



HIRING OF FOREIGNERS IN MOZAMBIQUE

- REGULATORY REGIMES AND PRACTICES -

REFERENCE FOR INVESTORS

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Agency for Promotion of Investment and Exports (APIEX)

Republic of Mozambique

Acknowledgement

This document has been prepared as a reference material for foreign and domestic companies or individuals considering hiring foreigners to work in the Republic of Mozambique, covering the laws and regulations related thereto, and prepared by the Project for Enhancing Capacity of Investment Promotion and Facilitation sponsored by Japan International Cooperation Agency (“JICA”), for and in consultation with the Agency for Promotion of Investment and Exports (APIEX). The legal contents (Chapters 1, 2 and 3) are mainly contributed by JLA Advogados (“JLA”), and the Appendices are mainly prepared by the legal team of the JICA Project.

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PREFACE

Mozambican Government maintains liberal investment regulations based on Law on Investment (no.3/1993, of June 24th) and Regulation of the Investment Law (Decree no.43/2009, of August 21st), by providing non-discriminatory treatment and allowing 100% ownership for foreign investors for most of the sectors. On the other hand, as being a developing country, the government is keen to increase employment opportunities for nationals and strengthen capacity of national human resources.

The laws and regulations for hiring foreign nationals have been enacted with the aim of protecting the national workforce, ensuring the availability of jobs for them, while limiting employment of foreigners to those positions with levels of technical and professional skills and qualifications which are either nonexistent or insufficient in the country.

Historically, the main instrument used by the Mozambican Government to achieve foreign investment promotion balanced with national employment, was the hiring of foreign employees through the quota mechanism, which is still in use at present. In the present context, it is fundamental that the regime of hiring foreign labour allows for certain flexibility but at the same time does not compromise the structural principle of protecting the local labour force.

This document is prepared to provide the current regulatory framework for hiring of foreign nationals, as a reference mainly for foreign investors considering employing foreigners in their projects in Mozambique.

Director General

Agency for Promotion of Investment and Exports (APIEX)

Note for Legal Reference

This document has been prepared with reference to the laws and regulations in force as of December 2018, as listed below.

- (i) Constitution of the Republic of Mozambique (CRM/2004);
- (ii) Law no. 23/2007, dated August 1st – “*Labour Law*”;
- (iii) Law no. 3/93, dated June 24th – “*Law on Investment*”;
- (iv) Decree no. 37/2016, dated August 31st – “*Regulation on the mechanisms and procedures for hiring foreign nationals*”;
- (v) Decree no. 63/2011, dated October 7th – “*Regulation for hiring foreign nationals in the Petroleum and Mining Sectors*”;
- (vi) Decree no. 43/2009, dated August 21st – “*Regulation on the Investment Law*”;
- (vii) Decree-Law no. 2/2011, dated October 19th – “*Regulation for hiring foreign nationals to render services in the Mozambican Public Service*”;
- (viii) Decree no. 75/99, dated October 12th – “*Regulation for hiring foreign nationals in the industrial Free Zones*”; and
- (ix) Decree-Law no. 2/2014, dated December 2nd – “*Special contractual and legal provisions specifically applicable to the Liquefied Natural Gas Project in Areas 1 and 4 of the Rovuma Basin*”.

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1. GENERAL FRAMEWORK FOR HIRING FOREIGN NATIONALS IN MOZAMBIQUE

The hiring of foreign labour in Mozambique can be accomplished through different legal regimes which vary according to the justification presented for the need for hiring.

Under the Legal Regime¹ applicable to the hiring of foreign labour force currently in effect, there are 4 (four) legal mechanisms to consider for the establishment of an employment relationship with foreign employees, namely:

- ✓ Hiring under the Short-Term Regime;
- ✓ Hiring under the Quota Regime;
- ✓ Hiring under the Investment Project Regime (which is separate from Quota Regime); and
- ✓ Hiring under the Work Authorization Regime.

In addition to the foreign labour contracting mechanisms mentioned in the previous paragraph, the following special contracting regimes, which apply to certain regions or certain sectors of activity, must also be taken into account:

- ✓ Contracting regime applicable to Special Economic Zones and Industrial Free Zones;²
- ✓ Contracting regime applicable to the Petroleum and Mining sectors;³ and
- ✓ Contracting regime applicable to the Liquefied Natural Gas Project in Areas 1 and 4 of the Rovuma Basin.⁴

Accordingly, the legal regime established in Decree no. 37/2016 of August 31st applies to the hiring of foreign labour, except the workforce hired to operate in the Rovuma Basin Gas Projects, in the Economic Zones, in the Industrial Free Zones and in the petroleum and mining sectors, which are subject to a specific regime, as explained above.

1.1 SHORT-TERM PERMIT

The Short-Term Employment Contract allows the foreign worker to work in Mozambique for a maximum period of 90 (ninety) consecutive or non-consecutive days per year.

This regime can only be used when it is intended that the foreign worker will provide services in Mozambique that are timely, unforeseeable and require a high level of scientific knowledge or for specialized professional technicians. Otherwise the contracting of the foreign worker will not be considered in accordance with the Law.

The Mozambican employer may also use this regime to hire a foreign worker bound by a contract with the foreign employer or head office based abroad. Considering their characteristics and requirements, this regime can be used for training local employees of foreign companies and to follow up on more complex aspects of the organization's operations, which require qualifications and skills unavailable in Mozambique due to absence or a deficiency.

Regarding formalities, the employer must notify the labour authorities of the hiring of the foreign employee in the short-term regime, before they enter the country. The entry of the worker into the national territory to provide said labour activity should occur after the verification of the compliance of the contract with the Law, which should take place within 5 (five) business days.⁵

It should be noted that hiring under this regime does not affect the legal quota to which the company is entitled under the provisions of the Law.

