



**DEPARTMENT OF PUBLIC SERVICE AND
ADMINISTRATION**

**POLICY ON THE UTILISATION OF FOREIGN
NATIONALS TO ADDRESS HUMAN RESOURCE AND
SKILLS NEEDS IN THE PUBLIC SERVICE**

ISSUED BY THE MINISTER FOR THE PUBLIC SERVICE AND
ADMINISTRATION AS A DIRECTIVE IN TERMS OF SECTION 41(3) OF
THE PUBLIC SERVICE ACT, 1994 TO ELUCIDATE AND SUPPLEMENT
THE PUBLIC SERVICE REGULATIONS 2001, CHAPTER 1, PART VII B.1,
B.4, C AND D

DATE OF COMMENCEMENT: 1 DECEMBER 2009

TABLE OF CONTENTS

PARAGRAPH	SUBJECT	PAGE
1.	INTRODUCTION	4
2.	PURPOSE OF THE POLICY	4
3.	DEFINITION OF TERMS	4
4.	SCOPE OF APPLICATION AND INSTITUTIONAL ARRANGEMENTS	7
5.	APPOINTMENT OF FOREIGN NATIONALS TO ADDRESS HUMAN RESOURCE SHORTAGES IN CRITICAL OCCUPATIONS	
5.1	Principles	8
5.2	Statutory requirements to be complied with	9
5.3	Criteria to be met before appointing foreign nationals	9
5.4	Identification of critical occupations	10
5.5	Process to be followed in the recruitment of foreign nationals	
5.5.1	<i>Job description for position to be filled</i>	11
5.5.2	<i>Methods of recruitment</i>	11
5.5.3	<i>Selection of candidates</i>	12
5.5.4	<i>Conditions of appointment</i>	12
5.5.5	<i>Conditions of service</i>	14
5.5.6	<i>Effecting the appointments</i>	15
5.5.7	<i>Reporting</i>	15
6.	UTILISATION OF FOREIGN NATIONALS ON A SECONDMENT OR EXCHANGE BASIS IN CRITICAL OCCUPATIONS OR CRITICAL SKILLS SITUATIONS	
6.1	Principles	15

PARAGRAPH	SUBJECT	PAGE
6.1.1	<i>Suitability</i>	16
6.1.2	<i>Compliance with treaties, agreements or memoranda of understanding</i>	16
6.1.3	<i>Utilisation</i>	16
6.1.4	<i>Consultation</i>	16
6.1.5	<i>Service delivery</i>	16
6.2	Statutory requirements to be complied with	17
6.3	Criteria to be met before implementing a programme for the utilisation of foreign nationals on a secondment or exchange basis	17
6.4	Identification of critical occupations and critical skills	18
6.5	Process to be followed in utilising foreign nationals on a secondment or exchange basis	
6.5.1	<i>Consultation with the country or countries as well as the stakeholders concerned</i>	19
6.5.2	<i>Terms and conditions applicable to secondment or exchange programmes</i>	20
6.5.3	<i>Formalising the secondment or exchange programmes between the parties concerned</i>	23
6.5.4	<i>Effecting the actual secondment or exchange of foreign nationals</i>	23
6.6	Special deployment allowance for seconded or exchanged foreign nationals	24
6.7	Organisational arrangements regarding seconded or exchanged foreign nationals	24
6.8	Reporting	25
ANNEXURES		
Annexure A:	Sections 9, 15(2) and 15(4) of the Public Service Act, 1994	
Annexure B:	Generic employment contract for foreign nationals	

1. INTRODUCTION

- 1.1 The ability of the Public Service to deliver services efficiently to the people of the RSA depends on the Public Service's capacity in terms of the competence and adequacy of its human resource base. The Public Service is currently facing serious challenges to manage human resource and skills shortages in a number of occupations. This Policy forms part of a variety of interventions to address human resource and skills shortages in the Public Service.
- 1.2 The Policy focuses specifically on the utilisation of foreign nationals and seeks to establish a clear basis for the employment of adequately competent foreign nationals to address, as an interim measure, the human resource and skills needs in respect of identified critical occupations and critical skills in the Public Service. The utilisation of foreign nationals will take place with due regard to the right of preference of South African citizens and permanent residents to employment opportunities that may exist in the Public Service.

2. PURPOSE OF THE POLICY

To provide mandates and processes according to which departments can address their human resource and skills needs in respect of critical occupations and critical skills by utilising foreign nationals on an employment, secondment or exchange basis.

