



CHINA BRIEFING

HUMAN RESOURCES AND PAYROLL IN CHINA 2016 - 2017 *(5th Edition)*

Produced in association with

 DEZAN SHIRA & ASSOCIATES



Disclaimer

This edition of Human Resources and Payroll in China was produced by a team of HR professionals at Dezan Shira & Associates, with Zhou Qian acting as technical editor and Samuel Wrest as managing editor.

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Introduction

A firm understanding of China's laws and regulations related to human resources and payroll management is essential for foreign investors who want to establish or are already running foreign-invested entities in China, as well as to location managers and HR professionals, and HR professionals who may need to explain complex points of China's labor policies.

In China, there are a wide range of government institutions involved in HR processes, and while key laws are drafted by the central government, numerous bylaws and regulations are instituted at a local level. The topic is too complex to be covered in complete detail in one book, so the term "guide" is quite appropriate for the nature of this publication. However, companies should still seek professional advice to deal with any specific situation they face relating to HR.

This guide was created in mid-2016 with the latest information available at the time. It was written in consultation with Dezan Shira & Associates, a specialist foreign direct investment practice providing corporate establishment, business advisory, tax advisory and compliance, accounting, payroll, due diligence and financial review services to multinationals investing in emerging Asia.

Since its establishment in 1992, the firm has grown into one of Asia's most versatile full-service consultancies with operational offices across China, Hong Kong, India, Singapore and Vietnam as well as liaison offices in Germany, Italy and the United States. Dezan Shira & Associates' experienced business professionals are committed to improving the understanding and transparency of investing in emerging Asia.



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Human Resources & Payroll in China at a Glance

- **Mandatory written contracts:** All employees must be given a written contract within one month of hiring; if not, the employee is entitled to double salary.
- **Probation period:** The range of legitimate grounds for dismissing an employee is considerably wider during his or her probation period. The employer may also pay only 80 percent of the employee's contractual salary during this time.
- **Regional variation:** National laws are often intentionally broad and vague, leaving a lot of room for local interpretation or additional legislation. Regulations and practices differ per city on issues such as minimum wage, work visa policy, social security contributions and maternity leave.
- **Representative offices:** The simplest of foreign investment vehicles in China, the representative office (RO), is not permitted to directly hire staff in China; instead, they need to use dispatch agencies, the largest being the Foreign Enterprise Service Corporation (FESCO).
- **Leave during the first year of employment:** Employees are not entitled to any minimum number of leave days during their first year of employment, except those during major holidays such as Chinese New Year around February, and the National Day celebrations in early October.
- **No at-will termination:** Terminating employees in China is both difficult and expensive. Employees may resign under 30 days' notice, but for employers, there are limited grounds for terminating an employee before his or her contract has come to an end.
- **Contracts can only be extended a maximum of two times:** After an employee finishes his or her second contract with your company, he/she must be offered a lifetime contract as the third. Such non-fixed term contract can only be terminated if there is grounds for dismissal.
- **Severance payments mandated by law:** In practice, severance payments are even higher than the law prescribes, and can comprise a significant part of overall HR costs.



“While the overall process for hiring people in China does not differ much from elsewhere in the world, there are a number of points that require special attention.”

Helen Kong
Manager
Human Resources
Dezan Shira & Associates
Dalian Office

About Dezan Shira & Associates

Dezan Shira & Associates is a pan-Asia, multi-disciplinary professional services firm, providing legal, tax and operational advisory to international corporate investors. Operational throughout China, India and ASEAN, our mission is to guide foreign companies through Asia's complex regulatory environment and assist them with all aspects of establishing, maintaining and growing their business operations in the region. With more than two decades of on-the-ground experience and a large team of lawyers, tax experts and auditors, in addition to researchers and business analysts, we are your partner for growth in Asia.

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Contents

1. Recruiting Professionals in China	9
1.1. China Recruitment Challenges	10
1.2. Profiling	11
1.3. Candidate Identification	16
1.4. Selection	24
1.5. On-boarding	30
2. Hiring Staff	33
2.1. Direct Hiring & Labor Contracts	34
2.2. Dispatch	41
2.3. Outsourcing	44
3. Payroll and Staff Administration	46
3.1. Structuring a Salary Package	47
3.2. Work Hour Systems and Overtime Payments	50
3.3. Mandatory Social Securities	52
3.4. Statutory Vacations and Payment Calculation	59
3.5. Additional Payroll Costs	69
3.6. Calculating and Filing Individual Income Tax	71
3.7. Distributing Salaries	84
3.8. Outsourcing Payroll	85
4. Terminating Employees	89
4.1. Terminating During the Probation Period	91
4.2. Terminating During a Fixed-Term or Non-fixed Term Contract	92
4.3. Terminating at the End of a Fixed-Term Contract	97
4.4. Employees Not Allowed to Be Terminated	98
4.5. Termination Pay and its Tax Treatment	99

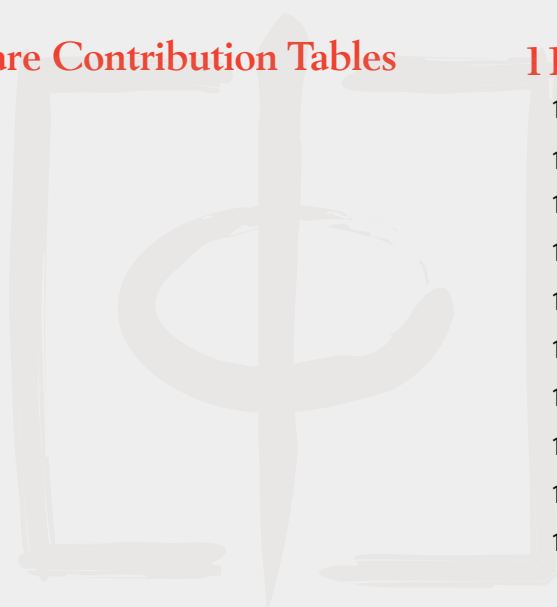


5. Employing Foreign Workers 103

5.1. Overview of China's Visa System	104
5.2. Z-Visa	106
5.3. M-Visa	111
5.4. R-Visa	112
5.5 Short-Term Work in China	113
5.6 Sending Your Chinese Staff Abroad	115

Appendix: Social Welfare Contribution Tables 116

Beijing	117
Changchun	118
Dalian	119
Guangzhou	120
Hangzhou	121
Qingdao	122
Shanghai	123
Tianjin	124
Shenzhen	125
Suzhou	126





Recruiting Professionals in China

- Profiling
- Candidate Identification
- Selection
- On-boarding

1.1 China Recruitment Challenges

Hard-to-fill positions: High demand for skilled labor, a more demanding business environment, skills mismatch, difference in expectations and deficiencies in tertiary education have resulted in a competitive market environment, and a shortfall in supply of professionals who possess the following skills: multiple language ability, in-depth technical and industry know-how, international exposure, and familiarity with global best practices. In particular, higher salaries in commercial roles such as sales and purchasing positions, have created a shortage of technical professionals.

High personnel turn-over and recruitment uncertainty: Professionals move quickly between jobs, particularly in first-tier cities such as Shanghai, Beijing and Guangzhou. Due to this common job-hopping trend, coupled with high drop-out rates during the on-boarding process, continuous recruitment planning is an unavoidable challenge.

Low mobility of staff: There is a general reluctance for professionals to relocate within China or to accept a longer commute to the workplace. Therefore, location is a particularly important factor to take into consideration when choosing to establish a branch location and attracting potential employees.

Misinterpretation of candidate credentials, profiles and presentations: Personality characteristics, such as being straight-forward, which might be favorable in the Western hemisphere, or language skills, such as the ability to communicate fluently in English, are often misinterpreted or over-emphasized in the search for suitable candidates. Furthermore, academic credentials are often over-valued. The Chinese education system still emphasizes learning facts by heart rather than developing independent thinking and problem solving skills. Additionally, candidates' frequent job changes are often incorrectly interpreted by companies as a sign of immaturity. From the perspective of the candidate, changing jobs has been considered for many years to be a means to rapidly gain experience and speed-up professional growth.

CV and credentials fraud: Falsifying credentials is a prevalent problem faced by recruiters in China. Particularly when CVs are provided by applicants in languages other than Chinese, these "translation mistakes" are a convenient means to "upgrade" titles or certificates. Accordingly the employment risk is amplified and appropriate actions must be taken to minimize these risks.

Lacking calibration of title and salary: Job titles in China have a different prestige status than in other cultures. Particularly, being a "Manager" or working in a commercial function are linked to greater prestige. Furthermore, finding the right salary level linked to a job and its title is a challenge. This problem is amplified by the lack of detailed market data and unrealistic expectations colored by candidates' perception of foreign salary levels. Companies tend to over-emphasize the starting salary; however, a clear growth perspective with respect to salary development is often more important to candidates than the starting salary per se.

1.2 Profiling

- By Miriam Wickertsheim, Director, Direct HR Shanghai

The profiling stage is a critical planning phase in the recruitment process for the development of a resource-efficient, fast and effective approach to ensure the suitability of a new hire within an organization. The cultural and experience gaps between Chinese and foreign managers in companies operating in China often results in conflicting assumptions with regards to job content and candidate qualification criteria during the hiring process. A well-executed profiling exercise will serve to bridge these gaps to minimize misunderstandings and avoid hiring unqualified employees.

Throughout the profiling stage, the HR representative should maintain close contact with the hiring manager, as strong communication is necessary when specifying company needs, job content, job title, candidate profile and compensation details. Especially when the HR manager and hiring manager have different cultural backgrounds, good communication ensures that assumptions for the position are aligned and complications are minimized throughout the recruitment process.

Analyze Company Needs

In order to assess a company's recruitment demands, an inventory has to be conducted of the functional areas that need to be covered. The defined functional areas are then broken down into specific job content. Clusters of job content are then categorized into distinct positions. Finally, the number of professionals needed is determined by the output required on the demand side, as well as the market availability of professionals with the skillsets to cover the pre-defined job content. In China, companies have often resorted to hiring more staff to counter the high fluctuation of employees.

Additionally, a prevailing scarcity exists of Chinese professionals with the necessary skill sets to fill senior technical and management roles. Accordingly, companies have been observed to hire a larger number of employees to fill such positions as compared to other more mature markets such as the United States and Europe. For example, a German engineering manager tends to have more years of experience, is more versatile, and is able to handle a larger variety of tasks compared to a Chinese equivalent. This often results in a company separating what would normally be done by one manager in other markets into two or more distinct positions in China.

Specify Job Content

Job content should include the job's objectives, responsibilities and duties. Due to the scarcity of versatile Chinese professionals, it is common in China for the originally defined job content to be adjusted after having reviewed the availability of skillsets in the labor market.

Define Job Title

Defining the right job title will have a significant impact on how well a company will be able to attract qualified candidates. For instance a multinational company in China might be restrained by their internal policies to set a job title as “team leader” or “senior engineer”, which would otherwise be designated as a “manager” at a local Chinese company.

A problem arises when candidates who would have considered the job opportunity for its content and compensation decline it simply because they would have to downgrade themselves from a “manager” to “non-manager” title. Many international companies have therefore implemented a unique system for job titles in China, in which the title “manager” is integrated in more positions, and even created new “job titles” that do not exist in any other country.

Generally candidates in China experience increasingly high performance pressure and expectations from their partner, parents and extended family, so they expect faster promotions. Therefore, to facilitate this demand, a company might consider adding more intermediate hierarchical levels. For example, whereas a company’s home market may only have “Account Managers”, this role in China could be split into “Junior Account Managers” and “Account Managers”. In China, a lower level of standardization exists when it comes to job titles and their related job content. This provides a certain flexibility for defining job titles within an organization.

Types of Employees in China

Candidate Type	China Cultural Fit	Chinese Language Ability	English Language Ability	Other Language Ability	Know-how of Industry Best Practices	Academic Strength	International Exposure	Employment Stability	Market Availability	Salary Expectations
Local Chinese (no overseas experience)	+++	+++	+	-	+	+	-	+	+++	+
Chinese returnees (with international exposure)	++	+++	++	+	++	++	++	++	+	++
Overseas Chinese in Asia (e.g. Singapore, Taiwan, Hong Kong)	++	++	+++	++	++	++	++	++	++	++
Overseas Chinese outside Asia (e.g. America, Europe)	+	+	+++	++	+++	+++	+++	++	++	+++
Foreigners (Non-Chinese)	-	-	+++	+++	+++	+++	+++	++	++	+++

+ Low, ++ Moderate, +++ High

Define Candidate Profile

It is increasingly common that companies in China are employing a mix of local and foreign staff for reasons such as communication, managerial experience and trust. The right mix of employees can positively enhance efficiency and create a better working environment. A general categorization will help employers in China come up with the optimal mix for their workforce.

At present, many foreign companies in China are forced to hire professionals with less practical working experience and lower technical qualification compared to employees in their home country who fulfill the same role. The solution implemented by numerous foreign companies in China consists of hiring comparatively younger high-potentials who are able to handle a steep learning curve and eventually undertake the required responsibility on their own, after initially receiving guidance from a more experienced foreign professional.

Besides listing qualification criteria for a vacancy in an ideal candidate profile, it is advisable to scrutinize each criterion by asking the following two questions:

1. Are the criteria kick-out, required or preferred?

- Kick-out criteria = candidate should no longer be considered if any 1 is not fulfilled
- Required criteria = candidate may still be considered if only 1 or 2 are not fulfilled
- Preferred criteria = candidate will still be considered even if criteria are not fulfilled

2. What is the relative importance of each qualification criterion compared to other criteria?

These additional qualifying questions will provide a clearer picture of the vacancy, both initially and throughout the selection process. A key benefit is that the individuals responsible for the selection of suitable candidates will have a clearer framework within which they can assess candidates.



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We provide an example of a candidate profile for a Senior Quality Engineer in which the two above mentioned candidate qualifying questions have been integrated.

Candidate Profile: Senior Quality Engineer

Candidate Details		KO	Weight
Educational Background	REQ	Bachelor degree or higher, major in casting or mechanical engineering	
	PRE	Alternatively a professional college education with focus on casting	
Professional Experience	REQ	KO	20
	PRE		
Technical Skills	REQ	KO	20
	PRE		
Soft Skills	REQ		20
	PRE		
Language Skills	REQ	KO	10
	PRE		
Personality Requirements	REQ		10
	PRE		
Motivational Requirements	REQ		5
	PRE		
Desired Age	PRE		3
Other Requirements	REQ		2
	PRE		

REQ = required, PRE = preferred but not necessary, KO = Kick-out criteria (max. 3), Weight = Category importance (out of 100)

Research Compensation Details

Conducting research on compensation in China will allow a company to more effectively attract the best talent in the market. This can be done by engaging professional service providers. External data on compensation is also available on various job websites or from comprehensive salary surveys, which can be used as a reference to track macro-trends in the Chinese market.

Compensation Research Channels

Channels	Quality	Price per Report (RMB)	Comments	Sources in China	Website
Consultancies	+++	>2,000	<ul style="list-style-type: none"> • Large sample source • Customized report • Detailed data collation process • Suitable for middle-executive level positions 	Hewitt Watson Wyatt Mercer Hudson	www.hewittassociates.com www.watsonwyatt.com www.mercer.com www.hudson.com
Job boards	++	>500	<ul style="list-style-type: none"> • Large sample source • Less customized report • Suitable for entry-middle level positions 	51Job ChinaHR Zhaopin	www.51job.com www.chinahhr.com www.zhaopin.com
Government Statistics	++	Free	<ul style="list-style-type: none"> • Generally use large sample sources • Reliable data • Suitable to observe market trends at national, provincial and industrial levels 	National Bureau of Statistics	www.stats.gov.cn/english
Web sites	+	Free	<ul style="list-style-type: none"> • Generally use large sample sources • Suitable for quick and rough benchmarking • Based on anonymous data 	Glassdoor Kanzhun	www.glassdoor.com www.kanzhun.com

1.3 Candidate Identification

- By Selma Mo, Account Manager, Direct HR Shenzhen

In general, there are 3 types of candidates that can be identified during the recruitment process:

Candidate Identification				
Candidate Type	Definition	Pros	Cons	Comments
Active Candidate - Applying	Candidates who send their resume to apply for an online and/ or offline job advertisement.	<ul style="list-style-type: none"> • Large pool • Interested candidates • Easy to obtain candidate profile 	<ul style="list-style-type: none"> • Low hit rate • Fraud sensitive • Marketing intensive • Time consuming screening 	Most suitable for junior positions and mass recruitment
Passive Candidate - Database	Candidates who have published their profiles in databases and who are not actively applying to a job advertisement.	<ul style="list-style-type: none"> • Large pool • Candidate profiles available • Detailed search specifications possibilities 	<ul style="list-style-type: none"> • Costly • Low candidate interest • Time consuming search 	Most suitable for generic mid-level positions
Passive Candidate - Direct Contacting	Candidates who have not published their profiles in databases and who are not actively applying to a job advertisement.	<ul style="list-style-type: none"> • Qualified pool of candidates • High hit rate • Lower fraud sensitivity 	<ul style="list-style-type: none"> • Difficult to identify and contact target candidates • Only able to assess candidate suitability after having obtained the candidate's profile • Low candidate interest • Resource consuming • Small pool 	Most suitable for executive-level positions and specialists

Due to the high activity level of the recruitment market in China, many demanded candidates do not publish their information in generic databases as this might lead to them being overloaded with irrelevant job offers. Many of these candidates are therefore only approachable via direct contact and often only promote themselves via niche (e.g. industry-specific) channels and their personal network. This also has the benefit that the candidates are able to realize a higher market value compared with finding jobs via generic strategies (actively applying, publishing their profile in databases, etc.).

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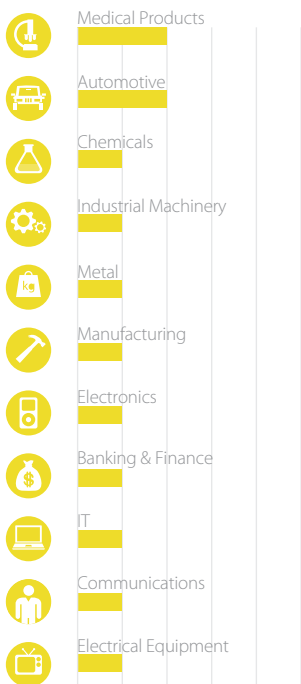
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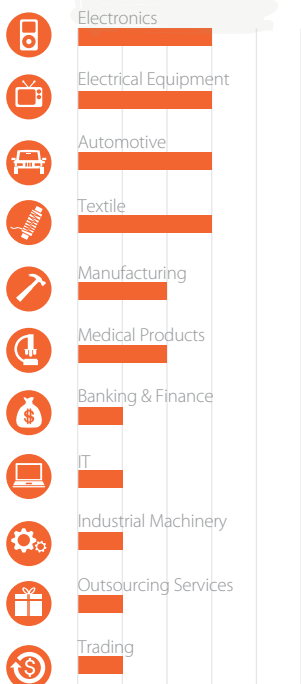
Breakdown of Professional Clusters in China (by Region)



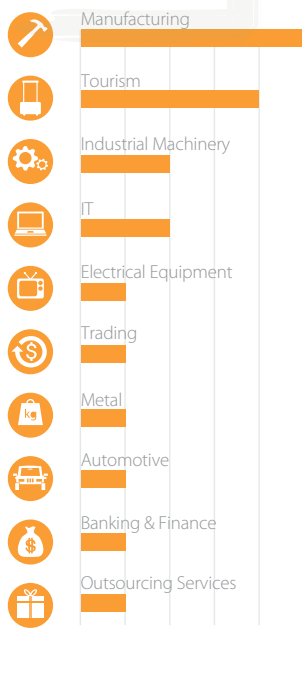
North China



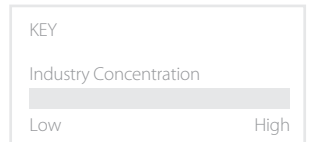
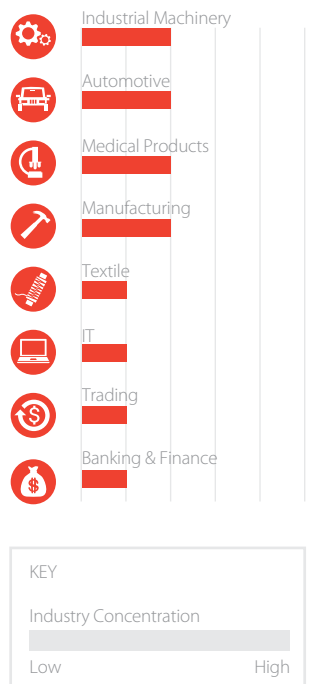
Eastern China



South China



Central China

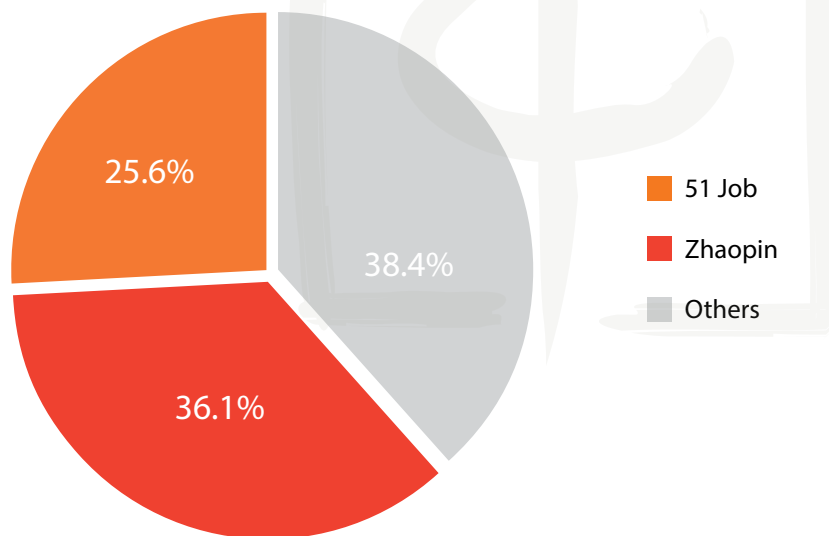


Attraction (Actively Applying Candidates)

The rate of candidates searching for career opportunities on online recruitment channels in China is comparable with mature markets such as the United States and Europe.

China has the largest population of netizens in the world. The latest data from China internet network Information (CNNIC) shows that there were 668 million internet users by the end of June 2015 – more than double the entire population of the United States. However, the market is highly dominated by two main players: 51Job.com and Zhaopin.com, who combined represent nearly two-thirds of the market.

