

ENGAGING FOREIGN EMPLOYEES IN CHINA

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This note provides an overview of the issues that arise when hiring foreign nationals to work in China as employees of a foreign-invested enterprise either via a secondment, a dual employment relationship or an onshore employment contract. For a detailed overview of the issues that arise from secondment arrangements, see *Practice note, Secondment of foreign employees: China*.

Jeanette Yu, *CMS, China and Practical Law China*

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SCOPE OF THIS NOTE

This note provides an overview of several important legal and practical issues that arise for a foreign company that wants to hire foreign (that is, non-Chinese) nationals to work at a **foreign-invested enterprise** (FIE) (外商投资企业) in **China** (PRC) (中国(中华人民共和国)). These include:

- Who counts as a “foreign national” for these purposes.
- The three structures that businesses use to hire foreign nationals in China (that is, secondment, dual employment and direct employment) and their respective merits.
- The penalties for foreigners working in China illegally.
- Eligibility and procedure for hiring a foreign national.
- The points to address in a domestic Chinese employment contract for a foreign employee.
- The key provisions of Chinese employment law that apply to foreign nationals hired under a domestic Chinese employment contract.

This note does not cover the hiring of staff by the **representative office** (外国企业常驻代表机构) in China of a foreign entity. That is typically conducted through the use of agency workers, which is a process known as **labour dispatch** (劳务派遣). For more information on labour dispatch and the staffing of representative offices, see *Practice note, Use of agency workers: China*.

Local variations

Chinese employment law varies greatly from one administrative division within China to another, because great discretion is given to local courts, arbitrators and governments to:

- Interpret and expand upon national legislation. For example, courts and employment arbitrators in Shanghai are generally regarded as more willing to take into account the legitimate interests of employers when applying employment law than in more remote regions, and local governments can and do to pass administrative regulations specifying how national laws are to be applied.

