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## ZIMBABWEAN DISPENSATION PROJECT

During the course of 2007/2008 South Africa witnessed an influx of Zimbabwean nationals, mostly refugees fleeing their country for economic and political reasons. The majority of these Zimbabwean nationals were undocumented and those who applied for asylum waited long periods for their applications to be processed. Towards the latter part of 2008 it was estimated that there were approximately 2 million Zimbabweans living in South Africa, of these only about 275 000 were documented.

From April 2009 to April 2010 the Department of Home Affairs implemented the Special Dispensation for Zimbabweans. Under this dispensation there was a moratorium on the deportation of Zimbabweans, furthermore Zimbabweans were afforded a three month visa free entry into South Africa. However, at the end of this dispensation the moratorium on deportations remained in effect.

In September 2010 the current Zimbabwean dispensation project (ZDP) was launched by the Department of Home Affairs. This project was implemented with the aim of regularising the stay of undocumented Zimbabweans in South Africa.

From September to December 2010, undocumented Zimbabweans were given the opportunity to apply for free temporary work, study and business permits. These 'free permits' were issued for up to four years. All that was required from the applicants was a valid Zimbabwean passport, a completed application form with fingerprints and written confirmation of employment, proof of registration with an educational institute or proof of business.

Since the issue of these free permits there has been some uncertainty and much speculation as to whether they would be renewed on expiry. These permits are now due to expire during the course of 2014.



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On 26 March 2014 the Deputy Minister of Home Affairs, Fatmia Chochan issued a media statement on the expiration arrangements of the free permits. She announced that at the Cabinet meeting held on 19 March 2014 Cabinet had approved the approach to be taken by Home Affairs on the expiry of the permits. The approach is that [Zimbabwean] permit holders will be expected to re-apply for their permits in Zimbabwe. It is unclear whether reapplication for the permits will be under the same relaxed requirements or if reapplication will be under the normal requirements applicable to regular permits which are very onerous. The Deputy Minister however did say that the Minister of Home Affairs, Naledi Pandor, would host a media briefing and expand further on Cabinet's directive.

At this stage it is important for employers with employees holding these permits to note that the permits are due to expire this year and that those employees will have to re-apply for their work permits in Zimbabwe. Due to the increased pressure this will place on the South African Embassy in Zimbabwe, this will likely result in lengthy delays in the processing of work permit applications. Employers will be well advised to pre-empt the expiry of Zimbabwean employees' work permits and to make adequate arrangements for the renewal of these work permits.

*Michael Yeates and Shungu Mariti*

## OBLIGATIONS THAT SURVIVE CANCELLATION AND RESCISSION OF THE EMPLOYMENT CONTRACT

In the case of *Steven Group v Renaissance BJM Securities (Pty) Ltd (J1720/12) [2014 ZALCJHB 72 (25 February 2014)]* the Labour Court was faced with the question whether an employee is entitled to payment of deferred equity compensation after he terminated the employment contract making provision for such payment.

During negotiations around the employment contract, the employee indicated that he had deferred equity compensation from his previous employer in the form of share options as part of a retention strategy. The employee indicated that he stood to lose his shares if he were to resign. A contract of employment was concluded between the parties and incorporated a clause which made provision for the payment, in cash value, equivalent to the deferred equity compensation.

The employee resigned from the employ of the employer before the whole amount of the deferred equity compensation was paid to him. In the Labour Court the employee's case was that the right to receive the payment vested before the termination of the contract and therefore his dismissal or resignation or cancellation of the contract was irrelevant. The employer, on the other hand, argued that the right of the employee to claim the amount in question was guaranteed as an incentive for him to leave his erstwhile employer and thereafter remain in the employ of the respondent. In other words, the employee was not entitled to receive any payment in terms of the contract of employment once the contract was terminated by resignation.

The court held that the purpose of the clause was to attract the employee to join the employ of the employer and this was done with the incentive of offering the employee the value of the shares he would have acquired had he remained with his previous employer.

The court held that the provisions of the clause in the employment contract gave rise to an enforceable obligation on the part of the employer to pay the employee the amount claimed. The obligation on the employer arose from a proper interpretation of the clause which created an unconditional and enforceable obligation surviving the cancellation and rescission of the contract by the employee.

What was apparent from the reading of the clause was that the parties addressed the risk consequent to the employee resigning from his previous employer. What the contract failed to address was the risk of the new employer in the event that the employee also resigned from it.

Employers are cautioned to ensure that they are adequately protected in these circumstances when mitigating the risk of employees. If not, they could end up having to discharge an obligation to an employee without having the full benefit of such obligation.

*Mohsina Chenia and Shungu Mariti*

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