

# Guide to Z Visas and Work Authorization in China



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Disclaimer: This Guide is general information, not legal advice. Make decisions only after consulting with your attorney about how the law applies to the specific facts of your case.

## A. INTRODUCTION

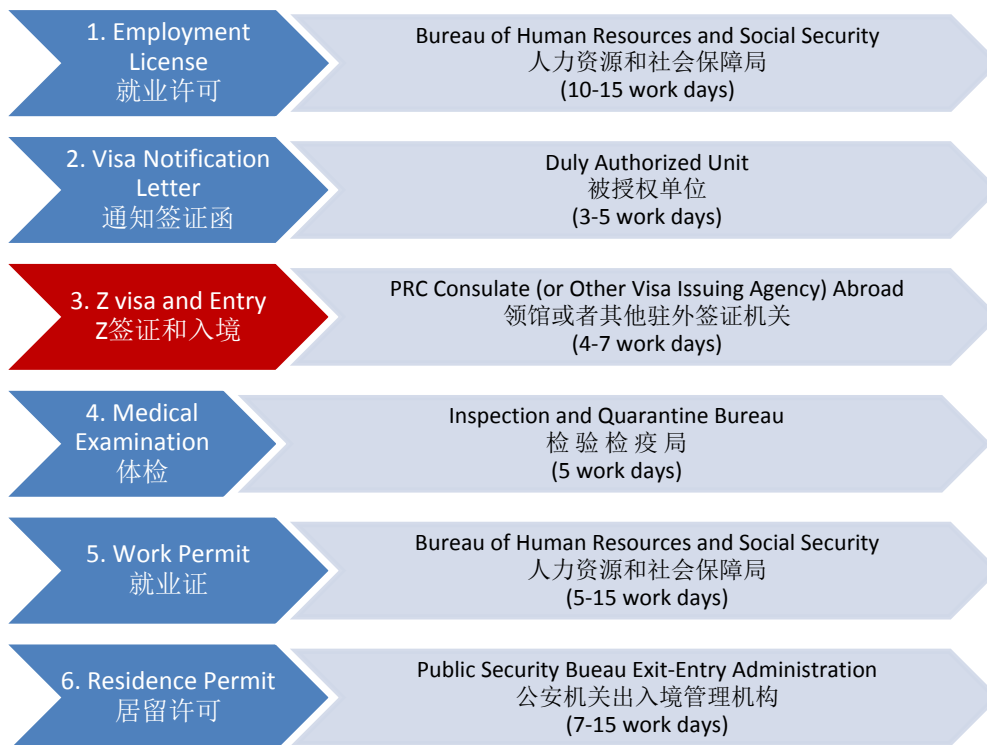
This *Guide* summarizes the requirements and procedures to apply for a Z visa and residence permit for work in China on the basis of an employment license and work permit issued by a local Bureau of Human Resources and Social Security (BHRSS).

Issues related to accompanying family members' are covered as well. Family members may each apply for an S1 visa and residence permit for private affairs if they intend to stay for over 180 days. (S2 visas are available for shorter stays). Qualified family members include the worker's spouse, children under the age of 18, parents, and parents-in-law. They are not authorized to work in China unless they independently obtain a residence permit for work.

The *Guide* concludes with a discussion of additional terms and conditions of stay in China for workers and their family members.

### A.1 TYPICAL Z (WORK) VISA AND WORK AUTHORIZATION APPLICATION PROCESS

Here's a general illustration of the Z visa application process. There are some exceptions, which are explained below:



### A.2 SCOPE OF THIS GUIDE

This *Guide* does not cover individuals applying for a foreign expert certificate. See Part B for an explanation of when may be appropriate to apply for a foreign expert certificate.

The Hong Kong and Macau Special Administration Regions have retained their own immigration systems, which are not discussed here.

Also, this *Guide* does not cover the rules for residents of Hong Kong, Macao, or Taiwan.<sup>1</sup>

### A.3 KEY AUTHORITIES

The relevant law is the Exit-Entry Administration Law (EEAL), effective July 1, 2013.<sup>2</sup> The State Council has provided further details in the Regulation on the Administration of the Entry and Exit of Foreign Nationals, effective September 1, 2013.<sup>3</sup>

Details about requirements and procedures for obtaining an employment license and work permit are found in the Rules for the Administration of Employment by Foreign Nationals (EEAL), which pre-date the EEAL.<sup>4</sup>

There are also rules for short-term employment jointly issued by the Ministries of Human Resources and Social Security, Foreign Affairs, Public Security, and Culture. These rules are effective January 1, 2015.<sup>5</sup>

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<sup>1</sup> Generally, the PRC employer only needs to apply to the local labor authority for a work permit on behalf of a Hong Kong, Macao, or Taiwan resident. If he or she is to act as a chief representative or a representative of a representative office of a foreign company, the office also needs to apply to the local Administration for Industry and Commerce for a representative card. These abbreviated procedures apply if the Hong Kong, Macao, or Taiwan resident has a “Pass for Hong Kong or Macao resident's entry into and exit from Mainland China” (港澳居民来往内地通行证) or “Pass for Taiwan resident's entry into and exit from Mainland China” (台湾居民来往大陆通行证). If the Hong Kong, Macao, or Taiwan resident holds a foreign passport and, as a result, is unable to get one of those passes, then he or she will need to use the regular procedure for foreign nationals as opposed to the abbreviated procedures.

<sup>2</sup> Adopted at the 27th Meeting of the Standing Committee of the Eleventh National People's Congress, effective July 1, 2013.

<sup>3</sup> Adopted at the 15th Meeting of the Standing Committee of the State Council, effective September 1, 2013 (hereinafter, “State Council Regulations”).

<sup>4</sup> Ministries of Labor, Public Security, Foreign Affairs, and Foreign Trade and Commerce, 外国人在中国就业管理规定 (PRC Rules for the Administration of Employment by Foreign Nationals), Ministry of Labor Publication No. 1996 (29), promulgated Jan. 22, 1996, effective May 1, 1996 and revised in accordance with the Order of the Ministry of Human Resources and Social Security No. 7 on November 12, 2010 (hereinafter, “Employment Rules”).

<sup>5</sup> Ministry of Human Resources and Social Security, Ministry of Foreign Affairs, Ministry of Public Security, and Ministry of Culture, Notice of Relevant Procedures for Foreigners Entering China for Completion of Short-Term Work Assignment, Notice No. 78 [2014] of the Ministry of Human Resources and Social Security, issued Nov. 6, 2014, effective Jan. 1, 2015 (hereinafter, “Short-Term Assignment Rules”).

Implementation of the Z (work) visa provisions of the EEAL is a work in progress. Agencies, such as the Ministry of Public Security, Ministry of Foreign Affairs, and Ministry of Human Resources and Social Security, are expected to issue implementing rules with further details.

Our firm is closely monitoring related developments and will update this *Guide* accordingly.

While the laws are generally national in scope, practice and procedure are often dictated by local agencies, giving rise to significant variation within the country.

In addition, lack of transparency is sometimes an issue. Some immigration policies are internal to the agencies and treated as confidential, in which case employers and foreign workers must operate in a less than clear environment.

## B. OTHER VISA OPTIONS

### B.1 WOULD A FOREIGN EXPERT CERTIFICATE BE APPROPRIATE?

This *Guide* discusses residence seeking a residence permit for work in China on the basis of a work permit (also known as an Alien Employment Permit) issued by a local Bureau of Human Resources and Social Security (HRSS). There is a separate path to seek a residence permit for work on the basis of a foreign expert certificate (外国专家证). The foreign expert certificate process is overseen by the provincial-level foreign expert authority<sup>6</sup> and is regulated at the national level by the State Administration for Foreign Expert Affairs (SAFEA).

Foreign expert certificates may be issued to qualified foreign nationals in the following types of positions:<sup>7</sup>

1. Culture and education: Foreign specialists hired to work in China in the fields of education, scientific research, news, publishing, culture, art, health, sports, etc. Culture and education experts can only be employed as foreign experts by a work unit holding a Certificate of Approval to Hire Foreign Experts (聘请外国专家单位资格认可证书).<sup>8</sup> In some cities, they are not eligible to apply for employment

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<sup>6</sup> SAFEA and Consular Dep't of the Ministry of Foreign Affairs, Notice on the Use and Administration of Foreign Expert Employment Permits, SAFEA No. 105 [2004], Aug. 8, 2004.

<sup>7</sup> SAFEA, 关于印发《外国专家来华工作许可办理规定》等的通知 [Notice Regarding Publication of the Provisions for Handling Permits for Foreign Experts Working in China, Etc.], SAFEA Doc. No. 139 (2004), Sept. 30, 2004.

<sup>8</sup> PRC Employment License for Foreigners, art. 3., issued by Division of Science, Education, Culture and Sanitation of the State Administration of Foreign Experts Affairs on Aug. 20, 2008.



licenses.<sup>9</sup> The foreign national must have at least a bachelor's degree and 5 years relevant work experience (or 2 years of relevant work experience in the case of a language teacher).<sup>10</sup> For an English language teacher, the 2 years of relevant work experience may be waived if the teacher holds a Teaching English as a Foreign Language (TEFL) certificate.<sup>11</sup>

2. Economic, technical, managerial experts: Technical specialists or managers (at least deputy general manager or equivalent rank) who have special knowledge that is in short supply in China in the field of economics, technology, engineering, trade, finance, accounting, taxation, tourism, etc. of China. The foreign national must have at least a bachelor's degree and 5 years of relevant work experience.<sup>12</sup>
3. Recruiters: Representatives who will work in representative offices of overseas expert organizations or talent intermediary agencies approved by SAFEA.<sup>13</sup>

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<sup>9</sup> Notice Regarding: Enhancing Administration of Employing Foreign Nationals in Beijing (关于进一步加强北京市外籍人员聘用工作的通知), Jing Ren She Wai [2014] No. 122, issued by the Beijing Municipal Human Resources and Social Security Bureau, Foreign Affairs Office, and Educational Commission (June 4, 2014).

<sup>10</sup> SAFEA, 关于印发《外国专家来华工作许可办理规定》等的通知 [Notice Regarding Publication of the Provisions for Handling Permits for Foreign Experts Working in China, Etc.], SAFEA Doc. No. 139 (2004), Attachment 1, paragraph 3, Sept. 30, 2004.

<sup>11</sup> SAFEA, 关于试行开展外籍语言教师（英语类）职业培训的通知 [Notice Regarding Testing the Development of Foreign (English) Language Teachers for Vocational Training], Notice 182 (2010).

