

IMMIGRATION ISSUES

[CHN ¶40-010] Types of Chinese visas and allowed activities

Foreigners who wish to enter, pass through or reside in the People's Republic of China (PRC) must obtain a visa from an overseas Chinese embassy or consulate. The commonly issued visas are described below.

[CHN ¶40-020] Tourist visa (L visa)

An L visa is issued to a foreigner who wants to visit the People's Republic of China (PRC) as a tourist or visit family or for other personal reasons. A foreigner holding an L visa cannot take up any employment in the PRC.

[CHN ¶40-030] Business visa (F visa)

A Business visa is issued to a foreigner who wants to come to the People's Republic of China (PRC) for business purposes such as research, giving lectures or attending scientific, technological and cultural exchange programs for a period of no more than six months. A foreigner holding an F visa cannot take up any employment in the PRC.

[CHN ¶40-040] Working visa (Z visa)

A Working visa is issued to a foreigner who wants to take up employment and work in the People's Republic of China (PRC). The same visa will be issued to his/her accompanying family members.

[CHN ¶40-050] Transit visa (G visa)

A Transit visa is issued to a foreigner who needs to transit in the People's Republic of China (PRC). Many travellers from the United States, Canada, Australia, Germany, France, Italy, etc can enjoy a visa-free transit if they stay in a transit city in the PRC for less than 24 hours without leaving the airport. Such travellers are required to hold a ticket to a final destination and book their seats on an international airline flying directly through the PRC.

[CHN ¶40-060] Crew visa (C visa)

A Crew visa is issued to crew members on an international airline or ship or for cross-border land transport. The C visa includes accompanying family members of these crew members.

[CHN ¶40-070] Journalist visa (J-1 or J-2 visa)

A Journalist visa is issued to journalists. The J-1 visa is issued to foreign resident journalists. While foreign journalists on temporary assignments should apply for the J-2 visa. In order to apply for the Journalist visa, foreign journalists must obtain a letter from the Information Department of the Ministry of Foreign Affairs as well as a letter from their employer to confirm the purpose of the visit.

[CHN ¶40-080] Education visa (X visa)

An Education visa is issued to a foreigner who wants to study at a university or college in the People's Republic of China (PRC) or enrol in an internship for six months or more. If the study period is less than six months, an F visa instead of an X

visa should be applied. Foreigners holding X visas are not allowed to take up employment in the PRC.

[CHN ¶40-090] Permanent residence (D visa)

A D visa is issued to a foreigner who has obtained the right of permanent residency in the People's Republic of China (PRC). It is not easy to get permanent residence for foreigners in the PRC. In the past, such visas are normally only given to a foreigner who is a close relative of a PRC citizen. This has recently changed and the PRC government also grants permanent residence to foreigners who have made significant contributions to development in the PRC.

[CHN ¶40-100] Preferential treatment

Nationals of Singapore, Brunei and Japan entering and staying in the People's Republic of China (PRC) for a period of not more than 15 days are not required to apply for visas, provided that the purpose of the visit is for carrying out business, sightseeing, meeting relatives or transit.

Residents of Hong Kong, Macau and Taiwan (HMT) who wish to travel to the PRC are not required to apply for visas. Instead, Hong Kong and Macau residents may use their Re-Entry Permit for Hong Kong and Macau Compatriots (港澳居民來往內地通行証或港澳同胞回鄉証), which is valid for 10 years. Taiwan residents (台灣居民來往大陸通行証) may use their Permit to Travel to the PRC, which is valid for five years. HMT residents may obtain such travel documents by submitting an application to the appropriate authorised authority in the PRC.

Immigration process

[CHN ¶40-210] Overview to the PRC immigration process

For the expatriate coming to the People's Republic of China (PRC), the most commonly used visas would be the Tourist visa, Business visa and Working visa. The application process for the three types of visas is listed in CHN ¶40-220 to CHN ¶40-240. The PRC immigration policies, rules and practices are constantly changing and detailed requirements and practices tend to vary from location to location. The following introductions are intended for general guidance only.

[CHN ¶40-220] Tourist visa (L visa)

In general, an L visa can be easily obtained at an overseas Chinese embassy or consulate. In Hong Kong, L visas can also be obtained from designated travel agents. The validity of a single entry L visa is 90 days from the date of issue, which means that the holder of the visa must enter the PRC no later than 90 days from the date of issue. An L visa is usually good for 30 days upon entry. It is possible to apply for a double entry or multiple entry L visa if the foreigner has family members or owns real estate in the People's Republic of China (PRC).