¹ Decree no. 37/2016 of August 31st.

² Decree no. 43/2009 of August 21st (Regulation of the Investment Law).

³ Decree no. 63/2011 of December 7th.

⁴ Decree-Law no. 2/2014 of December 2nd.

⁵ Article 7(1) of Decree no. 37/2016 dated August 31st.

1.2 QUOTA SYSTEM

The application of the right to hire a certain number of foreign employees depends on the total number of employees within the company. The greater the number of workers in the company, the greater the number of foreign employees permitted.

This contracting regime is not subject to authorization by the Ministry of Labour. However, the employer must inform the Ministry of the hiring of the foreign worker up to 15 (fifteen) days following their entrance in the country, alongside proof that the permitted quota has not been exceeded.

As mentioned, companies employing more than 100 (one hundred) workers, classified by the Law as a large company is allotted a quota of 5% (five percent) of the total number of employees for the purpose of hiring foreign employees. Medium-sized companies, which employ between 11 (eleven) and 100 (one hundred) workers, are permitted a quota of 8% (eight percent) of the total payroll. Meanwhile small enterprises, which employ up to 10 (ten) workers, are allowed 10% (ten percent) of the total number of employees to hire foreign employees. Companies with fewer than 10 (ten) employees can hire at least 1 (one) foreign worker.

1.3 INVESTMENT PROJECTS

In regards to investment projects which have been approved by the Government, there is a possibility of being granted a quota larger than the one legally established for hiring foreign employees in the aforementioned projects.⁶

The Regulation of the Investment Law⁷ lists the investment projects that must be authorized by the Government, and which may therefore benefit from a higher quota than they would have been entitled to, through the application of the general quota regime.

Thus, investment projects to be approved by the Government are as follows:

- ✓ Investment Projects whose value exceeds MZN 13,500,000,000 (thirteen billion and five hundred million Meticaís);
- ✓ Investment Projects that require a land extension with an area exceeding 10,000 ha (ten thousand Hectares);
- ✓ Investment Projects requiring forestry concessions with an area exceeding 100,000 ha (one hundred thousand Hectares); and
- ✓ Investment projects with foreseeable political, social, economic, financial or environmental implications and the determination shall be analyzed on a case-by-case basis by the Government itself.

This special regime can grant benefits to investors such as: protection of property rights; expatriation of funds; tax benefits; and access to credit for foreign investors in the same conditions applicable to nationals (Mozambican entities).

Foreign investors who intend to invest in Mozambique – provided that their investment projects are within the scope of this regime – may liaise with the Agency for Investment and Export Promotion (hereinafter the “APIEX”), a public institution with the purpose of assisting⁸ foreign investors. The APIEX guides the investors throughout the process of approval of their investment projects and acts as an intermediary between the foreign investor and Mozambican public entities which might be required to approve any interim act, *i.e.* an environmental license.

⁶ Article 12 of Decree no. 37/2016 dated August 31st.

⁷ Article 12 (d) of Decree no. 43/2009 dated August 21st, as amended by Decree no. 48/2013 dated September 13th.

⁸ Article 4 (2) of the Regulation on Investment Law.

As for formalities, due primarily to the strict foreign exchange (“FX”) policy enforced in Mozambique, investors are obliged to register⁹ their projects at the Central Bank of Mozambique (“*Banco de Moçambique*”, hereinafter “CBM”) as well as to register each financial transaction made under the investment project, including the financial fluxes that enter into Mozambique.

Thus, any investment project that falls under the situation above must be submitted to the Government for approval purposes and may, in turn, benefit from a quota higher than the general regime for the hiring of foreigners.

1.4 WORK AUTHORIZATION

The hiring of foreign employees under the work authorization regime¹⁰ is dependent on the submission of an application addressed to the Minister who oversees the manpower, justifying the need to hire more foreign employees than allotted by the quota system. Provided that (i) the need to hire foreign employees outside the legally allowed quota is duly substantiated; (ii) the academic or professional qualifications necessary for the intended function held by the intended foreign worker have been certified; and (iii) it has been verified that there are no nationals or there is insufficient number to perform this function and other legal requirements are fulfilled, the foreign worker is hired.

The hiring of foreign employees for specialized technical assistance is also subject to authorization, particularly for work in foreign non-governmental organizations, scientific research work, teaching and other areas.

The hiring of a foreign worker through this regime does not affect the quota applicable to the company, as it is considered as hiring out of quota.

1.5 NUMBER OF APPROVALS

This section includes statistics from the last 5 (five) years in the employment of foreign nationals in the quota framework,¹¹ short-term permit, investment projects and authorization.

Table 1 Number of Approvals by Each Regime (2012-2017)

Year	Number of Approvals by Each Regime				Total Approvals	Rejected	Total Submission (approval+reject)
	1) Short-term Permit	2) Quota	3) Investment Projects	4) Authorization			
2012	3,313	9,395	1,525	257	14,490	29	14,519
2013	4,776	11,094	3,095	417	19,382	125	19,507
2014	4,987	10,045	4,008	451	19,491	0	19,491
2015	6,329	8,936	2,624	936	18,825	245	19,070
2016	6,190	8,162	1,157	614	16,123	68	16,191
2017 (1st Semester)	2,516	4,697	554	378	8,145	7	8,152
Total	28,111	52,329	12,963	3,053	96,456	474	96,930

Source: Ministry of Labour

⁹ Article 22 of Investment Projects Law.

¹⁰ Article 16 of Decree no. 37/2016 dated August 31st.

¹¹ Information provided by the Ministry of Labour, Employment and Social Security. With regards to the grounds for refusing applications for work permits, it was not possible to obtain information therefrom.

