



FOUNDER & PUBLISHER Kowie Geldenhuys

EDITOR-IN-CHIEF Paulo Coutinho

Macau, Wednesday, October 17, 2018

Home » Opinion » Legal Wise | The 45-day conundrum: what work is work and what work is not?

LEGAL WISE | THE 45-DAY CONUNDRUM: WHAT WORK IS WORK AND WHAT WORK IS NOT?

WEDNESDAY, SEPTEMBER 21, 2016 - 2 YEARS AGO NO COMMENTS 5,258 VIEWS

Macau's immigration authorities are well known for their strict views and heavy-handed enforcement of immigration laws in the Territory. Anyone caught doing any kind of work in Macau without a valid work permit or a Macau Identification Card is likely to be considered an illegal worker, with all the consequences inherent to such an offense. One exception, however, is that it is possible for non-resident workers to legally provide services in Macau for a limited period of time without having a work permit or a Macau I.D., even without the recipients of such services being authorized to employ non-resident workers. So where does that leave us?

Commonly referred to as "secondment mechanisms" or the "45-day rule", the clause that allows non-residents to work in Macau without a valid authorization is established under section 4 of Administrative Regulation 17/2004. It states that a non-resident will not be considered an illegal worker if companies with a registered office located outside Macau, together with individuals or companies with a registered office in Macau, reach an agreement for an individual to execute specific or occasional work or services. One instance is when workers from outside Macau are required to provide guidance, technical, quality control or supervision services. The same conditions apply if an individual or company with a registered office in Macau invites a non-resident to participate in activities related to religion, sports, academia, cultural exchange or the arts. In any case, the services or work permitted under this exception are limited to a maximum period of 45 continuous or discontinuous days during a six-month period, starting from the date of the non-resident's lawful entry to Macau.

As Macau only has tourist visas, the 45-day exemption seems like the perfect solution to anyone who comes to Macau only occasionally, with the purpose of doing business (e.g. attending meetings, negotiating contracts, promoting sales, visiting construction sites) or rendering certain kinds of services (e.g. training, coaching, supervising and more). The fact is, however, that it is common for non-residents making use of this exception to be arrested and expelled from the Territory by the Macau authorities. In most cases, the reason for the arrests seems to be the interpretation of what constitutes work under the 45-day exception and what does not.

Actually, despite the existence of a list of permitted activities, the scope of said activities is not statutorily defined. Therefore, its extent and qualification is not absolutely clear. Though this leaves margin for interpretation, the fact is that Macau authorities tend to apply a restrictive interpretation of the scope of the services. Any activities that imply a more physical or "hands-on" service are, in the authorities' eyes, not covered by the exception set out in the law.

For activities such as guidance, supervision, and quality control - which do not usually require the "hands-on" approach - such interpretation would not pose as much of a problem, but when it comes to technical services, this restrictive interpretation impairs the purpose of the law. Essentially, and by definition, technical work is work that requires a fair amount of expertise and certain skills to be carried out, as these skills and expertise can only be acquired through practice and learning.

These activities require the intervention or direct action of individuals with a specific set of skills that cannot be delegated or easily taught to anyone else. For example, this would be the case for a painter of murals, a maintenance technician of machines or systems, or the installers of a renowned brand storefront, among many other scenarios.

So, what work is work and what work is not? **Isolda Brasil**

SHARE THIS:



Isolda Brasil

DAILY EDITION



19 HOURS AGO
Wednesday, October 17, 2018 - edition no. 3151

EXTRA TIMES



6 DAYS AGO
Biblical Honey

OCTOBER 2018

M	T	W	T	F	S	S
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

« SEP



OTHER ARTICLES

ANALYSTS BETTING ON OCTOBER GAMING REBOUND

EXHIBITION SHOWCASES 'RAW' BRIDAL SHOTS

DIRECT INVESTMENT IN MACAU RECORDS 80 PERCENT COLLAPSE

EDUCATION | IPM TAIPA CAMPUS EXPECTED TO OPEN BY 2020

AL PLENARY | LRT COMPANY TO OPERATE LIKE AIRPORT FIRM

