

MACAO SPECIAL ADMINISTRATIVE REGION

Law No. 21/2009

Law for the employment of non-resident workers

The Legislative Assembly decrees, pursuant to the terms of article 71, paragraph 1) of the Basic Law of the Macao Special Administrative Region, that the following shall be enforced as law:

CHAPTER 1

General provisions

Article 1

Object and scope

1. The current law establishes the general regime for the hiring of non-resident workers for the provision of their services within the Macao Special Administrative Region (MSAR).

2. For the purposes of the present law, a "non-resident worker" shall be understood as a person without right of residence in the MSAR who is authorised to temporarily provide a professional activity under an employment contract entered into with any one of the employers referred to in article 5.

3. The provisions of the present law shall not govern work provided within the MSAR under a service provision contract or work provided by a worker who is employed by an entity not referred to in article 5 herein, in particular

those who occasionally visit the MSAR at the invitation of a local entity to participate in religious, sporting, academic, cultural or artistic events, even if the provision of such activities are remunerated.

Article 2

General principles

The hiring of non-resident workers shall be subject to the following principles:

1) Complementarity - the hiring of non-resident workers aims to overcome the nonexistence or insufficiency of resident workers able to provide work under conditions of equal cost and efficiency;

2) Temporariness - non-resident workers shall be hired on a time-limited basis;

3) Non-discrimination - non-resident workers shall be given equal treatment to resident workers, in regards to rights, obligations and working conditions;

4) Remuneration equality - the hiring of non-resident workers shall respect the principle of remuneration equality for work of an identical nature or value regardless of whether such is provided by a resident or non-resident worker;

5) Priority - resident workers shall have precedence over non-resident workers, both in regards to the hiring, as well as keeping an employment position;

6) Sustainability - the hiring of non-resident workers shall not be permitted when it contributes significantly to the reduction of labour rights or directly or indirectly leads to the termination, without just cause, of employment contracts held by resident workers;

7) Prior authorisation - the hiring of non-resident workers shall be subject to the issue of a prior authorisation by the government to an employer;

8) Specificity - the hiring of non-resident workers shall take into consideration the specific characteristics of each economic sector or professional category, in accordance with the needs of the market, the economic situation, as well as the growth tendencies in a specific sector.

Article 3

Non-resident workers

Non-resident workers may be hired as:

1) Specialized workers, should they hold tertiary level degrees, or if they have highly qualified technical skills or professional experience, and will occupy a post which requires a high degree of specialization;

2) Domestic workers;

3) Non-specialized workers, when such persons do not meet the requirements specified in paragraph 1), and will not provide domestic work.

Article 4

Stay permit

1. Non-resident workers shall be granted a worker's stay permit, without prejudice to any legal regime granting residency rights to specialized workers.

2. When the stay permit, referred to in the previous number, is revoked or expires, a new permit shall not be issued to the same non-resident within a period of six months, except when that stay permit has ceased due to: (*)

1) Expiry of the respective term, and a new stay permit is requested by the employer of the non-resident when the expiry takes place; (*)

2) Expiry of the labour contract; (*)

3) Revocation of the employment permit granted to the employer; (*)

4) Termination of the labour relation by mutual agreement between the employer and the worker; (*)

5) Termination without just cause or unilateral termination of the labour contract by the employer; (*)

6) Termination of the labour contract with just cause by the worker. (*)

3. In the situations foreseen in paragraphs 3) to 6) of the previous number, a new stay permit may be issued to the same non-resident who will carry out, within six months, a new job identical to the occupation authorized under the last employment permit. (*)

4. The provision of number 2 shall not preclude the applicability of legislation on entry, stay and residence permit, particularly in case of overstay. (*)

(*) As amended by Law No. 4/2013 of April 15th, 2013.

Article 5 **Employers**

1. The following persons are authorised to hire non-resident workers:

1) MSAR residents;

2) Legal persons with their head-office or an establishment in the MSAR;

3) Non-residents with a commercial or industrial establishment in the MSAR.

2. The following persons may also be authorised to hire non-resident workers solely for the provision of domestic work:

1) Staff of diplomatic missions from the Central People's Government, as well as those of public companies and public capital companies of the People's Republic of China who hold a special stay permit;

2) Consular representatives and those working in similar positions within the MSAR;

3) Specialized workers authorised to work within the MSAR.

3. The employment permit to hire a non-resident worker, except domestic workers, shall have as a prerequisite the effective performance of a commercial or industrial activity, or of an activity to be provided within the purview of a liberal profession or, in the case of associations or foundations, the effective performance of the activity comprising the respective purpose thereof.

4. The suspension of the activity referred to in the previous number for a period greater than two months may be used as a justification to revoke the employment permit for the hiring of non-resident workers.

5. The employment permit for the hiring of a non-resident worker shall be conceded to each employer on an individual basis.

Article 6

Hiring

Non-resident workers may be hired directly by an employer or through a licensed employment agency.

CHAPTER II
Employment permit

Section I
General provisions

Article 7
Types of authorisation

1. The employment permit for the hiring of non-resident workers may be conceded through:

- 1) A nominal permit, to hire a specific person; or
- 2) A non-nominal permit, to hire a non-specified person.