The table above reflects the reality of Mozambique regarding the employment of foreign citizens in the different contracting arrangements provided for by law. In 2012, the number of cases submitted to the labour authorities was 14,519 and approved with 14,490 with only 29 applications rejected. As for the total in 5 and half years, from 2012 to the first semester of 2017, 96,930 applications were submitted and 96,456 were approved with 474 rejected, revealing that 99.5% were approved with only 0.5% rejected.

Although the breakdown of those rejected cases by each regime is not available, the record of number of applications and approvals indicated by the statistical data above demonstrates that the hiring of foreigners is attainable and not very difficult.

2. QUOTA REGIME

2.1 OBJECTIVE OF THE QUOTA REGIME

It is believed that the main objective of the *quota regime* is the protection of the national employee's interests, that is, firstly to prioritize the national labour force, to the detriment of foreign labour.

Notwithstanding, this regime is set to benefit the Country in several significant ways, such as:

- ✓ Ensuring the creation of more jobs for national employees – Mozambican Law provides that employers shall give preference to national employees over foreign nationals, save where special qualifications or professional skills are found only with the latter;
- ✓ Bringing qualified know-how from other countries – clear examples of this are found in the fields of oil/gas exploration, energy supply and infrastructure development, which have been great contributors to Mozambique's economy and culturally as Mozambicans are afforded the chance to familiarize themselves with events outside their daily spectrum;
- ✓ Increasing the level of expertise and professional skills of national workforce – Mozambican Law encourages employers to create conditions for the integration of qualified national employees in jobs that require technical expertise and in jobs of management and administration;
- ✓ Limiting the duration of the employment contracts with foreign nationals – Mozambican Law establishes that employment contracts with foreign employees shall not exceed 2 (two) years, and even after several renewals they can never be converted into a contract for an indefinite period, and its main objective is to limit the stay of foreign employees in the national territory; and
- ✓ Controlling immigration of foreign nationals – citizens of foreign nationality who wish to work in national territory must obtain work visas, and this visa must be requested before entering the national territory, otherwise the work permit will not be granted.

2.2 ADVANTAGES AND CONSTRAINTS OF THE QUOTA REGIME

The advantages and constraints of the quota regime shall be highlighted, based on the explanation on the objectives of the said regime.

2.2.1 ADVANTAGES OF QUOTA REGIME

Regarding the advantages of the quota regime, it is important to note that its implementation allows:

- ✓ The employer to have 15 (fifteen) days grace period, following the entry of the foreign employee, to the country, to notify the Labour Authorities;
- ✓ Expedition of the process of hiring a foreign national as it depends on the number of employees in the company, and mere communication to the competent authority; and
- ✓ No need to apply for work authorization in cases of hiring in the context of investment projects approved by the Government, only being necessary the notification for hiring foreign employees.

2.2.2 CONSTRAINTS IN IMPLEMENTATION OF THE QUOTA REGIME

1) Failure to comply with the obligation to notify

With regards to the response of the conformity of the notification, there is a 5 (five) day period for this purpose.¹²

This obligation also extends to contractors in investment projects, who in turn must also wait for the response of the Ministry of Labour within 5 (five) working days.¹³

Failure of compliance with the legal provisions is verified on a daily basis by the labour authorities, which may take more than 30 (thirty) calendar days to issue a decision, favourable or not.

It is concluded that the above constraints may lead to the discouragement of foreign investment, which will lead to a loss of interest *versus* opportunity, which may retard not only the development of the country but also frustrate the expectations of entrepreneurs wishing to invest in Mozambique.

2) Nominal ratio requirement

The submission of the nominal ratio – list of the employees hired with their relevant data – for the current calendar year¹⁴ is one of the formalities to be observed in the communication to be filed before the supervisory entity.

This requirement constitutes a barrier in terms that a newly incorporated company sometimes does not yet have hired workers or is still in the process of hiring.

Consequently, to newly incorporated companies, this nominal relation requirement can be considered as a hurdle to the start of the company, caused by the procedures that the organization of the nominal relation represents, from recruitment, internal organization and survey of the nominal relation.

3) Delay in the issue of the certificate of conformity of Communication¹⁵

The conformity of the work notice (Communication) must be verified and communicated within 5 (five) days, with the respective certificate to be delivered to the bearer of the communication.¹⁶

In practice, but rarely, the work reports (certificates of conformity of Communication) are issued within the legally established deadlines, but on average it takes between 7 (seven) to 15 (fifteen) days. Therefore:

- ✓ This Law has a low enforcement rate; and
- ✓ When it comes to renewing the work contract, until the issuance of the communication certificate, the employee's work is interrupted.

2.3 CASE EXAMPLES OF APPROVALS IN OUT OF QUOTA

The following table indicates cases of each regime for attaining additional or out of quota for foreigner employment, based on actual cases. These cases illustrate reality in obtaining work permits with convincing justifications.

¹² Article 11 of Decree no. 37/2016 of August 31st.

¹³ *Ibid.*

¹⁴ Article 10(e) of Decree no. 37/2016.

¹⁵ Note that in cases of hiring of foreign employees under the Quota Regime and Short-Term Regime, a certificate of conformity of Communication shall be issued by the labour services. However, when applying for hiring of foreign employees under the Work Authorization Regime, the Ministry that oversees the sector of Labour shall issue a work permit.

¹⁶ Article 11 of Decree no. 37/2016 of August 31st.

