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Tied to Your Desk? Blocked at the Door? Changes in China's Visa Policies for Foreigners

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Expatriates and foreign investors beware! China's new immigration law and policies have changed the visa requirements for foreigners who would like to work in the PRC and adopted heightened penalties for those who violate the requirements.

China's newest Exit-Entry Administration Law ("EEAL") is raising concerns in the expatriate business community and among foreign-invested enterprises. The new law became effective on July 1, 2013 and the State Council, China's highest administrative authority, also adopted a new set of regulations to supplement EEAL, the Exit-Entry Administration Regulations ("Visa Regulations") that will come into effect on September 1, 2013. Together, the EEAL and Visa Regulations function as a framework for immigration policies in China.

The new policies implement strict requirements for work visas even for short term presence in China. These new policies will have significant implications for foreign companies wishing to send employees to their China entities for business projects and for foreigners wishing to conduct internships in China. For persons already holding work or residence visas in China, the long renewal periods under the EEAL and the Visa Regulations have the potential to be disruptive for those whose jobs involve significant international travel.

Stricter Policies and Enforcement Mechanism

The overarching purpose behind the changes cannot be clearer: stricter control over immigration issues, especially regarding the employment of foreigners in China.

First, the EEAL and the Visa Regulations impose a more stringent visa requirement for foreign employment in China. Previously, many companies (especially those smaller in size) employed foreigners holding F visas. Under the old regulations, foreigners holding F visas could engage in commercial activities, including doing business, lecturing, training or internships not exceeding 6 months. Because obtaining work visas (Z visas) is often time-consuming and complicated, some companies would hire foreign individuals with F visas, which were much easier to obtain and allowed a wide array of activities.

However, the new Visa Regulations reduce the scope of allowed activities under F visas to include only non-commercial "exchanges, visits, and observation/inspection, etc." (Art. 6 of the Visa Regulations). So far, there is no clear guidance on what "etc." may cover. The "temporary visit for business purpose" aspect of the previous F visa appears covered by a new type of visa – the M visa. Under the Visa Regulations, the M visa is required for non-Chinese nationals who enter China to conduct commercial and business activities. The primary document required for an application for the M visa is believed to be comparable to that of the F visa. Specifically, the Visa Regulations require an invitation letter issued by "the commercial/business partner within China" when applying for the M

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visa. That said, it remains unclear as to whether the M visa will truly offer the “full scope” of commercial activities as permitted under the old F visa.

The EEAL prohibits foreigners from being employed without a work permit or an employment-based residence permit (typically issued to individuals with work visas). Under the Visa Regulations, the only types of visas with which foreign individuals can be employed are: Z visas (for employment) and R visas (for advanced foreign talents). Foreign students with X visas may be employed off-campus as interns, but must first obtain approvals from both the academic institution and the relevant government authority (likely the Ministry of Education).

Second, there are stronger enforcement measures for violations of the EEAL or the Visa Regulations. Under Art. 80 of the EEAL, illegal employment is punishable by a fine up to RMB20,000 and, in serious cases, up to 15 days of detention. Companies that illegally employ foreigners can be fined up to RMB10,000 per person, and any illegal gains will be confiscated. The EEAL also prohibits introducing illegal employment to foreigners, and the intermediaries for such illegal employment can be fined up to RMB5,000 per person (the maximum fine being RMB100,000). For violating the EEAL, foreign individuals can face deportation.

Stricter Policies and Enforcement Mechanism

- Commercial or employment activities while holding F visas are no longer allowed. Any non-PRC nationals who will be employed by any entity in China (e.g., a WFOE, a Representative Office or a domestic company with no foreign investment) must obtain a Z visa to enter China and then obtain a work permit and residency permit. Companies may face fines (RMB10,000 per employee) and deportation costs for employing foreign individuals without the proper work permit.
- The Visa Regulations do not list specific requirements for work visas or permits, and the requirements often vary depending on the localities. Companies must check the local requirement for obtaining work visas or permits for their foreign employees, and whether there are limitations on the number of foreign employees they can hire (often depending on the amount of registered capital), etc.
- Hiring foreign individuals residing outside of China as interns will be difficult. Previously, companies often hired foreign interns (not enrolled in a Chinese academic institution) who entered and worked in China on F visas. Because F visas can no longer be used for internships, companies will have to apply for Z (work) visas if they want to hire foreign individuals residing outside of China as interns.
- Companies can still hire foreign students already holding an X visa (based on enrollment in a Chinese academic institution) as interns, provided that the interns have obtained the required approval.
- The expatriate business community is likely to face longer processing times, which have the potential to prevent international travel for periods of up to 3 weeks. Under the new rules, visa and residence permit processing time can take up to 15 business days (7 business days for visas and 15 for residence permits). After the application has been submitted, the Exit-Entry Administration will retain the foreign individual's passport until the process is complete. For travel within China, a temporary travel document can be issued, but obviously foreign travel is not possible during the processing period. Companies and foreign employees should take the processing time into consideration when applying for visa/resident permits or planning business trips.

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- The EEAL and the Visa Regulations are still a work in progress. Companies with foreign employees in China should remain informed regarding further developments in this area of regulations, and in particular, how the local authorities implement the EEAL and relevant regulations.

In addition, other Chinese government agencies, such as the Public Security Bureau, the Ministry of Foreign Affairs, the Ministry of Human Resources and Social Security, and the Ministry of Education, are expected to issue further administrative rules on the topic.

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