



REPÚBLICA DE MOÇAMBIQUE

COUNCIL OF MINISTERS

Decree No. 37/2016 of 31 August

Arising from the need to review Decree No, 55/2008 of 30 December, that approves the Regulation governing the Mechanisms and Procedures for Employment of Foreign Nationals, with a view to adjust it to current market development challenges, in the light of article 269 of Law No. 23/2007 of 1 August, the Labour Law, the Council of Ministers Decrees:

Article 1. The enclosed regulation governing the mechanisms and procedures for employment of foreign nationals, which is part of the present Decree, is approved.

Article 2. Decree No. 55/2008 of 30 December and all legislation which contradicts the present regime, is hereby revoked.

Article 3. The present Decree enter into force 90 days from the date of publication.

Approved by the Council of Ministers, on 19th July 2016.

To be published thereof.

The Prime Minister, Carlos Agostinho do Rosário.

**Regulation governing the Mechanisms and Procedures
for Employment of Foreign Nationals**

CHAPTER I

(Object and scope of application)

Article 1

(Object)

The present regulation establishes the mechanisms and procedures for employment of foreign nationals.

Article 2

(Scope of application)

1. The present Regulation governs the employment of foreign nationals by national and foreign employers.
2. The provisions of the preceding paragraph are applicable to shareholders, administrators, directors, managers, proxies, and to representative offices of foreign companies with regard to workers or representatives of such offices.
3. Private employment agencies can not recruit foreign nationals for placement or temporary cession, however, they may recruit same as staff members under legally established terms.
4. The present Regulation is not applicable to employment of foreign nationals by Public Administration institutions.

CHAPTER II

(General conditions for the contracting of foreigners)

Article 3

(General conditions)

1. The foreign worker should have the necessary academic or professional qualifications and his or her admission can only take place on condition there are no nationals with such qualifications or their number is insufficient, except managing partners and proxies.
2. Employers must endeavour to create conditions for the integration of Mozambican workers in positions of greater technical complexity and in as much as in management and administrative positions in the company.

3. Should a need arise to employ a foreign national, the employer should ensure transfer of scientific knowledge or technical skills based on a training and gradual replacement plan by nationals, developed by the employer from the third year of commencement of business.

4. The provisions of the present Regulation do not prejudice the general norms governing the granting of permit for entry and stay of foreign nationals.

CHAPTER III

ARTICLE 4

(Contracting Regimes)

Employment of foreign nationals may occur under the following conditions:

- a) Short term work regime
- b) Quota regime
- c) Authorization regime

CHAPTER IV

(Short term work regime)

ARTICLE 5

(Regime)

1. Short-term work is considered to be work rendered by foreign nationals for periods not longer than 90 consecutive or interspersed days, within a year, including in instances where they are bound by contract with the parent company or its subsidiaries in other countries.

2. Short term work regime is subject to payment of a fee.

3. Short term work regime is aimed at performing timely and unforeseen work requiring highly scientific know-how or specialized skills.

4. Short term work does not fall within, nor is subsidiary to the quota and authorization regimes.

ARTICLE 6

(Formalities)

1. The employer or its representative must submit, before the foreign national entering the national territory, to the entity responsible for labor matters in the province where the applicant is going to develop his activity, a communication in duplicate containing:

- a) Name and address of the applicant;
 - b) Identification of the foreign national and his duty;
 - c) timeframe, lifespan of his work contract.
2. Together with the application the following must be presented::
- a) Motivation letter;
 - b) certified Identity document of the foreign national to be employed;
 - c) certified copy of the trading license or equivalent document;
 - d) Proof of payment of a fee to the equivalent of one minimum wage in force in the sector of activity the company is involved.

ARTICLE 7

(Reply)

1. Compliance of the Notice should be verified and communicated within five working days.
2. The Notice can not be accepted whenever it is found not to be in compliance with the nature and requirements of the short term work regime in terms of the present regulation and whenever such is aimed at circumventing the recourse to the quota and authorization regimes.