Table 2: Example of Cases for Out of Quota Approval

Case A: Hiring Regime: Short-Term Permit	
Company profile	The line of business: Insurance Service Employment Size: Categorized as “Small Company”, ¹⁷ with 3 employees (one of whom is foreign).
The justification for employing additional foreigner	The reason why the Company B is hiring additional foreign employee is to <u>provide training and implement new work procedures</u> adopted by the Company’s head office.
Result	Granted with one foreigner work permit for <u>90 days</u>
Date applied and approved	Application submitted: January 24, 2018 Approval: February 5, 2018 (less than two weeks)
Case B: Hiring Regime: Work authorization	
Company profile	The line of business: Aviation and Tourism Service Employment Size: Categorized as “Small Company”, with five employees (one of whom is a foreigner).
The justification for employing an additional foreigner	To work as station manager and to provide training to the hired national employees in the company, and an application for work authorization was submitted for hiring another foreign citizen.
Result	Granted with one foreigner’s work authorization for <u>two years</u>
Date applied and approved	Application submitted: June 16, 2017 Approval: September 26, 2017 (three months and ten days)
Case C: Hiring Regime: Investment Project	
Company profile	Sector of Business: Energy (Power plant construction and operation) Employment size: Categorized as “Large Company”, ¹⁸ plans to employ a total of 1,400 employees during the construction phase, and 350 after operation phase.
The justification for employing additional foreigners	Applied for this regime under the total value condition (exceeding MZN 13.5 billion), and the project requires highly skilled technical expertise not available locally.
Result	Construction phase: Quota of 30% (420 foreign employees allowed) Operation phase: Quota of 20% (70) for Years 1- 10, 15% (52) for Years 11- 15, and 10% (35) for Year 16 onwards
Date applied and approved	Approved in 2016

3. SPECIAL REGIMES

3.1 SPECIAL ECONOMIC ZONES / INDUSTRIAL FREE ZONES

In accordance with the Investment Law,¹⁹ Special Economic Zones (SEZ) and Industrial Free Zones (IFZ) comprise geographically delimited areas or units of areas of industrial activity, in which goods that are produced therein for export are exempt from all customs fees and are granted a special and more favorable tax, labour and foreign exchange regimes.

Moreover, in order to hire foreign nationals to work in the SEZ/IFZ certain requirements shall be met, namely:

¹⁷ Small Company: less than 10 employees.

¹⁸ Large Company: more than 100 employees.

¹⁹ Article 1 (x) of Law no. 3/93, dated June 24th.

- ✓ A work permit²⁰ shall be required for the foreign national who is to be hired;
- ✓ The hiring only takes place if foreign nationals possess the unique professional qualifications that are needed for the project and if such qualifications are not found in national workforce; and
- ✓ The number of such foreign employees hired shall not exceed a maximum of 15% (fifteen percent) of the total number of employees²¹ for such zones.

Also, foreign employees are allowed to start working before the authorization has been granted by the labour administration, but the employer shall submit an application to obtain the authorization up to 45 (forty-five) days after the date on which the foreign national started working.

It is worth noting that the contracts entered into with foreign nationals shall have a maximum duration of 7 (seven) years from the date of commencement of the activity, after which the employer may be authorized to maintain 3 (three) permanent jobs with foreign nationals, upon authorization to be granted by the competent authority.

Also, in cases where foreign nationals are hired for the SEZs/IFZs, the employer shall comply with the formalities and response time according to the provisions of the general quota system regime.

With regards to the companies that implement projects in the IFZs, a limit of 15% (fifteen percent) of the total number of employees of the said companies is established for hiring foreign nationals, regardless of the size of the companies.

3.2 PETROLEUM AND MINING SECTOR

Regarding the Petroleum and Mining sector, hiring of foreign employees is subject to the same 3 (three) regimes indicated above, without prejudice to some particularities established by Decree no. 63/2011 dated December 7th, as follows:

a) Short term work contracts:

Contract length

-In accordance with Article 5 (1) of Decree no. 37/2016, short term employment contracts are those that do not exceed 90 (ninety) days per year, consecutive or in intervals, when executed by foreign employees.

-In accordance with Article 12 (1) of Decree no. 63/2011, short term employment contracts are those that do not exceed 180 (one hundred and eighty) days per year, consecutive or in intervals, when executed by foreign citizens.

Submission of the communication

-In accordance with Article 6 (1) of Decree no. 37/2016, prior to the entrance of the foreign employee in the national territory, the employer or its representative should submit at the entity which oversees the labour sector in the province in which the foreign employee shall undertake his activity, a notification indicating (i) the name and address of the employer, (ii) identification details of the foreign worker and the activity to be carried out, and (iii) the period between the beginning and end of the activity of the foreign employee.

-In accordance with Article 12 (1) of Decree no. 63/2011, within 15 (fifteen days) after the entrance of the foreign employee in the national territory, the employer or its representative should submit at the entity which oversees the area in the province where the foreign citizen shall undertake his

²⁰ The work permit is issued once the Minister that oversees the labour sector approves the hiring of the foreign employee.

²¹ Positions of management and board members are not included in this percentage.

activity, a notification indicating (i) the identification details of the foreign employee, and (ii) the period of time in which the foreign employee will be carrying out the activity.

Length of clearance

-In accordance with Article 7 (1) of Decree no. 37/2016, the compliance of the communication shall be verified and communicated within 5 (five) business days.

-In accordance with Article 12 (4) coupled with Article 7 of Decree no. 63/2011, the conformity of the communication shall be verified at the time of its submission, whereby the respective certificate is immediately issued and handed over to the bearer of the notification.

Payable fee

-In accordance with Article 6 (2)(c) of Decree no. 37/2016, the requirement should be accompanied by a proof of payment at a fee of 1 (one) minimum salary in force in the sector of activities the company.

