

The legal system of non-resident workers in Macao

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Abstract

Although the issue of non-resident workers has been the subject of concern and specific regulation by the Government of Macao since 1982, it is with Law No. 21/2009 (in 2009) that the discipline of contracting of non-resident workers. The present text seeks to carry out a systematic analysis of this important legal instrument.

Keywords: nonresident worker; illegal worker; employment contract; basic law of employment policy

1. Introduction

Benefiting from the policies of the People's Republic of China, and as a result of a proper repositioning as a tourist city by the Macao Government after reunification, combined with the innovative factors introduced by the Portuguese administration before the transition, Macao has been experiencing a period of growth exponential, from a once fishing village of less than 10 square kilometers to a city of internationally renowned gaming and tourism.

One of the main success factors in this process was the release of labor. Given the limited space, Macao initially had a small population, which however increased following several migratory flows, in a way that allowed a normal urban development. Nevertheless, as the tourism and gambling

industry continues to expand, the growth of the local labor force is far from meeting the demand for human resources, and there is a growing need for hiring staff abroad to cope with the local labor force.

According to the Statistics and Census Bureau of Macao, when there were 11331 non-resident workers in Macao in 1991, the number in 2005 was 39411. It is estimated that today, after 27 years, the number exceeds 180,000 people (<http://www.dsec.gov.mo>). A 10-fold increase in 20 years shows how in the last 20 years, especially in the last 10 years, the demand for human resources has increased, and there is still a great lack of labor as demanded by the small, medium and micro enterprises. It was not the establishment of normative restrictions to the hiring of nonresident workers from an early age, today the number would far exceed this level.

2. Terminology

The non-resident workers referred to in this text are the subject of this entire exhibition, although the legislation that has been adopted does not provide for any definition for them, even using different terms, which may give rise to interpretative confusion, in the versions Decree-Law no. 24/89/M, the Basic Law on Employment and Labor Rights, Law no. 7/2008 and Law no. 21/2009. In any case, regardless of the terminology used in the Chinese language in the various legal instruments, we believe that the legislator wanted to refer to the same reality, on the one hand because the Portuguese versions use the term "nonresident worker" the aforementioned legislation falls within the same category of legislation, having the same object and purpose, around precisely the 'non-resident worker', the concept of which will be defined below.

Despite the fact that in recent diplomas the same wording has been adopted in Chinese as a non-resident language, doubts remain at the interpretive level and, as such, there is a need to define it in order to standardize the terminology used in this text.

3. Historical evolution of the policy of importing non-resident worker

For a better understanding of the legal regime for importation of nonresident labor force, we must first recapitulate previous policies.

Until the 1960s, Macao still lived mainly at the expense of agriculture and fishing, the gaming and tourism industry is still not very large in its initial phase. In the 1980s, Macao's economy entered the first boom in its urbanization process, with the tourism industry, led by the gaming industry, undergoing a major development phase, but society was still based on the secondary sector, that is, the industry let the dependent on large quantities of labor, especially after obtaining European and American quota privileges. In view of the lack of local labor, there was already a need to import a non-resident labor force, largely to satisfy industrial demand. The workforce imported from the Mainland was thus ensuring industrial development led by the textile and clothing industries, which, however, largely affected the jobs of local residents, hence the roots of a frontal conflict between the resident workers and the traders with nonresident workers, a factor of social instability that put the Government then in possession of a great puzzle. In order to reduce government pressure, the Macao Government issued a series of bills aimed at restricting the importation of non-resident labor, namely Decree-Law no. 18/82/M, Decree-Law No. 50/85/M, Order No. 12/GM/88, applicable to non-resident non-specialized workers, and Order No. 49/GM/88, applicable to specialized non-resident labor, and subsequently orders Nos. 39/GM/90, 125/GM/90 and 58/SAEF/95 were published in turn. All those measures aimed at balancing economic development with employment stability and at protecting the wage level of resident workers.

4. The first articles limiting the importation of non-resident worker

We will analyze the various diplomas that, in an initial period, imposed restrictions on the importation of non-resident labor.

4.1 Decree-Law no. 18/82/M and the supplementary legislation

The first decree that came to impose restrictions on the conclusion of employment contracts by the employer was Decree-Law no. 18/82/M, which aimed to combat situations of hiring people without any valid document, thus seeking to resolve the problems of illegal immigration with negative repercussions for the salary level of Macao residents¹.

Pursuant to the aforementioned Decree-Law, it was forbidden for natural and legal persons to enter into oral or written contracts of employment, apprenticeship, training or service provision with individuals who did not hold an identity card (issued by the competent Portugal), a police identification card, a passport that contained a valid authorization for entry and stay in the Territory or a residence permit, or a temporary stay. On the other hand, employers should list, in a monthly listing, all individuals with whom they had any of the aforementioned contractual relations, and keep the same listings in their headquarters, office or principal place of business, in a manner that is accessible to the supervisory bodies at any time. The lists were made in duplicate, the originals being kept by the employer for a period of one year and the duplicates sent by the employer to the Police of the Public Security Police Command until the fifth day of the following month. In this way, the inspecting agents were able to easily detect any illegal situation when they arrived at the employer's workplace. This has created conditions for the future establishment of legal regimes to control illegal immigration.