2. The employment permit to hire a specialized worker shall always be conceded through a nominal permit.

3. The employment permit to hire a non-specialized or domestic worker shall be conceded through a non-nominal permit, and the employer may freely utilize such permit to choose the respective worker.

4. The concession of an employment permit to hire a non-resident worker shall not exempt any of the parties involved from performing the legal obligations regarding the entry and stay of non-residents in the MSAR.

Article 8
Criteria for concession of the permit

The principles indicated in article 2 herein shall need to be observed and the following factors taken into account for the employment permit to hire a non-resident worker to be conceded:

- 1) The availability of resident workers to occupy the same positions, under equal conditions of cost and efficiency, as well as the procedures which the employer needs to carry out to hire such persons;
- 2) The needs of the labour market and the different sectors of the MSAR economy;
- 3) The physical aptitude as well as the suitability of the qualifications, training and professional experience of the worker to be hired;
- 4) The working conditions guaranteed to the worker;
- 5) The employer's financial capacity to ensure the performance of all obligations in relation to the worker.

Article 9

Conditions or obligations

The authorisation may be subject to conditions or obligations which are reasonable and suited to the situation at hand, including but not limited to:

- 1) The creation of a surety to guarantee the performance of obligations arising from the labour relation by the employer, in situations where domestic workers are employed by specialized non-resident workers;
- 2) Periodical medical examinations for the worker;
- 3) The provision of the work at a specific location.

Article 10

Duration of the permit

If an employer is not a permanent resident of the MSAR, the period for the authorisation may not exceed:

- 1) The period conceded in the employer's residency permit;
- 2) The person's term of office in the MSAR, when such is known, for the situations indicated in article 5, no. 2, paragraphs 1) and 2);
- 3) The period conceded to the employer within the permit for the provision of specialized work within the MSAR, in the situations indicated in article 5, no. 2, paragraph 3).

Article 11

Automatic renewal

1. The employment permit to hire domestic workers may include an automatic renewal clause, which shall be expressly mentioned in the respective administrative act.

2. In the situation provided in the previous number, the employment permit to hire domestic workers shall be renewed for an equal period, after the initial period ends, unless a shorter period is established in the respective act.

3. The clause referred to in no. 1 may be freely revoked up to ninety days prior to the production of the respective effects therein, thereby preventing the automatic renewal of the permit.

4. The nonexistence or revocation of an automatic renewal clause shall not damage the interested party's right to solicit the renewal of the permit, and such request shall be assessed under the general terms.

Article 12

Expiry

1. Without prejudice to other circumstances provided by law, the employment permit for the hiring of non-resident workers shall expire:

1) Within six months from the concession of the employment permit for the hiring of non-resident workers, or the respective renewal, if no stay permit for the worker has been solicited from the competent entity;

2) If, once initiated, the procedures for the concession of a stay permit to a worker, or its respective renewal, are suspended for more than three months due to reasons attributable to the interested party;

3) When a worker hired under such permit is absent from the MSAR for a period greater than three consecutive months, except if such worker was hired through a non-nominal permit and his or her replacement has been solicited.

2. A non-nominal permit shall not expire solely due to the termination of the labour relation.

Article 13

Revocation in special cases

1. Without prejudice to other situations provided by law, the employment permit to hire non-resident workers in a specific economic sector may be revoked at any moment, so long as such action is duly justified through plausible reasons of public interest, namely those which result from changes in the economic situation.

2. The employment permit to hire non-resident workers granted to a specific employer may also be revoked if such party directly or indirectly provokes the termination of the labour relation without just cause, or significantly re-

duces the labour conditions of the resident workers under the employ of such employer.

3. Should a non-nominal employment permit to hire a non-resident worker be partially revoked, the respective employer shall decide which employment contracts are to be consequently terminated.

4. The revocations indicated in nos. 1 and 2 shall not be effective until a minimum period of ninety and ten days, respectively, has passed counting from the date on which the interested parties are notified.

Article 14

Transfer of workers

1. A specialized worker may be transferred from his or her original employer to another employer, if he or she so agrees and pending authorisation from the original employer, so long as the activity to be performed by such worker under the new employer is compatible with the respective professional category under which he or she was authorised to work within the MSAR and the transfer does not result in a reduction of rights or benefits to such worker.

2. The authorisation indicated in the previous number shall not be effective until the Public Security Police Force updates the corresponding document authorising the stay of the respective worker.

Article 15

Temporary suspension

1. When justified by plausible economic or social reasons, the acceptance of applications for the hiring of non-resident workers, the concession of new permits or the renewal of previously conceded permits may be temporarily suspended.

2. The suspension referred to in the previous number may cover only certain professional categories, or economic or industrial activities.

3. The suspension may be ordered for a maximum period of six months, and may be extended.

4. The dispatch ordering the temporary suspension shall be published in the Official Gazette of the MSAR.

Article 16

Competence

Without prejudice to the provisions of article 14, no.2, it falls within the purview of the Chief Executive to carry out the acts referred to in the present section, and such powers may be delegated to the Secretariat of the Government responsible for economic matters.

Section II

Employment fee

Article 17

Fee

1. The employer shall be required to pay an employment fee for each non-resident worker effectively hired.

2. The employer may not transfer, in any way whatsoever, the obligation to pay the aforementioned fee to the worker, and, in particular, may not reduce the remuneration of such worker for this purpose.