-In accordance with Article 19 (2) of Decree no. 63/2011, employment in the short-term regime is subjected to a fee corresponding to 10 (ten) minimum salaries in force in the extraction of minerals industry.

b) Quota system:

Determination of the quota

-According to Article 9 (2) of Decree no. 37/2016, to determine the quota, it is taken into consideration the number of Mozambican employees effectively contracted and part of the nominal list²² of the company.

-Pursuant to Article 5 (3) of Decree no. 63/2011 to determine the quota, the number of workers to be considered corresponds to the average number of workers employed in the previous calendar year. Article 5 (4) states that in the first year of activity the number of workers to be considered is the one on the first day of activity.

Period to have a clearance

-In accordance with Article 11 (1) of Decree no. 37/2016, the compliance of the verification shall be verified and communicated within 5 (five) workdays.

-In accordance with Article 7 of Decree no. 63/2011, the conformity of the communication shall be verified at the time it is presented, by immediately issuing the respective certificate, to be delivered to the bearer of the communication.

Payable fee

-According to Article 10 (1) (g) of Decree no. 37/2016, the requirement should be accompanied by a proof of payment at a fee of 5 (five) minimum salaries in force in the sector of activities the company.

-Pursuant to Article 6 (1) (e) of Decree no. 63/2011, the employment of foreign employees under the quota regime is subjected to a fee corresponding to 3 (three) minimum salaries in force in the extraction of minerals industry.

²² List of the employees hired with their relevant data for the current calendar year.

c) Work authorization regime

In this hiring regime, no particular difference can be detected in both Decrees, with the exception of the documents that must be attached to the application (the same applies to the regimes above mentioned).

3.3 ROVUMA BASIN

As for hiring foreign employees in the Rovuma Basin Project, the Law provides that employers must always prioritize the recruitment of a national workforce with appropriate qualifications at all levels of their organization, including positions of technical and managerial complexity,²³ without prejudice to being able to contract foreign employees to operate in this industry.²⁴

The investment projects approved by the Government are considered as the main regime for hiring foreign employees in Rovuma Basin. However, it is also allowed to hire foreign employees by the short-term regime for a maximum period of 180 (one hundred eighty) days per year for any kind of work even if it is not unpredictable, as it occurs with application of the general regime, established for the other industries.

As a rule, the hiring of foreign nationals in this sector is done by submitting the workforce plan to the National Institute of Employment and Vocational Training within 60 (sixty) days before the end of each calendar year by the Concessionaires and Specific Purpose Entities.

The workforce plan should not provide for the hiring of foreign nationals for work positions of less technical complexity and for jobs which do not require any technical expertise. In cases where foreign employees are to be hired *outside* the quota established in the duly approved workforce plan, the hiring in question shall be carried out under the work authorization regime, upon submission of an application to the Minister overseeing the industry. A response to the application should be delivered within 7 (seven) business days from the date of the submission.

Thus, the hiring regimes applicable for foreign employees in Rovuma Basin are: (i) Investment Project Approved by the Government; (ii) short-term; and (iii) work authorization. With regards to the requirements for the hiring of foreign citizens for the Rovuma Basin project, the requirements are the same (please refer to *Chapter 1* above).

As for the renewal of contracts, the Law establishes that the employers have the choice to renew one or more times employment contracts for a fixed or uncertain term during the construction phase of each Rovuma Basin Development.

3.4 HIRING FOREIGN NATIONALS FOR THE MOZAMBICAN PUBLIC SERVICE

The hiring of foreign employees to render services for the public service is accomplished through the use of a fixed-term service contract²⁵, for a period of up to 5 (five) years, renewable once for an equal period following the performance and the necessity of the service.²⁶ Regardless of such

²³ According to Article 19 of this Decree, the Concessionaires and Special Purpose Entities shall submit before the National Institute of Employment and Vocational Training (INEFP) 60 (sixty) days before the end of each calendar year, a training plan for Consultation and coordination with the National Petroleum Institute to allow a gradual increase in the percentage of Mozambican citizens working in any Rovuma Basin Enterprise at all levels of their organization and an effective training program of Mozambican employees, whether on national or foreign territory, at each stage and level of operations, taking into account security requirements and the need to maintain reasonable standards of efficiency in the conduct of operations.

²⁴ With respect to the hiring of foreign nationals, the workforce plan relating to any Rovuma Basin Enterprise shall not provide for the contracting of such workplaces for work positions of lesser technical complexity and for those which do not require any technical qualification.

²⁵ The execution of these contracts is the responsibility of the heads of the central, provincial and institutional entities with administrative and financial autonomy, and the costs are borne by the respective salary fund, registered in the State Budget, donations, own revenues or consigned from those institutions.

²⁶ Exceptionally, due to an imperative and justified need for service, which is analyzed on a case-by-case basis, the contract may be extended for an additional period not exceeding 5 (five) years.

renewal, the contract entered into with the foreign employee may never be converted into a contract for an indefinite period, nor at any given time may the foreign national be granted the status of a civil worker of the State.

These contracts are subject to the prior supervision of the Administrative Court, and they have precedence over other proceedings, under the terms established in specific legislation.²⁷

The hiring of foreign employees for the Mozambican Public Service is done by way of a public tender solely when there is a lack or insufficiency of national staff with the required professional qualifications and experience, save where there is an urgent need for service declared by a member of the Government, in which case the said contracting may discharge the public tender proceeding.²⁸

Such contracts are entered into under an exclusive regime of functions, thus, the foreign employee is prohibited from exercising any form of private activity or accepting any remuneration other than those established by prevailing legislation, except in cases of teaching and research activities in the State institutions, upon prior authorization of the contracting party.

