

## NEW REGULATIONS ON THE MECHANISMS AND PROCEDURES FOR HIRING FOREIGN NATIONALS<sup>1</sup>



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### I. BACKGROUND AND CHANGES FROM DECREE NO. 55/2008

Decree no. 37/2016 of 31 August (which approves the “Regulations on the Mechanisms and Procedures for Hiring Foreign Citizens”) comes into force in 2016 and repeals Decree no. 55/2008 of 30 December (“Regulations in Relation to the Mechanisms and Procedures for Hiring Foreign Nationals”). The aim of the new Decree is to adapt the Mozambican rules under Law no. 23/2007 of 1 August, the Employment Law, to the current challenges raised by development of the market, and it provides for the possibility of hiring of foreign nationals by Mozambican employers or employers established in Mozambique.

Decree no. 37/2016 contains a number of significant changes to the previous rules. Highlights among these changes include amendments to the procedural deadlines, an increase in the formalities to be observed when hiring foreign nationals and provision for the application of new penalties to be imposed in the case of any infringement by the employer or by the foreign worker that is hired. There is also a new Chapter (“Chapter VIII”) governing the transfer of the foreign worker, and a new article 28 (“Revocation process”).

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<sup>1</sup> Decree no. 37/2016 of 31 August 2016: Regulations on the Mechanisms and Procedures for Hiring Foreign Nationals.

**II. SCOPE OF THE REGULATIONS ON THE MECHANISMS AND PROCEDURES FOR HIRING FOREIGN NATIONALS**

**Scope** - These regulations establish the mechanisms and procedures to be observed when entering into contracts of employment with foreign nationals.

The same rules apply whether the foreign national is being hired by a Mozambican employer or by a foreign employer.

The rules introduced by the new regulations cover administrators, directors, managers, representatives and entities representing foreign companies, in relation to the workers or delegates of their representations.

Article 2(4) of the new regulations expressly excludes the hiring of foreign nationals by public administration institutions from the scope of its application. This type of hiring is governed by Decree-Law no. 2/2011 of 19 October.

Under the new regulations, there are four ways in which foreign nationals can be hired in Mozambique:

- a) Hiring under the short-term employment system;
- b) Hiring under the quota system;
- c) Hiring in investment projects approved by the Government;
- d) Hiring under the work authorisation system.

**III. FORMS OF HIRING FOREIGN NATIONALS**

**a) Short-term employment**

Article 5(1) of the new Regulations provide that short-term employment is employment that does not exceed 90 days per year, whether consecutive or not, when this work is done by foreign nationals even if they are not bound by contract to the main employer or its representatives based in another country.

This is an important change to the duration of short-term employment, which increases from 30 days under the old rules to 90 days under the new ones. However, under article 13(1) of previous Regulations, the period of short-term employment could be extended, for well-founded reasons provided by the employer, up to a maximum of 90 days per year.

All short-term employment is subject to payment of a fee.

The new regulations also establish that short-term employment cannot be part of or ancillary to other forms of hiring, including hiring under the quota system and work authorisation system.

When it comes to the formalities, this type of hiring sees a number of changes arising from the greater amount of information to be provided by the employer or its representative before the foreign national enters Mozambique. This more detailed information has to be sent in duplicate to the body that supervises the area of employment in the province where the foreign national will work. The following information must be provided:

- (a) Name and address of the applicant entity;
- (b) Identification of the foreign national and his or her position;
- (c) Period and date of start of employment;
- (d) Grounds;
- (e) Certified document identifying the foreign national to be hired;
- (f) Certified photocopy of the permit or licence, or other equivalent document;
- (g) Proof of payment of the fee corresponding to one minimum salary in force in the sector of activity where the foreign national will work.

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**b) Hiring under the quota system**

The Employment Law distinguishes between small, medium-sized and large companies, and these three types of companies are distinguished according to the number of people that the company employs.

In determining the exact number of foreign nationals to be hired, the number of workers to be considered is the average of those existing in the company over the previous calendar year.

In the first year of activity of the company, the number of workers to be taken into account will be the one that exists on the date of start of activity. The quotas for hiring foreign workers are as follows:

- (a) 5% of the total number of workers in large companies;
- (b) 8% of the total number of workers in medium-sized companies;
- (c) 10% of the total number of workers in small companies.

