Disadvantages

3.143 By signing a local PRC employment contract, an employee under a dual employment relationship will have most of the same rights as a PRC national employee under the PRC Employment Contract Law.

3.144 Foreign national employees with dual employment relationships can bring a claim in China against the local PRC employer and against the overseas employer in the offshore jurisdiction. This can make terminating simultaneous employment relationships in two jurisdictions more complicated and more costly, depending on how the offshore and onshore employment contracts are structured and related to one another, if at all.

CHAPTER 4

THE EMPLOYMENT RELATIONSHIP AND EMPLOYMENT CONTRACTS

Overview

4.001 As discussed in Chapter 1, China's employment contract system is intended to provide employers and employees with flexibility in establishing and conducting employment relationships while ensuring basic employment rights for employees. Implementation of the employment contract system in China has faced many challenges (**see 1.004–1.007**).

4.002 One of the main issues has been the lack of thorough implementation of the employment contract system. For example, although employers and employees are required to enter into employment contracts, many individuals (particularly blue-collar workers) work on an informal basis without any agreement in writing that stipulates their rights and benefits. In practice, in cases where there is nothing in writing to evidence that individuals work for companies, the companies oftentimes avoid paying employees or providing them with other mandatory benefits.

4.003 Starting with the Labour Law[1] and continuing through to the passage of the Employment Contract Law,[2] China's government has tried to address this problem through steps such as the following:

(1) providing clearer guidance for determining when an employment relationship exists in the absence of a written contract;

(2) defining the circumstances under which written employment contracts are required (for full-time employment) and under which oral contracts are permitted (for part-time employment);

(3) increasing the requirements for what content must be included – and what may not be included – in employment contracts; and

(4) increasing employer penalties for failing to sign written employment contracts when they are required, as well as for other infractions.

4.004 This chapter discusses the above areas and related issues.

1. The Employment Relationship

4.005 As a threshold matter, PRC employment legislation and rules – such as the Labour Law and the Employment Contract Law – apply where an employment relationship has been formed inside China. This is a seemingly obvious yet important point, for

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1 *Labour Law of the People's Republic of China* (中华人民共和国劳动法) "Labour Law", effective 1 January 1995.
2 *Law of the People's Republic of China on Employment Contracts* (中华人民共和国劳动合同法) "Employment Contract Law", effective 1 January 2008.

if no employment relationship exists, legal protections and obligations do not apply. For example, on the one hand only employees are entitled to legal protections such as being subject to limited grounds for termination or benefits such as social insurance; employers on the other hand face limitations on when they can fire people working for them and have an obligation to contribute to the social insurance scheme in respect of their employees. (**See Chapter 9** regarding termination and **7.050–7.105** regarding social insurance.)

The Parties to an Employment Relationship

"Employer" and application of PRC law

4.006 Under the Labour Law and the Employment Contract Law, "employers" include "enterprises, individual economic organisations and private non-enterprise units *inside China*".[3] This definition includes state-owned enterprises (SOEs), collectively- or privately-owned Chinese enterprises, and foreign-invested enterprises (FIEs) such as wholly foreign-owned enterprises (WFOEs) or Sino-foreign joint ventures (JVs);[4] it excludes representative offices of foreign companies in China (Rep Offices), which are not permitted to employ workers directly. (**See Chapter 2** regarding Rep Office employment.)

4.007 Therefore, whenever an employer in China enters into an employment relationship, the Labour Law and the Employment Contract Law, and by extension other PRC employment legislation and rules, govern that employment relationship.

"Employee"

4.008 The Labour Law and the Employment Contract Law do not define the term "employee".[5] However, the Labour Union Law provides an indirect definition: "Employees are individuals who perform physical or mental work in enterprises, institutions and government authorities within the Chinese territory and who earn their living primarily from wages or salaries".[6] Thus, employees include not only blue-collar and white-collar workers, but also Chinese managers and even foreign managers.[7]

Establishment Methods

4.009 An employment relationship can be established in one of three ways:

(1) by the parties signing a written employment contract;

[3] Labour Law, Art 2; Employment Contract Law, Art 2. Implementing Regulations of the PRC Employment Contract Law (中华人民共和国劳动合同法实施条例) "Implementing Regulations", effective as of 28 September 2008, Art 3.

