



**ACCELERATED PROGRAMME FOR ECONOMIC
INTEGRATION**

**MEMORANDUM OF UNDERSTANDING
FOR**

**FACILITATION OF MOVEMENT OF
BUSINESS PERSONS AND
PROFESSIONALS BETWEEN APEI
COUNTRIES**

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16 September 2016**

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Preamble

Whereas the Governments of five like-minded, reform-oriented countries, namely: Malawi, Mauritius, Mozambique, Seychelles, and Zambia, jointly referred to as the 'Parties', and individually referred to as 'Party',

Desiring to accelerate the integration of their economies through closer cooperation in the area of movement of businesspersons and professionals to stimulate competitiveness and boost economic growth;

Recognizing that domestic and foreign companies operating in the region require the right people with the right skills at the right time within their national borders to foster their growth and competitiveness;

Conscious that movement of business persons and professionals is one of the key steps in achieving increased economic integration and regional cooperation; and in particular, movement of business persons and professionals is an important tool for the socio-economic development of concerned Parties;

Recognizing that the facilitation of the movement of business persons and professionals may help to accelerate the implementation of other schemes and protocols on the movement of business persons and professionals already agreed on within other frameworks Southern African Development Community (SADC) and Common Market for Eastern and Southern Africa (COMESA)) through the application of the principles of variable geometry and variable speed adopted by the COMESA Council and SADC organs;

Desiring to find solutions to investment and skills challenges facing their respective countries to implement measures aimed at boosting investment, trade in goods and services, and to accelerate regional integration.

The Parties to this Memorandum of Understanding (MoU) have reached the following understanding:

Article 1- Definitions

In this MoU, unless the context otherwise requires,

“**APEI**” means Accelerated Programme for Economic Integration;

“**APEI Countries**” mean Malawi, Mauritius, Mozambique, Seychelles and Zambia, as well as any other African country which may accede to this MoU in accordance with Article 21 of this MoU;

“**Business Person**” means a natural person legally residing in a Party’s territory who is engaged in trade in goods, the provision of services, technical assistance, training, or the conduct of investment activities and includes Business Visitors, Traders and Investors, Professionals, Contractual Service Suppliers and Intra-Corporate Transferees.

“**Business Visitor**” means

- i) a natural person, legally residing in a Party State, seeking to enter or stay in the territory of another Party temporarily for the purpose of conducting business, whose remuneration and financial support for the duration of the visit is derived from outside of that other Party State or;
- ii) a representative of a goods /service supplier, for the purpose of negotiating the sale of goods or supply of services or entering into agreements to sell goods or supply services for that goods /service supplier, where such negotiations do not involve direct sale of goods or supply of services to the general public; and
- iii) or an employee of a company seeking to enter the territory of a Party State for the purpose of investing or setting up a commercial presence, participating in business meetings or negotiations in the territory of another Party State or providing technical support or training to a business.

“Contractual Service Supplier” means an employee of a business entity, established in the territory of a Party, which has no commercial presence in the territory of the other Party and who enters a Party’s territory for a period of up to three months in order to supply a service pursuant to a contract(s) between his/her employer and service consumer(s) as either an executive, manager, or specialist and who receives remuneration from his/her employer and possesses the appropriate educational and Professional qualifications/accreditation/registration as appropriate relevant to the service to be provided.

“Dependant” refers to either of the two persons in a legally recognized marriage, according to national laws, as well as children of the prospective holder of the Residence Permit or any of the permits issued under this MoU or the children of their spouse. The children must be under the age of 18, not married, and substantially dependent on the financial support of a parent. If they are aged 18, they must have been continuously enrolled and in attendance as a full-time student in a post-secondary institution accredited by the relevant government authority; or depend substantially on the financial support of a parent and be unable to provide for themselves due to a medical condition.

“Employer” refers to a business or person who acts on behalf of the business to employ foreign nationals.

