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中国动态：
双语版亚洲雇佣法：季评
2012-2013

第三期：2013年第三季度

Asia Employment Law:
Quarterly Review

2012-2013

ISSUE 3: THIRD QUARTER 2013

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引言

INTRODUCTION

亚洲法律顾问与人力资源顾问的工作往往涉及多个司法辖区。准确把握雇佣相关法律发展情况既是重中之重又充满挑战。

为协助阁下获取最新法律动态，孖士打律师行发布电子期刊**亚洲雇佣法：季评**，内容涵盖亚洲15个司法辖区，并将每季更新。

在第三期中，我们将回顾并评点2013下半年雇佣法发展情况，同时强调2013下半年立法、谘询、政策及判例法方面的预期重大变革。

孖士打与亚洲地区15家律师行长期开展跨境合作，与对方律师建立了密切的工作关系，本刊正是这一努力的结果。欲获悉撰稿律师及律师行名单，请浏览[连络人](#)页面。

我们衷心希望本刊对阁下有所助益。

Asia's legal and human resources advisors are often required to function across multiple jurisdictions. Staying on top of employment-related legal developments is important but can be challenging.

To help keep you up to date, Mayer Brown JSM produces the **Asia Employment Law: Quarterly Review**, an e-publication covering 15 jurisdictions in Asia. It is updated every quarter.

In this third edition, we flag and provide comment on anticipated employment law developments during the second half of 2013 and highlight some of the major legislative, consultative, policy and case law changes expected during the rest of the year.

This publication is a result of ongoing cross-border collaboration between 15 law firms across Asia with whose lawyers Mayer Brown JSM has had the pleasure of working with closely for many years. For a list of contributing lawyers and law firms, please see the [contacts page](#).

We hope you find this edition useful.

顺颂商祺

With best regards,



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- 重要：可能需要采取行动
Important: action likely required
- 不可不知：关注发展动态
Good to know: follow developments
- 注意变更：无需采取行动
Note changes: no action required

图例
KEY

《信息安全技术个人信息保护指南》

已形成标准草案，文件发布指日可待

[更多...](#)

New National Standards on Personal Information Protection to be Adopted

A set of new national standards, namely, “Information Security Technology - Guide for Personal Information Protection” (Guide) is expected to be adopted.

[More...](#)

《广东省企业民主管理条例》（草案修改三稿）解读

《广东省企业民主管理条例》于2010年7月21日提交省人大常委会进行一审，经第三次修改，于2012年5月开始征询公众意见，并于2012年9月下旬提交省人大审议表决后出台。

[更多...](#)

Interpretation of Guangdong’s Regulations on the Democratic Management of Enterprises (Third Amendment)

The Guangdong’s Regulations on the Democratic Management of Enterprises (third amendment) went through its first reading in the People’s Congress Standing Committee in 21 July 2010. The Draft was open to public consultation in May 2012. It will be presented to the Standing Committee in September 2012.

[More...](#)

《中华人民共和国出境入境管理法》于2012年6月30日
全国人民代表大会会议通过

2012年6月30日，《中华人民共和国出境入境管理法》经第十一届全国人大常委会第二十七次会议审议通过，将于2013年7月1日起实施。

[更多...](#)

Exit and Entry of Citizens:
National Legislation passed, 30 June 2012

The New Law will take effect on 1 July 2013 and will apply to the exit-entry administration of both Chinese and foreign nationals.

[More...](#)

企业民主管理规定

中华全国总工会牵头制订公布了《企业民主管理规定》，要求企业建立以职工代表大会为基本形式的民主管理制度，实行厂务公开，推行民主管理，让原本已陷入招工难的众多企业面对很大压力。这项规定创设了职工代表大会、厂务公开、职工董事监事三个制度，推行民主管理。

[更多...](#)

Democratic Management of Enterprises:
New Nationwide Provisions

The “Provisions on the Democratic Management of Enterprises” were issued recently under the All China Federation of Trade Unions. The provisions urge enterprises to establish ‘democratic management systems’ with labour unions, to increase transparency, and also to give employees a greater say in the management of the company.