CHAPTER V

(Quota Regime)

ARTICLE 8

(Conditions for notice of admission)

1. The employer may have at its employ foreign nationals, suffice a notice to the Minister responsible for labour or such other entity he delegates, within fifteen days from the date of his entry in Mozambique.
2. Notice of admission whose form is enclosed herewith should indicate the degree of fulfillment of the quota.
3. In calculating the number of foreign nationals to be employed under the quota regime, rounding up of numbers is not permitted.
4. Small companies may employ one foreign citizen, even if the total number of national workers is less than ten.

SECTION 1

ARTICLE 9

(Determination of the quota)

1. The employer, based on the classification of the company, may have employ foreign nationals, in accordance with the following quotas:
 - a) Five percent of the total workforce, for large companies;
 - b) Eight percent of the total workforce, for medium-sized companies;
 - c) Ten percent of the total workforce, for small-sized companies.
2. For the purposes of the preceding paragraph, it is considered as:
 - a) Large company, one employing more than one hundred workers;
 - b) Medium-sized company, one employing more than ten and up to a maximum of one hundred workers;
 - c) Small-sized company, one employing up to ten workers.
3. For purpose of collating the quota, the number of Mozambican workers on the payroll is considered.

ARTICLE 10

(Formalities)

1. The notice should be submitted to the entity responsible for labour at provincial level where the foreign national is developing his activity, together with the following documents:
 - a) two copies of the form whose model is attached hereto, communicating the admission of the foreign citizen and the degree of fulfillment of the quota;
 - b) three copies of the employment contract;
 - c) certificate of academic qualifications or technical skills, together with the corresponding certificate of equivalence issued by the entity responsible for education regarding the level achieved overseas or document proving his work experience;
 - d) Quittance Certificate issued by the entity responsible for finance, valid for 30 days from the date of issue;
 - e) Payroll for the calendar year, detailing the nationalities of the workers;
 - f) certified copy of passport or Residence Identification Document for foreign nationals(DIRE);

g) Proof of payment of a fee corresponding to five minimum wages in force in the sector of activity the company is involved.

ARTICLE 11

(Reply)

1. Compliance of notice should be verified and communicated within five working days.
2. Notice can be rejected whenever it is found not to be in compliance with the nature and requirements of the quota regime outlined in this regulation and in instances where it is aimed at circumventing the recourse to the authorization regime.

SECTION II

Contracting under investment projects approved by Government

ARTICLE 12

(Conditions)

1. In investment projects approved by the Government which provide for the employment of foreigners in higher or lower percentage than that provided for in the quota regime, a work authorization is not required, suffice a notice within 15 days from the date of entry of the foreign national into the country.
2. The provision of the preceding paragraph does not prejudice the special regime applicable to industrial free zones.

ARTICLE 13

(Formalities)

The notice for employment of foreign nationals in investment projects approved by the Government is effected in terms of article 10 of this regulation.

ARTICLE 14

(Burden of proof)

The employer should submit together with the notice, a copy of the investment project approved by the Government that states the number of foreign nationals to be employed.

ARTICLE 15

(Reply)

The compliance of the notice shall be verified in terms of article 11 of the Regulation.

CHAPTER VI

Work authorization regime

SECTION I

Requirements and formalities for work authorization

ARTICLE 16

(Conditions for work authorization)

1. Employment of foreign nationals is preceded by an application to the Minister responsible for labour or to whom he entrusts such powers.
2. The employment of a foreign worker, who should have the required academic or professional qualifications, may only take place provided there are no national citizens with similar qualifications, or that they are insufficient in number.
3. Work authorization for foreign nationals is further conditional on proof that the provisions of this Regulation have been complied with.

ARTICLE 17

(Formulation of application and decision timeframe)

1. The application referred to in Paragraph 1 of the preceding article should be submitted to the entity responsible for labor matters in the province where the foreign national will develop his activity.
2. The application should, in terms of law, be processed within a maximum period of fifteen working days from the date of reception of the application by the competent entity.