3. DEFINITION OF TERMS

- 3.1 This Policy must be read in conjunction with the Public Service Act, 1994, the Public Service Regulations and other applicable policy prescripts.
- 3.2 In this Policy, unless the context indicates otherwise –

3.2.1 “**conditions of service**” means any service benefit, remunerative allowance or compensation paid or granted in accordance with the applicable provisions in the Public Service to an employee over and above the employee’s basic salary;

3.2.2 “**critical occupations**” means occupations or sub-categories within an occupation –

- (a) in which there is a scarcity of qualified and experienced persons currently or anticipated in the future, either because such skilled persons are not available or they are available but do not meet the applicable employment criteria;
- (b) for which persons require advanced knowledge in a specified subject area or science or learning field and such knowledge is acquired by a prolonged course or study and/or specialised instruction;
- (c) where the inherent nature of the occupation requires consistent exercise of discretion and is predominantly intellectual in nature; and
- (d) in respect of which a department experiences a high degree of difficulty to recruit or retain the services of employees;

3.2.3 “**critical skills**” means the operational or generic abilities needed within existing occupations that are required; or the top up skills required to fill a skills gap to enable employees to competently perform the roles/tasks associated with such occupations. Critical skills include transversal skills (“hard” skills like project management skills or “soft” skills like conflict management or communication skills) and functional skills associated with particular jobs or particular occupational categories;

3.2.4 “**department**” or “**departments**” means a national department, a national government component, the Office of a Premier, a provincial department or a provincial government component listed in Schedules 1, 2 and 3 of the Public Service Act, 1994;

- 3.2.5 “**exchange**” means the secondment of a foreign national to a department that is effected reciprocally with the placement of a Public Service Act-employee at the disposal of the employer of the foreign national as contemplated in section 15(4) of the Public Service Act, 1994;
- 3.2.6 “**executive authority**”, in relation to –
- (a) The Presidency or a national government component within the President’s portfolio, means the President;
 - (b) A national department or a national government component within a Cabinet portfolio, means the Minister responsible for such portfolio;
 - (c) the Office of the Public Service Commission, means the Chairperson of the Commission;
 - (d) the Office of a Premier of a province, means the Premier of that province; and
 - (e) a provincial department or a provincial government component within an Executive Council portfolio, means the member of the Executive Council responsible for such portfolio;
- 3.2.7 “**Immigration Act**” means the Immigration Act, 2002 (Act 13 of 2002);
- 3.2.8 “**Immigration Regulations**” means the Immigration Regulations made by the Minister of Home Affairs in terms of the Immigration Act;
- 3.2.9 “**Minister**” means the Minister for the Public Service and Administration;
- 3.2.10 “**Public Service Act, 1994**” or “**the Act**” means the Public Service Act, 1994 (promulgated under Proclamation No. 103 of 1994), as amended;

3.2.11 “**Public Service Regulations**” or “**Regulations**” means the Public Service Regulations made by the Minister in terms of the Public Service Act;

3.2.12 “**RSA**” means the Republic of South Africa as contemplated in the Constitution;

3.2.13 “**Recipient Organisation**” means the other government, institution or body to which an employee is made available on an exchange basis;

3.2.14 “**secondment**” means a foreign national in the service of another government, institution or body is placed at the disposal of a department as provided for in section 15(2) of the Public Service Act, 1994;

3.2.15 “**Treasury**” means the Treasury as defined in section 1(1) of the Public Service Act, 1994; and

any other word shall have the same meaning assigned thereto in the Public Service Act, 1994 and the Public Service Regulations.

4. **SCOPE OF APPLICATION AND INSTITUTIONAL ARRANGEMENTS**

4.1 This Policy applies to foreign nationals who are utilised in critical occupations or in instances where a critical skills need exists.

4.2 It is issued by the Minister as a directive to elucidate and supplement the Public Service Regulations 2001, Chapter 1, Part VII B.1, B.4, C and D which deal with the utilisation of foreign nationals by means of their appointment, secondment and exchange with Public Service Act-employees.

4.3 This Policy applies to the practices contemplated in –

- 4.3.1 section 9 of the Public Service Act, 1994 as far as the appointment of foreign nationals is concerned;
- 4.3.2 section 15(2) of the Public Service Act, 1994 as far as the secondment of foreign nationals is concerned; and
- 4.3.3 section 15(4) of the Public Service Act, 1994 as far as the secondment of foreign nationals on an exchange basis is concerned. (The aforementioned provisions appear for ease of reference at Annexure A)
- 4.4 Each executive authority may, in terms of this Policy and subject to the conditions prescribed by this Policy and any relevant law, determine a departmental policy to utilise foreign nationals on an employment or secondment basis or through their exchange with Public Service Act-employees.

5. APPOINTMENT OF FOREIGN NATIONALS TO ADDRESS HUMAN RESOURCE SHORTAGES IN CRITICAL OCCUPATIONS

5.1 Principles

The following principles shall inform the employment of foreign nationals:

- 5.1.1 The employment of South African citizens and permanent residents must receive preference and the utilisation of foreign nationals through their appointment in Public Service departments must be effected as a last resort.
- 5.1.2 The appointment of foreign nationals must be limited to critical occupations.

5.1.3 The availability of South African citizens and permanent residents for employment in critical occupations must be monitored regularly by departments.

5.1.4 The recruitment of foreign nationals must take place with due regard to the provisions and/or limitations in treaties, agreements or memoranda of understanding with other countries.

5.2 **Statutory requirements to be complied with**

5.2.1 In terms of section 10(1)(a) of the Public Service Act, 1994 no person shall be appointed permanently to a post unless she or he is a South African citizen or permanent resident. Foreign nationals who are not in possession of a permanent residence permit may therefore only be employed temporarily in departments.

5.2.2 The employment of foreign nationals in critical occupations shall at all times be subject to the South African laws regulating the entry of foreign nationals into the RSA, their residence and their employment, e.g. the Immigration Act, the Refugees Act, 1998 and the Public Service Act, 1994.