Subsequently, due to economic factors, the Government of Macao published Decree-Law no. 101/84/M in 1984, and for the first time introduced a systematic regulation of individual employment relations. It is important to refer to the discipline in Chapter VII. In particular, under the terms of art. 50, employers engaged in their activities in the Territory could only have foreign workers or stateless persons, as well as individuals holding a Hong Kong Identity Card, employed, although not remunerated, provided that: i) contract, which would necessarily assume the written form; ii) required the Director of the Office for Labor Affairs to register the contract, or its renewal, with the reasons for the contract; iii) the foreign citizen or stateless person possesses documentation proving the fulfillment of the legal obligations regarding the entry and residence or residence in the Territory; and iv) the Public Security Police Force of Macao shall inform of the absence of any legal impediment to the permanence of said workers. The law also allowed workers from the Mainland to be hired by employers with activity in the Territory, provided they were holders of a valid identification document (article 56 of Decree-Law no. 101/84/M).

4.2 Decree-Law no. 50/85/M the Orders no. 12/GM/88, and 49/GM/88

In 1985, the Government of Macao issued Decree-Law no. 50/85/M², which repealed Decree-Law no. 18/82/M, which also sought to address the lasting problems of illegal immigration, more conditions for the hiring of Macao residents through intensified labor control in relation to non-residents. The Decree-Law also regulated the contracting by foreign companies or foreign capital of workers in the respective country, as well as the hiring of non-residents to perform managerial or

¹ Miguel Pacheco Arruda Quental, *Manual de Formação de Direito do Trabalho em Macau*, Centro de Formação Jurídica e Judiciária, Março de 2012, p. 147.

²That, together with Order Nos. 12 / GM / 88 and 49 / GM / 88, was repealed in 2009 by Law No. 21/2009.

technical functions in companies of Macao with financial participation from abroad .

In 1988, the Macao SAR Government issued Order No. 12/GM/88, which provided in particular for the conditions for the conclusion of employment contracts with non-residents in normal circumstances, requiring Macao companies to enter into contracts with third parties (employment agencies), to obtain a favorable order from the Governor, to be able to receive work benefits from non-residents.

In the same year, Order No. 49/GM/88 was issued, which regulated especially the hiring of specialized workers or workers who, considering the conditions of the local labor market (Macao), were not normally available in Macao.

The Decrees signed the general rules for the hiring of non-resident workers, both mandatory and in terms of substantive and procedural law³.

Subsequently, Decree-Law no. 24/89/M revoked Decree-Law no. 101/84/M, establishing the discipline for employment contracts with resident workers. The labor relations between employers and nonresident workers were regulated by the special rules that were in force (Article 3 (d) of Decree-Law no. 24/89/M).

During this period, employment contracts between Macao employers and non-resident workers were governed by the provisions of the three Decree-Laws, namely Decree-Law No. 50/85/M (defines the system of admission of workers) and Orders no. 12/GM/88 (concerning the importation of unskilled labor) and 49/GM/88 (concerning the recruitment of skilled labor or not normally available in Macao).

However, none of those diplomas disciplined the rights, duties and guarantees of non-resident workers. What the Administration did at the time, in order to safeguard the rights and interests of nonresident workers, was to require employers to establish the content of those rights in the contract which was subject to a process of appreciation and approval by the Administration. Faced with this scenario, the doctrine and the majority of jurisprudence understood that, under the principle of equality, the general principles of Decree-Law no. 101/84/M and, later, Decree-Law no. 24/89/M⁴. Although these Decree-Laws explicitly excluded from the scope of employment relationships established with non-residents, in our view this is the solution that best matches the ratio iuris.

After almost 20 years, Law no. 7/2008 replaced Decree-Law no. 24/89/M as the defining qualification of the new discipline of labor relations, which, however, re-excluded non-workers. residents of its scope as we have seen. Thus, until the entry into force of the new Non-Resident Hiring Law, in the absence of any legal regulation, it continued to depend only on the Government's performance, when assessing and approving the contracts, on the imposition of contractual clauses apply the content of Macao labor legislation in the light of the rights and guarantees of workers.

