

Influence of the implementation of the *Regulations on the Administration of Foreign Labour Cooperation*

In China, foreign labour cooperation is the facilitative method for foreign companies, organizations or individuals to recruit employees from within the territory of the People's Republic of China to work abroad.

On 4th June 2012, the State Council promulgated *Regulations on the Administration of Foreign Labour Cooperation* (hereinafter referred to as "the Regulations") which shall come into force as of 1st August 2012. At present, in China there are almost 150 seafarer labor companies which have been approved by the transportation and maritime authorities, and over 100,000 seafarers who have been involved in the labour service. The promulgation and implementation of the Regulations has an important influence on the further standardization of the administration of foreign labour cooperation, and guarantees the legitimate rights and interests of companies and employees under the law.

I. Changes to the conditions of the application for qualification for foreign labour cooperation

Article 6 of the Regulations stipulates that for filing an application for qualification for foreign labour cooperation, the applicant shall meet the following criteria:

- i. Conforms to the conditions of a "business entity";
- ii. Paid-in registered capital is not less than RMB6,000,000;
- iii. Above 3 administrative staff who are familiar with foreign labour cooperation;
- iv. A sound internal administration system and emergency response system; and
- v. The legal representative has not committed any intentional crime.

Compared to the previous regulations, the new Regulations now contain more strict provisions on the establishment of foreign labour cooperation companies in order to protect employees as much as possible.

II. Changes to the deposition of the fund for handling risks in foreign labour cooperation

Compared to the previous regulations, the new Regulations increase the amount of the Fund to be paid by foreign labour cooperation companies to RMB3,000,000, and further require that the funds be deposited into a special bank account or be paid in the form of a bank guarantee in an equivalent amount.

III. Seafarers follow-up service

Article 16 of the Regulations stipulates that the foreign labour cooperation company shall follow up and know the employees' work and life abroad, assist in solving difficulties and problems in the employees' work and life and timely pass the employees reasonable requirements on to the foreign employers. In addition, where the number of the employees dispatched to the same country or area by a foreign labour cooperation company exceeds 100 persons, a accompanying administrative staff shall also be dispatched.

Article 17 requires that foreign labour cooperation companies shall set out an emergency response plan. Where emergencies occur abroad, foreign labour cooperation companies shall timely and properly handle the same and report to the Chinese embassies and consulates stationed in countries where labour projects are located, in addition to reporting to the relevant departments in China.

IV. Contracts regarding foreign labour cooperation

The Regulations make explicit provisions requiring three contracts regarding foreign labour cooperation;

- i. A labour contract in writing that shall be entered into between the foreign labour cooperation company and foreign employers (exclusive of foreign individuals);
- ii. A service contract or labour contract in writing that shall be entered into between the foreign labour cooperation company and the employees; and,
- iii. A contract for establishing a labour relationship that shall be entered into between the employees and the foreign employers under the assistance of the foreign labour cooperation company.

In the absence of the first two contracts, the foreign labour cooperation company shall not be permitted to arrange for the employees to work abroad.

V. Liabilities which should be borne by the foreign labour cooperation company when rights and interests actually enjoyed by the employees abroad are not consistent with those agreed in contracts

Article 29 of the Regulations stipulates that where rights and interests actually enjoyed by the employees abroad are not consistent with those agreed in contracts, the foreign labour cooperation company shall assist the employees in guaranteeing their legitimate rights and interests, and request foreign employers to perform agreed obligations and compensate the employees for losses. Where the employees do not get due compensation, they are entitled to request the foreign labour cooperation company to bear joint and several liability for the damage.

Where rights and interests actually enjoyed by the employees abroad are not consistent with legal provisions of the countries or areas where labour projects are located, the foreign labour cooperation company shall assist the employees in guaranteeing their legitimate rights and interests and request foreign employers to perform obligations provided by law and to compensate the employees for losses.

Where rights and interests actually enjoyed by the employees abroad are not consistent with those agreed in contracts, because the foreign labour cooperation company conceals relevant information or provides false information etc., the foreign labour cooperation company shall bear liability for the damage.

In addition to the above, where rights and interests actually enjoyed by the employees abroad are not consistent with those agreed in contracts due to the foreign labour cooperation company concealing relevant information or providing false information, the Regulations stipulate that the foreign labour cooperation company shall bear liability for the damage.

As can be seen from the above, the new Regulations act to further strengthen the rights and interests of the employees subject to foreign labour cooperation, and places a stricter burden on those companies operating within the foreign labour cooperation field.

Acknowledgement: WangJing & Co

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