

Break Through the Chinese Wall

**- Legal and practical guidelines
for establishing a company in China**

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About the book

“Break Through the Chinese Wall” is an accessible handbook which provides an introduction to the fundamental rules, regulations and common practices related to establishing and running a business in China. The handbook provides answers to the most frequently asked questions from our clients.

The handbook has been jointly written by Capital Associates and NCO China. Capital Associates is a Chinese law firm specialised in providing commercial legal services and assistance to foreign companies investing in and trading with China. NCO China is a consulting firm that offers corporate services with regard to the establishment of an enterprise in China, Hong Kong etc., and provides accounting, tax and HR services to foreign investors in China. Both Capital Associates and NCO China serve a variety of clients; from large multinational companies to small and medium sized enterprises.

China’s rapid development means that regulations and practices are constantly changing. The handbook is meant to be an introduction to the current laws and practices in China. Updates and further information regarding the subjects covered by the handbook can be obtained from our offices or websites. Please refer to the contact information in the back of the book.

Birgitta Bundgaard, Lawyer

Jette Renneberg, Economist

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Visa rules in China

Most foreign invested enterprises in China prefer to fill key positions with experienced personnel from overseas. Especially, management level and other important positions within the organization may be held by expatriates for a period of time when the corporate entity is initially set up.

The number of expatriate staff needed to run a business in China, and the duration of their stay, vary considerably from one FIE to another. A common trend is that the need for expatriates decrease after the start up period once appropriate local staff have been found and trained, and the business is up and running.

Generally, it is not a problem for foreigners to obtain an employment visa in China so long as they can demonstrate that a Chinese candidate cannot easily fill the position.

The Chinese government believes that FIEs can provide further employment opportunities for the local work force. Therefore, if a FIE can present the Chinese authorities with a reasonable explanation as to why they are hiring a foreigner rather than a local Chinese, no further questions in that regard should be expected.

Though most foreigners can expect to receive the employment visa they applied for, they should not expect the application procedure to be simple. The procedure tends to be very bureaucratic with the involvement of several Chinese authorities for the presentation and examination of numerous documents, some of which need to be prepared in both Chinese and English.

The inviting company does most of the preparatory paper work from China which can be a burden for those preparing the documents. For that reason, many FIEs choose to have the necessary paper work

prepared by a Chinese lawyer or a company specialised in preparing such documents.

In this section, the basic rules and procedures for obtaining visas and employment and residence permits for expatriates and their families will be described. It is important to be aware that visa rules and procedures are often changed. Updates and current visa information can be obtained from the Chinese embassy or consulate in your country.

Standard procedures

When a foreign employee applies for an employment and residence permit, there are four major steps:

Step 1: Employment Licence

First, the FIE must obtain an Employment Licence from the local labour bureau which gives the FIE a legal right to employ foreign workforce on an individual basis.

The task of the labour bureau is to examine whether the vacant position has special needs which cannot be filled by local candidates. The bureau also verifies that the foreign candidate meets the following general requirements for obtaining an employment visa:

- Be at least 18 years old and in good health
- Possess the necessary professional skills and work experience required for the job
- Have no criminal record
- Have a valid passport or other international travel document in lieu of the passport
- The employment must be with a clearly defined employer

The labour bureau also evaluates the application in respect of the number of foreign employees already employed in that area.

The type of documents to submit when applying for an Employment License may vary from one local labour bureau to another. In general, the following documents should be prepared:

- Copy of the candidate's passport.
- Application letter from the FIE explaining why the foreign candidate has been selected and hired.
- Completed application form sealed with the FIE's company chop and attached with a recent two-inch photo of the candidate.
- The FIE's Business License.
- The company charter of the FIE.
- If the FIE is a Joint Venture, relevant Joint Venture and Co-operation Contracts.
- Employment Letter of Intent of the FIE.
- CV of the candidate in both Chinese and English stating his/hers education credentials, e.g. certificates and diplomas. The candidate should have at least a bachelor's degree and two years of work experience.
- Medical Check-up Report.

On the basis of the information and documents provided, the local labour bureau will approve or disapprove the application for an Employment License. The approval process usually takes 10-15 working days to complete.