3.3 The Orders no. 39/GM/90, 125/GM/90and58/SAEF/95

Following the publication of Order no. 12/GM/88, the import authorization for unskilled labor was actually limited in time. In 1990, in order to deal with the social situation at that time, the Administration issued Order no. 39/GM/90, determining the suspension of the hiring of non-resident workers, except for the labor required for undertakings of public interest, as well as for the specialized labor force or that is not normally available in Macao under the terms of Order no. 49/GM/88. The suspension was envisaged for a period of 90 days, during which, after hearing the Permanent Council of Social Concertation, a new regime for the hiring of non-resident workers should be approved,

³Judgment of the Court of Second Instance n.º 739/2009, of 6 of January of 2010.

⁴Judgment of the Court of Second Instance n.º 569/2010, 30 of July of 2011.

which did not happen, but the deadline was extended for more 90 days by virtue of Order no. 125/GM/90 approved in the same year. Although, for a long period of time after that suspension period (until 2009), no new regime for the hiring of non-resident workers had actually been established, without a new period of suspension, the Administration never gave a green light to the importation of non-resident labor, a situation which continued until the new millennium As a result, those who already had (non-nominal) quotas of non-resident workers were able to maintain them, however without allowing new quotas.

As regards domestic work, in view of the non-low number of non-resident hired labor at that time, Order no. 58/SAEF/95 suspended for an indefinite period the submission of requests for the hiring of non-resident workers to the provision of domestic service, without prejudice to the requests for renewal and replacement of workers.

In short, if, since Order no. 39/GM/90, there was a long period of time without authorization of importation of new unskilled labor, from Order no. 58/SAEF/95 was suspended also the importation of new domestic workers.⁵

5. The policies to combat illegal immigration

Due to diverse political and economic factors, Macao has always been a destination of constant immigration since the beginning of the twentieth century until, in the 1980s, the Macao Government began to legislate the problems of illegal immigration. As stated, Decree-Law no. 18/82/M was essentially aimed at resolving the problems of long-standing illegal immigration at the legislative level. The subsequent Laws nos. 2/90/M and 6/2004, which repealed that one, came more specifically to approve the legal regime of detention and expulsion of non-residents to prevent and combat illegal immigration and to approve their respective penal regime and criminal procedure.

In particular, arts. 9 of Law no. 2/90/M and 16, no. 1, of Law no. 6/2004, with the same wording, that "Who establishes a working relationship with any individual who is not a holder of any of the documents required by law to be admitted as a worker, "regardless of the nature and form of the contract, or the type of remuneration or consideration, shall be punished with imprisonment for up to two years and, in the event of a repeat offense, imprisonment from 2 to 8 years. Paragraph 2 also establishes that a work relationship is presumed to exist whenever an individual is found in civil construction works and performs material acts of execution thereof⁶.

The law also regulated the regimes of detention, expulsion, revocation of the authorization of permanence and prohibition of entry of illegal immigrants, as well as the respective procedural regime.

6. The regulation on the prohibition of illegal work

In May 2004, the Administration published Administrative Regulation No. 17/2004, which established the prohibition of illegal acceptance or rendering of work and the corresponding sanctioning regime.

In fact, after several years of bad economy, when it gradually improved again all sectors of activity began to claim labor, especially in the gaming industry, so in the absence of labor in Macao,

⁵The validity of all these orders is terminated, the first two due to expiry of the special period provided for, the latter due to revocation of the Administration due to the readmission of the respective requests for hiring.

⁶Such a presumption did not exist in the original wording of Law no. 2/90/M. Faced with the ease of concealment of illegal contracting of workers in subcontracting (in the context of civil construction), in 1992 Decree-Law no. 39/92/M established this presumption, which was maintained in Law no. 6/2004, despite having generated enormous controversy. In our view, such a presumption violates the principle of the prohibition of the analogous application of criminal law.

many companies and individual entrepreneurs have turned to the outside labor force, especially in the Mainland, which, in addition to offering a large quantity and variety of human resources, demands relatively low remuneration.

However, according to Article 9 (3) of the Basic Law on Employment and Labor Rights⁷, the hiring of non-resident workers depends on administrative authorization to be granted individually to each production unit and, in accordance with the provisions of paragraph (1), the employment of non-resident workers shall be allowed only where it is cumulatively intended to cover the non-existence or insufficiency of resident workers able to provide work under conditions of equality of cost and efficiency and to be limited in time.

The provision of work in Macao by non-residents was thus subject to authorization. However, it was not any non-resident who could come to work in Macao. As established in the Admission Regime for Workers (Decree-Law no. 50/85/M), only holders of the resident's identity card (permanent or non-permanent) of Macao and holders of the nonresident worker's title were admitted to work legally in Macao. An employer who hires people without any legally required document would incur a crime, regardless of the nature and form of the contract, and the kind of remuneration or retribution. On the other hand, before the authorization was requested, the employer and the competent authority were also subject to strict compliance with the legal regulations. Thus, an employer wishing to apply for the hiring of skilled workers to work in Macao should, first of all, have already sought by resident workers suitable for the exercise of their professional activity without success and then in the application itself non-resident workers who intends to hire, with justification, a description of the specialized functions of the workers, as well as their academic qualifications, professional experience or proof of professional certification, curriculum and contract of employment. After authorization, the documents still had to be submitted to the Public Security Police for the purpose of supervising the existence or not of workers who were not allowed to enter Macao.