Foreigners who wish to stay in the PRC for longer periods may apply for visa renewals. Tourists may seek a domestic extension of their L visas to extend their stay in the PRC for up to 60 days. However, the locally-extended L visa is normally zero or single entry. When an L visa is renewed for the purpose of staying with relatives in the PRC, the applicant may request a multi-entry L visa with a validity period of up to one year.

[CHN ¶40-230] Business visa (F visa)

There are three types of F visas that can be obtained through overseas Chinese embassies and consulates (see table below). In Hong Kong, F visas can also be obtained from designated travel agents.

Table 1: Types of F visas

Type (or number) of entry	Validity	Duration of stay per visit
Single	90 days	30 days
Double	90 days	30 days
Multiple	180 days, 365 days or 2 years	30 days

An F visa can be extended or renewed with certain supporting documents from the People's Republic of China (PRC) entity sponsoring the business traveller's visa. There is no restriction on the number of times that an F visa may be renewed, but the total cumulative duration of the stay in the PRC on an F visa may not exceed one year from the first date of arrival in the PRC on that visa. F visas may also be extended in the PRC and be valid for a stay of at most one year, with multiple entry and exit privileges within the discretion of the issuing authority.

[CHN ¶40-240] Working visa (Z visa)

The *Law and Implementation Rules of the People's Republic of China on Entry and Exit of Foreigners*, *Rules for the Administration of Employment of Foreigners in China*, and *Notice Concerning the Implementation of the Rules for the Administration of Employment of Foreigners in China* specifically stipulate that all foreigners (including Hong Kong, Macau and Taiwan residents) as well as those with permanent residency status in the People's Republic of China (PRC) may not work in the PRC without obtaining prior permission from the relevant authorities, such as an Employment Permit. The term work is defined as engaging in behaviour of a remunerative nature, and work in the PRC means carrying out one's employment duties in the PRC pursuant to:

- an employment contract signed directly with a legal entity in the PRC, regardless of the length of employment in the PRC and regardless of whether the foreigner is paid or not in the PRC for services rendered in the PRC or
- an employment contract signed with a legal entity outside the PRC, with the individual's employment compensation derived outside of the PRC but who works in PRC territory for more than three months in any year. Exceptions: Foreign technological experts and professionals executing approved technology transfer contracts in the PRC are not deemed to be working in the PRC even if the contract is for more than three months in any year.

According to the relevant regulations, foreigners seeking employment in the PRC should meet the following conditions:

- (1) Is 18 years of age or older and in good health (in practice, some cities may have an age limitation for a work permit application, eg the said limitation is 26 to 59 in Beijing)
- (2) Possesses the professional skills and job experience required for the intended employment
- (3) Has no criminal record
- (4) Has a clearly-defined employer

Employment license

Before a foreigner can apply for a single entry Z visa from an overseas Chinese embassy or consulate, an employment license must first be obtained from the local labour bureau or a Foreign Expert License must first be obtained from the local foreign expert bureau. The application process is initiated by the employer in the PRC. Note that for foreign representative offices in the PRC that plan to employ a foreigner as a chief representative or representative, an employment license is generally not required upfront. Instead, such individuals need to apply for a Representative Working Card.

Single entry Z visa

With the approval of the employment license, the foreign applicant will be issued with a Z visa notification. Together with the employment license and Z visa notification, the applicant should then approach an overseas Chinese embassy or consulate to apply for a temporary Z visa. The temporary Z visa, if issued, is valid for single entry within 30 days of each stay, and usually remains valid for 90 days.

Temporary residence permit

The foreigner can enter the PRC with a single entry Z visa. Within 24 hours of entry into the PRC, the foreigner must register his/her temporary residence with the local public security authority or the hotel where the foreigner is staying (if due authorisation is given by the local public security authority).

Employment permit

The employer or supplier sponsoring the foreigner must apply for an employment permit with the local labour bureau on behalf of the foreigner within 15 days of the foreigner's entry into the PRC.

The employment permit can be valid from one year to five years depending on the expatriate's nationality, assignment period and the registered capital of the PRC employers. The employment permit can be renewed within a certain period before the expiry date (eg three months in Shanghai and one month in Beijing).

Residence permit

With the employment permit, the foreigner must apply with the local public security bureau for a residence permit. The foreigner can legally work in the PRC once he/she has obtained the employment permit and the residence permit. The residence permit must be done within 30 days of the foreigner's arrival into the PRC.

The residence permit is valid for one year only and annual renewal is required. The residence permit can be renewed within a certain period before the expiry date (eg two months in Shanghai and one month in Beijing).

