

# **China - Regulations on Labour Management in Enterprises Involving Overseas Investment, 1994**

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### Regulations on Labour Management in Enterprises Involving Overseas Investment

(Promulgated by the Ministry of Labor and the Ministry of Foreign Trade and Economic Cooperation on August 11, 1994)

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# **Regulations on Labour Management in Enterprises Involving Overseas Investment**

## **(Promulgated by the Ministry of Labor and the Ministry of Foreign Trade and Economic Cooperation on August 11, 1994)**

### **Article 1**

“The Regulations” is formulated on the basis of the State laws and administrative rules to protect the legitimate rights and interests of both foreign-invested enterprises (which will be referred to as enterprises hereinafter) and the employees working in these enterprises; and to establish, maintain and develop the stable and harmonious work relationship between the enterprises and their staff.

### **Article 2**

“The Regulations” is applicable to all the Chinese and foreign joint ventures, Chinese and foreign cooperative companies, foreign-invested enterprises and Chinese-foreign limited liability companies which are located within the People's Republic of China. “The Regulations” also applies to the staff members working in these enterprises and companies.

### **Article 3**

The labor administrative departments of the people's governments at county level and above exercise supervision over enterprise's policies in employment, training wage, insurance, benefits and labor safety and sanitation.

### **Article 4**

The rules made by enterprises must not contradict State laws and administrative decrees.

### **Article 5**

Enterprises, under the guidance of the relevant State laws and administrative rules, decide on their own number of employees they need, the qualifications for the employees as well as when and how to recruit employees.

Enterprises may recruit employees at local employment centers which are acknowledged by the local labor departments. With permission from local labor administrative departments, they may also hire employees directly or from other districts.

Enterprises must not recruit those who still hold a job at another work unit. Employment of child laborer is forbidden.

**Article 6**

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Enterprises should employ Chinese workers living in China. When there is a need to employ non-Chinese citizens or people from Taiwan, Hong Kong, or Macao, enterprises must, according to the relevant State regulations, seek approval from local labor administrative offices and obtain employment permit.

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**Article 7**

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Enterprises should provide career training for employees. Workers undertaking technical jobs or jobs with special skills should be granted a training certificate before taking up the post. Training fees should be set aside and used in accordance with the relevant State rules.

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**Article 8**

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A labor contract should be made in the written form between the enterprise and the employee. The trade union (workers' representatives should be elected if the trade union does not exist) may represent all the workers to sign a collective contract after discussing and negotiating with the management on such matters as payment for labor, working hours and holidays, safety and sanitation conditions, insurance and benefits, etc.

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Contents of a labor contract or a collective contract should be in line with relevant State laws and administrative decrees.

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**Article 9**

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A signed labor contract should be submitted within a month to the local labor administrative office for approval. A signed collective contract should be submitted to the same office for record, and becomes effective in 15 days provided that no objections are made by the labor administrative department.

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**Article 10**

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A labor contract becomes invalid on the date it expires or at the time when any of the terms of termination agreed to by the two contracting sides takes place. The two sides may agree to renew the contract.

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Revision of a contract should not be made until after the two sides have consulted with each other and reached an agreement on the details of revision. It is necessary to go through certain procedures in revising a contract.

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## Article 11

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Upon any of the following situations, either the enterprise or its employee can terminate the contract.

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I. Both parties agree to bring an end to the contract.

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II. The enterprise may terminate its contract with an employee who does not meet requirements during the probationary period, fails to carry out the contract, seriously violates the labor disciplines and the enterprise's regulations made in accordance with laws, is detained for labour reform, or is convicted for imprisonment.

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III. An employee may terminate a contract with the enterprise if the enterprise forces the employee to work by resorting to violence, threat, detention or other means of deprivation of personal freedom, and if the enterprise fails to live up to the labor contract, breaks State laws and administrative rules, or violates the employee's legal rights.

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## Article 12

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Upon any of the following situations, enterprises may, after consulting with the trade union, terminate a contract. But a written notice should be handed to the person in concern 30 days in advance.

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I. The employee is no longer able to accomplish the original job or any other job assigned by the enterprise after medical treatment of an illness or an injury brought upon him or her in an accident not at work.

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II. The employee remains incompetent on the job after receiving training and is not qualified for any other job in the enterprise.

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III. The objective conditions at the time of signing the contract have changed in such a way that it is difficult to keep to the original labor contract. In the meantime, the two sides fail to reach agreement on revising the contract.

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IV. Any other situations specified by law and administrative decrees occur.

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## Article 13

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The management cannot terminate a labor contract in these cases: the employee is suffering an occupational disease; the employee has lost or partially lost the ability to work after getting injured in an accident at work; the employee is receiving medical treatment for an illness; the female employee is taking a child-bearing, maternity or breast-feeding leave.

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If the employee who suffers an occupational disease or becomes disabled because of an accident at work requests the termination of the contract, the enterprise should turn to a social insurance institution and pay premiums in accordance with local government rules for resetting the disabled.