<sup>12</sup> SAFEA, 关于印发《外国专家来华工作许可办理规定》等的通知 [Notice Regarding Publication of the Provisions for Handling Permits for Foreign Experts Working in China, Etc.], SAFEA Doc. No. 139 (2004), Attachment 1, paragraph 3, Sept. 30, 2004.

<sup>13</sup> Article 3 of Notification re: Guiding Opinions on Administration of Work Units' Registration on Hiring Foreign Economic and Technical Experts distributed and printed by the State Administration of Foreign Experts Affairs, July 11, 2011; Article 2 of PRC Employment License for Foreigners, published by Division of Science, Education, Culture and Sanitation of the State Administration of Foreign Experts Affairs on August 20, 2008



*Sample Foreign Expert Certificate*

## **B.2 WOULD AN M OR F VISA SUFFICE?**

China also issues M visas for “business or commercial activities” and F visas for “exchanges, visits, inspections, etc.” The line between such activities and “work,” which requires a Z visa, can sometimes be blurry.

An M visa may be used for commercial or trade activities in China, including:<sup>14</sup>

- meetings with business partners;
- attending trade shows;
- trading activities;
- repair, installation, adjustment, disassembly, or giving instructions or training in connection with the purchase of equipment or machinery (up to 90 days);
- providing instruction, supervision, or inspection to a project in China that has won a bid (up to 90 days);
- being dispatched to the branch office, subsidiary, or representative office in China to complete a short-term “work” assignment (up to 90 days); and
- participating in certain sports event as an athlete, coach, or support staff (up to 90 days).

An F visa is available for exchanges, visits, and inspections, including:<sup>15</sup>

- Exchange for academic or cultural purposes;
- non-commercial health or sports activities; and

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<sup>14</sup> See Short-Term Assignment Rules.

<sup>15</sup> See Short-Term Assignment Rules.

- non-commercial performances approved by the cultural department (up to 90 days)

The key supporting document for an M or F visa is typically an invitation letter from a duly authorized agency (often the municipal commerce commission) or a company in China. M and F visas are typically issued valid for 1, 2, or multiple entries over for 3, 6, or 12 months, at the consular officer's discretion. The typical stay permitted is 30, 60, or 90 days. More favorable terms are available for employees of certain multinational corporations who have established headquarters in Shanghai or Beijing. In addition, recently China has entered into agreements with the United States and Canada to issue 10-year, multiple-entry M visas valid for 60-day stays. Limited extensions of stay are possible.

### B.3 IS A VISA WAIVER AN OPTION?

Citizens of Singapore, Brunei and Japan holding ordinary passports may enter China for business visits without a visa for not more than 15 days.<sup>16</sup>

Also, visa waivers are available persons of many nationalities who wish to stop over in any of a dozen cities (e.g., Beijing, Chengdu, Chongqing, Dalian, Guangzhou, Guilin, Hangzhou, Kunming, Shanghai, Shenyang, Wuhan, and Xian) for up to 72 hours while in transit between points of origin and final destinations outside of Mainland China.<sup>17</sup>

### B.4 IS AN R (TALENT) VISA AN OPTION?

The EEAL created a new R (talent) visa. According to the implementing rules, this visa will be issued to “foreign high-level talent” that China needs and to “specialized talent that is urgently needed due to short supply.”<sup>18</sup> An R visa applicant's qualifications and the need for his or her talent should be confirmed by a responsible department of the Chinese government.<sup>19</sup> The exact scope of activities that are permissible with an R visa have not been clarified by the government.

## C. STRUCTURING THE EMPLOYMENT RELATIONSHIP

Structuring the employment relationship may be straightforward for a domestic PRC company. The entity seeking must not be an individual economic

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<sup>16</sup> Ministry of Foreign Affairs, *Visa-free Access For Ordinary Passport Holders From Singapore, Brunei and Japan* (last viewed June 16, 2015).

<sup>17</sup> Gary Chodorow, *China's 72-Hour Visa Waiver Program* (<http://lawandborder.com/china-72-hour-transit-visa-waiver/>).

<sup>18</sup> Regulation on the Administration of the Entry and Exit of Foreign Nationals, art. 6(9).

<sup>19</sup> Regulation on the Administration of the Entry and Exit of Foreign Nationals, art. 7(9).

organization or private citizen, as they are not authorized to employ foreigners.<sup>20</sup> The foreign national will be a local hire with a PRC employment contract.

Structuring the employment relationship is also straightforward for a representative office. The representative office is not a PRC entity, but instead an office of the foreign entity with China. The foreign representative has an employment relationship with the foreign entity.

But for a multinational company, the employee may have a PRC employment contract, a foreign employment contract with an agreement to be seconded to China, or even dual contracts.

- PRC employment contract (aka “local hire”): This refers to the situation where the assigned employee signs an employment contract directly with the China entity, which pays his or her salary. The employment is governed by PRC law. The maximum term for an employment contract with a foreign national is five years, although it may be renewed subsequently.<sup>21</sup> Employment with the home country entity is terminated or suspended until the PRC employment ends.
- Secondment (aka “expatriation”): A secondment agreement assigns an employee based in his or her home country to a PRC affiliate without terminating the home country employment. A typical secondment agreement will state that the employee is being assigned to the PRC, the employee will be “controlled” by the local PRC entity, the local entity will not have authority to bind the employer, and the local entity will bear certain costs, such as paying PRC individual income tax. There may be a side agreement between the home country entity and the PRC local entity addressing issues such as payroll handling, tax, and benefit obligations and reimbursement. Even if the agreement says that foreign employment rules apply (e.g., termination without cause, overtime, etc.), a PRC agency or court may determine that PRC employment rules apply.
- Dual contracts: This may be the case for an individual with two genuine positions, one within and one outside the PRC.

How to structure the employment relationship among the multinational company, the PRC entity, and the foreign national will turn on various factors, as well as corporate culture:

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<sup>20</sup> Employment Rules, art. 34.

<sup>21</sup> Employment Rules, art. 18.

<b>Factors to Consider in Structuring Employment Relationship Among the Multinational Company, PRC Entity, and Foreign National</b>			
<b>Factors to Consider</b>	<b>PRC employment contract</b>	<b>Secondment</b>	<b>Dual contracts</b>
Type of PRC entity	An employee of a joint venture (JV) or wholly foreign-owned enterprise (WFOE) may use a PRC employment contract.		
Immigration law		Some cities will approve an employment license for seconded JV or WFOE employees (for example, Beijing or Shanghai) but others will require a PRC employment contract (for example, Tianjin).	
Labor law		Some multinational employers prefer secondment to a PRC employment contract because of the governing law (for example, that the PRC Employment Contract Law allows termination in only narrow circumstances).  Some parties also prefer not to sign a PRC employment contract in order to keep jurisdiction over employment disputes in the home country.  For seconded employees, some PRC agencies and courts will nonetheless in practice apply PRC labor law to disputes.	
Individual income tax (IIT)  (In all cases, the PRC entity has a legal obligation to withhold tax monthly.)  (Also, an employee who has been a tax resident of China for 5 years straight is subject to IIT on	The employee is subject to IIT from day 1 of employment.	A foreign citizen who lives continuously or for an accumulated period of no more than 183 days in China (or 90 days if no tax treaty between the home country and PRC) <sup>23</sup> during a calendar year, whose compensation is paid by the home country employer, is exempt from declaration for payment for payment of IIT in China. (This does not apply to a director, senior officer, legal representative, or chief representative of a PRC entity whose director's fees or compensation is paid by that entity). <sup>24</sup>	

<sup>23</sup> The U.S. and China have an applicable tax treaty. United States-People's Republic of China Income Tax Convention, entered into force Jan. 1, 1987.

<sup>24</sup> China State Administration of Taxation (SAT), Public Notice [1999] No. 241.

worldwide income. Tax residence can be interrupted for this purpose by being outside the PRC for more than 90 days cumulatively each calendar year or 30 consecutive days within a single calendar year.) <sup>22</sup>			
Permanent establishment		<p>If the home country entity pays secondees' wages, it increases the risks of a permanent establishment (PE) in China. Generally speaking, a PE is created when the home entity (a) secondes employees to PRC for more than 183 days during any rolling 12-month period, (b) either fully or partially bears the responsibilities and risks of the secondees' work, and (c) normally evaluates and assesses the secondees' performance.<sup>25</sup></p> <p>A PE is subject to corporate tax on the basis that it is doing business in China. This has been enforced by requiring the PRC entity to pay tax when reimbursing the home country entity for the salary and benefits of the employee on the theory that the home country entity is being paid for a service to the PRC entity.</p>	
PRC social insurance	Regardless of how employment is structured, the employee must participate in all five basic social security schemes (basic pension, basic medical, unemployment, maternity, and work-related injury insurance), unless a social security treaty between China and the home country applies. <sup>26</sup>		
Home country social insurance and retirement plan issues		Continued home country employment may be necessary to qualify for certain benefits (e.g., U.S. Social Security retirement benefits).	
		Continued home country employment may also be necessary to participate in the home country entity's retirement plan.	
Other		There are currency exchange concerns and intra-company	

<sup>22</sup> China State Administration of Taxation (SAT), Public Notice [1999] No. 37.

<sup>25</sup> China State Administration of Taxation (SAT), Public Notice [2013] No. 19, [http://www.csi.sh.gov.cn/pub/xxgk/zcfg/ssxd/201305/t20130507\\_403122.html](http://www.csi.sh.gov.cn/pub/xxgk/zcfg/ssxd/201305/t20130507_403122.html).

<sup>26</sup> No such treaty has been signed between the U.S. and China.

		chargebacks associated with secondment.	
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## D. REQUIREMENTS AND PROCEDURES, IN GENERAL

### STEP 1. EMPLOYMENT LICENSE (就业许可)

#### SAMPLE EMPLOYMENT LICENSE



#### EXEMPTIONS

The following individuals are exempt from the employment license requirement:

1. chief representatives and representatives of the permanent representative offices of foreign enterprises in China holding a work card (常驻机构工作证)<sup>27</sup>;
2. foreign nationals employed in China under agreements or accords entered into by the Chinese government with foreign governments or international organizations for the implementation of Sino-foreign projects of cooperation and exchange<sup>28</sup>;
3. foreign workers with special skills who work in offshore petroleum operations without the need to go ashore for employment and hold a “PRC Work Permit for Foreign Personnel Engaged in the Offshore Petroleum Operations”<sup>29</sup> issued by the China National Offshore Oil Corporation; and
4. foreign nationals engaged in commercial performing entertainment with the approval of the Ministry of Culture and hold a “License for Temporary Commercial Performance” (临时营业演出许可证).<sup>30</sup>

#### **REQUIREMENTS RELATED TO THE FOREIGN NATIONAL**

The foreign national must meet the following requirements:

1. Be 18 years of age or older.<sup>31</sup> Moreover, some cities prohibit applications from persons who have reached the mandatory retirement age, although agencies have some power to exercise discretion. (See below).
2. Be in good health. (See below section re: medical examination).
3. Have professional skills and job experience required for the intended employment.<sup>32</sup> This requirement is spelled out in more detail in many cities. For example, Beijing requires “a bachelor’s degree or higher and two or more years of experience related to the work.”<sup>33</sup> Shanghai has the same requirement.<sup>34</sup> In Shanghai, the

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<sup>27</sup> Employment Rules, art. 10

<sup>28</sup> Employment Rules, art. 10.

