

Human Resources and Payroll in **China 2023**

10th edition

NEW SECTIONS

Applying HR Technologies
for Seamless Operations

China's Data Laws and
Compliance Measures

Produced in association with



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

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 Sandy Zhang, Katrina Huang, Hazel Wang, Fuki Fu, Donfil Huang, and Jil Zhu as contributors. Creative design of the guide was provided by Aparajita Zadoo.

© 2023 Asia Briefing Ltd.

The contents of this guide are for general information only. For advice on your specific business, please contact a qualified professional advisor. No reproduction, copying or translation of materials is permitted without prior permission of the publisher.

Preface

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 for local managers 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 the 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. Companies should still seek professional advice to deal with any specific situation they face relating to HR.

This guide was amended in June 2023 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 offices across China, Hong Kong, India, Singapore, Vietnam, Indonesia, United States, Germany, Italy, India, and Russia, in addition to our trade research facilities along the Belt & Road Initiative. We also have partner firms assisting foreign investors in The Philippines, Malaysia, Thailand, and Bangladesh. Dezan Shira & Associates' experienced business professionals are committed to improving the understanding and transparency of investing in emerging Asia.



ADAM LIVERMORE

Partner

Dezan Shira & Associates



CONTACT

Dezan Shira & Associates

china@dezshira.com

www.dezshira.com



Human Resources & Payroll in China at a Glance



DAVID NIU

Partner
Beijing Office

- Hiring options: An enterprise can hire staff through three basic options - direct hiring, labor dispatch, and outsourcing.
- 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 agencies must hold a government issued special license that allow them to hire employees on behalf of their clients (for example, Dezan Shira & Associates has dispatch licenses).
- Dispatch limits: Labor dispatch can only apply to three types of positions - temporary position, auxiliary position, and replaceable position. The number of total dispatched employees used by an employer should not exceed 10 percent of its total number of employees.
- Mandatory written contracts: All directly hired employees must be given a written contract within one month of hiring; if not, the employee is entitled to double salary. Electronic labor contracts are regarded as written contract as well by satisfying certain conditions.
- Probation period: The range of legitimate grounds for dismissing an employee is considerably wider during their probation period. The employer may also pay only 80 percent of the employee's contractual salary during this time.
- Working hour system: In China, there are three main work hour systems - the standard work hour system, the comprehensive work hour system, and the non-fixed (flexible) work hour system. The latter two systems are considered 'special work hour systems', which require special approval and compliance requirements.
- Payment and tax: An employee's salary package could include base salary, allowances, bonuses, non-monetary pension plans, and employer's portion of social security contribution. The base salary should be stipulated in the labor contract. Employers are required to file individual income tax (IIT) for their employees on a monthly basis. The IIT system was reformed substantially in 2018.
- Mandatory social security: China's social security system is made up of five different kinds of insurance-pension, medical, maternity, work-related injury, and unemployment, plus one housing fund. Although both employer and employee are obligated to make contributions, it is generally the employer's responsibility to correctly calculate and withhold the payments for both parties. Employer's obligation to make adequate and timely contributions cannot be alleviated or exempted by reaching mutual agreement with employees. Foreign employees working in China have been required to participate in China's social insurance scheme as well starting from 2011, but this obligation can be exempted if they come from countries that have social insurance exemption agreements with China.

“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.”

- Leave during the first year of employment: Employees are not entitled to any mandatory minimum number of leave days during their first year of employment (ever), except those public holidays such as Chinese New Year around February, and the National Day celebrations in early October.
- 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.
- No at-will termination: Terminating employees in China is both difficult and expensive. Employees may resign with 30 days' notice, but for employers, there are limited grounds for terminating an employee before their contract has come to an end.
- Non-fixed term contract after two fixed term contracts: After an employee finishes their second contract with your company, he or she generally shall be offered a lifetime contract as the third unless he or she wants another fixed term contract instead. Such non-fixed term contract can only be terminated if there are grounds for dismissal. Notably, some regions, such as Shanghai, offer more flexibility on this rule.
- Severance payments mandated by law: In practice, severance payments can be even higher than the law prescribes, and can comprise a significant part of overall HR costs.
- Hiring foreign workers: China implements a tiered talents classification system for hiring foreign workers. Different classes of talents are subject to different administration. Foreigners who want to work at companies in China should arrive on a valid work visa (Z-visa or R-visa). Employers need to obtain and renew Foreigner's Work Permit and Residence Permit for their foreign staffs in a timely manner.
- Tech-powered HR and payroll solutions: Companies are increasingly moving away from separated, localized payroll software or Excel, and towards integrated and tech-powered human resources management platforms that streamline multiple HR processes, often including onboarding, attendance, leave, claims, and possibly even areas like talent management and training.
- Privacy and personal information protection: With the release of the *Civil Code*, the *Personal Information Protection Law*, as well as the other relevant data security laws and regulations, employers in China are faced with a series of new compliance requirements in human resources management. Companies need to audit their current policies and develop corresponding mechanisms to stay compliant.