A change in status, whereby the foreigner enters the PRC on a different status, eg as a tourist or business visitor and who subsequently wants to apply for an employment permit while remaining in the PRC, is not permitted except in very limited circumstances.

The legal retirement age in the PRC is generally 55 for female employees and 60 for male employees. Therefore, an employment license and employment permit are generally not issued to foreigners who have reached or have exceeded the PRC legal retirement age. However, certain exceptions may apply in limited circumstances.

Residents of Hong Kong, Macau and Taiwan, and Chinese individuals with overseas permanent residence are not required to apply for residence permits. However, they are still required to apply for the employment permit.

Law: *Law and Implementation Rules of the People's Republic of China on Entry and Exit of Foreigners; Rules for the Administration of Employment of Foreigners in*

China; Notice Concerning the Implementation of the Rules for the Administration of Employment of Foreigners in China

Required documentation

[CHN ¶40-310] Documents required when applying for a Chinese visa

Generally speaking, to apply for a Chinese visa overseas, the following documents are required as a minimum:

- The applicant's original passport
- One passport-size (two-inch) photographs of the applicant and
- A completed visa application form

For the expatriate coming to the People's Republic of China (PRC), the most commonly used visas would be the Tourist visa, Business visa and Working visa. The documents required for the application of each of the three types of visas are listed below.

Note that verification should be sought for the exact documentation required at the time applications are to be made. Such documentation is subject to change and will vary depending on the applicant's intended location of stay in the PRC and the changing regulatory environment in the PRC.

[CHN ¶40-320] L visa

The specific rules and policies for issuing L visas vary depending upon the specific Chinese embassies or consulates concerned.

When applying for an L visa, in addition to the normal required documents stated in CHN ¶40-310, applicants may be required to provide supporting documentation to evidence their financial ability to cover travel expenses and provide the return air, train or ship tickets. Applicants who come to the People's Republic of China (PRC) to visit relatives should provide supporting documents (eg marriage certificate/birth certificate and the invitation letter from the applicant's relative).

[CHN ¶40-330] F visa

In addition to the normal required documents stated in CHN ¶40-310, the applicant for an F visa should present an official invitation letter issued by an approved Chinese government agency or an invitation letter issued by a People's Republic of China (PRC) company.

[CHN ¶40-340] Z visa

Employment license

The following documents are normally required for the application of an employment license:

- An application form
- An application letter provided by the employer to the local labour bureau for the hiring of the foreigner
- A letter of intent to hire provided by the employer
- A photocopy of the applicant's medical report
- The applicant's resume

- A photocopy of the applicant's passport
- A certificate of no criminal record issued by the relevant authority of the applicant's home country (not mandatory in certain locations such as Beijing)
- Evidence of the applicant's qualifications to engage in the work
- A photocopy of the applicant's highest education certificate (the original may be required in certain locations such as Beijing)
- Photocopies of the various legal documents of the employer including the approval certificate, a duplicate copy of the business license, the organisational code certificate etc and
- Other documents as required by the approval authorities concerned

Foreign expert license

The foreign expert license is issued by the Chinese National Foreign Expert Bureau or its local counterparts. Foreigners who apply for the license must be in good health, have no criminal records and meet the definition of one of the following categories:

- Foreign professional technical or administrative personnel who will work in the People's Republic of China (PRC) to implement agreements between the governmental or international organisations
- Foreign professionals who work in the PRC in the areas of education, science research, news, publishing, culture, arts, health or sport, etc
- Foreigners who hold a position higher than deputy general manager or foreign senior technicians, or administrative personnel whose functionality, compensation and benefits in the position is equivalent to those afforded to the deputy general manager rank
- Foreign representatives of overseas expert organisations or agencies for talented people
- Foreign professional technicians or administrative personnel in the areas of economics, technology, engineering, trade, finance, accounting, taxation or tourism, etc and who have special skills that are difficult to source in the PRC

Once the license has been obtained, the employer can apply to the relevant approval authority for a single entry Z visa notification letter. If the applicant needs to bring dependants to stay in the PRC, the employer should arrange for Z visa notification letters for the dependants as well.

Single entry Z visa

A single entry Z visa notification letter from an authorised PRC government agency should be obtained to enable the foreigner to apply for a single entry Z visa with the overseas Chinese embassy or consulate.