<sup>29</sup> Employment Rules, art. 9.

<sup>30</sup> Employment Rules, art. 9.

<sup>31</sup> Employment Rules, art. 7.

<sup>32</sup> Employment Rules, art. 7.

<sup>33</sup> Beijing Municipal Human Resources and Social Security Bureau, *Employment Licenses for Foreign Nationals (Hired by Enterprises)* (Mar. 2010), [http://www.bjld.gov.cn/xxgk/xzxk/xkcx/201003/t20100305\\_22674.html](http://www.bjld.gov.cn/xxgk/xzxk/xkcx/201003/t20100305_22674.html).

<sup>34</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).



degree and experience requirements do not apply if the foreigner is the direct investor or the legal representative.<sup>35</sup>

4. Have no criminal record.<sup>36</sup> The Chinese government has not issued any interpretation of this provision. In practice, it seems as if some very minor foreign crimes do not prevent issuance of an employment license. One theory is that such minor foreign crimes would not be treated in China as crimes but instead as administrative violations. In addition, if a foreign crime has been expunged or vacated, arguably the applicant has no criminal record.
5. Have a valid passport or other international travel document in lieu of the passport.<sup>37</sup>

## REQUIREMENTS RELATED TO THE EMPLOYER AND POSITION

The foreign national must have a clearly-defined employer.<sup>38</sup>

Existing rules require that Z visas be reserved for positions for which the employer has a “special need” and that is currently a “shortage” occupation in China.<sup>39</sup> These rules are intended to support the Government’s long-held policy of protecting domestic workers against foreign competition while still allowing foreign talent to help develop the economy.<sup>40</sup> The rules are fairly vague and unevenly enforced. Positions which are clearly inappropriate include restaurant servers and hostesses.<sup>41</sup> Moreover, enforcement of this rule may take the form of informal limits on the number of foreign workers per entity, depending on its registered capital or number of Chinese employees.

Under the new law, various government departments should cooperatively formulate and periodically adjust a guidance list regarding special need / shortage occupations. The list should be based on economic and social development needs, as well as the supply of and demand for human resources. (Art. 42). No such list has been published yet. It remains to be seen how the new law will be interpreted and enforced.

## SPECIAL CASES: OLDER WORKERS

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<sup>35</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).

<sup>36</sup> Employment Rules, art. 7.

<sup>37</sup> Employment Rules, art. 7.

<sup>38</sup> Employment Rules, art. 7.

<sup>39</sup> Employment Rules, art. 6.

<sup>40</sup> Ministries of Public Security, Labor, and Foreign Affairs, “Notice on Curbing Illegal Employment of Foreign Nationals in China [关于制止外国人在华非法就业的通知], Public Notice [1994] No. 17, Oct. 31, 1994.

<sup>41</sup> Ministries of Public Security, Labor, and Foreign Affairs, “Notice on Curbing Illegal Employment of Foreign Nationals in China [关于制止外国人在华非法就业的通知], Public Notice [1994] No. 17, Oct. 31, 1994.

As mentioned above, some cities prohibit applications from persons who have reached the mandatory retirement age, although agencies have some power to exercise discretion.<sup>42</sup>

Currently, the general legal retirement age in China is 60 for males, 50 for female workers and 55 for female professionals and management personnel.

The 18th Central Committee of the Chinese Communist Party decided in November 2013, that it would begin implementing a policy to gradually increase the legal retirement age. It is likely that formal schemes will be developed in the near future. The objective of the new policy would be to raise the legal retirement age to 65 for both males and females.

Work visa rules import the mandatory age limits from the labor laws but are driven by slightly different policy priorities. On one hand, the rules are written to encourage entry of highly talented individuals in areas where there are skills shortages in China. On the other hand, the rules also reflect a concern that older foreign nationals could have health care costs that employers and the government are unable or unwilling to bear.

Generally speaking, there are two broad classes of work authorization, as explained above—based on an employment license issued by HRSS or based on a foreign expert license issued by foreign expert bureaus under the State Administration for Foreign Expert Affairs (SAFEA). The national rules for both types of work authorization are silent about the maximum age for eligibility.<sup>43</sup>

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<sup>42</sup> As background, the idea of mandatory retirement dates to a 1978 State Council rule that workers in government, State-Owned Enterprises, the Party, and mass organizations should generally retire at age 60 for men, age 50 for women (since changed to age 55 for many women). 国务院关于工人退休、退职的暂行办法 (Interim Measures of the State Council on the Retirement and Resignation of Workers), adopted by the NPCSC on May 24, 1978, and promulgated by the State Council on June 2, 1978. Mandatory retirement with a pension was publicized as a way to let retirees “lead a happy life in their twilight years,” thus “demonstrating the superiority of the socialist system.” *Id.* It was also a reform measure to end lifelong tenure for cadres and accelerate the Four Modernizations. Despite enormous changes in society over the last few decades, mandatory retirement ages are still in force.

National regulations state that a labor contract will terminate when the employee reaches the legal retirement age. 中华人民共和国劳动合同法实施条例 (Regulations on the Implementation of the PRC Employment Contract Law), Order 535 of the State Council, issued Sept. 18, 2008.

Today, while some older individuals can be found in the workplace, generally speaking, the relationship between an employer and an individual over the retirement age is treated by the law not as a labor relationship (劳动关系) but instead as a service relationship (劳务关系), so the employee protections of the Labor Contract Law don't apply.

<sup>43</sup> See EEAL; Employment Rules.

One exception is that for foreign expert licenses “foreign culture and education experts in principle should not exceed 65 years of age.” The caveat (“in principle”) again leaves room for agencies to exercise discretion in special cases.

Beyond that, cities enforce their own maximum age rules. For example, in Shenyang, persons over age 60 “generally” will not be granted foreign expert licenses. In practice, our experience is that discretion to allow older workers more often granted for foreign expert licenses than for employment licenses.

In sum, generally speaking, approval of an employment license or foreign expert license after age 60 for men and 55 for women is a matter of discretion reserved for “special cases” where the (a) individual is highly qualified, (b) the work unit is well-known, and (c) the position offered is important, urgently needed, and a shortage occupation in China.

## PROCEDURES

The application for an employment license is made by the employer.<sup>44</sup> In Shanghai, the application is submitted online<sup>45</sup> after the employer applies for an IC card providing access to the online system. The application is filed with the Certificate Office of the Bureau of Human Resources and Social Security<sup>46</sup>:

### **Documents to submit with the employment license application<sup>47</sup>:**

1. Application Form for Foreigner’s Employment in China;
2. Report from the employer explaining the reasons for the employment and the position offered;
3. Employment contract or a letter of intention to hire the foreign national. (If the position is at or above the rank of deputy general manager, attach a board resolution or, if there is no board, a signed resolution by the person in charge as specified in its articles of association).<sup>48</sup>

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<sup>44</sup> Employment Rules, art. 5. In Beijing, the person filing the application needs a letter of introduction from his or her employer (or a power of attorney from the employer and the agent’s business license) and own ID. Beijing Bureau of Human Resources and Social Security, *Matters Relating to Enterprises’ Application for the Employment License for Foreigners* (last visited Aug. 18, 2013), [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm).

<sup>45</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).

<sup>46</sup> Employment Rules, art. 13.

<sup>47</sup> See generally Employment Rules, art. 11.

<sup>48</sup> Beijing Bureau of Human Resources and Social Security, *Matters Relating to Enterprises’ Application for the Employment License for Foreigners* (last visited Aug. 18, 2013),

4. Resume (in Chinese)
5. Unless an exception applies, credentials of the foreign national required for the performance of the job. (This includes the original academic degree certificate, professional skills qualification certificates, and letters from former employers attesting to the two years of relevant work experience.<sup>49</sup> Also submit Chinese translations bearing the official seal of a professional translation company.)<sup>50</sup>
6. Certificate of no criminal conviction. This is required in Beijing (effective July 1, 2013)<sup>51</sup> but not Shanghai.<sup>52</sup>
7. Health certificate (see note below):
  - a. Some cities, including Beijing, require a physical examination at this stage. Submit a photocopy of the health certificate issued by a foreign medical institution recognized by the Chinese embassy or consulate or issued by China's Inspection and Quarantine Bureau.<sup>53</sup>
  - b. Other cities, including Shanghai, don't require a physical examination until the application for a work permit is submitted.<sup>54</sup>

[http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm).

<sup>49</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).

<sup>50</sup> Beijing Bureau of Human Resources and Social Security, *Matters Relating to Enterprises' Application for the Employment License for Foreigners* (last visited Aug. 18, 2013), [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm).

<sup>51</sup> U.S. and China Visa Law Blog, Beijing to Require "Certificate of No Criminal Conviction" for Foreigners' Employment Licenses (June 19, 2013), <http://lawandborder.com/beijing-to-require-certificate-of-no-criminal-conviction-for-foreigners-employment-licenses/>.

<sup>52</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).

<sup>53</sup> Beijing Bureau of Human Resources and Social Security, *Matters Relating to Enterprises' Application for the Employment License for Foreigners* (last visited Aug. 18, 2013), [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm).

<sup>54</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

8. Passport photocopy
9. Recent color photograph (two inches with a white background)
10. Company documents (original and copy with company chop, except as otherwise specified below):
  - a. Business license (or, for foreign-invested enterprise, certificate of approval)
  - b. Organization Code Certificate (required in Shanghai)<sup>55</sup>
  - c. For foreign-invested enterprises, articles of association and joint venture operation contract (if applicable)
  - d. For domestic companies, social insurance registration certificate
  - e. For the Beijing branch of an out-of-town enterprise, the head-office's business license (duplicate copies with company chop) and its own certificate of approval
  - f. Power of attorney for the agent assisting with the filing, plus his or her business card and national ID
11. In certain industries, pre-approval is required by competent trade authorities overseeing the work unit<sup>56</sup> (for example, law, hospital or research institutes, telecom, and finance)

There is no filing fee. In Beijing, the processing time is 10 work days.<sup>57</sup> In Shanghai, 15 days.<sup>58</sup> The certificate is valid for 6 months (i.e., work authorization procedures must be completed by then).<sup>59</sup>

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<sup>55</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).

