



STATUTORY INSTRUMENT.

No. 8 of 2016.

Public Employment (Engagement of Non-Citizen Technical Advisers) Regulation 2016.

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 - “advising ” or “advisory support”
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 - “Code of Conduct for Non-citizen Technical Adviser”
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 - “employ”
 - “employer”
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 - “the Act” means the *Public Employment (Non-Citizens) Act* (Chapter 342)”.
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STATUTORY INSTRUMENT.

No. of 2016.

Public Employment (Engagement of Non-Citizen Technical Advisers) Regulation 2016,

Being a Regulation made under the ***Public Employment (Non-Citizens) Act*** (Chapter 342) -

- (a) to provide a statutory framework for the engagement of a non-citizen Technical Adviser by an accredited aid agency in a Government agency; and
- (b) to repeal the ***Public Employment (Engagement of Non-Citizen Technical Advisers) Regulation 2015,***

and for related purposes.

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council under the ***Public Employment (Non-Citizens) Act*** (Chapter 342).

1. INTERPRETATIONS.

In this Regulation, unless the contrary intention requires -

- “accredited aid agency” means an aid agency or other entity authorised to employ a Technical Adviser for the purposes of providing advisory support to a Government agency;
- “advising” or “advisory support” means those activities of a Technical Adviser that enhance the performance and capacity of a Government agency and its employees, and may include the performance of in-line functions;
- “Agency Secretary” means the departmental head of the Government agency where the Technical Adviser is engaged to provide advisory support;
- “Code of Conduct for Non-citizen Technical Adviser” means the Code of Conduct provided for under Section 14;
- “DPM Secretary” means the departmental head responsible for personnel management matters;
- “employ” or “employment” includes employment on a temporary basis, on a part-time basis or on a consultancy basis;
- “employer” means the accredited aid agency or other entity authorised to employ a Technical Adviser;
- “Government agency” has the same meaning as “public authority” in Section 2 of the Act;
- “Performance and Conduct Agreement” means a contract provided for under Section 13;
- “register” means the register of Technical Advisers provided for under Section 16;
- “Technical Adviser” means a non-citizen employed by an accredited aid agency for the purposes of providing advisory support to a Government agency;
- “the Act” means the ***Public Employment (Non-Citizens) Act*** (Chapter 342).

Public Employment (Engagement of Non-Citizen Technical Advisers)

2. PURPOSE OF THE REGULATION.

(1) The purpose of this Regulation is to protect Papua New Guinea's sovereignty by establishing a legal framework to regulate the engagement of a Technical Adviser.

(2) This purpose is to be achieved by -

- (a) requiring the Technical Adviser to sign a Performance and Conduct Agreement with the Agency Secretary; and
- (b) binding the Technical Adviser to behavioral standards set out in a Code of Conduct; and
- (c) bringing the Technical Adviser under the direction and control of the Agency Secretary; and
- (d) requiring the Technical Adviser to develop the capacity, skills and performance of the adviser's Papua New Guinean counterparts.

3. APPLICATION.

(1) This Regulation applies to the engagement of a Technical Adviser by an accredited aid agency where the Technical Adviser provides advisory support within a Government agency.

(2) This Regulation does not apply to a Technical Adviser who is engaged under an Institutional Partnerships Agreement.

(3) In this section "Institutional Partnerships Agreement" means the engagement of a Technical Adviser under a formal partnership to perform activities related to:

- (a) staff exchanges or work attachments; or
- (b) mentoring; or
- (c) internships and graduate development; or
- (d) special projects; or
- (e) training and professional development opportunities; or
- (f) leadership and other development opportunities; or
- (g) targeted capacity building; or
- (h) study tours; or
- (i) establishing professional networks; or
- (j) short-term specialised assistance.

4. FOREIGN GOVERNMENT EMPLOYEE.

(1) A Technical Adviser shall not be an employee of a foreign government.

(2) In this section "an employee of a foreign government" means an employee of a central department of an independent sovereign state.

(3) For the avoidance of doubt, an employee of a foreign government may be engaged under an Institutional Partnerships Agreement.

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5. ROLE OF THE DPM SECRETARY.

(1) The DPM Secretary is responsible for overseeing the engagement of all Technical Advisers under this Regulation, including -

- (a) determining the format of the Performance and Conduct Agreement provided for under Section 13; and
- (b) determining the format of the Code of Conduct for Non-citizen Technical Adviser provided for under Section 14; and
- (c) maintaining the register provided for under Section 16.

(2) The DPM Secretary may give directions as provided for under Section 13 of the Act for any matter that is necessary or desirable for the efficient implementation of this Regulation

6. ENGAGEMENT OF A TECHNICAL ADVISER.

(1) An Agency Secretary who wishes to engage a Technical Adviser shall liaise with an accredited aid agency to secure necessary funding and other administrative approvals for the engagement of the Technical Adviser.

(2) The Agency Secretary shall collaborate with the accredited aid agency to prepare a Job Description and Terms of Reference for the Technical Adviser.

7. RECRUITMENT, SELECTION AND APPOINTMENT OF A TECHNICAL ADVISER.

(1) The accredited aid agency and the Agency Secretary shall be jointly responsible for the recruitment and selection of the Technical Adviser.