3. The fees charged shall be used for social security purposes.

Article 18

Periodicity

1. The employment fee shall need to be paid for each month the non-resident worker is authorised to remain in the MSAR.
2. The late payment of the fee may be used as a justification to revoke the employment permit.

Article 19

Amount

1. The employment fee amount shall be determined through a dispatch issued by the Chief Executive.
2. The following actions may be carried out, when justified by reasons of economic policy, and in a general and abstract manner:
 - 1) The Chief Executive may determine that the employment fee amount differs in accordance with the number of workers employed, the professional category of the worker or the type of activity performed by the worker;
 - 2) The payment of the employment fee may be temporarily or permanently waived, depending on the size of the production unit, the number of workers employed, the professional category of the worker or the type of activity performed by the worker.

CHAPTER III

Labour relations

Article 20

Subsidiary legal regime

The labour relations entered into with non-resident workers shall be subsidiarily governed by the labour relations law, namely in regards to the rights, obligations and guarantees provided therein.

Article 21

Prohibition of employment of minors

The employment of non-resident workers under 18 years of age is prohibited.

Article 22

Conclusion and effectiveness of the contract

An employment contract may be entered into with a non-resident worker prior to the granting of an employment permit for such worker or before the worker has been granted a worker's stay permit, and shall only be effective after both permits have been issued.

Article 23

Form of contract

1. All employment contracts entered into with a non-resident worker shall be made in writing.

2. The employment contract shall be made in duplicate, and each party shall hold a single copy thereof.

3. The contract must include:

1) The complete identification information of the parties;

- 2) The domicile or head office of the parties;
 - 3) The professional category of the worker, or the duties to be carried out by such person, along with their respective remuneration;
 - 4) The place of work;
 - 5) The normal working schedule and working hours;
 - 6) The date on which the contract will commence producing effects;
 - 7) The date on which the contract was entered into.
4. Should the requisite indicated in paragraph 6) of the previous number not be mentioned, the contract shall enter into effect on the date on which the employment permit and worker's stay permit have both been granted.
5. If any of the remaining obligatory requirements have been omitted, the worker may void the contract within one year after its entry into effect.
6. If the contract is not made in writing, it is voidable; however if the worker has already started providing his or her services, the employer may not revoke the contract entered into with the worker, and shall need to compensate the worker for the work which has already been provided, as well as perform any remaining contractual obligations.
7. If there is a discrepancy between the employment conditions included in the contract and those submitted for the purposes of soliciting the employment permit, the one which provides the more favorable conditions to the worker shall be applied.

Article 24

Term of the contract

1. The employment contract entered into with a non-resident worker shall be subject to a definite term and shall never convert into an indefinite contract.

2. The term of the employment contract shall not exceed the period provided within the employment permit.

3. If no written declaration from the parties exists, the employment contract shall cease to be effective at the end of the term stipulated therein, and shall not be automatically renewed.

4. If an employment permit exists, the employment contract may be renewed, for an indefinite period and number of times.

5. The renewal of the contract shall be subject to the verification of the material requisites needed for its signing, as well as those regarding its form, should the mandatory content specified in no. 3 of the previous article be altered.

Article 25

Termination of the contract due to revocation of the permit

1. Workers are entitled to compensation for the loss of employment due to the revocation of the employment permit, to be paid by the employer and calculated in accordance with the terms provided in the labour relations law for situations in which an employment contract is rescinded without just cause, and by initiative of the employer, without prejudice to the provisions specified in the following number.

2. If the revocation was justified by plausible reasons of public interest under the terms of article 13, no. 1 herein, the indemnity provided in the previous number shall be paid through public funds.

Article 26

Special rights of the worker

1. Without prejudice to the rights provided by general law, non-resident workers are entitled to suitable lodgings and, upon termination of the labour relation, repatriation.

2. The right to lodging may be guaranteed by the employer, or by the employment agency who or which hired the respective worker, and may be satisfied in cash.

3. The Chief Executive may, through a dispatch, determine the minimum hygiene and living standards that the lodgings must satisfy, and, should this obligation be satisfied in cash, the corresponding minimum amount.

4. The right to repatriation shall be understood as the right to receive a payment from the employer, corresponding to the cost of transportation to the worker's place of habitual residence, upon cessation of the labour relation.

5. The provisions of the previous number shall not affect the worker's right to travel to a different location; however, no additional burden shall be imposed upon the employer.

Article 27

Means of payment of remuneration

The remuneration of non-resident workers may only be carried out through a deposit to a current account owned by the respective worker at a banking institution within the MSAR.

CHAPTER IV

Sanctionary regime

Section I
General provisions

Article 28
Performance of omitted obligations

Whenever a breach results from the omission of an obligation, the application of the respective sanction shall not exempt the transgressor from performing said obligation, if such is still possible.

Article 29
Liability of legal persons

1. Legal persons, even if improperly incorporated, along with associations with no legal personality and special committees shall be liable for the infractions indicated in the present law, whenever such are committed by its bodies or representatives on behalf and collective interest thereof.

2. The liability referred to in the previous number shall be waived if the respective agent acted against the express orders or instructions of whoever has the power to give such.