Online Recruitment Market Share



Online Recruitment Channels in China

Online Channels	Sample	Regional Strength	Industry Strength	Target Group	Comments	Price Per Ad (RMB)
Generic	51Job.com	East China, Shenzhen, Beijing	IT Finance Management Advertising	White collar professionals	<ul style="list-style-type: none"> • Large market share in China • Well-respected brand among Chinese job seekers • www.51job.com 	20-40
	Zhaopin.com	East China, North China	Real State Finance Technology Automotive	White collar professionals	<ul style="list-style-type: none"> • Large market share in China • Market leader in job seeker traffic • Increased penetration in low tier cities and expansion of SME base • www.zhaopin.com 	30
	ChinaHR.com	First & second-tier cities	General	Generic	<ul style="list-style-type: none"> • Large market share in China • Ranks #7 in job seeker traffic • www.chinahhr.com 	20
Region-specific (example)	JobsDB.com	Hong Kong	General	Generic	<ul style="list-style-type: none"> • Large job portal spanning different cities in Asia and USA • http://hk.jobsdb.com/ 	700
Chambers of Commerce (examples)	German Chamber of Commerce Website	Beijing, Shanghai, Guangzhou, Hong Kong	General	White collar professionals	<ul style="list-style-type: none"> • Chinese-German speaking professionals • German native professionals • www.china.ahk.de 	1,500
	The American Chamber of Commerce (AmCham)	Beijing, Tianjin, Wuhan	General	White collar professionals	<ul style="list-style-type: none"> • Chinese-English speaking professionals • American professionals • www.amchamchina.org 	250
	The European Union Chamber of Commerce in China	Beijing, Nanjing, Shanghai, Shenyang, Tianji, South & Southwest China	General	White collar professionals	<ul style="list-style-type: none"> • Chinese-English speaking professionals • European professionals • www.europeanchamber.com.cn 	500 Free of charge for members

* Many online channels offer package deals including numerous job posting and CV credits

Search (Passive Candidates)

Online databases are also useful to reach passive candidates. Depending on the type of candidate, there are different databases to make use of (China-focused or international-focused).

Online Job Candidate Databases in China						
	Database	Users	Ability to specify search	Quantity of Candidate Profiles	Number of Candidates Having Know-how of Industry Best Practices	Price per Profile (RMB)
China-focused	51Job.com	Chinese	Average-high	>25 Million	Low-average	30
	ChinaHR.com	Chinese	Average-high	>25 Million	Low-average	20
	Zhaopin.com	Chinese	Low	>26 Million	Low	20
	Liepin.com	Chinese	High	> 10 Million	Average-high	Free, though it requires earning virtual points through interaction with the platform (i.e. login daily, posting jobs, answering candidates questions,...)
	LinkedIn.com	Global	High	>300 Million (4 Million in China)	Average-high	4500/month, unlimited profiles
International-focused	Xing.com	German	High	>14 Million (7.7 Million German-speaking)	Average-high	1920/month, unlimited profiles
	Reed	UK	High	> 3 Million	Average-high	6000/month, unlimited profiles
	Monster.com	Global	High	>100 Million	Average-high	122

**Already present in mainland China for over 10 years, LinkedIn launched a simplified version in Chinese in February 2014, and partnered with popular Chinese social network Weixin (Wechat) to allow users to link their respective accounts. Both moves aim at making the platform more accessible to a wider range of Chinese professionals.*

Research Target Companies

Establish a list of “target companies” consisting of direct competitors and other firms who might have suitable candidates. This can be followed by cold-calling target companies to obtain the name and contact details of the target candidates.

Legal Note

No statutory law exists against cold-calling. However, we recommend that companies engage a third party, usually a recruitment firm, to make the initial contact so that there is no clear connection to the company at this stage.

Contact Target Candidates

When contacting target candidates whose profiles are not known, the purpose of the call is to introduce the opportunity and obtain the candidate’s interest in the job opportunity. If the candidate indicates an interest, the next step is to have him/her send a CV. Only at this stage will one be able to assess whether the candidate is suitable for the position or not. This means that a significant amount of resources are required to obtain profiles that are eventually found to be unsuitable for the position.

In China, it may still occur that senior Chinese professionals do not have a digital resume; in such cases, making a structured inventory via the phone may be a feasible alternative for obtaining a short candidate profile.

When the profiles of target candidates are already on hand, the potential employer can conduct a proper CV screening before contacting the candidate to introduce the job opportunity and obtain candidate interest.

Involve a Recruitment Firm

Companies have a number of internally controllable channels to find the right candidates to fill vacant positions. However, it is more challenging to find qualified candidates for specialist and managerial positions, as the supply of candidates becomes ever scarcer. Recruitment firms are often used to reach this pool of talent in the market, who are generally passive candidates not actively looking for a change in their career path. As being introduced via a third party comes natural to most Chinese in various social settings, they are generally receptive to being introduced to an employer by a recruitment firm. This is in contrast with other markets where candidates prefer direct contact with the employer and might consider intermediaries as an annoyance.

Companies considering engaging a recruitment firm to find specialists or managers should decide whether to use a contingency or retainer search agreement. There are two main differences between these types of agreements: methodology of selecting candidates and payment.

Involving Recruitment Firms in the Search Process

PROS	CONS
<p>+ Increase speed Recruiters are more aggressive in the search process than corporate teams to find the right candidate.</p>	<p>- Reduced talent pool for large search firms Search firms often have agreements not to recruit from their existing clients and this might be a downside for large recruitment firms that have a big list of clientele in a particular industry.</p>
<p>+ Increase candidate reach Recruiters will be able to find and introduce candidates in a myriad of channels and networks that might not be accessible to an organization.</p>	<p>- Increased cost The cost of filling a vacancy may often be higher via a recruitment firm compared to an in-house search.</p>
<p>+ Increase confidentiality Search firms can be hired to operate in secrecy when companies do not want to disclose their search for strategic or competitive reasons.</p>	<p>- Need for knowledge transfer Hiring firms will have to invest time in the relationship with recruitment firms to have the recruitment firms fully understand the company, its culture, the position and what the company believes the ideal candidate should look like.</p>
<p>+ Increase assistance in negotiation process Recruiters are more in-tune with the current market trends, and can therefore offer advice on compensation and benefits.</p>	
<p>+ Replacement guarantees Recruitment firms often provide candidate replacement guarantees, meaning that the recruitment firm will replace a selected candidate who leaves the client within a certain pre-defined time-frame, without any further service charges.</p>	

Differences Between Job Candidate Search Types

Contingency Search	Retained Search
Transaction-oriented	Consulting-oriented
No cure, no pay – only when candidate is hired	Progressive payment on a predetermined amount
Results within four to eight weeks	Results within eight to twelve weeks
Each candidate is presented to many firms	Refined searches to find a few suitable candidates
Suitable for low- to mid-level positions	Suitable for mid to high-level positions
Not necessarily exclusive with one search firm	Exclusive with one search firm
Client communicates moderate commitment to filling the vacancy, resulting in moderate commitment of resources from recruitment firms	Client communicates high commitment to filling the vacancy, resulting in high commitment of resources from recruitment firm
Moderate level of confidentiality	High level of confidentiality, therefore more suitable for sensitive issues such as replacement positions
More commonly used in certain industries, e.g. IT, and first-tier regions	

**Both type of searches can charge anywhere from 20 percent to 33 percent of the prospective employee's first-year gross annual compensation*



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1.4 Selection

- By Deni Dai, Consultant, Direct HR Ningbo

Selection in the recruitment process is choosing the most suitable profiles from a pool of potential candidates. This section illustrates some important insights that should be taken into account during the selection process in China.

Screen CVs

CV screening should be done in relation to the candidate profiles defined during the profiling stage. Several China-specific candidate skills to be checked on an applicant's CV include:

1. Knowledge of Chinese business culture, laws and company structure
2. Intercultural exposure and competence (e.g. former work experience abroad)
3. Knowledge of global best practices
4. Work experience at foreign companies
5. English / Chinese language skills (e.g. certificates like TOEFL, CET)

Conduct Interviews

Due to the comparatively high number of candidates screened per position, initial structured telephone interviews are often conducted by a company's HR representative prior to face-to-face assessments to assess language skills and to clarify CV details. It is often a challenge for foreign managers to conduct an interview with a Chinese candidate due to communication and cultural barriers. The following guidelines can be used for more effective interviews:

1. Abolish the general perception of foreign managers

Chinese candidates often have the impression that foreign managers are very direct and impatient, have little experience in dealing with business in China and do not take the private circumstances of candidates into account. Therefore, foreign managers must be mindful of how to approach and interact with Chinese candidates in an interview in order to facilitate a more effective assessment.

2. Understand different behavior and expectations of candidates across regions of China

Due to regional and local cultural differences, distinct behavior and expectations can be stereotyped for candidates from different parts of China: South, East, North and West-Central. For instance, East China candidates often behave more directly and can therefore be more treated in a straight-forward manner compared with candidates from West-Central China. Moreover, the English level of candidates from the South is on average better than candidates from other regions.

Region Specific Behavioral Characteristics and Expectations of Chinese Candidates

Characteristics / expectations	Regions			
	South	East	North	West-Central
Politeness	+	++	++	+++
Pro-activeness	+++	++	+	+
Uncertainty Avoidance	++	+	+++	+++
Tendency to Being Humble	+	+	++	+++
Willingness to Make Compromises	+++	++	+	+
Work-life Balance Expectation	+++	++	++	+
English Language Skills	+++	++	+	+

+ Low, ++ Moderate, +++ High

3. Apply a China-specific interview structure

An advisable interview structure is presented in the following table:

Typical Interview Structure in China

Warming-up (5-8 min) – of greater importance in China

Longer with Chinese than with Western candidates due to Chinese culture specific behavior

Offer tea

Introductory questions create a more relaxed interview atmosphere for the candidate

Introduction (2-4 min)

All interviewers should be introduced by name and function

Company presentation (5-10 min)

Presenting materials should include bilingual company flyer, company's strategy in Chinese, economic performance, HR development strategy etc.

Candidate questions and answers (30-40 min) – most important / longest part of the interview

Includes career development, former employment, project work, achievements, responsibilities

Ending (3-5 min)

Candidate should leave with a positive impression

Provide clear indications on how you will follow up in terms of time-line and activity

Manage Candidate Expectations

Many Chinese candidates are observed to have high expectations, as many see their peers quickly move up the corporate ladder and expect that the same should happen to them. The biggest concerns of candidates are salary, benefits and career development. Companies that are not able to meet candidate expectations experience high employee turnover. Clarifying salary, benefits and career development during the recruitment process will improve employee retention and have a positive impact on candidate attraction.

Salary and Benefits

Chinese employees' salary growth expectations rank among the highest in the world. More than half of Chinese employees expect a salary increase of more than 30 percent when changing jobs. As a comparison, the average salary increase expectation in Europe is between 10 to 20 percent.

Career Development

Well-planned career development structures will benefit companies in retaining employees and attracting candidates during the recruitment process. It is advisable that hiring managers are involved in the process of managing candidate expectations together with the HR representative, as the latter might be unable to answer all questions related to the job content.

Conduct Assessment Tests

Conducting assessment tests provides a means to enable company representatives to obtain insights into various aspects of potential candidates such as behavioral, motivational, technical and aptitudinal attributes before making the final selection decision.

Assessment Tests in China

Category	Tests Available in China	Skills Tested/Trained	Method	Remarks	Provider	Source
Personality	MBTI Personality Test	Rational functions: thinking/ feeling Irrational functions: sensing / intuition	2 hour workshop	<ul style="list-style-type: none"> ✓ Available in traditional Chinese / English × Only available in Hong Kong 	Cross Culture Limited	www.mbticomplete.com
	FIT In™ Personality Test	Leadership competencies/ potential Managerial competencies Intercultural competencies	Online tool	<ul style="list-style-type: none"> ✓ Developed in Shanghai/ China ✓ 26 specific Scales grouped in 5 broad dimensions ✓ Each scale group is independently defined for a person 	HRO Consulting	www.hrobjective.com
	Identity - the self-perception questionnaire	Leadership Styles Team role preference Jung /MBTI Type Learning Styles Emotional Intelligence	Online tool	<ul style="list-style-type: none"> ✓ Directly assesses 36 personality traits ✓ Available in Chinese / English ✓ Specific in-house norm groups possible 	PsyAsia International	www.psyasia.com
Motivation	HRO MQ	Intrinsic and extrinsic motivational factors	Motivational questionnaire In-basket exercise	<ul style="list-style-type: none"> ✓ Based on 15 motivational factors ✓ Motivational profile can be used for appraisal, feedback, employee dialog 	HRO Consulting	www.hrobjective.com
	Chinese Proficiency Test (HSK)	Chinese for non-native speakers	Testing of: listening, reading, writing and speaking	<ul style="list-style-type: none"> ✓ Certificate ✓ Global recognition 	Tests available at locations worldwide	www.hsk.org.cn
Language	TOEFL, IELTS etc.	English for non-native speakers	Testing of: listening, reading, writing and speaking	<ul style="list-style-type: none"> ✓ Differentiation between general and academic level ✓ Certificate ✓ Global recognition 	Tests available at locations worldwide	www.ets.org
	Technical training and certification	Quality management, management techniques, CCC, CQC etc.	Workshops Written tests Practical tests	<ul style="list-style-type: none"> ✓ Global recognition ✓ Certificate × Mostly in Chinese 	TUEV SUED Greater China	www.tuvps.com.cn/home.html
Technical skills (examples)	Technical training and certification	Dye penetrant examination, metal material testing information security mgmt. FAMI-QS certification etc.	Workshops Seminars Trainings Tests	<ul style="list-style-type: none"> ✓ Certificate ✓ Seminars / training for different branches available 	SGS in China	www.cn.sgs.com/home_cn_v2

Conduct Reference Checks

Reference checks are carried out to verify information gathered about candidates during CV screenings and interviews. This is usually conducted after the final assessment interview and prior to making an offer to the candidate. For the following reasons, reference checks are particularly important in China:

1. It is not common that candidates possess written evidence of previous employment or letters of recommendation.
2. CV and credential fraud are more commonly practiced to enhance individual competitiveness in China compared with other markets.

Manipulated information might include personal data, qualification certificates, educational background, work experience, salary and reasons for leaving previous employers. Therefore, it is highly recommended to conduct reference checks before making a formal offer.

Legal Note

No statutory law exists against conducting reference checks. However, we recommend that companies should use a third party, usually a recruitment firm, to do so, including cold-calling candidates, collecting background information and doing reference checks to improve efficiency and avoid any direct connection to the company.

In China, the most common method of conducting reference checks is via telephone. Due to the frequent job changes of professionals in China, former management may no longer be with the same company, making the process of validating reference checks even more complex.



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1.5 On-boarding

- By Neil Huang, Consultant, Direct HR Shanghai

In China the on-boarding process plays a comparatively critical role in recruitment. It serves as an important means to reduce uncertainty for companies and candidates in the process of integrating a suitable professional into the organization. After a suitable candidate has been identified, the following steps should be taken:

Send Candidates a Letter of Intent

Sending out a letter of intent or offer letter prior to signing the employment agreement is a good means to summarize the key employment conditions and to bridge the time period between identifying the right candidate and the eventual starting date of the position.

The letter of intent should be kept within one to two pages and contain the most critical terms of employment. Additionally a checklist should be drafted, which describes the next steps to be taken and materials to be provided by the candidate. This will provide assurance to the candidate and might trigger a buy-in effect, so that the candidate mentally "joins" the company even before he /she signs the contract.

Letter of Intent		
Letter of Intent	Next Steps	Registration Materials
<ul style="list-style-type: none">• Formal title• Main duties• Reporting line• Remuneration details including bonus structure• Social welfare standard• Length of contract and probation period• Commencement date	<ul style="list-style-type: none">• Health checks• Signing employment contract• Registration with HR department on the starting date• Employment handbook• Training period	<ul style="list-style-type: none">• ID card• Copies of academic certificates• Reference letters• Labor handbook• Residence certificate• Housing fund account number• Passport pictures

Consider Candidates' Notice Period

The common contractual notice period for candidates in China is one month. For more senior positions, companies often customize employment contracts and add longer notice periods. In order to terminate an employment contract, candidates need to provide a formal letter of resignation to their supervisor or the HR department. To reduce the risk and to remain in a comfortable negotiation position, a candidate typically expects a formal letter of intent from the new employer before he resigns from his/her existing position.

Manage Time and Feedback

As the competition for skilled professionals in China is fierce, the assumption can be made that a candidate commonly has several employment options at hand. Therefore a rapid and transparent follow-up with candidates is critical, as it reduces employment uncertainty for the candidate and leaves a professional impression. In contrast to more developed markets, a structured on-boarding process is still not the rule in China. Therefore, professional handling can be an important differentiation factor and increase the chance of hiring talent.

Verbal and even written commitment is often provided by candidates without them actually being committed to a position. A candidate who has agreed during the on-boarding interview to start in the position might back-off at the last minute to accept an offer from another company. Therefore, hiring managers should take this point into account in China and counter it by keeping positive contact with other (less) suitable candidates as long as possible. Rejections should be communicated clearly, to avoid being inundated by follow-up correspondence from rejected candidates, but should be done in a courteous manner, to maintain positive word-of-mouth.

Consider Impact of Hukou and Location

A hukou (pronounced hoo-kou) is a kind of domestic passport of all Chinese citizens. This system is still enforced and requires citizens to register their households with the local city or district authorities. A household registration record officially identifies a person as a resident of an area and includes personal information such the name of the person, date of birth, the names of his/her parents, and spouse, if married.

Traditionally one's birthplace is identified as the individual's hukou. For university students, the hukou temporarily shifts to their study location. In order to permanently change a hukou, a Chinese citizen has to formally apply with the authorities in the target hukou region. Approval of such an application depends on the applicant's educational background, occupation and employment history, and the process might take up to several years to be completed. An employer can facilitate such approval for its employees by formally endorsing the employee's application. This can become a critical point of attraction for high potential candidates.

Unlike in earlier days of the People's Republic, the hukou no longer formally restricts Chinese citizens from seeking employment outside their hukou region. However, the hukou determines a citizen's entitlement to social welfare and other benefits, such as the housing fund and education. Therefore, somebody who works outside his/her hukou region will generally not be able to participate in the social benefits of the employment region.

In July 2014 the State Council announced a series of changes to the hukou system in a move to help migrant workers access services and social welfare. However, this is expected to have limited impact, since the reforms include exemptions for major cities, which are generally more attractive to migrants. Many of those who have gained urban hukou in recent years are workers resettling to small urban centers close to their original residency, but moving across provinces or into major cities will still remain a difficult issue.

However, there are means to bridge this discrepancy by formally employing staff in their hukou area either through a branch office or through an employment agency, but having them work in another location. Furthermore, the employer can financially compensate workers for the disadvantage of not being able to optimally participate in the social benefits scheme. This can further trigger the decision of candidates with hukou from other regions to join a company despite the disadvantages.

The logo for Direct HR, featuring the word "Direct" in blue and "HR" in pink, positioned over a faint background image of a person sitting at a desk with a laptop.

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Hiring Staff

- Direct Hiring & Labor Contracts
- Dispatch
- Outsourcing

Hiring staff is one of the first key decisions a company will come across in China. Before employing significant numbers of employees, a company should first take into account all the issues introduced in this chapter. It may be acceptable, or even sensible, to hire a few employees without investing money in developing rulebooks, policies and complex salary structures, but as a company grows, it needs to protect its interests and define employment relationships in a clear manner. This chapter discusses some options available to companies, introduces a few concepts unique to China, explains the requirements of the social insurance system as they relate to employers, and covers some other critical points that should be addressed.

2.1 Direct Hiring & Labor Contracts

In principle, any company located anywhere in the world may employ a Chinese person to physically work in China. However, the employment contract will not be regulated by relevant Chinese legislation unless it is entered into via an invested entity on the Chinese mainland, or under circumstances where the overseas company is regarded as a permanent establishment in China.

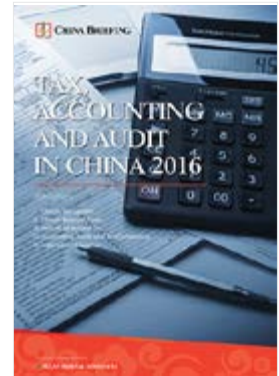
Is your company a Representative Office (RO)?

ROs in China cannot hire staff directly. Instead, Chinese staff must be seconded from an agency that will take the title of official employer (to find out more, please refer to the section on Labor Dispatch below). Foreign staff working for ROs should have an employment relationship with the parent company abroad, and any disputes should be settled under the laws of that country.

This is because an RO is not a capitalized legal entity in China. An employee must have the right to claim against their employer, and an RO is not a suitable entity to file claims against. By forcing ROs to employ staff through an agency (which itself is a capitalized legal entity in China), the interests of the employee are thereby protected.

According to Article 10 of PRC Labor Contract Law, employers are required to sign a written contract with their employees within one month, starting from the employee's first day of work at the company.

If the employer fails to conclude a written contract with the employee after a period of more than one month but less than one year from the date of employment, the employer must pay the worker double wages for each month. If the employee refuses to conclude a written labor contract with the employer, the employer should terminate the employment relationship, notify the employee in writing, and pay monetary compensation to the employee in accordance with Article 47 of PRC Labor Contract Law.



Tax, Accounting and Audit in China 2016 (8th Edition)

February 2016

This edition of Tax, Accounting, and Audit in China, updated for 2016, offers a comprehensive overview of the major taxes foreign investors are likely to encounter when establishing or operating a business in China, as well as other tax-relevant obligations.

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After a year without a written contract since the date of employment, the employer and the employee will be deemed to have concluded a non-fixed-term labor contract. The employee can be entitled to double wages for the period of more than one month but less than one year.

One exception to the abovementioned rules is part time work, where an oral agreement is considered sufficient, as stipulated in Article 69 of the PRC Labor Contract Law.

Note: The employment relationship is deemed to have started from the first day that the employee works at the company, not from the date of signature of the contract. As long as the employee can prove that they have physically been working for the company for over a month prior to signing an employment contract, this will be sufficient to make a successful claim against the company. The simplest piece of evidence proving this will be the receipt of salary.

To effectively lower the future risk of labor disputes, employers should build up reliable mechanisms to ensure the prompt conclusion of labor contracts.

Labor Contract in Chinese recommended

The question of which language a labor contract should be written in is seemingly a trivial one, but it has the potential to render even the best written contracts unenforceable. While monolingual foreign language contracts are accepted by Chinese courts, the foreign language contract must be translated by institutions that are approved by the courts, on a basis unknown to the plaintiff. Bilingual contracts contain their own problems, principally in determining which language will be the controlling language and in ensuring uniformity in the translation. More often than not, a bilingual contract that does not specify which language is the controlling version will automatically default to Chinese as the authoritative language. Alternatively, in the event that both languages in a bilingual contract each claim to be the controlling version, the Chinese will again be accorded primacy, even though the Contract Law provides that the contract should be interpreted according to the aim of the contract. Foreign investors are therefore advised to have a Chinese version contract for the purpose of legal certainty.

The Term of the Labor Contract

1. Fixed-term Labor Contract
2. Non-fixed Term Contract
3. Job Contract

1. Fixed-term Labor Contract

The fixed-term contract creates an employer-employee relationship for a fixed length of time. It can be used for part-time or full-time work.