“Long-Term Employment Permit” is intended as a generic term implying permission to pursue a gainful occupation for a long duration. In some countries, it might be called Occupation Permit.

“Independent Professional” means a person who has requisite professional skills and qualifications to practice his/her profession in a Receiving State in a sector.

“Intra-Corporate Transferee” means an employee of a business operation, established in the territory of a Party, who is transferred for a period of up to three months for the supply of a service or to conduct a business operation (either through a

representative office, branch, subsidiary or affiliate) in the territory of another signatory Party for a determined period.

“Professional” means person licensed by the State and registered/accredited with the appropriate body in the Receiving State to practise a profession or who is employed in the Receiving State by virtue of a contract of employment registered as such in the country to provide essential technical skills or specialized knowledge at the managerial, specialist or executive level to a business, and who is likely to make a significant contribution through his or her skills or talents to the Receiving State.

“Receiving State” means the Party that issues any of the permits under this MoU.

“Sending State” refers to the Party of which the prospective holder of the Residence Permit or any of the permits issued under this Memorandum is a national or a permanent resident.

“Short-Term Employment Permit” is intended as a generic term implying permission to pursue a gainful occupation for a short duration. In some countries, it might be called Short-Term Occupation Permit.

“Third Party” means a Party, which has an interest in a matter concerning other two or more parties to this MoU.

Article 2—Purpose

The purpose of this MoU is to provide a framework for cooperation to establish and implement a mechanism to facilitate the movement of business persons and professionals within the APEI countries.

Article 3—Objectives

Within the scope of this MoU which will be implemented in two phases as defined in Article 5, the Parties agree to

- i) facilitate the movement of business persons and professionals engaged in the conduct of business and provision of professional services between Party States;
- ii) subject to relevant national legislation, provide Business Permits or short-term flexible Employment permits with multiple entries to enable Businesspersons or Professionals to undertake a wide range of business activities;
- iii) facilitate infusion of high-level skills into priority sectors in the economy of Party states through the issuance of long-term employment/ business residence permits;
- iv) establish streamlined, harmonized and transparent procedures for the granting of permits to the specific categories of business persons and professionals;
- v) facilitate the development of talents and skills within priority sectors.

Article 4 -Principles

Parties to this MoU will act in accordance to the following Principles

- i) sovereign equality and interdependence of all Party States;
- ii) equity, balance and mutual benefit;
- iii) solidarity, peace and security;
- iv) recognition and promotion of fundamental human rights, democracy and the rule of law;
- v) promotion and sustenance of an accountable and just democratic system of governance;

- vi) commitment to peaceful settlement of disputes;
- vii) solidarity and collective self-reliance; and
- viii) enhancing regional integration.

Article 5 —Scope

1. The MoU shall apply to business persons and professionals in accordance with Article 1, and not for other categories of movement.

2. The first phase of this MoU shall apply to mechanisms for Business Visit Permits for business persons, and Short-Term Employment Permits for professionals in specific sectors; and Long-Term High-Skilled Employment Permits for professionals in agreed priority sectors in the signatory States. The specific categories will include:
 - i. Business Visitors;
 - ii. Contractual Services Suppliers;
 - iii. Independent Professionals;
 - iv. Intra-Corporate Transferees;

3. The second phase of the MoU shall apply, in a sequential manner, to cover a broader range of professions, sharing of information on labour market systems, cooperation in training programs and capacity building through peer-to-peer learning as well as the sharing of knowledge and experience and the establishment of mutual recognition agreement of certificates and qualifications in a broader range of agreed sectors.

4. The MoU shall enhance/accelerate the implementation of other schemes and protocols on the movement of business persons and professionals already agreed on within other frameworks, (e.g. 2005 SADC Protocol on the Facilitation of Movement of Persons; COMESA Protocol on Gradual Relaxation and Eventual

Elimination of Visas; COMESA Protocol on Free Movement of Persons, Services, Labour and the Right of Establishment and Residence; SADC Protocol on Trade in Services, etc.) and not nullify or affect negatively such other protocols.