[More...](#)

《女职工劳动保护特别规定》自2012年4月18日起施行

[更多...](#)

National Maternity Leave Extended to 14 Weeks:
State Council Approves in Principle

On 18 April 2012, the Special Regulations on Labour Protection of Female Employees (Draft) were reviewed and passed in principle by the Standing Committee of the PRC State Council.

[More...](#)

《关于审理劳动争议案件适用法律若干问题的解释（四）》
（征求意见稿）

根据《中华人民共和国劳动法》、《中华人民共和国劳动合同法》以及《中华人民共和国劳动争议调解仲裁法》等相关法律之规定，结合民事审判实践，就适用法律的若干问题，最高法院为正确审理劳动争议纠纷案件作出解释。

[更多...](#)

Labour Disputes Trials: The Fourth Interpretation on
Application of Laws (Draft for Consultation)

The PRC Supreme People’s Court released the Fourth Interpretation on Certain Issues regarding Application of Laws in Trial of Labour Disputes (Draft for Public Consultation).

[More...](#)

《中华人民共和国劳动合同法》建议修正案对劳务派遣公
司的影响

2012年11月，《中华人民共和国劳动合同法》若干预期修正条款如获通过，将对劳务派遣公司造成一定影响。上述修正极有可能具有追溯效力，并将影响现有和新成立的所有劳务派遣公司。

Labour Dispatch Companies:
Proposed Amendments to the PRC Employment Contract Law

Anticipated changes to PRC Employment Contract Law in November 2012 will affect labour dispatch companies, if approved. Changes are likely to be retroactive and will, impact all existing and new labour dispatch companies.

[More...](#)

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重要：可能需要采取行动
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2013
Q1[点击阅览第一季度期刊](#)
Click here to view Q1 edition2013年2月作出的2013年全年预测
2013: PREDICTIONS FOR THE YEAR AS AT FEBRUARY 2013图例
KEY

2013

截至2013年9月底更新
UPDATED AS AT END SEPTEMBER 2013**《上海市工伤保险实施办法》于2013年1月1日起施行**

《上海市工伤保险实施办法》已经2012年11月21日市政府第156次常务会议通过，并于2013年1月1日起施行。新办法除了对上海现行有关工伤保险政策作相应调整外，还明确了工伤人员住院治疗工伤期间的伙食补助费以及到外省市就医的住宿费、交通费。

[更多...](#)

Shanghai Implementation of Method of Work-related Injury Insurance effective 1 January 2013

The Method specifies the respective responsibilities of the dispatch entity and the service-receiving entity and adjusts the base of the invalidity allowance to the “salary of the principal.”

[More...](#)**最高人民法院《关于审理劳动争议案件适用法律若干问题的解释（四）》于2013年2月1日起生效。**

Non-Compete Clauses and other Employment Matters:
Judicial Interpretation IV effective 1 February 2013

Interpretation IV issued by the PRC Supreme People's Court addresses non-compete covenants and various other employment issues, and will significantly impact several important areas of PRC employment law practice.

[More...](#)**人力资源社会保障部关于执行《工伤保险条例》若干问题的意见**

为贯彻执行新修订的《工伤保险条例》，人力资源社会保障部提出若干意见。意见认为：“因工外出期间”的认定，应当考虑职工外出是否属于用人单位指派的因工作外出，遭受的事故伤害是否因工作原因所致。意见还规定，具备用工主体资格的承包单位违反法律、法规规定，将承包业务转包、分包给不具备用工主体资格的组织或者自然人，该组织或者自然人招用的劳动者从事承包业务时因工伤亡的，由该具备用工主体资格的承包单位承担用人单位依法应承担的工伤保险责任。

[更多...](#)

Work-Related Injury Insurance:
Opinion on the Implementation Rules of the Regulations

The Ministry of Human Resources and Social Security (MOHRSS) released the *Opinions on Certain Issues Concerning the Implementation of the Regulations on Work-Related Injury Insurance* (the “Opinions”). According to the Opinions, “during the period of a work-related trip” shall be determined by taking into account whether the employee was assigned by his or her employer to take the trip, and whether the employee’s accidental injury was caused by or while doing his or her job. The Opinions provide that, in the event that an eligible contractor, in violation of the laws or regulations, contracts or subcontracts contracting services to an ineligible organisation or natural person, and that a labourer employed by such organisation or natural person is injured or dies in the course of his or her service, the eligible contractor shall bear liability for work-related injury insurance entitlements which ought to have been borne by an employer as required by law.

