process between the employer and the trade union body shall not last longer than thirty days, and it shall address the grounds for the collective dismissal, the possibility of avoiding or reducing its effects and the measures necessary in order to mitigate its consequences for the affected employees.

Article 134
(Burden of proof of lack of economic resources)

When an objection is raised against collective dismissal carried out under the terms of article 130 (2) hereof, the burden shall be on the employer to prove the existence of structural, technological and market related reasons.

Article 135
(Effects of rescission without grounds)

1. Where a court declares the rescission by an employee of an employment contract on the basis of just cause null, the employee shall have the duty to compensate the employer in an amount *equal to half* the compensation contemplated in article 128 (2) and (3) hereof.
2. Where a court declares that the grounds invoked for rescinding an employment contract were unfounded, the employee shall be reinstated and shall be entitled to receive an amount equal to the remuneration payable between the date of the termination and the date of effective reinstatement, subject to a maximum of six months. From this payment there shall be deducted any amounts received by the employee as compensation at the time of dismissal.
3. Where circumstances objectively make the employee's reinstatement impossible or if the employee expressly chooses compensation, the employer shall be bound to pay compensation calculated in terms of article 128 hereof. In this case, the time elapsing between the date of the termination and the date of the judgement nullifying the termination shall be counted towards the length of service of the employee, subject to a maximum of six months.
4. Any objection disputing just cause for the rescission must be raised within a period of six months following the date when notice was given, and the competent authorities shall rule on the objection according to the circumstances of the case.

Article 136

(Employment certificate)

1. Whenever an employment relationship is terminated, irrespective of the reasons, the employer shall give the employee an employment certificate, which shall indicate the length of service of the employee, the occupational levels and skills attained and the duty or duties performed.
2. The certificate shall not contain any other references, save as requested in writing by the employee.
3. If the employee disagrees with the content of the certificate, the employee may, within thirty days, appeal to the competent entity so that appropriate changes may be made, as may be applicable.

CHAPTER V

COLLECTIVE RIGHTS AND COLLECTIVE EMPLOYMENT RELATIONS

Section I

General principles

Article 137

(Right of association)

1. Employees and employers are guaranteed the right, without any discrimination and without prior authorisation, to form and belong to organisations of their choice, for the defence and promotion of their socio-professional and business rights and interests.
2. Trade union and employer associations may form and belong to other organisations at a higher level, as well as establish relationships with or join international organisations of similar types.

Article 138

(Principle of autonomy and independence)

1. Without prejudice to the forms of support contemplated in this law and in other legislation, employers, acting individually or through intermediaries, are forbidden to promote, using any means whatsoever, the formation, maintenance or funding of the operation of structures for the collective representation of workers, or otherwise to interfere with their organisation or management, or to obstruct or hinder the exercise of their rights.
2. Structures representing employers and workers shall be independent from the State, political parties, religious institutions and other structures representing civil society, and any interference by these in the organisation and management of structures representing employers and workers, as well as reciprocal funding, shall be forbidden.
3. Public authorities shall refrain from any intervention likely to limit this right or obstruct the lawful exercise of it.

Article 139

(Objectives)

1. In furthering their purposes, trade union and employer organisations shall, in particular:

- a) Defend and promote the defence of the legally protected rights and interests of their members;
- b) Participate in the drafting of labour legislation and in the definition and execution of policies on labour, employment, vocational training and improvement, productivity, wages, protection, hygiene and safety at work and social security;
- c) Exercise the right to collective bargaining, within legally established terms;
- d) Collaborate with the Labour Inspectorate, under the terms of the law, in monitoring the application of labour legislation and collective labour regulation instruments;
- e) Be represented in organisations, at international conferences and at other meetings on labour issues;
- f) Give its opinion on reports and other documents related to the normative instruments of the International Labour Organisation;
- g) Promote activities that are pertinent to Mozambique's fulfilment of undertakings and obligations it has assumed in labour matters.

Article 140

(Administrative, financial and patrimonial autonomy)

1. In furthering their purposes, trade union and employer associations shall enjoy the right to enter into contracts and to acquire, gratuitously or for valuable consideration, movable and immovable assets and to dispose of them according to the law.
2. In furthering their objectives, trade union and employer associations shall enjoy the freedom to raise financial resources.

Article 141

(Right of organisation and self-regulation)

1. Trade union and employer organisations shall have the right to write their own articles of association, elect their own representatives, organise their own management and activity, and formulate their own action plans.
2. Trade union and employer organisations shall respect democratic principles in their organisation and functioning, namely, they shall elect governing bodies, establish the length of their terms of office, and encourage their members to participate in all aspects of activity of the organisation.

Article 142

(Protection of trade union freedom)

Any act or agreement seeking to do the following things shall be prohibited and considered void:

- a) To make the hiring of an employee conditional upon membership or non-membership of a trade union association, or on withdrawal from a trade union association to which the employee already belongs;
- b) To apply a sanction due to the fact that an employee has participated in or promoted the exercise, within legal limits, of a collective right;

- c) To transfer or otherwise cause detriment to an employee, because the employee has exercised his or her rights to participate in collective representation structures, or because of the employee's trade union membership or non-membership or trade union activities.

Article 143
(Freedom of membership)

1. Employees and employers shall have the freedom to join their respective representative organisations, and any discrimination based on non-membership shall be forbidden.
2. There shall be only one trade union committee in each enterprise.
3. If the employees of an enterprise belong to different trade unions, the composition of the trade union committee shall be based on proportional representation criteria, and this shall be regulated in the collective labour regulation instrument.

Article 144
(Fee collection system)

1. Employees are not obliged to pay fees to trade unions of which they are not members, and any collection system that offends against the individual or collective rights, freedoms and guarantees of employees shall be unlawful.
2. Employees who are trade union members shall pay fees to the trade union to which they belong, under the terms of the union's articles of association.
3. For the purposes of the preceding paragraph, the trade union committee shall present a written list of the names of employees who are trade union members, which list shall be signed by each employee, to allow the employer to withhold deductions at source.
4. A third party shall sign a declaration or authorisation given by a visually impaired employee or an employee that cannot write, on behalf of that employee. Such declaration or authorisation shall contain the identification details of both of them, and the fingerprint of the employee shall be indispensable.

Section II
Formation of trade union and employer associations

Article 145
(Legal personality)

Trade union and employer associations acquire legal personality upon registering their articles of association at the central labour administration office.

Article 146
(Registration requirements and procedures)

1. Applications to register any trade union or employer association shall be addressed to the Minister of Labour or to whomever the Minister has delegated this authority, and shall be accompanied by the following documents:
 - a) Minutes of the founding general meeting;

- b) List of names of persons present at the founding general meeting;
 - c) Articles of association;
 - d) Certificate confirming the availability of the name of the association;
 - e) Document evidencing publication of the notice calling the founding general meeting.
2. The general rules on associations shall apply on a subsidiary basis, with the necessary changes, to the formation, registration and functioning of trade union and employer associations.

Article 147
(Removal of irregularities)

Where the registration application contains irregularities, the interested parties shall be notified, so that they may rectify the irregularities within such time limit as may be set for this purpose.

Article 148
(Contents of articles of association)

The articles of association of trade union or employer organisations shall contain the following particulars:

- a) The name, head office and sectoral and geographical scope of the organisation, the purposes it pursues and the time for which it is established, if it established for a fixed term;
- b) The manner in which membership is acquired and lost;
- c) The rights and duties of members;
- d) The right to elect and be elected to offices in the association organs, and to participate in the activities of associations to which they are affiliated;
- e) The disciplinary regime;
- f) The composition, method of election and functioning of the association organs, and the length of the terms of office;
- g) The creation and operation of branches or other systems of decentralised organisation;
- h) The rules of financial, budgetary and accounting administration;
- i) The procedure for amending the articles of association;
- j) Exhibition, dissolution and liquidation of its assets.

Article 149
(Name)

Each trade union or employer organisation shall have a name allowing it to be identified in the best way possible, in order that it is not confused with the name of any other organisation.

Article 150
(Registration, publication and amendments)

1. Once the requirements for forming a trade union or employer organisation have been confirmed, the central labour administration office shall register the organisation in the appropriate book, within forty-five days after the application for registration is lodged.
2. After registration, the central labour administration office shall order the publication of the articles of association in the Government Gazette (*Boletim da República*), the cost of which shall be borne by the interested parties.
3. Any acts related to the association, such as alterations, mergers and dissolutions shall be noted subsequently in the specific file or book kept for registration of associations.

Article 151
(Association organs and identification of members)

1. Without prejudice to other structures provided for in the articles of association, trade union and employer associations shall have the organs prescribed by the general rules on associations, namely, a general meeting, management and a supervisory body.
2. The chairman of the founding general meeting shall send the identification of the members of the association organs, together with the minutes of the meeting, to the central labour administration office.
3. Until the associations have delivered the document referred to in the preceding paragraph, acts carried out by the said organs shall have no effect.