5.3 **Criteria to be met before appointing foreign nationals**

Foreign nationals may be considered for employment in critical occupations subject to the following criteria being met beforehand:

5.3.1 The RSA labour market must have been properly tested through national recruitment campaigns (as prescribed in regulation 16(5) of the Immigration Regulations) to recruit from within South Africa and the negative outcomes properly recorded (as proof), before considering the appointment of a foreign national.

- 5.3.2 Employment must not be offered to foreign nationals where there is an adequate supply of suitable South African citizens or foreign nationals who have permanent residence, for the vacant posts concerned.
- 5.3.3 Appointing a foreign national must not displace a South African citizen or permanent resident from her or his post.
- 5.3.4 Should foreign nationals be appointed and an adequate supply of suitably skilled South African citizens become available in future, the employment of foreign nationals must be phased out in the critical occupations concerned in terms of the provisions of their employment contracts.

5.4 Identification of critical occupations

A department may identify an occupation as a critical occupation based on the following:

- 5.4.1 There is a proven high vacancy and/or staff turnover rate in the relevant occupation.
- 5.4.2 The demand for suitably qualified and experienced human resources outweighs the supply, i.e. there is a scarcity of qualified and experienced persons currently or anticipated in future because such skilled persons are not available or they are available but do not meet the employment criteria.
- 5.4.3 Advanced knowledge that can only be acquired by a prolonged course of study or specialised instruction is required.
- 5.4.4 The RSA labour market must have been tested through national recruitment campaigns without success, i.e. vacancies must prove difficult to fill.

5.4.5 The occupation appears in the Scarce Skills and Work Permit Quota List issued by the Minister of Home Affairs.

5.5 **Process to be followed in the recruitment of foreign nationals**

5.5.1 *Job description for position to be filled*

If a department considers the appointment of a foreign national in a critical occupation, the department must ensure that a job description for the position exists containing the following information:

- (a) The post level concerned
- (b) The job purpose
- (c) The main objectives of the post
- (d) The competency profile required from the post incumbent
- (e) Other requirements that should be satisfied by the post incumbent, e.g. registration with a professional council, statutory test or qualification requirements.

5.5.2 *Methods of recruitment*

- (a) To comply with the requirement that the RSA labour market be tested before the employment of foreign nationals can be considered, departments must at least apply the following recruitment methods within the RSA:
 - (i) Advertisement in the national media
 - (ii) "Head hunting" of a South African citizen or permanent resident
- (b) If the appointment of foreign nationals is to be done by means of entering into treaties, agreements or memoranda of understanding with foreign countries, the Department of International Relations and Cooperation must be approached to

facilitate the process. Once approached, the Department of International Relations and Cooperation will ensure that –

- (i) liaison with the foreign government takes place for purposes of recruitment through the correct channels;
 - (ii) recruitment in the relevant foreign country is permissible; and
 - (iii) the correct recruitment methods in the relevant foreign country and entering into treaties, agreements or memoranda of understanding are followed.
- (c) Agreements, treaties or memoranda of understanding may only be entered into with countries subject to the parties adhering to the legislative and protocol requirements and following the prescribed official channels via the Department of International Relations and Cooperation.

5.5.3 *Selection of candidates*

The provisions for the selection of candidates as provided for in Part VII/D of Chapter 1 of the Public Service Regulations must be complied with.

5.5.4 *Conditions of appointment*

- (a) The employment of foreign nationals must be on a fixed term contract basis, the term of employment must not exceed the term of the relevant work permit and the employment relationship must be on a full-time basis in funded vacant posts.
- (b) A foreign national must undertake to perform her or his tasks diligently in the critical occupation to which she or he will be appointed and to transfer her or his skills (section 2(1)(j)(ii) of the Immigration Act refers) to other employees.

- (c) All applicants applying for work permits must be provided with a letter of endorsement and certification in terms of section 19 of the Immigration Act by the employing department to endorse the job offer and to certify their employability.
- (d) In terms of section 19 of the Immigration Act, departments are obliged to monitor the validity of the work permits of foreign nationals and commit themselves to notify the Department of Home Affairs when a foreign national is no longer employed or is employed in a different capacity or role.
- (e) It is a statutory requirement that all foreign nationals working in South Africa must maintain their legal residence status in the country at all times.
- (f) Prior to employment, the employing department must obtain proof of the educational qualifications of foreign nationals and, if applicable, have it evaluated by the South African Qualifications Authority for purposes of recognition in South Africa.
- (g) If registration with a professional council is a requirement for appointment in the relevant post, such registration must be obtained before the appointment of the foreign national.
- (h) Proof of experience required for appointment must be provided by the foreign national prior to appointment or within an agreed to period after assumption of duty.
- (i) Where appropriate, the employing department must clearly state the health requirements for appointment in the relevant position and obtain proof that the foreign national complies with these requirements prior to assumption of duty.

- (j) In the event of a security clearance being a requirement for appointment in the relevant position, the employing department must ensure that the security clearance is obtained prior to the assumption of duty of the foreign national. If this is not possible, the department must obtain a preliminary security clearance.
- (k) It must be ensured that the foreign national is able to communicate effectively in performing the duties of the job in the critical occupation in one of the official languages of the RSA.