[More...](#)**《江苏省劳动合同条例》自2013年5月1日起施行**

Jiangsu Province:
Labor Contract Regulations Amendments effective 1 May 2013

《中华人民共和国出境入境管理法》将于2013年7月1日起实施[更多...](#)

Exit and Entry of Citizens:
Control Law Take Effect 1 July 2013

The Law of the People's Republic of China on the Control of the Exit and Entry of Citizens came into effect as of 1 July 2013 and applies to the exit-entry administration of Chinese and non-Chinese nationals.

[More...](#)**《广东省工会经费收缴管理暂行办法》开始实施（2013年7月1日）**

广东省总工会、广东省地方税务局和中国人民银行广州分行联合下发的《广东省工会经费收缴管理暂行办法》（“办法”）于2013年7月1日起实施。根据该办法规定，广东省工会经费（含工会建会筹备金）统一实行由地税代收，即从2013年8月1日起，广东省内已建立工会组织的用人单位，以及开业或设立满6个月但仍未建立工会组织的用人单位，应直接向所在地的地方税务机关申报缴交所属期为2013年7月（含7月）以后的工会经费（标准为职工工资总额的2%）。尽管有上述要求，广东省总工会进一步明确，暂不向不足二十五人尚未建立工会组织的企业收缴工会建会筹备金。需注意的是，该办法是否具有法律强制力仍存在较大争议，但建议相关用人单位应密切关注当地的具体实施情况。

[更多...](#)

Guangdong Province Issues New Notice on Payment of Union Fees

The *Interim Measures of Guangdong Province on Administration of the Collection of Union Fees* (the “Measures”), which was issued jointly by the Guangdong Federation of Trade Unions, the Guangdong Taxation Bureau and the Guangzhou Branch of People's Bank of China, came into effect as of 1 July 2013. In light of the Measures, the union fees (including union preparation fees) in Guangdong province will be collected by the local tax authorities on behalf of union authorities. Specifically, from 1 August 2013, employers which have already established company trade union, as well as those which have not yet established company trade union within 6 months after the company's establishment or starting operations, should declare and pay the union fee or union preparation fee (equivalent to 2% of the total wages of all its employees) for the period after July 2013 (inclusive) directly to local tax authorities. Despite the above requirements, Guangdong Provincial Federation of Trade Unions has further clarified that it does not require payment of union preparation fees from those companies with fewer than 25 employees which have not yet established a trade union. Please also note that whether such Measures have the force of law still remains controversial; local employers are advised to keep abreast of progress of relevant enforcement actions.

[More...](#)**《外国人入境出境管理条例》开始生效**

为配套实施2013年7月1日生效《中华人民共和国出境入境管理法》，国务院于2013年7月12日公布《中华人民共和国外国人入境出境管理条例》（“《条例》”）。该《条例》于2013年9月1日起实施。原《中华人民共和国外国人入境出境管理法实施细则》同时废止。《条例》将普通签证由原先的8类调整为12类，新增了M字（贸易）、Q字（亲属）、R字（人才）、S字（私事）四类签证，并对原有F、X、Z字签证的发放范围进行了调整。《管理条例》的一大亮点是留学生勤工助学合法化。《条例》规定，持学习类居留证件的外国人需要在校外勤工助学或者实习的，应当经所在学校同意后，向公安机关出入境管理机构申请在居留证件上加注勤工助学或者实习地点、期限等信息。未加注的，不得在校外勤工助学或者实习。

