

New regulation for hiring of foreigners in Mozambique

An overview of the new Foreign Hiring Regulation approved by the Council of Ministers by Decree No. 37/2016 on 31 August 2016.

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The new regulation providing the mechanisms and procedures to apply to the hiring of Foreign Citizens (Foreign Hiring Regulation) was approved by the Council of Ministers by Decree No. 37/2016 on 31 August 2016. This new Foreign Hiring Regulation will be implemented on 29 November 2016 and revokes the previous regulation, which was approved by Decree No 55/2008 on 20 December 2015.

Although some of the changes introduced in this new Foreign Hiring Regulation may be thought of, from a theoretical point of view, as largely irrelevant, we believe that they will have a major impact practically.

In general

This Foreign Hiring Regulation applies to the hiring of foreign citizens by national or foreign employers, with the exception of embassies, which have been excluded from this decree. Despite this exclusion, it is our opinion that embassies and co-related entities will continue to be governed by this Foreign Hiring Regulation, namely as to what concerns workers outside the context of diplomatic and consular relations.

The private employment agencies can no longer hire foreigners on behalf of other employees (for instance, the transfer of a worker, whether temporary or otherwise); such agencies are only allowed to hire employees for themselves (expressly under the terms of this Foreign Hiring Regulation).

It is clear that this Foreign Hiring Regulation shall not apply to the hiring of foreign workers for the Public Administration Institutions.

Another innovation, with a great practical impact, is the need to prove (i) that the employee has the requisite academic or professional qualifications for the job and (ii) that there are no other suitably qualified local employees for that position.

Evidence in support of this will be the provision of a certificate of qualifications and/or the certificate of equivalence, when the latter has been issued in a foreign country.

Furthermore, the employer will be obliged to ensure that the foreign employee, after gaining three years of work experience, effects a knowledge transfer to the local employee in order to engineer the foreign employee's replacement by the local employee. Employers will need to put in place processes to enable/support this transfer.

Employment contracts will need to refer to the frequency of the foreign employee's salary payment.

This Foreign Hiring Regulation shall apply to all procedures concerning the transfer conditions of any foreign employee (these procedures shall no longer be governed by labour laws).

Another important provision in this Foreign Hiring Regulation is that the termination of any local employee employment contract will lead to the termination of a corresponding number of foreign employee employment contracts (as a result of the reduction of hired Mozambican workers).

Short-term employment contract regime - key amendments

Any short-term employment contract may not exceed 90 days per year (the precedent regulation stated a limit of 30 days renewed).

Any hire implies the payment of taxes.

The deadline for hiring procedure approvals (whether affirmative or negative) will be five business days of the approval of the short-term contract (in the previous regulation such decision was immediately provided).

Quota Regime - key amendments

Under this new regime, hiring procedures (including the respective communication to the competent authorities) are subject to the relevant foreign worker's arrival date in the country, while the previous regulation referred to the effective hiring date.

To determine the "quota", the employer should present a staff plan including information on employee start dates; meaning that any employer just starting up a business or wishing to start a business should be registered with the Labor Ministry otherwise it will not be permitted to hire foreign employees.

On the date the process is submitted to the competent authorities, the employer is obliged to present an academic qualifications certificate/the professional qualifications certificate and a certificate of equivalence (if the latter has been issued abroad). This procedure will compel the employer to prove that the foreign employee has the required qualifications for the proposed job, unlike the national employee.

The certificate proving that the employer has no debt to the State is valid for 30 days following its issuance date; after which the certificate will be considered "expired" and therefore will not be accepted for the purpose.

The employer will no longer be responsible for requesting from the Social Security National Institute (INSS) the certificate stating that it has no debt to INSS. This is now the responsibility of the Ministry of Labor.

The deadline for any decision regarding the approval request of a “quota-regime” will be five business days from the date the request is submitted to the competent authorities (the previous regulation worked off the date of immediate decision).

Work Permit regime

This Foreign Hiring Regulation introduces some changes as to what concerns the documents to be provided along with any hiring application, such as, for instance, a copy of the business license “alvará”. However, these changes will not have a great practical impact.

Important note: The Foreign Hiring Regulation shall not apply to the hiring of foreign citizens in the oil and gas and mining sectors. These sectors will continue to be governed by specific legislation.

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