5.5.5 *Conditions of service*

- (a) Foreign nationals must be appointed on Public Service terms and conditions which at no time may be superior or inferior to those offered to South African citizens or permanent residents.
- (b) The salary of a foreign national must be agreed on between the department and the foreign national concerned before he or she arrives in South Africa to assume duty, which salary must be included in the contract of employment.
- (c) Should it prove difficult for a department to recruit suitably skilled foreign nationals at the appropriate remuneration levels, the department may consider utilising the provisions of Part V/C3 of Chapter 1 of the Public Service Regulations which provides for an executive authority to set the salary for an employee above the minimum notch of a salary range if he or she cannot recruit or retain an employee with the necessary competencies at the salary indicated by the job weight. In such a case the reason why the salary indicated by the job weight was insufficient must be recorded.
- (d) Provision must be made in the contract of employment of a foreign national that she or he must transfer skills to Public

Service employees in the relevant critical occupation during the period of her or his employment.

5.5.6 *Effecting the appointments*

- (a) The provisions of Part VII/D of Chapter 1 of the Public Service Regulations are applicable with regard to the processing of applications, nominating candidates, approval by the relevant executive authority or her or his delegate and informing the candidates of the outcome.
- (b) The applicable channels of communication via the Department of International Relations and Cooperation must at all times be followed.
- (c) An employment contract must be entered into when appointing a foreign national. (The generic employment contract at Annexure B could be used as a basis if no other contract is prescribed.)

5.5.7 *Reporting*

Reporting must be done according to the format determined by the Minister in terms of Part III/J.4 of Chapter 1 of the Public Service Regulations.

6. **UTILISATION OF FOREIGN NATIONALS ON A SECONDMENT OR EXCHANGE BASIS IN CRITICAL OCCUPATIONS OR CRITICAL SKILLS SITUATIONS**

6.1 **Principles**

The following principles should inform the utilisation of foreign nationals on a secondment or exchange basis:

6.1.1 *Suitability*

Departments must endeavour to obtain the most suitable foreign nationals for purposes of their secondment or exchange. The determination of a foreign national's suitability must be based on the inherent requirements attached to the duties to be performed in the department and the capacity building needs of the RSA employees.

6.1.2 *Compliance with treaties, agreements or memoranda of understanding*

Foreign nationals who are temporary residents and who obtain suitable registration for utilisation in the RSA Public Service must not be allowed to take up employment outside the scope of their registration status and the intention of the treaty, agreement or memorandum of understanding regulating their service in South Africa.

6.1.3 *Utilisation*

The utilisation of foreign nationals on a secondment or exchange basis must be limited to critical occupations and critical skills situations.

6.1.4 *Consultation*

The relevant RSA line department at national government level must be involved or consulted from the onset by departments that intend to utilise the secondment or exchange of foreign nationals.

6.1.5 *Service delivery*

Service delivery in the RSA Public Service must not be compromised by the utilisation of a foreign national on a secondment or exchange basis.

6.2 **Statutory requirements to be complied with**

6.2.1 The South African laws regulating the entry of foreign nationals into the Republic, their residence and employment status, e.g. the Immigration Act, the Refugees Act, 1998 and the Public Service Act, 1994 must be complied with.

6.2.2 Any secondment or exchange of foreign nationals must take place in terms of section 15(2) and (4) of the Act respectively, the provisions of Part VII B.4 of Chapter 1 of the Public Service Regulations and this Policy.

6.3 **Criteria to be met before implementing a programme for the utilisation of foreign nationals on a secondment or exchange basis**

Prior to embarking on a programme to second foreign nationals to the RSA Public Service or utilising a foreign national on an exchange basis, the executive authority of a department or her or his delegate should ensure that the following criteria have been met:

6.3.1 The department must ensure that the level of training and qualifications (including registration with professional councils and security clearance, where applicable) of the foreign nationals are sufficient to ensure their effective utilisation during the secondment or exchange period.

6.3.2 The department must ascertain that the professional competence of the individuals concerned, their performance records and their ability to communicate effectively in respect of the inherent requirements of the job in one of the official languages of South Africa, are adequate.

6.3.3 Foreign nationals must be utilised in an identified critical occupation or critical skills situation and they may not, except with prior approval, migrate to other positions, geographical areas (e.g. from rural areas to

urban areas) or to other employers (e.g. from the Public Service to the private sector).

6.3.4 Foreign nationals must not be allowed to take up employment outside the scope of their registration status under the Immigration Act and the intention of the treaty, agreement or memorandum of understanding regulating their service in the RSA.

6.3.5 All legislative requirements of the Immigration Act, the Immigration Regulations and the South African Passport and Travel Documents Act, 1994, must be complied with before finalising the secondment or exchange of (a) foreign national(s) to the RSA Public Service.

6.4 **Identification of critical occupations and critical skills**

6.4.1 The secondment and exchange of foreign nationals to the RSA Public Service are restricted to critical occupations and critical skills situations.

6.4.2 A department may identify an occupation as a **critical occupation** based on the following:

- (a) There is a proven high vacancy and/or staff turnover rate in the relevant occupation.
- (b) The demand for suitably qualified and experienced human resources outweighs the supply, i.e. there is a scarcity of qualified and experienced persons currently or anticipated in future because such skilled persons are not available or they are available but do not meet the employment criteria.
- (c) Advanced knowledge that can only be acquired by a prolonged course of study or specialised instruction is required.