3. The liability of the entities referred to in no. 1 shall not exempt the respective agents from liability.

Article 30
Liability for payment of fines

1. If the transgressor is a legal person, the directors, or representatives thereof shall be solidarily responsible alongside such entity, whenever deemed liable for the breach.

2. If a fine is applied to an association without legal personality or to a special committee, it shall be paid through the common assets thereof, and, should these prove to be insufficient, through the assets of each of the respective members or associates and each one shall be solidarily responsible for its payment.

Article 31

Destination of fines

The proceeds from the payment of fines which were applied due to a breach of the provisions of the present law shall constitute revenue of the Social Security Fund.

Section II

Administrative infractions

Article 32

Infractions

1. An employer shall be fined between \$10,000.00 (ten thousand patacas) to \$20,000.00 (twenty thousand patacas), for each worker against whom the following infractions are committed:

1) The employer accepts work from a non-resident worker and does not hold a valid employment permit for such worker;

2) The employer, despite holding a nominal employment permit for the hiring of a non-resident worker, hires a different worker from the person indicated in the respective permit;

3) The employer, despite holding a non-nominal employment permit for a non-resident worker, hires a non-resident worker who was granted a stay permit to work within the MSAR for another employer.

2. An employer shall be fined between \$5,000.00 (five thousand patacas) to \$10,000.00 (ten thousand patacas) for each worker against whom the following infractions are committed:

1) The employer, having been authorised to hire a non-resident worker, enters into the labour relation without having drawn up the respective employment contract in writing;

2) The employer enters into an employment contract which stipulates worse conditions for the worker than those which were included in the application for the employment permit;

3) The employer refuses to repatriate the worker, despite being legally bound to do so;

4) The employer remunerates the worker in a different form from that which was provided in article 27;

5) The employer - in any way whatsoever - makes the non-resident worker pay the employment fee specified in article 17;

6) The employer makes the non-resident worker provide his or her work in a location different than that which was expressly authorised, even if the location in question is another establishment owned by the same employer;

7) The employer uses non-resident workers to provide a professional activity which they were not authorised to perform.

3. Any employer or employment agency who denies a worker his or her right to lodging, or does not observe the minimum standards required under the terms

of article 26, no.3 shall be fined \$5,000.00 (five thousand patacas) to \$10,000.00 (ten thousand patacas), for each worker against whom such infraction is committed.

4. Any employer who, upon obtaining an employment permit, enters into a contract with a non-resident worker which does not contain all the information required under article 23, no.3, save for the information indicated in paragraph 6) therein, shall be fined \$500.00 (five hundred patacas) to \$1,000.00 (one thousand patacas) for each worker against whom such infraction is committed.

5. Without prejudice to other measures which may be applied to the situation at hand, any non-resident who commits any of the following infractions shall be punished with a fine ranging between \$5,000.00 (five thousand patacas) to \$10,000.00 (ten thousand patacas):

1) The non-resident worker provides his or her work within the MSAR without being authorised to remain here as a worker;

2) The non-resident worker, despite being authorised to remain in the MSAR as a worker, provides his or her work to a different employer than whom he or she was authorised to work for.

Article 33

Accessory sanctions

1. The following accessory sanctions may be applied to the infractions specified in nos. 1 to 3 of the previous article:

1) The revocation of all or part of the employment permits issued to an employer, along with the suspension of the right to request new employment permits for a period of six months to two years;

2) The suspension of activity of an employment agency for a period ranging between six months to two years.

2. The accessory sanctions should be proportional to the seriousness of the infraction, the fault of the agent and, wherever applicable, to the number of workers who will be negatively affected by the infractions.

Article 34

Competence

It falls within the purview of the director of the Labour Affairs Bureau (DSAL) to apply the sanctions specified in the present section.

Article 35

Procedure

1. Upon verification of an administrative infraction, the DSAL shall investigate the case and make an accusation, of which the formal suspect shall be notified.

2. A period of fifteen days shall be given for the formal suspect to defend himself or herself and this information shall be included in the notification of the accusation.

3. The fines shall be paid within a period of fifteen days, counting from the notification of the decision to apply the respective sanction.

CHAPTER V

Final and transitory provisions

Article 36

Supervision

It falls within the purview of the DSAL to supervise the performance and/ or observance of the provisions in the present law, without prejudice to other powers granted to other entities by law.

Article 37

Application in time

1. The provisions of the present law shall be applicable to all employment contracts entered into after its entry into effect.

2. The provisions of the present law shall also be applicable to employment contracts entered into prior to its entry into effect, should they be more favorable to the worker, so long as the non-residents are legally residing in the MSAR as workers at that date.

3. The employment fee specified in article 17 shall need to be paid in regards to non-resident workers who have been granted stay permits after the entry into effect of this law, or if a stay permit is renewed after this date.

Article 38

Amendment to the framework law for employment policy and labour rights

Article 7 of Law no. 4/98/M, of July 27th, shall henceforth read as follows:

«Article 7 (Measures)

The pursuit of the objectives specified in the previous article shall require the adoption of measures which aim, in particular, to:

a) [...]

- b) [...]
- c) [...]
- d) [...]
- e) [...]
- f) [...]
- g) Give priority to resident workers regarding access to jobs;
- h) [...]
- i) [...]
- j) [...]»

