

GLM

Global Vision, Local Experience

August 2012



GLM - Gabinete Legal Moçambique

Josina Correia

Lawyer

josina.correia@glm-advogados.com



GLM - Gabinete Legal Moçambique

Pascoal Bie

Intern

pascoal.bie@glm-advogados.com

HIRING FOREIGN WORKERS IN MOZAMBIQUE

I. INTRODUCTION

Law no. 23/2007 of 1 August (the "Employment Law"), which defines the general principles and establishes the legal rules applicable to individual and collective subordinate employment relationships in respect of remunerated work done by hired employer, provides the possibility of hiring foreign workers by Mozambican employers or employers established in Mozambique.

Work done under employment contracts by foreigners in Mozambique is governed by the principle of equality. However, when there are substantial grounds to do so, the Mozambican State may still reserve the performance of certain activities to Mozambican citizens.

Under article 33 (3) of the Employment Law, the legal framework for hiring of foreign workers set out in that Law is regulated by specific legislation. The general rules are set out in the Regulation approved by Decree no. 55/2008 of 30 December (Regulation on Mechanisms for Hiring Foreign Citizens) - the "Regulation", while the special rules are set out in Decree no. 63/2011 of 7 December (oil and mining) and Decree-Law no. 2/2011 of 19 October (civil service).

Under the Employment Law and the Regulation, Mozambique has four different schemes for hiring foreign workers:

(a) Hiring under the employment authorisation scheme (outside the quota);

(b) Hiring under the quota scheme;

(c) Hiring under investment projects approved by the Government;

(d) Hiring under the short term employment scheme.

II. THE SYSTEMS FOR HIRING

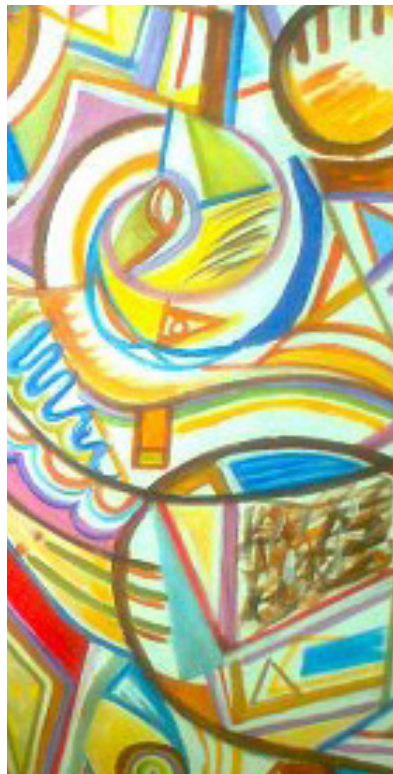
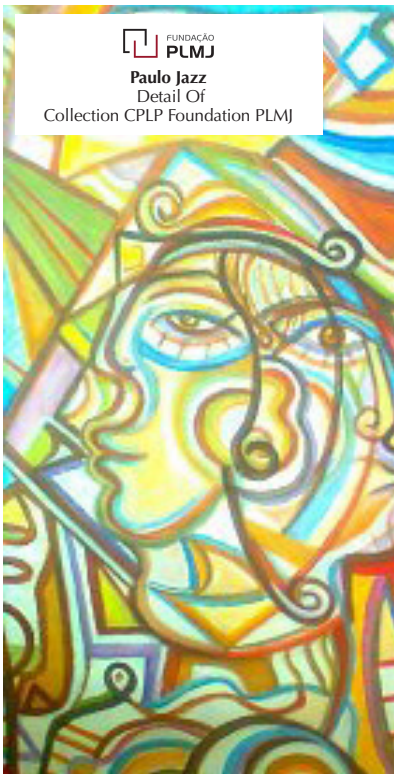
1. Hiring under the employment authorisation scheme

Hiring under the employment authorisation scheme is only allowed when there are no Mozambican citizens with the necessary qualifications to fill the vacancy in question or when, if such professionals do exist, there are not enough of them to meet demand in the employment market.

The application for the employment authorisation must be submitted to the appropriate provincial employment directorate and is addressed to the minister responsible for the area of employment. The Regulation establishes that the official decision must be issued within fifteen business days of receipt of the application by the authority in question.

2 Hiring under the quota scheme

To better understand this hiring scheme, we must bear in mind the place the employer actually occupies in the classification given to companies by the Employment Law on the basis of the employer's respective size. The Employment Law and the Regulation draw a distinction between small,



medium and large companies, and the three types of company are defined based on the number of employees that they have.

The legislation defines small companies as those with a maximum of ten employees and medium companies as those with a minimum of eleven and a maximum of one hundred employees. Finally, large companies are defined as those with more than one hundred employees.

In determining the exact number of foreign workers to be hired, the number of employees to be taken into account is the average number of employees in the previous calendar year.