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 30 years 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.

Our Services

- > Accounting
- > Audit and Financial Review
- > Business Advisory
- > Business Intelligence
- > Corporate Establishment and Governance
- > Due Diligence
- > HR and Payroll
- > Intellectual Property
- > Mergers and Acquisitions
- > Outbound Direct Investment
- > Risk Management
- > Tax
- > Technology



Our Locations

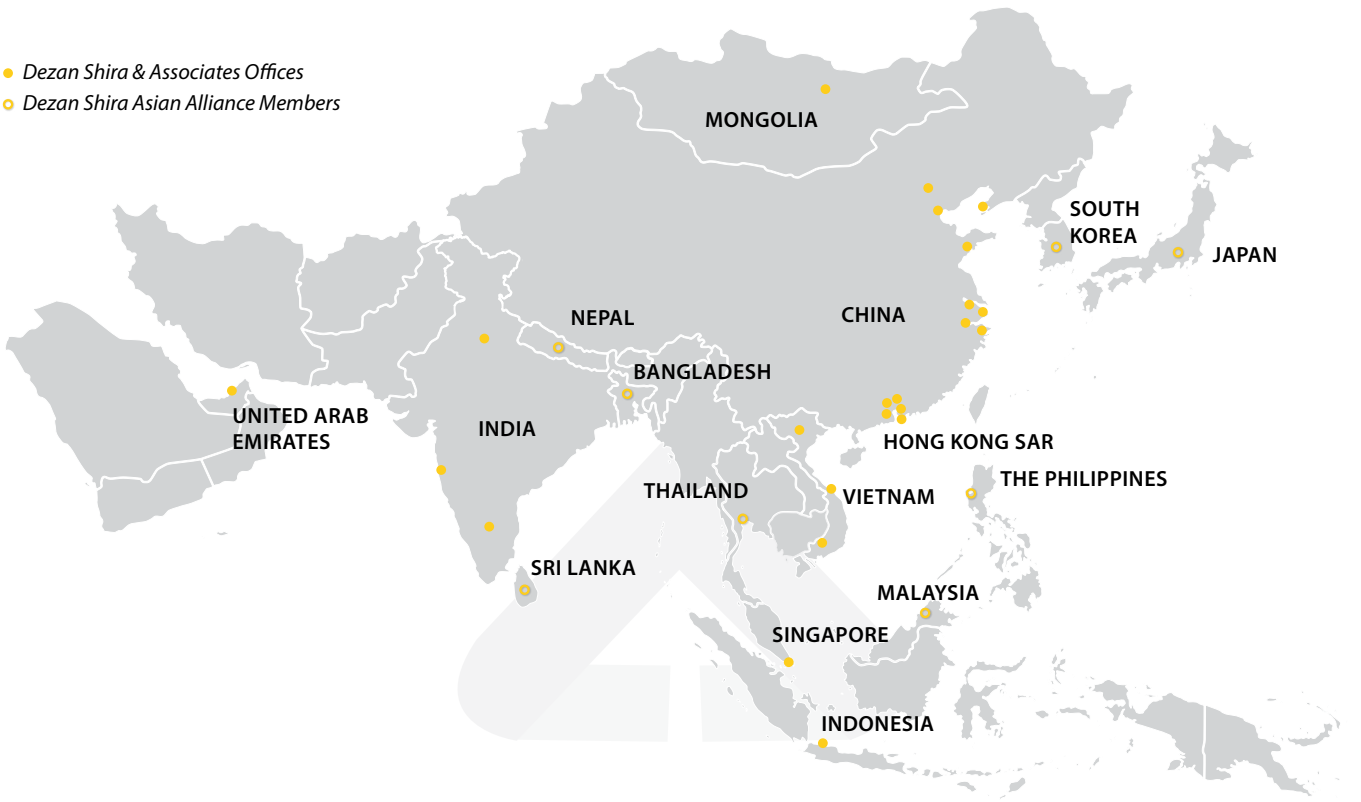


Table of Contents

Preface	03
Human Resources & Payroll in China at a Glance	04
Part 1 Hiring Staff	12
Direct hiring and labor contracts	14
Labor contract in Chinese recommended	15
The term of the labor contract	15
Mandatory clauses in labor contracts	18
Recommended clauses in labor contracts	18
Dispatch	22
Dispatch agency	23
Applicable scope of labor dispatch	23
10 percent limit	23
Contract signing	24
‘Equal pay for equal work’ principle	25
Cross-region labor dispatch	25
Termination of labor contract	26
Outsourcing	27
Part 2 Staff Administration and Payroll	29
Structuring a salary package	30
Base salary and bonus	30
Fringe benefits	30
Mandatory benefits (social security)	31
Defining net salary	32
Work hour systems and overtime payments	33
The standard work hour system	33
The comprehensive work hour system	34
The non-fixed (flexible) work hour system	35
How to get approval for the special work hour system	36
Mandatory benefits (social security)	37