[更多...](#)

China's New Entry-Exit Rules for Foreigners Take Effect

The PRC State Council released the Administrative Regulations of the People's Republic of China on Entry and Exit of Foreigners on 12 July 2013 (the “New Regulations”) to implement the Exit-Entry Administration Law of the People's Republic of China (the “New Law”). The New Regulations came into force on 1 September 2013. The Detailed Rules for the Implementation of the Law of the People's Republic of China Governing the Administration of the Entry and Exit of Foreigners (the “Old Regulations”) have been repealed. The New Regulations increased the categories of ordinary visa from 8 classes to 12 classes. The 4 new classes of visa are M visa (Maoyi, i.e., commerce), Q visa (Qinshu, i.e., relatives), R visa (Rencai, i.e., people with special skills), and S visa (sishi, i.e., personal affairs). The applicable respective scopes of the original F, X and Z visas were also adjusted. One of the highlights of the New Regulations is that it recognises that foreign students can undertake off-campus work legally. It is stipulated that where a foreigner holding a study-type residence permit needs to do off-campus work or internship, such foreign student should obtain the consent of the university and apply to the entry-exit administration of a competent public security authority for an endorsement as to the time period and the location of the internship or off-campus work. Without such endorsement, foreign students are not allowed to do off-campus work or internship.

[More...](#)1月1日
1 JAN1月15日
15 JAN2月1日
1 FEB2月1日
1 FEB4月25日
25 APR5月1日
1 MAY5月1日
1 MAY7月1日
1 JUL7月1日
1 JUL7月1日
1 JUL7月1日
1 JUL8月7日
7 AUG9月1日
1 SEP**预料于2013年就弹性工作制度进行立法**

Regulations on the Special Working Hours Scheme
Introduced at National Level during 2013

《江苏省劳动合同条例》于2013年1月15日修订通过

《江苏省劳动合同条例》已由江苏省第十一届人民代表大会常务委员会第三十二次会议于2013年1月15日修订通过，现予公布，自2013年5月1日起施行。草案规定，用人单位使用劳务派遣劳动者人数一般不得超过本单位员工的30%，最高不得超过一半。同时，草案鼓励劳务派遣企业与被派遣劳动者建立长期稳定用工关系。草案还明确了劳务派遣跨地区劳动者的参保方式。

Jiangsu Labour Contract Regulations Amendments:
Passed 15 January 2013, Effective May 2013

The draft amendment provides that the number of employees participating in labour dispatch should not exceed 30% of the total number of employees (with a maximum of 50%). It also encourages companies and employees to form a long term stable employment relationship. It clarifies the mode of social insurance taken out by the cross-locality labour dispatch employees.

《信息安全技术公共及商用服务信息系统个人信息保护指南》于2013年2月1日起实施

该标准最显著的特点是规定个人敏感信息在收集和利用之前，必须首先获得个人信息主体明确授权。

Personal Data Protection:
National Guidelines for Public and Commercial Services
Effective 1 February 2013

天津出台《天津市贯彻落实劳动合同法若干问题的规定》

用人单位未缴纳或未足额缴纳社会保险费的，劳动者可以单方面提出解除劳动合同，并要求用人单位支付经济补偿。用人单位与劳动者约定不缴纳或少缴纳社会保险费的，双方约定无效，应视为因用人单位原因导致未缴纳或未足额缴纳社会保险费。

[更多...](#)

Tianjin: An Employer in Breach of Statutory Social Insurance Contributions Gives an Employee the Right to Terminate

An employee is entitled to unilaterally terminate the employment and claim statutory severance if the employer fails to make the statutory social insurance contribution on a timely basis and in full. Even if the employer and employee have mutually agreed not to contribute, or to underpay the social insurance premium, such an agreement will be deemed void and the employer in breach of its statutory obligations.