<sup>56</sup> Employment Rules, art. 11. National-level work units and those without an agency overseeing the industry file directly with the Bureau of Human Resources and Social Security. *Id.*

<sup>57</sup> Beijing Bureau of Human Resources and Social Security, *Matters Relating to Enterprises' Application for the Employment License for Foreigners* (last visited Aug. 18, 2013), [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm).

<sup>58</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).


<sup>59</sup> Beijing Bureau of Human Resources and Social Security, *Matters Relating to Enterprises' Application for the Employment License for Foreigners* (last visited Aug. 18, 2013), [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ObtainingAnEmploymentLicense/t1126465.htm); Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).

## STEP 2. VISA NOTIFICATION LETTER (通知签证函)

### SAMPLE VISA NOTIFICATION LETTER

**被授权单位邀请函**  
Invitation Letter of Duly Authorized Unit  
编号/No: \_\_\_\_\_

此函仅限申请人前往中华人民共和国驻 泰国大使馆 (总领馆/领事馆/处) 或中华人民共和国外交部驻 \_\_\_\_\_ 特别行政区特派员公署申请签证时使用。  
Please apply forthwith for visa at the Embassy (Consulate// Office) of the P. R. China in Tailand or the commissioner' s office of the Foreign Ministry of the P. R. China In \_\_\_\_\_ SAR with this letter.

被授权单位名称: 山东省日照市人民政府外事办公室 Name of Duly Authorized Unit				
被邀请人情况 Information of the Invited				
外文姓名 Full Name	性别 Sex	出生日期 Date of Birth	国籍 Nationality	护照号码 Passport No.
1	男	_____	美国	_____
申请签证有效期 90 天 Validity of Visa Intended to Apply	拟入境次数 1 次 Number of Entries	最长停留天数 365 天 Longest Stay		
拟入境日期 2013. 9. 30 Date of First Entry	访问地点 日照市 Places to Visit	事由 工作 Purpose of Visit		
联系人 闫慧 Contact Person	被授权单位盖章及负责人签署 Seal and Signature			
电话 (0633) 8787132 Tel	 <p style="text-align: center;">高慧 副主任 2013 年 9 月 16 日 Year      Month      Day</p>			
传真 (0633) 8781303 Fax				
邮箱 E-mail 196892691@qq.com				

注: 本函限五人使用, 不足五人的空白部分, 请对角划一斜线, 超过五人另行出函。  
Notes: This letter is for 5 people at most. Please cross a diagonal in the blank space if there are less than 5 people. For more than 5 people, please issue another one.

### PROCEDURES

A visa notification letter must be issued by the “duly authorized unit” (被授权单位).<sup>60</sup> In each city, the default unit is different:

<sup>60</sup> Employment Rules, art. 14.

- Beijing<sup>61</sup> and Shanghai<sup>62</sup>: the Municipal Commission of Commerce
- Dalian: Foreign Affairs Office
- Guangzhou: Bureau of Foreign Trade and Economic Cooperation

In Beijing and Shanghai, the procedure is to first file an online application with the names of the worker and dependents. After that application is accepted, the paper documents are filed. Processing takes 5 work days, and the invitation letter is valid for 1 month, during which time the visa application must be filed.

**Documents required for the visa notification letter:**

1. Application form. If the employer's license was not issued by the local Industry and Commerce Bureau (ICB), a stamp must be pre-applied from the government agency that oversees its trade. (For example, if a law firm hire a foreigner legal advisor, the law firm first apply for approval from the local Bureau of Justice).
  - a. Note that the application must specify the PRC consulate where the applicant will seek a Z visa. See the below rules regarding place of application.
2. Certificate that the online application has been accepted
3. Employment license (original and copy), or representative card
4. Employer's business license (photocopy), or representative office's ICB registration certificate
5. Passport of the worker and each dependent seeking a visa (photocopy)
6. Guarantee letter issued by the employer and signed by the legal representative of the employer
7. The operator's ID and the copy, his or her work card and the copy
8. Marriage certificate of dependent spouse and birth certificate of each dependent child (photocopy with English translation chopped by a professional translation company)

Note: all copies must be chopped by the PRC employer.

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<sup>61</sup> Beijing Municipal Commission of Commerce, *Verification and Issuance of Invitation Letters to Overseas Businesspersons* (Aug. 8, 2010),

[http://www.bjcoc.gov.cn/en/administrative/201008/t20100818\\_28865.html](http://www.bjcoc.gov.cn/en/administrative/201008/t20100818_28865.html).

<sup>62</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Employment License* (last visited Aug. 18, 2013),

[http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102207.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102207.shtml).

## STEP 3. Z VISA AND ENTRY (Z 签证和入境)

### PERSONS IN CHINA WHO CAN APPLY FOR A RESIDENCE PERMIT FOR WORK WITHOUT A Z VISA

Most foreign nationals who don't currently hold a residence permit for work will need to apply for a Z visa abroad prior to applying for a residence permit for work. However, individuals in China may be able to apply for a residence permit for work without holding a Z visa if they fall within these categories<sup>63</sup>:

- Special talent: In Beijing, to be recognized as such, the applicant must submit a certification from a Chinese government agency that he or she is a high-level talent or a professional urgently needed in China.<sup>64</sup>
- Investors
- Humanitarian grounds
- Otherwise conform to State regulations

### PLACE OF APPLICATION

The Z visa application is filed with a PRC Embassy, Consulate, Chinese Visa Application Service Center (CVASC), or other visa-issuing agency with jurisdiction over the applicant's place of residence.

A CVASC is a private company that contracts with a PRC Embassy or Consulate to handle some processing tasks related to visa applications. The CVASC receives visa applications, reviews them for completeness, collects the visa application fee, forwards the application to the Embassy or Consulate to be adjudicated, delivers the passport with the new visa to the applicant, and answers customer inquiries.

Application in third countries is usually discouraged, with the exception of applying at the Ministry of Foreign Affairs' Office in Hong Kong.

You must be physically present in the country where you apply for the visa.

### DOCUMENTS REQUIRED FOR THE APPLICATION

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<sup>63</sup> EEAL, art. 31. MPS, 外国人申请签证证件须知, <http://www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html>. (Note that there is no exception for persons in China with a residence permit for family reunion or private affairs. They will need to go abroad to apply for a Z visa).

<sup>64</sup> Beijing Municipal Public Security Bureau, Provisional Procedures for Visa and Residence Permits, Part 1.1.1, <http://www.bjgaj.gov.cn/eng/wsgsAction.do?methodname=getSubListWsgs&id=col2274>.



## Documents required for the visa application:

Basic documents for Chinese visa applications<sup>65</sup>:

1. Valid passport (valid for 6 months or more, with at least 2 blank pages) or other international travel document<sup>66</sup>
2. Visa application form
3. Photograph
4. Third country nationals: If you are not applying for the visa in the country of your citizenship, you must provide the original and photocopy of your valid certificates or visa of stay, residence, employment or student status, or other valid certificates of legal staying provided by the relevant authorities of the country where you are currently staying.
5. Previous Chinese citizens: If you are applying for a PRC visa for the first time, provide your previous PRC passport and a copy of its ID page; if you are applying for a PRC visa using a passport that contains none, present photocopies of your prior foreign passport's data page and the visa page. Also, if you've changed names, provide official evidence.
6. Visa application fee, which depends on the applicant's nationality and is set on a reciprocal basis by PRC and the foreign government.<sup>67</sup>

A Z visa application should also include the following documents<sup>68</sup>:

7. Employment license,<sup>69</sup> unless exempt, in which case a document related to the exemption must be submitted (see Step 1)
8. Visa notification letter or employer invitation letter

For each family member seeking an S1 visa and listed in the worker's visa notification letter, the additional supporting documents should include:

9. an invitation letter from the worker or student with information about the applicant (full name, gender, date of birth, etc.), the visit (purpose of visit, arrival and departure dates, place of intended residence, relationship between the parties, source of financial support, etc.), and the worker or student (name, contact number, address, signature, etc.).

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<sup>65</sup> See generally Ministry of Foreign Affairs, *About Chinese Visa* (Nov. 1, 2013), <http://cs.mfa.gov.cn/wgrlh/lhqz/lhqzjjs/t1095035.shtml>.

<sup>66</sup> MOFA, *About Chinese Visa[s]* (Nov. 1, 2013), <http://cs.mfa.gov.cn/wgrlh/lhqz/lhqzjjs/t1095035.shtml>.

<sup>67</sup> MOFA, 外国人来华签证收费标准一览表 [List of Visa Fees for Foreigners Coming to China], Apr. 1, 2015, <http://cs.mfa.gov.cn/wgrlh/>.

<sup>68</sup> See generally MOFA, *About Chinese Visa[s]* (Nov. 1, 2013), <http://cs.mfa.gov.cn/wgrlh/lhqz/lhqzjjs/t1095035.shtml>.

<sup>69</sup> Regulations on the Administration of the Entry and Exit of Foreign Nationals, art. 7(12).

10. a photocopy of the worker or student's passport and residence permit (if he or she has already entered China). Note that the residence permit must be valid for over 180 days.
11. original and photocopy of certification of relationship between the parties (marriage certificate, birth certificate, certification of kinship issued by Public Security Bureau or notarized certification of kinship).<sup>70</sup>

The visa-issuing agency may require additional documentation.<sup>71</sup>

## APPLICATION METHOD

Application procedures at each Consulate are different. Our firm will provide you with advicer about applying at your selected Consulate. In the meantime, here's an example of how to apply at the China Visa Application Center (CVASC) in Mumbai, India. To apply there, you can file using any of the following methods:

- Apply in person
- Authorize a third person to file in person for you.<sup>72</sup>
- File by mail<sup>73</sup>

For filing in person, no appointment is needed. For the CVASC address, a map, and office hours, see the CVASC website.<sup>74</sup> The busiest hours are 10am to 1pm, so you may want to avoid those times. When you drop off the application, the CVASC will give you a pick-up form showing the date to pick up your visaed passport.