[4] While the *Company Law of the People's Republic of China* (中华人民共和国公司法), amended 1 March 2014, permits foreign companies to establish branches in China, the central government currently prohibits local authorities from registering branches of foreign companies, with the exception of certain industries.

[5] This book uses the English word "employee" as the translation for the Chinese term *"laodongzhe"*, which is sometimes translated as "worker." The English term "worker" could be a misleading translation because the scope of the Labour Law, Employment Contract Law and related rules is so broad that it encompasses managers as well as subordinate staff and workers. In Western parlance, managers may be employees, but certainly not workers.

[6] *Labour Union Law of the People's Republic of China*, amended 27 October 2001, Art 3.

[7] *Explanations Concerning Several Provisions of the Labour Law* (劳动部关于《劳动法》若干条文的说明), 5 September 1994 (*Lao Ban Fa* [1994] No 289), Art 16; *Regulations for Administration of the Employment of Foreigners in China* (外国人在中国就业管理规定), effective 1 May 1996 (*Lao Bu Fa* [1996] No 29), Art 26.

(2) by the parties making an oral contract; or

(3) *de facto*, by the parties acting as if an employment relationship exists, even in the absence of an employment contract.

4.010 A written employment contract is required in the case of full-time employment[8] (**see 4.003**). For part-time employment relationships, an oral contract will be sufficient[9] (**see 4.003**). However, an employment relationship may still be established on a *de facto* basis where the parties have not entered into any contract, and even if it was the parties' intention at the commencement of the relationship that the relationship *not* be an employment relationship (**see 4.069–4.076**).

Date of Commencement

4.011 Regardless of how an employment relationship is formed (**see 4.008**), the date of establishment of an employment relationship is considered to be the day on which an employee begins working for an employer.[10] This is the case even where an employment contract is concluded prior to the date on which the employee begins working for the employer.[11]

"Coordination" Concerning Employment Relationship Issues

4.012 The Employment Contract Law provides that the following three parties should establish a "comprehensive, tri-partite mechanism for the coordination of employment relationships":

(1) The local labour bureau of People's Governments at the county level and above;

(2) "The labour union" (presumably that of the relevant enterprise); and

(3) Enterprise representatives.

4.013 The purpose of the mechanism is to "jointly study and resolve major issues concerning employment relationships".[12]

4.014 This is a new provision, the practical significance of which is not yet clear, but which suggests an avenue for the government and labour unions to influence the content of enterprise employment contracts, potentially even in the absence of – or alternatively in connection with – collective bargaining. However, up until now, this initiative has not made much progress and does not seem to have had much impact on employment matters in practice.

[8] Employment Contract Law, Art 10; Labour Law, Art 19.

[9] Employment Contract Law, Art 69.

[10] Employment Contract Law, Art 7.

[11] Employment Contract Law, Art 10.

[12] Employment Contract Law, Art 5. Implementing Regulations, Art 2.

2. Full-Time Employment: Written Employment Contract Required

Written Employment Contract Required

4.015 A signed, written employment contract is required for the establishment of a full-time employment relationship.[13] Employers face risks if contracts are not signed or renewed in a timely manner. If no employment contract is signed within one month of commencement of an employee's work, the employee is entitled to receive double his normal wage from the first day of the second month until either an employment contract is actually signed or the date immediately prior to the one year anniversary.[14] If no employment contract is signed within one year of commencement of an employee's work, the parties are deemed to have signed an open-term contract as of the one year anniversary of the employment relationship.[15] (**See 4.030–4.039** regarding the term of duration of employment contract.) If an employer fails to provide the text of an employment contract to an employee, the local labour bureau should order rectification and the employer is liable for any damages suffered by the employee.[16]

4.016 In practice, however, it can be hard to implement and enforce penalties such as these because the limited manpower at most local labour bureaus restricts the capacity for inspections. There is also the possibility that an employee may lose his job should he report the employer to the labour bureau for not concluding a written employment agreement. Although such a termination would be unlawful, an employee could face such a retaliatory step from an employer and then would have to make the effort to again approach the labour bureau or to bring a claim to labour arbitration.