Step 2: Employment Visa

Once the FIE has obtained the Employment License for employing a foreigner in China, the foreign candidate can apply for an Employment Visa. The application can be submitted to the appropriate Chinese embassy or consulate in the candidate's home country or to the competent authorities in China.

Chinese visas are categorized into eight types identified by a different letter. An Employment Visa carries the letter “Z”.

To apply for a Z-visa, the following documents are required:

- Completed application form with one recent two-inch photo of the candidate.
- Employment License from the local labour bureau in China.
- Invitation letter from the FIE.
- Candidate’s valid passport.
- Medical Check-up Report.

Once the Z-visa is obtained, the foreigner can legally work in China.

Step 3: Employment Permit

Within 15 days after the foreign candidate’s arrival in China, the FIE should go to the office of the local labour bureau (the same office that issued the Employment License) to apply for an Employment Permit. The Employment Permit is a formal certificate stating the names of the FIE and the expatriate, the term of employment, and type of work.

When applying for an Employment Permit, the following documents should as a minimum be prepared and presented:

- Candidate’s valid passport
- Employment License from the local labour bureau in China
- Employment Contract

Which additional documents to submit when applying for an Employment Permit, varies from one local labour bureau to another. Besides the above mentioned documents, Beijing Labour Bureau will ask the FIE to provide a Foreigner Employment Registration form, one recent two-inch photo of the candidate, Residence Registration Certificate, Medical Check-up Report, etc.

The approval process for an Employment Permit usually takes 5 working days to complete.

The Employment Permit must be renewed annually by the local labour bureau.

Step 4: Residence Permit

After receiving the Employment Permit, but within 30 days after arrival in China, the foreign candidate must apply to the Entry-Exit Administration of the local public security bureau for a Residence Permit.

In general, the following documents will be required when applying for a Residence Permit:

- The candidate's valid passport and Z-visa
- Completed application form with one recent two-inch photo of the candidate
- Residence Registration Certificate from the local police station
- Business License of the FIE
- Medical Check-up Report
- Employment Permit

The Residence Permit must be renewed every year by the Entry-Exit Administration office.

In principle, the expatriate has an obligation to carry the Residence Permit with him or her at all times, and to show it to the police upon request.

Special procedures for foreign Representative Offices

Representatives of ROs in China do not need to carry out the process of obtaining an Employment Licence before applying for an Employment Visa. They can apply for a Z-visa directly at the nearest Chinese embassy or consulate by presenting the following documents:

- Valid passport
- Completed application form with one recent two-inch photo
- Invitation letter from the RO
- Registration Certificate of the RO

The individual Chinese embassy or consulate may require further documentation.

When arriving in China, the representative must carry out the standard procedures of applying for an Employment Permit and a Residence Permit. The document requirements, however, are to a certain extent different.

Document requirements for the Employment Permit:

- Valid passport
- Completed application form with two recent two-inch photos
- Registration Certificate of the RO
- CV of the Representative
- Medical Check-up Report. The medical check is provided by the local Entry-Exit Inspection and Quarantine Bureau.

Document requirements for the Residence Permit:

- Valid passport and Z-visa
- Completed application form with two recent two-inch photos
- Residence Registration Certificate
- Employment Permit

- Registration Certificates and Operation Certificates of the RO
- Medical Check-up Report

Accompanying family members

It is common that expatriate staff bring along their spouse and children when taking up employment in China. In general, expatriates will face no restrictions in doing so as long as the expatriate carries a valid Employment Visa in China.

Usually, the filing of visa applications for accompanying family members will take place in conjunction with the application process for the employment visa of the expatriate staff, but it can also be carried out separately at a later time. By presenting the required documents together, spouses and children can obtain Z-visas similar to the ones given to the expatriate.

It is important to note, however, that the Z-visa does not give the accompanying family members the right to work in China. In case they want to work for a FIE or a Chinese employer, the procedures for obtaining an Employment License and Employment Permit should be observed. This can be done either as a part of the visa application process before leaving for China, or after arriving in China.

Within 30 days after arriving in China, spouses and children should carry out the procedures of applying for a Residence Permit as well.