## PROCESSING TIME AND PICK UP

You can choose between regular service and express service. The fees and processing times are shown below.<sup>75</sup> Note that the fees differ slightly depending on nationality and the consular post:

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<sup>70</sup> Cf. Ministry of Public Security, Rules for Foreign Nationals Applying for Visas and Other Certificates (Dec. 17, 2013), art. 16, [www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html](http://www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html) (requiring that the evidence of kinship either be (a) issued by the responsible government agency, notarized, and authenticated by a PRC consulate abroad; or (b) issued by a foreign consulate in China).

<sup>71</sup> Regulations on the Administration of the Entry and Exit of Foreign Nationals, art. 7.

<sup>72</sup> [http://www.visaforchina.org/BOM\\_EN/generalinformation/faq/271203.shtml](http://www.visaforchina.org/BOM_EN/generalinformation/faq/271203.shtml) (last visited Nov. 16, 2014);

[https://www.visaforchina.org/web/guidance/StepByStep\\_step1GoNext.action](https://www.visaforchina.org/web/guidance/StepByStep_step1GoNext.action) (last visited Nov. 16, 2014). No power of attorney is needed.

<sup>73</sup> [http://www.visaforchina.org/BOM\\_EN/generalinformation/faq/271203.shtml](http://www.visaforchina.org/BOM_EN/generalinformation/faq/271203.shtml) (last visited Nov. 16, 2014).

<sup>74</sup> [http://www.visaforchina.org/BOM\\_EN/aboutus/271179.shtml](http://www.visaforchina.org/BOM_EN/aboutus/271179.shtml) (last visited Nov. 23, 2014).

<sup>75</sup> [http://www.visaforchina.org/BOM\\_EN/generalinformation/visaknowledge/271163.shtml](http://www.visaforchina.org/BOM_EN/generalinformation/visaknowledge/271163.shtml) (last visited Nov. 16, 2014).

Z visa application fee	USD 140 (U.S. citizens) USD 30 (Citizens of most other countries) <sup>76</sup>
CVASC fee, where applicable	Varies
Express or rush fees (optional):	
• Express service	USD 20
• Same-day rush service	USD 30

At some consular posts, payment should be in cash (local currency only).<sup>77</sup>

Z and S1 visa applicants may be required to attend an interview,<sup>78</sup> but in practice that is seldom necessary.

If a visa is refused, the officer need not explain why.<sup>79</sup> There is no appeal.

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<sup>76</sup> China has reciprocal visa fee agreements with the following 26 countries:

Angola	D.R.Congo	Poland
Armenia	Ecuador	Romania
Bolivia	Ethiopia	Russia
Brazil	Gabon	Ukraine
Bulgaria	Iran	United Kingdom
Cameroon	Kazakhstan	United States of America
Canada	Mexico	Uzbekistan
Chile	Moldova	Venezuela
Cote D'ivoire	Panama	

<http://www.fmcoprc.gov.hk/eng/fwxx/wgrqz/t279937.htm>

<sup>77</sup> [http://www.justdial.com/Mumbai/Chinese-Visa-Application-Service-Center-%3Cnear%3E-Next-To-HDFC-Bank-Backbay-Reclamation-Nariman-Point/022PXX22-XX22-110802150845-I9Z2\\_TmF0aW9uYWwgU2VhcmNoIFZpc2EgVmlraW5new==\\_BZDET](http://www.justdial.com/Mumbai/Chinese-Visa-Application-Service-Center-%3Cnear%3E-Next-To-HDFC-Bank-Backbay-Reclamation-Nariman-Point/022PXX22-XX22-110802150845-I9Z2_TmF0aW9uYWwgU2VhcmNoIFZpc2EgVmlraW5new==_BZDET) (last visited Nov. 16, 2014).

<sup>78</sup> Regulations on the Administration of the Entry and Exit of Foreign Nationals, art. 8 (requiring interview if applying for “residence”).

<sup>79</sup> EEAL, art. 21.



Upon arriving at a port of entry, a Z visa holder should fill in an Entry Card and present it with his or her passport (or other travel document) to the officer at the Exit and Entry Border Inspection Station.<sup>82</sup>

Inspection Stations have statutory authority to collect fingerprints and other biometric data from persons entering the country, but no such plan has yet been submitted to the State Council.<sup>83</sup> Immigration stations also have authority to require health exams,<sup>84</sup> but that authority is rarely exercised.

As a practical matter, visa holders are rarely refused entry. As a legal matter, an officer may refuse entry if, among other things<sup>85</sup>:

1. the foreign national lacks a valid visa (or other exit-entry certificate);
2. the foreign national refuses or evades inspection;
3. the officer believes that the foreign national may, upon entering China, engage in activities inconsistent with the terms and conditions of the visa; or
4. the foreign national does not meet the visa eligibility requirements listed above.

Let us know as soon as possible if you believe there is a chance any of these grounds for refusal may apply to you.

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<sup>82</sup> The Entry Card is attached to a Departure Card, which warns, “Retain this card... Failure to do so may delay your departure from China.” Currently, there is no need to fill in the card, and if you lose it your departure from China won’t be delayed because you can pick up another card at the airport when you depart China.

<sup>83</sup> EEAL, art. 7.

<sup>84</sup> Frontier Health and Quarantine Law, art. 16, enacted by the Standing Committee of the National People’s Congress, promulgated Dec. 29, 2007 (authorizing frontier health and quarantine offices to require health exams by persons entering or exiting China); Implementing Regulations for the Frontier Health and Quarantine Law, art. 19(5), State Council Order No. 574 (2010), promulgated Apr. 24, 2010 (same).

<sup>85</sup> EEAL, art. 25.

If admission is refused, the officer need not explain why,<sup>86</sup> and there is no right of appeal. Persons refused admission will not be allowed to leave the Inspection Station until they depart the country.<sup>87</sup>

### TEMPORARY RESIDENCE REGISTRATION (临时住宿登记)

A foreign national must register his or her residence with the public security bureau within 24 hours of arrival in China with the Z visa. Registration is also required within 24 hours of changing residence. For details, see “China: Foreign Nationals Must Register with Local Police within 24 Hours” at <http://lawandborder.com/temporary-residence-registration-for-foreign-nationals/>.

Prior to your entry, please give us a copy of your visa, flight itinerary, and information about where you will stay initially in China (for example, a hotel? A service apartment?) so that we can advise you about how to register.

## STEP 4. MEDICAL EXAMINATION (体检)

### HEALTH REQUIREMENTS

As mentioned above, to qualify for an employment license you must be in “good health.”<sup>88</sup> This requires that the applicant have “no mental illness,” no infectious disease such as leprosy, AIDS, venereal disease, or active tuberculosis, and no illness that makes the foreign national unable to perform the job offered.<sup>89</sup> There doesn’t appear to be an authoritative list of all medical conditions that may disqualify an individual from “good health.”

We recommend you contact us our firm if you may have any of the following conditions so that we can investigate whether it may disqualifying:

1. HIV+ or AIDS
2. A sexually transmitted disease
3. Active tuberculosis
4. Leprosy
5. Mental disease
6. Plague
7. Cholera
8. Yellow fever
9. Malaria
10. Polio

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<sup>86</sup> EEAL, art. 25.

<sup>87</sup> EEAL, art. 26.

<sup>88</sup> Employment rules, art. 7.

<sup>89</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit for Chief Representative or Representative of Representative Office of Overseas Enterprise* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102212.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102212.shtml).

11. Typhoid
12. Hepatitis
13. Asthma
14. Diabetes
15. Epilepsy
16. Kidney disease
17. Cardiac disease
18. Hypertension
19. Any history of use of illegal drugs
20. Drug addiction
21. Any physical disability

### **WHEN IS A MEDICAL EXAM NEEDED?**

- Employment license applicants in Beijing: In some cities, including Beijing, the foreign national will be required to obtain a health certificate before applying for an employment license and submit a copy to HRSS. Then, after entering China, that certificate must be verified by the Inspection and Quarantine Bureau (IQB), and submitted with the work permit application.
- Work permit applicants in Shanghai: In other cities, such as Shanghai, the health certificate is not needed until the work permit application stage.
- Applicants for initial residence permits valid for one year or more: And in all cities, the foreign worker and family members applying to the Public Security Bureau's Exit-Entry Division for initial residence permits valid for one year or more will be required to submit a health certificate.<sup>90</sup> (Beijing exempts applicants under age 18.) The regulations don't require a medical examination from persons applying to the PSB to extend a residence permit, change from one type of residence permit to another, or replace a residence permit.<sup>91</sup>

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<sup>90</sup> EEAL, art. 16.

<sup>91</sup> State Council Regulations, art. 17.

## PROCEDURES IN SHANGHAI

In most cases, the health certificate will be obtained by undergoing a medical examination at the health center of the Inspection and Quarantine Bureau (IQB).<sup>92</sup> Here's an overview of the procedures in Shanghai:<sup>93</sup>

- Location: Shanghai International Travel Healthcare Center at 15 Jinbang Rd., Changning District (上海市长宁区金浜路 15 号上海国际旅行卫生保健中心). Telephone: +86.21.6268.8851. This Center is affiliated to the Shanghai IQB.
- Scheduling an appointment: Appointments are scheduled online at [www.sithc.com/sithcen](http://www.sithc.com/sithcen).
- Please don't eat for 5 hours before the exam. (It's OK to drink water).

<b>Items to bring to the appointment:</b>
1. Shanghai Health Examination Application Form
2. Passport plus a photocopy of your ID and visa pages
3. Company's business license or registration certificate (photocopy)
4. Four 2-inch photographs (full face without hat)
5. RMB 640 examination fee (cash only)

- Getting the health certificate:
  - Pick up in person: You or a third party can personally return to the health certificate-collection window (window #2) with

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<sup>92</sup> However, if the foreign national has undergone a medical exam at a physician abroad within six months, and if that exam is as comprehensive as the one conducted by IQB, then IQB may "confirm" that exam. The following documents must be submitted:

1. The complete medical examination report performed abroad
2. Passport (original and photocopy)
3. Employer's business license (photocopy)
4. Two passport-style photographs

If IQB deems the exam comprehensive enough, it will issue a health certificate. As a practical matter, IQB often determines that an exam performed abroad is not sufficiently comprehensive, in which case further examination is required.

For Shanghai procedures, see [http://www.sithc.com/sithcen/introduccionofservice/healthadministration/healthadministration/201311/t20131122\\_15143.html](http://www.sithc.com/sithcen/introduccionofservice/healthadministration/healthadministration/201311/t20131122_15143.html).

<sup>93</sup>

<http://www.sithc.com/sithcen/introduccionofservice/healthadministration/healthadministration/>.



your passport and the payment receipt to pick up the health certificate. The certificate will be ready 4 work days after the exam.