The part-time worker has five characteristics:

- The employee may not work for more than four hours per day on average.
- No probation period is allowed, and either the employer or employee may end the agreement at any time.
- The employee is not entitled to severance compensation.
- The employee must be paid at least every 15 days.
- Part-time employees need not receive a written contract.

Part-time work could be appropriate for an office cleaner, or some other role where the tasks can be completed within a relatively short period of time each day.

2. Non-fixed Term Contract

There are four ways for an employee to obtain a non-fixed term contract.

- The employer and employee sign a non-fixed term contract upon commencement of employment (not recommended).
- The employer has failed to give a written contract to an employee who has been working for over one year.
- The employer wants to renew the employee's contract for a second time.
- The employee has worked for the same employer for ten years continuously.

The non-fixed term contract effectively guarantees the employee job security until retirement age. As there is no longer a contractual limit to the length of employment, companies will be unable to dismiss the employee without a valid reason.

This means employers can only terminate the employee based on the grounds listed for immediate dismissal, dismissal with 30 days' notice, or as part of a mass lay-off. During a mass lay-off, employees on non-fixed term contracts must be prioritized over other employees.

3. Job Contract

A job contract is defined by the task or project the employee is to work on, not the length of time. This type of contract allows a company to hire a person to implement a specific project. Once the project is completed, the employment relationship comes to an end. At that stage, the company needs to make a severance payment to the employee according to Article 22 of the Implementation Regulations of the PRC Labor Contract Law.

Job contracts are sometimes used for seasonal jobs where the scope of work can be defined very clearly. However, in most cases, defining the scope of work proves to be a challenge. It is often hard to adequately define the completion of a project. The relevant legal framework offers no guidance on what to do when a project is left uncompleted for whatever reason, or how employees should be compensated in such a case.



This lack of clarity makes job contracts relatively more prone to disputes and even litigation. Unlike a contract signed with another company for its provision of services to complete a project, the job contract forms an employer – employee relationship. As such, in the event of a dispute, the court will tend to protect the interests of the employee to a greater extent than those of the employer.

In addition, the employer is not allowed to set a probation period for a job contract. For these reasons, most employers avoid this type of arrangement.

Mandatory Clauses in Labor Contracts

- Name of the company, address, name of the legal representative or a senior manager.
- Name of the employee together with a valid address and identification number.
- Commencement date and the term of the contract.
- Description of the job and the location where it is to be implemented.
- Salary details.
- Statement that the employer will contribute social insurance for the employee.
- Labor protection, labor conditions and protection from occupational hazards.

Every local Labor Bureau will have standard labor contracts available in Chinese. However, we do not recommend using these in every case. Each company may have specific requirements, and may wish to draft labor contracts with its employees in such a way as to offer the company more protection. We therefore suggest combining a local standard template with terms you use in labor contracts for your operations abroad.

Recommended Clauses in Labor Contracts

Depending on the specific situation, a number of additional terms to the labor contract are recommended, including:

- Probation period.
- Non-competition clauses.
- Confidentiality clauses.
- Allowances and benefits (particularly for foreign employees).
- Reference to the company rulebook or staff manual.

Probation Period

The employer can choose to set a probation period at the start of the contract. During the probation period, it is comparatively easier for the employer to dismiss the employee. Also, the employer is allowed to pay the employee 80 percent of the full salary stated in the employment contract, although this amount may not fall below the local minimum wage. The employee may resign after giving only three days' notice. It is therefore inadvisable to stipulate a very long probation period. The length of the contract will determine the maximum length of probation the employer can set.

“It’s important to make sure newly hired staff receive and sign a written contract within a month, to avoid potential liabilities. Companies are well advised to streamline this process, as an oversight may prove costly.”

Helen Kong
Manager
Human Resources
Dezan Shira & Associates
Dalian Office

During the probation period, the employer may dismiss the employee if he/she is found to not

Maximum Probation Period by Contract Term

Contract Term	Maximum Probation Period
Less than 3 months	None
3 months to 1 year	1 month
1 – 3 years	2 months
3+ years or non-fixed term contract	6 months

meet the requirements for the position. The burden is on the employer to prove this. (Read more in section 4.1)

Note: An employer cannot make an employee take a new probation period, for example, after promotion or when the company has been merged or acquired by an investor.

Non-competition Clauses

The non-competition clause, which aims to prevent an employee from working for a competitor after terminating the labor contract, is usually used only for senior positions and can be signed for a maximum period of two years. Companies are obligated to continue paying a proportion of the employee's salary after their departure from the company in order to maintain the effectiveness of the non-competition agreement. There is no unified standard about the amount of the compensation. Employers are advised to make an agreement with their employees or consult with the local labor bureau in charge.

Confidentiality Clauses

The confidentiality clause, which normally covers corporate secrets, may include terms relating to the scope of the secret, the confidentiality period, the secret-keeping method, as well as the legal liabilities of divulging the secret. To be noted, the confidentiality clause must be made with the agreement of both the employer and the employee. That is, the employee shall not be obliged by the confidentiality clause if it is made by the employer unilaterally.

Company Rulebook

Any company with over ten employees is recommended to create a company rulebook, which provides supplemental explanations concerning mandatory terms, and makes it easier to demonstrate an employee has broken a company rule.

The contents of the rulebook will vary per industry. Manufacturing companies will want to focus on issues relating to promptness, break lengths, safety requirements, etc. Business process

outsourcing companies, on the other hand, will be more concerned with confidentiality of their clients' information, while the food industry will focus on hygiene, etc.

When drafting a company rulebook, keep in mind the following considerations:

- Ensure the company rulebook is bilingual English-Chinese.
- If the company has a trade union, the union will have to agree to the terms.
- Have the labor contract make clear reference to the company rulebook. This will strengthen the company's case if you need to dismiss an employee over a breach of company rules.
- Avoid writing a company rulebook that is too lengthy. This may unnecessarily burden your staff to stay in compliance, and increases the workload of the HR department in supervising the rules.
- If a dispute is taken to court, and the company is found to have set arbitrary rules in order to find reasons to fire employees, the judge is more likely to decide in the employee's favor. You should be prepared to explain why each of the regulations is included. Have the rulebook differentiate between minor and major breaches. For a minor breach, the employee is issued an official warning letter. A major breach can result in immediate dismissal. Also, specify how many minor breaches may constitute a major breach. This way, the company may gain the right to dismiss an employee without compensation. Do keep in mind that your decision whether a breach was sufficiently serious to warrant dismissal can be challenged in court.
- Have each employee sign a statement that he/she has read, understood and agreed to the rulebook. When you change the rulebook, have employees make a new written statement. This improves your position in the event of a court case, and encourages your employees to read the rules more carefully.

Verify the labor contracts in the local Labor Bureau

In many cities, employers are required to give draft labor contracts to the local Labor Bureau for verification. Failure to do this can result in the company having trouble issuing social insurance to its employees, and the validity of some of its contracts can be challenged in court. Companies must also seek approval when making amendments to a contract.

Finally, all contracts need to be signed by the employee and chopped with the company seal before they are considered valid.



What is the importance of original employment contracts in China?

Q&A with
Adam Livermore
Partner

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2.2 Dispatch

Labor dispatch is an alternative option for FIEs looking to hire Chinese staff. While the preparatory work for setting up entities in China may require the assistance of Chinese staff, it is necessary for foreign investors to obtain their local entity's business license before formally hiring employees. Additionally, as mentioned previously, a Representative Office cannot hire staff directly, and their employees must be seconded from dispatch agencies.

Labor dispatch is generally regulated by Section 2 of the PRC Labor Contract Law. On January 24, 2014, China's Ministry of Human Resources and Social Security (MOHRSS) promulgated the "Interim Regulations on Labor Dispatch" (MOHRSS Order No. 22, hereinafter referred to as the "Interim Regulations"), which is the first comprehensive labor dispatch regulation at the country's Ministerial level.

Key information about dispatch can be found below.

Dispatched Agency

To establish a labor dispatch agency, the following requirements should be satisfied:

- a registered capital of no less than RMB 2 million.
- the fixed business premises and facilities correspond to the business.
- the labor dispatch management system complies with the provisions of laws and administrative regulations.
- any other criteria stipulated by laws and administrative regulations.

Additionally, the labor dispatch agency must have a license issued by the local Labor Bureau. Without such a license, the business registration of the labor dispatch agency cannot be completed.

Applicable Scope of Labor Dispatch

According to the Interim Regulations, labor dispatching arrangements are only applicable for the following three types of positions:

Temporary position: A position with a duration of no more than six months.

Auxiliary position: A position that provides auxiliary services to the main or core business of the employer.

Replaceable position: A position that can be performed by a dispatched employee in place of a permanent employee during the period when such an employee is away from work for study, vacation or other reasons.

The applicable position type must be specified within the applicant's dispatch contract.

“With the regulatory framework surrounding labor dispatch now fundamentally changed, companies must be aware of alternative methods of hiring temporary workers to avoid labor disputes and government penalties.”

Allan Xu
Manager
Business Advisory Services
Dezan Shira & Associates
Shanghai Office

10% Limit

The Interim Regulations stipulate that the number of total dispatched employees used by an employer should not exceed 10 percent of its total number of employees, including regular employees and dispatched employees. Representative Offices of foreign enterprises, however, are not subject to this restriction on dispatched employees' positions.

In the event that the number of dispatched employees exceeds this limit before the effective date of the Interim Regulations, the employer must reduce the proportion of dispatched staff to 10 percent within two years of the effective date of the provisions. That two year period expired in March, 2016, and so all FIEs, excluding ROs, must now be fully compliant with the new policy.

Contract Signing

Labor Contract between the Dispatching Company and the Dispatched Employee

According to the Interim Regulations, the contract signed between the labor dispatching company and the dispatched employee should have a fixed employment term of at least two years. The previous draft allowed non-fixed period labor contracts.

The dispatching company may arrange a probationary period of employment with the consent of the dispatched employee. However, such probationary periods are only allowed once for each dispatched employee.

Dispatching Contract between the Dispatching Company and the Host Entity

The Interim Regulations add several essential items required for drafting the dispatching contract between the dispatching company and the employer (i.e. the host entity). Below is a list of all the essential items:

- The title and type of the dispatching position (temporary, auxiliary, or replaceable).
- The location of work.
- The number of dispatched employees and the allotted time.
- Payment amount determined in accordance with the "equal pay for equal work" principle.
- The payment method and the amount of social insurance premiums.
- Work hours and vacations.
- The relevant treatment for work injury, maternity leave and illness.
- Work safety and hygiene, and other relevant training.
- Financial compensation.
- The valid term of the dispatching contract.
- The payment method and the standard of dispatching service fees.
- The penalty for violating the dispatching contract.
- Other required items.

Contract between the Host Entity and the Dispatched Employee

The contract between the host entity and the dispatched employee is required in every labor dispatching relationship. This contract is regulated by the PRC Contract Law rather than the PRC Labor Contract Law. It is usually used as a supplementary document to clarify the relationship between the host entity and the dispatched employee.

“Equal Pay for Equal Work” Principle

The Interim Regulations stipulate that the principle of “equal pay for equal work” is applied to all labor dispatching agreements, meaning that employers should apply the same remuneration standards for dispatched employees as they do for direct-hire employees who hold similar positions, including overtime salaries and bonuses.

Where the employer has not hired any employee holding a similar position, the labor remunerations payable to the dispatched employee should be determined with reference to those payable to employees holding a similar position in the place where the employer is located.

Cross-Region Labor Dispatch

Under the Interim Regulations, if a labor dispatching entity dispatches employees to an employer located in another region, the social insurance to be enjoyed by the dispatched employees should be provided according to the rates and standards of the place where the employer is located.

With respect to who makes the insurance payment, if the labor dispatching entity has a branch in the region where the employer is located, the local branch of the labor dispatching entity should pay the social insurance for the dispatched employees; if it does not have a branch in the region, the host entity should pay for the social insurance on behalf of the labor dispatching entity.

Termination of Labor Contract

The dispatched employee may terminate the labor contract by giving a written notification to the labor dispatching entity 30 days in advance. During the probation period, such notification may be given three days in advance.

The Interim Regulations stipulate that the host entity may return the dispatched staff back to the dispatching company due to the following reasons:

- Major change in objective circumstances.
- Mass layoffs due to financial difficulties.
- The host entity is dissolved or its operation is discontinued.
- The term of dispatching contract is due.

If the dispatched employee is returned because of the above reasons, the labor dispatching entity is responsible for redistributing the dispatched employee. The labor dispatching entity may only



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Presentation by
Stephen O'Regan

*International Business Advisory
Associate*

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terminate the employee's contract if the employee refuses a new dispatch offering equal or greater conditions.

For more details, please refer to the later chapter on termination.

2.3 Outsourcing

Outsourcing is an additional option for FIEs. Generally, the most commonly outsourced tasks are those that require specialist skills, a high degree of confidentiality, or those that have a clear scope but incur major consequences if incorrectly implemented. Good examples in China include accounting, tax filing, HR administration and payroll processing work. Many small and medium-sized companies will choose to completely outsource some or all of these functions, whereas large companies will set up a separate entity to manage such back-office tasks on behalf of their regional subsidiaries.

An outsourcing contract is fundamentally different from a dispatching contract in several ways, including:

- Responsibility for the behavior of the outsourced employee is borne by the company contracted for the outsourcing.
- The role is often not a full-time one, and most of the work does not have to be completed on-site. Working off-site improves the level of confidentiality. As the company does not need to hire a full-time internal resource for the role, outsourcing can often be a money-saving solution.
- The outsourcing company retains the right to use whichever resources it feels are best for each project. This ensures continuity in service provision.
- Such tasks will often use special software licensed by the company contracted for the outsourcing. The company requesting the services does not need to pay for software licenses or development work.

To make the difference between dispatching and outsourcing more clear, we present the following chart:

	Labor Dispatch	Outsourcing
Relationship	The company has a direct relationship with dispatched staff and can monitor their performance.	The company monitors the progress and outcome of the project rather than the individual staff members.
Fees	Payment is made monthly to the labor dispatch agency per individual dispatched worker.	Payment (outsourcing fees) is generally made based on the progress of the project.
Qualification Rules	Dispatched staff must adhere to the company's qualification rules and standards.	Usually, the company does not have obligatory qualification rules to outsourced staff who provide service to them. However, the company has the right to replace any workers assigned by the outsourcing service provider.
Supervision	The company directly supervises the performance of dispatched staff.	The outsourcing service provider supervises the performance of assigned staff.
Regulation Compliance	Dispatched staff shall abide by the rules and regulations of the company.	Outsourced staff are not required to abide by the rules and regulations of the company.
Assessment	The company assesses the performance of dispatched staff.	The company assesses the outcome of the project.



FOR MORE INFORMATION

For assistance with automating your HR processes or advice on drafting labor contracts, please contact us at hr.admin@dezshira.com

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Staff Administration and Payroll

- Structuring a Salary Package
- Work Hour Systems and Overtime Payments
- Mandatory Social Securities
- Statutory Vacations and Payment Calculation
- Additional Payroll Costs
- Calculating and Filing Individual Income Tax
- Distributing Salaries
- Outsourcing Payroll

3.1 Structuring a Salary Package

The structure of a salary package payable for each position in a company should be given careful consideration. Certain employees need to be incentivized, while other roles require a more fixed form of salary. Furthermore, the employer should consider the amount of income tax that will be payable by the employee based on the proposed salary package. This is particularly important if the company offers a net salary package to its employees.

Base Salary and Bonus

As we saw in the previous chapter, the base salary needs to be stated in the labor contract. This is the fixed monthly amount that the company guarantees to pay the employee. Employers can also include some one-off payments. For example, many companies make a 13th month salary payment to their employees around Chinese New Year.

Companies should beware including any payments that are separate to the base salary in the labor contract, as they will be legally bound to make the payment. Instead, employers can choose to pay this amount as an annual bonus. In this case, the employer can explain to staff that the company generally pays this amount under normal business circumstances, but is not obligated to do so if performance is below expectations.

The company can also pay bonuses at various points throughout the year. In this case, please note that under Chinese individual income tax law, employees can use a special tax treatment for a one-off annual bonus to reduce their tax burden (more below).

Annual vs Quarterly Bonuses

An employee was transferred from her US HQ to a China subsidiary.

In 2011, she stayed in China for 365 days and was paid a monthly salary of RMB 40,000.

	Individual Income Tax Savings Quarterly Bonus Payment	Annual Bonus Payment
	Quarterly bonus = RMB 10,000 per quarter	Annual bonus = RMB 40,000
IIT	$IIT = RMB\ 10,000 \times 30\% \times 3\ months + (RMB\ 10,000 \times 3\% - RMB\ 0) = RMB\ 9,300$	$IIT = (RMB\ 40,000 \times 10\% - RMB\ 105) = RMB\ 3,895$
	One of the quarterly bonuses is considered annual bonus, the other three bonuses are added to wages.	
IIT savings	$RMB\ 9,300 - RMB\ 3,895 = RMB\ 5,405$	

Allowances

The Chinese Tax Bureau allows foreign staff (including those from Hong Kong, Macau and Taiwan) to deduct certain “allowances” before calculating the tax burden on their monthly salary, provided:

- In the employment contract (and sometimes also in a board resolution depending on the location of the company), there should be a clear reference to the amount being paid to the employee under the title of each specific allowance.
- Each month, the employee should produce evidence to show the company that this money was indeed spent on the services described in the contract; this is done using the ubiquitous “fapiao,” or official invoice, which should be received whenever an official monetary transaction is completed in China.

Generally, the following allowances are deductible:

- *Meal allowance*

Foreign employees are allowed to deduct a certain amount that they spend on meals each month from their taxable income. Most of the fapiaos submitted should be issued by restaurants, but for some portion of the allowance fapiaos issued by supermarkets may also be accepted. Please note that the fapiao should state that the products purchased were “meals” or “food.”

- *Housing allowance*

The amount spent on rental of an apartment may also be deducted. However, please be aware that in China, a private landlord will often be reluctant to issue an official fapiao because in order to obtain one, he/she must pay some percentage of the rental amount received to the Tax Bureau. If a fapiao is requested, the landlord will likely charge a large premium on top of the originally negotiated rental amount. Foreign employees that require a fapiao should negotiate this with the landlord before signing the rental contract. Fapiao issuance should be clearly mentioned in the agreement. Foreign employees living in a serviced residence will not have this problem – the residence will be managed by a company that can issue a fapiao.

- *Laundry allowance*

This is fairly self-explanatory – an allowance for the dry cleaning of clothes.

- *Children's education allowance*

Some of the cost of a foreign employee's education expense for studying Chinese, or relating to the education of their children, can be deducted. Note that the education must be received in China and, as with the other allowances above, a fapiao must be received.

- *Home visit allowance*

Each year a foreign employee is allowed to deduct the cost of one or two return flights back to their home country (usually the cost of a ticket up to business class may be permitted). Note that flights to other destinations are normally not accepted. Cost of hotels and other expenses are also not accepted as this is considered a home visit allowance, not a vacation allowance.

One key point is how much of a foreign employee's salary can be allocated to allowances. This is something that is not clearly defined by the law, which stipulates that the allowances should be "reasonable." In practice, many companies adopt a proportion of 30 percent of the total salary of the foreign employee and classify this portion as allowances. There is always the possibility that the tax office will challenge the company on this issue, so we recommend that the proportion of allowance should be set at or below this level.

Mandatory Benefits (Social Insurance & Housing Fund)

The next portion of the salary package is social insurance and housing fund, often referred to in China as mandatory benefit. Contributions are made by both the employee and employer. The employee's portion is deducted from their gross salary. The proportions and maximum contributions made by employer and employee vary depending on where the business is located.

Some employers choose to enroll their employees in additional pension plans or other types of wealth accumulation plans. These are legal, but please note that only the mandatory benefits specified in the IIT laws can be deducted before calculation of IIT.

Defining Net Salary

Normally, "net" is defined as the amount that employees receive each month after payment of IIT and social insurance. It is more commonly offered to blue-collar workers that may not understand the details of the Chinese social insurance or IIT systems.

Misunderstandings between managers and employees over the definition of "net" salary are commonplace. If a company intends to offer such packages to employees, we suggest that the HR Department draws up a clear example to explain to each employee how their salary package will be structured, and to show the employee how much money they will be able to take home each month.

The total of the base salary, allowances, bonuses, non-mandatory pension plans, and the employer's portion of social insurance contribution are added together to form the total compensation and benefits (C&B) amount.



3.2 Work Hour Systems and Overtime Payments

Overtime can be expensive for employers. In China, employees are grouped into three categories working under different systems – the standard work hour system, the comprehensive work hour system and the non-fixed work hour system.

The standard work hour system requires that an employee's normal working day should not exceed eight hours, and that the normal working week not exceed 40 hours. Each employee should be guaranteed at least one rest day. Most white-collar workers in China now operate under a five-day working week, although some domestic companies still utilize a six-day working week model.

The comprehensive work hour system does not refer to one week as the key factor in regulating working hours. Instead, it takes a set period (usually a month, but not necessarily) as the base to calculate the number of working hours. Although the distribution of hours worked during this period may be quite irregular, the average number of working hours per day and per week should roughly correspond to the levels set out in the standard work hour system. Please note that before a company can implement this system, it must first submit its plan to the local Labor Bureau and receive approval. This system is normally used for blue-collar workers or other workers that require irregular shifts.

Under the non-fixed work-hour system, employees do not generally receive overtime payments, because measurement of the time spent working is considered to be impractical. A company implementing this system for some of their employees should receive prior approval from the local Labor Bureau.

“Overtime regulations in China are complex and often seen as controversial. Employers must therefore understand the legalities that govern overtime in China in order to avoid potential discrepancies with the law.”

Nicole Jiang
Assistant Manager
Human Resources
Dezan Shira & Associates
Dalian Office

Overtime Under the Standard Work Hour System

Time of Work	Percentage of Hourly Salary
Extra hours worked on weekdays	150%
Hours worked on weekends	200%
Hours worked on public holidays	300%

Basic hourly salary is calculated by taking the monthly pay of the employee and dividing it by 174 (average number of working hours in the month).

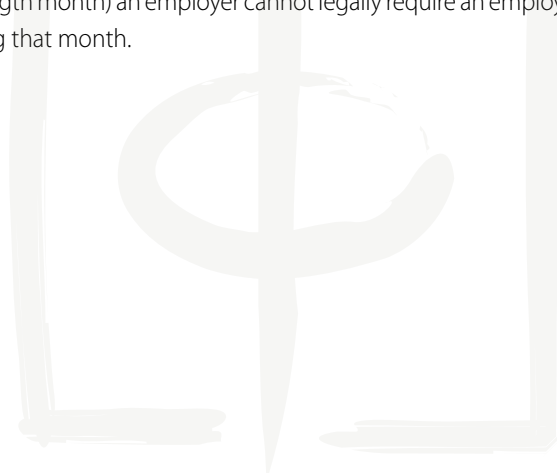
These are the mandatory minimum percentages paid to employees for the overtime that they work, although some companies offer their employees higher rates than the statutory minimums.