Article 152
(Founding general meeting)

1. The founding general meeting of any trade union or employer organisation shall be convened with the utmost publicity using any mass media, and in the most widely circulated newspaper, and all interested parties shall be given the opportunity to express their opinions.
2. At the founding general meeting, a list of the names of all employers or employees taking part shall be drawn up, and the decisions taken shall be recorded in the minutes of the meeting.
3. The provisions of this article shall be equally applicable to the alteration, merger or dissolution of trade union or employer organisations.

Section III
Parties to collective employment relationships

Article 153

(Structures representing workers)

1. Trade union or workers' organisations may form trade union delegates, trade union committees, workplace committees, trade unions, unions, federations and general confederations.
2. For the collective protection and furtherance of their rights and interests, workers may form the following:
 - a) *Trade union delegate* – workers' representative body in enterprises with less than ten employees;
 - b) *Trade union committee or workplace committee* - basic representative body of the trade union, in the establishment or enterprise;
 - c) *Trade union* - association of workers for the promotion and protection of their social and professional rights and interests;
 - d) *Regional union* - regional association of trade unions;
 - e) *Federation* - association of trade unions in the same occupation or field of activity;
 - f) *General confederation* - national association of trade unions.
3. In enterprises or services where there is no trade union body, trade union rights shall be exercised by the trade union body next above, or by a workers' commission elected at a general meeting convened specifically for that purpose by a minimum of twenty per cent of the employees.

Article 154

(Powers and responsibilities of trade unions)

In the furtherance of the objectives referred to in article 139 hereof, trade unions shall have the following powers and responsibilities:

- a) To promote and defend the interests of workers who practise the same occupation or work in the same or related fields of activity;
- b) To represent workers in the negotiation and signature of collective labour regulation instruments;
- c) To provide economic, legal, social and cultural support services to their members;
- d) To sign cooperation agreements with similar national and international organisations.

Article 155

(Powers and formation of trade union committees)

1. In the furtherance of the objectives established in article 139, trade union committees shall have the following powers, in particular:
 - a) To represent the employees of the enterprise or establishment before the employer in the negotiation and signature of company-level agreements, and in discussing and solving the social-occupational problems of the workplace;
 - b) To represent the trade union before the employer and the employees of the enterprise or establishment.
2. The members of the trade union committee shall be elected from among the employees of the enterprise or establishment, at a meeting of the employees that belong to the respective trade union, especially convened for that purpose.
3. The articles of association of the respective trade union shall determine the number of members of the trade union committee and their terms of office.
4. Trade union delegates shall have the same powers as trade union committees.
5. The trade union shall inform the employer of the identity of the members of the elected trade union committee.

Article 156

(Powers and responsibilities of regional unions)

In the furtherance of the objectives established in article 139, regional unions shall have the following powers and responsibilities, in particular:

- a) To represent affiliated trade union associations at a regional level;
- b) On behalf of affiliated associations, to make decisions about joining the relevant federation;
- c) To establish relationships of cooperation with other national or international unions;
- d) To provide support services to its affiliated associations;
- e) To negotiate and sign collective labour agreements in the respective region.

Article 157

(Powers and responsibilities of federations)

In the furtherance of the objectives established in article 139, federations shall have the following powers and responsibilities:

- a) To make decisions about joining general confederations;
- b) To represent trade unions in the same occupation or field of activity in confederations;

- c) To provide support services to its affiliated associations;
- d) To negotiate and sign collective labour agreements in the same occupation or field of activity.

Article 158

(Powers and responsibilities of confederations)

In the furtherance of the objectives established in article 139, confederations shall have the following powers and responsibilities:

- a) To promote and defend the interests of workers before the Government and employer confederations;
- b) To make proposals directly to Government, after consultation with affiliated or non-affiliated trade union associations, for changes to labour legislation;
- c) To represent trade union associations in any negotiations with employer confederations;
- d) To establish relationships of cooperation with similar international organisations;
- e) To provide support services to its affiliated organisations.

Section IV

Exercise of trade union activity

Article 159

(Meetings)

1. Trade union delegates, trade union committees and trade unions may hold meetings on trade union affairs at the workplace and these meetings shall, in principle, take place outside the normal working hours of their members.
2. Office holders in trade union bodies shall be given time-off rights, which must be fixed in a collective labour regulation instrument.
3. The employees' assembly may hold meetings at the workplace outside normal working hours, and these meetings shall be convened by the trade union or by at least one third of the employees of the enterprise or establishment.
4. Without prejudice to the provisions of the preceding paragraphs, the trade union delegates and the trade union committees, as well as the trade unions and the employees' assemblies, may hold meetings at the workplace during normal working hours with the prior consent of the employer.
5. The employer and the employees shall be given at least twenty-four hours prior notice of the meetings referred to in the preceding paragraphs.

Article 160

(Right to display trade union notices and information)

1. Trade unions may display and organise the distribution of texts, convocations, notices or information regarding trade union affairs at the workplace, in appropriate places accessible to all employees.
2. All matters not dealt with specifically in this law, in particular, the allocation of a time fund and premises for conducting trade union business, shall be the subject of negotiations between the trade union bodies and the employers.

Article 161

(Protection of office holders)

1. Members of the organs of trade union associations, trade union committees and trade union delegates may not be transferred away from their workplace without prior consultation with those associations, nor may they be prejudiced in any way because of their performance of trade union functions.
2. Employers are forbidden from rescinding, without just cause, the employment contracts of members of the organs of trade union associations and committees, for reasons attributable to the performance of their trade union functions.

Section V

Freedom of association of employers

Article 162

(Formation and autonomy)

1. Employer organisations or associations shall be independent and autonomous and may form unions, federations and confederations, either on a regional basis or by field of activity.
2. For the purposes of the preceding paragraph, the following words shall have the following meanings:
 - a) *Regional union* - regional based organisation of employer associations;
 - b) *Federation* - organisation of employer associations of the same field of activity;
 - c) *Confederation* - association of federations or regional unions.

Article 163

(Exceptional measures)

Businesspersons or associations of businesspersons that do not have employees may belong to employer organisations, provided, however, that they shall not interfere in decisions regarding employment relations.

Section VI
Rules on collective bargaining

Subsection I
General provisions

Article 164
(Objective)

1. The purpose of collective regulation instruments is to establish and stabilise collective employment relations, and they shall regulate, in particular:
 - a) The reciprocal rights and duties of employees and employers bound by individual employment contracts;
 - b) The method of resolving disputes arising from the creation or revision of collective regulation instruments, and the respective process of extension.
2. Within legally established limits, the parties are free to establish the content of their respective collective labour regulation instruments, provided these shall not establish regimes that are less favourable to employees nor limit the management powers of the employer.

Article 165
(Principles of good faith)

1. The employer or employers' association and the trade union body are bound to respect the principles of good faith during the negotiation of collective labour regulation instruments. In particular, each shall supply the other party with information that is necessary, credible and adequate for the progress of the negotiations, and they shall not question issues that have already been agreed upon.
2. The employers and trade union bodies shall be under a duty to maintain secret all information received subject to reservation of confidentiality.
3. Without prejudice to the preceding paragraph, trade union bodies shall have the right to pass on information about the progress of negotiations to their members and to higher-level trade union bodies.
4. The rules established in collective labour regulation instruments may not be displaced by individual employment contracts, save where such contracts afford working conditions more favourable for the employees.

Article 166
(Scope and legitimacy)

1. The legal regime governing collective regulation shall apply to every type of enterprise and establishment.
2. Only employers and employees, through their respective organisations or associations, may legitimately negotiate and enter into collective labour regulation instruments.
3. In the case of public enterprises, the chairmen of the boards of directors and their representatives with sufficient powers to enter into contracts may legitimately negotiate and sign collective labour regulation instruments.

Subsection II Collective bargaining procedures

Article 167 (Initiation of the bargaining process)

The collective bargaining process shall begin with the submission of a proposal for the signature or revision of a collective labour regulation instrument.

Article 168 (Proposals for collective regulation)

1. Proposals for establishing or revising collective labour regulation instruments may be made either by the trade union body or by the employer or its association, and must be in writing.
2. For the purposes of the preceding paragraph, the trade union body shall present its proposal to the employer or the employer's association and vice-versa.
3. The proposal shall expressly indicate which matters are to be negotiated, and shall be based on labour legislation in force and other applicable rules, and shall always take into account the economic and financial situation of the enterprise and the reference indicators of the sector of activity of the enterprise.
4. In the negotiation and establishment of collective labour regulation instruments, the trade union body and the employer or employer's association may rely on services and technical assistance from experts of their choice.