ARTICLE 18

(Details of the Application)

1. The application for authorization for admission of foreign nationals whose sample of the form is attached hereto, should contain:
 - a) the name, office address and field of activity of the applicant [employer];
 - b) the identification of the representative of the employer;
 - c) the identification of the foreign national for whom the authorization is requested, his category, duties or position to be held or functions to be performed;
 - c) motivation for the application.
2. The following should be attached to the application:
 - a) three copies of the employment contract;

- b) academic qualification or technical skills certificate of the foreign national to be employed together with the certificate of equivalence issued by the entity responsible for education regarding qualifications acquired overseas or and document proving professional experience;
 - c) quittance certificate issued by the entity responsible for field of Finance valid for 30 days from the date of issue;
 - e) statement drawn from the trade union representative or shopsteward committee or sectoral trade union;
 - f) certified copy of trading license or related document;
 - g) updated Payroll of staff members for the calendar year, with details of the citizenship of the workers;
 - h) proof of payment of a fee to the equivalent of ten minimum wages in force in the sector of activity the company is involved.
3. further, work authorization is subject to confirmation that the company is not in arrears in its contribution towards the Compulsory Social Security System, by producing a quittance certificate issued by the entity responsible for management of the system, valid for 30 days from the date of issue, and at the request of the entity responsible for labour in the province.
4. The statement from union representative, shopsteward committee or sectoral trade union, should reflect on the pertinence or otherwise of the application for employment of a foreign national.

SECTION II

Specialized Assistance

ARTICLE 19

(Specialized assistance work)

1. Contracting of foreign nationals for employment in non-governmental organizations, scientific research, teaching, and other specialized technical assistance areas will be subject to approval by the Minister responsible for labor, upon consultation with the relevant entity responsible for the sector concerned.
2. For a Non-governmental Organization, the employment of a foreign national to perform the duty of representative requires a referral statement regarding the opinion of the entity that authorized the commencement of the activities.
3. For the purposes of the preceding paragraph, the application should be organized in accordance with Article 18 of this Regulation, and be accompanied by a referral statement from the entity responsible for the sector concerned.

CHAPTER VII

Employment Contract

ARTICLE 20

(Form and content of contract)

1. The Employment contract, dated and signed by both parties, should comprise the following clauses:

- a) Identification of both parties;
- b) Professional category, duties or agreed activities;
- c) Work place;
- d) Duration of Contract;
- e) Remuneration, form and terms of payment;
- f) Date of commencement and ending of the contract.

2. Any amendment or change in employment conditions should be communicated to the entity responsible for labour in the province where the foreign national is developing his activity, by attaching the relevant signed addendum to the employment contract.

ARTICLE 21

(Duration of contract)

1. The employment contract for a foreign national is entered into for a maximum period of two years, renewable by submitting a new application.
2. Regardless of the number of renewals, an employment contract for a foreign national can not be turned into a contract for an indeterminate period.

ARTICLE 22

(Occupation Charter)

1. In instances where an occupation charter is required, the employment contract is only valid against presentation of the charter.
2. The employment contract entered into in contravention of the foregoing is null and void.
3. The employment contract that has been declared null and void or cancelled, has all the effects of a valid contract, should it be executed and during the time it is executed.

ARTICLE 23

(Termination of contract)

In the event of terminating the employment contract, on whatever grounds, the employer must notify the entity responsible for labour and the immigration services in the province where the foreign national was developing his activity, in writing, within 15 days from the date of termination.

CHAPTER VIII

Transfer of foreign worker

ARTICLE 24

(Transfer)

1. A foreign worker may be transferred temporarily or definitively.
2. It is considered temporary transfer, in instances where the deployment of the worker is aimed at attending to timely and specific work programs and does not cover all the lifespan of the contract.
3. It is considered definitive, in instances where his transfer is for the entire lifespan of the contract.
4. The employer may temporarily transfer the worker to another work place, whenever exceptional circumstances related to administrative or production organization dictate, and should notify the entity responsible for labour in the Province where the foreign national is developing his activity.
5. Definitive transfer of the worker is only allowed, unless otherwise stated in the contract, in instances where there is a complete or partial change of the employer or premises where the affected employee performs his duties.
6. Definitive transfer of the worker to another work place, outside his place of residence, is subject to mutual agreement.
7. Definitive transfer arising from partial change of the employer or premises, can only be carried out in instances where there is a quota in the intended destination.
8. The requirement for a quota in the representative or branch of the employer in the province where the worker is transferred to, does not affect those without branches at the place of destination and the activities of national nature or whose execution extends to many provinces.