Thus, as a result of the impossibility of timely recruitment of sufficient workers by many employers and as a consequence of the suspension of the importation of unskilled labor for an extended period of time, large numbers of illegal workers . In the face of many social voices, the previous legislation provided for a relatively weak fight against illegal workers, in particular because there was no specific discipline for "non-employer or local workers" (for example, for which it had no authorization) and the provision of services by non-residents on their own account, the Macao Government issued the Administrative Regulation on the Prohibition of Illegal Labor (hereinafter, the Regulation).

6.1 Delimitation of the concept of illegal worker

In accordance with the provisions of art. 2 of the Regulation on the Prohibition of Illegal Labor, are illegal workers:

6.1.1 Non-residents who do not have the necessary authorization to engage in work for hire or reward, even if unpaid.

Non-residents wishing to perform lawfully any activity in Macao must file the competent application to the Public Administration, in the same way as employers who intend to hire non-residents to come to work in Macao, under penalty of being hired without authorization which is

⁷ Law no. 4/98/M, 29 of July.

moreover a relatively frequent and obvious situation of illegal work, and it is the employer's responsibility to pay a fine for each illegal worker under the Regulation, without prejudice to the criminal liability that may be applicable to the case. In the same way as a fine is applied to non-residents who work illegally in Macao, without prejudice to the accessory sanction of prohibition of any work activity in Macao for a period of two years.

The legislator was clear in predicting that illegal work does not depend on remuneration, and to this end the existence of a working relationship with others.

6.1.2 A non-resident who, despite having the necessary authorization to work as an employee, is engaged in his or her activity, whether or not remunerated, for an entity other than that required to be hired.

It is also illegal to work for a non-resident who, despite having the necessary authorization to work for hire or reward, is working, whether paid or not, for an entity other than the employer who requested to be hired. The non-resident concerned here is already a worker whose employment was legally authorized following a regular procedure but only limited to the provision of work for the requesting employer, for example the hiring of a non-resident cook to perform duties in a particular restaurant, which can not freely go to work in another restaurant or even change profession. Once discovered non-resident at the service of a different entity from the applicant, such as the case of work on a land B of another company when initially working in land A, we are before the so-called "workers outside the employer or the place", being applied to the entity that contracts them a fine for each worker involved, who will also be penalized with a fine and possibly with ancillary sanction of prohibition of work in Macao, all in accordance with the Regulation.

Included in this category are the non-resident domestic servants who, in the service of a particular family, in practice, for convenience or for any other reason, are posted or transferred to serve other families, or work in the businesses explored by the family that required them or by other people. More dubious is the question of the legality of situations where the domestic worker takes his elderly wheelchair employer periodically to the hospital, or who is going to make purchases to the market.

On the other hand, the requesting employer itself will also be sanctioned if the investigation proves that it has promoted or authorized the placement of the non-resident in the service of another entity not authorized for this purpose.

6.1.3 A non-resident who, despite having the necessary authorization to work as an employee, is carrying on his business without observing other conditions of employment, except for the situation of "workers outside the employer or the place", imposed by the respective authorization order.

Apart from the situations of "workers who are not related to the employer or the place", it is also illegal to provide work by a non-resident who, despite having the necessary authorization to work for others, does not comply with the conditions of employment imposed by the respective authorization, if any.

For example, suppose that Company A has two lots and that it is necessary to hire non-residents to work in the field 1. If, after authorization, non-residents are seconded to work temporarily on the ground 2, due to the increase of unforeseeable and urgent work, Company A will be in violation of the imposition of the respective authorization order, since, as a rule, it will be specified in the order that the non-residents concerned may only work on land 1 of that Company, thus their work is limited

spatially to the same land. If non-residents come to work elsewhere, or if they even change their business, they will be "workers outside the employer or the place." If they are transferred to another land of the same company, a situation of violation of the imposition of the authorization order will be verified.

6.1.4 A non-resident who pursues an activity for his own benefit, without complying with the conditions laid down in Regulation.

There are currently a large number of non-residents in Macao who are self-employed after the proper start of business with the Finance Department (DSF) in areas such as retail, tailoring and repair of electrical appliances, being both entrepreneurs and workers, which we can generally refer to as self-employed, and who have been given specific discipline by the Regulation. Thus, the personal and direct exercise by the non-resident of activity for their own benefit is subject to prior administrative authorization for this purpose. In fact, as long as the activity carried out has beneficial effects on the economy and the labor market of Macao, once the authorization has been obtained, it is perfectly legal for the non-resident to exploit it. For non-residents who were already working for their own benefit only on the basis of their tax entry date, they should apply for authorization within 30 days of the entry into force of the Regulation.