5. Notwithstanding the provisions of existing investments and immigration regulations, any Businessperson shall apply for a Business Permit or the employer of a Professional shall apply for an appropriate employment permit authorizing the Professional to carry out an occupation or work for reward or profit in the Receiving State.

Article 6 —Business Permit

Whereas a Business Permit allows a business Person to enter the territory of Party State for the purpose of establishing a business or conducting a business or investment

- (i) the Receiving State will grant a fast-track, multiple entry Business Permit via a specially designated APEI Business Travel Card for business persons and professionals referred to in Article 5 for a period of up to 120 days in any 12-month period, to enter the territory of the Receiving State for the purpose of undertaking a short term business visit or establishing a business or investment
- (ii) a Business Permit so granted will apply only to the holder.

Article 7 —Short-Term Employment Permit

1. A Short-Term Employment Permit allows a professional or an independent professional or a professional who is transferred to a subsidiary of the parent company for a short assignment, who requires a longer period than the duration of the initial entry visa, to carry out a professional activity.
 - i) the Receiving State will grant a Short –term Employment Permit to the

Professional for a period of up to six months upon receipt of relevant documents and satisfactory evidence that the prospective holder is a qualified Professional as provided in Article 5 (2);

ii) the Short-Term Employment Permit is renewable once for a maximum of another six months, subject to satisfactory conditions;

iii) the permit so granted shall not be transferable to another employee.

2. The Receiving State will issue a Short-Term Employment Permit in accordance with the provisions in the Annex II.

3. An application for Short-Term Employment Permit shall be submitted together with all relevant documents specified in Annex II of this MoU.

4. An application for Short-Term Employment Permit shall be processed expeditiously by the Receiving State but typically within seven working days of receipt of all relevant documents.

Article 8— Long Term Employment Permit

1. Notwithstanding the provisions of existing investments and immigration regulations, an employer of a Professional shall apply for an appropriate work permit authorizing the Professional to carry out an occupation or work for reward or profit in the Receiving State.

2. The Receiving State will grant a Fast-Track Long-Term High-Skilled Employment Permit to an employee or Professional engaged in a preferred economic sector where there is a recognized need for Professionals or highly skilled workers. The

priority sectors shall be decided by Parties and shall include but not limited to the following:

- i) mining
- ii) manufacturing
- iii) agriculture, agro-processing, and agribusiness
- iv) construction
- v) hospitality and tourism
- vi) financial services
- vii) information and communication technology (ICT)
- viii) health services
- ix) education services
- x) ocean Economy
- xi) renewable Energy
- xii) research and Development
- xiii) biotechnology
- xiv) professional, scientific, and technical activities.

3. The Fast-Track Long-Term High-Skilled Employment Permit shall be issued for a period specified in the employment contract or thirty-six months, whichever is less and will be renewable for another term upon satisfactory conditions.
4. The validity of an employment permit will not be affected by changes in the name of the company or its shareholding provided the same conditions provided that changes are duly notified to relevant authorities within 3 months of changes occurring.
5. A permit-holder who decides to shift to another company, shall notify the issuing authority in good time and the issuing authority shall make a determination whether the conditions warrants a fresh application or not.

6. An application for Fast-Track Long-Term High-Skilled Employment Permit will be processed expeditiously but typically within fourteen days of submission of appropriate documents and satisfactory evidence as provided in Annex II to this MoU.
7. The dependants of the Fast-Track Long-Term High-Skilled Employment Permit-holder may be allowed to reside in the Receiving State for the period of time granted to the Permit-holder. The Receiving State shall issue them with a Dependent Residence Permit, subject to satisfactory application to the appropriate authority and satisfaction of relevant immigration requirements, and provided the conditions specified in Annex II are met.
8. In the case of incomplete applications, Parties agree to notify applicants within three days outlining the additional information that is required to complete the application. Parties agree to make a determination on the application within a reasonable period following the provision of additional information.