- Courier: You can sign up for courier services to deliver the certificate to your chosen address. Fill in your mailing address at reception when after your finish the exam. It will be received about 4 days after the exam. There is a small fee.
- Abnormal exam results: If your exam results are not normal, you will receive a notice of review. Take the notice, your passport, and the fee receipt to the specified department for the review.
- Health certificates are valid for 6 months.<sup>94</sup>

## STEP 5. WORK PERMIT (就业证)

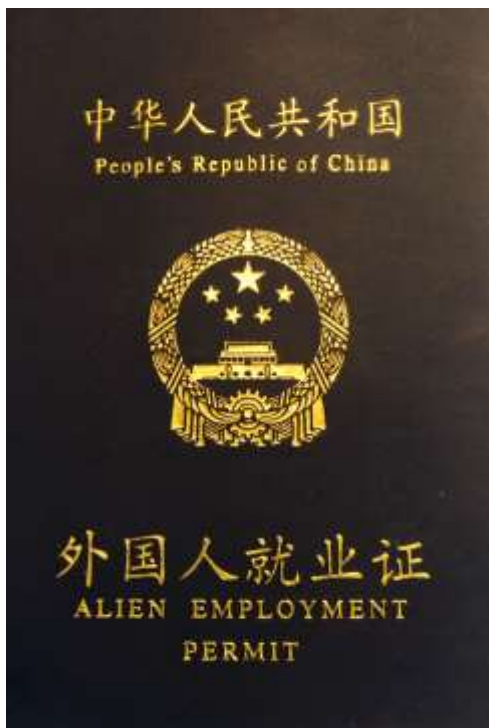
Within 15 days after the foreign national has entered China, the employer should apply at the Certificate Office of the Bureau of Human Resources and Social Security for a work permit (also known as an alien employment permit) for the foreign national.<sup>95</sup>

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<sup>94</sup> EEAL, art. 16.

<sup>95</sup> Employment Rules, art. 16.

## **SAMPLE WORK PERMIT**



中文 [redacted]  
姓名 in Chinese

Name 外文 [redacted]  
in native language

国籍 美国 护照号 [redacted]  
Nationality Passport No.

出生日期 [redacted] 性别 男  
Date of birth Sex

职业或身份 自代  
Occupation or status

工作单位 [redacted]  
Name of employer

现在住址 [redacted]  
Present address

LDBZH LDBZH

有效期限  
Validity

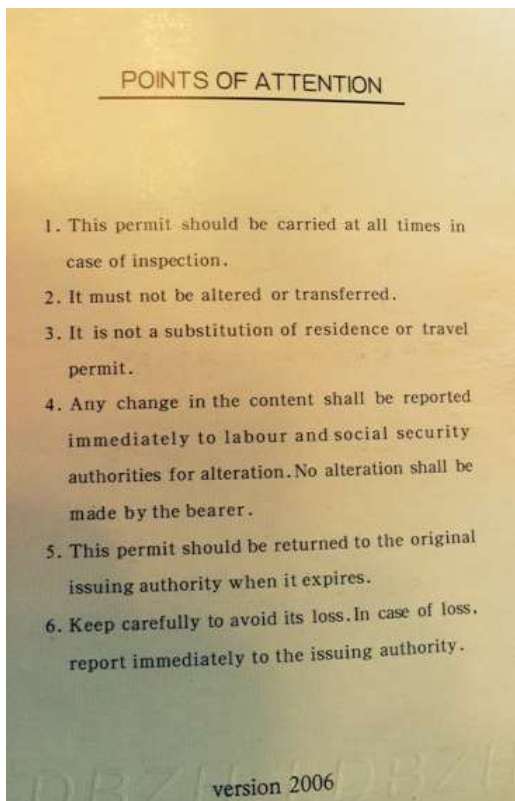
有效期至 2008 年 03 月 31 日  
Valid until yr mth day

发证机关(印)  
Issued by (Seal)



签发日期 2008 年 01 月 09 日  
Date of issue yr mth day

LDBZH LDBZH



## REQUIREMENTS

The foreign national must meet the following requirements:

1. hold an employment license<sup>96</sup> (or a representative certificate for a representative office);<sup>97</sup>
2. have entered China with a Z visa;<sup>98</sup>
3. be in good health (as discussed above);

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<sup>96</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

<sup>97</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit for Chief Representative or Representative of Representative Office of Overseas Enterprise* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102212.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102212.shtml).

<sup>98</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml); Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit for Chief Representative or Representative of Representative Office of Overseas Enterprise* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102212.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102212.shtml).

4. In addition, the foreign national must meet the similar requirements as mentioned above for the employment license (no criminal record,<sup>99</sup> age requirements<sup>100</sup>).

## PROCEDURES IN BEIJING

In Beijing, the filing method is the same as for an employment license.

## PROCEDURES IN SHANGHAI

In Shanghai, the application can be made either online or in person at the HRSS office:<sup>101</sup>

- If company has an HRSS IC card, the application can be filed online. A notice of approval will be issued within 5 work days (15 days for representatives of representative offices).<sup>102</sup> At that point, the notice of approval is brought to HRSS with the required documents to pick up the work permit.
- If filed in person, an HRSS IC card can be applied for at the same time as the work permit application is filed. The required documents are brought to HRSS. A pickup notice will be provided, stating the date on which the work permit may be picked up.<sup>103</sup> The timeline is the same as filing online.

## DOCUMENTS NEEDED FOR THE APPLICATION

**Submit the below documents for the work permit application.<sup>104</sup>  
(There is no filing fee)**

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<sup>99</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit for Chief Representative or Representative of Representative Office of Overseas Enterprise* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102212.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102212.shtml).

<sup>100</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit for Chief Representative or Representative of Representative Office of Overseas Enterprise* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102212.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102212.shtml).

<sup>101</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

<sup>102</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

<sup>103</sup>

<http://wsbs.shwjzx.12333sh.gov.cn/info.issue.issueAction.do;jsessionid=2C9DF4432A9F57614E15D87AB5C5D47D?method=viewPage&issueId=905>

<sup>104</sup> See generally Employment Rules, art. 16.

Employer documents:

1. Foreign National Employment Registration Form (外国人就业登记表) (original with company seal; submitted in duplicate)
2. Business license<sup>105</sup> or representative office registration certificate (copy with company seal)
3. Labor contract or income certificate from the overseas employer, stating the remuneration, job title, and duration of employment.<sup>106</sup> In Shanghai, the direct investor or legal representative of a company is exempt from this requirement.<sup>107</sup> In Beijing, a legal representative is exempt.<sup>108</sup> (copy with company seal)
4. Employer's HRSS IC card (Shanghai only)

Foreign national's documents:

5. Passport. (The validity of the residence permit can't exceed the validity of the passport) (original and copies of the ID, Z visa, and China entry stamp pages with company seal)
6. "Two-inch" photographs.<sup>109</sup> How many? 2 in Beijing; 3 in Shanghai<sup>110</sup>

Initial applicants only:

7. Employment license (unless exempt) (copy with company seal)
8. Temporary accommodation registration form

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<sup>105</sup> Beijing Municipal Human Resources and Social Security Bureau, *Matters Relating to the Application for Employment Permit for Foreigners by Enterprises* (last visited Aug. 21, 2013), [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ObtainingAnEmploymentPermit/t1126495.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ObtainingAnEmploymentPermit/t1126495.htm).

<sup>106</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

<sup>107</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

<sup>108</sup> Beijing HRSS, 代表机构办理外国人就业证相关事宜 (Matters Related to Representative Office's Handling of Work Permits for Foreigners) (last visited June 15, 2015), [http://www.bjrbj.gov.cn/wzzx/work\\_570/work02/201307/t20130715\\_31649.html](http://www.bjrbj.gov.cn/wzzx/work_570/work02/201307/t20130715_31649.html).

<sup>109</sup> For photograph specifications, see *Photo Requirements for a Chinese Visa*, <http://lawandborder.com/photo-requirements-chinese-visa/>.

<sup>110</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

9. Health certificate issued or confirmed by the local Inspection and Quarantine Bureau (original) (not required for an extension) (copy with company seal)

Additional documents for reps of representative offices

10. Organization code certificate (copy with company seal)
11. The foreign national's representative work certificate
12. The foreign national's resume

Miscellaneous:

13. Chinese translations of any foreign-language document
14. The Beijing branch of an out-of-town enterprise should also submit photocopies (duplicate) of the head-office's business license and its own certificate of approval (copy with company seal; in duplicate)

## VALIDITY OF THE WORK PERMIT

Normally, the validity of the work permit shall not exceed one year.<sup>111</sup>

In Shanghai, if the foreigner is the direct investor or legal representative, or employed by an enterprise which has registered capital over 3 million USD, or employed by a regional headquarters established in Shanghai by a multinational corporation, the duration of the work permit can be longer—up to 5 years in certain cases.<sup>112</sup>

In Beijing, work permits may be valid for up to 3 years in the case of workers at WFOEs, representative offices, or Sino-foreign JVs.

In any case, the work permit will expire not later than<sup>113</sup>:

- the labor contract or employment agreement,
- the validity of the foreigner's passport

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<sup>111</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

<sup>112</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

<sup>113</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102208.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102208.shtml).

- the term of the business license or the registration certificate of the employer.

For a representative of a representative office, the work permit will be valid for the same period as the registration certificate and the foreign national's representative certificate, but not longer than the validity of the passport.<sup>114</sup>

## STEP 6. RESIDENCE PERMIT (居留证)

### SAMPLE RESIDENCE PERMIT



### PROCEDURES

The foreign worker and family members should apply for residence permits at the Public Security Bureau's Entry-Exit Division (EED) with jurisdiction over the place of residence.<sup>115</sup> If they have entered with Z and S1 visas, the residence permit should be applied for within 30 days of entry.<sup>116</sup> The visas will indicate this time limit.<sup>117</sup>

The initial residence permit application needs to be filed in person, except if the applicant is

<sup>114</sup> Shanghai Municipal Human Resources and Social Security Bureau, *Instructions for Applying for Alien Employment Permit for Chief Representative or Representative of Representative Office of Overseas Enterprise* (last visited Aug. 21, 2013), [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/20091109\\_1102212.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/20091109_1102212.shtml).

<sup>115</sup> State Council Regulations, art. 16.

<sup>116</sup> EEAL, art. 30.

<sup>117</sup> State Council Regulations, art 9.