Overtime Under the Comprehensive Work Hour System

Time of Work	Percentage of Hourly Salary
Extra hours worked outside of normal shift	150%
Extra hours worked on public holidays*	300%

*This higher rate applies even if the standard shift for the worker is scheduled on a public holiday.

An employee may work a maximum of three hours of overtime in any one weekday and a maximum of 36 hours of overtime in any one month. Assuming a company stipulates an eight-hour work day, then on average in a month a worker shall work 174 hours. Adding this maximum 36 hour period of overtime means that (for an average-length month) an employer cannot legally require an employee to work for more than 210 hours during that month.



3.3 Mandatory Social Insurance

Social security in China is a complex and inconsistent issue, as it is organized on a regional level. The formal social security system only covers urban workers, and partially covers rural workers that have come to the cities to work (the so-called “floating population”).

In this section, we introduce the various components of the Chinese social security system, some examples of contributions that need to be made by employees and employers in various cities, and the conditions under which employees can make claims.

China's Social Security System is made up of five different kinds of insurance, plus one mandatory housing fund. The insurances are as follows:

Mandatory Benefit Types

Pension

Pensions for workers in China are financed by contributions from both the employee and the employer. The portion contributed by the latter is normally higher than that contributed by the former. As a general rule, the employer's contribution is usually between 10 percent and 22 percent of monthly salary. The employee will usually contribute around 8 percent.

Pension contributions made by employees go directly into their “personal” pension accounts, while those made by the company go into a “social” account. The overall amount of pension that an individual can draw is based on the overall level of contributions made over their working career. Once the personal account is empty, the individual's pension will be 100 percent funded from the social account. If the individual dies before the amount in the personal account is used up, the balance remaining in this account may be inherited by their relatives.

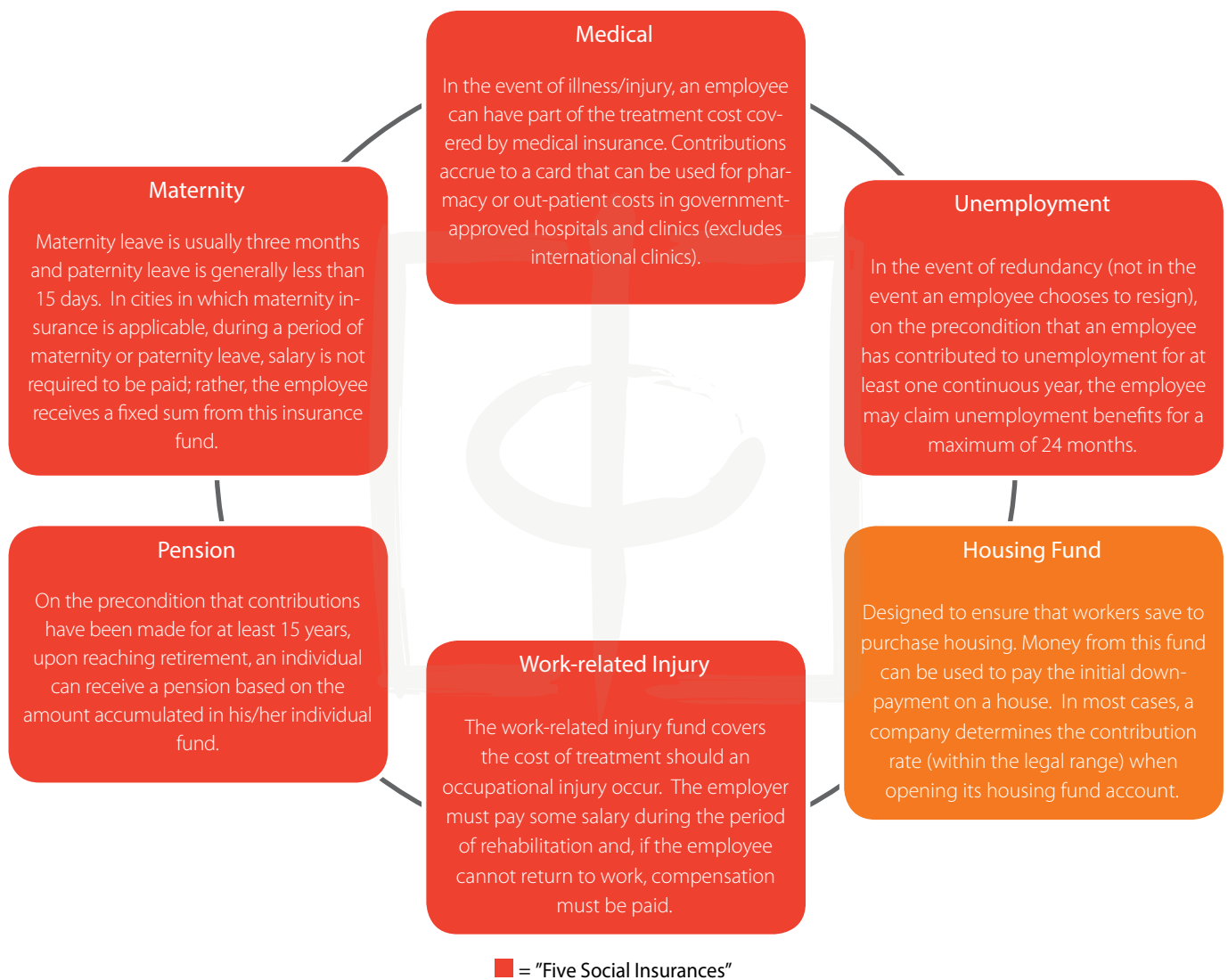
An individual in China cannot draw a pension unless they have made contributions for a minimum of 15 consecutive years. Even if an individual loses their job, it will still be necessary for the employee to continue making social security contributions, at least at the minimum level stipulated by the authorities.

In China, the statutory retirement age for men is 60; for white collar female workers, 55; and for blue collar female workers, 50.

Unemployment Insurance

In most large cities, both the employee and the employer contribute to this fund. The employer contribution can be as high as two percent of the individual's monthly salary. If an individual becomes unemployed, this insurance will pay out a fixed amount every month. Only people who have continuously paid into the fund for one full year are eligible to receive payments.

Mandatory Benefit Types



The payment amount will not be related to the amount of money paid by the individual or the company into the fund. Individuals may claim unemployment benefits for a maximum period of 24 months.

Medical Insurance

Both employer and employee contribute to this fund. Proportions vary considerably between cities, but generally the company will be expected to contribute between five and 12 percent of the employee's monthly salary, while the employee will contribute around two percent. Each individual covered by medical insurance is issued a medical treatment card. Every month, a small amount of money is added to the balance on this card. Cardholders can make purchases from pharmacies using the balance.

A base charge will usually have to be paid up front to the hospital by the individual, and the rest of the treatment expense should be received by the hospital from the insurance scheme. The precise portion covered by insurance can depend on the type of sickness or injury.

Occupational Injury Insurance

The employer makes contributions to this fund. The premium is typically between 0.5 percent and three percent of the monthly salary of the employee, depending on what kind of work is being carried out by the employee.

If an employee is injured at work, the employer needs to collect evidence of the incident and send it to the insurance company. Assuming everything is in order, the insurance company will then reimburse the employer for the cost of the treatment.

Note: The employer needs to keep paying salary while the employee is rehabilitating.

Beware that your company may be liable for all costs of the treatment, if failing to pay insurance premiums. These costs can be very high in case of serious injury. We therefore recommend you make sure new hires are registered for occupational injury insurance with the Social Insurance Bureau, and make timely contributions into the scheme.

Maternity Insurance

Usually only the employer pays maternity insurance.

During maternity leave, the pregnant employee's maternity insurance is paid by the Social Security Bureau where the woman is registered. The amount that the bureau will pay is the company's average monthly salary over the last 12 months.

Note: Some cities and regions, such as Shanghai, require the company to pay the difference between the average salary for employees in the company and the actual wage of the female employee during the period of maternity, in situations where the female employee's salary is higher than the average.

Housing Fund

The housing fund is administrated separately from social insurance, by the local Housing Fund Bureau. Just like social insurance, both the employer and employee are obligated to make contributions to the fund.

The Housing Fund is different from the other social insurance schemes in that there is no social pool. All payments go towards the individual's balance. This is why the Housing Fund is governed by a different bureau.

The Housing Fund is designed to ensure that workers save some money towards buying a home. The employee can use the money in the fund as a down payment for a house, or to subsequently pay back the mortgage. Furthermore, banks are often willing to offer lower interest rates if the employee has accumulated a high enough amount in their housing fund. Upon retirement, the remaining balance can be withdrawn and used at will.

Some cities allow the funds to go towards rent or renovations as well. Note: Where the amount exceeds three times the average local salary, the contributions are considered part of the employee's taxable income. Some cities limit contributions beyond that level. Be sure to explain this to your employees.

Contribution Calculations

Monthly contributions to the social security system are determined from a base figure. In most cities, it is calculated as follows:

Social security base = Previous year's total income / 12

For new hires, the starting salary may be used as the social security base during the first year. Note that the base figure for social security contributions is capped at 300 percent of the social average salary for the location in which the employee pays social security. Any employee earning more than this amount will therefore actually pay a smaller percentage of their salary in social security contributions (employers will also have a smaller percentage burden).

The maximum base figures will generally be updated once per year for all employees. This usually happens in May. Sometimes, the government will also adjust the percentages to be contributed by employee and company at this time. Note that although the maximum base figures will usually be updated during the middle of the year, the calculation of each individual employee's base will be made based on their average salary during the period from January to December of the previous year.

Participation of Foreign Employees

The inclusion of foreigners in China's social insurance system was formally indicated when the new Social Insurance Law was promulgated in October 2010. However, it was not until September 2011 that China's Ministry of Human Resources and Social Security (MOHRSS) announced in the Interim Measures for Participation in the Social Insurance System by Foreigners Working within the Territory of China that foreigners should be included in the Chinese social insurance system, starting from October 15, 2011.

Subsequent to the promulgation of these regulations, various cities, including Beijing and Suzhou, have issued local implementation rules requiring foreign employees to enroll in the social insurance scheme. However, the implementation of the scheme for foreigners remains uneven and uncertain across China.

Registering for Social Insurance and the Housing Fund

Although both employee and employer make contributions towards the social insurance funds in China, it is generally the case that the employer is responsible each month for withholding the contribution of the employee from gross salary, and making the employee's contribution together with that of the employer. When hiring a new staff member, employers need to register him/her with the local Social Insurance Bureau and the Housing Fund Bureau. As each city or region regulates its own social insurance scheme, the procedures vary per city and change rapidly. Below, we describe how this procedure generally works.

Social Insurance Registration

1. To be able to hire staff, the company needs to obtain a social insurance number. Certain documents, such as the company's business license, the enterprise code certificate, ID documents of the legal representative, RMB bank account documents, etc., are required.

If employers pay employees through a branch of the company, they will often need to bring:

- Parent company's business license and enterprise code certificate.
 - Power of attorney chopped with company seal.
2. After obtaining the social insurance number, companies need to enter the employee's details into the software provided by the Social Insurance Bureau. This information includes the employee's salary, as this determines the social security contribution to be made.
 3. Companies can sign a contract with an eligible bank to ensure that payments are made directly to the Social Insurance Bureau each month. In most cases, the first payment should be done by company-issued check. Funds can be automatically debited from the second month onwards.

Note:

1. Late payments can result in a fine.
2. If an employee suffers an injury at work, and occupational injury insurance has not been paid, the company is liable for all the costs of treatment.

Housing Fund Registration

Registering with the Housing Fund Bureau typically requires the following steps:

- Opening an account with the Housing Fund Bureau. Companies usually need to bring the company business license, the enterprise code certificate and an ID document of the company's legal representative.
- Applications are generally approved immediately. The company will receive a special account number for payments to the housing fund.
- Companies need to sign a contract between the Housing Fund Bureau, the company and an eligible bank to automate contribution payments. As with social insurance, the first payment needs to be made by a check issued by the company.

Summary

Contributions from the employee and employer can vary considerably depending on the city in which the amounts of contribution are being made. For a company that has employees based in a number of cities around the country, this means that the overall cost to the company for an employee earning RMB 10,000 in one city may be quite different from someone on the same salary based in another city, although the cost in first-tier cities, such as Beijing and Shanghai, tend to be similar.

Companies based in large cities may find that if they employ an individual from a regional city in their head office, the employee will request to have social security paid in the city where the company is based rather than in their hometown. The reason is simple – the employee will be able to earn more money via the pension and housing fund.

The opposite situation occurs as well. For example, if an employee is relocated from Shanghai to Shenyang, they will likely request that social security continues to be paid in Shanghai. This is partly because the amount of pension and housing fund receivable in Shanghai will be higher. Additionally, the employee will probably consider the fact that it is unlikely the company will employ them permanently in Shenyang; there is a strong likelihood of a return to Shanghai at some point.

The social security contribution can affect the total compensation and benefits (C&B) cost quite considerably. Companies should take this variance into consideration when deciding where to locate their operations. Even within a single city, there are different percentages and bases for contribution of social welfare, examples of which can be found in the Appendix.

How does the hukou system influence social insurance participation today?

A hukou is a kind of domestic passport for all Chinese citizens. A hukou stipulates an employee's home city and is either rural or urban.

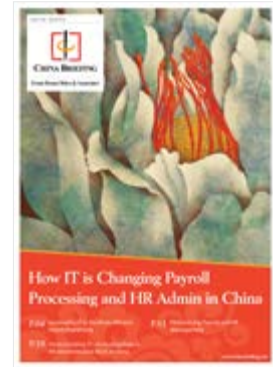
Previously, an employee working outside of their hukou area would generally not be able to participate in the mandatory fund benefits of the region of employment. If an employer wished to hire someone from outside the region of employment, they could pay mandatory benefit contributions through a branch office or through an employment agency (such as FESCO) in the employee's hukou area.

When the social insurance system was expanded to include even foreign employees, hukou became mostly irrelevant when determining which local Social Insurance Bureau should receive payments made on behalf of an employee. The company should pay mandatory benefits in the city in which it is based. This way, should an employee want to access medical insurance funds at a local government-approved facility, they can do so conveniently. In addition, the company is familiar with the local government bureaus and can more easily assist the employee in resolving any difficulties in accessing benefits.

Hukou still has a small influence on mandatory benefit contribution rates, as employees are divided into the categories of permanent local residents and other residents (which includes Chinese with hukou from other cities and foreigners) and rates differ for certain insurance contributions. Some hukou locations are viewed as being the most highly desirable (particularly Beijing and Shanghai) for reasons related to children's education, property purchases, international travel, etc. For key staff that a company wants to retain for the long-term, an employee's application for a hukou change can be endorsed. The transfer of previously contributed social insurance funds between cities can vary in difficulty, depending on city tiers.

The full hukou transfer process takes about six months and involves several bureaus other than the Social Insurance Bureau. These bureaus include the Public Security Bureau, which must issue a new ID card for the employee before the Social Insurance Bureau will accept that employee's application to make social insurance contributions as a local permanent resident.

No one can be sure what China's hukou policy will be like in 20 years, but the law states that an individual can apply for a refund or transfer of the individual portion of their social insurance contribution back to their hometown. Note that only the funds contributed by the individual can be transferred; company contributions must stay in the city in which they were made.



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April 2016

In this edition of China Briefing magazine, we examine how foreign multinationals can take better advantage of IT in the gathering, storing, and analyzing of HR information in China.

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“China is among the five least generous nations for paid annual leave entitled to employees. The amount of statutory annual leave is generally based on an employee’s work experience/tenure..”

Riccardo Benussi
Senior Associate
International Business Advisory
Dezan Shira & Associates
Shanghai Office

3.4 Statutory Vacations

Annual Leave and Public Holidays

By law, employees in China are allowed one day off per week. Additionally, statutory annual leave exists for qualified employees. The amount of statutory annual leave is generally based on an employee’s work experience/tenure. Employers may extend paid annual leave as a benefit to their employees, but they need to specify the additional days in the HR documentation, for instance the employee handbook.

What is the statutory minimum annual leave?

Paid annual leave for employees (including dispatched employees) in China is regulated in the “Regulations on Paid Annual Leave of Employees (State Council Order No.514)” and its implementation measures. Employees who have worked at a company for one continuous year are entitled to five days annual leave. Thus, employers do not have to give leave to employees who have not yet worked for one full year.

Statutory Annual Leave

Work Tenure	Days Leave
Less than one year	No leave
1-10 years	5
10-20 years	10
Over 20 years	15

It is important to note that the work tenure is not limited to the length of time that an employee has worked for their current employer, but rather refers to their cumulative work experience with all previous and current employers. In addition, paid annual leave does not include the country’s statutory rest days, public holidays and other additional holidays (e.g., maternity leave and annual visits to family). Based on Chinese Labor Law, employees are entitled to at least one rest day per calendar week, which can be any day of the week. Saturdays and Sundays are generally rest days in China. However, employers may arrange rest days according to their operation and production plan.

Employees may not take paid annual leave under the following circumstances:

- Where an employee is legally entitled to a summer and/or winter holiday that is longer than their annual leave;
- Where an employee takes at least 20 days of personal affairs leave and the salary is not deducted according to the regulations of the employer;
- Where an employee whose accumulated working time is more than one year, but less than ten years, takes sick leave of at least two months;
- Where an employee whose accumulated working time is more than ten years, but less than 20 years, takes sick leave of at least three months;
- Where an employee whose accumulated working time is at least 20 years takes sick leave of at least four months.

How to deal with employees' untaken annual leave

In the case where an employee has not taken all of their paid annual leave in that year, and does not agree to carry over the untaken leave to the next year, the employer must compensate this employee with 200 percent of the employee's average daily wage for each day of unused annual leave, in addition to their regular daily wage. Many foreign companies in China provide additional annual leave for their employees as a benefit. As this part of annual leave is not specified in Chinese labor laws, employers have the right to make internal HR rules regarding compensation schemes.

Employee's daily wage= Employee's average monthly salary/21.75 days

Note that the average monthly salary doesn't include overtime payments.

In practice, employees are generally required to use up their leftover annual leave from the previous year before a specific deadline set by the company's internal rules. Employers are advised to write down these rules in the employment contract or the employee handbook to avoid any possible future labor disputes. Additionally, the employer may calculate the annual leave for newly hired employees as below:

The amount of annual leave= (the number of days he/she will be working for the current employer in that year ÷ 365) × his/her total annual leave in the same year

China's 2016 Official Holiday Schedule

● Holidays ● Working Days

January	S M T W T F S	February	S M T W T F S	March	S M T W T F S
<i>New Year</i>	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	<i>Spring Festival</i>	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		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
April	S M T W T F S	May	S M T W T F S	June	S M T W T F S
<i>Tomb Sweeping Day</i>	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	<i>Labor Day</i> <i>*April 30-May 2</i>	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	<i>Dragon Boat Festival</i>	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
July	S M T W T F S	August	S M T W T F S	September	S M T W T F 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		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	<i>Mid-Autumn Festival</i>	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
October	S M T W T F S	November	S M T W T F S	December	S M T W T F S
<i>National Holiday</i>	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		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		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

Sick Leave

Assuming that the employer and employee have been making regular contributions under the social insurance system, at least some proportion of the hospital costs for any illness or injury will be covered by medical insurance, while the rest of the burden will fall on the individual.

If an employee takes sick leave, the employer must continue paying a portion of salary. Some of the regulations stipulating this responsibility are made at a local level. Here, we compare Shanghai and Beijing, confining our discussion to sickness or injury that is non-work-related.

Shanghai

The recuperation period is the period in which the employer cannot terminate the sick/injured employee and is responsible for paying a proportion of salary.

Generally, the minimum recuperation period is three months plus one month for every year of service to the company from the second year onward, with a maximum of 24 months. Nevertheless, for employees who have lost their working capability entirely, but are not qualified for retirement, the recuperation period should be extended subject to the agreement of the employer and employee. In addition, if the recuperation period stipulated in the collective labor contract, labor contract or the company rulebook is longer than the statutory minimum one, the longer recuperation period shall be applied.

Percentage of Salary Payable for Consecutive Leave

Within a 6-month Period

Continuous working period < 2 years	60% of employee's salary
2 years ≤ continuous working period < 4 years	70% of employee's salary
4 years ≤ continuous working period < 6 years	80% of employee's salary
6 years ≤ continuous working period < 8 years	90% of employee's salary
8 years > continuous working period	100% of employee's salary

In Excess of a 6-month Period

Continuous working period < 1 year	40% of employee's salary
1 year ≤ continuous working period < 3 years	50% of employee's salary
3 years ≤ continuous working period < 6 years	60% of employee's salary

Note: The above employee's salary is defined as employee's normal salary x 70%

The employer needs to pay a percentage of the employee's salary – higher for the first six months of recuperation and lower for subsequent months. The employee's salary for calculation of sick pay is defined as the base salary stated in the employment contract, and does not include additional social insurance, allowances, bonuses, etc. If there is no clear salary clause in the contract, the base salary could be determined in accordance with Article 18 of the PRC Labor Contract Law. If the base salary still cannot be determined or the amount is regarded as unreasonable, 70 percent of the employee's normal salary shall be defined as the base salary for calculation of sick pay.

Sick pay cannot be lower than 80 percent of the minimum wage in Shanghai (or 40 percent of the company's average salary, up to the point of the employee's usual salary). Companies are not required by law to pay more than the Shanghai average salary.

In Shanghai, employers can fire an employee after the recuperation period is over, but will have to pay the dismissed employee an additional medical care subsidy of no less than six months' wages on top of the statutory severance payment. Read more in the Termination Pay section.

Beijing

The recuperation period in Beijing is calculated depending on whether or not an individual has worked for 10 years total, and how many years the individual has worked for the same specific company.

Recuperation Period by Cumulative Number of Working Years

Cumulative Years Worked at Current Company	Recuperation Period (< 10 Cumulative Years Worked)	Recuperation Period (>10 Cumulative Years Worked)
Under 5 years	3 months	6 months
5 - 10 years	6 months	9 months
10 - 15 years	-	12 months
15 - 20 years	-	18 months
Over 20 years	-	24 months

The employer is required to pay at least 80 percent of the Beijing minimum wage per month, unless the contract with the employee says otherwise.

According to the Beijing regulations, the employer may dismiss an employee after the recuperation period, but the company needs to make a one-off compensation payment of two months' salary for every year worked (this already includes the regular severance payment). Additionally, the employer will need to pay six months' salary as further compensation for medical expenses. This amount is increased by 50 percent for "serious" illnesses and 100 percent for those defined as "terminal".



Maternity Leave

In 2012, the State Council released and implemented the “Provisions on Female Labor Protection under Special Circumstances (State Council Decree No. 619),” which extended maternity leave for female employees in China to 14 weeks (98 days) from the previous 90 days - just meeting the minimum maternity leave stipulated by the International Labor Organization (ILO).