Article 169 (Response)

1. An employer or employers' association or a trade union body that has received a proposal for the establishment or revision of a collective labour regulation instrument shall have thirty days within which to submit its response, in writing, and this period may be extended by agreement between the parties.
2. The response shall state explicitly what matters have been accepted, and include a counterproposal in respect of matters not accepted, which counterproposal may cover matters not included in the proposal.
3. In addition to the labour legislation in force and other applicable rules, the counterproposal shall be based on the economic and financial situation of the enterprise and shall have regard to the reference indicators of the sector of activity of the enterprise.
4. The employer or its association or the trade union body shall remit a copy of the proposal and supporting information to the ministry that oversees the area of labour.
5. The employer or association to whom the proposal is addressed shall have a duty to respond to the proposing party, failing which the regime laid down in the following paragraph shall apply.
6. If there is no response to the proposal within thirty days, the employer or its association or the trade union body may request mediation by public or private conciliation, mediation and arbitration bodies, under the terms established in this law.

Article 170
(Direct negotiations)

1. Direct negotiations shall commence within ten days after receipt of the response, unless a different period has been agreed to in writing.
2. At the beginning of the negotiations, the negotiators for both parties shall be identified, and a schedule of negotiations and the rules that the negotiations must adhere to shall be established.
3. At every negotiation meeting, the parties shall agree upon and faithfully record the conclusions reached on matters that have been agreed on and those to be discussed at the following meeting.

Article 171
(Content of collective labour regulation instruments)

1. Collective labour regulation instruments may govern:
 - a) The relationship between the trade union associations and employers that are parties to them;
 - b) The reciprocal rights and duties of employees and employers;
 - c) The mechanisms for extra-judicial resolution of individual or collective labour disputes, provided for in this law.
2. Collective labour regulation instruments shall indicate:
 - a) The period for which they are to remain in force, and the procedures and notice periods for terminating them;
 - b) Their territorial scope of application;
 - c) The trade union bodies or associations and employers' associations that they cover;

Article 172
(Form and checking of collective labour regulation instruments)

1. Collective labour regulation instruments, including interim agreements reached by the parties during the bargaining process, must be in writing.
2. Collective labour regulation instruments shall be checked, dated and signed by the representatives of the parties.

Article 173
(Depositing of collective labour regulation instruments)

1. The original copy of a collective labour regulation instrument shall be delivered to the ministry that oversees the area of labour within twenty days after signature, for the purposes of depositing it and for verification of its legal conformity.

2. The collective labour regulation instrument shall be deemed accepted and shall become effective if the labour administration office has not made a statement to the contrary, in writing, within fifteen days after the instrument was deposited.

Article 174
(Refusal to accept deposit)

The labour administration office may refuse to accept the deposit of a collective labour regulation instrument on the following grounds, namely:

- a) Violation of public policy rules for the protection of workers' rights;
- b) Failure to observe the rules on compulsory content.

Article 175
(Disclosure and publication)

Employers and trade union bodies are bound to disclose collective labour regulation instruments to the employees, to post them at a place that is accessible to all, to facilitate consultation and to provide any necessary clarification.

Article 176
(Binding effect of collective labour regulation instruments)

1. Collective labour regulation instruments shall bind the employers that were signatories to the instruments or are otherwise covered by their scope, as well as the employer's successors.
2. The binding effect referred to in the preceding paragraph covers all employees in service, regardless of the date of their admission.

Article 177
(Duration and force of collective labour regulation instruments)

1. Collective labour regulation instruments shall remain fully in force until they are modified or replaced by others.
2. Collective labour regulation instruments may be terminated only on the date stipulated therein or, in the absence of this, sixty days before the end of the period of validity of the instrument.
3. While collective labour regulation instruments are in force, employers and employees shall refrain from behaving in any way that might jeopardise performance of the instrument.
4. While collective labour regulation instruments are in force, employees shall not resort to strikes as a form of bringing about the modification or revision of collective labour regulation instruments, except in the circumstances referred to in article 197 (4) of this law.

Article 178
(Adhesion agreements)

1. Enterprises or establishments in the same activity sector may adhere, in whole or in part, to collective labour regulation instruments that are in force, in which case they shall inform the competent local labour administration office of their adhesion and remit the text of the instrument within twenty days following the date of adhesion.

2. The adhesion instrument shall be signed by the employer and by the trade union body following the necessary negotiations, under the terms established by this law.
3. Collective labour regulation instruments to which the parties have adhered shall be fully effective as between both parties, except in those aspects in which they have agreed to certain reservations.

Article 179
(Annulment of clauses)

Interested employees, trade union bodies and employers may bring an action, before a competent court, for the annulment of provisions in collective labour regulation instruments that are considered to contravene the law

Subsection III
Collective disputes and methods of resolution

Article 180
(Principles)

The bodies entrusted with the resolution of collective disputes shall abide by the principles of impartiality, independence, speedy process, equity and justice.

Article 181
(Methods of collective dispute resolution)

1. Collective disputes arising out of the establishment or revision of collective labour regulation instruments may be resolved through alternative extra-judicial methods, by conciliation, mediation or arbitration.
2. Extra-judicial resolution of collective disputes may be conducted by public or private, non-profit or profit making entities, on such terms as the parties may agree or, if they do not agree, according to the provisions of this law.
3. In mediation procedures, employees may be represented by the trade union body and the employer may be represented by the employers' association.
4. The establishment and operation of conciliation, mediation and arbitration bodies shall be regulated by specific legislation.

Article 182
(Scope of the rules on extra-judicial resolution of labour disputes)

1. The rules on extra-judicial resolution of collective labour disputes shall be applicable, with the necessary adjustments, to disputes arising from individual labour relationships.
2. Extra-judicial resolution of individual labour disputes by means of arbitration shall always be voluntary.

Article 183

(Initiation of the dispute resolution process)

1. The labour dispute resolution process begins when either or both of the parties gives notice of the dispute and requests the intervention of the body of their choice, for the purposes of conciliation, mediation or arbitration.
2. The notice referred to in the preceding paragraph shall be given in accordance with the procedures prescribed in this law and in specific regulations.
3. If the body has been chosen by one of the parties and the other party disagrees, then the choice shall be made by decision of the Labour Mediation and Arbitration Commission.

Article 184

(Compulsory mediation)

1. All disputes must be referred to mediation before they are submitted to arbitration or to employment courts, except in cases involving provisional remedies.
2. Arbitration or judicial bodies that receive cases which have not first been submitted to conciliation or mediation shall notify the parties to comply with the provision of preceding paragraph.

Article 185

(Rules applicable to conciliation)

Conciliation shall be an optional process and follow the rules set down for mediation, with the necessary changes.

**Subsection IV
Mediation**

Article 186

(Mediation)

The request for mediation shall indicate the matters in dispute and provide such information as may assist the mediator in resolving the dispute, together with supporting documentation.

Article 187

(Mediation process)

1. The mediation and arbitration body shall appoint a mediator within three days after it has received the request for intervention, and the mediator shall notify the parties of the date, time and place of the mediation.
2. The mediation period shall not exceed thirty days from the date of the request for mediation, unless the parties have agreed on a longer period.
3. In collective labour disputes, if the trade union body fails to appear at a mediation session without justification, the mediator may extend the period established in the preceding paragraph for up to thirty days, and if the employer fails to appear, the mediation period may be reduced.

4. If the party that requested the mediation fails to appear on the day of the mediation hearing without justification, the mediator shall shelve the case, whereas if the other party fails to appear the mediator shall, of his own motion, refer the case to arbitration. In either case, the defaulting party shall have to pay a fine set by the mediation and arbitration centre.
5. The mediator may request such details and information as are deemed necessary from the parties or from relevant entities, as well as make contact with the parties, either together or separately, or resort to any other means suitable for the resolution of the dispute.
6. Where the parties reach a consensus, a definitive text of the agreement shall be drafted and given to the parties for signature, and if a party refuses to sign it the punitive measure referred to in paragraph 4 of this article shall be applied.
7. In case of an impasse in the resolution of a collective labour dispute during the mediation period, or where no resolution has been reached by the end of this period, the mediator shall issue an impasse certificate.

Subsection VI Arbitration of labour disputes

Article 188 (Types of arbitration)

1. Arbitration may be voluntary or compulsory.
2. Arbitration is voluntary where the parties agree to it.
3. Voluntary arbitration shall follow the regime laid down in articles 190 to 193 of this law and the specific legislation governing arbitration of labour disputes.
4. Arbitration is compulsory under the terms of the following article.