Article 9- Issuance of APEI Business Travel Card

1. APEI Business Travel Card will be issued to facilitate movement of businesspersons and professionals within APEI states.
2. In the operationalisation of the APEI Business Travel Card, Parties agree to cooperate in the expeditious issuing of Travel Cards to suitably qualified travellers who are legally resident in each Party's territory.
3. The Parties will agree on protocols on the nature and format of information required, its quality, storage, handling and information sharing, and all privacy to be respected.

Article 10 —Refusal of Applications

1. The entry and stay of foreign businesspersons and professionals in the territory of a Party shall be subject to the national legislation in force therein.
2. Notwithstanding the provisions of the MoU, a Party may refuse entry into its territory on grounds of public health, public security, and public interest.
3. In the case of refusal of applications, Parties agree to notify the applicant in writing, providing reasons for the refusal, subject to any national security limits on full disclosure, within seven days of the submission of the application. The refusal letter may spell out the options for appeal.

Article 11 —Cessation of Business and Professional Activities

Where a businessperson or professional ceases his business or professional activities in a Party State, he/she shall within 15 days give notice to his/her employer and the relevant authorities in writing, and Fast-Track Long-Term High-Skilled Employment Permit shall be cancelled.

Article 12 —Fees

1. Any fees for the permits specified hereinto shall be in accordance with agreed fees by signatory Parties.
2. Fees shall be reasonable and shall reflect the cost recovery element only in each Party state.

Article 13 —Institutional Mechanisms

1. Parties shall establish an APEI Technical Working Group which will champion the adoption, implementation and review of this MoU among parties, and shall meet bi-annually. Such a Technical Working Group shall be responsible to the Committee of responsible Ministers of Cabinet from Parties to this MoU who shall meet at least once a year to provide guidance to the implementation process.
2. Hosting of APEI Technical Working Group meetings shall be rotated among Parties to this MoU.
3. Each Party shall establish a National Working Group (NWG) to enable the national level consultation and cooperation necessary to carry out the terms of this MoU . That mechanism may suggest implementing arrangements for this MoU as well as any amendments that it considers appropriate.
4. The NWG shall be composed of senior officials of all relevant agencies, including Investment Promotion Agencies (IPAs), into a 'one stop shop' to ensure smooth implementation of the MoU.
5. The NWG shall include other stakeholders such as the private sector and relevant civil society representatives.
6. At its discretion, the NWG may make use of the advisory support of a "technical working group".
7. Parties may agree to allocate additional resources for training of personnel and provide systems to effectively implement the MoU.

Article 14 —Recognition of Certificates and Qualifications

1. By agreement, Parties will recognize the educational qualifications, licenses and certificates issued by nationally or internationally accredited institutions in for the fulfilment in whole or in part fulfilment of the conditions for the grant of employment permit.
2. Notwithstanding paragraph (1) above, concerned professional applicants will have to comply with mandatory profession admission requirements in the receiving State.
3. Parties will encourage competent bodies, including professional bodies or associations, in their territories to enter into cooperation agreement with other bodies or associations within signatory States on recognition of the following:
 - i) Qualification requirements
 - ii) Qualification procedures
 - iii) Licensing, certification or registration requirements and procedures.

Article 15 —Information Sharing and Transparency

1. Parties shall develop clear and transparent information on the requirements and procedures for granting permits for businesspersons and professionals.
2. Such information as is relevant for public consumption shall be simplified and made publicly accessible and available through new and existing channels such as portals of Investment Promotion Agencies, immigration and tax authorities, foreign missions of Party states and other media
3. Each Party commits to make information available in its own territory of the new regulations regarding the granting of permits to business persons and professionals,

and the general requirement for such permits, including information of prescribed forms and documents. Such information may be made electronically available.