The Written Employment Contract

Definition and requirements

4.017 An employment contract is defined as an agreement between an employer and an employee that establishes an employment relationship between the parties and sets out the parties' binding rights and obligations.[17] An employment contract – either written (for full-time employment) or oral (for part-time employment) – is required whenever parties enter into an employment relationship.[18] However, as discussed in detail in **4.069–4.076**, an employment relationship may still be established even if the parties have failed to meet the requirement that they enter into an employment contract. Once a *de facto* employment relationship is determined to exist, an employment contract must be concluded.

Principles

4.018 Employment contracts must be concluded based on the principles of lawfulness, fairness, equality, free will, negotiated consensus and good faith.[19]

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13 Employment Contract Law, Art 10. Labour Law, Art 19.
14 Employment Contract Law, Art 82. Implementing Regulations, Art 6.
15 Employment Contract Law, Art 14. Implementing Regulations, Art 7.
16 Employment Contract Law, Art 81. Implementing Regulations, Art 34.
17 Labour Law, Art 16; Employment Contract Law, Art 3.
18 Labour Law, Art 16.
19 Labour Law, Art 17; Employment Contract Law, Art 3.

Effectiveness

4.019 An employment contract is effective when the employer and the employee agree to the contract terms through negotiated consensus and sign or seal the text of the contract.[20]

Invalidity

4.020 An employment contract is invalid – fully or partially – if any of the following apply:

(1) provisions of the contract violate laws and/or regulations;[21]

(2) the employer or employee uses deception or coercion, or takes advantage of the other party's difficulties, to conclude or amend an employment contract against the party's true intent;[22] or

(3) the employer disclaims its legal liabilities or denies the employee his rights.[23]

4.021 If only certain provisions of a contract are invalid, the invalid provisions do not affect the validity of the remaining provisions.[24] A labour arbitration commission or People's Court has the authority to determine whether a contract is invalid, and to what degree.[25]

4.022 If a contract is confirmed to be invalid but the employee has already performed work, the employer must pay the employee based on the compensation of employees in the same or similar positions with the employer.[26] If one party suffers damages as a result of the actions of the other party that resulted in the contract being confirmed as invalid, the offending party is liable for damages.[27]

Language

4.023 According to a reply issued by the Ministry of Labour in 1994, employment contracts entered into in China should be in Chinese. A corresponding foreign-language version is also permitted and must be consistent with the Chinese version, but in case of discrepancy the Chinese version will govern.[28] Although the Employment Contract

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20 Employment Contract Law, Art 16.
21 Labour Law, Art 18; Employment Contract Law, Art 26.
22 Labour Law, Art 18; Employment Contract Law, Art 26.
23 Employment Contract Law, Art 26.
24 Labour Law, Art 18; Employment Contract Law, Art 27.
25 Labour Law, Art 18; Employment Contract Law, Art 26.
26 Employment Contract Law, Art 28.
27 Employment Contract Law, Art 86.
28 *Ministry of Labour Reply Regarding Validity of Employment Contracts Prepared in Chinese and a Foreign Language* (劳动部综合计划与工资司对大连市劳动局《关于同时用中外文书写的两种劳动合同文本法律效力问题的请示》的复函) issued by the Ministry of Labour on 28 January 1994 "Labour Reply".

