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# 中国动态： 双语版亚洲雇佣法：季评

2020-2021

第三十三期：2021年第三季度

## Asia Employment Law: Quarterly Review

2020-2021

ISSUE 33: THIRD QUARTER 2021

索引 INDEX:

引言 INTRODUCTION

中国 CHINA

## 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(Mayer Brown)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。

在第三十三期中，我们将回顾并评点2021年第三季雇佣法发展情况，同时列出一些2021年立法、咨询、政策及判例法方面的预期重大变革。

孖士打与亚洲地区15家律师事务所长期开展跨境合作，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事务所名单，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 produces the **Asia Employment Law: Quarterly Review**, an e-publication covering 15 jurisdictions in Asia.

In this thirty-third edition, we flag and comment on employment law developments during the third quarter of 2021 and highlight some of the major legislative, consultative, policy and case law changes to look out for in 2021.

This publication is a result of ongoing cross-border collaboration between 15 law firms across Asia with whose lawyers Mayer Brown 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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2021

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developments注意变更：  
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no action  
required

回顾

Looking  
Back

展望

Looking  
Forward

回顾 LOOKING BACK

## 最高法出台审理劳动争议案件司法解释

日前, 最高人民法院发布《关于审理劳动争议案件适用法律问题的解释(一)》(下称《解释》), 自2021年1月1日起施行。

《解释》共五十四条, 对劳动争议的纠纷范围、管辖、起诉与受理、仲裁等事项予以明确。其中, 《解释》规定, 劳动者以用人单位的工资欠条为证据直接提起诉讼, 诉讼请求不涉及劳动关系其他争议的, 视为拖欠劳动报酬争议, 人民法院按照普通民事纠纷受理。同时, 劳动合同期满后, 劳动者仍在原用人单位工作, 原用人单位未表示异议的, 视为双方同意以原条件继续履行劳动合同。一方提出终止劳动关系的, 人民法院应予支持。《解释》还提出, 劳动合同被确认为无效, 劳动者已付出劳动的, 用人单位应当按照规定向劳动者支付劳动报酬和经济补偿。

[更多...](#)中国  
1月1日  
2021CHINA  
1  
JAN  
2021

## SPC Issues Judicial Interpretation (I) on Trial of Labor Dispute Cases

The Supreme People's Court ("SPC") has recently issued the Interpretation on Issues concerning the Application of Law in the Trial of Labor Dispute Cases (I) (the "Interpretation"), with effect from January 1, 2021. The Interpretation consists of 54 articles in total, specifying the scope, jurisdiction, prosecution and acceptance, and arbitration of labor disputes. Among others, the Interpretation stipulates that where an employee directly institutes a lawsuit on the strength of a slip on wage default issued by the employer as evidence, and the claims do not involve any other dispute over labor relationship, it shall be regarded as a dispute over the default on labor remunerations and shall be accepted by court as a general civil dispute; where, after the expiration of a labor contract, the employee still work for the original employer and the original employer does not express any objection, it shall be deemed that the parties agree to continue the performance of the labor contract in accordance with the original terms and conditions; if a party proposes to terminate the labor relationship, the court shall support it. The Interpretation also points out that where a labor contract is confirmed as invalid but the employee has already provided labor services, the employer shall pay the labor remuneration and financial compensation to the employee in accordance with the relevant provisions.

[More...](#)中国  
8月3日  
2021CHINA  
3  
AUG  
2021

## 《关于下放国务院所属部门人力资源服务机构审批管理权限的通知》

人力资源和社会保障部办公厅于2021年8月3日发布《关于下放国务院所属部门人力资源服务机构审批管理权限的通知》(下称《通知》)。《通知》明确, 现将国务院所属部门人力资源服务机构审批管理权限下放北京市人力资源和社会保障局, 请做好有关承接工作, 实现国务院所属部门人力资源服务机构的属地化管理。《通知》进一步规定, 相关下放权限包括: 一是下放国务院各部委、直属机构及其直属在京事业单位和在京中央直管企业、全国性社团申请行政许可审批备案权, 涉及从事职业中介活动的审批事项等三类。二是下放国务院所属部门人力资源服务机构日常管理权。

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## Circular on Delegating the Approval and Management Authority of Human Resources Service Agencies of the Departments under the State Council

The Ministry of Human Resources and Social Security ("MOHRSS") issued Circular on Delegating the Approval and Management Authority of Human Resources Service Agencies of the Departments under the State Council

[Continued on Next Page 接下页](#)

2021

中国  
CHINA回顾  
LOOKING BACK中国  
8月3日  
2021CHINA  
3  
AUG  
2021

("Circular") on August 3 2021. The Circular states that the approval and management authority of the human resources service agencies of the departments under the State Council is now delegated to the Beijing Municipal Human Resources and Social Security Bureau. Relevant transition work shall be carried out effectively to achieve the administrative localization of the human resources service agencies of the departments under the State Council. The Circular further stipulates that, the delegation of authority relates to two aspects: the first is to delegate the approval and record-filing authority for administrative licensing applied for by the ministries, commissions and directly affiliated institutions of the State Council and their directly affiliated public institutions in Beijing, Beijing-based enterprises directly under the Central Government, and national associations, involving three categories of approval items such as engaging in employment intermediary activities. The second is to delegate the day-to-day management authority of the human resources service agencies of the departments under the State Council.

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回顾

Looking  
Back

展望

Looking  
Forward

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孖士打: 根据中华人民共和国司法部的规定, 本行不能从事中国法律业务。根据目前中国的法律法规, 本行及其他注册地在中国之外的司法管辖区的国际律师行不能就中国法律提供正式的法律意见。本文所载观点是基于本行此前处理中国有关事宜及开展调查研究时获取的对中国法律法规的认识与了解。有鉴于此, 本文内容并不构成(也不应被视为构成)关于中国法律法规的意见或建议。

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