

7.2 Employment Procedures

7.2.1 Signing of Labour Contract

Under the *Labour Law*, a labour contract must be signed between an individual worker and an enterprise, or workers may sign a collective contract with the enterprise. The contract forms the basis of labour relation between the enterprise and the employee.

In recruiting staff, an enterprise should obtain the relevant particulars of the candidates and check the validity of their documents before signing labour contracts with them.

The *Labour Law* and other relevant regulations clearly state the mandatory terms and conditions to be included in a labour contract, such as the term of the contract, conditions for changing, dissolving or terminating the contract, as well as compensations in the event of dissolving the contract. The Labour Handbook provided by the local labour department should be used as reference by enterprises in formulating their labour contracts.

7.2.2 Contract Authentication

Contract authentication is a legal process whereby the labour administrative department conducts full-scale examination, verification and validation of all labour contracts signed between an enterprise and its employees. Hence, the process confirms the legality of a labour contract. At present, it is compulsory for all labour contracts signed between enterprises and their staff to be authenticated.

The enterprise should submit the labour contract to the local labour administrative department for authentication within 30 days after the commencement of service by an employee upon signing a labour contract. In the case of collective labour contracts, they should be filed with the local labour administrative department for the record. Collective contracts automatically enter into force 15 days after the date of receipt

by the labour department if no objection is raised during that period.

The following documents are required for contract authentication (the list may vary in different localities, so enquiry at relevant local departments is advised):

- Labour contract and its copy;
- Business licence or its copy;
- Proof of identity of legal representative or authorised person;
- Identity card or proof of domicile registration of the employee;
- Proof of education attainment, medical report, Labour Handbook, and other relevant information of the employee.

7.2.3 Personal Files Management

An enterprise or its resident representative office may entrust a service agency specialised in human resources employment to manage the personal files of its mainland staff. Such agencies should be located at the place of domicile registration or current work place of the staff concerned. The services they offer include verification of the staff's identity, salary track record and political reports (for overseas travel). Other services such as assessment of technical qualifications, contract authentication and social insurance are also provided.

7.2.4 Foreigners Working in China

According to stipulations, foreigners (including Hong Kong residents) are allowed to work in China. Any organisations or individuals employing foreigners (including Hong Kong residents) in the mainland are required to complete the necessary formalities with the labour bureau which is responsible for granting approval and handling registration. Otherwise, the employees and employers concerned would become "illegal workers" and "illegal employers" and may be fined or even prohibited from working in the mainland.

(a) Departments Responsible for Administration of Employment of Foreigners in China

The labour administration departments at provincial, autonomous region and municipal levels and their authorised labour administration departments at prefecture and city levels are responsible for the administration of employment of foreigners in China.

(b) Criteria for Foreigners Taking up Employment in China

- At least 18 years of age and in good health;
- Possessing the professional skills and working experience required for the work of intended employment;
- No criminal records;
- Having a confirmed employer;
- Holding a valid passport or other international travel documents;
- Being able to obtain the employment and residence permits for foreigners upon entry into China.

(c) Application Procedures for Foreigners Taking up Employment in China

China has a more liberal and permissive foreign labour policy than Hong Kong or other western countries. Hong Kong residents or foreigners wishing to work in the mainland are only required to register with the “foreign labour employment service centre” under the local city-level labour bureau by presenting the following documents:

| Category | Hong Kong, Macau and Taiwan Residents | Foreign Nationals |
|------------------------|---|--|
| Formalities | Employment Permit for Personnel from Taiwan, Hong Kong and Macau | Employment Permit for Foreigners |
| Documentation Required | <ol style="list-style-type: none"> 1. Photocopy of business licence (copy) 2. Application Form for the Employment of Personnel from Taiwan, Hong Kong and Macau (one form may be used by the same employer to cover multiple applicants) 3. A completed Taiwan, Hong Kong and Macau Personnel Employment Registration Form affixed with photo plus a colour photo (uncropped) bigger than 1 inch x 1 inch 4. Photocopies of the pages showing personal particulars and latest stamp of the valid entry-exit permit or home visit card of the employee | <ol style="list-style-type: none"> 1. Photocopy of business licence (copy) 2. Photocopies of the pages showing personal particulars and latest visa in the valid passport of the employee 3. Application Form for the Employment of Foreigners in duplicate 4. A completed Foreigner Employment Registration Form affixed with photo plus a colour photo (uncropped) bigger than 1 inch x 1 inch 5. Original of Labour Contract (or letter of appointment specifying the term of employment if a Labour Contract has not been signed) |

| Category | Hong Kong, Macau and Taiwan Residents | Foreign Nationals |
|--------------------|---|---|
| Formalities | Employment Permit for Personnel from Taiwan, Hong Kong and Macau | Employment Permit for Foreigners |
| | 5. Original of Labour Contract (or letter of appointment specifying the term of employment if a Labour Contract has not been signed) 6. Medical report of the employee | 6. Medical report of the employee |
| Note | <ul style="list-style-type: none"> • All forms are obtainable from the local city-level labour bureau • Standard forms of the labour bureau must be used • Four working days are normally required from the date of documentation submission • The administration fee varies among different city-level labour bureaus and is usually tens of Rmb a month (e.g. Rmb80 per person a month in Shenzhen) | <ul style="list-style-type: none"> • All forms are obtainable from the local city-level labour bureau • Standard forms of the labour bureau must be used • Four working days are normally required from the date of documentation submission • The administration fee varies among different city-level labour bureaus and is usually tens of Rmb a month (e.g. Rmb80 per person a month in Shenzhen) |

The term of the employment permit for foreigners (including Hong Kong residents) issued by various mainland cities depends on the duration of the current labour contract and is usually one or two years. It is advisable to apply for extension of the employment permit within one month before its expiration as overdue applications are not only more costly and time-consuming but also involve more complicated procedures. Formalities for extending the employment permit are as follows:

| Category | Hong Kong, Macau and Taiwan Residents | Foreign Nationals |
|------------------------|---|--|
| Formalities | Extension of Employment Permit for Personnel from Taiwan, Hong Kong and Macau | Extension of Employment Permit for Foreigners |
| Documentation Required | <p>The extension formalities are generally the same for foreigners and personnel from Hong Kong, Macau and Taiwan:</p> <ol style="list-style-type: none"> 1. Original of Employment Permit 2. A completed Employment Permit Extension Application Form bearing the seal of the employing unit (one form for each applicant) 3. Photocopy of the business licence of the employing unit 4. Photocopy of the passport or entry-exit permit or home visit card of the employee 5. Copy of Labour Contract (or letter of appointment specifying the term of employment if a Labour Contract has not been signed in the first place). | |
| Note | <ul style="list-style-type: none"> • It is necessary to specify in the original permit that application for extension within one month before expiration • A recent colour photo bigger than 1 inch x 1 inch should be brought along if the extension pages of the Employment Permit have been used up. Medical checks have to be conducted anew in the case of overdue applications | |