However, maternity leave in China can vary widely by location, especially with new family planning legislation enacted from January 1, 2016, which further relaxes population controls by promoting the two-child policy nationwide and cancels the previous late-marriage and childbirth incentives. It can therefore be more complex for an employer to calculate how much maternity leave and allowance a female employee is entitled to. Below, we explain maternity and paternity leave in China and detail the payment of maternity allowances.

Prenatal check-up

Starting from the 12th week of pregnancy, a pregnant employee will need to go for an increasing number of prenatal check-ups, for which she is entitled to paid leave. These check-ups will be logged in the pregnancy handbook provided by the local Community Health Service Center.

Length of paid maternity leave

All across China, a Chinese female employee is granted to take a 98-day paid maternity leave beginning at her discretion 15 days prior to childbirth. Leave may be extended by 15 days under special circumstances such as dystocia. If the employee gives birth to more than one child at a time, an additional 15-day maternity leave shall be given for each infant.

Note: The 98-day leave includes working days, weekends and national holidays

Previously, a Chinese female employee who gave birth to her first child at age 24 or older was regarded as a case of ‘late childbirth,’ and therefore was entitled to an additional ‘late maternity leave’ of roughly 30 days. While this benefit has now been scrapped with the enactment of new family planning legislation, it is important for companies to check that the new policy has been fully implemented with their local government authority.

Abortion and miscarriage

No less than 15 days of maternity leave is offered in cases of abortion after a pregnancy shorter than four months, and no less than 42 days of leave in cases of miscarriage/abortion after a pregnancy longer than four months.

“*Maternity leave in China can vary widely by location, especially in terms of ‘late maternity leave’ as determined by the local government.*”

Maria Kotova
Senior Associate
International Business Advisory
Dezan Shira & Associates
Shanghai Office

Maternity allowance

In the following table, we present the cities which have already implemented the new maternity leave policies (up to May 17, 2016):

Maternity Leave (in days)							
Province	Base Maternity Leave	Difficult Childbirth	Multiple Children	Late Childbirth	Only Child	Newly-added Maternity Leave	Paternity Leave
Shanghai	98	+15	+15/child	N/A	N/A	+30	10
Guangdong	98	+15	+15/child	N/A	N/A	+30	15
Shenzhen	98	+15	+15/child	N/A	N/A	+45	15
Zhejiang	98	+15	+15/child	N/A	N/A	+30	15
Tianjin	98	+15	+15/child	N/A	N/A	+30*	7
Hubei	98	+15	+15/child	N/A	N/A	+30	15
Sichuan	98	+15	+15/child	N/A	N/A	+60	20
Shandong	98	+15	+15/child	N/A	N/A	+60	7
Fujian	98	+15	+15/child	N/A	N/A	+60~82	15
Shanxi	98	+15	+15/child	N/A	N/A	+60	15
Ningxia	98	+15	+15/child	N/A	N/A	+60	25
Guangxi	98	+15	+15/child	N/A	N/A	+50	25
Jiangxi	98	+15	+15/child	N/A	N/A	+60	15
Anhui	98	+15	+15/child	N/A	N/A	+60	10**
Beijing	98	+15	+15/child	N/A	N/A	+30	15
Jiangsu***	98	+15	+15/child	N/A	N/A	+30	15
Chongqing	98	+15	+15/child	N/A	N/A	+30	15
Hainan	98	+15	+15/child	N/A	N/A	+3 month	15
Inner Mongolia	98	+15	+15/child	N/A	N/A	+60	25
Yunnan	98	+15	+15/child	N/A	N/A	+60	30
Hunan	98	+15	+15/child	N/A	N/A	+60	20
Gansu	98	+15	+15/child	N/A	N/A	+82	30
Jilin	98	+15	+15/child	N/A	N/A	+60	15
Hebei	98	+15	+15/child	N/A	N/A	+60	15
Liaoning	98	+15	+15/child	N/A	N/A	+60	15
Guizhou	98	+15	+15/child	N/A	N/A	+60	15
Qinghai	98	+15	+15/child	N/A	N/A	+60	15
Heilongjiang	98	+15	+15/child	N/A	N/A	+82	15

*If the company has difficulty to give 30 days' additional leave, as an alternative, it can pay additional one month salary to the employee.

**The paternity leave shall be 20 days if the couple lived in different cities.

***In Jiangsu province, the maternity leave and paternity leave exclude weekends and public holidays.

****In Beijing, Hainan, Chongqing, Jilin, upon the agreement of the employer, the employee can get extra leaves with certain amount of payment.

During maternity leave, a female employee receives a maternity allowance in lieu of salary. Generally, a Chinese female employee (assuming that they have participated in maternity insurance for a certain period) is paid by the Social Security Bureau where they are registered. In determining the amount of maternity allowance, the Social Security Bureau will look at the average monthly salary of all employees in the company over the last 12 months (hereinafter “company average salary”).

In cases where the company average salary is no more than three times the average salary in the Bureau’s jurisdiction, the maternity allowance paid by the Bureau will be the company average salary. In cases where the company average salary is over three times the average salary in the Bureau’s jurisdiction, the maternity allowance will be three times the local average salary, and any amount above three times of the local average must be paid by the employer.

In certain parts of China, such as Shanghai, if the maternity allowance paid by the Bureau is lower than the average monthly salary of the employee over the last 12 months (hereinafter “employee average salary”), the remainder is paid by the employer.

In addition, the maternity allowance is subjected to minimum standards in certain cities.

For clarity, we present the following scenario, which supposes that the employee is based in Shanghai and gave birth to her baby in 2014:

	Scenario 1	Scenario 2	Scenario 3
Employee average salary	RMB 8,000	RMB 8,000	RMB 30,000
Company average salary	RMB 10,000	RMB 20,000	RMB 20,000
Payment by Social Security Bureau to employee	RMB 10,000	RMB 16,353*	RMB 16,353
Payment by company to employee	0	RMB 3,647	RMB 13,647

*the average monthly salary in Shanghai in 2014 was RMB 5,451, making the benchmark maternity allowance in Shanghai $RMB\ 5,451 \times 3 = RMB\ 16,353$.

The maternity allowance also applies to foreign employees who have contributed to the maternity insurance scheme. Foreign and Chinese employees not participating in maternity insurance receive their average salary over the past 12 months paid by the company.

- The employee didn't participate in maternity insurance:

Breast-feeding period

A female employee is also granted at least one hour each day during work hours for breast-feeding. In practice, companies tend to ask employees to work a full eight-hour day, and allow them to accumulate the extra hour toward vacation time. Most female employees also prefer this approach.

Paternity leave

The amount of time that a male employee can take as paternity leave largely depends on where the individual is registered for social security, as provided in the table above.

No termination

In China, it is illegal to terminate a pregnant employee during her pregnancy, maternity leave or breast-feeding period (which lasts until the infant is one year old). Further, if an employee gets pregnant during the term of her fixed-term contract, and the contract ends during the pregnancy, the contract shall be automatically extended (through a renewed end date or a second contract) until the end of the breast-feeding period.

No Overtime or Night Hours

Starting from the seventh month of pregnancy, employers may not have a pregnant employee work overtime or night hours. This requirement continues as long as she is breastfeeding a baby that is not yet one year old.

Marriage Leave

Marriage leave is granted to those who make marriage registration in accordance with the relevant provisions of law. Generally, employees can get three days paid marriage leave at the national level. This leave is not mandatory for FIEs, but most FIEs tend to provide it to employees as a bonus

Marriage Leave(in days)							
Province	Basic Marriage Leave	Late Marriage Leave	Newly- added Marriage Leave	Province	Basic Marriage Leave	Late Marriage Leave	Newly- added Marriage Leave
Shanghai	3	+7	+7	Chongqing	5	+10	+10
Guangdong	3	+10	N/A	Gansu	3	+27	+27
Zhejiang	3	+12	N/A	Henan	3	+18	N/A
Tianjin	3	+7	N/A	Guizhou	3	+10	+10
Hubei	3	+15	N/A	Hebei	3	+15	+15
Sichuan	3	+20	N/A	Heilongjiang	3	+15	+12*
Shandong	3	+14	N/A	Hunan	3	+12	N/A
Fujian	3	+12	12	Jilin	3	+12	+12
Shanxi	3	+27	27	Jiangsu	3	+10	+10
Ningxia	3	+15	N/A	Liaoning	3	+7	+7
Guangxi	3	+12	N/A	Inner Mongolia	3	+15	+15
Jiangxi	3	+15	N/A	Qinghai	3	+15	+12
Anhui	3	+20	N/A	Shaanxi	3	+20	N/A
Beijing	3	+7	+7	Xinjiang	3	+20	N/A
Yunnan	3	+15	+15	Hainan	3	+10	+10
Tibet	3	+7	N/A	-	-	-	-

Note: Provinces above have already made changes in accordance with China's new family planning regulations, while those not highlight are still undergoing change (as of May 17, 2016).

*In Heilongjiang, 10 more days additional marriage leave is granted to those who take pre-marital checkups, which involves being checked for any health conditions that will affect childbirth.

3.5 Additional Payroll Costs

Certain cities and regions require additional mandatory payments be made to employees. Although these additional fees do not appear high, especially by Western standards, we include them in this chapter to highlight the fact that there are regional policies in place affecting the amount of compensation payable to employees. Companies that do not follow these rules can be fined. Such regional allowances should be considered when processing the monthly payroll.

Winter Heating Fee

North China – defined according to the Huai River-Qin Mountains line – gets very cold in the winter, with temperatures below -30 degrees Celsius in some areas. Heating is supplied to all apartments during the winter, but the costs vary per city. Each household can expect to pay a fixed fee of around RMB 2,000 to RMB 4,000 for constant heating through the winter months.

To ensure that all households are able to afford their heating bill, many local governments require companies to set aside a heating allowance each month for all employees.

For example, in Dalian, this amount is calculated according to the job title and issued per month. Additionally, companies must contribute two percent of the average salary of all employees with a Dalian hukou to a fund that helps retired people pay for their annual heating fees. This amount is paid together with the monthly social security contribution to the social security bureau.

Summer Heat Allowance

Areas of both South and North China get very hot in the summer, prompting local governments to require companies to compensate employees during the hot months. For example, in Guangdong Province, during the period of June–October, companies should pay an additional RMB 100 per month to their employees working indoors and RMB 150 per month to any staff working outdoors.

Disabled Worker Assistance Fund

The Chinese government has set a minimum quota of disabled employees that a company must hire. The national average is 1.5 percent of a firm's workforce, but the rate can differ by province. The quota does not apply to companies under three years old and with a workforce of less than 20. Eligible companies that do not meet this quota have to pay into a fund called the Baozhang Jin (保障金), with the necessary amount again varying according to location. Below, we provide examples of how the fund works in Beijing and Shanghai.

Disabled Workers Employment Assistance Fund

	Beijing	Shanghai
Fee Exemption: Minimum % of Workforce as Disabled Workers	1.6%	1.7%
Fee Contribution Amount	Beijing average annual salary for previous year × 60% × No. of workers employed × 1.7%	Actual average annual salary for the company in previous year × No. of workers employed × 1.6%
Comments	Companies that employ some disabled workers but do not meet the exemption requirement will pay a reduced amount into the fund based on the difference between the percentage of disabled employees actually employed and the exemption threshold.	Note: By law, employers should base the contribution rate on the actual average salary, but in practice, this is limited to the social insurance cap for the given year (e.g. at the time of writing this was RMB 15,108).



“China’s Individual Income Tax Law recognizes eleven different categories of income, with a host of different deductions, tax rates and exceptions applying to each of them.”

Sabrina Zhang
Partner
Dezan Shira & Associates
Beijing Office

3.6 Calculating and Filing Individual Income Tax (IIT)

Individual Income Tax (IIT) in China is levied not only on salary income, but on a range of other income that an individual may receive. The employer’s responsibility is limited to withholding the IIT payable on employment income, including wages and salaries, bonuses, stock options and allowances, before paying a net amount to the employee. Employers are required to file IIT for their employees on a monthly basis, but the actual deadlines vary from city to city.

IIT on Income from Wages and Salaries

As in most countries, income from wages and salaries is taxed according to progressive rates ranging from three to 45 percent. All employees are given a fixed standard deduction and may also deduct mandatory benefit payments (e.g. social insurance and housing fund payments for Chinese nationals, and foreign and Chinese social insurance payments for foreigners) as stipulated by laws and regulations. Some employers choose to enroll their employees in additional pension plans or other types of wealth accumulation plans, which are usually not tax deductible.

For better illustration, the following tables are provided to introduce the tax rates and calculation method for both Chinese nationals and foreign employees.

It should be noted that not all foreign employees are liable for Chinese tax. To determine whether a foreign individual working in China is subject to Chinese tax, please refer to the section “When Foreign Employees are Liable to Chinese Tax”.

Employment Income Tax Rates and Deductions

Monthly Taxable Income (RMB)	Tax Rate	Quick Deduction (RMB)
1,500 or less	3%	0
1,500 < TI ≤ 4,500	10%	105
4,500 < TI ≤ 9,000	20%	555
9,000 < TI ≤ 35,000	25%	1,005
35,000 < TI ≤ 55,000	30%	2,755
55,000 < TI ≤ 80,000	35%	5,505
> 80,000	45%	13,505

Individual Income Tax Calculator – Chinese Nationals

Payable tax = Monthly taxable income x Applicable tax rate – Quick Deduction

**Monthly taxable income =
Base salary + Fringe Benefits – Employee social security / housing fund contributions* – RMB 3,500**

Fringe benefits include:

- Non-mandatory insurance policies
- Various fixed allowances such as housing allowances
- Contributions to corporate retirement funds or wealth accumulation funds
- Bonuses
- Fringe benefits should be distinguished from reimbursements, which are not part of gross income. Employees should provide official invoices (fapiao) for reimbursement each month.

Chinese nationals are entitled to a RMB 3,500 standard deduction.

*Not all cities allow social security and housing fund payments to be deducted.

Individual Income Tax Calculator – Non-Chinese Nationals*

Payable tax = Monthly taxable income x Applicable tax rate – Quick Deduction

**Monthly taxable income =
Base salary + Fringe Benefits – Mandatory social welfare in home country/China – RMB 4,800 - Deductible allowances**

Fringe benefits include:

- Non-mandatory insurance policies
- Various fixed allowances such as housing allowances
- Contributions to corporate retirement funds or wealth accumulation funds
- Bonuses
- Fringe benefits should be distinguished from reimbursements, which are not part of gross income. Employees should provide official invoices (fapiao) for reimbursement each month

Non-Chinese nationals are eligible for a RMB 4,800 standard deduction.

Deductible allowances:

- Allowances for housing, meals, relocation and laundry expenses
- Relocation expenses at the start or end of employment in China
- Reasonable business travel expenses and two personal trips to the individual's country of origin per year
- Reasonable allowances for Chinese classes and children's education
- These allowances are only deductible if they are stipulated in the contract, and the employee can provide an official receipt (fapiao)
- Some details in tax policy vary per city

*Non-Chinese nationals include citizens from Hong Kong, Macau and Taiwan

IIT on Annual Bonuses

Chinese tax law allows a yearly one-off lump sum bonus to be calculated and taxed separately from other taxable salary income, according to the following formula:

Tax payable on year-end bonus = Taxable annual bonus amount x Applicable tax rate – Quick deduction

You can arrive at the applicable tax rate and quick deduction by dividing the bonus figure by 12, and entering that amount into the "Individual Income Tax Rates and Quick Deductions" table above. For example, the applicable tax rate for a bonus of RMB 120,000 is 25 percent (RMB 120,000 ÷ 12 months = RMB 10,000).

In most cases, deductions are not permitted to be applied to one's taxable bonus income, as these will have already been offset against the individual's normal monthly salary.

This separate calculation can only be done once a year per individual employee. Any additional bonuses, such as half-year, quarterly, overtime, senior employee, and work attendance bonuses, must be considered as part of the employee's monthly salary.

IIT on Stock Options

Stock options are a type of remuneration where companies that are listed on the stock exchange give their employees the right to buy stocks in the company. After one year, the options become exercisable and the employee may buy the shares at the set price. It is a way of compensation that allows the company's interests to align with the employee's.

As with annual bonuses, tax on stock options is calculated separately from normal monthly income. The grant of stock options becomes taxable on the day that the employee exercises the options, i.e. buys the shares. The taxable income is the difference between the option price set in the contract, and the market price of the shares at the end of that day. As with the annual bonus, you arrive at the tax rate and quick deduction by dividing the taxable income by 12.

Taxable income = (Market price of shares - Option price in contract) x Number of shares

IIT Incentives for Commercial Health Insurance

On November 27, 2015, China's Ministry of Finance, together with the State Administration of Taxation (SAT) and China Insurance Regulatory Commission (CIRC), expanded a trial program of individual income tax (IIT) reduction on commercial healthcare insurance to cover 31 cities, including Beijing, Shanghai, Tianjin, Chongqing and certain second-tier cities in other provinces (hereinafter referred to as the "pilot cities"). Specifically:

- The expenditure incurred by individuals in the pilot cities from purchasing qualified healthcare insurance products is now permitted to be deducted before IIT collection, with a cap of RMB 2,400 per year (or RMB 200 per month).
- Companies that are established in the pilot cities and purchase healthcare insurance for their employees will be deemed as purchasing individuals and thus will enjoy the same tax incentives.

The policy came into effect on January 1, 2016. Previously, the pilot program was only implemented in four major cities in China. The new document also further clarifies the definition of "qualified healthcare insurance products," stipulating that the insurant should be at least 16 years old and under the mandatory retirement age. Meanwhile, the medical loss ratio (MLR) should be higher than 80 percent.

Qualified Insurance Company

The CIRC stipulates that insurance companies who provide the above-mentioned healthcare insurance products need to meet the following criteria:

- The company's solvency ratio is no less than 150 percent for the past two years.
- No administrative penalty within the latest three years.
- Insurance companies that are not professional healthcare insurance companies should set up a special healthcare insurance department.
- The company has an independent healthcare insurance information supervision and management system.
- Employees that have work experience in the healthcare insurance sector should account for at least 50 percent of the company's total employees; employees with a medical background should account for more than 30 percent of its total employees.

IIT Incentives for Hiring Disabled Workers

Disabled employees in China are eligible for IIT deduction. While disabled persons employed anywhere in the country qualify for this deduction, China's tax authorities have yet to implement a nationwide standard. The deduction amount therefore varies from region to region, with the country's more affluent areas tending to provide greater deductions. Below, we provide an example in Guangzhou, Guangdong province.

IIT Deduction for Disabled Employees in Guangzhou	
Annual salary (RMB)	Deduction (%)
Below 60,000	50%
60,000 – 100,000	40%
100,000 – 150,000	30%
150,000 – 200,000	20%
More than 200,000	10%

Individual Income Tax for Foreign Employees in China

The time that a foreign employee has spent in China determines the extent of their tax liability in the country, as detailed in the table below.

What is income sourced within China?

The following income types are deemed income sourced within China, regardless of who makes the payment:

- Income from providing services (including employment) in China.
- Income from leasing property to a lessee for use in China.
- Income from transferring property located in China, such as buildings and land-use rights.
- Income from licensing the use of proprietary rights in China.
- Interest, dividend, and bonus income derived from companies, enterprises, and other organizations or individuals in China.

Determining an Individual's Liability to PRC IIT

Taxpayer Status	Taxable Income
Living in China less than 90 days (183 days if there is a tax treaty in place)	<ul style="list-style-type: none">• Income sourced within China• Income paid by an overseas employer (not borne by its Chinese operation) is exempt
Living in China over 90 days (183 days if there is a tax treaty) but less than one year	<ul style="list-style-type: none">• Income sourced within China• Income sourced outside of China is not subject to IIT, unless the taxpayer is a director or senior manager of a Chinese domestic enterprise
Between one and five years	<ul style="list-style-type: none">• Income sourced within China• Income sourced outside of China where the income is paid by a Chinese enterprise or individual
Living in China over five years	<ul style="list-style-type: none">• Income sourced within and outside China from the sixth year onwards for every full year spent in China

How is time in China counted?

Residing in China for one calendar year means that, within the year, temporary absences from the country are less than 30 days continuously or 90 days altogether. When counting the number of days in China for income tax calculation purposes, the day on which one enters into or exits China is also included.

Individuals who reside in China for more than five years are taxed on their worldwide income, meaning both income sources within and outside China. However, if an individual resides in China for less than one year after having resided in China for five consecutive years, the individual's tax status is reset, meaning that only the individual's income sourced within China will be subject to individual income tax.

Taxation of senior management salaries

The "90 (183) days rule" does not apply if the employee in question holds a senior management position in China. Their director's fees or salaries paid by domestic employers, regardless of whether they are China or non-China sourced, are subject to IIT from the employee's first day in China.

In general, senior management positions include:

- Director.
- Chief executive officer.
- General manager.
- Vice president.
- Chief representative.
- Individuals holding positions in specific professional fields, such as chief engineer or chief financial officer.
- Certain individuals not holding titles such as manager but carrying similar responsibilities or having a great influence on business operations or decisions.

Tax Planning

An optimal compensation package allows an employee to take home the most value while staying within the parameters set by China's tax laws. This can be achieved by careful tax planning: making use of a combination of permitted allowances, annual bonuses, stock options and other strategies that allows the employee to minimize their tax burden.

Tax planning should always be based on the individual's personal circumstances. To give a better understanding of the options available, we provide some specific examples below.

Tax planning via deductible allowance

[Example]

Mr. J is an expat who works for a foreign-invested enterprise in Shanghai. His employment income of RMB 10,000 is fully taxable in China and his individual income tax is borne by himself. Suppose he receives a housing allowance of RMB 3,000 in total and no other deductions. Below, we compare his original income tax liability to an arrangement with deductible fringe benefits.

As can be seen, Mr. J was able to save 76 percent off of his tax liability by using a housing allowance, at no extra cost to the employer.

One thing to be noted is how much of a foreign employee's salary can be allocated to allowances. This is something that is not clearly defined by law, which only stipulates that the allowances should be "reasonable." In practice, many companies adopt a proportion of 30 percent of the total salary of the foreign employee and classify this portion as an allowance. There is always the possibility that the tax office will challenge the company on this issue, so we recommend that the proportion of allowance be set at or below this level.

	Original Liability	Optimized with Deductions (RMB)
Total income	10,000	10,000
Deductions	4,800	4,800
	0	3,000 (non-taxable allowance)
Taxable income	5,200	2,200
Tax rate	20%	10%
Quick deduction	555	105
Tax payable	485	115
Tax saving		370

Tax planning via year-end bonuses

A year-end bonus is a helpful tool to reduce an employee's tax burden, as it is calculated separately from salary income. An employer can therefore choose to pay out some of the employee's salary as a bonus to reduce the employee's tax burden. As described above, the appropriate tax rate is determined by dividing the bonus by 12 and applying the monthly tax rate and quick deduction figures.

There are two major issues that an employer should keep in mind when planning year-end bonuses. Firstly, employers should be wary of tax bracket thresholds. As illustrated in the following chart, a small difference in the bonus amount can lead to vastly different tax outcomes.

