



REPUBLIC OF MOZAMBIQUE
COUNCIL OF MINISTERS

Decree nº 63/2011

of 07 December 2011

In light of the need to regulate the contracting of foreign citizens to the Petroleum and Mining sector, under the provisions of Article 33, paragraph 3, read together with Article 269, both of Law nº 23/2007 of 1 August, the Council of Ministers decrees:

Article 1. The Regulation for the Contracting of Foreign Citizens in the Petroleum and Mining sectors, attached hereto, is approved, and forms an integral part of this decree.

Article 2. The provisions of this Regulation are without prejudice to the general rules on granting foreign citizens authorization to enter and remain in the country.

Article 3. This Decree enters into force on the date of its publication.

Approved by the Council of Ministers, on 06 October 2011.

For publication.

The Prime-Minister, *Aires Bonifácio Baptista Ali*

REGULATION FOR THE CONTRACTING OF FOREIGN CITIZENS FOR THE PETROLEUM AND MINING SECTOR

CHAPTER I Object and scope

ARTICLE 1 (Object)

This Regulation establishes the legal regime on mechanisms and procedures for contracting foreign citizens for work purposes, under the provisions of the Petroleum Law and Mining Law, provided that the performance of such activities has been approved by the competent entity.

ARTICLE 2 (Scope of application)

1. The legal regime established in this Regulation applies to national and foreign employers from the Petroleum and Mining sector and to the foreign citizens who intend to work in those sectors.
2. The contracting of foreign citizens by national or foreign employers is subject to authorization by the Minister who oversees the area of Labor, or the entity to which the Minister delegates, except in cases foreseen in articles 4 and 8 of this Regulation.

CHAPTER II General conditions for the contracting of foreign citizens for the Petroleum and Mining Sector

ARTICLE 3 (General conditions)

1. Employers must use best efforts to create conditions for the integration of qualified Mozambican workers in positions of greater technical complexity and in management and administrative positions of the company.
2. Foreign citizens may, for the purposes of the provisions of this Regulation, be contracted by the mining title holder, by a concessionaire, by an operator or by a subcontractor, as long as [such employer is] legally registered in Mozambique.
3. If a subcontractor or operator is not legally registered in the national territory, the mining title holder or concessionaire shall issue a declaration in terms of which it accepts liability arising from the violation of labor legislation committed by foreign citizens in its service [or the service of] the subcontractor or operator.

4. A foreign citizen may be hired for the petroleum and mining sector through the quota regime, the short term work regime, the regime under investment projects approved by the Government and the work authorization regime.
5. The quota regime presupposes the contracting of a certain percentage of foreign citizens set in accordance with the total number of Mozambican workers in the company, under the terms established in Article 5 of this Regulation.
6. The short-term work regime is for contracting of foreign citizens to perform occasional, unforeseeable and discrete jobs, for not longer than 180 days per year, consecutive or interspersed, under the terms of Article 12 of this Regulation.
7. The regime of investment projects approved by Government is for contracting of foreign citizens, taking into consideration the number authorized or the terms agreed between the Government and the concessionaire for such contracting on a certain project, under the terms of Article 8 of this Regulation.
8. The regime of work authorization is for contracting foreign citizens through authorization by the Minister that oversees the area of Labor or the entity to whom she delegates, taking into consideration their academic or professional qualifications, in accordance with Article 13 of this Regulation.

CHAPTER III

Contracting under the quota regime

ARTICLE 4

(Conditions for communicating admission)

1. An employer may employ foreign citizens by giving notice of the employment to the Minister who oversees the area of Labor or the entities to whom he delegates within fifteen days after admission, in accordance with the quota regime.
2. The communication of admission, a model of which is annexed, must indicate the degree to which the quota is filled.
3. In the calculation of the number of foreign citizens to be admitted under the quota, rounding up is not permitted.
4. Small companies may employ one foreign citizen, even if the total number of national workers is less than ten.

ARTICLE 5
(Quota regime)

1. Based on the classification of the company, the employer may employ foreign citizens, 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 companies;
 - c) Ten percent of the total workforce, for small companies.
2. For the purposes of the preceding paragraph the following apply:
 - a) Large company: employing more than one hundred workers;
 - b) Medium company: more than ten and up to a maximum of one hundred workers;
 - c) Small company: employing up to ten workers.
3. The number of workers to be considered corresponds to the average number of workers employed during the previous calendar year.
4. In the first year of activity, the number of workers to be considered is the number on the day of start-up of activity.