This extension of the concept of an illegal worker to include self-employed workers is not an innovation of the Regulation. In fact, Decree-Law no. 18/82/M has already been repealed, in its art. 2, that: The persons indicated in the previous article (article 1) are prohibited from verbally or in writing entering into a work contract, apprenticeship, training or service provision, with individuals who do not hold any of the documents referred to in the following article (article 3), provided that the activity of these individuals must be provided, albeit partially, in the Territory. For this purpose, it is irrelevant (considering illegal work) (...) the fact that the work or service is provided at the contractor's home or establishment, even when the latter has been obliged to provide the raw materials.

The Regulation also provides that the following situations shall not be regarded as illegal work: where an agreement has been concluded between undertakings located outside the Macao SAR and natural or legal persons based in the Macao SAR to perform certain and occasional works or services, in particular, where there is a need for the use of workers outside the Macao SAR for the provision of management, technical, quality control or supervisory services; or when the natural or legal person residing in the Macao SAR invites the non-resident to engage in religious, sporting, academic, cultural and artistic activities. In any case, the residence of the respective non-resident in Macao is limited to a maximum period of forty-five days for each period of six months, consecutive or interpolated (counted from the date of legal entry of the non-resident in Macao SAR).

When the activity of the non-resident is not in conformity with the situation provided for in the law by the Directorate of Labor Services (DSAL), the Public Security Police (CPSP) or the Customs Service (SA) to the non-resident natural person or legal entity to whom the non-resident worker renders service and, as soon as he becomes aware of the communication, terminate the activity of the non-resident, in addition to maintaining a permanently days in which the non-resident actually carries out his activity, in order to be able to be displayed at any time to the abovementioned auditing entities (article 4).

6.2 Responsible bodies and persons with a duty to communicate

The supervision of compliance with the provisions of these Regulations is the responsibility of the DSAL, the CPSP or the SA, according to the respective areas of intervention.

All employees of the Public Administration are obliged, under penalty of disciplinary procedure, to report to DSAL any situations that contravene the provisions of these Regulations and that they become aware in the performance of their duties.

7. The Law on the hiring of non-resident workers and supplementary regulations

In 2009, the Public Administration published Law no. 21/2009, which standardized the regime for hiring non-resident workers to work in the Macao SAR, repealing Decree-Law no. 50/85/M and Decisions no. 12/GM/88 and 49/GM/88.

Thereafter, a non-resident worker means a person who does not have the right of residence in the Macao SAR who is authorized to work temporarily here under a contract of employment concluded with one of the employers mentioned in Law No. 21/2009 (article 1, paragraph 2, of Law no. 21/2009).

7.1 Scope of Law No. 21/2009

The provisions of Law no. 21/2009 do not cover work performed in Macao by non-residents under a service contract or as employees of an entity not included in art. 5, in particular those who occasionally travel to the Macao SAR, at the invitation of a local authority, to participate in religious, sporting, academic, cultural or artistic activities, even if remunerated (art. Law no. 21/2009). The provision of this provision is analogous to the provisions of art. 4 of the Regulation, under which the discipline of this Regulation does not apply when an agreement has been concluded between companies located outside the Macao SAR and natural or legal persons domiciled in the Macao SAR to perform certain and occasional works or services, where there is a need for the use of workers outside the Macao SAR for the provision of management, technical, quality control or supervisory services; or where the natural or legal person residing in the Macao SAR invites the non-resident to engage in religious, sporting, academic, cultural and artistic activities, although the work or service of the non-resident in Macao is limited to a maximum period of forty five days for each six-month period, consecutive or interpolated.

7.2. Contracting entities

They may hire non-resident workers, under the terms of art. 5 of Law no. 21/2009:

- i) Residents of the Macao SAR;
- ii) Legal persons established or established in the Macao SAR;
- iii) Non-residents who have a business or industrial establishment in Macao.

They may hire non-resident workers for the exclusive provision of domestic work:

- i) Officials holding special residence titles, official representatives of the Central People's Government, public enterprises and public capital of the People's Republic of China;
- ii) Consular representatives in the Macao SAR and assimilated;
- iii) Specialized workers authorized to work in the Macao SAR.

Non-resident workers may be recruited directly by the employer or through a licensed

employment agency (article 6 of Law no. 21/2009). As a rule, when the employer is not a permanent resident of the Macao SAR, the period of authorization can not exceed the period of residence permit granted to the employer. In the case of hiring non-residents to perform domestic work, the period of authorization may not exceed the term of the appointment to perform duties in the Macao SAR, when known, or the period of authorization for the provision of specialized work in the Macao SAR granted to the employer (article 10 of Law no. 21/2009).