Annual Bonus Amount (RMB)	Tax Rate Applicable	Annual Bonus Amount (RMB)	Tax Rate	Difference in IIT Amount (RMB)
18,000 (i.e., 1,500x12)	3%	18,001 (i.e., 1,500.08x12)	10%	1,154.10
54,000 (i.e., 4,500x12)	10%	54,001 (i.e., 4,500.08x12)	20%	4,950.20
108,000 (i.e., 9,000x12)	20%	108,001 (i.e., 9,000.08x12)	25%	4,950.25
420,000 (i.e., 35,000x12)	25%	420,001 (i.e., 35,000.08x12)	30%	19,250.30
660,000 (i.e., 55,000x12)	30%	660,001 (i.e., 55,000.08x12)	35%	30,250.35
960,000 (i.e., 80,000x12)	35%	960,001 (i.e., 80,000.08x12)	45%	88,000.45

[Example]

Jason receives an annual bonus of RMB 420,000, while Frank receives an annual bonus of RMB 420,001. To determine the tax rates applicable, the first step is to divide the bonus amount by 12:

Jason:

- $\text{RMB } 420,000 / 12 \text{ months} = \text{RMB } 35,000$
- IIT rate = 25 percent
- IIT on the lump-sum annual bonus = $\text{RMB } 420,000 \times 25\% - \text{RMB } 1,005 = \text{RMB } 103,995$

Frank:

- $\text{RMB } 420,001 / 12 \text{ months} = \text{RMB } 35,000.08$.
- IIT rate = 30 percent
- IIT on the lump sum annual bonus = $\text{RMB } 420,001 \times 30\% - \text{RMB } 2,755 = \text{RMB } 123,247.1$

As shown above, Frank's annual bonus is RMB 1 more than Jason's, but the total bonus income that ultimately goes into Frank's pocket is $\text{RMB } 420,001 - \text{RMB } 123,247.1 = \text{RMB } 296,753.9$, which is less than Jason ($\text{RMB } 420,000 - \text{RMB } 103,995 = \text{RMB } 316,005$).

Secondly, it is important to remember that using an annual bonus will only be effective up to a certain point. One must not assume that the higher the bonuses are, the lower the tax burden is, as the tax rate for annual bonuses also increases correspondingly. When the compensation package for certain employees for the whole year is of the same amount, the optimal annual bonus arrangement actually varies from case to case.

To illustrate this point further, the chart below compares five different scenarios of income planning (salary + annual bonus) for an expat working in China, earning a total income of RMB 120,000.

As can be seen, the ideal outcome is Scenario 2, in which the percentage of IIT paid on the employee's overall income is at its lowest. It may therefore require a bit of maneuvering on the employer's part to arrive at the ideal tax treatment.

To optimize your foreign employee's compensation package, it is advisable to consult a tax advisor prior to implementing a tax-efficiency plan. This can ensure that the arrangements are in compliance with PRC individual income tax laws and that the related IIT liability is properly and legally minimized.

IIT Filing

Following the payment of salaries at the beginning of the month, there is a period of around two weeks during which the IIT filing should be made. The precise deadline can be different depending on the city in which the company is located.

Online filing

To make online filings of IIT, the company will generally require:

- A special USB Key issued by the local Tax Bureau.
- A piece of software installed on a computer to facilitate the online filing.
- The details of the IIT amounts for each individual, organized into a format that can be uploaded into the above mentioned software.

Step 1: The company must have signed an agreement with the Tax Bureau and its bank to allow the amount filed to automatically be debited. Most large domestic banks are able to facilitate these transactions.

Step 2: The USB key needs to be inserted into the computer on which the Tax Bureau software is installed. The pre-generated IIT file with the details of all the payments to be made by each employee can then be uploaded into this software.

Step 3: The next step is to authorize the software to send the total amount of IIT to be paid by the company to the Tax Bureau. Upon submission of IIT, the Tax Bureau will directly deduct the amount of IIT filed from the bank account of the company.

Note: Online filings must be made on time. If the company fails to meet the deadline, it must make a physical filing, and a fine will likely be imposed.

	Scenario 1	Scenario 2	Scenario 3	Scenario 4	Scenario 5
Monthly salary	10,000	9,000	8,000	7,000	5,000
Annual salary	120,000	108,000	96,000	84,000	60,000
Annual bonus	0	12,000	24,000	36,000	60,000
IIT on monthly salary	485	315	215	115	6
IIT on annual salary	5820	3780	2580	1380	72
IIT on annual bonus	0	360	2295	3495	11445
Total IIT	5280	4140	4875	4875	11517
Actual percentage of tax paid over total annual income	4.85%	3.45%	4.0625%	4.0625%	9.5975%

Physical filings

Depending on the city, physical filings of IIT might be necessary. Assuming online filings have already been made by the company, all that is required for the physical filing is:

- Print out the details of the IIT payments from the Tax Bureau software for each individual and for each of the months required.
- Stamp each document with the company chop.
- Take to the local Tax Bureau for submission.

It is possible that companies can only make physical filings instead of online filings, which is obviously more time consuming.

The person delivering the filings to the Tax Bureau will be able to see the salaries of each staff member. We therefore advise that companies either send their HR manager or use someone outside the organization to do it for confidentiality reasons.

If physical filings are made, the tax payment generally cannot be deducted directly from the company's bank account, and a visit to the bank with a form issued and stamped by the Tax Bureau will be necessary. The bank should receive this form and the payment. The form will not include the details of each individual's tax burden, so no particular confidentiality risk exists for the company at this stage.

Who needs to make an annual declaration of their income?

The annual income declaration should be made no later than March by anyone who has income in China in excess of RMB 120,000 during the financial year (January 1 to December 31). This requirement was introduced by the government to ensure that individuals earning significant income from China take personal responsibility for the amount of tax that they pay.

This income does not all have to be derived from salary; it can also come from other sources such as commission, service fee, or interests. Foreigners that have stayed in China for less than 275 days during the calendar year are not required to make this declaration, even if the amount of personal income they have received from China in one form or another exceeds this amount.

The most important information on the form is as follows:

- Name of individual and employer.
- Income from wages, taxable income, tax paid and tax still owed.
- List of other non-salary income.
- Signature of employee submitting information under the section clearly stating that the information is complete and accurate.

Since the details on this form are not limited to salary income and also include other forms of income, the responsibility for submission lies with the individual rather than the employer. At the end of the year, the employer should inform the employee of the total amount of gross income paid by the company and the total amount of tax paid on behalf of the individual over the course of the year. If gross income, added to any other income earned from other sources during the year, exceeds RMB 120,000, the individual should fill out and submit a declaration.

As mentioned above, the obligation to submit such a form extends to foreigners working in China. In situations where the salary details of the foreign employee cannot be disclosed to any local staff member, companies will often appoint a third-party agent to assist the foreign employee to make the declaration.

3.7 Distributing Salaries

The vast majority of companies in China handle salary distribution via electronic funds transfer (EFT). EFT files can be uploaded through bank websites by the HR manager and approved online for payment to employees by the finance manager. If employees have bank accounts with the same bank as the company then the transactions should be processed immediately; otherwise, there can be a short delay of normally no more than one day.

Uploading one EFT file which includes details of each employee's net take home pay saves time, and also has the advantage that individual salary details will not appear on the bank statement at the end of the month. Before the batch is processed, the bank will require approval from the finance manager at the company for the total amount of salary to be released. This is the figure that will appear on the company's next bank statement. Only the person that uploaded the EFT file will know the contents of that file; usually the HR manager at the company.

Salary payments in China should be handled through the company's main operating bank account if possible so that payments can easily be classified as salary payments.

It is not always possible to process a batch of EFT files for companies that use an international bank as their main bank account. Salary details for each individual will therefore appear on the statement. To avoid this situation, some companies set up a domestic bank account, first transferring the funds into this new account (specified as a payroll account) before remitting to their employees' accounts. Another alternative is to pay a lump sum to a payroll agent, which will then pay salary, mandatory benefits and possibly IIT on behalf of the company. This method is not recommended, however, as it causes an unnecessary delay in the monthly payroll process while the agent verifies that the funds have been received. There is also the risk that the agent fails to make the required payments.



3.8 Outsourcing Payroll

Payroll processing is never easy work. As a company's payroll structure becomes more complex, and especially when the company is expanding its operations, both the time involved and the risk of error increase. Outsourcing payroll then offers a solution. It takes valuable time off the hands of local managers to have these processes automated. Entrusting the matter to an experienced payroll outsourcer also reduces the risk of error and non-compliance. Additionally, when payroll is handled externally, reports can be sent directly to HQ, ensuring confidentiality of sensitive information.

Advantages of Outsourcing Payroll

More and more companies are turning to third parties to handle their payroll in China. Common reasons for doing this include:

1. Increased efficiency

Providers should have their own software that can generate all the necessary reports required by the client, the bank and the Tax Bureau. This is more efficient and reliable than generating reports internally using relatively manual processes on software like Excel.

2. Increased accuracy

Running payroll through a manual system can often lead to mistakes. This presents a poor image of the company to its employees. It can also cost the company money if employees have been overpaid or are left on the payroll after they have left the company. Both of these phenomena are remarkably common.

3. Increased transparency

It is necessary to have a clear procedure in place to ensure that the source of problems can be located and reported to management. When companies handle payroll internally, it will often be the case that such problems are rectified without any reporting to management. By outsourcing the payroll process, this possibility can be eliminated.

Problems with payroll can come from one of two areas – incorrect input information or incorrect processing. In the first instance, the problem lies within the company's inter-departmental reporting structures. As long as the problem is reported to management, it can be investigated and dealt with. In the second instance, the problem lies with the setup of the payroll calculation software itself. If the company is outsourcing payroll management, the provider should take responsibility for the error and the client should consider switching providers in the future.

4. Increased confidentiality

By outsourcing payroll, there should only be a small core of senior people in the organization who are aware of payroll details. The finance team will only need to know the total amount for the payroll every month, not the individual breakdown.

“Providing only the most basic data will only enable your payroll provider to make payroll calculations for you, such as salary, leave and bonuses. The more detailed HR information you can provide, the more sophisticated analysis your payroll provider can provide.”

Adam Livermore
Partner
Dezan Shira & Associates
Dalian Office

5. Decreased liability

Outsourcing payroll management reduces the risk that the company will make incorrect filings to the Tax Bureau. Assuming that the correct information has been provided to the third party by the agreed deadline, any responsibility for under-reporting of tax or penalties for late filing will be the duty of the outsourced company.

6. Decreased cost

While the costs of outsourcing are quite obvious, they should be carefully compared with the costs of running payroll internally. These can include staffing costs (HR / IT / managerial resources), software development costs and other miscellaneous costs. Mistakes made when processing payroll can cause discontent among a company's staff and lead to an increase in staff turnover. This is a very significant cost for a company to burden.

Please bear in mind that outsourcing payroll will not mean that a company can entirely disregard its internal HR costs. Companies will still need somebody internally to supply the input information to the provider and approve the payroll each month, as well as other HR tasks, such as organizing the hiring of employees and ensuring observation of internal regulations.

Payroll Processing Procedure

There are several distinct steps during a payroll processing operation:

Step 1: Submission of payroll input information by company

This should include all the information regarding staff who have joined or left during the month, details of salary increases, bonuses and other allowances. Depending on the scope of the outsourcing work, the company may also need to provide time management sheets, mandatory benefit contributions and details of annual leave taken for each employee.

Step 2: Initial processing of "master report"

At this stage the payroll processor checks all the information sent by the company before uploading it into the payroll processing software. After uploading is complete, the software can generate the "master report". This file details all the components of salary for each individual, as well as figures for net salaries, IIT payments, social insurance contributions (for employee and employer) and total compensation and benefit costs for the employer. It also shows the total amount of money that the company must prepare for payment of salary, IIT and social insurance payments. The payroll processor will send this file back to the internal HR manager at the company for approval.

Step 3: Approval of payroll data

The internal HR manager will check the information on the master report, paying particular attention to the completeness of the input information sent to the payroll processor. Once everything is in order, the HR director will approve the payroll.

Step 4: Generation of all other payroll-related reports

The payroll calculations are now approved and the payroll processor can run the other reports. These can include, but are not limited to, the following:

- Electronic funds transfer (EFT) file.
- Pay slips (printed on special security paper).
- General ledger file for uploading into the financial system d) Cost center report e) IIT online filing document.

Step 5: Processing of reports

This will depend on the scope of the outsourcing work requested by the company. Usually, the outsourcer will implement the following:

- The EFT file will be sent to the bank via the secure online portal using a password provided by the bank.
- The pay slips are couriered to the offices or, in some instances, to the home addresses of employees.
- The ledger file is sent back to the company's HR department, and then forwarded to the finance team for consolidation into the general ledger.
- The cost center report is also sent back to the HR department to be relayed to management.
- The IIT online filing document is uploaded into the Tax Bureau software at the beginning of the following month and subsequently filed.

Step 6: Transfer of funds

The final step is approval of the payment of salary via online banking (finance team only needs to see the total amount, not the individual payments) and ensure that there are enough funds in the account to cover the payment of salary, mandatory benefit and individual income tax. As a general rule, the processing takes between six to ten working days each month, with the IIT online filing happening at the beginning of the following month.

How to identify a reliable payroll processing agent

- Agents should handle all interactions with the local HR team through e-mail and in English, allowing management to monitor the process.
- Agents should have a reliable software system that can meet the requirements of the company.
- Agents should not have direct contact with anyone but the members of the HR team at the company and their supervisors.
- Agents should process the payroll from a remote location, preferably not the same city as the client. Only one or two people should be involved in the processing work.
- Agents should not do any executive search operations as a side business; no company would want to entrust its employees' salary records to a company that may misuse them for other purposes.



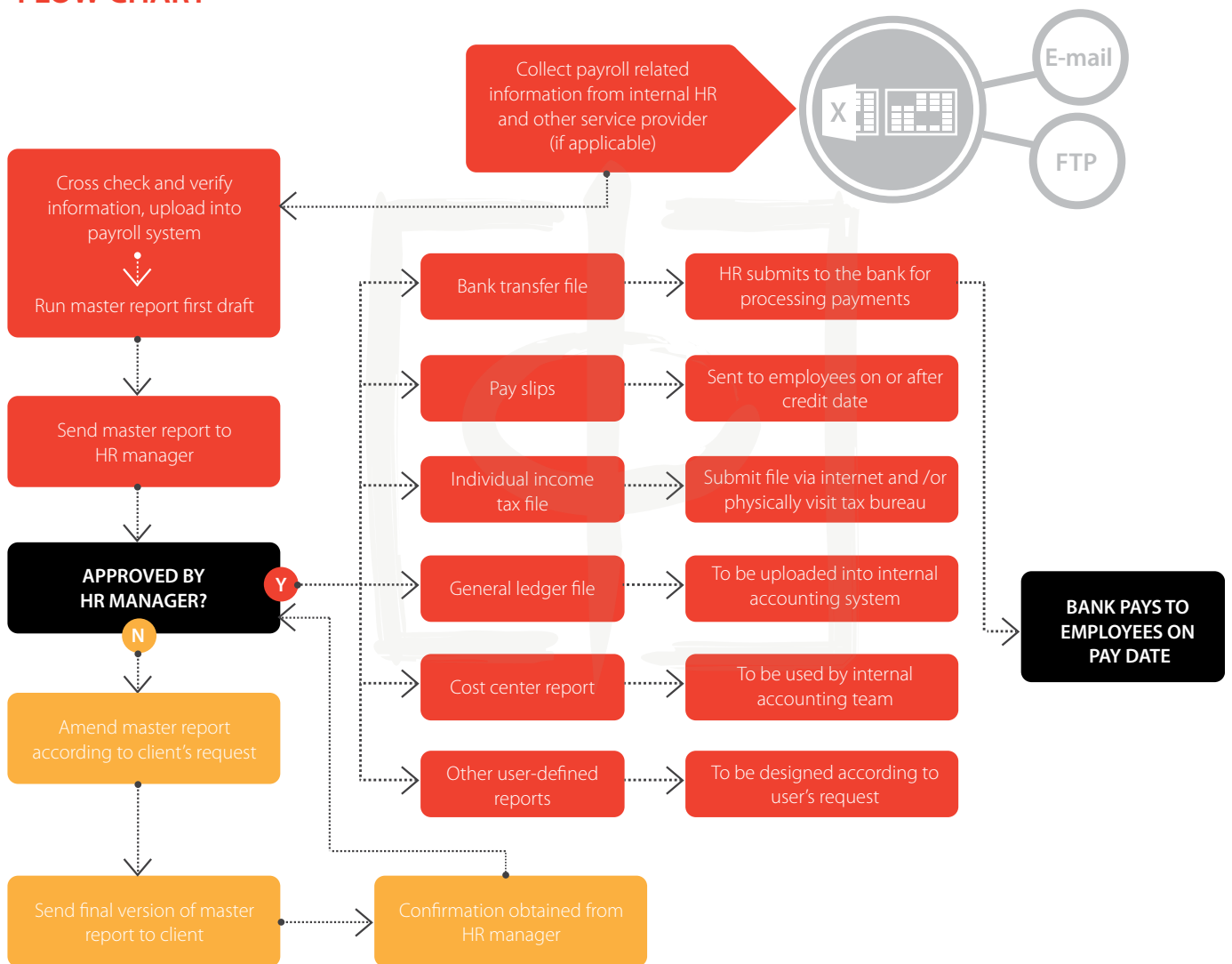
Explaining Monthly Payroll Work in China: What Does Your Payroll Manager Do?

Presentation by
David Niu

*Corporate Accounting Services
Manager*

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Terminating Employees

- Terminating During the Probation Period
- Terminating During a Fixed-Term or Non-fixed Term Contract
- Terminating at the End of a Fixed-Term Contract
- Employees Not Allowed to Be Terminated
- Termination Pay and its Tax Treatment

Terminating an employee in China is more difficult and often more expensive than in many other countries, as the Chinese Labor Contract Law offers a high degree of protection to workers' job security.

In the remarks below, we will only discuss terminating fixed-term and non-fixed term contracts. Part-time contracts can be terminated at will by both parties. For job contracts, the same rules for termination apply as for fixed-term contracts.

Terminating Staff in China - an Overview

Type of Termination	Admissible Grounds	Type of Employee	Severance payment
During probation	<ul style="list-style-type: none"> Employee doesn't meet the job requirements stated in job description 	<ul style="list-style-type: none"> Fixed-term Non-fixed term 	No
Mutual agreement	<ul style="list-style-type: none"> Agreed with employee 	<ul style="list-style-type: none"> Fixed-term Non-fixed term 	Yes (if the termination is put forward by the employer)
Immediate (unilaterally)	<ul style="list-style-type: none"> Serious violation of company rules Serious loss attributed to employee Giving false information to employer Criminal offense during employment Employee takes up second job, harming first employer 	<ul style="list-style-type: none"> Fixed-term Non-fixed term 	No
30 days' notice (unilaterally)	<ul style="list-style-type: none"> Employee incompetent for position Employee unable to work after sickness/injury Job cannot be performed due to fundamental change in objective circumstances 	<ul style="list-style-type: none"> Fixed-term Non-fixed term 	Yes
Not renewing contract	<ul style="list-style-type: none"> After one or two fixed-term contracts, differs per city 	<ul style="list-style-type: none"> Fixed-term 	Yes (unless the employee refuse to renew the contract upon maintaining or raised provision proposed by the employer)
Mass lay-off	<ul style="list-style-type: none"> Company being restructured under the PRC Enterprise Bankruptcy Law Serious difficulties in productions or operations Company changes production method, making staff unnecessary Objective economic situation makes employment impossible 	<ul style="list-style-type: none"> Fixed-term Non-fixed term 	Yes
Automatic termination upon bankruptcy/revoked/dissolution	<ul style="list-style-type: none"> The employer is declared bankrupt pursuant to the law The employer's business license is revoked The employer is ordered to close down or revoked by government bureaus The employer has decided to dissolve prematurely 	<ul style="list-style-type: none"> Fixed-term Non-fixed term 	Yes
Termination not allowed (under most situations)	<ul style="list-style-type: none"> The employee is suspected of having occupational disease(s) and waiting for diagnosis. The employee has completely or partially lost labor capability due to occupational disease(s) or work injury. The employee is still in the legal recuperation period for non-work-related illness/ injury. The employee is pregnant, on maternity leave or in nursing period. The employee has continuously worked for the employer for more than 15 years and is less than five years before retirement. 		

Note: When unilaterally terminating an employee, the employer needs to notify the labor union if there is one.



4.1 Terminating During the Probation Period

Under the current Labor Contract Law, both the company and the employee are allowed to dissolve the labor contract unilaterally by giving three days' notice. Nevertheless, while employees can terminate the contract at will, the company can only dismiss an employee on probation if it turns out the employee doesn't satisfy the job requirements, in addition to the regular causes for dismissal (detailed below in section 4.2). To be noted, the burden is on the company to prove that an employee has not been able to meet the requirements of the position they were hired to fill. There are two aspects involved here:

1. The job description shown to the employee prior to being hired must be specific enough to give valid grounds to the employer for dismissing the employee if the employee proves to be unsatisfactory. It should clearly indicate the key roles that the employee will be expected to perform and the relevant skills that the employee should possess.
2. The company must gather clear evidence to prove that the employee has not been able to meet the requirements that were established.

The probation period appraisal form can be used as the basis for assessing the suitability of the employee and the degree to which they meets the requirements for the position. This will be a useful piece of evidence if the company wishes to dissolve the relationship at this point.

HR departments may also want to introduce more forms to make the appraisal process more specific. For instance, some companies have their managers sit down with employees during their first week and set tasks for which employees will be assessed during this probation period. These tasks are summarized in a document which is signed by the employee and employer. At the end of the probation period, the employee is assessed based on the degree to which these specific tasks were completed. Managing the probation period in this way further reduces the scope for dispute in the future, although there is a larger administrative burden on the managers involved.

To terminate an employee on probation period, the company is not required by law to pay severance payment.

“To avoid the onerous and costly labor disputes that can arise from improper termination, foreign-invested enterprises in China must understand the governing framework and key issues behind employee termination and consider taking preventative measures from the start of the employment arrangement.”

Helen Kong
Manager
Human Resources
Dezan Shira & Associates
Dalian Office

4.2 Terminating During a Fixed-Term or Non-Fixed Term Contract

Upon completion of the probation period, the employee has a greater degree of job security, at least until the expiry of their first fixed-term contract. While the only additional requirement of the employee is to give the employer one month's notice if they intend to resign from the position, the employer has a higher hurdle to overcome when terminating an employee. During a fixed-term contract, the employment relationship could be terminated either by mutual agreement or by unilateral termination with lawful causes, the latter including immediate termination situations and termination with 30 days' notice.

Termination through mutual agreement

This type of termination occurs when the employer and employee mutually agree to terminate the relationship. If the termination is put forward by the employer, then the employee is entitled to severance payment. More often than not, the employer would provide additional money to the employee to obtain employee consent on separation, and there is no mandatory limit to this additional money.