ARTICLE 6
(Formalities)

1. The communication must be submitted to the entity which oversees the area of labor in the province in which the foreign citizen intends to work, together with the following documents:
 - a) Certified copy of the passport or DIRE [Residence Identification Document for Foreign Citizens] of the foreign citizen;
 - b) Copy of the employment contract or document that proves the existence of a contractual relationship deemed equivalent to the labor relationship between the titleholder, concessionaire, operator or subcontractor and the foreign citizen to be admitted, necessarily containing the following elements:
 - i. Identification of the parties;
 - ii. Duties or activities agreed;
 - iii. Contract duration;
 - iv. Remuneration and form of payment;
 - v. Starting and finishing date of contract.

- c) Quitclaim certificate in favor of the titleholder, concessionaire or operator, issued by the entity that oversees the social security area;
 - d) Quitclaim certificate in favor of the titleholder, concessionaire or operator, issued by the entity that oversees the area of finance;
 - e) Evidence of payment of the fee.
2. The legal agents and representatives of the titleholder, concessionaire, operator or subcontractor, if they have not entered into an employment contract, shall present the respective power of attorney, [corporate] resolution or equivalent document that confers their powers.

ARTICLE 7 (Reply)

The conformity of the communication shall be verified at the time it is presented, and a document confirming its receipt shall be drawn up immediately and delivered to the bearer of the communication.

CHAPTER IV **Regime for contracting in investment projects approved by the Government**

ARTICLE 8 (Contracting conditions)

1. In petroleum and mining investment projects approved by the Government in which the employment of foreign citizens in a percentage greater or lesser than the one foreseen in the quota regime is provided, work authorization is not required, and communication in accordance with the terms of Article 9 of this Regulation shall suffice.
2. The preceding paragraph shall apply to investment projects approved up to date of entry into force of this Regulation by the Government of the Republic of Mozambique and that do not provide the number of foreign citizens to contract.
3. When applicable, the employer must attach to the letter of communication a copy of the investment project approved by the Government that mentions the authorized number of foreign workers to contract.

ARTICLE 9 (Duty to communicate)

The communication of contracting foreign citizens under investment projects approved by the Government shall be made within fifteen days after the date of the employee's entry, by completing the form annexed hereto.

ARTICLE 10
(Formalities)

1. The communication must be submitted to the entity which oversees the labor area in the province where the foreign citizen intends to work, along with the following documents:
 - a) Certified copy of the passport or DIRE of the foreign citizen;
 - b) Copy of employment contract or document that proves the existence of a contractual relationship deemed equivalent to the employment relationship between the titleholder, concessionaire, operator or subcontractor and the foreign citizen to be hired, necessarily containing the following elements:
 - i. Identification of the parties;
 - ii. Duties or activities agreed;
 - iii. Contract duration;
 - iv. Remuneration and form of payment;
 - v. Starting and finishing date of contract.
 - c) Quitclaim certificate in favor of the titleholder, concessionaire or operator, issued by the entity that oversees the social security area;
 - d) Quitclaim certificate in favor of the titleholder, concessionaire or operator, issued by the entity that oversees the area of finance;
 - e) Opinion of the entity that oversees the mining and petroleum sector which shall pronounce on the relevance or not [sic] of hiring the foreign citizen;
 - f) Evidence of payment of the fee.
2. The opinion referred to in e) above shall be issued within fifteen days from the submission of the application by the applicant, after which, if it has not been issued, the request is deemed denied.
3. The legal agents or representatives of the titleholder, concessionaire, operator or subcontractor must submit the respective power of attorney, [corporate] resolution or other equivalent document that conferred powers on them, if they have not signed an employment contract.

ARTICLE 11
(Reply)

The conformity of the communication shall be verified in accordance with the terms established in Article 7 of this Regulation.