CHAPTER 9

TERMINATION OF EMPLOYMENT

Overview

Unlike in the United States, there is no employment "at will" in the PRC for full-time employees. This means that every full-time employee in China must have an employment contract with his employer, and an employment contract (or an employment relationship where the parties have failed to execute an employment contract) can only be terminated in certain narrowly defined circumstances. Because of the limitations on termination of full-time employment, it is essential that any employment contract in the PRC be carefully drafted. **9.001**

Full-time and part-time employees in China are treated very differently in terms of grounds for termination.[1] A part-time employee can be terminated at any time without prior notice or statutory severance. By contrast, there are fairly strict and complicated limitations on the termination of full-time employees. This chapter thus addresses the termination of full-time employees (**see 4.055** *et seq* for more details on part-time employment). **9.002**

There are four main methods by which a full-time employment relationship may end: **9.003**

(1) resignation by an employee;

(2) termination by mutual agreement between the employer and employee;

(3) automatic ending of an employment contract or

(4) unilateral termination by the employer.

Each of these methods is examined below in more detail.

1. Employee Resignation

Employee Resignation with Prior Notice

Generally, an employee must provide an employer with 30 days' written notice before he can resign from a company, though there are some exceptions.[2] Specifically, the 2008 Employment Contract Law requires an employee in his probationary period to give three days' prior notice to resignation.[3] **9.004**

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1 A "part-time" employee refers to an employee whose compensation is mainly calculated by hours, and whose working hours should not exceed 4 hours per day on average, or 24 hours per week in the aggregate for the same employer.

2 Labour Law, Art 37.

3 Employment Contract Law, Art 37.

Employee Resignation without Notice

9.005 In certain circumstances, an employee can resign with immediate effect, such as:

(1) where the employer fails to provide the labour protection or working conditions specified in the employment contract;[4]

(2) where the employer fails to pay labour compensation in full and on time;[5]

(3) where the employer uses violence, threats or unlawful restriction of personal freedom to compel an employee to work;[6]

(4) where the employer fails to pay social insurance premiums for the employee in accordance with law;[7]

(5) where the employer has rules and regulations that violate laws or regulations, which harm the employee's rights and interests;[8]

(6) where the employer causes the employment contract to be invalid due to (i) use of coercion, deception, or taking advantage of the employee's difficulties to make the employee sign the employment contract; (ii) a disclaimer of the employer's legal liability or denial of the employee's rights; or (iii) a violation of mandatory legal provisions;[9]

(7) where the employee is instructed by his employer in violation of rules and regulations, or is peremptorily ordered by his employer to perform dangerous operations that threaten his personal safety;[10]

(8) where the employer refuses to pay an employee overtime;[11]

(9) where the employer pays the employee below the local minimum wage[12] and

(10) other circumstances provided for under the law.[13]

Employee Liability

9.006 If an employee resigns in breach of relevant regulations or his employment contract (ie failure to provide sufficient notice), then the employee can be liable to the employer for the following incurred costs and consequential damages:

(1) training and recruitment costs;

[4] Employment Contract Law, Art 38; Labour Law, Art 32.
[5] Employment Contract Law, Art 38; Labour Law, Art 32(2).
[6] Employment Contract Law, Art 38; Labour Law, Art 32(2).
[7] Employment Contract Law, Art 38.
[8] *Id.*
[9] Employment Contract Law, Art 26.
[10] Employment Contract Law, Art 38.
[11] *Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Hearing of Labour Disputes* (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), effective 30 April 2001, Art 15.
[12] *Ibid.*
[13] Employment Contract Law, Art 38.

(2) direct economic damages caused to production, operations or work and

(3) other compensation items specified in the employment contract.[14]

9.007 Employers are limited to specifying and agreeing upon liquidated damages to be paid by an employee in the following two circumstances:

(1) breach of a non-competition restriction and

(2) breach of a training contract.[15]

9.008 According to a notice issued by the Ministry of Human Resources and Social Security, the main purpose of this restriction on liquidated damages is to prevent an employer from imposing penalties that unreasonably restrict an employee's right to resign.[16]

Employer Liability

9.009 While statutory severance is not generally payable upon employee resignation, if an employee resigns because his employer has abused the legal rights of the employee, the employer may be required to pay severance and other compensation[17] (for example, **see 6.113–6.117** regarding employer penalties for violation of working hours rules).

