

# CHINA TAX ALERT

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## Companies should actively review its existing expatriate immigration policy to ensure compliance

### Regulations discussed in this issue:

- *Ordinance on the Administration of Entry and Exit of Foreign Individuals in China*, Order of the State Council, No. 637 (the "New Ordinance").
- *Law of the People's Republic of China on the Administration of Entry and Exit of Individuals*, Order of the President, No. 57 (the "New Law").

Following the announcement of the *Law of the People's Republic of China on the Administration of Exit and Entry of Individuals* and the collection of public comments on the exposure draft of the *Ordinance on the Administration of Entry and Exit of Foreign Individuals in China* ("Exposure Draft") drafted by the Ministry of Foreign Affairs and the Ministry of Public Security, the State Council promulgated the *Ordinance on the Administration of Entry and Exit of Foreign Individuals in China* on 12 July 2013. The New Ordinance is aimed at standardising the issuance of visas and ensuring effective governance of the short-term and long-term stay of foreign individuals in China. The New Ordinance took effect on 1 September 2013.

The New Ordinance and the various changes with respect to securing working permits for foreigners (including procedural requirements and lead time for document processing) introduced by local exit and entry bureaus across China in recent months will inevitably impact the way companies are required to manage their foreign workforce going forward. Companies that host or hire foreign employees are therefore recommended to familiarise themselves with the New Ordinance and the up-to-date practices for relevant procedures in their respective locations in order to amend their internal guidelines and effectively manage their foreign workforce in China.

The salient points contained in the Exposure Draft were analysed in the [China Tax Alert, Issue 12](#) in 2013. We have highlighted the major differences between the Exposure Draft and New Ordinance below.

### Change to Visa types

***An S visa will be introduced for family members of expatriate employees working in China instead of the dependent visa proposed in the Exposure Draft.***

According to the New Ordinance, an S Visa will be introduced for spouses, children or parents visiting foreign nationals who reside in China due to work, study or other purposes. The S visa will be subdivided into two categories, S1 and S2. An S1 visa will be issued to those who will stay in China for more than

180 days, while an S2 visa will be issued to those who intend to stay for up to 180 days.

***No sub-categories for R visa or Z visa.***

In the Exposure Draft, it was proposed that the R visa and Z visa be subdivided into R1, R2 and Z1, Z2 based on the length of stay. However, the New Ordinance did not subdivide the two types of visa according to the length of intended stay.

**Definition of illegal employment**

The New Ordinance removed the definition of illegal employment which was proposed in the Exposure Draft, as the term was already defined in the New Law.

**Changes to the application process for work permit and residence permit**

Following the implementation of the New Law on 1 July 2013, relevant authorities across China have introduced changes to procedural requirements for work and residence permit applications. Notable changes for major locations in China are summarised as follows:

***Application requirement for employment license***

As of 1 July 2013, a certificate of no criminal record is required for employment license applications submitted in Beijing. The certificate should be issued by the police authorities or judiciary department in the location where the applicant resides, or notarised by the Chinese consulate in the location where the applicant resides. The requirement has also been introduced in Chengdu and is expected to be progressively rolled out by other cities and provinces.

	Shang hai	Beijing	Guangz hou	Shenzhe n	Hangz hou	Cheng du
Health report	x	√	√	√	√	√
Certificate of no criminal record	x	√	x	x	x	√

Furthermore, Shenzhen now requires a health report to be submitted when applying for an employment license, a policy that has already been established in Beijing, Guangzhou, Hangzhou and Chengdu.

The submission of a health report and a certificate of no criminal record for employment license applications will lead to additional preparation and prolong the entire application process.

***Extended processing time for visas and residence permits***

According to the New Ordinance, the processing time for the renewal, amendment or re-issuing of visas, as well as applications for temporary-stay visas, is extended from 5 to 7 working days, while that for the renewal, amendment or re-issuing of residence permits is extended from 5 to not more than 15 working days. The receipt issued upon submission of the application allows the applicants to legally stay in China while their applications are processed, but their passports are retained by the authority.

***Change of deadline for residence permit application/renewal***

Based on the old *Implementation Rule for the Law of the People's Republic of China on the Administration of Exit and Entry of Foreign Nationals*, visas and residence permits can be renewed by the holders as long as the extension application is submitted before the document expires.

Under the New Law, applications for visa extensions should be submitted at least 7 days before a visa expires, while applications for renewal of a residence permit should be submitted 30 days before the document expires.

### ***New temporary-stay visa***

Foreigners who have de-registered their work and residence permit upon completion of their employment in China but wish to remain in the country should apply for a temporary-stay visa. The 30-day L visa that was previously issued in such circumstances will no longer be appropriate. The new temporary-stay visa allows the visa holder to remain in China for a short period of time before leaving the country, and caters to foreigners who require additional time to arrange their repatriation. It is anticipated that extensions to the temporary-stay visa will not be permitted and that the visa holder will be required to depart China before it expires. Foreigners who wish to re-enter China will need to apply for an appropriate visa. The validity of a temporary-stay visa is not specified in the New Ordinance, but is expected to be less than 30 days.

### **KPMG observations**

The New Law and New Ordinance focus on standardising the management of exit and entry of foreign individuals in order to curb illegal entry, illegal stay and illegal employment.

For foreigners obtaining employment in China, the New Ordinance retained the existing Z visa without sub-dividing it by the length of intended period of work. As foreigners are required to apply for a work permit in China if they intend to work in China for more than 90 days, the authorities may still need to devise measures to monitor the employment status of foreigners who intend to work in China for no more than 90 days.

Furthermore, human resource professionals should review and adjust their existing visa application cycle in response to the prolonged processing time for visas, so that the impact on the travel and work schedule of foreigners can be kept to a minimum.

Recently, the general offices of the Organization Department of the Central Committee, the Ministry of Human Resources and Social Security, the Ministry of Foreign Affairs, the Ministry of Public Security and the National Bureau of Foreign Expert Affairs jointly announced the *Notice on the Issuance of Visas and Residence Permits for Foreign High-Level Talent Individuals*, which requires the relevant authorities to report on their plans for attracting foreign talents and provides guidance on the visa and residence permit application procedures for foreign talents. Specifically, the notice indicates that visa and residence permit application procedures will be simplified for those who qualify for the relevant talent recruitment plans, and also introduces the following:

- A five-year multiple-entry visa (no more than 180 days per stay) for qualified talents who are required to frequently travel in and out of China; and
- A long term work visa or residence permit valid for two to five years for qualified talents who are required to work in China on a long-term basis.

With the release of the notice, and a due date of 10 September 2013 set for the submission of a talent attraction plan by the relevant authorities, we anticipate that the requirements for R visa applications will be clarified in the near future.

The New Ordinance took effect on 1 September 2013. Companies should familiarise themselves with the new regulation and prepare to make the required changes. Companies that do not have internal guidelines regarding visa and permit sponsorship or are uncertain on how to deal with these changes are advised to contact KPMG for guidance.

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