- (d) The RSA labour market must have been tested through national recruitment campaigns without success, i.e. vacancies must prove difficult to fill.
- (e) The occupation appears in the Scarce Skills and Work Permit Quota List issued by the Minister of Home Affairs.

6.4.3 A department may identify a skill as a **critical skill** based on the following:

- (a) The skills needs identified in departmental skills development plans.
- (b) The skills needs identified in individual personal development plans as part of a departmental performance management system.
- (c) New or emerging skills in respect of which training was not previously provided or included in study courses.

6.5 **Process to be followed in utilising foreign nationals on a secondment or exchange basis**

6.5.1 *Consultation with the country or countries as well as the stakeholders concerned*

A department considering utilising foreign nationals on a secondment or exchange basis should approach the Department of International Relations and Cooperation to facilitate and advise on –

- (a) the identification of countries or bodies where foreign nationals with the required expertise could be available to assist in the delivery of the required service(s) and/or develop the capacity of RSA public servants in a critical occupation or critical skill in a department;

- (b) the establishment of official contact with the countries or bodies concerned;
- (c) entering (if necessary) into treaties, agreements or memoranda of understanding with the foreign countries or bodies concerned;
- (d) the conditions to be included in such treaties, agreements or memoranda of understanding being entered into; and
- (e) the formal signing of the intergovernmental treaties, agreements or memoranda of understanding.

6.5.2 Terms and conditions applicable to secondment or exchange programmes

- (a) The terms and conditions must be agreed upon between the department(s) and the country or body concerned and must be consistent with the applicable statutory provisions referred to in paragraph 6.2 above. As a minimum, the following matters should be addressed in this respect:
 - (i) The objective and term of the secondment or exchange programme.
 - (ii) The conditions and arrangements concerning the premature termination of a foreign national's secondment or exchange.
 - (iii) Arrangements regarding the funding of the secondment or exchange programme.
 - (iv) Detail concerning the accommodation, place of work, work hours and utilisation of the foreign nationals concerned.
 - (v) Arrangements regarding the management of the foreign nationals during the term of their secondment or

exchange e.g. leave, performance assessment, payment of salary and benefits, work place relations, etc.

- (vi) Detail, if applicable, regarding the payment of the special deployment allowance referred to in paragraph 6.6 below.

- (b) The terms and conditions applicable to a foreign national's secondment or exchange must be approved by the relevant Treasury as prescribed in section 15(2) and 15(4) of the Public Service Act.

- (c) Either the recipient (RSA) department or the other government or body shall bear the inclusive costs of the secondment or exchange unless both the recipient department and the other government or body agree to share the costs. **(Note:** *The "inclusive costs of the secondment or exchange" means for the purpose of this subparagraph the monetary value of the following expenses incurred where applicable, by the other government or body during the period of the foreign national's secondment or exchange:*
 - (i) *The basic salary plus conditions of service paid by the other government, institution or body.*
 - (ii) *The other contributions made by the other government, institution or body in respect of the foreign national to a pension or similar fund.*
 - (iii) *The contributions made by the other government, institution or body in respect of the foreign national to a medical aid scheme.*
 - (iv) *Any subsidy or compensation paid by the other government, institution or body to the foreign national in respect of accommodation.*
 - (v) *Any compensation paid by the other government, institution or body to the foreign national if she or he obtains an injury or contracts an illness that originates*

from the performance of her or his duties during the period of deployment or exchange.

(vi) Any other compensation paid by the other government, institution or body to the foreign national.)

- (d) A secondment or exchange programme with another country or body will normally necessitate the evaluation of the (foreign) qualifications of the candidates from the other country for recognition within the South African context. Departments must timeously arrange with the South African Qualifications Authority to perform such evaluations, especially where registration with a professional council is a prerequisite for employment in a post.
- (e) The foreign nationals must be utilised to address the staffing needs in an identified critical occupation or critical skills area in the department and the migration of foreign nationals from one employer to another (public/private) or between departments and provinces or who wish to change their purpose of entry into the RSA or any other condition of their temporary residence permit to secure an extended stay or employment in South Africa, must not be supported, unless the head of department or her or his delegate supports the application on good cause shown. In such an instance the matter must be reported to the Department of Home Affairs.
- (f) Where a secondment or exchange programme is aimed at the development of staff in a rural area, the migration of the foreign nationals to urban areas must not be allowed.

6.5.3 *Formalising the secondment or exchange programmes between the parties concerned*

- (a) The Department of International Relations and Cooperation must facilitate the formal signing of inter-governmental treaties, agreements or memoranda of understanding with regard to programmes for the secondment or exchange of foreign nationals.
- (b) The terms and conditions applicable to foreign nationals who are identified to participate in a secondment or exchange programme must be included in the relevant treaty, agreement or memorandum of understanding with the other country or countries and the relevant RSA department must consult the relevant Treasury timeously in advance to obtain the appropriate Treasury approval.
- (c) The communication between a foreign country and the department entering into a programme for the secondment or exchange of foreign nationals must be channeled via the Department of International Relations and Cooperation.
- (d) Such communication must include the period of secondment or exchange.