Social security types	37
Contribution calculations	42
Foreigner and migrant worker involvement	42
Employer obligations	43
Local variances	44
Statutory vacations and payment calculation	45
Statutory annual leave	45
Official public holidays	47
Sick leave	49
Child-related leaves and related benefits	51
Marriage leave	59
Additional payroll costs	61
Winter heating fee	61
Summer heat allowance	61
Disabled worker assistance fund	62
Calculating and withholding individual income tax	63
IIT reform	63
IIT taxpayer and their liability	65
IIT taxable income and tax rates	69
Deductions	72
IIT calculation	78
IIT on lump-sum bonuses	82
IIT declaration	84
IIT filing	85
IIT incentives	85
Distributing salaries	89
Outsourcing payroll	90
Advantages of outsourcing payroll	90
Payroll processing procedure	91
How to identify a reliable payroll processing agent	93

Leveraging technology to improve HR and payroll management	94
Why is a 'tech-powered' HR and payroll solution needed?	94
What is a tech-powered HCM portal?	95
What processes can be integrated into the HCM portal in China today?	95
How does the HCM portal work?	96
How to get started?	99
Potential obstacles in adopting technology solutions	100
Use a third-party tech-powered service provider	100
Tips for successful implementation	101
Part 3 Terminating Employees	102
Termination during the probation period	104
Termination during a fixed-term or non-fixed term contract	105
Termination through mutual agreement	105
Immediate termination for inappropriate behavior of the employee	105
Termination with 30 days' notice and compensation payment	106
Automatic termination upon bankruptcy/ license revoking/permanent dissolution of the company	108
Mass layoff	108
Termination at the end of a fixed-term contract	111
Employees not allowed to be terminated	112
Termination pay and its tax treatment	113
Calculation of severance payment	113
IIT implication on severance payment	115
Part 4 Employing Foreign Workers	117
Overview of China's visa system	118
China's visa system	118
Z-visa	120
M-visa	120
F-visa	121
R-visa	121

China's new unified work permit and tiered talents classification system	122
Unified work permit system	122
Tiered talents classification system	123
Administrative procedures for hiring foreign employees (>90 days)	125
Applying for Notification Letter of Foreigner's Work Permit in China	126
Applying for Z-visa or R-visa	129
Applying for Foreigner's Work Permit	130
Applying for Residence Permit	131
Renewal of Foreigner's Work Permit	132
Deregistration of Foreigner's Work Permit in China	133
Administrative procedures for hiring foreign employees (≤90 days)	134
Administrative procedures for short-term work	134
Administrative procedures for Foreigner's Work Permit in China (≤90 days)	136

Part 5 Privacy and Data Protection	138
Right to privacy under China's Civil Code	140
Definition of privacy under the Civil Code	140
Typical infringement acts	140
Where do the right to privacy disputes usually arise in employment?	141
How should employers balance employment management and employee's privacy rights?	142
New compliance requirements under the Personal Information Protection Law	145
Employer's role under the PIPL	145
Key considerations under the PIPL	146
Potential disputes between employer and employee	153
Practical tips on getting prepared for PIPL compliance	153



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia



Are you making changes to your operations in Asia?

Get started by speaking to our professionals today

Accounting | Audit and Financial Review | Business Advisory | Business Intelligence
Corporate Establishment and Governance | Due Diligence | HR and Payroll | Mergers
and Acquisitions | Outbound Direct Investment | Risk Management | Tax | Technology

Our Offices in China

Hong Kong SAR

hongkong@dezshira.com

Beijing

beijing@dezshira.com

Dalian

dalian@dezshira.com

Dongguan

dongguan@dezshira.com

Guangzhou

guangzhou@dezshira.com

Hangzhou

hangzhou@dezshira.com

Ningbo

ningbo@dezshira.com

Qingdao

qingdao@dezshira.com

Shanghai

shanghai@dezshira.com

Shenzhen

shenzhen@dezshira.com

Suzhou

suzhou@dezshira.com

Tianjin

tianjin@dezshira.com

Zhongshan

zhongshan@dezshira.com



Scan this QR code

Visit our mobile page and
get the latest updates investors
news and resources with us

*Asiapedia*TM



Asiapedia is a collection of resources based on what we have learned about doing business in Asia.

China · Hong Kong SAR · Australia · Bangladesh · Dubai UAE · Germany · India · Indonesia · Italy · Japan · Malaysia
Mongolia · Nepal · Singapore · South Korea · Sri Lanka · Thailand · Turkiye · The Philippines · United States · Vietnam

www.dezshira.com