Article 189 (Compulsory arbitration)

1. When a collective dispute involves a public enterprise or an employer whose activity is directed at meeting the essential needs of society, the Labour Mediation and Arbitration Commission, after consulting the relevant minister, may decide to make arbitration compulsory.
2. Activities directed at meeting the essential needs of society shall mean those referred to in article 205 (5) of this law.
3. Compulsory arbitration proceedings shall follow the rules laid down in articles 191 *et seq.* of this law, with the necessary changes.

Article 190 (Appointment of arbitrators or formation of an arbitration committee)

1. The arbitration committee shall comprise three members. Each party shall appoint its own arbitrator and the third, who shall preside, shall be appointed by the mediation and arbitration body.

2. All mediation and arbitration centres shall notify the Labour Mediation and Arbitration Commission about the matters in dispute, the beginning and the end of the arbitration process.
3. The arbitrators shall not be managers, directors, administrators, representatives, consultants or employees of the employer involved in the arbitration, nor persons with a direct financial interest in the employer or a relationship with either of the parties.
4. The provisions of the preceding paragraph shall also extend to spouses, direct lineal relatives, lateral relatives up to the third degree, relatives by affinity, and adoptive and adopted relatives of the persons referred to therein.

Article 191
(Arbitration process)

1. The parties may submit the disputed issue to arbitration if the matter is not resolved through mediation.
2. If only one of the parties submits the disputed issue to arbitration, the other party has to agree to submit to that form of extra-judicial dispute resolution.
3. Within five days following the request for arbitration, the conciliation, mediation and arbitration body shall appoint an arbitrator, who will be the presiding arbitrator where arbitration is by an arbitration committee, and shall notify the parties of the date, time and place of the arbitration.
4. In cases where arbitration is by an arbitration committee, the mediation and arbitration body shall give each of the disputing parties notice to appoint an arbitrator of their choice within a period of three days.
5. The arbitrator or arbitration committee shall conduct the arbitration process in the manner it considers appropriate to resolve the dispute swiftly and fairly, having regard to the merits of the dispute and the minimum formalities required.
6. Under the arbitrator's discretionary power to determine the appropriate procedures, either party to the dispute may adduce evidence, call witnesses, ask questions and present arguments.
7. The parties to the dispute may be represented by the trade union body, the employers' association or by proxies.
8. Within fifteen days after the award is made, the arbitrator or the arbitration committee shall send a copy of the award to each of the parties, and shall lodge a copy of it with the local conciliation, mediation and arbitration body and with the ministry that oversees the area of labour.
9. The arbitrator or the arbitration committee may, of its own motion or at the request of the parties, correct any material error in the award made.

Article 192
(Technical support for the arbitration)

1. The arbitrator or the arbitration committee may request such details and information from the parties or from the relevant State services and bodies as it deems necessary for reaching its decision.

2. The costs of voluntary arbitration shall be borne by the parties on the terms and conditions that they have agreed upon.
3. The arbitrator or the arbitration committee shall make an award apportioning the costs of the arbitration, unless one of the parties or its representative has acted in bad faith.
4. The arbitrator or arbitration committee and the experts that assist it are subject to a duty of secrecy in respect of all information received subject to reservation of confidentiality.

Article 193
(Arbitral award)

1. An arbitral award made pursuant to this law shall be binding and respect the legislation in force, and it shall be lodged in accordance with the regulations of the mediation and arbitration centres.
2. The arbitral award shall have the same effects as a judgement delivered by a judicial body, and it shall constitute an executory title.
3. An appeal for annulment shall be available against arbitral awards.
4. Arbitral awards may only be annulled by the employment court, in the terms of specific legislation governing arbitration of labour disputes.

Section VII
Right to strike

Subsection I
General provisions on strikes

Article 194
(Right to strike)

1. The right to strike is a basic right of workers.
2. Workers shall exercise the right to strike in order to protect and promote their legitimate social-labour related interests.

Article 195
(Concept of strike)

Strike means the collective and concerted abstention from work, in conformity with the law, for the purpose of persuading the employer to satisfy a legitimate common interest of the employees involved.

Article 196
(Limits on the right to strike)

By virtue of the provisions of article 3 (a) of this law, the exercise of the right to strike regulated by this law shall not extend to the public sector, save as provided otherwise by specific legislation.

Subsection II General principles

Article 197 (Resort to strike)

1. The decision to resort to strike shall be taken by the trade union bodies, after consultation with the employees.
2. In enterprises or services that do not have a trade union body, the decision to resort to strike shall be taken at a general assembly of employees, convened expressly for that purpose by at least twenty per cent of the employees of the enterprise or the sector of activity.
3. Employees should do not resort to strike until attempts have been made to settle the dispute using alternative dispute resolution methods.
4. Whilst any collective labour regulation instrument is in force, employees should not resort to strike, except in the event of serious violations by the employer and after the dispute resolution methods referred to in the preceding paragraph have been exhausted.

Article 198 (Democratic rules)

1. The general assembly of employees referred to in paragraph 2 of the preceding article may only take valid decisions if at least two thirds of the employees of the establishment or enterprise are present at the meeting.
2. The decision to resort to strike shall be taken by an absolute majority of the employees present.

Article 199 (Freedom to work)

Employees on strike shall not obstruct access to the premises of the enterprise, nor shall they resort to violence, coercion, intimidation or any other fraudulent measure intended to force the other employees to join the strike.

Article 200 (Prohibition against discrimination)

Any act directed at dismissing, transferring or otherwise causing prejudice to an employee by reason of their joining a strike declared in accordance with the law, shall be forbidden and considered void and without effect.

Article 201 (Representation of employees on strike)

1. Employees on strike shall, for all purposes, be represented by their trade union body or by one or more employees elected by the general assembly in the terms of articles 197 and 198 of this law.
2. The entities referred to in the preceding paragraph may delegate their representation powers.

Article 202

(Duties of the parties during a strike)

1. During the strike, employees on strike are obliged to ensure that minimum services indispensable to the safety and maintenance of the equipment and premises of the enterprise or service are provided so that, at the end of the strike, they may resume their activity.
2. Minimum services may be defined in collective labour regulation instruments or, failing this, in the terms of the following paragraph.
3. During the period of prior notice, the trade union body and the employer shall, by agreement, decide what the minimum services are and which employees will provide them.
4. In the absence of the agreement referred to in the preceding paragraph, the minimum services and the employees that should provide them shall be determined through mediation conducted by a conciliation, mediation and arbitration body.
5. In enterprises or services directed at meeting the essential needs of society, the framework of obligations applicable during strikes, set down in article 205 hereof, shall apply.
6. Without prejudice to article 209 (1) hereof, trade union leaders cannot be selected to provide minimum services.
7. For the purposes of the agreement on what the minimum services are and which employees should provide them, the parties shall act according to the principles of good faith and proportionality.
8. Employers shall not replace employees on strike with other persons who did not work in the enterprise or service on the date of the prior notice of the strike.

Article 203

(Prohibition of lockouts and replacement of employees on strike)

1. Lockouts are prohibited.
2. A lockout is considered to be any decision of the employer to close the enterprise or service or to suspend work, which affects part or all of its sectors, with the intention of pressuring its employees with a view to maintaining existing working conditions or establishing other less favourable conditions.

Article 204

(Exceptional measures by the employer)

1. The employer may suspend all or part of the activity of the enterprise whilst a strike is in progress, owing to an imperative need to safeguard the maintenance of the premises and equipment of the enterprise, or to guarantee the safety of employees or other persons.
2. The ministry that oversees the area of labour shall be informed of measures taken pursuant to the preceding paragraph, within the following forty-eight hours.
3. The employer may replace employees during the period of the strike, if legal formalities regarding the strike have not been complied with.

4. For the purposes of the preceding paragraph, the employer shall ask the ministry that oversees the area of labour for an opinion, which must be issued within forty-eight hours, on whether or not the legal formalities for the strike have been complied with.

**Subsection III
Special strike regimes**

Article 205
(Strike in essential services and activities)

1. In services and activities directed at meeting the essential needs of society, employees on strike are obliged to ensure that minimum services that are indispensable to meeting those needs are provided throughout the duration of the strike.
2. In the sectors covered by the regime in this article, it shall be mandatory for a collective labour regulation instrument to specify what the minimum services are. Failing this, the local office of the relevant ministry, after consultation with the trade union body and the employer, shall be responsible for deciding what the minimum services are.
3. Subject to the stipulation in article 209 (1) hereof, leaders of trade union bodies cannot be selected to provide the services referred to in the preceding paragraphs.
4. Services and activities directed at meeting the essential needs of society shall comprise, namely:
 - a) Medical, hospital and medicinal services;
 - b) Water, power and fuel supplies;
 - c) Postal and telecommunication services;
 - d) Funeral services;
 - e) Loading and unloading of animals and perishable food stuffs;
 - f) Air space and meteorological control;
 - g) Fire service;
 - h) Cleansing services;
 - i) Private security.
5. Public enterprises and any other public corporate entity whose employment relationships are governed by this law shall be considered as services directed at meeting essential needs for the purposes of the regime in this article.