- a nationally-designated high-level talent or urgently needed specialist
- under age 16, over age 60, or has limited mobility

The applicant’s presence may in certain situations be waived for an extension, replacement, or reissuance.<sup>118</sup>

According to the law, the EED may collect biometric data such as fingerprints.<sup>119</sup> But as a practical matter, collection has not yet begun. If the application is not complete, the EED will advise what needs to be done to complete the application.<sup>120</sup> The EED may verify the truthfulness of the application through interviews, phone calls, or field investigations.<sup>121</sup>

If the application is complete, the EED will issue an acceptance notice valid for not more than 15 work days and adjudicate the application within that period:<sup>122</sup>

- Shanghai usually takes 7 work days to process the application
- Most cities (e.g., Beijing and Shenyang) use the entire 15 work days, although expedited processing may be possible for emergencies

## DOCUMENTS NEEDED

**Submit the following documents.**

**Where a photocopy is submitted, it should be on size A4 paper.**

Basic documents:

1. Filing fee: 400 RMB (for a 1-year residence permit) or 800 RMB (for a permit valid 1-3 years)
2. Passport or other international travel document
3. One “two-inch” photograph
4. Visa / Stay Permit / Residence Permit Application Form (original with company seal for worker; originals for dependents)
5. Original health certificate issued within 6 months (if applying for an initial residence certificate for one year or longer)

<sup>118</sup> State Council Regulations, art. 19.

<sup>119</sup> EEAL, art. 30.

<sup>120</sup> State Council Regulations, art. 18.

<sup>121</sup> State Council Regulations, art. 20.

<sup>122</sup> EEAL, art. 30; State Council Regulations, art. 18 (referring to the period as “15 days”); Ministry of Public Security, Rules for Foreign Nationals Applying for Visas and Other Certificates (Dec. 17, 2013), art. 17, [www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html](http://www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html) (referring to the period as “15 business days”).

6. Temporary residence registration issued by the local police station or hotel (original and copy)

Company documents:

7. Job confirmation letter from the work unit.<sup>123</sup>
8. Employer's business license (original and copy with company seal)
9. Organization code certificate (original and copy with company seal)
10. Certificate of approval of foreign-invested enterprise (original and copy with company seal)

Worker only:

11. Work permit

Dependents:

12. Worker's work permit
13. Proof of relationship: marriage certificate, birth certificate, or adoption certificate. The certificate must, if issued by foreign authorities, either (a) be issued by the foreign country's consulate in China or (b) authenticated by the Chinese Embassy or Consulate in the country of issuance.<sup>124</sup>

Documents from the filing agent (if applicable)

14. Cover letter issued by the employer
15. National ID card (original and copy)

Miscellaneous:

16. Application materials not in Chinese or English should be accompanied by translations by a qualified translation company.

## **INCONVENIENCES WHILE YOUR PASSPORT IS BEING HELD BY EED**

The foreign national may legally remain in China during the period indicated on the EED's acceptance notice, while his or her passport (or other international

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<sup>123</sup> Ministry of Public Security, Rules for Foreign Nationals Applying for Visas and Other Certificates (Dec. 17, 2013), art. 11(1), [www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html](http://www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html).

<sup>124</sup> *Cf.* Ministry of Public Security, Rules for Foreign Nationals Applying for Visas and Other Certificates (Dec. 17, 2013), art. 16, [www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html](http://www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html) (requiring that the evidence of kinship either be (a) issued by the responsible government agency, notarized, and authenticated by a PRC consulate abroad; or (b) issued by a foreign consulate in China).

travel document) is held by the EED.<sup>125</sup> But international travel is not possible without the passport. In certain compelling circumstances, processing can be expedited at the EED's discretion, as explained above.

You may also encounter other inconveniences while your passport is being held by PSB and you are holding just the EED's acceptance notice:

- You may or may not be able to board a domestic airplane or train.
- You should in theory be able to check into a hotel, but sometimes hotels are not cooperative.<sup>126</sup>
- You may not be able to conduct certain bank or financial transactions.

Take these potential inconveniences into account in deciding the timing for filing your application for a residence permit.

### **GROUNDINGS FOR DENIAL**

Grounds for denial of the residence permit include<sup>127</sup>:

1. Falsification in the application procedure;
2. Failure to provide relevant credentials as required;
3. Violation of relevant laws and administrative regulations, and it is not appropriate for him to reside in China; and
4. Other circumstances in which the EED deems that approval is not appropriate.

There is no appeal if the application is denied.

### **VALIDITY OF THE RESIDENCE PERMIT**

The worker's residence permit will be valid for a period of 90 days to five years.<sup>128</sup> The permit will not be valid beyond the passport's expiration date or work permit's expiration date.<sup>129</sup> In practice, most residence permits are valid for one year. Exceptions include:<sup>130</sup>

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<sup>125</sup> State Council Regulations, art. 19.

<sup>126</sup> For details, see "China: Foreign Nationals Must Register with Local Police within 24 Hours" at <http://lawandborder.com/temporary-residence-registration-for-foreign-nationals/>.

<sup>127</sup> EEAL, art. 31.

<sup>128</sup> EEAL, art. 30.

<sup>129</sup> Beijing Municipal Public Security Bureau, Provisional Procedures for Visa and Residence Permits, Part 1.1.1, <http://www.bjgaj.gov.cn/eng/wsgsAction.do?methodname=getSubListWsgs&id=col2274>.

<sup>130</sup> Ministry of Public Security, Rules for Foreign Nationals Applying for Visas and Other Certificates (Dec. 17, 2013), art. 11(1), [www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html](http://www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html).

- For high-level talent or urgently needed talent, and investors, the residence permit may be valid for up to 5 years.
- For employees of companies registered with the exit-entry administration that have good reputations, the residence permit may be valid for up to 2 years.
- Certain employees of multinational companies with their regional headquarters in Shanghai<sup>131</sup> or Beijing,<sup>132</sup> along with their family members, may be granted residence permits valid for 3-5 years.

Family members' residence permits will be valid for the same period as the worker (but cannot be issued if the worker's remaining validity is shorter than 180 days).<sup>133</sup>

## E. REQUIREMENTS AND PROCEDURES FOR SHORT-TERM WORK ASSIGNMENTS

Effective January 1, 2015, the government has also introduced on a “trial basis” new Procedures for Foreigners Entering China for Short-Term Work Assignments for up to 90 days.<sup>134</sup>

### E.1 WHAT COUNTS AS A WORK ASSIGNMENT?

Under these Procedures, the following activities constitute “work” in China and so require work authorization under a streamlined procedure taking about 15 to 25 business days:

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<sup>131</sup> Letter of the Shanghai Municipal Commission of Commerce, the Shanghai Municipal Human Resources and Social Security Bureau, the Exit-Entry Administration Bureau of Shanghai Public Security Bureau and the Shanghai Entry-Exit Inspection and Quarantine Bureau on Issuing the Supplementary Provisions on the Implementing Opinions on the Provisions on Encouraging Multinational Corporations to Establish Regional Headquarters [关于印发《关于鼓励跨国公司设立地区总部规定实施意见的补充规定》的函], Hu Shang Wai Zi [2014] No.348, issued July 14, 2014, <http://www.scofcom.gov.cn/zxxxgk/236485.htm>.

<sup>132</sup> People's Government of Beijing Municipality, Notice On The Provisions To Encourage Multinational Corporations To Establish Regional Headquarters In Beijing [北京市人民政府关于鼓励跨国公司在京设立地区总部的若干规定], Doc. No. (2009) No.15, issued May 21, 2009, <http://www.bjdch.gov.cn/n8775435/n8777419/n8777674/8860817.html>.

<sup>133</sup> Beijing Municipal Public Security Bureau, *Provisional Procedures for Visa and Residence Permits*, Part 1.1.2, <http://www.bjgaj.gov.cn/eng/wsgsAction.do?methodName=getSubListWsgs&id=col2274>.

<sup>134</sup> Ministry of Human Resources and Social Security, Ministry of Foreign Affairs, Ministry of Public Security, and Ministry of Culture, Notice of Relevant Procedures for Foreigners Entering China for Completion of Short-Term Work Assignment [《外国人入境完成短期工作任务的相关办理程序（试行）》的通知], Notice No. 78 [2014] of the Ministry of Human Resources and Social Security, issued Nov. 6, 2014, effective Jan. 1, 2015.

1. Completing certain technical, scientific research, management, supervisory, etc. “work” at a cooperative entity in China;
2. Conducting training at a sports institution in China as an athlete or coach;
3. Filming (including advertisements or documentaries);
4. Fashion shows (including modeling at car shows, shooting print advertisements, etc.);
5. Foreign-related commercial performances; and
6. Other circumstances that the HRSS bureau may designate.

## **E.2 PROCEDURES**

The procedures are streamlined in that no medical examination or work permit application is required:

1. Apply to HRSS for the employment license and “short-term work certificate for foreign nationals” (as described above)
2. Apply for the visa notification letter from the duly authorized unit
3. Z visa application
4. Apply for a residence permit, if the stay will exceed 30 days

## **F. ADDITIONAL TERMS AND CONDITIONS OF STAY IN CHINA**

### **F.1 TEMPORARY RESIDENCE REGISTRATION (临时住宿登记)**

A foreign national must register his or her residence with the public security bureau within 24 hours of arrival in China with the Z visa. Registration is also required upon obtaining a new residence permit and within 24 hours of changing residence. For details, see “China: Foreign Nationals Must Register with Local Police within 24 Hours” at <http://lawandborder.com/temporary-residence-registration-for-foreign-nationals/>.

### **F.2 SCOPE OF AUTHORIZED WORK**

A person with a residence permit for work is only allowed to work within the scope of the employment license.

- Employer: Work for multiple employers is not authorized because the license authorizes work for a single work unit. There are, however, certain situations where the license will authorize work for several affiliated companies.
- Location: Work in multiple cities is not authorized because the license authorizes work for the work unit in a single city. A less

clear area of law is to what extent travel to other cities is authorized as “business” instead of “work.”

- Position: Changing positions with the same employer requires notification to the municipal HRSS bureau.<sup>135</sup>

### F.3 EXTENSION OF THE WORK PERMIT AND RESIDENCE PERMIT

Unlike some countries, there is no maximum number of years work authorization will be granted in China. In other words, the work permit and residence may be extended indefinitely (up to the mandatory retirement age).

To extend the residence period, the company needs to apply to extend the work permit within 30 days of when it expires.<sup>136</sup> Then, within 10 days<sup>137</sup>--but not later than when the current residence permit expires--the foreign national should submit an application to the PSB exit-entry division for an extension of the residence permit.<sup>138</sup> Our law firm would be pleased to assist. Please contact us 3 months before your current work permit’s expiration.