[More...](#)**修订后的《中华人民共和国劳动合同法》自2013年7月1日起施行**

劳动合同法修改决定加大了对劳动者权益的保护，强调“同工同酬”，并对“临时性、辅助性、或替代性”作了进一步明确。

[更多...](#)

Labour Dispatch:
PRC Labour Contract Law Amendments Effective July 2013

The amendments define labour dispatch arrangements with a view to mainstreaming and better controlling the use of third party (or agency) employment arrangements.

[More...](#)**《劳务派遣行政许可实施办法》自2013年7月1日起施行**

经营劳务派遣业务，应当向所在地有许可管辖权的人力资源和社会保障行政部门（以下称许可机关）依法申请行政许可。未经许可，任何单位和个人不得经营劳务派遣业务。申请经营劳务派遣业务应当具备下列条件：（一）注册资本不得少于人民币200万元；（二）有与开展业务相适应的固定的经营场所和设施；（三）有符合法律、行政法规规定的劳务派遣管理制度。劳务派遣单位在2012年12月28日至2013年6月30日之间订立的劳动合同和劳务派遣协议，2013年7月1日后应当按照修订后的《中华人民共和国劳动合同法》执行。

[更多...](#)

Administrative Licence for Labour Dispatch Services:
Requirements

On 20 June, the Ministry of Human Resources and Social Security (MOHRSS) released the *Implementing Measures for Administrative Licence for Labour Dispatch* (the “Measures”), effective as of 1 July 2013. The Measures provide that an enterprise operating labour dispatch services shall file an application for administrative licence with the local human resources and social security department. Without a licence, no entity or individual may operate labour dispatch services. The Measures provide that an enterprise that applies for operating labour dispatch services must meet the following requirements: (1) the registered capital shall not be less than CNY2 million; (2) it has fixed business premises and facilities appropriate to the services; and (3) it has a labour dispatch management system that complies with the provision of laws and administrative regulations. The Measures also require that labour contracts and labour dispatch service agreements concluded after 28 December 2012 and before 30 June 2013, shall be fully performed in accordance with the PRC Labour Contract Law Amendments as of 1 July 2013.

[More...](#)**人力资源和社会保障公布《劳务派遣若干规定（征求意见稿）》**

为了贯彻《全国人大常委会关于修改〈中华人民共和国劳动合同法〉的决定》，进一步规范劳务派遣，人力资源社会保障部于2013年8月7日发布《劳务派遣若干规定（征求意见稿）》，向社会公开征求意见。该征求意见稿首次明确了“劳务派遣”的法律定义，明确了劳务派遣的适用范围及劳务派遣的用工比例限制（即10%），进一步明确了劳务派遣单位和用工单位的法定义务，明确规定可以退回被派遣劳动者的情形，规定了劳务派遣关系下劳动合同的解除与终止的处理、细化了跨地区劳务派遣的待遇标准及社会保险缴纳方式的规定，并重申了违法使用劳务派遣的法定情形。意见反馈截止时间为2013年9月7日。

[更多...](#)

Public Comments Sought on PRC Labour Dispatch Provisions

The Ministry of Human Resources and Social Security (MOHRSS) released the *Circular of the Ministry of Human Resources and Social Security on Seeking Public Comments on the Several Provisions on Labour Dispatch (Draft for Comments)* (the “Draft Provisions”) on 7 August, 2013 and solicited public comments with the goal of implementing the Amendment to the PRC Labour Contract Law and regulating labour dispatch. The Draft Provisions, for the first time, clearly defined “Labour Dispatch”, specified the applicability of Labour Dispatch and provided the maximum percentage of dispatched staff to the total number of the workforce (i.e. 10%). The Draft Provisions further delineated the statutory obligations of the labour dispatch company and host entity, elaborated the circumstances under which the host entity was entitled to return the dispatched staff and the payment of statutory economic compensation, and provided the procedures for terminating a labour contract under a labour dispatch. Details concerning for labour remuneration standard and social insurance under cross-region labour dispatch arrangement were provided and the penalty for breaching the labour dispatch restrictions was reiterated in the Draft Provisions. Public comments were invited until 7 September, 2013.

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