In case of non-compliance with the provisions of the paragraph above, the foreign citizen may be held liable. Such disciplinary accountability may result in the application of the following sanctions:

- ✓ A fine ranging from 5 (five) to 10 (ten) salaries of the foreign employee's salary (graduated according to the gravity of the offence committed and/or recidivism), or
- ✓ Immediate termination of employment contract.

²⁷ Please refer to Article 60 in conjunction with Article (1)(c), both of Law no. 14/2014, dated August 14th (Concerning the organization, operation and process of the Inspection Section of Revenues and Public Expenditures, as well as of the Administrative Court, provincial administrative courts and Maputo City).

²⁸ Mozambique has the right of preference, where, as a rule, national citizens have priority over foreign citizens, and the contracting of the latter is dependent on proof (by public tender) of the lack of national frameworks to meet what is required.

HIRING OF FOREIGNERS IN MOZAMBIQUE

- REGULATORY REGIMES AND PRACTICES -

APPENDICES

Appendix A Summary of Foreigners Employment Regime

Appendix B Investors' Reference for Hiring Foreigners in Mozambique

Appendix C Application Forms for Quota and Work Authorization

Summary of Foreigners Employment Regimes

Regime	Short-Term Permit	Quota	Investment Project (Extra Quota)	Authorization
Purpose	To hire foreign employees with high level scientific knowledge and special professionals	To provide right to hire certain number of foreign employees by size of total employment	To provide a concrete quota of foreign employees necessary to the implementation of a certain project. The number may be higher or lower than what is normally allowed under the quota regime	To hire foreign employees with academic or professional qualification
Eligibility	To verify the qualification and proof of non-availability in Mozambique	5% for more than 100 8% between 11 and 100 10% for 10 employees and below	Investment value exceeds MZN 13.5billion Investment project use exceeding 10,000 ha Forestry project exceeding 100,000ha Investment projects with political, social, economic, financial and environment consideration	To verify the qualification and proof of non-availability in Mozambique
Duration	Maximum 90 days (180 days for mining sector and for Rovuma Basin)	Maximum 2 years	Maximum 2 years	Maximum 2 Years
Procedure for Application	To notify Ministry of Labour, prior to entering the country	To notify Ministry of Labour within 15 days after entering the country	Prior, apply to APIEX to help to get the approval of the investment project from the relevant authority in the sector in which it will be implemented and then, notify Ministry of Labour within 15 days after entering the country of any hired employee, under the quota allowed for the concrete investment	To apply for authorization
Authorization	Not subject for authorization	Not subject for authorization	Not subject for authorization	Ministry of Labour
Legal Reference	Articles 5 to 7 and 20 to 21 of Decree no. 37/2016 dated August 31 st	Articles 8 to 11 and 20 to 21 of Decree no. 37/2016 dated August 31 st	Article 12 (d) of Decree no. 43/2009, amended by Decree no. 48/2013 Articles 12 and 20 to 21 of Decree no. 37/2016 dated August 31 st	Articles 16 to 19 and 20 to 21 of Decree no. 37/2016 of August 31 st

Note: Besides these regimes, there are special regimes applied for LNG Project in Rovuma Basin, Mining and Petroleum sector and designated regions under SEZ/IFZ.

“Investors’ Reference” for Hiring Foreigners in Mozambique

1. Quota Regime (under general Quota/ Quota for Investment Projects)

(a) Sectors not applied by the application of the general quota

The special regime is applied for the following sectors (which are covered by separate regulations):

- (a) Liquefied Natural Gas Project in Areas 1 and 4 of Romuva Basin,²⁹
- (b) Special Economic Zones and Industrial Free Zones,³⁰ and
- (c) Petroleum and Mining sectors.

(b) How to determine the Quota

It is based on the payroll for the calendar year detailing the nationalities of the employees.³¹ For the purpose of determining the applicable quota based on the total workforce, only Mozambican nationals are included in the “total workforce” and foreign nationals currently on the payroll are excluded.

(c) Rounding up not allowed

In calculating the number of foreign nationals under the quota regime, rounding up of numbers is not allowed.³²

(d) Sending of “notice” to labour authorities

The employer must send a “notice” to the relevant labour authority within 15 days from the date of the foreign employee’s entry in Mozambique.³³ The “notice” must be submitted together with the following documents:³⁴

- (i) Two copies of the standard “notice” form (attached as **ANNEX I**), communicating the hiring of the foreign employee and the degree of fulfilment of the quota;
- (ii) Three copies of the employment contract;

²⁹ Decree Law no. 2/2014 dated December 2nd.

³⁰ Decree no. 43/2009 dated August 21st (Regulation of the Investment Law).

³¹ Article 1(e) of Decree no. 37/2016 dated August 31st.

³² Article 8(3) of Decree no. 37/2016 dated August 31st.

³³ Article 8(1) of Decree no. 37/2016 dated August 31st.

³⁴ Article 10 of Decree no. 37/2016 dated August 31st.

- (iii) Certificate of academic qualifications or technical skills, together with the corresponding certificate of equivalence issued by the education authority regarding the level achieved overseas or document proving his/her work experience;
- (iv) Tax Clearance Certificate issued by the Tax authority proving that the employer has no debt to the State, valid for 30 days from the date of issue;
- (v) Payroll for the calendar year, detailing the nationalities of the employees;
- (vi) Certified copy of passport or Residence Identification Document for foreign nationals (DIRE); and
- (vii) Proof of payment of a fee corresponding to five minimum salaries in force in the sector of activity of the company.
- (viii) For investment projects approved by the Government, the notice must be accompanied by a copy of the investment project approved by the Government that specifies the number of foreign nationals to be employed.³⁵

(e) Start of work

The foreign employee may only start work after the employer has received the verification/conformity of “notice” (also known as “work permit”) from the labour authority. Under the law, this is issued within 5 business days from receipt of notice from the employer.³⁶

(f) Effect of termination of employment of Mozambican nationals

An employer which terminates the employment contracts of Mozambican nationals is not required to terminate the employment of foreign employees as long as the work permit is valid. The number of national employment will be affected on occasion of renewal of foreigners’ work permit in such a number as to comply with the quota.³⁷

2. Work Authorization (or Out-of-Quota) Regime

The Work Authorization (or Out-of-Quota) may be used when the employer already filled their quota.