In the first year of activity of the company, the number of employees to be taken into account is the number at the date the company begins its activities. The quotas for hiring foreign workers are:

- (a) Five per cent of the total number of employees in large companies;
- (b) Eight per cent of the total number of employees in medium companies;
- (c) Ten per cent of the total number of employees in small companies.

It should be noted that, even if the total number of Mozambican employees is fewer than ten, small companies may

employ one foreign citizen, which is understandable given that the strict application of the mathematical requirements for small companies would be impracticable.

The employment contract is a condition for the issue of the residence visa, which in turn serves as the basis of the application for the residence authorisation. For this reason, it is advisable for the employment contract with the foreign citizen to be made before the foreign worker enters Mozambique.

3. Hiring under investment projects approved by the Government

Article 31 (5) of the Employment Law regulates the hiring of foreign citizens under investment projects approved by the Government, when it is necessary to hire one or more foreign workers. For these cases, the employment authorisation is not required. The employer simply needs to inform the ministry responsible for employment about the hiring of the employee or employees in question within fifteen days of their entry into the country. The exemption from the authorisation requirement by the authorities that oversee the employment area is justified

by the fact that the hiring of foreign citizens will have been authorised by the issue of the respective investment project authorisation.

4. Hiring under the short term employment scheme

It may be the case that employers wish to admit workers to work for a period of less than thirty days. The Regulation addresses this type of situation and there are special rules to govern it.

Under article 12 (1) of the Regulation, short term employment is defined as any work that does not exceed thirty days, whether consecutive or not, when done by foreign citizens, even if they are bound by a contract with the parent company or its representatives in another country. Short term employment does not require an employment authorisation, which means that work done by foreign workers in Mozambique for periods shorter than thirty days is unrestricted.

In case of absolute necessity, the short term employment period can be extended, as long as it never exceeds ninety days a year. For this purpose, it is only necessary to demonstrate the existence of reasons that justify such extension.

III. EMPLOYMENT CONTRACTS WITH FOREIGN CITIZENS

Employment contracts with foreign citizens must be in writing and must expressly include:

- (a) Identification of the parties;
- (b) Duties or activity agreed;
- (c) Place of work;
- (d) Duration;
- (e) Remuneration and method of payment; and
- (f) Employment start and end date.

The employment contract is a condition for the issue of the residence visa... For this reason, it is advisable for the employment contract with the foreign citizen to be made before the foreign worker enters Mozambique.

Any alteration to the work conditions must be communicated to the entity that oversees the employment area in the province where the foreign citizen is working, and the respective apostille must be signed by the employer and by the worker in question.

Any alteration to the work conditions must be communicated to the entity that oversees the employment area in the province where the foreign citizen is working, and the respective apostille must be signed by the employer and by the worker in question.

As to duration, employment contracts made with foreign citizens may only be fixed-term contracts and may never be for more than two years, renewable upon presentation of a new application in cases of hiring under employment authorisation. The renewal of contracts made under the quota system naturally does not require any application, and can be done automatically. It is important to note that employment contracts made with foreigners may not be converted into contracts for an indefinite period.

IV. SUPERVISION AND SYSTEM OF PENALTIES

It is the role of the General Inspectorate of Employment to supervise compliance of the rules on hiring foreign workers and non-compliance will result in the application of penalties.

These sanctions vary in accordance with the seriousness of the breach of the rules. The criteria for the application of the penalties are laid down in the Employment Law and in the Regulation.

V. SPECIAL RULES ON HIRING FOREIGN WORKERS IN MOZAMBIQUE

In this context, it is also important to highlight the special rules on hiring foreign citizens to work in the oil and mining sectors, which are contained in the regulation approved by Decree no. 63/2011 of 7 December and also the diploma on hiring foreign citizens to work in the civil service (regulated by Decree-Law no. 2/2011 of 19 October).

One important aspect of the rules on hiring of foreigners to work in the oil and mining sectors is the fact that those rules establish the general principle that employers must use their best endeavours to create the conditions to bring qualified Mozambican workers into positions involving greater degrees of technical complexity and into management and directorial positions in the company (article 3 (1) of Decree no. 63/2011).

Foreign citizens can be hired to work in the oil and mining sectors under the quota system established in the Employment Law and in the regulation approved by Decree no. 55/2008 described above. The rules on short term employment in these sectors are a special case in that, under article 12 of the regulation approved by Decree no. 63/2011, the maximum duration of short term employment is one hundred and eighty days, whether or not they are consecutive, in the same calendar year. This rule applies to work done by foreign citizens, even if they are bound by a contract with the main company or a concessionaire, operator, subcontractor or any of their representatives based in another country. As regards the hiring of foreigners under the employment authorisation scheme, the rules for the oil and mining sectors are, in general terms, similar to the general rules for hiring of foreign citizens.

This newsletter was prepared by a multidisciplinary team made up of mozambican lawyers from GLM – Gabinete Legal Moçambique and Portuguese lawyers from PLMJ. This team was brought together under an agreement for international cooperation and membership of PLMJ International Legal Network, in strict compliance with applicable rules of professional ethics.