39

The existing regulations regarding the time limit for the medical treatment of an illness or an injury caused outside work are still valid. 40

**Article 14** 41

The enterprise should adopt a system of equal pay for equal work. With the economic development of the enterprise, employees' wages should be raised year by year. Employees' wages should be set through collective negotiations as well as in line with the salary guideline issued by local people's governments or local labor administrative department. 42

The minimum wage for employees' legal work time must not go below the local minimum payment line. 43

**Article 15** 44

The enterprise must pay on time wages to the employees in the full amount in the form of currency. While payment should be delivered at least once a month, the enterprise should deduct and pay income taxes on behalf of the employees. 45

**Article 16** 46

The enterprise should compile statistics on employees' wages in accordance with the relevant rules and submit wage income statements to the local labor administrative department, financial department, statistics department, and the organization that oversees the enterprise. 47

**Article 17** 48

According to State regulations, the enterprise must join social insurance for pension, unemployment, medicare, work injury, and child bearing and with reference to the premium standard set by local people's government, pay premiums on time and in full to insurance companies. 49

Insurance fees, in accordance with State regulations, should be set aside as a separate item in the enterprise's expenditure. Employees should also, according to regulations in concern, pay for pension insurance. 50

**Article 18** 51

The enterprise should compile a "Labor Manual" and "Old Age Insurance Manual" for each employee to record the employee's years of service, wage, and contribution and spending of pension, unemployment, work injury, medicare, and other social insurance costs. 52

**Article 19**

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The enterprise should provide a lump sum of living allowance to the employees if it decides to terminate its labor contract with an employee in accordance with provisions set in the first and third clauses of Article 11 and Article 12. If the labor contract is to be terminated in accordance with provisions set in the first clause of Article 12, the enterprise shall provide the employee with medical treatment subsidies in addition to the living allowance.

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**Article 20**

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The amount of living allowance and medical treatment subsidies shall be based on an employee's years of service in the enterprise. In terms of living allowance, one should get one's monthly actual income on each year of service. In terms of medical treatment subsidies, the employee should get a payment equal to his three months' actual income if the employee's service in the enterprise is less than five years, or six months' actual income if his service is more than five years. If the employee has worked in the enterprise for more than six month' but less than one year, his term of service should be counted as one year.

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The average of the employee's six months' actual income before the termination of the contract is the standard to be used in calculation.

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**Article 21**

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If the enterprise decides to announce dissolution or to terminate a contract in accordance with the regulations in concern or with the agreement from the employee, it shall refer to the relevant rules made by a local people's government and pay a lump sum fees and other premiums to the social insurance institution to cover the necessary living cost for the employee who is amidst the medical treatment for or recuperation from an occupational disease or an injury caused in an accident at work, or the employee who is , after the medical treatment, confirmed by a labor assessment committee to have lost or partially lost the ability to work. The same treatment shall be extended to the family of the employee who dies in accident at work, a female employee who is pregnant , at labor, or breast-feeding her baby, and the employee who has not taken part in any social insurance program.

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**Article 22**

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Employees shall enjoy benefits specified in relevant State regulations.

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**Article 23**

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The enterprise shall set aside a housing fund for employment of Chinese workers.

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**Article 24**

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Employees are entitled to officially prescribed national and public holidays, and shall be allowed to take the marriage leave and maternity leave as well as take leaves to visit their immediate family members residing in another city and to attend to the funeral of a family member.

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**Article 25**

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If disputes arise over making a collective contract and the enterprise and the trade union (or workers' representatives) fail to solve them through negotiation, a local administrative department may be called in to arrange meetings to help solve the disputes, If the disputes caused in the process of implementing the collective contract cannot be resolved through negotiation, the parties concerned may resort to legal means to apply for mediation or file a lawsuit.

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**Article 26**

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Enterprises shall implement State regulations on labor disputes, labor safety and sanitation conditions, accident report and settlement, work time, and special protection for female and non-adult employees.

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**Article 27**

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If one party breaches the labor contract and as a result , violates the other party's interests and causes losses, this party shall pay compensations.

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**Article 28**

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If the enterprise recruits employees in violation of “the Regulations”, local labor administrative departments may impose a fine five to 10 times of the employee's average monthly salary and order the enterprise to turn back the employee.

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**Article 29**

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If an employee's wage is lower than the local minimum wage standard, the local labor administrative department can order the enterprise to correct the practice. In addition to making up for all the differences, the enterprise shall provide a compensation 20 to 100 per cent of the difference between the employee's actual income and the local minimum wage standard. If the enterprise refuses to pay the difference and the compensations, the enterprise will get a fine equal to the difference between the employee's actual income and the local minimum wage standard plus one to three time of the original compensation.

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The enterprise which make employees work overtime at will shall stop the practice immediately. Otherwise a fine will be imposed at five times of the average payment for the over-working hours or days during the month. 76

**Article 30** 77

The enterprise which has not bought social insurance for its employees shall do it within the time limit prescribed by labor administrative department. If it fails to do so, each day after the deadline, it will be charged a 2 per thousand arrears. The arrears shall be entered into respective accounting items of social insurance costs. 78

**Article 31** 79

The enterprise that violates labor safety and sanitation rules shall be ordered to amend itself within a prescribed period of time or close down for rectification. In addition, a fine shall be imposed on this enterprise according to regulations. 80

**Article 32** 81

The enterprise that blocks or refuse supervision from labor administrative departments shall be fined at below 1 per thousand of its monthly business turnover and sales income. 82

**Article 33** 83

Fines specified above shall be collected only after the enterprises has received a warning from local labor administrative department and fails to solve the problems promptly. 84

**Article 34** 85

Local labor administrative departments are responsible for imposing administrative penalties specified above. All the fines collected shall be turned over to the state treasury. 86

**Article 35** 87

“The Regulations” is also applicable to the enterprises solely or partially invested by overseas Chinese, business people from Taiwan, Hong Kong, and Macao, as well as to their limited liability companies and cooperative production enterprises. 88

**Article 36**

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The right of interpretation of “the Regulations” lies with the Ministry of Labor.

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## Metadata

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