Article 206
(Strikes in free zones)

Strikes in free zones shall follow the provisions of the preceding article.

Subsection IV
Procedures, effects and effective implementation of the strike

Article 207
(Prior notice)

1. The trade union body shall give prior written notice to the employer and to the ministry that oversees the area of labour, during normal business hours, at least five days before the commencement of the strike.
2. In enterprises or services directed at meeting the essential needs of society, seven days prior notice of the strike shall be given.
3. The prior notice, which shall be accompanied by a list of demands, must mention the activity sectors affected by the strike, the date and the time when the stoppage will begin and the expected duration.

Article 208
(Conciliatory action)

During the period of prior notice of the strike, the ministry that oversees the area of labour or the conciliation, mediation and arbitration body may, on their own initiative or at the request of the employer or trade union body, take such conciliatory action as is considered appropriate.

Article 209
(Putting the strike into effect)

1. Once the prior notice period has expired and the legal formalities have been fulfilled, the employees may begin the strike, provided they have secured the provision of the minimum services contemplated in articles 202 and 205 of this law.
2. The conciliation and mediation bodies and the local labour administration offices may promote conciliatory action aimed at helping the parties to reach an agreement.
3. The strike shall progress with strict observance of the legal rules, and any resort to violence against persons or property shall be prohibited.

Article 210
(Effects of the strike)

1. For the extent of its duration, the strike shall suspend the relationships arising out of the employment contracts of the striking employees, namely, the right to remuneration and the duty of subordination and regular attendance at work.
2. Without prejudice to the preceding paragraph, the strike shall not suspend rights, duties and guarantees that do not depend on or entail the actual performance of work, including those relating to social security, payments for accidents or occupational illness and the duty of loyalty.
3. The suspensive effects of the strike with respect to remuneration shall not occur in cases of manifest violation of the collective labour regulation instrument by the employer.
4. The suspensive effects of the strike shall likewise not occur in relation to employees providing minimum services.

5. During the period of suspension, the length of service of the striking employees and the effects derived therefrom shall not be adversely affected, save for those that are conditional upon the actual performance of work.

Article 211

(Effects of an unlawful strike)

1. A strike shall be unlawful where it has been declared and carried out outside the law, in particular, in cases of strike action prohibited by law, violation of procedures for calling a strike or the use of violence against persons or property.
2. During the period of an unlawful strike, striking employees shall be subject to the rules on unjustified absence, without prejudice to any applicable civil or criminal liability or liability for misdemeanours.

Article 212

(Termination of the strike)

1. The strike shall in all cases terminate by agreement between the parties, by decision of the trade union body after consultation with the employees, by decision of the mediation and arbitration body, or at the end of the period established in the prior notice of strike.
2. The employer and the ministry that oversees the area of labour shall be informed immediately of the decision referred to in the preceding paragraph.

Article 213

(Exceptional measures by Government)

1. When, by virtue of its duration, extent or characteristics, a strike in essential services and activities may have serious consequences for the life, health and safety of the population or a part thereof, or may provoke a national crisis, the Government shall, exceptionally, take such measures as it deems appropriate, including civil requisition.
2. The civil requisition may have as its object the performance of work on an individual or collective basis, the surrender or temporary use of goods and equipment, public services, state owned enterprises, public enterprises and private or mixed public/private enterprises.

Article 214

(Content of civil requisition)

1. The administrative act by which the civil requisition is decreed shall indicate:
 - a) Its object and duration;
 - b) The entity responsible for executing the civil requisition;
 - c) The form of intervention of the armed forces, if such is the case, and the regime governing the rendering of requisitioned work;
 - d) The form of management of requisitioned enterprises, remuneration of employees and individual compensation.
2. The general regime governing civil requisition shall be laid down in specific legislation.

Article 215
(Objective of civil requisition)

Public services or enterprises affected by the civil requisition shall maintain their own management and their respective social or economic activities and, with the means and resources available, shall be obliged to perform the activities for which they are intended, namely:

- a) Obtaining and distributing water for consumption and for industrial and agricultural production;
- b) The exploitation and supply of electricity and fuels necessary for industrial and agricultural production and for transport;
- c) The operation of postal services, telecommunications, land, maritime, river or air transport, as well as port, airport and railway services;
- d) The industrial or agricultural production of goods essential for the national economy and for basic nutrition;
- e) The provision of medical, hospital and medicinal services and public health, including funerals;
- f) Private security;
- g) The provision of the services referred to in article 205 of this law.

CHAPTER VI
Hygiene, safety and health of employees

Section I
Hygiene and safety at work

Article 216
(General principles)

1. All employees have the right to perform their work in hygienic and safe conditions, and employers are responsible for creating and developing adequate means for protecting the physical and mental integrity of employees and constantly improving working conditions.
2. Employers shall afford their employees good physical, environmental and moral working conditions, inform them of the risks of their job, and instruct them on appropriate compliance of the rules on hygiene and safety at work.
3. Employees should look after their own safety and health and that of other persons who may be affected by their acts and omissions at work, and they should cooperate with their employers in matters of hygiene and safety at work, either individually or through work safety commissions or other suitable structures.
4. Employers should take all adequate precautions to ensure that all work posts and means of access and exit to and from them are safe and free of risks for the safety and health of employees.

5. Whenever necessary, employers should provide protective equipment and appropriate work clothing in order to prevent the risk of accidents or detrimental effects on the health of employees.
6. Employers and employees are obliged to comply promptly and rigorously with the legal and regulatory rules, as well as with the directives and instructions of competent authorities on matters of hygiene and safety at work.
7. Enterprises may, within legal limits, establish policies for the prevention of HIV/AIDS at the workplace, provided they respect the principle that the employee's consent is required for sero-prevalence tests.

Article 217
(Work safety commissions)

1. All enterprises that pose exceptional risks of accident or occupational illness shall have an obligation to establish work safety commissions.
2. Work safety commissions shall comprise representatives of the employees and the employer, and their purpose shall be to supervise compliance with the rules on hygiene and safety at work, to investigate causes of accidents and, in conjunction with the enterprise's technical services, to organise preventive measures and ensure hygiene at the workplace.

Article 218
(Hygiene and safety regulations)

1. The general rules on hygiene and safety at work shall be laid down in specific legislation. Special regimes for each sector of economic or social activity may be established through diplomas issued by the ministers of Labour, Health and the relevant sector, after consultation with the representative trade union and employer associations.
2. Business associations and trade union organisations shall, to the extent possible, establish codes of good conduct regarding matters of hygiene and safety at work in the respective field.
3. The Labour Inspectorate shall be responsible for ensuring compliance with the rules on hygiene and safety at work, and it may request collaboration from other competent government bodies, whenever it deems it necessary.

Section II
Health of employees

Article 219
(Medical assistance at the workplace)

1. Large enterprises shall have an obligation to offer, either directly or through a third party contracted for this purpose, a service for the provision of first aid in cases of accident, sudden illness, poisoning or indisposition.
2. The provisions of the preceding paragraph shall likewise apply to enterprises that employ fewer staff, but whose activities are hard, unhealthy or involve a high degree of risk to which the employees are permanently exposed.

Article 220

(Medical assistance organised by several enterprises)

Without prejudice to the provisions of paragraph 2 of the preceding article, an association of several enterprises may establish and maintain the operation of a private health unit, provided that the number of employees does not exceed the installed capacity of the unit, and the unit is appropriately located to allow easy access to its services.

Article 221

(Medical examinations)

1. At enterprises equipped with a private health unit, the doctors in charge, or their substitutes, shall carry out regular examinations of the employees of the enterprise, in order to check:
 - a) Whether the employees meet the conditions of health and physical fitness necessary for the work stipulated in their contract;
 - b) Whether any employee is carrying an infectious-contagious disease that may endanger the health of the other employees in the enterprise;
 - c) Whether any employee is suffering from a mental disease that makes his or her employment in the assigned job inadvisable.
2. The Ministers of Health and Labour shall issue a joint diploma to establish the rules governing medical examinations of employees and the respective records.

Section III

Work accidents and occupational illness

Subsection I

Concept of work accident

Article 222

(Concept)

1. A work accident is an accident that takes place at the workplace and during work time, provided that it directly or indirectly causes physical injury, functional disturbance or illness to the employee, resulting in death or a reduction in working or earning capacity.
2. Also considered as work accidents are accidents occurring:
 - a) On the journey to or from the workplace, when means of transport supplied by the employer is used, or when the accident is a consequence of specific dangers found on the normal route or of other circumstances which aggravate the risk of that same route;
 - b) Before or after the performance of work, provided that the accident is directly related to the preparation or termination of the work;
 - c) As a result of the work performed outside the workplace and normal work time, if the accident occurs while the employee is carrying out orders or services under the direction and authority of the employer;

- d) In the performance of services, including non-professional services, rendered spontaneously by the employee for the employer outside the workplace and work time, from which the employer may derive an economic benefit.
3. If the injury resulting from the work accident or occupational illness is not immediately recognised, the victim or the victim's legal beneficiaries must prove that it was a consequence thereof.