6.5.4 *Effecting the actual secondment or exchange of foreign nationals*

The secondment or exchange of foreign nationals must be formalised in writing with the countries and institutions concerned.

6.6 Special deployment allowance for seconded or exchanged foreign nationals

The recipient department may, in order to attract a foreign national with the required skills, consider the payment of a special deployment allowance in South African currency to a foreign national. The allowance shall not exceed 30% of the commencing salary notch or package attached to the post level at which the foreign national will be utilised and may only be paid after consultation with the Department of Public Service and Administration.

6.7 Organisational arrangements regarding seconded or exchanged foreign nationals

A foreign national who is utilised on a secondment or exchange basis must be employed additional to the fixed establishment of the department. This does not influence the fact that the foreign national must perform the duties allocated to her or him by the department (which, in the case of an exchanged foreign national, will normally be those of the RSA employee exchanged with the other country).

6.8 Reporting

Reporting must be done according to the format determined by the Minister in terms of Part III/J.4 of Chapter 1 of the Public Service Regulations.

SECTIONS 9, 15(2) and 15(4) OF THE PUBLIC SERVICE ACT**Section 9 of the Act**

“Appointments in public service

An executive authority may appoint any person in his or her department in accordance with this Act and in such manner and on such conditions as may be prescribed.”

Section 15(2) of the Act

“(2) A person in the service of a department under any law other than this Act, or in the service of another government, or of any council, institution or body established by or under any law, or of any other body or person, may be employed by another department or a department, as the case may be, for a particular service or for a stated period and on such terms and conditions, other than conditions laid down by or under any pensions law, as may be agreed upon by the employer of the person concerned and the relevant executing authority and approved by the Treasury.”

Section 15(4) of the Act (utilisation of foreign nationals on an exchange basis)

“(4) (a) A person (in this paragraph referred to as the official) in the service of a department under any law other than this Act, or in the service of another government, or of any council, institution or body established by or under any law, or of any other body or person, may be employed by another department or a department, as the case may be, for a stated period and on such terms and conditions, other than conditions laid down by or under any pensions law, as may be

agreed upon by the employer of the official and the relevant executing authority and approved by the Treasury, and in such a case, on such conditions, in addition to those prescribed by or under any law, as may be determined by the said authority after consultation with the Treasury, an officer or employee may with his or her consent and in terms of such an agreement be placed at the disposal of the employer of the official for the same period on an exchange basis.

- (b) Such an officer or employee remains subject to the laws applicable to officers and employees in the public service while so placed at such disposal.”

GENERIC EMPLOYMENT CONTRACT FOR FOREIGN NATIONALS

ENTERED INTO BY AND BETWEEN

The Government of the Republic of South Africa, herein represented by
.....
.....(full name of Executive Authority or
her/his delegate) in her/his capacity of
..... (indicate portfolio or post)
(hereinafter referred to as the Employer)

and

.....
..... (full name and passport number)
(hereinafter called the Employee) in the temporary capacity of
..... (indicate rank title).

WHEREBY IT IS AGREED AS FOLLOWS:

1. Appointment

1.1 The Employer hereby appoints the Employee, who agrees and accepts
appointment as in terms
of section 9 of the Public Service Act, 1994 as amended (hereinafter
referred to as “the Act”) in the capacity of (indicate
rank title) for a period ofyears/calendar months commencing
on the day of and

terminating on the day of
.....

1.2 The Employee's employment shall be governed by the Act, the Public Service Regulations, 2001 (hereinafter referred to as "the Regulations") and any other legal provisions applicable to the Employee.

1.3 In terms of this Contract –

(a) the Employee shall serve the Employer in (name of the national/provincial Department, national/provincial Government Component or Office of a Premier) on a full-time basis at such place as may from time to time be directed by the Employer;

(b) the Employee will be responsible for the responsibilities and key performance areas set out in the Performance Agreement referred to in clause 5, shall carry out all lawful and reasonable instructions of the Employer and shall comply with any statutory obligations applicable to the position; and

(c) while serving under this Contract, the Employee undertakes to transfer and share the skills she/he possesses to other employees as indicated and required by the Employer from time to time.

1.4 The employment of the Employee is subject to –

(a) a security clearance of (only if applicable, in which case confidential, secret or top secret must be stated);

(b) a probationary period in accordance with section 13 of the Act;

- (c) the submission by the Employee of original certificates of her/his academic and professional qualifications, service certificates and a valid work permit;
- (d) registration with the relevant RSA Statutory Professional Council, if applicable;
- (e) the Employee having a sufficient degree of proficiency in one of the official languages of the RSA, to communicate adequately with her/his Employer, colleagues, members of the staff and members of the public to whom she or he delivers services;

1.5 The Employee may be required to perform other duties or to work at other places.

1.6 Any matter arising out of this Contract, which are not specifically provided for herein shall be dealt with in accordance with the provisions of the Act, the Regulations and any other legal provisions applicable to the Employee.

2. Remuneration

2.1 The remuneration that the Employee shall receive as from the date of assuming duty as stated in clause 1.1 above, is that specified in Appendix A.