#### DOCUMENTS REQUIRED FOR THE WORK PERMIT EXTENSION

**Documents for the work permit extension:**<sup>139</sup>

(There is no filing fee.)

1. Foreign National Employment Registration Form (外国人就业登记表)
2. Business license or representative office registration certificate
3. Labor contract or income certificate from the overseas employer, stating the remuneration, job title, and duration of employment.
4. Employer’s HRSS IC card (Shanghai only)
5. Passport
6. A “two-inch” photograph.<sup>140</sup>
7. Work permit
8. Chinese translations of any foreign-language document

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<sup>135</sup> See e.g., Beijing Municipal HRSS Bureau, *Matters Relating to the Alteration of Position and Employer for Foreigners*, [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ChangeOfEmploymentPermitInformation/t1126513.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ChangeOfEmploymentPermitInformation/t1126513.htm).

<sup>136</sup> Employment Rules, art. 19. For the Shanghai procedures, see [http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102209.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102209.shtml) (English) and <http://wsbs.shwjzx.12333sh.gov.cn/web.webAction.do?method=indexPage> (Chinese).

<sup>137</sup> Employment Rules, art. 20.

<sup>138</sup> EEAL, art. 32; State Council Regulations, art. 17.

<sup>139</sup> For Shanghai, see

[http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109\\_1102209.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/t20091109_1102209.shtml).

<sup>140</sup> For photograph specifications, see *Photo Requirements for a Chinese Visa*, <http://lawandborder.com/photo-requirements-chinese-visa/>.

## F.4 INSPECTION OF MULTI-YEAR WORK PERMITS

If the work permit is valid for more than one year, the employer should present it to the HRSS bureau for inspection within 30 days of the end of each year of employment. Failure to do so results in cancellation of the permit.<sup>141</sup>

## F.5 CHANGES REQUIRING A REPLACEMENT RESIDENCE PERMIT

The foreign national should report changes in any of the following items to the exit-entry administration for a change within ten days after the change:<sup>142</sup>

- Name, gender, date of birth
- Purpose of residence
- Residence period
- Issue date
- Location of employment<sup>143</sup> (as shown on the business license submitted to the public security bureau)
- Passport or other international travel certificate number

Such changes require application to replace (换发) the residence permit to reflect the changed information.<sup>144</sup> Normally, prior to applying for the new residence permit such changes must also be reported to the municipal HRSS bureau.<sup>145</sup>

## F.6 CHANGING YOUR PASSPORT

As mentioned above, if you are *in China* and change to a new passport, within 10 days you should apply to the PSB for a replacement residence permit and report the change to the HRSS bureau.

If you are *abroad* when you get the new passport, you may travel to China with the new passport and the old passport containing the residence permit, so long as

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<sup>141</sup> Employment Rules, art. 27.

<sup>142</sup> EEAL, art. 33.

<sup>143</sup> The employer, too, has a duty to report a change in the employment location “promptly.” State Council Regulations, art. 26.

<sup>144</sup> State Council Regulations, art. 17; Ministry of Public Security, Rules for Foreign Nationals Applying for Visas and Other Certificates (Dec. 17, 2013), art. 13, [www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html](http://www.mps.gov.cn/n16/n84147/n84211/n84303/n3952066/3954315.html)

<sup>145</sup> See e.g. Beijing HRSS Bureau, *Matters Relating to the Alteration of Employment Permit Particulars for Foreigners*, [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ChangeOfEmploymentPermitInformation/t1126512.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ChangeOfEmploymentPermitInformation/t1126512.htm).

your biographic information in both passports is identical.<sup>146</sup> Then, within 10 days of entering you should take the actions mentioned above.

## F.7 TERMINATION OF EMPLOYMENT AND CHANGING EMPLOYERS

When the employment ends, the employer has an obligation to report this “promptly” to the municipal human resources and social security (HRSS) bureau<sup>147</sup> and public security bureau.<sup>148</sup> For related advice, please contact our firm prior to the termination of employment.

Then one of the following things will be done with the work permit<sup>149</sup>:

- If the foreign worker is leaving China, the employer should cancel the work permit and HRSS should issue a cancellation certificate. If the foreign worker and dependents will remain in China for a short period afterwards, it is possible to apply to PSB for a stay certificate to cover that period.
- If the foreign worker is seeking a job in another city, HRSS will take back the work permit and issue a transfer certificate, so the foreign national can apply in the new city for a new employment license (if the job is in a different field), work permit<sup>150</sup> and residence permit within 10 days of the change; or
- If the foreign worker will seek a job with a new employer in the same city, HRSS will need to issue a new employment license (if the job is in a different field), amend or issue a new work permit<sup>151</sup> and then the foreign national should change the residence permit within 10 days.

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<sup>146</sup> PRC Embassy in Washington, DC, *FAQs* (Feb. 4, 2015), <http://www.china-embassy.org/eng/visas/faq/>:

I get [sic] a new passport, but I have a valid Chinese visa in my old passport. Can I travel with both passports to China without applying for a new visa?

Yes, you may travel with both passports provided that your visa is still valid and the personal details including your name, sex, date of birth and nationality on both passports are exactly the same.

<sup>147</sup> Employment Rules, art. 21.

<sup>148</sup> State Council Regulations, art. 26; Employment Rules, art. 21.

<sup>149</sup> Employment Rules, art. 21. *See also* Beijing Municipal HRSS Bureau, *Matters Relating to Cancellation or Transfer of Employment Permit for Foreigners*, [http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/TerminationOfEmploymentPermit/t1126519.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/TerminationOfEmploymentPermit/t1126519.htm).

<sup>150</sup> Employment Rules, art. 24.

<sup>151</sup> Employment Rules, art. 24.



Typically, per local rules, a foreign national seeking to continue working in China will also need to submit to the municipal HRSS bureau with jurisdiction over the new job a release letter (离职证明 or 劳动合同时出具解除或者终止劳动合同的证明) from the prior employer.<sup>152</sup> The employer must provide this letter at the time of revocation or termination of a labor contract.<sup>153</sup> The letter should state the contract period, termination or revocation date, the job title, and the period actually worked.<sup>154</sup>

If foreigner can't get a release letter, it is still possible to apply obtain work authorization. Start from the beginning by applying for an employment license, visa notification letter, get a new Z visa, and then reenter China for work permit and residence permit.

## F.8 STUDYING IN CHINA

A foreign worker with a residence permit for work or a spouse with a residence permit for private purposes may study in China but may not enroll in a full-time, degree-granting program. That would require a change to a residence permit for study.

The foreign worker's children with residence permits for private purposes may study in international school,<sup>155</sup> in a Chinese-owned private school, or in a public school approved to accept foreign students.<sup>156</sup>

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<sup>152</sup> Beijing Municipal HRSS Bureau, *Matters Relating to the Alteration of Position and Employer for Foreigners*,

[http://www.ebeijing.gov.cn/feature\\_2/WorkingInBeijing/ChangeOfEmploymentPermitInformation/t1126513.htm](http://www.ebeijing.gov.cn/feature_2/WorkingInBeijing/ChangeOfEmploymentPermitInformation/t1126513.htm); Shanghai Municipal HRSS Bureau, *Instructions for Applying for Foreigner's Switching Employer*,

[http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/20091109\\_1102213.shtml](http://www.12333sh.gov.cn/200912333/2009english/resources/instructions/ep/200911/20091109_1102213.shtml); Guangzhou Labor Employment Service Administration Center, *Guide to Affairs Relating to Employment Permit*,

<http://gzjy.gzlm.net/BanShi/Foreigner/formalities%20concerned3.htm>.

<sup>153</sup> 劳动合同法 [Labor Contract Law], art. 50, adopted by the Standing Committee of the National People's Congress on June 29, 2007, effective Jan. 1, 2008.

<sup>154</sup> 中华人民共和国劳动合同法实施条例 (Regulations on the Implementation of the PRC Employment Contract Law), art. 42, Order 535 of the State Council, issued Sept. 18, 2008.

<sup>155</sup> Ministry of Education, Interim Regulations for the Administration of Schools Established for the Children of Foreign Personnel [国家教育委员会关于开办外籍人员子女学校的暂行管理办法], Ed. Comm'n Foreign Affairs Doc. No. 130 [1995], issued Apr. 5, 1995, at <http://lawandborder.com/international-school-regulations/>.

<sup>156</sup> Ministry of Education, 中小学接受外国学生管理暂行办法 [Interim Measures for Managing Acceptance of Foreign Students in Primary and Secondary Schools], Order No. 4 (1999), issued July 21, 1999. Studying in a public school may require a residence permit for study, depending on the city.

## F.9 INTERNATIONAL TRAVEL

Your unexpired passport with the valid, unexpired residence permit is the key document to exit China and to seek readmission to China after your trip. Beyond that, our standard advice before you travel is:

- Make sure there have been no changes that may require a replacement residence permit. (See Part E.5 and E.6 above).
- Be aware that in narrow circumstances a person's departure from China may be prohibited. (See Q.34 at <http://lawandborder.com/faq-new-china-visa-law>).
- Be aware that in narrow circumstances a person with a valid residence permit may still be denied entry to China. (See “Entering China” in Part E, Step 3 above).

## F.10 OTHER ISSUES

Other issues which foreign nationals in China should be familiar with include:

- Rights during interrogation by the public security bureau
- The requirement that foreign nationals above age 16 carry their passports at all times
- Education options for children
- Special permission needed for travel to Tibet
- Social insurance, including endowment insurance, unemployment insurance, housing accumulation fund, and basic medical insurance
- Penalties for overstaying a visa or residence permit or otherwise failing to comply with the terms of the visa or permit.
- Penalties for unauthorized employment: Penalties may be imposed on foreign nationals, employers, and third-party intermediaries for unauthorized employment. (Note that employment is authorized only after issuance of the residence permit.<sup>157</sup> Prior to that date, employers may wish to have foreign nationals engage in non-work activities, such as attending meetings, conferences, and training sessions; setting up their computers for work use and completing pre-employment paperwork; and finalizing any assignments from the previous position abroad.)
- Penalties for persons and work units that make false statements in invitation letters and other immigration-related application materials.
- Birth of a child or death in China

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<sup>157</sup> Employment Rules, art. 5.

Our firm is available to advise on these issues. Additional information on several of these issues can be found at “FAQ: China’s New Visa Law,” at <http://lawandborder.com/faq-new-china-visa-law/>.

## CONCLUSION

To summarize, this Guide is meant to assist in the application process for foreign nationals who intend to work in China. It analyzes the possible questions that foreign nationals may encounter during the application process and provides answers to these questions. For more in-depth information and details on intermediary services and process, please consult our law firm.