Article 223

(Accidents not considered work accidents)

1. Employers shall not be obliged to compensate for the following accidents:
 - a) Those which are intentionally provoked by the injured party;
 - b) Those which are a result either of the inexcusable negligence of the injured party in the execution or omission of an express order from persons to whom he or she is professionally subordinate; or of acts of the victim which reduce the safety conditions established at the workplace or required by the particular nature of the work;
 - c) Those which result from voluntary physical offences, except where these have an immediate connection with some other accident or where the victim suffers them as a result of the nature of the functions that he or she performs;
 - d) Those which result from the injured party's permanent or passing loss of reason, except if the loss results from the performance of work itself or if the employer consents to the victim's performance of the work with knowledge of the victim's condition;
 - e) Those which result from events of *force majeure*, unless they constitute an ordinary risk of the occupation or occur during the performance of services expressly ordered by the employer, in conditions of manifest danger.
2. For the purposes of this subsection, an event of *force majeure* is an event caused by unavoidable forces of nature independent of human intervention and, as such, does not constitute an ordinary risk of the occupation nor occur in the performance of work expressly ordered by the employer in conditions of manifest danger.

Subsection II Occupational illness

Article 224

(Concept of occupational illness)

1. For the purposes of this law, an occupational illness is considered to be any clinical condition that is localised or generalised in the body, of a toxic or biological nature, resulting from and directly related to occupational activity.
2. Occupational illnesses are considered to be those that occur as a result of:
 - a) Lead poisoning, including poisoning by lead alloys or compounds, and the direct consequences of such poisoning;

- b) Poisoning by mercury or mercury amalgams or compounds and the direct consequences of such poisoning;
 - c) Poisoning by pesticides, herbicides, colorants and noxious solvents;
 - d) Poisoning caused by industrial dust, gases and vapours, which are taken to include gases from internal combustion of refrigeration machines;
 - e) Exposure to asbestos dust and asbestos fibre in the air or dust from products containing asbestos;
 - f) Poisoning caused by x-rays or radioactive substances;
 - g) Carbuncular infections; and,
 - h) Occupational dermatitis.
3. The list of conditions capable of causing occupational illness set out in the preceding paragraph shall be updated by diploma by the Minister of Health.
4. The industries and occupations likely to provoke occupational illnesses shall be dealt with in specific regulations.

Article 225

(Occupational illness manifested after termination of the employment contract)

- 1. An employee shall retain the right to assistance and compensation where an occupational illness manifests itself after the employment contract has terminated.
- 2. The onus shall be on the employee to prove the causal nexus between the work performed and the illness suffered.

Subsection III

Common provisions on work accidents and occupational illness

Article 226

(Prevention of work accidents and occupational illness)

- 1. Employers have an obligation to work closely with the work safety commissions set up in the enterprise, to adopt effective measures to prevent work accidents and occupational illness and to investigate the causes thereof and ways to suppress them.
- 2. As soon as the appropriate investigations have been conducted and recorded, employers, in collaboration with trade unions, shall inform the competent local labour administration office about the nature of work accidents and occupational illnesses and the causes and consequences thereof.

Article 227

(Duty to report work accidents and occupational illness)

- 1. The employee or another person shall report the occurrence of any work accident or occupational illness, as well as the consequences thereof, to the employer.

2. Health institutions have an obligation to report the death of any injured employee to the employment courts, and to the person whose care the injured employee was in.

Article 228
(Duty to provide assistance)

1. In the event of a work accident or occupational illness, the employer shall provide the injured or ill employee with first aid and suitable transport to a medical centre or hospital where the employee can be treated.
2. The injured employee shall be entitled to medical and medicinal aid and other necessary care, as well as the provision and normal renewal of prosthetic and orthopaedic equipment, according to the nature of the injury suffered, all at the expense of the employer or of insurers against accidents and occupational illness.
3. An employee who has to be transported within the country to an establishment far away from his or her home shall be entitled, at the expense of the employer, to be accompanied by a family member or by another person providing direct assistance.
4. The injured employee may, on request, obtain an advance of the amount equivalent to one month's compensation or pension, in order to help with unforeseen needs arising by virtue of his or her condition.
5. The employer shall bear the costs resulting from the funeral of the injured employee.

Article 229
(Right to reparation)

1. All employees working for employers shall have a right to reparation in the event of a work accident or occupational illness, except when it results from drunkenness, a drugged state or voluntary intoxication of the victim.
2. The right to reparation by virtue of a work accident or occupational illness presupposes that the employer will endeavour to place the injured employee in a job that is compatible with his or her residual capacity.
3. If it is impossible to place the employee in the terms of the preceding paragraph, the employer may rescind the employment contract, in which case the employer shall compensate the employee in terms of article 128 of this law.
4. The pathological predisposition of an injured employee, which will be regulated by specific legislation, shall not exclude the right to reparation if the employer knew about it.

Article 230
(Assessment of residual capacity)

1. In assessing the injured employee's new work capacity, regard shall be had to the nature and seriousness of the injury or illness, the occupation, the victim's age, the degree to which the victim is able to re-adjust to the same or another occupation, and all other circumstances that may affect the assessment of the reduction in the employee's actual working capacity.

2. The criteria and rules for evaluating physical impairment and disability resulting from work accidents and occupational illness shall be contained in a table published in a specific diploma.

Article 231

(Collective insurance for ordinary occupational risks)

Employers shall have collective insurance for their employees, for coverage of work accidents and occupational illness.

Article 232

(Collective insurance for aggravated occupational risks)

For activities whose characteristics pose a particular occupational risk, enterprises shall have specific collective insurance for employees exposed to that risk.

Article 233

(Pensions and compensation)

1. When a work accident or occupational illness results in a loss of capacity to work, the employee shall be entitled to:
 - a) A pension, in the event of permanent total or partial disability;
 - b) Compensation, in the event of temporary total or partial disability.
2. Additional compensation shall be awarded to victims of work accidents or occupational illness, resulting in disability, who require constant assistance from another person.
3. If the accident or occupational illness results in the death of the employee, a survivor's pension shall be awarded.
4. In cases of total permanent disability, the pension payable to the injured employee shall in no event be less than the retirement pension to which the employee would be entitled on reaching retirement age.
5. The legal regime governing pensions and compensation shall be regulated under the terms of specific legislation.

Article 234

(Date on which pensions and compensation fall due)

1. Pensions for permanent disability become due and payable as of the day following the day of discharge from hospital, and compensation for temporary disability becomes due and payable as of the day after the accident.
2. Pensions for death become due and payable as of the day after death is confirmed.
3. Any interested party may request a review of the pension for permanent disability, on the ground of a change in the disability, provided that more than six months and less than five years have elapsed since the date on which the pension was set or was last reviewed.

Article 235

(Loss of the right to compensation)

The following acts committed by an injured employee shall be sufficient grounds for the loss of the right to compensation:

- a) Voluntarily aggravating his or her injuries, or contributing to their aggravation through his or her manifest carelessness;
- b) Failing to observe the prescriptions of the attending doctor or to make use of the occupational rehabilitation services available to him or her;
- c) Causing a person other than the attending doctor to intervene in the treatment;
- d) Failing to see the doctor or appear for the treatment prescribed.

Article 236

(Prescription of the right to compensation)

1. The right to claim compensation for a work accident or occupational illness shall expire twelve months after the accident or illness occurs.
2. The right to collect the amount to which the employee is entitled shall expire three years after the compensation is ascertained or the last payment is made.
3. The prescriptive period shall neither start nor run until the beneficiary has been notified that the compensation amount has been ascertained.

CHAPTER VII

Employment and vocational training

Section I

General principles

Article 237

(Right to work)

The basic principles underlying every citizen's right to work, without any discrimination whatsoever, are the ability and vocational skills of the individual and equality of opportunity in the choice of occupation or type of work.

Article 238

(Right to vocational training)

1. Vocational training is a fundamental right of citizens and workers, and the State and employers shall allow this right to be exercised through actions aimed at giving effect to it.
2. The vocational training, improvement, retraining and re-qualification of employees, especially young persons, are aimed at developing capacities and the acquisition of knowledge and facilitating access to employment and to higher occupational levels, with a view to furthering personal achievement and promoting the economic, social and technological development of the country.