2.2 The annual salary and any applicable conditions of service will be payable in equal monthly installments in the currency of the RSA by deposit into a bank account, the particulars being as follows:

.....
(name of bank);
..... (branch number and
account number)

3. Termination of employment

3.1 The employment of the Employee may be terminated under the following circumstances:

(a) On expiry of the term determined in this Contract.

(b) Dismissal in terms of section 17(2) of the Act.

(c) Voluntary resignation

(d) Death.

3.2 The pension and other payable benefits are linked to method of termination and shall be paid in accordance with the applicable prescripts.

3.3 In the case of voluntary resignation, the Employee shall, unless otherwise agreed with the Employer, give at least one month's written notice.

3.4 Should the Employee's employment be terminated as contemplated in clause 3.3, the Employer has the right to require the Employee to vacate the office occupied by her/him and to leave the premises of the Department before the expiry of the notice period on a day stipulated by the Employer and not to present herself/himself for duty any time thereafter.

3.5 Should the Employer invoke the provisions of clause 3.4, the Employee will still be entitled to all such benefits as contained in the relevant prescripts.

- 3.6 In the case of incapacity or misconduct, the Employee shall be dealt with in accordance with the relevant labour legislation and any directive issued by the Minister for the Public Service and Administration.
- 3.7 If applicable, the Employee must at all times uphold her/his registration status with the relevant Statutory Professional Council(s). If for any reason, the Employee's registration should lapse, this Contract shall terminate simultaneously.
- 3.8 The Employee must at all times uphold her/his temporary residential status in the Republic of South Africa and the validity of her or his work permit. If for any reason, the Employee's residential status or validity of work permit expires, this Contract shall terminate simultaneously.
- 3.9 On the termination of this Contract for any reason, the Employee must immediately return to the Employer all property of the Employer relating to the business of the Employer which is in the Employee's charge or under her/his control, or otherwise deal with such property according to the Employer's instructions. The financial value of any lost items may, at the discretion of the Employer, be recovered from the Employee.

4. **Conduct**

- 4.1 The Employee undertakes to the Employer that she/he –
- (a) shall not, without the applicable consent and during her/his employment or at any time thereafter, disclose any record, as defined in section 1 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), that must or may be refused upon a request for access to a record of a public body in terms of that Act,;
 - (b) shall not, during her/his employment or at any time thereafter, use any record so defined and obtained as a result of her/his

employment, to the detriment of the State, except if it is used in the exercise or protection of any right, or legitimate expectation, conferred by law;

- (c) shall –
 - (i) if so requested by the Employer during her/his employment or on the termination of her/his employment, submit to the Employer any record so defined and in the Employee's possession as a result of her/his employment; and
 - (ii) not retain any copies of or extracts from such record, except with consent of the Employer;
- (d) shall comply with the Employer's prescribed Code of Conduct as contained in the Public Service Regulations.
- (e) shall manage the resources allocated to her/him effectively and efficiently; and
- (f) shall not, while in the employ of the Employer, engage or be involved in, or devote any time or attention to any other remunerated work without the prior written consent of the Employer.

4.2 The parties agree that clause 4(1)(a) and (b) is severable from the Agreement and shall remain in effect when the Agreement terminates for whatever reason.

4.3 The Employee –

- (a) acknowledges that she/he has carefully considered the provisions of this clause; and
- (b) acknowledges that she/he enters into this Contract freely and voluntarily and that no circumstances exist and/or existed for her /him alleging either now or at any future time that she/he was at a disadvantage in agreeing to the restraints set out in this clause or was other than in an equal bargaining position with the Employer in agreeing to such restraints.

5. Performance agreement

The Employee shall enter into a performance agreement with the Employer as prescribed.

6. Additional terms and conditions

This Contract is directly linked to the performance agreement referred to in clause 5. In the event that the Employee does not perform satisfactorily in relation to the requirements of her/his performance agreement, the Employee acknowledges that the Employer may deal with her/him in accordance with the procedure contained in the relevant labour legislation and any other applicable prescript.

7. General

7.1 Change of temporary residence status

The Employer is under no obligation to support any application for any immigration permits in terms of the Immigration Act, 2002 (Act No 13 of 2002).

7.2 Extension of contract

- (a) It is agreed that the Employee has been employed for the period indicated in clause 1.1 after which the Employer in her/his sole discretion may renew the Contract.
- (b) It is understood that the Employee's position is temporary, with a new contract having to be entered into afresh, and that there is no expectation of an automatic renewal.
- (c) Any renewal contemplated in clause 7.2(b) must commence and be finalised before the expiry of this Contract.

7.3 Good faith

In the implementation of this Contract, the parties undertake to observe the utmost good faith and they warrant in their dealing with each other that they will neither do anything nor refrain from doing anything that might prejudice or detract from the rights, assets or interests of each other.

7.4 Interpretation of Contract

The interpretation of this Contract shall be governed by the laws and legal principles applicable in the Republic of South Africa.

7.5 Jurisdiction of courts

- (a) The Employee submits to the jurisdiction of the Courts of the Republic of South Africa in the event of any legal proceedings arising from the provisions of this Contract.
- (b) It shall not be a breach of the Contract if a party to this Contract is prevented from or hindered in the performance or observance

of its obligations hereunder by any Act of Parliament or other action of the State or by any cause or event outside the control of that party.