4. Parties agree to ensure that this information so published is updated in a timely manner or at least every six (6) months

Article 16 —Revisions

1. Parties agree to enter into discussions to review the commitments under this MoU within one year of entry into force and thereafter review discussions shall take place at intervals as agreed by Parties.
2. Parties may request in writing any revision or amendment of any part of this MoU
3. Any review or amendments or addition to the provisions of this MoU shall only be adopted by consensus
4. Any agreed revision, modification or amendment shall form an integral part of this MoU
5. Any revision shall not prejudice the rights and obligations based on the agreement prior to the date of amendment.

Article 17 —Withdrawal

Any Party may withdraw from this MoU upon written notice delivered to the other Parties at least 180 days prior to the intended date of withdrawal. By such withdrawal, no Party may nullify obligations already incurred for performance or failure to perform prior to the date of withdrawal.

Article 18— Validity

The Parties may terminate this MoU by common agreement to take effect at least 180 days prior to the intended date of termination. By such termination, no Party may nullify obligations already incurred for performance or failure to perform prior to the date of termination.

Article 19—Settlement of Disputes

1. In the event of a disagreement on interpretations of any provision of the MoU, dispute, controversy or claim arising out of or relating to this MoU, the Parties shall use their best efforts to settle promptly such dispute through direct negotiation within 90 days.
2. A Third party may file notice to join a case involving two parties provided that written notice is issued within 90 days of direct negotiations or mediation or arbitration,
3. If disputes in relation to cooperation under this MoU cannot be resolved between the Parties, the Parties have agreed to resolve them under the mediation or arbitration mechanism available under SADC Treaty.

Article 20—Temporary Suspension

1. Each Party reserves the right, for reasons of defence, public health, public order, public safety and national security, to order the temporary suspension of this MoU. All the Parties will immediately be informed when any such measure is taken.
2. The suspension shall be reviewed and lifted upon satisfactory assessment of the situation. A Party may take such measures or actions for such a period of time as

may be necessary to remedy the situation. The period shall not exceed six months unless conditions giving rise to the action still prevail and therefore subject to review in three months intervals.

3. Each Party reserves the right to prohibit persons it deems to be undesirable from entering or staying in its territory provided that reasonable measures are taken to inform the concerned person the basis for the decision.

Article 21—Accession

Any interested African country may apply in writing to join the MoU through the current Chair of APEI, and subsequently signing it provided that

- i) it subscribes to the purpose and objectives of this MoU;
- ii) it undertakes to implement the provisions of this MoU;
- iii) it has undertaken or is willing to undertake all the APEI reforms within an agreed period of time; and
- iv) it has secured the consent of the APEI founding parties.

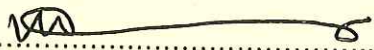
Article 22—Entry into Force

1. This MoU shall enter into force on the date of signature, or ratification where required, by at least three Parties.
2. Two countries may agree to implement the MoU in whole or in part while in its provisional status.

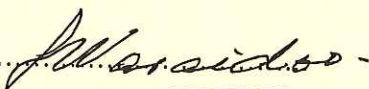
IN WITNESS WHEREOF we, being duly authorised thereto by our respective Governments have signed and sealed this Memorandum of Understanding in five originals in the English language.

DONE at Balaclava, Mauritius on this 16th day of September 2016.

FOR

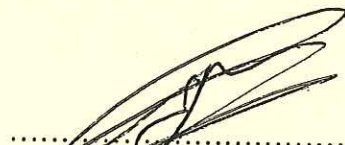


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Annex 1

1. General Provisions

1.1 Human resource and skills development

- i) Parties will collaborate on initiatives to sustain and promote human resource and skills development in identified sectors by Parties and defined under an implementation agreement.
- ii) In order to address the problem of skills gaps and other challenges in the labour market, Parties will ensure that skills development support is made through transfer of knowledge and skills as well as through enhancing capacity in training institutions in Party states to ensure continuity and promote skills development.
- iii) In this regard, Parties undertake to encourage and facilitate the creation of programs to increase capacity in skills in specific sectors, and allow citizens access to such training programs and facilities to benefit State Parties.