Section II Employment

Article 239 (Public employment service)

To implement employment policy measures, the activities of the State in the area of labour market organisation shall aim to place workers in jobs that are suited to their vocational qualifications and the demands of employers, through studies on the development of employment programmes, through vocational information, orientation and training and through the operation of free public job placement services.

Article 240 (Measures to promote employment)

The following constitute measures to promote employment:

- a) The preparation and execution of development plans and programmes, involving all State bodies and in collaboration with social partners, in joint, co-ordinated activities in the areas of job creation, maintenance and recovery;
- b) Support for individual and collective initiatives aimed at creating employment and work opportunities, as well as the promotion of employment-generating investment in the various sectors of social and economic activity;
- c) Incentives for the occupational and geographical mobility of workers and their families, insofar as this is appropriate for the equilibrium of job supply and demand and in accordance with sectoral and regional investments for the social advancement of socio-occupational groups;
- d) The outlining of vocational information and orientation programmes for young persons and workers, with a view to enabling citizens and communities to choose freely their occupations and types of work, according to their individual abilities and the country's development needs;
- e) The development of co-operation with foreign countries in the area of migrant labour;
- f) The organisation of free public job placement services;
- g) The regulation and supervision of private job placement activity, through licensing, controlling and overseeing their operation.

Section III Promotion of access to employment for young persons

Article 241 (Contractual regime)

1. Employers shall have the freedom to use term employment contracts with recently qualified young persons, with a view to promoting employment.

2. Fixed term employment contracts with job candidates may be renewed freely, provided, however, they shall not exceed a maximum of eight consecutive years of employment under this regime with the same employer, except in the cases provided for in article 42 hereof.

Article 242

(Compulsory retirement)

The compulsory retirement referred to in article 125 (2) of this law aims to promote the freeing up of vacancies for young job seekers.

Article 243

(Pre-professional traineeships)

1. Employers that take on final-year students from any educational level under remunerated pre-professional traineeship schemes shall enjoy tax benefits, which will be established in specific legislation.
2. Employers may enter into agreements with educational establishments, in respect of unremunerated pre-professional traineeships.
3. Pre-professional traineeships shall count towards professional experience.

Section IV

Vocational training

Article 244

(General principles)

1. Vocational training is directed at employees in active service, young people intending to enter the labour market with no specific vocational qualifications, job seekers in general, injured workers and workers requiring occupational re-qualification.
2. The provision of vocational training for employees in active service shall be ensured by the respective employers.

Article 245

(Vocational training and orientation)

1. Reinforcement of vocational training depends on the adoption of measures aimed at:
 - a) Stimulating the coordination of vocational training;
 - b) Creating training courses with curricular programmes that correspond to actual market needs;
 - c) Encouraging the provision of training for employees by employers;
 - d) Supporting the integration into the labour market of trainees who complete vocational training courses;
 - e) Preventing increases in unemployment as a consequence of technological development.

2. Vocational orientation shall be conducted in collaboration with structures in the educational system, and it shall comprise information about the content, perspectives, promotion possibilities and working conditions of different occupations, as well as about the choice of occupation and the relevant vocational training.

Article 246
(Objectives)

1. Vocational training, improvement and re-qualification shall be governed by the State in coordination with social partners, with a view to ensuring that adults and young persons develop the capacities and acquire the skills and knowledge they need to pursue skilled occupations, thereby facilitating access to the labour market.
2. The State shall be responsible for promoting actions aimed at vocational training and re-qualification of employees, by granting tax benefits and by facilitating vocational training operations, whether these are managed by employers or not.

Article 247
(Training of employees in active service)

1. Employees in active service shall be entitled to vocational training activities, in accordance with the needs of the enterprise.
2. For the purposes of the preceding paragraph, employers shall promote training activities aimed at:
 - a) Stimulating an increase in productivity and in the quality of services they provide, through the professional development of their employees;
 - b) Increasing the occupational skills of their employees, as well as updating their knowledge with a view to their personal development;
 - c) Enabling employees to progress in their professional careers;
 - d) Preparing employees for technological development in the enterprise and in the market;
 - e) Promoting on-the-job training activities;
 - f) Organising and structuring annual vocational training programmes in the enterprise, from which trainees are entitled to certificates;
 - g) Facilitating continuing education for employees who intend to attend vocational courses outside the enterprise, without interference in working hours.

Article 248
(Apprenticeships)

1. Enterprises may admit apprentices for jobs related to the occupational speciality to which the apprenticeship pertains, and the apprenticeship should give the apprentice access to the respective professional career.

2. For the purposes of the preceding paragraph, apprenticeships shall be of varying duration, depending on the customary practices of the occupation.
3. Enterprises or establishments may not admit young persons under twelve years of age for apprenticeships.

Article 249
(Apprenticeship contracts)

1. An apprenticeship contract is one whereby an establishment or enterprise undertakes to ensure, in collaboration with other institutions, the vocational training of an apprentice, who shall be under a duty to perform the tasks inherent in that training.
2. The apprenticeship contract must be in writing, and it must contain the identification of the contracting parties, the content and duration of the apprenticeship, the working hours, the place where the apprenticeship is to be conducted and the amount of the training grant, as well as the conditions for rescinding the contract.
3. Contracts of promise of employment may be entered into with apprentices, under which the apprentices are given the opportunity to pursue the occupation in the service of the entity that administered the apprenticeship.
4. The regulatory rules governing apprenticeships in each occupation or group of occupations shall be defined by diploma issued by the Minister of Labour, on proposals from interested parties.
5. Apprenticeship contracts do not give the apprentice employee status, and the apprentice's rights and duties shall be regulated by specific legislation.

Article 250
(Vocational training courses)

1. The objective of vocational training courses is to enable people to acquire or improve knowledge, practical skills, attitudes and forms of conduct required in order to pursue an occupation or group of occupations. Such courses may be administered by any qualified entity in the public or private sectors, taking into account the economic and social reality of the country and the demands of the employment market.
2. The entities administering the courses shall guarantee the rights and expectations of trainees by means of contracts between the training entity and the trainee.
3. Contracts for vocational training and capacity building entered into with school-age minors require prior permission from the minor's legal representatives and the Ministry of Education.
4. A specific diploma shall set down the rules that regulate the legal status of trainees and the operation of establishments that administer vocational training courses that are wholly or partially financed by public funds.
5. After a vocational training course has been successfully completed, graduates may be required to undergo traineeships with a view to their adapting to work procedures, according to the nature and technical demands of the tasks to be performed.

Section V
Occupational evaluation of employees

Article 251
(Concept and purposes)

1. Evaluation is the assessment, according to previously established rules, of the skills and qualification requirements that an employee should possess to perform certain functions.
2. The purpose of evaluation is to guarantee that jobs are filled by employees who fulfil the appropriate conditions, as well as to contribute to the classification of wages.
3. Evaluation shall take place in the following cases:
 - a) When it is necessary to fill job vacancies;
 - b) To find out the reasons for the low productivity of an employee;
 - c) At the request of the employee;
 - d) Upon the decision of the employment court;
 - e) Upon the decision of the management of the enterprise or establishment, or the proposal of the competent trade union body.
4. Enterprises or establishments may set up evaluation commissions for their employees, where the conditions permit this.

Article 252
(Promotion of employees)

1. Promotion shall mean the assignment of an employee to a category with higher levels of complexity, demands, degree of responsibility and wage.
2. In the promotion of an employee, regard shall be had not only to the employee's qualifications, knowledge and abilities, but also to the attitude demonstrated towards the work, the effort made towards professional improvement, disciplinary conduct and the employee's experience and length of service in the job.
3. The promotion shall be recorded in the employee's individual file and noted on his or her employment contract.
4. Employers shall inform their employees about the staff framework of the enterprise or establishment, as well as the conditions for promotion and access thereto, on the basis of which vocational training and retraining action will be taken.

Article 253
(Certificate of professional competence)

The professional qualifications given to employees shall be recorded in a certificate of competence, and the rules governing these certificates shall be contained in specific legislation or in the bylaws of professional associations.

Article 254
(Professional qualifications)

Professional qualifications awarded through vocational training courses shall be established by the labour administration office and awarded by the respective training institutions.

Article 255
(Employees' guarantees)

When an employee performs functions that do not correspond to his or her qualifications, the employment court or the mediation and arbitration body shall, of its own motion or at the request of the employee, notify the employer of the job that is compatible with the qualifications.

CHAPTER VIII
Social security

Article 256
(Social security system)

1. All workers shall be entitled to social security, according to the financial conditions and resources of the development of the national economy.
2. The social security system comprises various branches, has a managing body for the system and covers the entire national territory.

Article 257
(Objectives of the social security system)

The social security system aims to guarantee the material subsistence and social stability of workers, in cases of impaired capacity or incapacity to work and old age, as well as the survival of their family members, in the event of death.