7.6 Variation

- (a) The Contract constitutes the whole of the Contract between the parties to this Contract relating to the subject matter of this Contract, and save as otherwise provided, no amendment, alteration, addition or variation of any right, term or condition of this Contract will be of any force or effect unless reduced to writing and signed by the parties to this Contract.
- (b) The parties agree that there are no other conditions, warranties or representations, whether oral or written and whether expressed or implied or otherwise, save those contained in the Contract, the Act, the Regulations and other relevant legislation (e.g. the Government Employees Pension Fund Law).

7.7 Waiver

No waiver of any of the terms and conditions of this Contract will be binding for any purpose unless expressed in writing and signed by the party giving the same, and any such waiver will be effective only in the specific instance and for the purpose given. No failure or delay on the part of either party in exercising any right, power or privilege precludes any other or further exercise thereof or the exercise of any other right, power or privilege.

8. **Notice and domicilium**

- 8.1 The parties choose as their respective *domicilium citandi et executandi* for the purpose of legal proceedings and for the purpose of giving or

sending any notice provided for or necessary in terms of this Contract, the following addresses:

	Employer	Employee
Physical address
Postal address
Telefax number

Provided that a party reports any change of her or his *domicilium* to any other physical address, postal address or telefax number by written notice to the other party. Such change of address will be effective seven days after receipt of notice of the change of *domicilium*.

- 8.2 All notices to be given in terms of this Contract will –
- (a) be given in writing; and
 - (b) be delivered or sent by prepaid registered post or by telefax; and
 - (c) if delivered, be presumed to have been received on the date of delivery; or
 - (d) if sent by prepaid registered post, be presumed to have been received within three business days of posting unless the contrary is proved; or
 - (e) if sent by telefax, be presumed to have been received on the first business day following the date of sending of the telefax unless the contrary is proved.

SIGNED by the Employer at on the
..... day of

AS WITNESSES:

1. _____

**EMPLOYER (EXECUTIVE
AUTHORITY ON BEHALF OF
THE GOVERNMENT OR
HER/HIS DELEGATE)**

2. _____

SIGNED by the Employee at on the
..... day of

AS WITNESSES:

1. _____

EMPLOYEE

2. _____

TERMS AND CONDITIONS OF EMPLOYMENT

1. **RANK/ TITLE**

.....
.....

2. **REMUNERATION*** (If the foreign national is appointed to a salary level **below** the Senior Management Service and the MMS)

2.1 If employed for less than six months, the Employee shall be paid the applicable basic salary of R.....per annum plus the prescribed non-pensionable allowance in lieu of benefits, excluding leave benefits.

2.2 If employed for six months or longer, the Employee shall be afforded a choice between-

(a) the remuneration package in clause 2.1; or

(b) to be paid the applicable basic salary of R per annum and to receive the prescribed benefits.

2.3 The Employee is excluded from membership of the Government Employees Pension Fund if she/he is paid the prescribed non-pensionable allowance as contemplated in clauses 2.1 and 2.2(a). If the Employee is remunerated in accordance with clause 2.2(b), membership to the Government Employees Pension Fund is compulsory.

* Delete if the clause is not applicable

3. **REMUNERATION*** (If the foreign national is appointed in the Senior Management Service or the MMS)
- 3.1 If the Employee is a member of the Government Employees Pension Fund, the Employee shall be paid an inclusive flexible remuneration package of R..... per annum, which shall consist of the following:
- (a) A basic salary consisting of R, calculated at 60% of the applicable inclusive flexible remuneration package.
 - (b) The Employer's contribution to the Government Employees Pension Fund calculated at 13% of the monthly pensionable remuneration.
 - (c) The Employee's contribution to the Government Employees Pension Fund calculated at 7,5% of the monthly pensionable remuneration.
 - (d) A flexible portion of R, calculated as the inclusive flexible remuneration package minus the basic salary and minus the Employer's contribution to the Government Employees Pension Fund, which may be structured by the Employee in accordance with the rules applicable to the relevant dispensation.
- 3.2 If the Employee is not a member of the Government Employees Pension Fund, she or he shall be paid an inclusive flexible remuneration package of R per annum, which in total may be

* Delete if the clause is not applicable

structured by the Employee in accordance with the rules applicable to the relevant dispensation.

- 3.3 The Employee is excluded from membership of the Government Employees Pension Fund if she/he is paid the prescribed non-pensionable allowance referred to in clause 3.2 above, except if she/he will receive the prescribed benefits as provided for in clause 3.1, in which case membership to the Government Employees Pension Fund is compulsory.

4. **LEAVE**

The Employee shall during the currency of this Contract be granted leave of absence in accordance with the Regulations and collective agreements relating to leave in force at the time.

5. **HOURS OF WORK**

The Employee shall faithfully and diligently work a minimum of hours per day on the following basis:

From to for days of the week.

6. **OTHER CONDITIONS OF SERVICE AND BENEFITS**

Other conditions of service and benefits will be granted as stipulated and provided for in terms of the Act, the Regulations, determinations and directives issued there under and any other legal provisions applicable to the Employee. The parties to this Contract accept that the conditions of service and benefits may be changed from time to time by means of determinations and directives by the Minister for the Public Service and Administration.