



## A short introduction to UK employment law for Chinese Businesses

This note sets out a précis of some of the issues that Chinese businesses may wish to consider when establishing, or furthering, a commercial presence in the UK, where they intend to employ members of staff.

### Employment contracts

Employers in England and Wales are obliged, pursuant to the Employment Rights Act 1996, to give employees whose employment is to continue for more than one month a “*written statement of particulars of their employment*”. The clauses which are required pursuant to the Employment Rights Act 1996 include:

- The level of pay (or the method of calculating it) and the intervals at which the employee will receive payment;
- The hours the employee will be required to work;
- Holiday entitlement and holiday pay;
- The employee’s job title, or a brief description of the work;
- The length of notice which the employee is obliged to give and entitled to receive to terminate the employment;
- The employee’s place of work;
- Information relating to pensions and pension schemes; and,
- Information on disciplinary and grievance procedures.

All of the above terms are commonly incorporated into a contract of employment.

### Additional protection

We recommend that our clients include additional clauses in their contracts of employment to further protect their business. Examples of such clauses include:

- **Intellectual Property** – Provisions for the rights to any intellectual property created by an employee to be the property of the Employer;
- **Confidential Information** - Clauses restraining an employee, both during and upon termination of their employment, from divulging confidential and commercially sensitive information to any person, company or organisation unless expressly permitted to do so by the employer.
- **Restrictive covenants** - clauses restraining an employee, following the termination of their employment, from enticing clients and/or employees away from their ex-employer, or working for a company which is competition with their ex-employer for a specified period, (ordinarily between 3-6 months).

If seeking to enforce such provisions employers have to be able to show a legitimate proprietary interest that it is appropriate to protect, and show that the protection sought is no more than is reasonable having regard to the interests of the parties and the public interest.

- **Garden leave clause** - Such a clause is commonly invoked when an employee has tendered their resignation. The employee who has tendered his or her resignation remains an employee for their notice period and are paid in the usual way; but they are not required to carry out work, unless specifically instructed to do so by their employer. “*Garden leave*” describes the traditional view that during this period senior employees would be tending their garden at home.

The aim of garden leave is to keep employees out of the market place long enough for any information they have to go out of date, or to enable that employee’s successor to establish themselves, particularly with customers.

- **Warranty confirming eligibility to work in the UK** - A clause containing a warranty from the employee that they are eligible and entitled to work in the UK.
- **Reasonable changes** - Although an employment contract is legally binding between employer and employee, a clause may be included which permits the employer to make “*reasonable*” changes to the terms of the contract (such as minor administrative matters which will not fundamentally alter the terms of the contract) without the employee’s specific consent.

**Listed Companies** - If you intend to list your company on the London Stock Exchange (or another exchange) then there are additional criteria, and strict rules, which you will need to consider.

### Staff handbooks

We recommend that employers also issue staff handbooks to staff setting out policies and guidance. The policies can help to instill the culture of the organisation and sets out what is expected of the employees in terms of conduct.

These policies are usually non-contractual and are aimed to provide the employer with flexibility to modify them in the future; for example, in response to new legislation. The following are typically included in a staff handbook:

- Dress Code
- Expenses Policy
- Equal Opportunities Policy
- Anti-harassment and Bullying Policy
- Sickness Absence Policy
- Capability Procedure
- Disciplinary Rules
- Disciplinary Procedure
- Grievance Procedure
- Whistleblowing Policy
- Maternity Policy
- Paternity Policy
- Adoption Policy
- Parental leave policy
- Time Off for Dependant’s Policy
- Compassionate Leave
- Bereavement Leave
- Flexible Working Policy
- Homeworking Policy

- Time Off for Public Duties
- No-smoking Policy
- Health and Safety Policy
- Stress Policy
- Substance Misuse Policy
- Data Protection Policy
- Electronic Information and Communications Systems Policy
- Anti-corruption and bribery policies
- Relocation policy
- Travel allowance policy

**TIP: Consider your existing HR policies**

Chinese companies should consider the existing HR policies that they have in place in China (and the geographical extent of those policies), and consider whether they could, or should, also apply in the UK, or if they need to be adapted. Consider the type of benefits, and terms, that are offered to staff, such as: life assurance; permanent health insurance; private medical insurance and company cars.

**TIP: Consider immigration issues**

It is also important to consider immigration issues early on as the process can take a long time. Consider if you require particular members of staff to work part of their time in the UK, and overseas? Does the Company have a sponsorship licence? Will the company sponsor the visa application of the employee?

Are there any members of staff whom you intend to send on secondment to the UK? If so you should consider having a secondment agreement in place, and also take specialist tax and accountancy advice. Consider whether seconded employees continue to accrue rights and entitlements in China - such as bonuses or stock allowances?

**TIP: Consider employee status**

Chinese companies would be well-advised to consider the capacity in which their UK staff will work for them. Are they “employees” or “workers” or will they be self-employed contractors who are in business on their own account?

It is important that this be considered at an early stage, especially if your company will only have a small number of staff in the UK to start with. Many companies will revert to retaining self-employed consultants, as opposed to employees, when this may not be appropriate, and/or not reflect the actual legal relationship. To avoid a potential unforeseen tax liability, it is important to ensure the relationship that an employer has with each of its staff falls as clearly as possible into the category of employee, worker or self-employed contractor, and the employer accordingly adopts the appropriate position. It is best to take early legal, and accountancy and tax advice, upon what you are trying to achieve.

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We look forward to working with you.

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