The following documents are generally required to be submitted to apply for the Z visa notification letter:

- A photocopy of the applicant's passport
- A photocopy of the business license of the employer
- The original employment license or foreign expert license issued
- A safety guarantee letter issued by the employer
- The application form

Upon the receipt of the employment license or foreign expert license and the Z visa notification letter, the applicant should apply to the overseas Chinese embassy or consulate concerned for the issuance of the single entry Z visa. Normally, the

following documents are required:

- A visa application form
- The Z visa notification form
- The employment license, representative working card (for representatives only) or foreign expert license
- The original passport
- One passport-size photograph and
- Other documents required by the overseas Chinese embassies or consulates (eg the original health check report)

Health check

Refer to CHN ¶40-410 for a more detailed explanation.

Temporary residence registration

Within 24 hours of entry into the PRC, the foreigner must register his/her temporary residence with the local public security authority or the hotel where the foreigner is staying (if due authorisation is given by the local public security authority). A temporary residence registration form will be issued by the local police authority or the designated hotel, which will be used when applying for the residence permit.

If the foreigner or HMT resident moves to a new place during his/her stay in the PRC, he/she should re-register with the local police station having jurisdiction over his/her new place of stay. If the foreigner does not change the place of stay but other personal information affecting the visa has changed, he/she should register any such changes with the local police station as well.

Employment permit

The employee should apply to the relevant local labour bureau for an employment permit by submitting the following documents within 15 days of his/her arrival:

- Appropriate application forms
- Photocopies of the various legal documents of the employer including the approval certificate, a duplicate copy of the business license, the organisational code certificate, etc
- Employment license or representative working card
- Original medical report
- Photocopy of the employment contract or secondment contract of the employee
- Three passport-size photographs
- An original and photocopy of the employee's passport and single entry Z visa

Residence permit

When applying for the residence permit, applicants must submit the following documents:

- Completed application form
- Original temporary residence registration form
- Original medical report issued by the designated health institution
- Original passport
- Two passport-size photographs
- For Z visa holders, the employment permit or foreign expert certificate and the

required information from the employer

- For X visa holders, an admission notice and application letter provided by the receiving unit stating the study period
- For J-1 visa holders, the correspondent certificate
- For dependants, photocopies of the appropriate kinship certificates such as the certificate of marriage for a spouse and certificate of birth for children below the age of 18, etc
- Other documents as required by the approval authorities in charge.

Required medical checks

[CHN ¶40-410] Medical check for entry visa

Some Chinese embassies such as the Chinese embassy in the Philippines and Malaysia require a health check before issuing a single entry Z visa. Normally, the embassy will provide a list of approved hospitals. Expatriates should ensure that they bring all original health check records into the People's Republic of China (PRC) as the health check review will be required in a clinic in the PRC after their arrival.

[CHN ¶40-420] Medical check or review in the PRC

Foreigners who intend to work in the People's Republic of China (PRC) will be required to undergo a health check. The health check can be carried out in the PRC or in an overseas public hospital approved by the Chinese embassy or consulate concerned. This needs to be followed up by a review of the health check results by a designated clinic in the PRC. However, in practice it is convenient and easy to undergo the health check in the PRC.

The health check is a relatively thorough one and includes but is not limited to the following tests:

- Eyesight
- Blood test
- Blood pressure
- Chest x-ray
- Abdominal ultra-sound scan
- Physical examination (non-invasive)
- Electrocardiogram
- Personal history questionnaire

The health check is required for the employee and all accompanying dependants from the age of 18 to 70. All Taiwan residents are required to take the health check, including children under the age of 18. No food should be consumed for four hours before the health check.

Occasionally, an applicant may fail the health check at the first attempt as he/she may be slightly unwell or have minor health problems on the day of the health check that affect the outcome for any one of the health indicators, but may pass upon subsequent attempts as he/she is in good health by then.

The following documents are required upon performing the health check:

- Passport (original and copy)
- Three passport-size photos

- Cash (in RMB) for the health check fee

Instead of submitting their passports, Hong Kong and Macau residents are required to submit their ID cards and *tong xing zheng* (港澳居民來往內地通行証或港澳同胞回鄉証) while their Taiwan compatriots are required to submit their *tai bao zheng* (台灣居民來往大陸通行証或台胞証).

Translation requirements

[CHN ¶40-510] Requirement for documents to be in Chinese or translated into Chinese

All documents submitted as part of the application process must be in Chinese or be translated into Chinese if the original is in a foreign language. In addition, Chinese translations and duplicate copies of company documents must be stamped with the company seal or by an authorised translating company.

