

This HR Communique is a free human resource briefing distributed by FINEX 金隽 in electronic format to its clients, talents, and business associates. The aim is to provide quick and brief alerts to recipients on important developments in the human resource and regulatory areas in China, thereby equipping them with timely insights and updates for human resource management and compliance in China.

### **New Notice on Procedure for Foreigners' Short-term China Assignment**

#### **Introduction**

The four Chinese Ministries of Human Resources and Social Security, Foreign Affairs, Public Security as well as Culture, have on November 6 last year announced a new notice 《 Relevant Procedure for Foreigners Entering China for Short-term Work Assignment (Trial) 》 , (renshebufa[2014]No 78, hereinafter referred to as 《 the Notice 》 ). It became effective from January 1 this year.

《 The Notice 》 aims at further regulating foreigners working in China, as well as consistently implementing the requirements stipulated under the 《 Exit-Entry Administration Law 》 and 《 Administration Regulations on the Entry-Exit of Foreigners 》 promulgated previously and which took effect in the year 2013 (for background information please refer to the 2012 Oct issue of our FINEX HR Communique on the 《 Exit-Entry Administration Law 》 and the 2013 Jun issue of our FINEX HR Communique on the 《 Administration Regulations on the Entry-Exit of Foreigners 》 ).

Foreigners visiting China on short-term work assignment but who have not complied with the required procedure or have not worked in accordance with the certified nature of work, 《 The Notice 》 directed that the Public Security authorities will treat them as illegal workers.

#### **Essence**

《 The Notice 》 has specifically listed the scope of “foreigners entering China to complete short-term work assignment”, and basically draws a line of not more than 90 days for such short-term work assignment. People falling within such category will need to comply with the required procedure and apply for work permits, invitation letters, resident permits as well as Z visas. According to the 《 Administration Regulations on the Entry-Exit of Foreigners 》 , Z visas are visas issued by the Chinese government to foreigners working in China.

According to the 《 the Notice 》 , “foreigners entering China to complete short-term work assignment” means those who enter China for the following reasons, and that their stay in

China do not exceed 90 days:

- (1) To accomplish certain assignment such as technological, scientific research, management, guidance work for the counter parties in China;
- (2) To carry out trial training for athletic organizations in China, and coaches and athletes are included;
- (3) To shoot movies, including advertisements and documentaries;
- (4) To perform at fashion shows, and models at car shows and shooting of commercial graphics are included;
- (5) To carry out foreign-related business performances;
- (6) To fulfill other conditions as stipulated by the Ministry of Human Resources and Social Security.

After obtaining approval, if foreigners have cancelled the work or performance and have not actually entered China, the relevant organizations or Chinese counter parties would need to submit written notifications to the relevant authorities on a timely basis.

Foreigners visiting China to accomplish short-term assignment are not allowed to carry out the work exceeding the time that have been approved, and the work permits cannot be extended upon expiry. If the relevant entities in China intend to employ foreigners who have properly completed the assignment in China and that their residence permits have not yet expired, application can be made within China in accordance with the relevant procedure as stated in the 《Administrative Rules for Foreigners Working in China》 .

#### Short-term Work Assignment Procedure

Foreigners on short-term work assignment shall apply to work in China following the required procedure:

- (1) *Applying for work permits* -The counter parties in China or show organizers shall apply for permits and work certificates at the Ministry of Human Resources and Social Security or at the governing cultural authorities.
- (2) *Obtaining invitation or confirmation letters* -The relevant organizations in China shall apply for invitation or confirmation letters at the governing authorities of their registered locations or locations of their authorized representatives.
- (3) *Applying for Z visas* -After approval, foreigners shall apply for Z visas at the overseas visa offices. It should be noted that for people from countries with mutual visa exemption agreements with China, they would still need to apply for work certificate and Z visas before their entries into China.
- (4) *Applying for residence document* -Foreigners for short-term work assignment shall need to work and stay in China within the periods approved in the work certificate and Z visas. If the work period exceeds 30 days, then the residence document applied for should be the 90-day residence permit.

#### Non-short-term Assignment

On the other hand, 《the Notice》 has also specified that the following will not be deemed as for completing short-term work assignment in China:

- (1) Providing respective maintenance, installation, testing, disassembling, guidance and training for purchased machinery and equipment;

- (2) Providing guidance, supervision, examination to successful project bids in China;
- (3) Dispatching for completing short-term work at group companies and representative offices in China;
- (4) Participating in sports events (including relevant personnel such as athletes, coaches, medical crew and assistants, with some exceptions);
- (5) Entering China to be engaged in volunteer work without compensation or compensated by overseas entities;
- (6) Having approval documents from the relevant cultural authorities but which do not specify “carrying out foreign-related business performances”.

For the aforementioned deemed non-short-term assignment and for which the periods of stay do not exceed 90 days, relevant visas will need to be applied for. The first four categories listed above require M visas, and for the remaining two categories, F visas are required. M visas are issued by China for people entering China for business and trade activities, and F visas are issued for people entering China for visits and cultural exchanges etc.

### Implication

Owing to the ever increasing number of foreigners visiting China for business, cultural exchanges and other purposes, China has promulgated the 《Exit-Entry Administration Law》 and 《Administration Regulations on the Entry-Exit of Foreigners》 as well as other rules to regulate and streamline the administration of foreigners working in China. Since non-compliance of the rules or carrying out work in China not in line with the scope approved may be deemed as working illegally in China, it is in the best interest of companies to ensure that relevant personnel visiting China comply with the requirement thereby avoiding undesired adverse impacts on their business activities in China.

In this process for streamlining and regulating foreigners visiting China by the Chinese authorities, the various ministries and departments in China are increasingly strengthening communication and coordination among themselves. In addition, it should be noted that the activities of such foreign visitors may be closely linked to their personal income tax exposure and social contribution obligations.

On the other hand, the foreigners' activities in China may also have some bearing on the corporate tax position as well as withholding and reporting obligations of the relevant entities inside or outside China (please refer to the 2013 Jun issue of our FINEX HR Communique on the subject of intra group contracts, permanent establishments as well as corporate and individual income tax exposures). Consequently, companies should properly arrange their personnel visiting China as needed, and maintain proper contracts and documentation to ensure compliance with the Chinese rules.

### HR Action

Human Resource management should proactively seek to keep up-to-date with the relevant Chinese administrative rules and regulations in China, and keep the relevant entities and departments abreast of such requirements. For groups that may have frequent overseas visitors to China, an internal communication system or protocol should be established to ensure smooth and timely coordination for proper compliance.

---

**FINEX** specializes in **financial & investment, consulting, management and sales, IT, medical, manufacturing and other talent** recruitment at the senior levels for **multi-national corporations and prestigious Chinese Companies** in Greater China. Led and managed by very experienced professionals working out of **Shanghai, Beijing and Hong Kong**, the team and its network can work closely with you to address your financial talent needs at the senior and management levels all over China. We shall be happy to tell you more about us, so please do not hesitate to give us a call or ask for a meeting.

*Please note that this Communique is only aimed at providing brief general information for users and which should not be relied upon for decision making. The publisher does not accept any liabilities associated with the use of this Communique.*