7.3 Worker

Only the largest non-resident workers are allowed (article 21 of Law no. 21/2009). Although the law does not establish who can be a nonresident worker, the different types of nonresident worker are foreseen, and may be specialized workers (holders of a higher education degree, or of highly qualified technical to carry out tasks requiring a high degree of specialization), unskilled workers (if they do not meet the requirements for skilled workers, nor do they provide domestic work), or domestic workers. Although Law No. 21/2009 does not define domestic work, it is provided for in the Labor Relations Act (article 2, paragraph 10), with domestic work being understood as the work to meet needs own or specific to a household, or the like, and their members. This concept applies in principle to both resident and non-resident workers. However, in our view, the concept must be interpreted in conjunction with other provisions in the case of non-resident workers, on the ground that in their contract the reference to the place of employment is mandatory, activity of the non-resident, and the latter may not work elsewhere in the employer. The same is to say, the non-resident domestic worker can only work at the employer's home, otherwise he or she will be considered a "non-local worker".

Apart from domestic work, a non-resident worker must be employed effectively in a commercial, industrial or liberal profession or, if he is employed by associations or foundations, in an activity which is the purpose thereof (Article 5 3 of Law no. 21/2009).

The authorization of hiring non-resident workers may take the forms of nominal authorization and non-nominal authorization (article 7 of Law no. 21/2009), the one to hire a specific person, to hire an indeterminate person. In this sense, the authorization of hiring a skilled worker is always granted through a nominal authorization, while the authorization of hiring a non-specialized or domestic worker is granted through a non-nominal authorization, whose characteristic is the authorization of workers without specifying their identity, thus enabling the employer to replace them freely within the period of authorization. Conversely, for specialized workers, the termination of the respective contract will determine the termination of the contracting authorization. The skilled worker may, however, with his consent and with authorization, be transferred from the original employer to another employer, provided that the duties to be performed for him are compatible with the professional category under which he was authorized to work in the Macao SAR and the transfer does not result in the same reduction of rights and perks. Such authorization depends, under penalty of not having effect, on the corresponding updating, by the CPSP, of the certificate proving the worker's residence permit (article 14 of Law no. 21/2009).

Once a permit has been obtained, a non-resident worker will be granted authorization to stay in the Macao SAR, although without a right of residence if he can only remain as a non-resident worker (Article 1 (2) of Law no. 21/2009), not being a habitual resident because he / she does not consider to reside in Macao, reason why he / she is not granted the quality of resident of Macao even after 7 years of work (articles 1 and 4 of Law no. 8/1999). Without prejudice to the foregoing, specialized workers, more than a mere stay, may apply for a residence permit (article 4, no. 1, of Law no. 21/2009). Except

as a special authorization from the Chief Executive of Macao SAR, Chinese nationals residing in mainland China can only obtain a residence permit in Macao if they hold documents issued for that purpose by the competent Chinese authorities (single travel safe-conduct for Macau) (Articles 10, 3 and 11 of Law 4/2003).

7.4 Employment contract

The contract of employment for hiring a non-resident worker is subject to a written form, being executed in duplicate, each of the parties having a copy of the contract, which must be included (article 23 of Law no. 21/2009):

- i) Complete identification of the parts;
- ii) The domicile or seat of the parties;
- iii) The professional category or functions of the employee and their remuneration;
- iv) The workplace;
- v) The normal working time and period;
- vi) The date on which the contract takes effect;
- vii) The date of conclusion of the contract.

In the absence of mandatory other than the date on which the contract takes effect, the employee may argue that the contract is voidable within one year from the effective date (Article 23 (5) of Law No. 21/2009). However, in the absence of a written form, even if the contract is null and void, if the employee has begun to provide the work, the annullability of the contract is not enforceable by the employer, who must pay the work already done and fulfill the other contractual obligations (art. 23, paragraph 5, of Law no. 21/2009).

The employer shall remunerate the non-resident worker under the terms agreed in the contract, under equal conditions of equal or equal work remuneration for the resident workers. To date, apart from occasional cases where minimum wage levels have to be respected, such as non-resident employers' employment contracts by the Macao SAR Government for the provision of cleaning and security services, the law does not fix the amounts of remuneration, which can only be made by means of a deposit to the order of the employee in a banking institution of the Macao SAR (article 27 of Law no. 21/2009).

The contract of employment concluded with a non-resident worker is subject to termination, which must be a certain term, and can not exceed that of the contracting authorization. In the absence of a written statement from the parties to the contrary, the employment contract terminates at the end of the stipulated term, and there is no automatic renewal thereof. If there is an agreement and a contracting authorization exists, the employment contract may be renewed, without a time limit or the number of renewals. The renewal of the contract is also subject to verification of the requirements of its conclusion, and should be expressed, if necessary, the change to its content, such as the increase in remuneration. Contrary to what happens under the Labor Relations Act, contracts entered into with nonresident workers in no case become an unlimited contract, given the need for a temporary restriction because of their complementary nature as resident labor force.