Frequently Asked Questions

1. *I represent an overseas company that has decided to set up a FIE in China. In the process of setting up the enterprise, recruiting staff, and starting up production, I will need to make several trips to China. Do I need to apply for an Employment Visa?*

No, unless you hold a position in the FIE, you do not need to go through the complicated procedures for applying for an Employment Visa (Z-visa). However, you will need to apply for an “F” (Business) or alternatively an “L” (Tourist) visa. Both of them can be used for business trips and usually last for a period of up to six months. Only F-visas can have multiple entries (do not forget to ask for it) and may be valid up to 12 months. With an “F” or “L” visa you do not need to apply for neither an Employment Permit nor a Residence Certificate when arriving in China.

2. *Besides my family, I plan to bring our overseas maid to work for us in China. Will that be a problem?*

Yes. Due to the fact that many Chinese maids are short of work, overseas maids will find it difficult to obtain an Employment Visa to China. Even if the maid has served you and your family for many years, the chance of approval is very low.

3. *During my term of employment in China, family members and friends plan to come to China and stay with me for shorter periods of time. What type of visas do they need?*

On condition that they only intend to stay in China for periods of no more than six months, they should apply for an ordinary “L” visa (tourism and visiting relatives). Family members may need

to present Marriage Certificates and Kinship Certificates as well as an invitation letter and a return air ticket.

Since the rules regarding issuance of L-visas are often changed, the relevant Chinese embassy or consulate should always be contacted before applying for visa, in order to make sure that the correct documents are submitted.

4. *Is it possible to alter a visa from inside China?*

It depends on the situation. Extensions of visas are usually possible, whereas changes from one type of visa to another can be more problematic. Some changes can only be made from a Chinese Embassy or Consulate outside China, giving you no other option but to leave China and re-enter with a new visa.

For more details on alterations, including document requirements, please contact your local public security bureau. For guidance, see the website of Beijing Municipal Public Security Bureau www.bjgaj.gov.cn.

In general, the public security bureaus tend to be little helpful and very bureaucratic. Many foreigners have reported great despair and irritation over the strict application of formal rules and requirements in their struggle to change their visa type or simply obtain an extra entry into China. The best advice is to apply for any changes well in advance and, if possible, to bring along a Chinese speaking person.

5. *Do I need to apply for a new Employment Visa, if I change my job in China from one FIE to another?*

No, you do not need a new visa. However, after your new employer has applied to the local labour bureau for permission to recruit a foreigner (Employment Licence), you need to apply for a new Employment Permit.

Useful links

Help and advice when establishing a FIE in China

- www.capitallaw.cc
Capital Associates' website.
- www.ncochina.com
NCO China's website.

Government and organizations

- <http://english.gov.cn/index.htm>
The official website of the Chinese central government.
- www.ebeijing.gov.cn
Official website of the Beijing Municipal Government.
- www.shanghai.gov.cn
Official website of the Shanghai Municipal People's Government.
- www.china.org.cn
Government portal site to China that offers broad access to news about China.
- www.fdi.gov.cn
Website of the Chinese Ministry of Commerce directed to foreign investors. The site comprises government news and information about investment directions, economy, statistics and law.
- <http://english.mofcom.gov.cn/>
Official website of the Chinese Ministry of Commerce.

- www.chinainvest.com.cn
China International Electronic Commerce Centre's website. Contains investment news and information about investment projects in China.
- www.tdctrade.com
Hong Kong Trade Development Council's website. Provides information about CEPA.
- www.tid.gov.hk/english/cepa/
Website of Hong Kong Trade and Industry Department. Provides full text documents on all CEPA agreements and annexes.
- www.adb.org
Website of the Asian Development Bank.

Other sources of information about China

- www.transparency.org
Website of Transparency International, a coalition against corruption.
- www.hoover.org/publications/clm
Website of the Hoover Institution of Stanford University. Provides information about China's leadership politics and its foreign and domestic policies.
- www.chinaeconomicreview.com
China Economic Review is a monthly magazine published in Hong Kong covering business, finance and economics in China.
- www.worldbank.org/transitionnewsletter
World Bank newsletters on developing economies.

- www.cia.gov/library/publications/the-world-factbook/
U.S. CIA World fact book.
- www.expatsinchina.com
A guide for foreigners living in China.