(a) Conditions under the Work Authorization Regime

- a. The foreign employee must have the required academic or professional qualifications;

³⁵ Article 14 of Decree no. 37/2016 dated August 31st.

³⁶ Article 11(1) of Decree no. 37/2016 dated August 31st.

³⁷ Article 27(5) of Decree no. 37/2016 dated August 31st.

- b. There are no national employees with similar qualifications, or they are insufficient in number; and
- c. Proof that the provisions of Decree 37/2016 dated August 31st (otherwise known as the “Regulation governing the Mechanisms and Procedures for Employment of Foreign Nationals”) have been complied with.

Proof of such compliance includes, for example, CV, diploma, academic degree certificate, training certificate, etc.

(b) Application for Work Authorization

For employment of foreign employees in excess of the quota (under general quota or quota for investment projects approved by the Government), an application must be submitted by the employer to the relevant labour authority.³⁸ It is subject to approval by the relevant labour authority (Minister of Labour).

(c) Application Requirements

An application for authorization for hiring of a foreign employee (using the standard application form (attached as **ANNEX II**) must contain the following:³⁹

- a. Name, office address and field of activity of the applicant (employer);
- b. Identification of the representative of the employer;
- c. Identification of the foreign employee for whom the authorization is requested, his/her category, duties or position to be held or functions to be performed;
- d. Motivation letter/grounds for hiring; and
- e. The following shall be attached to the application:
 - (A) Three copies of the employment contract;
 - (B) Academic qualification or technical skills certificate of the foreign employee to be employed together with the certificate of equivalence issued by the education authority regarding qualifications acquired overseas or and document proving professional experience;
 - (C) Tax Clearance Certificate issued by the Tax authority proving that the employer has no debt to the State, valid for 30 days from the date of issue;

³⁸ Article 17(1) of Decree no. 37/2016 dated August 31st.

³⁹ Article 18 of Decree no. 37/2016 dated August 31st.

- (D) Statement from the trade union representative or sectoral trade union reflecting the need, or otherwise, of the application for employment of a foreign national;
- (E) Certified copy of trading license or related document of the employer;
- (F) Updated Payroll of staff members for the calendar year, with details of the nationality of employees; and
- (G) Proof of payment of a fee equivalent of ten minimum salaries in force in the sector of activity of the company.

(d) Timeframe for approval of application

The application must be processed by the relevant labour authority within 15 days from its receipt of the application.⁴⁰ The approval is also known as “out-of-quota work permit.”⁴¹

(e) Start of work

Foreign nationals are not allowed to start work prior to receiving approval of application for work authorization (or out of quota⁴²).

2. Hypothetical Cases

1) We plan to establish a company engaged in the information technology (IT) Solution business in Maputo. Due to the very technical aspect of the business, our offshore parent company plans to send two of its foreign employees to Mozambique

A small company is allowed to employ 1 foreign employee. For another foreign employee outside of the general quota, the company has to apply through the work authorization (out of quota) regime. The company has to submit proof that:

- (a) The foreign national has the required academic or professional qualifications;
- (b) There are no nationals with similar qualifications, or they are insufficient in number; and

⁴⁰ Article 17(2) of Decree no. 37/2016 dated August 31st.

⁴¹ Note that these applications are submitted to the Labour department of the province/city in which the employees will carry out their activity for verification purposes and sent to the Minister for approval. The timeframe for the approval of work authorization might not comply with the legal period of 15 days, due to the fact that Minister analyzes the application case-by-case. Therefore, a possible delay or situation where the 15 days indicated by law is exceeded may occur.

⁴² For cases of renewal of employment contracts of foreign employees in the work authorization regime, it is recommended to start the application process 6 months prior to the termination of the contract.

(c) The provisions of Decree No.37/2016 of August 31st (otherwise known as the “Regulation governing the Mechanisms and Procedures for Employment of Foreign Nationals”) have been complied with.

2) Our company currently has the following workforce: one general manager (foreigner); five managers (foreigners) and 120 workers (Mozambican nationals). What is our quota of foreign employees?

Since the total workforce is 100 workers (excluding the foreigners), the quota of your company is 6. You have already reached the allowed quota of 6 foreign nationals

3) Our company has several subsidiaries around Mozambique. In case one of our subsidiaries has not yet reached the quota of foreign national workers, can the balance or unused number be used by another subsidiary which has already reached their quota?

No. The quota refers to the total workforce in each subsidiary. The unused quota is not transferrable. The subsidiary which has already reached the quota may apply for employment of the foreign employee under the work authorization (out-of-quota) regime.

4) Our newly-established company will start its operations next year and for the first year we will hire only one foreign employee who will serve as the manager of our company. Is this allowed?

Yes. A company is allowed at least one foreign employee even if the total number of national employees is less than 10.

5) Our manufacturing company is in its first year of operations with 15 employees who are Mozambican nationals but we plan to increase their number during the second year to 40. Can we hire 4 foreign employees during our first year?

No. The quota is based on the number of employees at the start of its operations. For the first year, it is only allowed to employ 1 foreign national.

6) Our company has reached the quota on foreign nationals, but we need to hire foreign technical experts to conduct emergency repair of machineries. Are we still allowed to hire foreign employees for short-term work even though we have reached our quota?