1.2 Regulatory barriers

- i) Parties will collaborate and cooperate to establish modalities to streamline and harmonize their immigration regulations and procedures through targeted reforms to reduce existing regulatory and administrative barriers that impede the movement of business persons and professionals.
- ii) Parties will cooperate and collaborate to establish a credible mechanism for expediting the grant of permits to business persons and professionals within their territories. These will include
 - a) simplified and standardized documents and requirements for the processing of permits;
 - b) expedited approval and issuing of permits;
 - c) expedited processing of such categories of persons at airports and borders through the creation of fast-track channels and development of a database for long-term business travellers and other vetted applicants.

1.3 Exchange of information

Parties will provide annually, appropriate information on the legislative and administrative processes relating to the entry, residence and employment of business persons and professionals. This would include exchange of information on labour markets in signatory States.

1.4 Private Sector Participation

Parties will give proper regard to the participation of the private sector in the implementation of this MoU. The private sector will be responsible for gathering relevant information to monitor compliance under this MoU.

Annex II

2. Specific Provisions

2.1. Long-Term Employment Permit

A complete application for Long-Term Employment Permit for Professionals under Article shall be submitted together with such information, documents and particulars specified as follows

- i) certified copy of the Certificate of Incorporation;
- ii) a valid passport;
- iii) four Passport size photographs;
- iv) copy of relevant parts of passport showing name, date of birth, place and date of issue of passport, photo, passport number and movement;
- v) certified copy of academic and professional qualifications and/or details of work experience to be submitted in either French, English or Portuguese as the case may be;
- vi) CV, which will include proof of professional qualification and experience in relevant field;
- vii) certificates from the relevant authority in the country of residence that the foreign employee has not been convicted of a criminal offence or is otherwise judged to be of good character;
- viii) a written undertaking, in the case of a professional that the employer will meet any expense or charge likely to be incurred for the maintenance, support or the repatriation of the holder of the Long term Employment Permit and any dependants to the sending State on termination of the contract of employment;
- ix) a list of agreed sectors where there is a recognized need for skills and professional services will be defined under an implementation agreement by State Parties;
- x) certificate of medical fitness from a competent authority

2.2 Short-Term Employment Permit

An application for Short-Term Employment Permit for a Professional as specified under Article 7 of this Memorandum of Understanding shall be submitted together with the following documents:

- i) a valid passport;
- ii) four passport size photographs;
- iii) copy of relevant parts of passport showing name, date of birth, place and date of issue of passport, photo, passport number and movement;
- iv) certified copy of academic and professional qualifications and/or details of work experience to be submitted in either French, English or Portuguese as the case may be;
- v) CV, which should include proof of professional qualification and experience in related field;
- vi) certificates from the relevant authority in the country of residence that the foreign employee has not been convicted of a criminal offence or is otherwise judged to be of good character;
- vii) a list of agreed sectors where there is a recognized need for skills and professional services will be defined under an implementation agreement by State Parties.
- viii) certificate of medical fitness from a competent authority.

2.3 Dependant Permit

- i) Dependants who are entitled to reside in the Receiving State under this MoU, in accordance with Article 7 or 8 will be entitled to be granted a Dependant Residence Permit provided documentary evidence of family relationship is produced and verified.
- ii) For spouses and dependent children, an application for a Dependant Residence Permit should be made and submitted along with the following documents:

- a) copy of marriage certificate for spouse;
 - b) in case of children, a copy of birth certificate for each child will be required;
 - c) copy of passport for each dependent (personal data plus visa pages);
 - d) four recent passport sized photographs for each dependent;
 - e) a medical certificate for each dependent, as per the above-mentioned requirements.
- iii) Holders of Dependant Residence Permits may change their status and apply for any of the other Permits specified while in the Receiving State if they meet the necessary requirements.