(2) The Agency Secretary must give final approval for the engagement of the preferred candidate following the recruitment and selection process.

(3) The accredited aid agency is responsible for any costs associated with the recruitment, selection and appointment of the Technical Adviser.

8. DURATION OF ENGAGEMENT

(1) A Technical Adviser shall be engaged for a period not exceeding two years in duration at any one time.

(2) A Technical Adviser may only have his contract extended on the basis of a satisfactory performance assessment by the Agency Secretary.

9. EMPLOYER.

The accredited aid agency is the employer of the Technical Adviser for all purposes.

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10. REMUNERATION AND COSTS.

(1) The accredited aid agency is responsible for the payment of the remuneration and all other costs associated with the Technical Adviser.

(2) Notwithstanding Subsection (1), a Government agency may agree to co-fund the remuneration and other costs associated with the Technical Adviser.

(3) For the avoidance of doubt, despite a co-funding arrangement Subsection (2) the accredited aid agency remains the employer of the Technical Adviser.

(4) The Technical Adviser's remuneration shall be determined by the accredited aid agency as the employer, in consultation with the Agency Secretary.

11. FUNCTIONS, RESPONSIBILITIES ETC OF A TECHNICAL ADVISER.

(1) A Technical Adviser is engaged to provide advisory support to the Agency Secretary in accordance with the Performance and Conduct Agreement and the Terms of Reference.

(2) The Technical Adviser shall report to and shall be accountable to the Agency Secretary for his performance.

(3) In accordance with Section 10 of the Act, the Technical Adviser has the same protections as a Government agency employee.

(4) A Technical Adviser is required to build the capacity of Papua New Guinea citizens within the Government agency by providing training, mentoring, skills development and related activities.

12. PERFORMANCE OF AN IN-LINE FUNCTION.

(1) A Technical Adviser may perform an in-line function.

(2) A Technical Adviser who is engaged under Subsection (1) may be delegated such powers and responsibilities by the Agency Secretary that are necessary to perform his in-line functions.

(3) In this section an "in-line function" means a function within a Government agency which is ordinarily performed by a Government agency employee.

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13. PERFORMANCE AND CONDUCT AGREEMENT.

(1) The Agency Secretary shall be the first to sign the Performance and Conduct Agreement.

(2) The DPM Secretary shall endorse the Performance and Conduct Agreement after it has been signed by the Agency Secretary.

(3) The requirement for a Technical Adviser to sign a Performance and Conduct Agreement shall be a condition in the employment contract between the Technical Adviser and the accredited aid agency.

(4) A Technical Adviser shall sign the (signed and endorsed) Performance and Conduct Agreement before entering the country.

- (5) The Performance and Conduct Agreement requires the Technical Adviser to -
- (a) comply with the Code of Conduct; and
 - (b) be accountable to the Agency Secretary for his work performance in accordance with agreed Terms of Reference and Job Description; and
 - (c) develop the capacity, skills and performance of the adviser's Papua New Guinean counterparts.

(6) The Performance and Conduct Agreement shall be in a format approved by the DPM Secretary.

14. CODE OF CONDUCT.

(1) A Technical Adviser is bound by the Code of Conduct approved by the DPM Secretary.

(2) Contravention of the Code of Conduct by a Technical Adviser may give rise to disciplinary action under Section 15.

15. DISCIPLINE AND TERMINATION.

(1) The Agency Secretary may determine that disciplinary action, including action to address unsatisfactory work performance, should be taken against a Technical Adviser if -

- (a) the Technical Adviser has contravened the Code of Conduct; or
- (b) the Agency Secretary is satisfied there are other reasonable grounds to take such action.

(2) The Agency Secretary must notify the DPM Secretary and the accredited aid agency before any disciplinary action is commenced

(3) The Agency Secretary, the DPM Secretary and the accredited aid agency must jointly determine the appropriate action to be taken under the circumstances.

(4) The Technical Adviser shall be afforded natural justice if any action is taken under this Section.

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16. REGISTER.

(1) The DPM Secretary shall maintain a register of Technical Advisers engaged by Government agencies.

(2) The register shall record -

(a) the Curriculum Vitae; and

(b) the signed Performance and Conduct Agreement; and

(c) the agreed Terms of Reference; and

(d) a performance assessment report made by the Agency Secretary on completion of the contracted period,
for each Technical Adviser.

(3) The accredited aid agency shall provide the DPM Secretary the documents referred to in Subsection (2)(a) to (c) and the Agency Secretary shall provide the DPM Secretary the document referred to in (d).

(4) The DPM Secretary and any Agency Secretary may make reference to the register in assessing the suitability of a Technical Adviser recommended for engagement or for contract extension.

17. TRANSITIONAL.

(1) A Technical Adviser who is engaged before the coming into force of this Regulation shall be required to sign a Performance and Conduct Agreement.

(2) A Technical Adviser who fails to sign a Performance and Conduct Agreement within three months of this Regulation coming into force may have his engagement terminated by the DPM Secretary.


MADE this

03rd

day of

AUGUST

, 2016.



GOVERNOR-GENERAL.