Article 258
(Applicable rules)

Social security shall be regulated by specific legislation.

CHAPTER IX
Supervision and contraventions

Section I
Inspection

Article 259
(Monitoring of the legality of labour matters)

1. The Labour Inspectorate shall monitor the legality of labour matters, and shall have power to supervise compliance by employers and employees with their duties.

2. In the exercise of their activities, the Labour Inspectorate shall favour, whenever possible, educating employers and employees about voluntary compliance with labour rules, without prejudice to the prevention and suppression of violations when necessary.
3. Labour Inspectorate officers shall have free access to all establishments that are subject to their supervision, and the employers shall furnish them with all the information they require to carry out their functions.
4. The rights, duties and other legal prerogatives conferred on labour inspectors shall be contained in a specific diploma.
5. All administrative and police authorities shall provide the inspection officers with all the support they need for the proper performance of their functions.

Article 260
(Powers of the Labour Inspectorate)

1. The Labour Inspectorate shall have power to supervise and ensure compliance with this law and other legal provisions that regulate labour matters, and they shall report, to the relevant State bodies, violations of rules whose enforcement is not within the jurisdiction of the Labour Inspectorate.
2. In the event of imminent danger to the lives or physical integrity of employees, officers of the Labour Inspectorate may take immediate measures aimed at averting the danger, provided they shall submit their decision for confirmation by their superior within a period of twenty-four hours.

Article 261
(Jurisdictional scope)

The Labour Inspectorate shall exercise its functions throughout the national territory and in all spheres of activity subject to its supervision, in public, State, mixed public/private and private enterprises and in co-operatives, as well as in national and foreign economic and social organisations that employ a paid workforce.

Article 262
(Professional ethics and secrecy)

1. Officers of the Labour Inspectorate shall be under an obligation of professional secrecy, breach of which shall be punishable by dismissal, without prejudice to the sanctions applicable under the penal law. Officers shall in no event reveal manufacturing, cultivation or trade secrets or, in general, any processes of economic exploitation that may happen to come to their knowledge during the performance of their functions.
2. All sources of denunciations of acts or events that constitute violations of legal or contractual provisions or that point towards shortcomings in an enterprise shall be considered strictly confidential, and Labour Inspectorate personnel shall not reveal that an inspection visit is the result of a denunciation.
3. Labour inspectors cannot have any direct or indirect interest in the enterprises or establishments that are subject to their supervision.
4. Labour inspectors are forbidden, during the course or because of the performance of their duties, from receiving gifts from employers or employees.

Section II Contraventions

Article 263 (Concept)

For the purposes of this law, a contravention is any violation of or non-compliance with the rules of labour law contained in legislation, collective labour regulation instruments, regulations and decisions of the Government, particularly with regard to employment, vocational training, wages, hygiene, health and safety of employees, and social security.

Article 264 (Negligence)

Negligent acts that contravene the labour law shall always be punishable.

Article 265 (Warning notice)

Where offences are found in relation to which it is thought preferable to set a time limit for rectifying them, inspectors may, before imposing a fine, issue a warning notice to the offending parties.

Article 266 (Report of violations)

1. Officers of the Labour Inspectorate shall draw up a report of violations when, during the performance of their functions, they personally and directly detect and prove any violations of the rules which they are responsible for supervising.
2. The efficacy and validity of the report of violations shall depend upon its confirmation by the competent hierarchical superior.
3. After confirmation, the report of violations may not be annulled, stayed or declared without effect, and it shall be used in the proceedings as evidence of the offence, unless there is a subsequent finding of an incurable irregularity or non-existence of the offence, determined following a complaint presented by the party charged within the time limit allowed for voluntary payment.

Section III Sanctions

Article 267 (General sanctions)

1. Fines shall be payable for violations of the rules established in this law and in other labour legislation, and the amounts of these fines shall be calculated as follows:
 - a) When the violation pertains to the workers in general, the applicable fine shall be of between five and ten times the minimum wage, depending on the seriousness of the violation;
 - b) Failure to establish work safety commissions in cases where the law or collective labour regulations require it shall be punishable in the terms of the preceding

subparagraph, and the respective fines shall be doubled in cases where such a commission is not established after the Labour Inspectorate has given notice to this effect;

- c) Failure to observe the legal rules on the employment of foreigners in Mozambique shall be punishable by suspension and a fine of between five and ten times the monthly wage of the foreign employee in respect of whom the offence is found;
 - d) Failure, without justification, of employers or their representatives to appear before the Labour Inspectorate services when called upon to make statements, provide information or deliver or exhibit documents, following the finding of an act that requires such procedures, constitutes a transgression punishable by a fine of between five and ten times the minimum wage;
 - e) The successive commission of the same contravention within a period of one year following the date of notification of the violation report in respect of the last offence constitutes an aggravated transgression and the applicable fines shall be increased to double their minimum and maximum amounts;
 - f) Whenever a higher amount is not applicable by virtue of specific sanctions, the violation of any labour rules shall be punishable by a fine of between three and ten times the minimum wage, for every worker involved.
2. Inspectors shall only have power to impose the minimum amounts of fines. Employers may either obtain discharge by paying the fine voluntarily, or they may appeal to the inspector's hierarchical superior, who may graduate the fine differently, up to the maximum limit of the fine.
 3. Rejection of the notification shall constitute the crime of contempt, punishable in terms of the law.
 4. For the purposes of this article, the minimum wage is considered that which is in force for each area of activity on the date on which the offence occurs.

Article 268

(Special sanctions)

1. Failure to comply with the provisions of articles 197, 198, 202 and 207 shall result in the suspension of the guarantees set forth in article 202 (8), and constitutes a disciplinary offence.
2. Failure to comply with the provisions of articles 202 (6) and 205 (3) shall be punishable by fine, of an amount which shall range from two to ten times the minimum wage.
3. Violation of the provisions of articles 199, 202 (1) and the last part of 209 (1) constitutes a disciplinary offence and shall cause the workers on strike to incur civil and criminal liability in terms of the general law.
4. An employer that violates the provisions of article 203 (1) and (2) shall compensate the employees with an amount equivalent to six times their wage in respect of the duration of the lockout, without prejudice to the fine payable for the offence committed.

CHAPTER X

Final provisions

Article 269 **(Complementary legislation)**

The Council of Ministers shall pass regulations on this law.

Article 270 **(Transitional provisions)**

1. The ministry that oversees the area of labour shall have jurisdiction to resolve labour disputes extra-judicially until the mediation and arbitration centres begin operating.
2. This law shall not apply to acts or events that occurred or were initiated before this law enters into force, namely, with respect to probationary periods, holidays, periods prescription or lapse of rights and proceedings, as well as formalities for the application of sanctions and the termination of employment contracts.
3. For the purposes of new employment contracts, the provisions of article 42 (3) hereof shall apply to small and medium-sized enterprises that are already established, for the first ten years following the entry into force of this law.
4. For the purposes of compensation, individual employment contracts and collective labour regulation instruments signed while Law 8/98 of 20 July was in force shall be subject to the following rules:
 - a) During the first fifteen years following the entry into force of this law, the rules on compensation provided for in Law 8/98 of 20 July shall be applicable to all employment contracts and collective labour regulation instruments signed pursuant to that law for employees covered by the situation of article 130 (3) (a);
 - b) During the first ten years following the entry into force of this law, the rules on compensation provided for in Law 8/98 of 20 July shall be applicable to all employment contracts and collective labour regulation instruments signed pursuant to that law for employees covered by the situation of article 130 (3) (b);
 - c) During the first five years following the entry into force of this law, the rules on compensation provided for in Law 8/98 of 20 July shall be applicable to all employment contracts and collective labour regulation instruments signed pursuant to that law for employees covered by the situation of article 130 (3) (c);
 - d) During the first thirty months following the entry into force of this law, the rules on compensation provided for in Law 8/98 of 20 July shall be applicable to all employment contracts and collective labour regulation instruments signed pursuant to that law for employees covered by the situation of article 130 (3) (d).

Article 271 **(Acquired rights)**

Save for the provision of the preceding article, the rights acquired by employees up to the entry into force of this law shall be safeguarded.

Article 272
(Repeals)

1. Law 8/98 of 20 July, and articles 9 (2) and 16 (2) of Law 18/92 of 14 October, are repealed, except for the provision of article 270 (4) hereof.
2. The provisions of article 9 (2) and article 16 (2) of Law 18/92 of 14 October are also repealed.

Article 273
(Entry into force)

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

Approved by the Assembly of the Republic on 11 of May of 2007

The President of the Assembly of the Republic,

Eduardo Joaquim Mulembwe

Promulgated on

Let it be published.

The President of the Republic,

ARMANDO EMÍLIO GUEBUZA