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THE FOREIGN EMPLOYEE AND THE MOROCCAN LAW REQUIREMENTS.

Throughout the implantation of a company or a subsidiary, investors want to be informed of the national provisions, specially the one governing the worker's regime. Thus, the Moroccan Labor law become a real tool between investors hands wishing to establish themselves in this country. It is more and more complex to sustain a project if the social national law is overprotective or too binding for companies.

Investors do not systematically wish to be surround by national people. Thus, they often turn to foreign national or of their own country. The work of foreigners in Morocco is surrounded by strict and precise rules, but also depend of the goodwill of Moroccan authorities. This one are qualified for the work visa issuance. The visa is needed by the regulation in order to regularize the worker's situation.

Beforehand the worker's visa, one condition must imperatively be filled: it concerns the acquisition of the certificate of activity in Morocco for worker overseas, commonly referred as the certificate ANAPEC.

We invite you though this draft to study the way which permit to regularize the situation of worker overseas, but also to focus on current issues of our social Moroccan law.

1. The request of the certificate of activity for the worker overseas in Morocco.

The certificate of activity in favor of stranger workers in Morocco has for main aim to prove the complete lack of national candidates responding to the asking profile and seeking by the employer.

The request of the certificate of activity of a worker oversea is directly formulated by the employer alongside the general direction of the National Agency for the Promotion of Employment and Skills (NAPES).

Then the work offer is provided by the company in the national press and applications received will directly be transfer to the NAPES. As well as the offer is published on the website of the Agency. Simultaneously, a research profile corresponding is executed at the central level by the NAPES.

Then the request is treated, and the delivery of the certificate is decided if there is none profile responding to the work offer.

There are some exemptions because some profiles categories benefit of a simplify proceed with a delay that cannot overpass 48 hours. It concerns posts with a certain responsibility or some pointed profile which are rare or unavailable on the market. Lists are establishing and regularly updated by NAPES in concertation with the employment Ministry.

Some others are totally exempt of the certificate of activity. It is about a list of persons for which the recruitment is not force to respect the previous mentioned procedure. For instance, foreign people whose spouses are Moroccan, or shareholders, partners of the employer's company.

Last exemption, Algerian nationals, Tunisians nationals or Senegal nationals are exempted of the delivery of the certificate of activity. It is justified by the reason of their belonging to a signatory country of a bilateral convention with the Morocco.

The acquisition of the certificate is not the only procedure who needs to be respected for the recruitment of a worker oversea. Several others stapes need to be respect.

2. The authorization of the employment Ministry, a key element to the recruitment of foreign employees

The law enacted by the Dahir of 11th September 2003 (« the Labor Code ») surround the work of foreign employees with several conditions. Thus it can be establishing the second stapes of the proceed of regulation of foreign employees: the necessity to obtain an authorization from the Service of employment of clandestine within the employment ministry by the employer. This last one takes the form of an imposed visa on the work contract in which the model is fixed by the Ministry.

- **Formalism of the work contract.**
For purposes of recruit a salary with a foreign nationality, the employer must conclude a foreign work contract with the concerned-employee. A formalism is expressly provided by the Labor Code and more specifically by the decree of the Minister of Training and Employment Development dated of 9th February 2005 which fixing the model of foreign work contract. This model is available on the Minister's website.
In general terms, the work contract must answer to requirements quoted in the previous decree. The employer commit himself to recruit the employee for a determined or undetermined period. The date entry into force is the one corresponding to the visa delivered by the Mister of Employment.
In practice, the requirement will be a work contract with a determined period and a possibility to renew it. This limitation of the contract can be from one to five years.
- **The visa**
The first visa request lead to a visa which is valid for a one-year period. Thus, it is difficult to grant a visa for an unlimited period. The visa requirement by the Ministry of Employment is the same whether it is for an amendment or a renewal of the employment contract.
The authorization of visa issuance by the Ministry is the beginning of the subordinate relationship between the employer and the employee. The issuance is generally given in a delay from one to two months following the request.
The obtainment of the visa is subordinated by the submission of some specific parts and documents in French or Arabic language, they are accompanied the employment contract. A resident permit must also be attached, to this above mentioned documents. This resident permit is issued to any foreigner who have resided since more than three months in Morocco. Furthermore, a residence certificate also called residence permit can be issued when the foreigner would have passed more than for years in Morocco without a break.
- **The legislation applicable to the relationship between employer and foreign employee.**
It is expected that all provisions of the Moroccan Labor Code may be applied expect a few exceptions. So, there are exemptions regarding the employment of foreign employees that must be developed, in particular concerning the termination of the employment contract. Indeed, in case of a conciliation between employee and employer, the labor code provisions related to dismissal are not going to be apply.

Which provisions could we apply to this particular contractual termination?

3. The termination of the foreign employment contract:

In the case of a dismissal procedure without any fault, that lead to an amicable settlement and by which they agree on a transactional amount, there is a practical rule that is apply especially in foreign employee cases. Instead of calculate the amount of the dismissal indemnity that is payable to the employee, based on his seniority, the foreign employment contract termination will lead to a calculation based on the amount of salaries that would have been paid if the contract has not been terminated.

Let us take an example: if a foreign employment contract was terminated but which could have been maintain for another two years in the future, then the dismissal indemnity will be equal to twenty-four times his salary.

This procedure is very advantageous for the foreign employee.

Practical information: It should be noted that when the time period fixed into the foreign employment contract is expired, or when it is terminated, it is very important to recover tax clearances. *Why?*

In order to avoid the risk of a double taxation in the home country. Indeed, if any convention for the avoidance of the double taxation has not been signed between the country and the kingdom of Morocco, there is a risk that the foreign employee will be taxed twice. The solution of this financial lose is the tax clearances

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