7.5 Duration of hiring authorization

In principle, the hiring of non-resident workers is temporary in nature given their complementary function of the local labor force in case of insufficiency, so that the contracting authorization is always

granted in the long term, without possibility of automatic renewal.

As far as the term is concerned, the law only defined rules for cases in which the employer is not a permanent resident of the Macao SAR. As a rule, the term of the non-resident hiring authorization can not exceed the term of the residence permit granted to the employer. In the case of workers employed by civil servants, holders of special residence titles, official representatives of the Central People's Government and public enterprises and public capital of the People's Republic of China, or consular representatives in Macao, may not exceed the term of appointment of the employer to perform duties in the Macao SAR, when known. In the case of an employer who is a specialized worker authorized to work in the Macao SAR, the period of authorization may not exceed the period of authorization for the provision of specialized work in the Macao SAR granted to the employer.

As for the renewal, as a rule, the contracting authorization can not provide clauses for automatic renewal (article 24 of Law no. 21/2009), except in the case of non-residents hired to provide domestic work. The law (in article 11 of Law no. 21/2009) allows the authorization of hiring domestic workers to be granted with a clause of automatic renewal, by means of an express mention in the respective administrative act, in which case, at the end of the respective term, the authorization for hiring is renewed for a similar period, and a shorter term may also be established in the same act. If the Administration, having established an automatic renewal clause, wishes to prevent this from happening, it may revoke it until ninety days before the production of the respective effects.

The absence of an automatic renewal clause, or its revocation, does not prejudice the right of the interested party to request the renewal of the authorization, and the request is assessed in the general terms.

7.6 Suspension and termination of contracting authorization

Due to the recruitment of non-resident workers to labor policies, the Government of Macao may order the temporary suspension or termination of contracting authorizations in justifiable circumstances, which may also cease for other reasons.

7.6.1 Suspension

When it is justified by economic or social reasons, the acceptance of applications for the employment of non-resident workers, the granting of new authorizations or the renewal of authorizations previously granted may be suspended. Such suspension may cover only certain professional categories or sectors of activity and is enacted for a maximum period of six months and may be extended. The temporary suspension order is published in the Official Gazette of Macao SAR (article 15 of Law no. 21/2009).

7.6.2 Expiry

Expiry terminates a contract or other situation after a certain period (by law or by agreement of the contracting parties). Under Law no. 21/2009, expiration may occur, when (pursuant to article 12):

- i) Within six months of the contracting authorization, or renewal thereof, no authorization to remain a worker is requested from the competent authority;
- ii) Once initiated, the procedure for granting the authorization to remain a worker, or its renewal, is stopped for more than three months for reasons attributable to the interested party;
- iii) The worker hired under it shall be absent from the MSAR for more than three consecutive months, except if, having been hired under a non-nominal authorization, it is required to be replaced;

iv) Other cases provided by law.

7.6.3 Repeal

Authorizations for the hiring of non-resident workers in a particular sector of the economy may be (unilaterally) withdrawn by the Administration on grounds of duly substantiated reasons of public interest, notably as a result of economic developments, although the withdrawal must necessarily be notified to interested parties, producing effects after 90 days. Authorizations for the hiring of non-resident workers granted to an employer may also be revoked where they cause, directly or indirectly, the termination, without just cause, of employment relationships or a significant reduction of the working conditions of the resident workers in the service of that employer. The interested parties shall also be notified of the revocation, which shall take effect 10 days after notification (Article 13 of Law no. 21/2009). On the other hand, Failure to pay timely the employer's contracting rate constitutes grounds for revocation of the contracting authorization (article 18 of Law no. 21/2009).

The revocation of the contracting authorization entitles workers who lose their jobs to the right to compensation paid by the employer calculated in accordance with art. 70 of the Labor Relations Act. When the revocation is based on weighty reasons of public interest, the compensation will be borne by the public purse (article 25 of Law no. 21/2009).

The revocation of the contracting authorization implies the revocation of the authorization of permanence granted in the quality worker, and the Administration can not issue a new authorization in favor of the same nonresident before a period of six months has passed, that is the period of disgust already mentioned, except in cases of expiry of the period of residence permit, the new residence permit being required by the employer of the non-resident at the time of expiration; termination of employment contract; revocation of the contracting authorization granted to the employer; termination of the employment relationship by mutual agreement between the employer and the employee; unjustified termination or denunciation of the employment contract at the initiative of the employer; or termination of the employment contract with just cause at the worker's initiative.

7.7 Penalties

Law No. 21/2009 prescribes sanctions for both the contracting entity and the contracted employee.

7.7.1 Recipients

Contracting entity

Natural or legal persons, associations without legal personality and special committees:

- i) In the case of a natural person, the sanctions provided for in art. 32;
- ii) In the case of a legal person, pursuant to art. 30, paragraph 1, for the payment of the fine, also jointly and severally with the company, the administrators or otherwise representing it, when they are found responsible for the infringement;
- iii) In the case of an association without legal personality or special commission, under the terms of art. 30, paragraph 2, the joint assets and, in their absence or insufficiency, the assets of each of the members or members in solidarity shall be liable for the fine.