Immediate Termination for Inappropriate Behavior of the Employee

Generally, there are only five circumstances in which an employer can terminate an employee immediately and with no additional compensation. In every case, the dismissal must somehow be attributable to inappropriate behavior of the employee.

1. The employee is deemed to commit a serious violation of the company rules.

The key here is for the employer to show that the violation of the company rules was serious. Make sure the company rulebook clearly stipulates what is considered a serious breach, and how many minor breaches constitute a serious breach. However, even though the company rules may deem a certain breach to be serious, the court will have the final say in the matter. You may still need to provide justification for your decision to the judge.

2. The company suffers a serious loss that can be attributable to the conduct of the employee.

In this situation, the company would have to convince the judge that the loss was due to the negligence or inappropriate conduct of the employee, and that the loss can be considered serious.

3. The employee is convicted of a criminal offence during the term of the labor contract.

In practice, the employer may only know about the conviction of an employee if a prosecution for a criminal offence in some way involved the company, or if it is informed by the court or other authority during the prosecution process.

Note that the employer may not terminate an employee for having a prior criminal record. It is the responsibility of the employer to find out about any irregularities in the employee's past prior to hiring him/her. It should be possible to find this information on the 'dangan' of the individual.

4. Labor contract signed by employer under false assumptions or coercion from the employee.

The most common situation falling under this category is due to misrepresentation of information on the resume by job applicants. For instance, falsely claiming to have a degree or other qualification is a relatively common phenomenon. We would suggest employers to require job applicants to bring the originals of graduation certificates and licenses obtained and also sign a copy of each one to be held by the employer's HR department. Additionally, the company should ask the employee to sign a statement that allows the company to request details about the employee from previous employers or educational institutes. Adding this requirement to the job description may deter potential employees from making false claims about their professional and educational background.

5. Employer's interests harmed due to the employee taking up a post at a separate entity.

If the employer discovers that an employee is working on behalf of another company and it negatively affects the employee's job performance, the employer must first request the employee to terminate the other position. Only in the event that the individual refuses to stop carrying out the second role may the employer terminate the labor contract.

Termination with 30 Days' Notice and Compensation Payment

Under the following three circumstances, an employer is allowed to terminate an employee unilaterally with 30 days' notice or an additional month's salary. Besides, according to Article 46(3) of PRC Labor Contract Law, the employees being terminated are entitled with severance payment.

1. The employee can no longer work after becoming sick or injured.

These grounds can be used for an employee who meets the following three conditions:

- He/she has been absent from work due to sickness or an injury unrelated to work.
- After returning to work from the prescribed time for medical treatment (read more about recuperation period in section 3.4), he/she is no longer able to perform the original work.
- He/she is unable to perform other work provided by the employer.
- If these three conditions are met, the employee can be terminated, but the company needs to pay severance payment together with an additional medical care subsidy of no less than six months' wages.

2. The employee is incompetent for the position, even after training or a job transfer.

3. Change in circumstances.

The objective situation on which the employment was originally based has changed considerably. As a result, the employment contract can no longer be fulfilled. The employer is required to first attempt to negotiate with the employee regarding changes to the content of the contract.

Termination upon Bankruptcy/License Revoking/Permanent Dissolution of the Company

Upon the following circumstances, the employment relationship shall be terminated automatically, and the employer is required to pay severance payment to the affected employees:

- The employer is declared bankrupt pursuant to the law.
- The employer's business license is revoked.
- The employer is ordered to close down or revoke by government bureaus.
- The employer has decided to dissolve prematurely.

Mass Lay-off

Under any of the following circumstances, where an employer needs to reduce 20 or more employees or where the number of employees to be reduced is less than 20 but comprises 10 percent or more of the total number of employees, it is considered a mass lay-off. In this case, the employer should explain the situation to the labor union or all staff 30 days in advance and seek their opinion. Upon approval of the mass lay-off scheme from the labor administrative bureaus, the employer may carry out the mass lay-off exercise and provide severance payment to the reduced employees.

- The employer undergoes restructuring pursuant to the provisions of the PRC Enterprise Bankruptcy Law.
- The employer has serious production and business difficulties.
- The enterprise undergoes a change of production, significant technological reform or change of mode of operation. Upon variation of labor contracts, there is still a need for mass lay-off.
- The objective circumstances have undergone significant changes and, as a result thereof, the labor contract can no longer be performed.

To be noted, the following personnel shall be given priority to be retained in a mass lay-off:

- A worker who has entered into a fixed-term labor contract of a longer period with the employer.
- A worker who has entered into a non-fixed-term labor contract with the employer.
- A worker whose family members are not employed or who needs to support aged or under-aged family members.

Besides, if an employer that carried out a mass lay-off is re-hiring employees within six months of the mass lay-off, the reduced employees need to be noticed and shall be given priority for employment under the same conditions.

The detailed procedures of mass lay-off are stipulated in "Reduction of Staff for Economic Reasons Provisions" (Lao Bu Fa [1994] No.447) and other local level legal documents. Companies are suggested to pay close attention to these procedures. Failing to fulfill these requirements, the company may be confronted with onerous labor disputes or even potential penalties from labor administrative bureaus. Where a company definitely has a need to reduce staff, it shall act in accordance with the following procedures:

Step 1: Explain the situation to all the employees or to the labor union and provide information regarding details of its production and business, 30 days in advance.

Step 2: Submit a mass lay-off scheme to all employees or the labor union, that shall include: a. the names of the staff to be reduced; b. when and how staff will be reduced; c. the procedures for economic compensation to the staff to be reduced in accordance with laws and regulations.

Step 3: Opinions regarding the mass lay-off scheme shall be solicited from the labor union or all the employees and the proposal shall be revised and improved accordingly.

Step 4: The mass lay-off scheme together with the opinions of the labor union or all the employees shall be reported to the local labor administration department and the opinions of the bureaus shall be heeded.

Step 5: The company shall then formally announce the mass lay-off scheme, handle the procedures for terminating contracts with the staff to be reduced, pay economic compensation personally and issue certificates of redundancy.

Revision of the Mass Lay-off Procedures

On December 31, 2014, the Ministry of Human Resources and Social Security released a revised draft on mass lay-off and sought public opinion, in which two major changes were introduced in the suggested rules:

1. For a branch company with its own business license, the relevant calculation for eligibility as a "mass layoff" is based on the staff number and percentage at the branch company specifically, not the whole company.
2. More details were added to each step of the mass lay-off procedure.
Until the writing of this Guide, the formal legislative document remains unpublished.

Note that reporting to government labor administrative authorities is not simply a formality to receive a bureaucratic rubber stamp. Government officials use their discretion to determine whether a company qualifies for economic redundancy and, in some cases, can be quite strict. There also appear to be unofficial regional variations in enforcement standards. For example, Beijing has a reputation for being tough on employers, while Shanghai is generally more amenable to green lighting layoffs. In any case, liaising with the local labor bureau before formally submitting an application helps mitigate uncertainty and increases the likelihood of success.

Beyond complying with government requirements, companies must be conscious of the impacts that merely applying for economic redundancy can have on its employees. Announcing layoffs 30 days in advance inevitably introduces various complications to the workplace. Employees may feel dejected and protest, and particularly desperate workers may try to seize or damage company assets, such as official company chops. On the other hand, if the economic redundancy application ends up being rejected, employees are empowered to negotiate more lucrative severance payments from the employer. Developing a strategic plan to approach certain employees before formally announcing mass layoffs can help employers retain control over what is often an unpredictable process

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4.3 Terminating at the End of a Fixed-Term Contract

The expiry of a fixed-term contract provides an important opportunity for the employer to evaluate the contribution of the employee and come to a decision on whether or not to renew it.

It is relatively straightforward for an employer to terminate an employee at this stage. The employer does not need to give the employee a reason for the company's decision. However, employers should bear in mind the following points:

- If the employer does not provide a new contract to the employee by the end of the contract term, and the employee still works in the company after this point, the labor relationship effectively continues – the employer shall take liability for absence of the labor contract.
- If the employer decides not to renew the contract at the end of the period, the company must still pay economic compensation to the employee.
- If the employer offers the employee a renewed contract on equal or better terms to the expired contract but the employee refuses to accept it, the employer is not required to pay any compensation to the employee.

The company should have a clear understanding of which employees are approaching the expiry of their fixed-term contracts. Around two months before the expiration the relevant managers should come to an agreement on whether or not to retain the employee. Both the performance of the employee and current and anticipated future business conditions should be considered when making the decision.

To be noted, upon expiration of the second fixed-term contract, where the employee raises the request to renew the employment contract, the employer will have no other option but to accept such a request, unless the circumstances of "immediate termination" or "termination with 30 days' notice" apply. Under this situation, it's recommended that the company decides whether to retain the employee at the end of the first contract. In practice, companies might opt for a longer contract term for the first contract in order to delay this point.

4.4 Employees Not Allowed to Be Terminated

Under the current labor law system, certain groups of people are specially protected, including:

- The employee who is suspected of having occupational disease(s) and waiting for diagnosis.
- The employee who has completely or partially lost labor capability due to 5 occupational diseases or work injury.
- The employee who is still in the legal medical treatment period for non-work-related illness/ injury.
- The employee is pregnant, on maternity leave or in nursing period.
- The employee has continuously worked for the employer for more than 15 years and is less than five years before retirement.

These groups of employees mentioned above are not allowed to be terminated for reasons listed under “termination with 30 days’ notice” and “mass lay-off”. Besides, upon expiration of their labor contracts, they are not allowed to be terminated until the corresponding circumstances extinguish (except where the employee has completely or partly lost labor capability due to occupational diseases or work injury. This kind of employees shall be terminated and treated in accordance with the provisions on work injury insurance). Note: The employer can still terminate these specially protected employees by mutual agreement or if any circumstances under “immediate termination for inappropriate behavior of the employee” exists.

For employees specially protected by the laws and regulations

Terminate by mutual agreement	Allowed
Immediate termination for inappropriate behavior of the employee	Allowed
Termination upon 30 days’ notice	Not allowed
Mass lay-off	Not allowed
Terminated upon the expiration of the labor contract	Not allowed*

* Except where the employee has completely or partly lost labor capability due to occupational disease or work injury

4.5 Termination Pay and its Tax Treatment

As mentioned in the above sections, an employer is required to make severance payment to employees for:

- Termination by mutual agreement and the proposal is put forward by the employer.
- Termination upon 30 days' notice.
- Termination upon bankruptcy/license revoking/permanent dissolution of the company.
- Termination in a mass lay-off.
- Termination upon the expiration of the labor contract except where the employer offers the employee a renewed contract on equal or better terms to the expired contract, but the employee refuses to accept it.

Calculation of Severance Payment

The formula of calculating the severance payment is:

Severance Payment = average monthly salary × years of service

Notes:

1. For the average monthly salary:

It is calculated at the employee's average monthly salary during the last 12 months. If the employee worked for less than 12 months, the average monthly salary shall be calculated according to the actual work time.

2. Three-time restriction:

For any period after January 1, 2008 – the date of the enactment of the PRC Labor Contract Law – where the employee's average monthly salary is more than three times the average monthly salary in the location of employment, the latter will be used to calculate severance pay.

This rule does not apply to the period prior to the enactment of the PRC Labor Contract Law.

For example, in Shanghai, the average local monthly salary of 2014 was RMB 5,451, and three times this amounts to RMB 16,353. Thus, an employee whose employment is lawfully terminated in Shanghai can only receive up to RMB 16,353 as severance for each year of employment after January 1, 2008.

3. For the counting of the years of service:

How to deal with working periods of less than one year? For a working period that is less than 6 months, it shall be counted as half a year, and half month's salary must be paid as severance.

If a working period is over 6 months but less than one year, it shall be counted as one year, and one month's salary shall be paid as severance.

For example, in the case that an employee worked for 13 months for the same company, it can be regarded as (1+12) months when calculating the severance payment. For the 12 months, he will receive severance pay that amounts to 1 month's salary. For the 1 month, it can be regarded as half a year and the employee can receive 0.5 month salary as severance payment. So in total, the severance payment is 1.5 months' salary.

4. Total amount restriction:

The severance is limited to a maximum of 12 month's average salary. In other words, a lawfully terminated employee can only receive a maximum of 12 month's average salary even if he or she worked for a company for over 12 years.

The calculation method provided above is only the minimum amount an employer is required to pay by law. In practice, however, employers often pay a higher amount than the statutory minimum amount. The reason behind this is simple: employers are willing to pay more money to get employee's consent, and thus avoid potential labor disputes. Even if there are grounds for unilateral termination, they are challenged in court and lead to costly and onerous litigation more often than not. This is because the grounds for termination are not always easy to prove. Besides, in circumstances beyond the lawful termination we presented in the above sections, such as wrongfully terminating a specially protected personnel, the employee shall be entitled to double severance payment if the employee does not demand continued employment or it's impossible to continue the employment relationship. It is a common misconception that an employer can unilaterally terminate an employee with no solid reasons by simply paying double severance payment. The potential cost to employers for unlawful termination can be quite high. Apart from litigation costs, the employer might still need to pay the employee's salary for the remainder of the contract, as well as the double severance payment.

In addition, employers often give higher severance payment to employees in sensitive positions, such as employees who keeps important documents of the company, upon the expiration of their labor contracts.

IIT Implication on Severance Payment

The PRC tax laws prescribe a special treatment for severance payments. As the terminated employee may have no income in the coming months, the IIT burden on the severance payment is far lower than if an employee received a similar amount as a salary or even as a bonus. Besides, the compensation for termination upon the bankruptcy of the company is subject to IIT exemption.

Below, we explain the steps for making the calculation.

Step 1: Decide on an amount for the total compensation package that will be provided to the employee. The amount should be paid in one lump sum to the employee in order to be able to take full advantage of the termination IIT calculation.

Step 2: Deduct an amount equal to 300 percent of the annual social average salary of the previous year for the region in which the company is based from the total compensation package.

Step 3: Divide the remaining amount by the number of full years the employee has spent with the company (maximum of 12).

Step 4: Deduct RMB 3,500 (RMB 4,800 for non-mainland Chinese) and the social security/housing fund contributions (if any) from the amount derived in step 3 above, decide the IIT rate and quick deduction amount accordingly and then calculate the corresponding IIT.

Step 5: Multiply the IIT amount in step 4 by the number of full years served by the employee at the company (maximum of 12). This will be the IIT on severance payment for the employee.

Note that any tax burden payable by the employee on money received as part of a termination package should be deducted by the company before payment of the remaining amount to the employee.

[Example]

Mr. R (non-Chinese national) has worked in a company based in Shanghai since January 1, 2008. His average monthly salary in 2014 was RMB 40,000. He didn't join any social security plan. On January 1, 2015, he was terminated in the company's mass lay-off. The average monthly salary of Shanghai in 2014 was RMB 5,451.

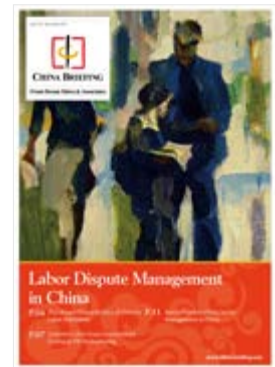
The minimum severance payment Mr. R can get is calculated as follows:

1. The average monthly salary of Mr. R in 2014 was RMB 40,000, which is over three times the average monthly salary of Shanghai in 2014 ($\text{RMB } 5,451 \times 3 = \text{RMB } 16,353$). So the average monthly salary for calculating minimum severance payment is RMB 16,353.
2. His years of service is 7 years.
3. His minimum severance payment should be $\text{RMB } 16,353 \times 7 = \text{RMB } 114,471$.

To gain the consent of Mr. R and avoid future disputes, the company decided to give Mr. R a lump-sum payment of up to RMB 300,000.

The IIT burden on this lump-sum severance payment is calculated as follows:

1. Deduct 300 percent of annual monthly salary of Shanghai in 2014: $\text{RMB } 300,000 - \text{RMB } 5,451 \times 12 \times 3 = \text{RMB } 103,764$.
2. Divide the remaining amount by the years of work in the company: $\text{RMB } 103,764 \div 7 = \text{RMB } 14,823$.
3. Deduct RMB 4,800 from the answer in step 2: $\text{RMB } 14,823 - \text{RMB } 4,800 = \text{RMB } 10,023$.
The corresponding IIT rate is 25% and quick deduction amount is 1005.
4. IIT burden on this lump-sum severance payment = $(\text{RMB } 10,023 \times 25\% - 1005) \times 7 = \text{RMB } 10,506$.



Labor Dispute Management in China

December 2015

In this edition of China Briefing magazine, we examine how foreign multinationals can take better advantage of IT in the gathering, storing, and analyzing of HR information in China.

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Employing Foreign Workers

- Overview of China's Visa System
- Z-Visa
- M-Visa
- R-Visa
- Short-Term Work in China
- Sending Your Chinese Staff Abroad



As any foreigner who has been through the process will know, obtaining a work visa in China can be a twisting process of back-and-forth between multiple government agencies and forms of documentation. Chinese visa grants the holder the right to enter China and stay in the country for a fixed number of days. There are several visa categories, depending on the reason the foreigner is coming to China.

Each visa contains three important pieces of information: the issuance and final entry date, number of entries and duration of each stay. The number of entries states how many times the foreigner may cross the border into China between the date of issue and the final entry date. The final entry date is indicated on the visa as ENTER BEFORE xxx. The length of each stay indicates how long a foreigner may stay in China after each entry.

For example, a visa may be granted with issue and final dates January 1 and July 1, two entries and duration of stay of 30 days. This means the foreigner can enter China twice before July 1, and stay for thirty days each time.

These factors are determined by the Chinese embassy or consulate where the application is made. Foreigners can also apply at the branch of the Ministry of Foreign Affairs in Hong Kong and Macau.

Once in China, the visa can be extended at the local Immigration office, at the discretion of local officials.

5.1 Overview of China's Visa System

The Chinese government amended its visa regulations in September 2013. The law mainly introduced a number of new visa categories, increasing the number from eight to 12, and altered the scope of a few existing ones.

The F-visa, also known as the business visa, was used previously by foreign business people who came to China on business but were not employed at a Chinese entity. However, the new regulations have limited the scope of the visa to non-commercial purposes only, such as cultural exchanges, visits and inspections. At the same time, the regulations introduced a new visa for business travelers called the M-visa. It is applicable to foreigners coming to the country for business and trade purposes.

Another new visa type is the R-visa, which is issued to attract foreign high-level personnel and people with special talents of which there is a shortage in China. What kind of people can be regarded as "high-level personnel" is not very clear yet. One thing that we can be sure of is that applicants for the R-visa need to satisfy higher requirements.

“Although some speculation has it that the population of foreigners working in China is in decline, our experience at Dezan Shira & Associates speaks otherwise, where questions regarding work visa procedures continues to pour in at a steady stream.”

Kyle Freeman
Senior Associate
International Business Advisory
Dezan Shira & Associates
Beijing Office

In the following table, we present China's visa categories according to the major purpose of visit.

Major Purpose of Visit	Visa Categories	Description of Visa
Exchanges, visits, study tours and other activities	F	Issued to those who are invited to China for exchanges, visits, study tours and other activities.
Commerce & Trade	M	Issued to those who are invited to China for commercial and trade activities.
As a tourist	L	Issued to those who are going to travel to China for tourism.
Family reunion, foster care or visiting relatives with permanent residence in China	Q1	Issued to those who are family members of Chinese citizens or of foreigners with Chinese permanent residence and intend to go to China for a long-term family reunion, or to those who intend to go to China for the purposes of foster care (intended duration of stay in China exceeding 180 days). "Family members" refers to spouses, parents, sons, daughters, spouses of sons or daughters, brothers, sisters, grandparents, grandsons, granddaughters and parents-in-law.
	Q2	Issued to those who intend to visit relatives who are Chinese citizens residing in China or foreigners with permanent residence in China; the intended duration of stay is limited to no more than 180 days.
Visiting relatives working or studying in China or other private affairs	S1	Issued to relatives of foreigners working or studying in China for the purpose of long-term visit, or to those who intend to visit China for other private reasons (intended duration of stay exceeding 180 days). "Relatives" refer to spouses, parents, sons or daughters under the age of 18 years and parents-in-law.
	S2	Issued to those wishing to visit family members that are foreigners working or studying in China, or to those who intend to go to China for other private reasons. The intended duration of stay in China is limited to no more than 180 days. "Family members" refers to spouses, parents, sons, daughters, spouses of sons or daughters, brothers, sisters, grandparents, grandsons, granddaughters and parents-in-law.
Employment Commercial performances	Z	Issued to those taking up a post or employment, or giving commercial performances, in China.
Transit	G	Issued to those who are going to transit through China en route to a third country (or region).
As a crew member or a motor vehicle driver	C	Issued to foreign crew members of aircraft, trains and ships, motor vehicle drivers engaged in cross-border transport activities, and also to the accompanying family members of the above-mentioned ships' crew members.
As a student	X1	Issued to those intending to study in China for a period of more than 180 days.
	X2	Issued to those intending to study in China for a period of no more than 180 days.
As an introduced talent	R	Issued to those who are high-level qualified talents or whose skills are urgently needed by China.
As a journalist	J1	Issued to resident foreign journalists/media staff of foreign news organizations stationed in China. The intended duration of stay in China exceeds 180 days.
	J2	Issued to foreign journalists/media staff on temporary news coverage missions. The intended duration of stay in China is limited to no more than 180 days.
Permanent Residence	D	Issued to those who are going to reside in China permanently.

5.2 Z-Visa

The Z-visa is usually referred to as a working visa. It is used by foreigners who are actually employed by a company that has been incorporated in China (either domestic or foreign invested). An employee that possesses a Z-visa may subsequently apply for a residence permit. The residence permit allows the foreigner an unlimited number of trips into and out of China during the term, which is usually for one year.

Applying for a Z-visa will allow the holder more flexibility and also virtually eliminate the risk of not being able to extend the visa (assuming the employer's China entity remains in compliance with relevant laws). On the other hand, the application procedure is more time-consuming and expensive. It is not necessary for employees on occasional, relatively short-term business trips to go through the process to obtain a Z-visa. Once the parent company has established a foreign-invested entity in China, this entity is capable of issuing the invitation letter which an employee requires to apply for an F-visa.

Employees working at companies in China should arrive in China on a Z-visa. In this section we will explain the general process for obtaining a Z-visa. Please note that the precise procedures will vary from city to city inside China, and possibly from embassy to embassy outside China.

Applying for a Z-Visa

- Foreign Expert Certificate issued by the State Bureau of Foreign Experts of the PRC.
- Registration Certificate of Resident Representative Offices of enterprises of foreign countries (regions) issued by Chinese authorities of industrial and commercial administration.
- An approval document for commercial performances issued by the Chinese government authorities for cultural affairs.
- Invitation Letter to Foreigners for Offshore Petroleum Operations issued by National Offshore Oil Corporation.

Medical Check-up

Medical check-ups are required for foreigners who want to work in China. The check-up mainly focuses on mental illness and epidemic diseases such as leprosy, AIDS, venereal diseases and open tuberculosis.