Article 39

Amendments to the law for illegal immigration and expulsion

Article 11 of Law no. 6/2004 shall henceforth read as follows:

«Article 11

Revocation of the stay permit

- 1. [...]
- 1) Working in the MSAR without being authorised to do so;
- 2) [...]
- 3) [...]
- 2. [...]
- 3. [...]
- 4. [...]»

Article 40

Addition to the law for illegal immigration and expulsion

Articles 26-A and 26-B have been added to Law no.6/2004, and shall read as follows:

«Article 26 - A

Accessory sanctions

1. The following accessory sanctions may be applied for the crime specified in article 16:

1) Revocation of all or part of the employment permits for non-resident workers granted to the employer, along with the suspension of the right to apply for new permits for a period ranging between six months to two years;

2) The suspension of the right to participate in public tenders for public construction works or for the concession of public services for a period ranging between six months to two years;

3) The suspension of the right to any subsidies or benefits granted by a public service for a period ranging between six months to two years.

2. The accessory sanctions provided in the previous number may be applied individually or cumulatively.

Article 26 - B

Criminal liability of legal persons

1. Legal persons, even if improperly incorporated, associations with no legal personality and special committees shall be liable, under the terms of the present article, for the crime specified in article 16, whenever such is committed on its behalf, or in its collective interest:

1) By its bodies or its representatives;

2) By a person under the authority of such bodies or representatives, when the crime committed was made possible due to an intentional breach of the obligations of supervision or control which fall within the purview of such bodies or representatives.

2. The entities specified in the previous number shall not be criminally liable when the respective transgressor acts against the express orders or instructions of the persons authorised to give such.

3. The liability of the entities referred to in no. 1 shall not exclude the individual responsibility of the respective agents.

4. A fine of up to 360 days shall be applicable to the entities specified in no. 1 of the present article for the crime specified in article 16.»

Article 41

Amendment to the social security legal regime

Articles 3 and 4 of Decree-Law no. 58/93/M, of October 18th, shall henceforth read as follows:

«Article 3 (Beneficiaries)

1. Workers under the employ of another person, including those hired to carry out specific, occasional or seasonal jobs, who are residents of the Macao Special Administrative Region must compulsorily be registered in the Social Security Fund as beneficiaries.

2. [...]

Article 4
(Contributors)

1. Employers who employ resident workers must compulsorily be registered in the Social Security Fund as contributors.

2. Employers who employ non-resident workers must also compulsorily be registered in the Social Security Fund, for the purpose of paying the employment fee specified in the respective statutory provisions.»

Article 42
Complementary regulations

1. The Chief Executive shall approve the complementary administrative regulations necessary for the execution of the present law, namely in regards to:

1) The administrative procedures necessary to issue the employment permit granted to local employers;

2) The administrative procedures necessary to issue the stay permit granted to non-resident workers;

3) The date and manner in which the employment fee is to be paid, along with the destination of the respective amounts paid.

2. The complementary regulations provided in the previous number may differ depending on the economic sector, professional category, market needs, economic situation, as well as the growth tendencies within each sector.

3. The Chief Executive shall endow the DSAL, the Human Resources Office and the Public Security Police Force with the necessary resources to effectively implement and apply the present law and respective complementary regulations.

Article 43

Repealed laws

The following laws and regulations are hereby repealed:

- 1) Decree-Law no. 50/85/M, of June 25th;
- 2) Article 41, no.2 of Decree-Law no. 58/93/M, of October 18th;
- 3) The provisions of Administrative Regulation no. 17/2004, which contradict the present law;
- 4) Dispatch no. 12/GM/88, of February 1st;
- 5) Dispatch no. 49/GM/88, of May 16th.

Article 44

Entry into effect

1. The present law shall enter into effect 180 days after its promulgation.
2. Without prejudice to the provisions of the previous number, paragraph 2) of the previous article shall enter into effect together with the complementary regulations which govern the procedures regarding the payment of the employment fee.

Approved on October 9th, 2009.

The President of the Legislative Assembly, Susana Chou.

Signed on October 15th, 2009.

May it be published.

The Chief Executive, Ho Hau Wah.

Administrative Regulation No. 8/2010

Regulation of the Law for the employment of non-resident workers

The Chief Executive, having heard the Executive Council, decrees, under the terms of paragraph 5 of article 50 of the Basic Law of the Macao Special Administrative Region, and no. 1 of article 42 of Law no. 21/2009, that the following shall have force of administrative regulation:

CHAPTER I

General provisions

Article 1

Object

The current administrative regulation regulates:

- 1) The concession of employment permits for non-resident workers;
- 2) The concession of stay permits for non-resident workers;
- 3) The payment of the employment fee for non-resident workers;
- 4) The destination of the employment fees charged.

CHAPTER II

Employment permit

Article 2

Employment permit applications

1. Non-resident worker employment permit applications shall be submitted to the Human Resources Office, hereinafter designated simply as GRH, upon filling in the printed form approved by dispatch of the Secretariat for Economy and Finance.

2. The application must include the salary and other essential labour conditions that an employer wishes to offer the worker.