CHAPTER V
Short-term work regime

ARTICLE 12
(Regime and formalities)

1. Short-term work is considered to be work for periods not longer than 180 consecutive or interspersed days, in the same calendar year, when rendered by foreign citizens including those already under contract to the company that is a titleholder, concessionaire, operator, subcontractor or its subsidiaries in another country.
2. Short-term work in the terms of the preceding paragraph does not require work authorization; [for the purpose,] communication shall suffice.
3. The employer or its representative shall submit, within fifteen days after the date of the employee's entry, to the entity which oversees the labor area in the province where the foreign citizen is to work, a communication in duplicate including the following information:
 - a) Identity of the foreign employee;
 - b) Academic or professional qualifications;
 - c) The reason for his employment;
 - d) The activities he will perform; and
 - e) Indication of the starting and finishing date dates for his activities.
4. The conformity of the communication shall be verified in accordance with the terms established in article 7 of this Regulation.

CHAPTER VI
Regime of contracting through work authorization

ARTICLE 13
(Conditions for work authorization)

1. The contracting of foreign citizens is under the regime of work authorization done by means of an application addressed to the Minister who oversees the area of Labor.
2. The employment of a foreign citizen, who shall have the required academic or professional qualifications, may only take place provided there are no national citizens with those qualifications, or when they are insufficient in number.
3. The authorization to employ foreign citizen is also conditional on proof that the provisions of this Regulation have been respected.

ARTICLE 14
(Formulation of application and time period for order)

1. The application referred to in paragraph 1 of the preceding article shall be submitted to the entity which oversees the Labor area in the province where the foreign citizen is to work.
2. The file shall, in terms of the law, be the object of an order within a maximum period of fifteen working days counted from the date of its receipt by the competent entity.

ARTICLE 15
(Application contents)

1. The application for the work authorization for foreign citizens, a model of which is annexed, shall contain:
 - a) the legal name, headquarters and type of activity of the company submitting the application;
 - b) the identity of the foreign citizen the contracting of whom is the object of the request, his professional category [and] tasks or functions to be carried out;
 - c) grounds for the application.
2. Together with the application the following must be presented:
 - a) Certified copy of the passport or DIRE of the foreign citizen;
 - b) Copy of employment contract or document that proves the existence of a contractual relationship deemed equivalent to the employment relationship between the titleholder, concessionaire, operator or subcontractor and the foreign citizen to be contracted, containing the following elements:
 - i. Identification of the parties
 - ii. Duties or activities agreed;
 - iii. Contract duration;
 - iv. Remuneration and form of payment;
 - v. Starting and finishing date of contract.
 - c) Certificate of academic or technical or professional qualification of the foreign citizen to be employed and document proving professional experience;
 - d) Quitclaim certificate in favor of the titleholder, concessionaire or operator, issued by the entity that oversees the Social Security area;
 - e) Quitclaim certificate in favor of the titleholder, concessionaire or operator, issued by the entity that oversees the area of Finance;

- f) Opinion of the entity that oversees the Mining and Petroleum sector which shall pronounce on the relevance or lack thereof [sic] of the hiring of foreign citizen;
 - g) Opinion of the union delegate, union committee or sectoral union;
 - h) Evidence of payment of the fee.
3. The opinion referred to in *f)* above shall be issued within fifteen days from the submission of the application by the applicant, after which, if it has not been issued, the request is deemed denied.
 4. The opinion of the union delegate, union committee or sectoral union shall refer to the relevance or lack thereof [sic] of the application for contracting the foreign citizen.
 5. For academic qualification certificates acquired abroad, a certificate of equivalence must, without fail, be issued by the entity which oversees the Education area.

ARTICLE 16
(Contract content)

1. The work contract, dated and signed by both parties, shall contain the following clauses:
 - a) Identification of the parties;
 - b) Duties or activities agreed;
 - c) Work place;
 - d) Contract duration;
 - e) Remuneration and form of payment;
 - f) Starting and finishing date of the work.
2. Any amendment to the work conditions of the contract shall be communicated to the entity that supervises the labor area in the province in which the foreign citizen is employed, and an addendum signed.

ARTICLE 17
(Contract duration)

1. The work contract may be signed for a maximum period of two years, renewable based on the submission of a new application.
2. Regardless of the number of renewals, the contract of a foreign employee may never become an indeterminate period contract.

ARTICLE 18
(Termination of work contract)

In case of termination of the work contract for any reason, the employer must inform the entity that oversees the labor area and the immigration authorities in the province where the foreign citizen was employed, in writing, not more than fifteen days from the date of contract termination.

