



## New PRC law on the administration of exit and entry of individuals

### Regulations discussed in this issue:

- Law of the People's Republic of China on the Administration of Exit and Entry of Individuals (Order of the president, No 57)
- Law of the People's Republic of China on the Administration of Exit and Entry of Foreigners (Order of the president, No 31)
- Law of the People's Republic of China on the Administration of Exit and Entry of Chinese Citizens (Order of the president, No 32)

### Background

On 30 June 2012, the 11th Standing Committee of the National People's Congress (NPC) passed a new law, which will govern the administration of exit and entry of individuals (Order of the President, No. 57) from 1 July 2013. Once the new law comes into force, the existing laws on the administration of exit and entry of foreigners (Order of the President, No. 31) and administration of exit and entry of Chinese citizens (Order of the President, No. 32) will be repealed.

The new law is an integration of presidential orders No. 31 and No. 32 and their accompanying implementation rules, which were introduced in the mid-1980s, as well as the exit and entry frontier inspection ordinance implemented in the mid-1990s. The formulation of the new law was initiated by the Ministry of Public Security in late 2003 with the intent of promoting foreign exchange and opening up to the outside world, and safeguarding the sovereignty, security and social order of the PRC.

With the number of foreign workers entering China increasing each year, the new law is meant to improve the existing system and put into place measures to strengthen enforcement of the administration of exit and entry of foreigner workers.

### Improved system

- 'Special Talent' visa

The new law introduces a new 'special talent' category of visa. This visa will provide the basis for attracting qualified foreign professionals to join the workforce in China. It is anticipated that the relevant details of the 'special talent' visa will be formulated by the State Council in due course.

- Extension of stay

Under the new system, foreigners who qualify as 'special talent', investors and those whom for humanitarian reasons are required to convert their visa for temporary stay (i.e., no more than 180 days) to a residence permit (with a minimum validity of 90 days for work-related purposes or 180 days for non-work-related purposes) can do so by applying to the relevant exit and entry bureau. Introduction of this new rule provides the legal basis for qualified foreigners to convert their visas without having to leave the country.

- Chinese 'green card'

The law also provides for those who have made outstanding contributions or qualify under other criteria to be eligible to apply for a Chinese 'green card'. It is understood that the criteria for applying for a Chinese 'green card' under the new system is likely to be relaxed over time, which will serve to attract talent and capital into China.

### **Measures to strengthen enforcement**

- Standardising issuance of invitation letter

The new law stipulates that the party that issues the invitation letter for a foreign individual's visa application should be legally responsible for ensuring the authenticity of the contents within the invitation letter. Those who issue a false invitation letter or other application documents may be fined between RMB 5,000 and RMB 10,000. In addition, any financial gains derived from engaging in such illegal activities would be confiscated, and the party, which is in violation, may also be ordered to bear the costs of deporting the foreign individual.

- Administration of foreigners' 'temporary stay' and 'residence'

The new law defines a 'temporary stay' visa to be one with a maximum stay of not exceeding 180 days. Such a visa generally does not require the individual to obtain other form of permits after arrival and may be extended for a period not exceeding the authorised stay of the original visa.

Foreigners who hold visas, which require them to apply for residence permits after arrival in China, are required to obtain the said permit within 30 days following their arrival. Residence permits for foreigners holding work permits are valid from 90 days to five years, while the validity for non-work related residence permits range from 180 days to five years.

According to the law, a foreigner who stays beyond the validity of his/her residence permit in China (e.g., failure to renew the residence permit) will be warned. For serious offences, the foreign individual will be subject to a daily fine of RMB 500 for each day of their overstay in China; the total amount of the fine should not exceed RMB 10,000, or they shall be detained between for five to 15 days. For a foreign individual under the age of 16, his/her legal guardian may receive a warning regarding his/her overstay, and may be fined an amount not to exceed RMB 1,000.

- Improving control over and punishment of illegal employment of foreigners

According to the new law, foreigners who work in China without work permits and residence permits, foreigners who render services outside the scope of the work permits, and student visa holders who violate regulations on working arrangement will be regarded as illegal workers.

In an effort to prevent foreigners from working in China illegally, the law also requires companies employing foreigners and institutions that have foreign students enrolled to report details on the foreigners to the local public security bureau. Citizens and other organisations are also encouraged to report foreigners who may be working in China illegally to the local public security bureau.

Foreigners who work in China illegally will be fined between RMB 5,000 and RMB 20,000. For serious offences, they may also be detained between five to 15 days. Companies that employ illegal foreign workers will also be fined RMB 10,000 for each and every foreigner they illegally employ up to a maximum amount of RMB 100,000. Any financial gains derived from such employment will also be confiscated. The foreigner may also be deported from China if he/she is in breach of the new law or other PRC laws, and could be denied entry to China between one to five years following their deportation.

### **KPMG observations**

The new law concerning the administration of exit and entry of individuals clearly places a great deal of focus on foreigners. Whilst it introduced measures to attract talented foreign individuals and investors, it also places emphasis on regulating the employment of foreigners in China.

In the coming months, it is anticipated that various Chinese authorities will draft or amend rules and regulations to supplement the new law, and that this may lead to procedural changes with respect to visa and permit applications. Companies with foreigners currently working in China should review the visa status of these individuals to ensure compliance and may also take the opportunity to review the company's mobility policy to ensure that appropriate form of visa and/or permits are being obtained for their foreign workers in China.

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