3. The following documents must be submitted, wherever applicable, alongside the application:

1) Photocopy of the identification document of the applicant, whenever such is a natural person;

2) Commercial registration certificate;

3) Photocopy of the identification document of the applicant's representative;

4) Photocopy of the permit granted for the activity being carried out;

5) Photocopy of the declaration of commencement of activities submitted to the Financial Services Bureau, or a photocopy of the document certifying that the applicant has been charged industrial tax in the previous year ;

6) Proof of payment of the complementary income tax;

7) Proof of payment of the employment fees and contributions to the Social Security Fund, hereinafter designated simply as the FSS;

8) Photocopy of the identification document of the specialised worker to be employed;

9) Documental evidence of the academic qualifications, technical skills or professional experience of the specialised worker to be hired;

10) Proof that the employment offer was registered in the Labour Affairs Bureau, hereinafter designated simply as the DSAL.

4. The provisions of the previous number shall not preclude the inclusion, by the applicant, of other documents or information deemed to be useful for the assessment of the application.

5. The forms referred to in no. 1 are provided by the GRH, in both printed and electronic formats.

Article 3

Assessment procedures

The GRH may solicit, for application assessment purposes:

- 1) Appropriate complementary documents or information from the applicant;
- 2) Information and formal opinions from other public entities;
- 3) Access to the employer's establishment.

Article 4

Surety

1. Should the employment permit for a domestic worker be subject to the creation of a surety, pursuant to article 9, paragraph 1) of Law no. 21/2009 (Law for the employment of non-resident workers), the respective surety must be a resident of the Macao Special Administrative Region, hereinafter desig-

nated as the MSAR, or a legal person with its registered office therein, who shall be the principal contributor and expressly waive his/her/its benefit of discussion.

2. The surety may only be replaced pending authorisation from the entity with competency to grant employment permits.

Article 5

Transfer of specialised workers

The provisions of articles 2 and 3 are applicable, with the necessary adaptations, to the permits for the transfer of specialised workers referred to in article 14 of Law no. 21/2009 (Law for the employment of non-resident workers).

Article 6

Notifications for the Public Security Police Force and the FSS

The GRH shall immediately notify the Public Security Police Force, hereinafter designated simply as the CPSP, and the FSS of:

- 1) The employment permits for non-resident workers;
- 2) The permits for the transfer of specialised workers;
- 3) Employment permit renewals;
- 4) Employment permit revocations.

CHAPTER III

Stay permit

Article 7

Compulsory nature of the stay permit

A non-resident may only commence providing his or her labour in the MSAR upon concession of the worker's stay permit, and only whilst the permit remains valid.

Article 8

Stay permit application

1. Applications for worker's stay permits shall be solicited from the CPSP, by the employer or by a licensed employment agency indicated by the employer, within six months from the date on which the employer receives notification of the concession of the employment permit.

2. The application must contain the following components, without prejudice to any other documents the CPSP may deem necessary:

- 1) Photocopy of the dispatch granting the employment permit;
- 2) Passport or any other travel document belonging to the non-resident;
- 3) Four recent, passport type colour photographs, with a white background.

Article 9

Alteration of the application

No substantial alteration of the employment permit application under assessment is allowed after the period indicated in no. 1 of the previous article has passed, save for situations of force majeure which have been duly proven.

Article 10

Validity

Stay permits shall be conceded for a period equal to the employment permit, unless the shorter period is provided in the legal regime for the entry, stay and residency permits in the MSAR.

Article 11

Identification document

1. Non-residents who are authorised to stay in the MSAR as a worker shall - after registering their fingerprints - be issued with an identification document identifying such persons as nonresident workers, the format of which is to be approved by a dispatch of the Chief Executive, and shall contain, amongst other necessary data, the identification information of the worker and the employer.

2. Non-resident workers must always carry the identification document referred to in the previous number, which shall be used to identify the worker for all legal purposes during its period of validity.

3. For the purposes of article 18, no. 1 of Law no. 21/2009 (Law for the employment of nonresident workers), the CPSP shall notify the FSS of the issue of the identification document referred to in the present article.

Article 12

Fees

1. A fee of 100 patacas shall be charged for the issue and renewal of the identification document referred to in the previous article.

2. A fee of 200 patacas shall be charged for the re-issue of the identification document referred to in the previous number.

Article 13

Provisional stay permit

1. The CPSP may, during the assessment of the stay permit, or of the renewal thereof, and whenever circumstances so justify, issue provisional worker's stay permits, which may be valid for a maximum period of 45 days.

2. The provisions of articles 11 and 12 shall not be applicable to holders of the provisional permits referred to in the previous number.

Article 14

Renewal of the stay permit

1. The provisions of article 8, no.2 shall be applicable, with the necessary adaptations, to the renewal of the stay permit.

2. The renewal of stay permits for domestic workers employed under an employment permit which contains an automatic renewal clause may be solicited once the period indicated in article 11, no. 3 of Law no. 21/2009 (Law for the employment of non-resident workers) has elapsed, as long as such clause has not been revoked.

Article 15

Refusal and revocation

1. Worker's stay permits shall be refused or revoked upon fulfilment of the conditions provided by law, respectively, for the refusal or prohibition of the entry of non-residents, or for the revocation of the respective stay permit.

2. The CPSP must notify:

1) The FSS, of all situations in which the stay permit for a non-resident worker is revoked;

2) The GRH, of the cases referred to in the previous paragraph, when such concern specialized non-resident workers.