Yes, foreign nationals may be employed under the short-term work regime, provided that the period of employment shall not be longer than 90 days within a year, whether consecutive or not, and the purpose is for performing timely and unforeseen work requiring highly scientific know-how or specialized skills. Foreign nationals employed under the short-term work regime are not included in the quota.

7) Our company plans to implement quarterly 1-week training of all employees in Mozambique, comprising of 21 employees (20 Mozambican nationals, 1 foreign national), to be conducted by two (2) training managers of our offshore parent company who are foreigners. We will pay the training manager fees for his/her services.

(a) Is our company allowed to have such an arrangement with the two (2) training managers? If yes, which is the appropriate regime for such arrangement?

Your company is allowed to engage the services of two training managers who are foreigners under the short-term work regime provided that the period of their work will not exceed 90 days within a year, whether consecutive or not. The company has to prove that the work requires highly scientific know-how or specialized skills.⁴³

(b) When should we notify the labour authorities, before or after the arrival of the training managers in Mozambique?

Your company should notify the labour authorities before the entry of the training managers in Mozambique as they are only allowed to enter the country after verification by the labour authority.⁴⁴

8) For the investment project approved by the Government, our company has already reached the quota approved by the Government. May we still apply for employment of a foreign employee in excess of such quota? If yes, what is the procedure and timeframe for approval of the application?

Yes. For employment of foreign employees in excess of the quota (under the investment project approved by the Government), an application must be submitted by the employer to the relevant labour authority in the province where the foreign employee will conduct his/her work.⁴⁵ The procedure and timeframe for approval of the application are the same as the application for work authorization (or extra quota) under the general quota.

9) Our office has several locations/branches in Mozambique. Can we temporarily transfer one of our foreign employees for one month to another location/branch which has already reached its quota of foreign employee?

Yes. The employer may temporarily transfer the foreign national worker to another workplace if dictated by exceptional circumstances related to administrative or production organization. The employer should notify the labour authority in the province where the foreign employee is

⁴³ Article 5(1) and Article 5(3) of Decree no. 37/2016 dated August 31st.

⁴⁴ Article 7(1) of Decree No. 37/2016 dated August 31st.

⁴⁵ Article 17(1) of Decree No. 37/2016 dated August 31st.

conducting his/her work.⁴⁶ Since the transfer is only temporary, such foreign employee is not counted in the quota of the destination location/branch.

⁴⁶ Article 24(4) of Decree no. 37/2016 dated August 31st.

Annex I: Standard “Notice” Application Form for Quota Regime

Modelo a ser usado pelas
empresas no âmbito das quotas

Senhor Ministro do Trabalho,

Excelência;

Assunto: Comunicação de contratação de trabalhador estrangeiro no
âmbito da quota

Nos termos das disposições do n.º do artigo 31 e com n.º 1 do artigo 34, ambos da Lei n.º 23/2007, de 1 de Agosto, a empresa sita na representada pelo(a) Sr(a)....., de nacionalidade....., comunica à V.Excia a admissão do(a) Sr(a)..... de nacionalidade....., portador do passaporte n.º..... emitido aos..... para exercer as funções de..... por um período de..... meses, a partir de...../...../200....., até/...../20..... É do grupo das empresas, com um total de trabalhadores dos quais..... são(é) estrangeiro(s). No âmbito da quota, tem direito a%, o que corresponde a estrangeiro(s). Com a presente admissão passa a ter..... estrangeiro(s) para um máximo de....., da quota. A empresa junta os seguintes documentos:

- 1. Dois exemplares da carta comunicando a admissão do cidadão estrangeiro e o grau da realização da quota;
- 2. Relação nominal de trabalhadores relativa ao ano civil anterior;
- 3. Certidão de quitação passada pelo INSS;
- 4. Certidão de quitação passada pelo Ministério das Finanças;
- 5. Cópia autenticada do passaporte ou DIRE, do cidadão estrangeiro a admitir;
- 6. Talão de depósito comprovativo do pagamento da taxa;
- 7. Três cópias do contrato de trabalho;
- 8. Projecto de investimento

....., aos de de 200.....

Annex II: Standard Application Form for Work Authorization Regime

Modelo a ser usado pelas
empresas que tenham
esgotado a quota

Senhor Ministro do Trabalho

Excelência

Assunto: Autorização de Trabalho,

A empresa.....,
Sita na....., representada
neste acto pelo(a) Sr(a)....., de
nacionalidade....., solicita autorização de contratação a favor do(a)
Sr(a).....de
nacionalidade....., portador(a) de passaporte nº
....., emitido em/...../....., que irá exercer a função de
....., por um período de....., meses, tendo
em conta que a empresa empregatrabalhadores nacionais e estrangeiro(s), pelo facto de ter
esgotado a quota, a que tem direito, vem pela presente solicitar a V Ex.ª **autorização de trabalho** ao abrigo
do artigo 33 da Lei nº 23/2007, de 1 de Agosto. A empresa junta os seguintes documentos:

- 1. Três exemplares do contrato de trabalho;
- 2. Certificado de habilitações literárias;
- 3. Certificado de equivalência das habilitações literárias, emitido pelo Ministério da Educação e cultura;
- 4. Certificado de habilitações técnico-profissionais e documento comprovativo da experiência profissional;;
- 5. Certidão de quitação passada pelo Ministério das Finanças
- 6. Certidão de quitação passada pelo INSS;
- 7. Parecer do delegado sindical, comité sindical ou sindicato do ramo;
- 8. Talão de depósito comprovativo do pagamento da taxa.

Fundamentação:

Pede Deferimento

....., aos..... de de 200.....

O Representante da empresa