ARTICLE 25

(Transfer Notice)

1. The transfer of a foreign worker should be communicated to the entity responsible for labour in the province where the worker has been contracted and the employer should keep copies of the process at the place where the employee performs his duties.

2. The notice should contain, other than the address of the new work place and period of transfer, the following:

- a) a certified copy of compliance of contracting or work authorization procedures;
- b) Addendum to the work contract, in instances where there is a definitive transfer, in terms of number 2, article 20 of this Regulation.

CHAPTER IX

Inspection and penalties

Article 26

(Inspection)

The General Labour Inspectorate is responsible for enforcement of the provisions of the present Regulation.

ARTICLE 27

(Penalties)

1. Failure to comply with the provisions governing the regime for contracting foreign workers is punishable by imposing a suspension and a fine ranging from five to ten monthly salaries earned by the foreign worker to whom the contravention is related to.

2. In calculating the fine, should the employer fail to disclose the salary earned by the illegal worker, the General Labor Inspectorate shall apply a salary paid to the corresponding category or activity of the foreign worker concerned, based on the pay scale in force in the company.

3. Repeated offence within a space of one year from the date of notice of the latest contravention, amounts to aggravated offense and the applicable fines increased to a double of their minimum and maximum.

4. An employer who declares to employ national citizens with a view to increase the quota of foreign nationals and thereafter fails to employ, will be punished by a suspension and a fine ranging from five to ten monthly salaries earned by the foreign worker to whom the contravention is related to.

5. An employer who terminates work contracts of Mozambican citizens should, likewise, terminate the contracts of foreign workers in an equivalent number to the residual percentage of the quota arising from the laying off of Mozambican citizens.

6. The suspension of the worker referred to in paragraph 4 of this article, can only be uplifted after effectively contracting local workers to fill the vacancies and payment of a fee the equivalent of five minimum salaries in force in the sector of activities.

7. The Minister responsible for labour revokes the administrative provision that allowed the employment of the foreign worker, in the following cases:

- a) ill-treatment by a foreign worker, namely amounting to serious physical assault against a national worker or foreigner at the workplace;
- b) Serious offence against a national worker or foreign worker based on race, colour of skin, or other serious discriminatory attitudes that are an attempt on the honour, dignity, good name and image, at the workplace.
- c) Serious violation of special rights accorded to working women;
- d) Sentencing of a foreign national for a mandatory prison term.

ARTICLE 28

(Revocation process)

1. Whenever there are sufficient grounds that give rise to cancel an act that allowed the foreign worker to be contracted, the General Labour Inspectorate or its Provincial Office, opens a docket containing the relevant evidences for decision-making.
2. The foreign worker concerned is notified regarding the evidences against him to defend himself, if he so wishes, within eight days, and he should acknowledge receipt of the accusation by affixing his signature.
3. Should he refuse the notice, such must be confirmed by a minimum of two witnesses.
4. The General Labour Inspectorate or its Provincial Office, if it so wishes, may grant a hearing to the foreign worker concerned and the witnesses he considers relevant.
5. After the period referred to in paragraph 2 of this article has lapsed, with or without counteraccusation from the foreign worker, the process is submitted to the Minister responsible for labour for decision within a maximum period of thirty days.
6. Revocation of an act should duly be motivated and communicated to the foreign worker, or should there be difficult in tracing him, through his employer who may object within five days or litigiously appeal the decision within ten days.
7. Both the objection and the litigious appeal have a returnable effect.

ARTICLE 29

(Application of emoluments)

The revenue arising from the payment of fees in terms of the present Regulation shall be divided as follows: 60% to the Treasury and 40% to cover administrative expenses related to the handling of processes in the relevant area.