In the case of small companies, even if the total number of Mozambican workers is below 10, they may employ one foreign national.

The communication of the hiring of a foreign national under the quota system must respect the applicable formalities.

The period for response, which has been increased compared with the previous Regulations (which provided for a response immediately after receiving the communication), is five working days.

**c) Hiring in investment projects approved by the Government**

Articles 12 to 15 of the Regulations govern the hiring of foreign nationals under investment projects approved by the Government in which it is necessary to hire one or more foreign workers.

The only change in respect of this type of hiring is that it no longer appears as a separate form of hiring, but is now inserted in the Chapter on hiring under the quota system ("Chapter V").

**d) Hiring under the work authorisation system**

Hiring under the work authorisation system is only allowed when there are no Mozambican citizens with the qualifications necessary to fill the vacancies in question or when, even if such professionals do exist, they are in such small numbers that they are unavailable in the labour market.

The application for work authorisation must be submitted to the Minister responsible for the area of employment, or to the bodies to which the Minister delegates this responsibility.

The Regulations provide that the official response must be sent within 15 working days of receipt of the application by the competent body.

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**IV. THE CONTRACT OF EMPLOYMENT FOR FOREIGN NATIONALS**

Employment to be made with the foreign national. This issue is addressed in Chapter VII of the Regulations.

The Regulations provide that the contract of employment to be made with the foreign national must be in writing and contain the following clauses:

- (a) Identification of the parties;
- (b) Professional category, duties or activities agreed;
- (c) Place of work;
- (d) Duration of the contract;
- (e) Salary, and form and frequency of payment;
- (f) Contract start and end date.

Any change to the conditions of employment must be communicated to the body that supervises the area of employment in the province where the foreign national is working. Any amendment or addendum to the contract of employment must be signed by the employer and the worker.

Any contract of employment with foreign nationals may only be made for a fixed-term and this term may never exceed two years, renewable upon presentation of a new application.

Foreign nationals' contracts of employment cannot be converted into permanent contracts.

Another change introduced by the new Regulations is the fact that they include a new chapter ("Chapter VIII") entitled Transfer of the Foreign Worker. This chapter provides that foreign workers may be transferred on a temporary or definitive basis.

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This new chapter goes on to provide that the temporary transfer of foreign workers who have been hired may only take place when the aim of the transfer is to respond to occasional and specific work programmes. It does not cover the whole period the contract is in force.

In contrast, a definitive transfer can only take place, except if the contract provides otherwise, in cases of a complete or partial change in the employer or establishment where the foreign worker works.

Notice of any transfer of foreign worker must be given to the body that supervises employment in the area where the worker was hired and the employer must maintain copies of respective process on file at the place where the foreigner goes to work.

The notice must contain the following information:

- (a) Precise address of the new place of work;
- (b) Duration of the transfer;
- (c) Copy of the statement of compliance of the hiring work authorisation;
- (d) Addendum to the contract in the case of a definitive transfer.

**V. SUPERVISION AND FRAMEWORK OF  
PENALTIES**

The General-Inspectorate of Employment is responsible for ensuring compliance with the provisions of the regulations under analysis.

The penalties vary according to the seriousness of the infringement, and the criteria for application of the penalties are set out in the Employment Law and in the new Regulations.

New penalties have been introduced in article 27(4), (5) and (6) of the Regulations, and provision is also made for the Minister responsible for the area of employment to revoke any administrative act allowing the hiring of foreign workers in the event of:

- (a) Mistreatment committed by the foreign worker;
- (b) Serious injury against a Mozambican or foreign worker;
- (c) Serious violation of the special rights of female workers;
- (d) Sentencing of the foreign worker to a long term in prison.

Other changes introduced by the new Regulations:

- (a) The process of revoking the act that allowed the hiring of the foreign worker, which can be carried out by the Inspectorate-General of Employment for its provincial delegation;
- (b) The destination of the revenue that comes from the payment of the fees provided for in the Regulations: 60% goes to the public treasury and 40% goes towards dealing with the procedure in the respective area.

Finally, it should be noted that the new Regulations on the Mechanisms and Procedures for Hiring Foreign Nationals comes into force on Tuesday, 29 November 2016.

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