ARTICLE 19
(Fees)

1. The employment of foreign citizens in the petroleum and mining sector under the quota regime is subject to payment of a fee corresponding to three times the minimum wage in effect in the mineral extractive industry sector.
2. Employment in the work authorization regime and short term work regime is subject to a fee corresponding to ten minimum wages in effect in the mineral extractive industry sector.

CHAPTER VII
Inspection and penalties

ARTICLE 20
(Inspection)

The General Inspectorate of Labor is responsible for overseeing compliance with this Regulation.

ARTICLE 21
(Penalties)

1. The non-observance of the provisions of the legal rules on the regime for contracting foreign labor in Mozambique is punishable by suspension and a fine of between five and ten times the monthly salary of the foreign worker in relation to whom the violation occurred.
2. In calculating the fine if the employer does not divulge the salary of the foreigner citizen in an illegal position, the Labor Inspectorate shall make recourse to the highest salary paid by the employer.
3. The failure to communicate referred to in Article 18 of this Regulation is punishable by a fine of five times the minimum wage in effect in the extractive industry sector of petroleum and minerals.
4. The repeated practice of the same violation, within one year of the date of notice of the most recent violation, is considered an aggravated offense, and the fines applicable are increased to double their minimum and maximum.

5. In case of violation of the principles of the Constitution of the Republic, laws and other rules in force in the country, the exercise of the right to work of the foreign citizen in question may be prohibited by order of the Minister who oversees the area of Labor.

ARTICLE 22
(Destination of revenues)

The revenues resulting from the payment of fees foreseen in this Regulation shall revert 60% to the state treasury and 40% for expenses relating to documentary processing in the respective area and for professional training.

Honorable Minister of Labor

Excellency

Subject: Communication of contracting of foreign citizens within the quota

In accordance with the provisions of paragraph no..... of article 31 and paragraph 1 of Article 34 both of Law no. 23/2007, of 01 August, the company located at the represented by Mr./Ms. of nationality, communicates to Your Excellency the admission of Mr./Ms bearer of Passport no. to exercise the position of for a period of months, from/...../..... to/...../20..... It is from the group of companies, with a total of..... employees of which..... are(is) foreigner(s). Within the quota, it is entitled to%, which corresponds to..... foreigner(s). By this admission it will have..... foreigners for a maximum of of the quota. The company attaches the following documents:

1. Two copies of the letter communicating the admission of the foreign citizen and the degree to which the quota is filled;
2. Nominal list of employees for the preceding calendar year;
3. Quitclaim Certificate issued by INSS;
4. Quitclaim certificate issued by the Ministry of Finance;
5. Certified copy of passport or DIRE of the foreign citizen to be admitted;
6. Deposit slip as evidence of payment of the fee;
7. Copy of the employment contract or document attesting the existence of contractual relationship deemed equivalent to employment relationship;
8. Investment project.

....., of, 20....

The Representative of the Company

Form to be used by the companies that have used up the quota

Honorable Minister of Labor

Excellency

Subject: **Work authorization**

The company located at represented in this act by Mr./Ms. of nationality, requests authorization for the contracting of Mr./Ms. of nationality, bearer of passport no. issued on of,, who will exercise the position of for a period of months, taking into account that the company employs national employees and..... foreigner (s), having used up the quota to which it is entitled, hereby requests Your Excellency for work authorization under terms of the article 33 of Law no. 23/2007, of 1 August. The company attaches the following documents:

1. Certified copy of the passport or DIRE of the citizen to be admitted;
2. Copy of the employment contract or document attesting the existence of contractual relationship deemed equivalent to employment relationship;
3. Certificate of qualifications;
4. Copy of equivalence of qualifications, issued by the Ministry of Education and Culture;
5. Certificate of professional and technical qualifications and proof of professional experience;
6. Quitclaim certificate issued by the Ministry of Finance;
7. Quitclaim certificate issued by INSS;
8. Opinion of the entity that oversees the petroleum and mining sector
9. Opinion of the union delegate, union committee or sectoral union;
10. Deposit slip as evidence of payment of the fee.

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The Representative of the Company

Honorable Minister of Labor

Excellency

Subject: Communication within the regime of short-term work

The company located at..... represented in this act by Mr./Ms. of nationality, communicates to Your Excellency that there will work at this company under the short-term work regime, Mr./Ms. of nationality, issued on of, 20....[sic], specializing in, for a period of days, with effect from/...../20 to /..... /20...., under the terms of the Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector.

Grounds

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The Representative of the Company