The medical check certificate should be issued by a public medical institution, the whole process of which takes about five working days. This certificate is valid six months from the date of issue. Certificates issued by a private medical institution need to be notarized by the host country. If the public security bureau cannot ascertain whether the certificate is valid or not, then the foreigner might be required to have a health check in an authorized medical institution in China.

	Step-1: Applying for alien employment license*	Step-2: Applying for an invitation letter	Step-3: Applying for Z-Visa
Applicants	Company	Company	Employee
Authorities in Charge	Human Resources and Social Security Bureau (HRSSB)	Municipal Commission of Commerce	Chinese diplomatic missions overseas or MFA Office in HK
Qualifications	<p>Employee qualifications</p> <ul style="list-style-type: none"> • Is of working age. • Is of good physical and mental health. • Has no criminal record. • Has the required professional skills and work experience. 		
Materials required	<p>Company:</p> <ul style="list-style-type: none"> • Business license, Organization Code and Articles of Association. • Official letter explaining the reasons for the employment. • Official letter showing intention for employment of foreigners. • Application form. <p>Employee:</p> <ul style="list-style-type: none"> • Valid passport. • Health certificate. • CV in Chinese. • Credentials required for job, including academic degree certificate, the professional skills qualification certificate and the credentials of over two years of relevant work. • Criminal record check. • Recent passport-size photo. 		
Time needed	15 working days	3~5 working days	4~5 working days
Term of validity	6 months from the date of issuance	3 months from date of issuance	3 months from date of issuance

Applying for Employment Permit (Work Permit)

Except for foreigners who hold the four types of documents equivalent to the alien employment license mentioned above, the company should apply for work permits for their foreign employees within 15 days of their entrance into China.

To apply for a work permit, the foreign employee must:

- Hold an Employment License.
- Enter into China with a Z-visa.
- Hold a health certificate issued or confirmed by an authorized medical institution.
- Have a labor contract / employment agreement with local employer, or have an income certificate issued by overseas employer.
- Accommodation registration (after entering China, the foreigner needs to register with the police where he/she is staying. If the individual is staying in a hotel, the hotel staff tends to do this. If you rent an apartment, you need to take a copy of your passport and the signed rental agreement to the nearest police station). The HRSSB or a department authorized by it is in charge of this matter. The whole application takes about five working days.

Normally, the valid period of the work permit is up to one year. This number may be raised if the foreigner is 1) a direct investor or legal representative of a company; 2) employed by an enterprise which has the registered capital over USD 3 million, or 3) employed by a multinational company's regional headquarters in Shanghai.

In that case, the length of the Employment Permit may be extended to the length stipulated in the employment contract, up to five years. It may not, however, exceed the validity of the employee's passport, the term on the company's business license or the registration certificate of the employer. Besides, the Employment Permit will be subject to annual review.

For foreigners switching companies during the validity of his/her alien employment permit:

- If a foreigner intends to switch employers within the region designated by the certificate-issuing office, but to continue to engage in the same profession, approval from the original certificate-issuing office must be obtained and the procedures to amend the Employment Permit must then be carried out.
- If a foreigner is to work outside the region designated by the certificate-issuing office, or intends to switch employers within the region designated by the certificate-issuing office and to engage in a different profession, procedures for the issue of a new Employment Permit must be handled again.

- Within ten (10) days of obtaining approval to change their employment location or employer unit, a foreigner must go to the public security authority to apply for amendment of their Residence Certificate. Otherwise, they might be banned from working in China.
- If the alien employment permit only needs to be amended, then the foreign employee only needs to amend their alien residence permit correspondingly. There is no requirement to change the visa.
- If a new alien employment permit is needed, then the foreigner needs to go through the whole process like the new applicants, which is extremely onerous.

Applying for Residence Permit

Employees who received their Employment Permit are required to apply for the residence certificate from the Division for Exit-Entry Administration of Local Public Security Bureau within 30 days after their entry into China. Receipt of a residence permit signifies the completion of the visa issuance process, allowing the applicant to travel into and out of China as regularly as they require. To receive the residence permit, an applicant must submit the following documentation:

- Application Form.
- Alien Employment Permit.
- Business license of the employer entity.
- Valid passport with Z-visa of the foreigner.
- Health certificate confirmed or issued by Entry-Exit Inspection and Quarantine Bureau.
- Recent passport-size photos.
- Accommodation registration.

The application takes about 5-15 working days. In addition, the application procedures are slightly different from city to city. For example, in Shanghai, the applicant is required to show up in person to a government office to take a digital picture to confirm it's the same person as the passport holder from the application.

The term of validity of the residence certificate is determined in accordance with the validity of the employment permit, which is usually for up to one year. In some cities, such as Beijing and Shanghai, certain foreign employees can apply for five-year residence permits, subject to higher qualifications.

Renewal of Employment Permit, Residence Permit and Z-Visa

Renewing an employment permit/residence permit/Z-Visa is not as difficult or time-consuming as making the initial application. The most important point is that the company is organized enough internally to know when each foreign employee's visa will expire. Overstaying a visa in China can be costly and create problems, both for the company and the employee. Note that processes elsewhere in the country may be slightly different. Generally, there are two basic steps involved:

Step 1: Renewal of the alien employment permit at the Labor Bureau

The following documents need to be arranged:

- Labor contract of the employee.
- Copy of the company's business license.
- Passport of the employee.
- Registration form for renewal.

The process for renewal takes around one week. Note that it will likely take longer during the Chinese holiday periods in February and October.

Step 2: Renewal of residence permit / Z-Visa

The following documents need to be arranged:

- Original of the company's business license.
- Passport.
- Passport-size photo.
- Alien employment permit.
- Application form.

This process for renewal should take about one week. We would recommend that visa applications and renewals be coordinated by a reliable agent, unless your organization is already structured to effectively manage the visa.

Note: Starting from July 1, 2015, employees from Taiwan/HK/Macau can enter mainland China visa-free. They only need to apply for the work permit for working and living in mainland China. They are also not required to apply for residence permits.

5.3 M-Visa

The M-visa was introduced as part of the new visa regulations released in 2013.

In order to receive an M-visa, a foreigner must supply an invitation letter from a company registered in China. This can be a Chinese business or a foreign-invested company in China. If the company is not yet incorporated, or it is unable to issue an invitation letter for other reasons, there are many agents that can provide such services.

M-visas are granted for lengths of time commonly ranging from one month to one year, depending on the situation. It could be extended under certain conditions. Generally:

- Only the company that sends the official invitation letter to the foreigner can support his/her application for extension.
- If the company didn't use the official invitation letter but a letter written by the company itself, then the M-visa extension service is not available.
- Foreigners will keep the remaining entry as stipulated in the former visa. For example, if the former visa has 1 entry remaining, then the current extension will keep that 1 entry.
- Normally, the extension of stay cannot exceed the former visa stay period. For example, if the duration of each stay of the former M-visa is 30 days, then the extension is up to another 30 days. Only if the duration of each stay is 60 days, then the foreigners can apply for 60 days' extension.
- M-visas are appropriate for foreigners who do not work full-time in China, and only need to make occasional visits, such as attending trade shows, meetings or negotiations. While in practice, foreign employees or interns sometimes stay in China on an M-visa, this is not permitted and we advise against it. The Chinese government has been sharpening up its enforcement recently, and employees that are caught may face deportation.

In January 2015, China released a new rule for foreigners who come into China to finish short-term work (less than 90 days). In that rule, it clarified what kind of situation is counted as a short-term working (Z) visa and what situation is counted as a short-term Commerce & Trade (M) visa. [More details in Section 5.5 Short-Term Work in China.](#)

Note: Starting from November 12, 2014 for US passports-holders and from March 9, 2015 for Canada passport-holders, applicants are able to obtain multi-entry M-Visas that are valid for ten years.

5.4 R-Visa

The R-visa, also known as a China Talents Visa, is issued to those who are high-level qualified talents or whose skills are urgently needed in China.

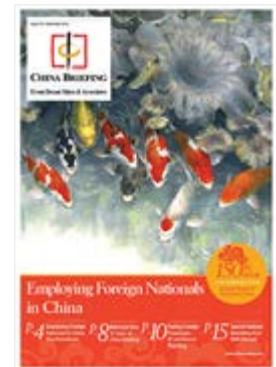
As of now, Shanghai and Beijing have relatively well-defined rules on how to determine high-level qualified talents, and how to apply for the R-Visa. Here we take Shanghai as an example.

To apply for the R-visa, the foreigners must fulfill one of the following conditions:

- High-level qualified talents invited by the Chinese government (i.e. Ministry of Organization; Ministry of Human Resources and Social Security or State Administration of Foreign Experts).
- High-level qualified talents invited by the Shanghai local government (Shanghai Ministry of Organization; Shanghai Ministry of Human Resources and Social Security or Shanghai Foreign Experts bureau).
- High-level qualified talents employed by a Shanghai high-technology company which has the valid high-tech certificate.
- To be qualified as a high-level talent, the foreigner must fulfill one of the following conditions: Be a well-known award winner or be in the high-level personnel plan list (e.g. the Nobel Prize, the Turing Prize, the Fields Prize, China's Thousand Talents Program).
- Be a well-known expert, scholar, exceptional talent or professional (e.g. Foreign members of the Chinese Academy of Science and the Chinese Academy of Engineering, leaders of foreign governments or well-known organizations).
- Be a talent and/or professional in the enterprises (e.g. senior management, technical talent or key researcher of state-owned enterprises, high-technology companies that have valid high-tech certificates, FIEs in the encouraged categories, enterprises with register capitals of over USD 3 million).
- Be regarded as a professional whose skills are urgently needed.

Foreign talents, with proper documentation issued by above ministry or company, can apply for the R-visa directly in the Shanghai airport after landing. That R-visa is renewable for up to 180 days. R-visa holders, whose labor contract is over 180 days, can apply for the talents working residence permit in Shanghai. After three years of continuously holding the talents working residence permit, the foreigner can apply for a Chinese green card.

Except for the extra documents from the government for qualification as a high-level talent, the application procedure for the R-visa is almost the same as applying for the Z-visa (detailed in Section 5.2). The whole process takes about seven working days.



Employing Foreign Nationals in China

December 2014

In this issue of China Briefing, we have set out to produce a guide to employing foreign nationals in China, from the initial step of applying for work visas, to more advanced subjects such as determining IIT liability and optimizing employee income packages for tax efficiency.

[DOWNLOAD](#)

5.5 Short-Term Work in China

On November 6, 2014, China's Ministry of Human Resources and Social Security (MHRSS) released a circular on the visa requirements for foreigners coming to China for short-term work. The circular was issued jointly with the Ministries of Public Security, Foreign Affairs and Culture, and entered into force on January 1, 2015.

The regulations only apply to foreigners coming to China for no more than 90 days. Foreigners coming to China to work for more than 90 days must follow the regular procedures.

The new rules further clarify the visa types that apply to short-term visits to China. For short-term trips, the main distinguishing factor is whether an activity is considered short-term work:

The visa procedure for short-term work is as follows:

Step-1: Applying for Employment License (or Approval Letter from the Cultural Department for commercial shows) and Short-Term Work Certificate

Foreigners who are traveling to China for short-term work, other than engaging in commercial shows, need to apply for an Employment License and Short-Term Work Certificate from the provincial or authorized-municipal Human Resources and Social Security Bureau (HRSSB). The following documents are required:

- Photocopies of the domestic partner's Registration Certificate and Organization Code.
- A contract between the Chinese and foreign enterprise, a project contract etc.
- Resume of the foreigner.
- Valid passport.
- Copies of relevant certifications (applicable to foreigners coming to China for technical or professional work).
- Additional documents required by the approving authorities.

Foreigners coming to China for commercial shows need to apply for the Approval Letter from the Cultural Department where the first show is held. The letter of approval is the equivalent of an Employment License and will be marked as 'Foreign Related For-Profit Show or Performance for Commercial Ends'. For foreign performers who shall stay in China for less than 90 days, the Cultural Department will issue the Short-Term Work Certificate. To be noted, for commercial shows held at more than one location, there is no need to apply for separate approval letters from each Cultural Department.

Step-2: Applying for Invitation Letter

The companies who invite foreigners to China for short-term work other than commercial shows should apply for an invitation letter from the local HRSSB or other authorized departments.

The show organizer should apply for the invitation letter from the provincial level foreign affairs department where the first show is held.

Step-3: Applying Z-visa

With the Invitation Letter, Employment License (or Approval Letter from the Cultural Department for commercial shows) and Short-Term Work Certificate, the foreigner can apply for a Z-visa.

For short-term work, the medical check-up and the Employment Permit are not required.

Foreigners working in China for less than 30 days are not required to apply for the Residence Permit. Instead, their Short-Term Work Certificate and Z-visa will stipulate how many days they are allowed to stay. For stays over 30 days, the foreigner needs to apply for a Residence Permit.

Reason for coming to China	Considered as short-term work	Visa type
<ul style="list-style-type: none">• Sports training at a local sports organization (athletes and coaches).• Tasks involving technology, research, management or guidance at or with a local partner.• Filming (including advertisements and documentaries).• Fashion show (including car shows and photo shoots for advertising).• Foreign-related, commercial shows and performances.• Additional categories stipulated by the Ministry of Human Resources and Social Security.	Yes	Z-visa
<ul style="list-style-type: none">• Maintaining, installing, testing, disassembling or providing guidance and training for the use of machinery and equipment.• Guiding, supervising and inspecting a project that has won bidding in China.• Dispatching personnel to work at branches, subsidiaries or Representative Offices (ROs).• Participating in sports events (athletes, coaches, doctors, assistants and other related personnel).	No	M-visa
<ul style="list-style-type: none">• Unpaid work or volunteer work in China that is paid for by a foreign institution.• Performances approved by the Culture Department but not marked as 'foreign related show or performance for commercial ends'.	No	F-visa

5.5 Sending Your Chinese Staff Abroad

Every country has its own regulations about what documentation needs to be submitted for various visa types.

Chambers of Commerce in China, including the American, German and Australian Chambers, can be extremely helpful in coordinating visa applications for Chinese staff to work abroad and advising employers what supporting documentation is necessary.

This documentation may include:

- Letters confirming employment at the entity in China.
- Paper pay-slips (preferably on security paper) issued to the employee for past months which will show length of employment and amount of salary received.
- Letters explaining details of the work carried out at the China entity, reasons why the company would like to send the employee abroad and future prospects for the employee at the China entity upon returning from foreign countries.

This documentation should be stamped with the company chop and include the name of a person at the company who can be contacted by a consular official.



FOR MORE INFORMATION

To arrange a free consultation on how to obtain a work visa in China, please contact us at hr.admin@dezshira.com

EXPLORE DETAILS



Appendix: Social Welfare Contribution Tables

- Beijing
- Changchun
- Dalian
- Guangzhou
- Hangzhou
- Qingdao
- Shanghai
- Shenzhen
- Suzhou
- Tianjin

Beijing

Social Welfare Contribution Details



Social Insurance

Data valid to June 2017

	Contribution Base (RMB)	Employer	Chinese Employee	
			City Hukou	Rural Hukou
Pension	2,834-21,258	19% (Started from May 1, 2016)	8%	8%
Unemployment		0.8% (Started from May 1, 2016)	0.2%	N/A
Medical	4,252-21,258	9% +1%	2% + RMB 3	2% + RMB 3
Injury		0.2%-1.9%	N/A	N/A
Maternity		0.8%	N/A	N/A

* Social insurance payments are all tax exempt

Housing Fund (Chinese Only)

Data valid to June 2017

Monthly Contribution Amount RMB 412.8 - 5,102		
	Employer	Employee
Rate	5-12%	12%

* Chinese only. Employer and employee pay same rate for housing fund.

** Minimum salary = RMB 1,720 (adjusted April 2015); average salary = RMB 7,086 (adjusted June 2016)

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Social Welfare Contribution Details

Social Insurance

Data valid since August 1, 2015

Contribution Base RMB 2,800.70 -14,003.49

	Employer	Employee	
		City Hukou	Rural Hukou
Pension	20%	8%	8%
Medical	7%	2% (monthly) + RMB 100 (annual)	2% (monthly) + RMB 100 (annual)
Unemployment	1.5%	0.5%	0.5%
Injury	0.5% -2%	N/A	N/A
Maternity	0.7%	N/A	N/A

* Social insurance payments are tax exempt.

Housing Fund (Chinese Only)

Data valid since August 1, 2015

Contribution Base RMB 1,320-21,485

	Employer	Employee
Rate	7% -12%	7% -12%

* Employer and employee can pay different rates within the range.

** Minimum salary = RMB 1,480 (Adjusted December, 2015); average monthly salary = RMB 4,667.83 (2014)

Dalian

Social Welfare Contribution Details



Social Insurance

Data valid to June 2016

Contribution Base RMB 3,181-15,903		
	Chinese	
	Employer	Employee
Pension	18%	8%
Medical	8%	2% (monthly) + RMB 24 (annual)
Unemployment	1%	1%
Injury	0.25%-1%	N/A
Maternity	0.2%	N/A

*Social insurance payments are tax exempt. Foreign employees pay pension and medical insurance only.

Housing Fund (Chinese Only)

Data valid to June 2016

Contribution Base RMB 1,530 -26,505			
	Employer	Employee	Employee work commencement
Rate	10%-15%	10%-15%	Before Jan 1, 1999
	25%	15%	After Jan 1, 1999

*Tax exempt housing fund amounts to RMB 15,903/ employee at most.

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Social Welfare Contribution Details



Social Insurance

Data valid to June 2016

	Contribution Base (RMB)	Employer		Employee	
		GZ-city Hukou	Non GZ-city Hukou	Urban Hukou	Rural Hukou
Pension	2,408-14,958		14%	8%	8%
Medical	3,712-18,561		8%	2%	N/A
Unemployment			0.8%	0.2%	N/A
Injury	1,895-18,561	0.2%-1.4% (eight levels in total, started from July 1, 2016)		N/A	N/A
Maternity	3,712-18,561		0.85%	N/A	N/A
Serious illness	6,187		0.26%	N/A	N/A

*Social insurance payments are tax exempt.

Housing Fund (Chinese Only)

Data valid to June 2017

Contribution Base RMB 1,895-33,820

	Employer	Employee
Rate	5%-12%	5%-12%

*Employer and employee can pay different rates for housing fund, however employee rate should not be lower than employer rate.

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Hangzhou

Social Welfare Contribution Details



Social Insurance

Data valid to June 2016

Contribution Base (RMB 2418.60 -12,093)			
	Employer	Employee	
		Urban Hukou	Rural Hukou
Pension	14%	8%	8%
Medical	6%-15%	2% + RMB 4	2% + RMB 4
Unemployment	1.5%	0.5%	N/A
Injury	Three levels 0.5% / 0.8% / 1.2%	N/A	N/A
Maternity	1.2%	N/A	N/A

* Social insurance payments are tax exempt.

Housing Fund (Chinese Only)

Data valid to June 2016

Contribution Base (RMB 1,860 -17,302)		
	Employer	Employee
Rate	12%	12%

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Social Welfare Contribution Details



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Social Insurance

Data valid to June 2016

Contribution Base (RMB 2,423-12,114)			
	Employer	Employee	
		Urban Hukou	Rural Hukou
Pension	18%	8%	8%
Medical	9%	2%	2%
Unemployment	1%	0.5%	N/A
Injury	0.7%, 1.2%, 1.9%	N/A	N/A
Maternity	1%	N/A	N/A

* Social insurance payments are tax exempt.

Housing Fund (Chinese Only)

Data valid to June 2017

Monthly Contribution Amount (RMB 79-RMB 2, 686)		
	Employer	Employee
Rate	5%-12%	5%-12%

* Employer and employee pay the same rate for housing fund.

Shanghai

Social Welfare Contribution Details



Social Insurance

Data valid to March 2017

Contribution Base (RMB 3,563-17,817)

	Employer	Employee
Pension	20% (Start from Jan.1,2016)	8%
Medical	10% (Start from Jan.2016)	2%
Unemployment	1% (Start from Jan.1, 2016)	0.5%
Injury	0.2%-1.9% (8 levels)	N/A
Maternity	1.0%	N/A

* Foreign employees: Non-compulsory. Social insurance payments are tax exempt.

Housing Fund (Chinese Only)

Data valid to June 2017

	Type	Employer	Employee	Monthly Contribution Amount (RMB)
Rate	Compulsory	7%	7%	82-4,276
	Optional	1%-5%	1%-5%	1,782(Maximum)

* Foreign employees: Non-compulsory.

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Social Welfare Contribution Details



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Social Insurance Data valid to June 2016

	Contribution Base (RMB)	Employer		Employee
		Shenzhen Hukou	Non-Shenzhen Hukou / Foreigner	All
Pension	2,030 -18,162	14%	13%	8%
Injury		0.14%-1.14% (8 levels in total, started from July 1)		N/A
Unemployment	2,030	2%		1%
Maternity	3,632.4 -18,162	0.5%		N/A
Medical		6.2%		2%

* Social insurance payments are tax exempt. Foreign employees: Social insurance payments are compulsory for foreign employees (treated the same as Chinese).

Housing Fund (Chinese Only) Data valid to June 2017

Contribution Base (RMB 2,030-33,765)		
	Employer	Employee
Rate	5-12% (Started from May 1, 2016)	

* Employer and employee pay the same rate for housing fund.

Suzhou

Social Welfare Contribution Details



Social Insurance

Data valid to March 2016

Contribution Base (RMB 2,697-16,738)		
	Chinese	
	Employer	Employee
Pension	20%	8%
Medical	9%	2% + RMB 5
Unemployment	1.5%	0.5%
Injury	1%	N/A
Maternity	1%	N/A

* Social insurance payments are tax exempted. Foreign employees: Social insurance payments are compulsory.

Housing Fund (Chinese Only)

Data valid to June 2015

Contribution Base (RMB 2,697-17,700)		
	Employer	Employee
Rate	8%-12%	8%-12%

* Employer and employee pay the same rate for housing fund.

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Social Welfare Contribution Details



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Social Insurance

Data valid to December 2016

Contribution Base		RMB 2,966-14,832	RMB 2,472-14,832
	Employer	Employee	
		City Hukou / Foreigner	Rural Hukou
Pension	20%	8%	8%
Medical	11%	2% (Monthly) + RMB 260 (annual)	2% (Monthly) + RMB 260 (annual)
Unemployment	1%	1%	1%
Injury	0.5% -2%	N/A	N/A
Maternity	0.8%	N/A	N/A

* Social insurance payments are tax exempt. Social insurance payments compulsory for foreign employees at the time of writing.

Housing Fund (Chinese Only)

Data valid to June 2017

Contribution Base (RMB 1,950-21,048)

	Employer	Employee
Rate	5% -12%, 11% is the general rate	

* Employer and employee pay same rate for housing fund.

** Minimum salary = RMB 1,950 (Adjusted in 2016); average monthly salary = RMB 6,350 (Adjusted in 2016)

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