Article 16

Subsidiary legislation

The legal regime for the entry, stay and residency permits in the MSAR shall be subsidiarily applicable to the provisions of the present chapter.

CHAPTER IV

Employment fee

Article 17

Periodicity of the payment

1. The employment fee shall be charged monthly starting from:

1) The first day of the month in which the identification document specified in article 11 is issued, if such fact occurs between the 1st and 15th days of that month.

2) The first day of the month immediately following the month in which the identification document specified in article 11 is issued, if such fact occurs between the 16th and 31st day of that month.

2. The employment fee shall cease to be paid starting from:

1) The first day of the month in which the identification document specified in article 11 expires or is revoked, if such fact occurs between the 1st and 15th day of that month;

2) The first day of the month immediately following the month in which the

identification document specified in article 11 expires or is revoked, if such fact occurs between the 16th and 31st day of that month.

3. The employment fee shall be paid in the months of January, April, July and October, relative to the previous quarters, through a form approved by the FSS.

Article 18

Reduction and exemption

1. Employers involved in the manufacturing industry who are subject to the legal regime provided in Decree-Law no. 11/99/M, of March 22nd, shall, pursuant to article 1 thereof, benefit from a reduction of 50% of the employment fee.

2. Employers of non-resident workers who provide services of a domestic nature shall be exempt from payment of the employment fee.

Article 19

Registration

The FSS shall, of its own volition, upon receiving the notification specified in article 6 and based on the information provided therein, carry out the registration procedures for the employer entities referred to in article 4, no.2 of Decree-Law no. 58/93/M, of October 18th.

Article 20

Destination of the fees

The employment fees charged shall constitute revenue of the FSS.

CHAPTER V
Administrative infractions

Article 21
Sanctions

1. Any employer who does not pay the employment fee within the period specified in article 17, no. 3 herein shall be liable to a fine of 300 to 1000 patacas, for each worker against whom such an infraction was committed.

2. The application of the sanction indicated in the previous number does not exempt the transgressor from paying the employment fees owed.

3. A specialised non-resident worker who, having been authorised to hire a non-resident worker to provide domestic services, substitutes the surety thereof without first obtaining the permit indicated in article 4, no.2 shall be liable to a fine of 1,000 to 5,000 patacas.

4. A non-resident who, despite possessing the identification document referred to in article 11 herein, does not display such document when requested to do so by the competent authority for verification purposes shall be liable to a fine of 250 to 400 patacas.

Article 22
Competence

1. The following entities have the competence to apply the fines described in the previous article:

1) The Administrative Committee of the FSS, for the situation described in no.1;

- 2) The Director of the DSAL, for the situation described in no.3;
 - 3) The Commissioner of the CPSP, for the situation described in no. 4.
2. Any decision to apply the sanctions specified in the previous article may be immediately contested through the Administrative Court.
 3. The FSS and the DSAL shall notify the GRH of the sanctions they apply.

Article 23

Destination of the fines

The proceeds of the fines applied shall constitute revenue of the FSS.

Article 24

Subsidiary legislation

The general legal regime for administrative infractions and respective procedures, approved by Decree-Law no. 52/99/M, of October 4th, shall be subsidiarily applicable to the provisions of the current chapter.

CHAPTER VI

Final and transitory provisions

Article 25

Supervision and coordination between the public services

The DSAL, GRH, FSS and CPSP shall adopt the necessary procedures to assure the prompt exchange, amongst themselves, of the information needed to

properly execute the present administrative regulation and shall moreover inform, whenever necessary and within their purview, any occurrence of permit expiry.

Article 26

Treatment of personal data

Without prejudice to the principles established in Law no. 8/2005 (Law for the protection of personal data), the DSAL, GRH, FSS and CPSP shall carry out the procedures - regarding the treatment and interconnection of personal data - which are necessary to perform the duties entrusted to them by the present administrative regulation and by Law no. 21/2009 (Law for the employment of non-resident workers).

Article 27

Application in time

The present administrative regulation shall be applicable to pending applications.

Article 28

Alterations to the Administrative Regulation no. 5/2003

Article 5 of the Administrative Regulation no. 5/2003 (Regulation regarding the entry, stay and residency permits) shall henceforth read as follows:

«Article 5.º

Documents

1.
2.

- 1).....
- 2).....
- 3).....
- 4).....
- 5).....
- 6).....
- 7).....
- 8).....
- 9).....

10) Holders of the identification document identifying such person as a non-resident worker.

3.
4.
5.
6. »

Article 29

Entry into force

The present administrative regulation shall enter into effect upon the entry into force of Law no. 21/2009 (Law for the employment of non-resident workers).

Approved on April 12th, 2010.

May it be published.

The Chief Executive, Chui Sai On.

Administrative Regulation No. 13/2010

Regulation of the conditions or responsibilities to be established in the employment permit for non-resident workers

The Chief Executive, having heard the Executive Council, decrees, under the terms of paragraph 5) of article 50 of the Basic Law of the Macao Special Administrative Region, and no. 1 of article 42 of Law no. 21/2009, that the following shall have force of complementary administrative regulation:

Article 1

Object

The current administrative regulation regulates the conditions or responsibilities to be established in the employment permit for non-resident workers referred to in article 9 of Law no. 21/2009 (Law for the employment of non-resident workers).