Rejected applications

[CHN ¶40-610] Appeals for rejected applications

Where the People's Republic of China (PRC) authorities are unable to approve the issuance of visas (including the employment license, employment permit and residence permit), there is no formal appeal process. The normal approach is to re-apply. For re-applications, an applicant may have to be interviewed by the relevant approval authorities in person. A new set of application documents must also be submitted. There is no guarantee of success for a re-application. However, any applicant with multiple refusals is strongly advised not to re-apply for the same visa unless his/her situation has changed significantly. Repeated applications without significant changes in the applicant's circumstances are likely to end in a temporary suspension.

If an expatriate who has been fined or detained by the public security authority refuses to accept such a penalty, he/she may, within 15 days upon receipt of the notification, appeal to the original authority or the higher level authority, which will make the final judgment within 15 days upon receipt of the appeal. The expatriate being penalised may also file an appeal directly with a local People's court.

Relationship between immigration, tax and employment law

[CHN ¶40-710] The connection between immigration regulations, tax law and employment law

To some extent, immigration regulations, tax law and employment law are interconnected. One of the important issue reflecting such connections is the effective date of employment in the People's Republic of China (PRC).

Under immigration regulations, the expatriate can legally work in the PRC only after he/she has obtained an employment permit and residence permit. Usually, for an expatriate, the employment start date set out in the employment or secondment contract may be earlier than the date of obtaining the employment permit. In practice, although not common, the expatriates run the risk of failing to obtain the employment permit because of reasons such as failure to pass the health check, non-qualified academic background, etc. As such, it may be a better approach to stipulate that the effective date of employment in the PRC in the employment or secondment contract is subject to the successful application of the employment

permit and residence permit.

From the PRC Individual Income Tax (IIT) perspective, the effective date of employment is not the only key factor to determine whether the expatriate is liable to PRC IIT. The key factors in determining whether an individual is liable to PRC IIT include whether the individual is domiciled in the PRC, the length of the individual's physical stay in the PRC and the source of income (see CHN ¶10-200 for more details), etc. As such, the conclusion of an employment contract under PRC employment law or obtaining the employment permit under PRC immigration law does not necessarily mean that an expatriate should be liable to PRC IIT.

Another example that can reflect the connections between immigration regulations and PRC tax law is frequent travellers. With the rapid growth of global business, employees are often required to cross borders frequently to accomplish projects, exchange skills or manage mergers and acquisitions. For such frequent travellers, their employment relationships tend to be with the overseas entities. Most are travelling in the PRC using F visas. From the PRC's immigration perspective, such travellers should apply for appropriate working visas in the PRC if they work in the PRC for more than three months during a calendar year. From the PRC tax perspective, they are liable to the PRC IIT once they have exceeded the 183 days threshold under the relevant tax treaties (see CHN ¶10-410 and CHN ¶10-1050). As such, an increasing number of companies are facing both immigration and tax risks on their frequent travellers in the PRC.

Under current practice in some cities in the PRC, the immigration authorities and the tax authorities are not yet well connected and the exchange of information is not yet synchronised and well-coordinated. As such, the tax authorities may not be aware of the fact that the frequent travellers with F visas who have exceeded the 183 days threshold are liable to PRC IIT. In the meantime, the immigration authorities may not be aware of frequent travellers who have already reported their PRC IIT after exceeding the 183 days threshold but have yet to apply for their working visas. However, the increasing trend is that the PRC government is making efforts to enforce the exchange of information among different government authorities within the PRC as well as the exchange of information between PRC authorities and overseas government authorities. Companies need to track their frequent travellers carefully to mitigate the immigration and tax risks.

Law: *Employment Law; Immigration Law*

Local immigration policies for non-married partners

[CHN ¶40-810] Local immigration policies for non-married partners

The People's Republic of China (PRC) does not formally recognise de facto relationships between unmarried partners. However, and as a matter of discretion, where statutory declaration can be issued by the consulate in the PRC of the partners' home country or the appropriate government authority where both individuals currently reside, then the PRC authorities may consider the application for a dependent residence permit for the accompanying partner. Evidence of cohabitation may be required by the consulate or certifying authority where they live and PRC authorities.

Note that while PRC immigration policy is established by national legislation, the implementation of such policy is subject to the interpretational of the provincial labour bureaus and public security bureaus, whose procedural and documentation requirements often differ significantly. Prior consultation with the appropriate

professionals is advisable.

Local immigration rules for same-sex partners

[CHN ¶40-910] Local immigration rules for same-sex partners

The People's Republic of China does not formally recognise same-sex partnership. Therefore, dependent Chinese visas will not be granted even though they reside in a jurisdiction that legally recognises such relationships.