Logistics

- www.maps-of-china.com
Maps of Chinese cities, provinces and regions in the principal areas of China.
- www.primecargo.com
Website of the international transportation and freight forwarding company Primecargo.
- www.dsv.com
A transportation company that offers end-to-end transport and logistics solutions.

News in English

- www.chinadaily.cn
Website of China Daily, the Chinese government's official mouthpiece.
- www.scmp.com
Website of South China Morning Post, which is a little less censored than China Daily.
- www.shanghaidaily.com
Website of the local Shanghai newspaper
- <http://english.peopledaily.com.cn>.

Chambers of commerce

- www.amcham-china.org.cn
The American Chamber of Commerce in China.
- www.europeanchamber.com.cn
The European Chamber of Commerce in China.
- www.pek.britcham.org
The British Chamber of Commerce in China.
- www.ccifc.org/
The French Chamber of Commerce in China.
- www.dccc.com.cn
The Danish Chamber of Commerce in China.
- www.swedishchamber.com.cn
The Swedish Chamber of Commerce in China.

Abbreviations

| | |
|-----------|---------------------------------------------------------------|
| AIC | Administration of Industry and Commerce |
| AMEA | Anti-Monopoly Law Enforcement Agency |
| ASBE | Accounting Standards for Business Enterprises |
| BLTB | Beijing Local Tax Bureau |
| CAS | Chinese Accounting Standards |
| CBRC | China Banking Regulatory Commission |
| CCPIT | China Council for the Promotion of International Trade |
| CEPA | Closer Economic Partnership Arrangement |
| CIETAC | China International Economic and Trade Arbitration Commission |
| CJV | Contractual or Cooperative Joint Venture |
| CO (CEPA) | Certificate of Hong Kong Origin (CEPA) |
| COFCOM | Commission of Commerce |
| CPA | Certified Public Accountant |
| CSRC | China Securities Regulatory Commission |
| DTT | Double Taxation Treaty |
| EJV | Equity Joint Venture |
| EPZ | Export Processing Zones |
| FESCO | Foreign Enterprise Service Corporation |
| FIE | Foreign Investment Entity |
| FIP | Foreign Invested Partnership |
| FR | Factory Registration with TID (CEPA) |
| HKTDC | Hong Kong Trade Development Council |
| IASB | International Accounting Standards Board |
| IFRS | International Financial Reporting Standards |
| LoI | Letter of Intent |
| MII | Ministry of Information Industries |
| MOFCOM | Ministry of Commerce |
| MOLSS | Ministry of Labour and Social Security |
| NDRC | National Development and Reform Commission |
| NPC | National People's Congress |

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|-------|-----------------------------------------------------------------------------|
| PBOC | People's Bank of China |
| PRC | People's Republic of China |
| RMB | Renminbi |
| RO | Representative Office |
| ROOs | Rules of Origin (CEPA) |
| SAFE | State Administration of Foreign Exchange |
| SAIC | State Administration for Industry and Commerce |
| SAR | Special Administrative Region (Hong Kong and Macau) |
| SAT | State Administration for Taxation |
| SIPO | State Intellectual Property Office of the PRC |
| TID | Hong Kong Trade and Industry Department |
| TRIPs | Trade-Related Aspects of Intellectual Property Rights (agreement under WTO) |
| WFOE | Wholly Foreign Owned Enterprise |
| WIPO | World Intellectual Property Organization |
| WTO | World Trade Organization |

References

We have found inspiration for the handbook on the websites listed under “Useful links”. In addition, various materials from events and presentations together with “Danmarks Nationalbank, Quarterly Review 1, 2009” have been used.

Last, but not least, we have drawn on the long experience of Capital Associates and NCO China in advising clients.

Contact information

Beijing

Capital Associates

Tel: + 86 8447 9588

Email: lukalu@capitallaw.cc

www.capitallaw.cc

NCO China, Beijing

Tel: + 86 10 8447 8118

Email: enquiry@ncochina.com

www.ncochina.com

Shanghai

NCO China, Shanghai

Tel: + 86 21 51699589

Guangzhou

NCO China, Guangzhou

Tel: + 86 20 8751 4381

Tianjin

NCO China, Tianjin

Tel: + 86 22 8210 1281

Denmark

NCO (China Consult APS)

Tel: + 45 3917 9895

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