Article 2

Types of conditions or responsibilities

The following conditions or responsibilities may be established in the employment permit for non-resident workers:

- 1) Creation of a surety to ensure that the employer performs all obligations pertaining to the labour relation, in situations where specialised non-resident workers hire domestic workers;
- 2) Requiring the worker to undergo periodical medical examinations;

- 3) Provision of the work at a specific location;
- 4) Guarantee the employment of the minimum number of resident workers;
- 5) Implement the re-evaluation system for the number of non-resident workers to be employed;
- 6) Other conditions or responsibilities that the entity with competence to authorise the employment of non-resident workers deems reasonable and adequate.

Article 3

Guarantee that the minimum number of resident workers has been employed

1. The minimum number of resident workers to be employed shall be determined in accordance with the needs of the market, the economic situation as a whole, as well as the growth trends of individual economic sectors during the period in which the entity with competence to authorize the employment of non-resident workers is assessing the concession of the respective permit, as well as with the number of resident workers employed by the employer and with the number of workers such person has promised to employ.

2. Should the employer be unable to guarantee the employment of the minimum number of resident workers as determined in the previous number, due to the termination of a labour relation, then the employer must, within 15 days from the occurrence of such fact, take all necessary measures to ensure that the minimum number of resident workers is employed.

3. If, after taking all necessary measures, the employer still cannot employ the minimum number of resident workers required within the period indicated in the previous number, then the employer must, within five days after the end

of the aforementioned period and through a written and justified request, solicit the extension thereof from the Human Resources Office, hereinafter designated as the GRH.

4. Upon reception of the application indicated in the previous number, the GRH shall, within 15 days, pronounce a decision and notify the employer.

5. Should the employer not observe the provisions of the present article, the employment permit for non-resident workers thereof may be partially or entirely revoked.

Article 4

Re-evaluation system for the number of non-resident workers to be employed

1. Any employer who, having employed resident and non-resident workers to carry out the same professional activity, reduces the number of such workers due to a change in the volume of work, must notify the GRH within 15 days.

2. Upon reception of the notification referred to in the previous number, the GRH shall, within a period of 15 days, assess the need to alter the number of non-resident workers which the employer is authorised to employ and notify such person of the respective results.

3. Should an employer fail to notify the GRH in accordance with the provision of no. 1, the employment permit for non-resident workers thereof may be partially or entirely revoked.

Article 5

Supervision

1. It falls within the purview of the Labour Affairs Bureau, hereinafter designated as the DSAL, to supervise the performance of the present administrative regulation, and must notify the GRH regarding any infringements of

which it is aware.

2. If the DSAL, when handling procedures resulting from employment conflicts related to the termination of employment contracts with resident workers, becomes aware that an employer was granted an employment permit for non-resident workers, it must inform the GRH; videlicet it must submit its conclusions regarding the existence of infringements in the procedures, the type of infringement(s) and the applicable sanctions.

3. Should any irregularities regarding the payment of contributions be discovered during the supervision to assure that employers are performing all provisions relative to the social security legal regime, the DSAL and the Social Security Fund must notify the GRH of such facts.

Article 6

Entry into force

The current administrative regulation shall enter into force 60 days after its publication.

Approved on May 14th, 2010.

May it be published.

The Chief Executive, Chui Sai On.

Dispatch of the Chief Executive No. 88/2010

Using the powers conferred by article 50 of the Basic Law of the Macao Special Administrative Region and under the terms of Article 26, no.3 of Law no. 21/2009, the Chief Executive decrees:

1. The lodgings of the non-resident workers must have an average living area no smaller than 3.5m² per worker, and contain the following equipment, without prejudice to the provisions of the following number:

- 1) A single bed for each non-resident worker;
- 2) A fan in each compartment in which there are beds;
- 3) One bathroom with a shower dispensing hot and cold water and a washing machine for each group comprising eight or less non-resident workers;
- 4) Lockers to store personal belongings, as well as a sufficient quantity and capacity of tables for meals, chairs, kitchen cupboards, refrigerators and ovens relative to the number of workers.

2. Should a domestic worker reside at his or her workplace, the respective employer shall provide lodgings which are adequate for, and capable of protecting his or her privacy in a reasonable manner and shall moreover provide such worker with basic commodities, particularly with a bed, wardrobe and access to a bathroom.

3. Should a worker's right to lodgings be provided for in cash, he or she shall be given a monthly sum of no less than 500 patacas for this purpose.

4. The present dispatch shall enter into effect upon entry into force of Law no. 21/2009 (Law for the employment of non-resident workers).

April 15th, 2010.

The Chief Executive, Chui Sai On.

Dispatch of the Chief Executive No. 89/2010

Using the powers conferred by article 50 of the Basic Law of the Macao Special Administrative Region and under the terms of Article 19, no.1 of Law no. 21/2009, the Chief Executive decrees:

1. The employment fee each employer shall need to pay for each non-resident worker effectively employed is hereby fixed at 200 patacas per month, without prejudice to the provisions of article 18 of Administrative Regulation no. 8/2010 (Regulation of the Law for the employment of nonresident workers).

2. The present dispatch shall enter into effect upon entry into force of Law no. 21/2009 (Law for the employment of non-resident workers).

April 15th, 2010.

The Chief Executive, Chui Sai On.