Worker

- i) That he works in the Macao SAR without being authorized to remain as a worker here; or

ii) That, being authorized to remain in the MSAR as a worker, he provides his activity to an employer other than the one for which he is authorized to work.

7.7.2 Conduct sanctioned as an illegal contract by the employer who

i) If someone do not hold a valid employment authorization, accept the employment benefit per nonresident worker;

ii) If the holder of a nominal authorization to hire a nonresident worker, hire a worker other than the one that was the subject of the authorization; or

iii) If someone hold a non-nominal authorization to hire a non-resident worker, hire a non-resident worker who has been granted authorization to stay in the Macao SAR to work for another employer.

7.7.3 Conduct sanctioned for breach of the rules of engagement by the employer

Having been authorized to contract a non-resident worker, establish a working relationship with the same without reducing the written contract of employment;

Celebrate, in writing, an employment contract that stipulates for the employee conditions lower than those that were submitted with the respective application for contracting authorization;

If he refuses to repatriate the worker, he is obliged to do so;

Pay the nonresident worker's remuneration in a manner different from that of the employee's deposit to a banking institution of the MSAR;

Transfer to the nonresident worker, by any means, the cost of the hiring rate;

Use the non-resident worker in a place other than the expressly authorized, even if it is another establishment belonging to the same employer;

Use workers who are not resident in professional activities other than those authorized;

Deny himself or the employment agency the right to housing of the worker or do not meet the minimum conditions; or

After having obtained a contractual authorization, enter into a written contract of employment with a non-resident worker that omits any of the particulars relating to the complete identification of the parties, the domicile or seat of the parties, the professional category or functions of the employee and their remuneration, normal working hours, or on the date of conclusion of the contract.

7.7.4 Applicable administrative sanctions applicable

To the employer, revocation of all or part of the contracting authorizations of non-resident workers granted, accompanied by deprivation, for a period of six months to two years, of the right to request new authorizations;

To the employment agency, the suspension of the activity for a period of six months to two years.

Ancillary penalties must be proportionate to the gravity of the offense, the fault of the offender and, where appropriate, the number of employees affected by it.

7.7.5 Procedure for punishment and destination of fines

Once an administrative offense has been committed, the DSAL investigates the case and files an indictment, which is notified to the accused. The notice of prosecution shall set a period of fifteen days for the accused to present his defense. Determining the application of a fine, it must be paid

within a period of fifteen days, counting from the notification of the sanction decision. The proceeds from fines constitute FSS revenue.

7.7.6 Accessory feathers

Law no. 21/2009 amended and added content to art. 26 of Law no. 6/2004 (Law on Illegal Immigration and Expulsion), regarding accessory penalties and criminal liability of legal persons in connection with the crime of employment provided for in art. 16 of Law no. 6/2004.

8. The Basic Law of Employment Policy

In the definition of any labor law system, it is essential to take as a reference standard the Basic Law of Employment Policy, as a legal document defining the political bases that it is. As for non-resident workers, the provisions of its art. 9, which, in view of the complement of local human resources, provides that the employment of non-resident workers is only allowed if it is cumulatively aimed at satisfying the lack or insufficiency of resident workers able to provide work under conditions of equal efficiency and is temporally limited. Moreover, the hiring of non-resident workers is not allowed when it contributes significantly to the reduction of labor rights or causes, directly or indirectly, the termination, without just cause, of employment contracts.

The Basic Law of Employment Policy was amended by Law no. 21/2009, giving priority to workers residing in access to employment, when it originally provided for the assignment of this priority only in access to employment in public works and in the provision of public services (g) of art. 4/98/M), representing a change of policy in extending the scope initially limited to public works and the provision of public services to now cover any public or private sector.

9. Final considerations

Throughout the text, we analyze the legal documents that have been issued so far with a view to limiting the importation of non-resident labor in Macao. At the same time, other aspirations of a different order continue to emerge, for example, the operators of the game complain about the prohibition of hiring non-residents for the exercise of functions linked to the game, or how one can not admit the importation of labor, insufficient number of drivers of buses and coaches, or, as some associations are calling for, the introduction of factors of consideration for the possibilities of promoting resident workers in the examination of applications for employment of non-residents, given that in many sectors of activity the importation of labor has prevented the promotion of resident workers. Although all these suggestions are still the subject of much discussion, it is to be hoped that the legal regime for the importation of non-resident labor will still suffer much alteration in several possible meanings worthy of further analysis. Whatever the meaning of future vicissitudes, as long as the principles do not change, the regime and legal requirements addressed throughout the text will always have to be observed and will remain valid.

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