

New Entry and Exit Administration Law in China

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Key points

- » On June 30th, 2012, the National People's Congress promulgated the new Entry and Exit Administration Law (hereafter as "EEAL"), which shall come into force from July 1st, 2013.
- » A new visa category named "talent introduction" is implemented.
- » The new EEAL stipulates a stricter administration system for foreigners visiting or working in China, and a more severe punishment for foreigners working in China illegally.
- » Compliance is becoming more important for China investors.

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1. Positive development

✓ Introduction of new “talent-visa”

The new EEAL introduces a new type of visa, the so called “talent introduction”. This new type of visa constitutes a sub-category of the “ordinary visa” type and is intended to attract foreign talented professionals to work in China. It is anticipated that the relevant implementation regulations stipulating the detailed requirements will be released in the near future.

✓ Permanent residence status

The new EEAL formulates that a foreigner who has made outstanding contributions to China’s economic and social development or who fulfills further eligibility requirements could apply for the permanent residence status in China. We expect that the relevant detailed implementation rules shall be prescribed by the Ministry of Public Security and Ministry of Foreign Affairs or other related government sectors.

✓ Extension of stay

According to the new EEAL, foreigners who qualify as professional talents, investors or those who need to change the visa type from temporary stay to a residence permit for humanitarian reasons, could apply for such conversion with the in charge exit and entry administration division of the public security administration. This provision constitutes a legal basis for qualified foreigners to convert their visas without leaving the country.

2. Stricter administration system

✓ Clear definition of illegal employment

An enumerated definition for illegal employment is stipulated in the new EEAL. According to Article 43 of the new EEAL, a foreigner shall be deemed to be working in China illegally if any of the following circumstances is met:

- He works in China without obtaining a work permit or a work-related residence permit as required;
- He has carried out jobs beyond the permitted scope in his work permit in China; or
- A foreign student works in China beyond the types of work or duration in violation of the administrative provisions on work-study.

✓ Clearer administration system for foreigners’ temporary stay and residence

- The new EEAL distinguishes the definitions of foreigners’ temporary stay and residence. According to the relevant provision, foreigners holding a visa with a maximum stay of not exceeding 180 days, generally do not have to apply for other residence permits after their arrival in China. An extended period shall not exceed the authorized period of stay of the original visa.
- Work related residence permits for foreigners are valid between 90 days and 5 years; the validity of non-work related residence permits is between 180 days and 5 years.

✓ **Precautionary measures and stricter punishment**

- For the purpose of preventing foreigners from working in China illegally, the new EEAL requests companies employing foreigners and institutions enrolling foreign students to report details on the foreigners to the public security bureau. Citizens, corporations and other organizations shall immediately report to the local public security organs as soon as they discover foreigners' illegal employment in China.
- Stricter punishment measures

Foreigners working illegally in China shall be fined with an amount between RMB 5,000 and RMB 20,000; in serious cases, foreigners may be detained between 5 to 15 days.

Corporations employing illegal foreigners shall be fined RMB 10,000 for each employed foreigner, with a maximum fine of RMB 100,000. In addition, the relevant authorities will confiscate all financial gains derived from the illegal employment.

Foreigners who are proved to enter, stay or work in China illegally may be repatriated to her/his home country by the in charge authority. The repatriated foreigner may not be allowed to enter China within 1 to 5 years from the day when he is repatriated.

3. Conclusion

Considering the increased Individual Income Tax ("IIT") rates effective from September 2011 and the Social Insurance contribution requirement for foreigners, the new Law concerning the administration of entry and exit of foreigners will further increase the personnel cost for foreign nationals working in China. Compliance with regulations in China is becoming more important than ever, considering the strengthening of penalties, which may not only be limited to financial penalties but also imprisonment and not being allowed to enter China again.

With the stricter administration and increased penalties for illegal employment of foreigners in China, we recommend employers of foreign employees to review the foreigners' visa status in order to avoid any punishment according to the new law.

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