2. Mutual Termination

9.010 The most common and legally acceptable way under PRC law to terminate an employment contract prior to its expiration is by mutual agreement. From an employer's point of view, mutual termination is generally considered to be the safest way to terminate an employment relationship. First, if the separation is amicable, then as a practical matter there is less of a chance that the employee will later bring a claim against the employer. Second, if the parties both agree on termination, then the employer avoids the risk of being sued for unlawful termination (**see 9.115–9.127**). Third, mutual termination contracts can include a waiver and release clause whereby the employee waives any and all present or future claims against the employer, which are generally deemed enforceable as long as no statutory rights are being waived.

9.011 Legally, any employee's employment contract can be terminated by a mutual contract; this likely would also apply to special employees who are protected from unilateral termination (**see 9.097**). According to a 2010 Supreme People's Court interpretation, in order to be enforceable, a mutual termination contract may not violate any mandatory laws or regulations, and no party shall be defrauded, coerced or taken

[14] *Measures for Compensation in Connection with Violations of Provisions of the Labour Law on Labour Contracts* (违反〈劳动法〉有关劳动合同规定的赔偿办法) "Labour Law Violation Measures", effective 10 May 1995, Art 4.
[15] Employment Contract Law, Art 25.
[16] *Outline for How to Publicise the Employment Contract Law* (<中华人民共和国劳动合同法>宣传提纲), issued by the MOHRSS on 29 June 2007, Doc 25.
[17] Employment Contract Law, Art 46(1); Labour Law, Art 91.

advantage of by the other party to enter into the mutual termination contract. A mutual termination can also be invalidated if one party has a material misunderstanding about the mutual termination contract or the contract is significantly unfair to one party.[18]

9.012 An employee will sometimes attempt to rescind a signed, mutual termination contract on the grounds of a material misunderstanding or waiver of a right unknown at the time of signing the mutual termination contract. People's Republic of China courts generally are split in their opinion as to whether a mutual termination contract can be rescinded in such circumstances.

9.013 ***Case before Dongguan No. 3 People's Court***

Facts:

A female employee signed a mutual termination contract with the employer and her employment was terminated pursuant to the termination contract. Twenty days after the employee's last day of work, the employee found out that she was pregnant at the time she signed the mutual termination contract. She asked to rescind the mutual termination contract because she was not aware of her true health condition at the time of signing the agreement and therefore did not knowingly waive her special rights and protections as a pregnant employee under PRC law. The company argued that the employee voluntarily signed the contract, and under PRC law an employee's pregnancy does not restrict the parties from being able to mutually terminate their employment relationship.

Holding:

The court opined that the mutual termination contract is valid as it was reached through consensus, and dismissed the employee's claim.[19]

9.014 ***Case before Shanghai Municipal No. 2 Intermediate People's Court***

Facts:

A female employee signed a mutual termination contract with the employer, and was terminated pursuant to the contract. Later, she claimed reinstatement of employment on the grounds that she did not know that she was pregnant at the time of signing the mutual termination contract.

Holding:

The first instance court supported the employee's claims, reasoning that the employee was allowed to rescind the mutual termination contract because it was concluded as a result of a "major mistake" or "material misunderstanding". However, the appellate court overruled the lower court and rejected the employee's claims. According to the appellate court, the mutual termination contract signed by the pregnant woman was enforceable and cannot be revoked, regardless of whether the employee knew of her pregnancy status, because an employee's pregnancy status can only protect her from unilateral termination but not mutual termination. The appellate court also ruled that the employee's lack of awareness of her pregnancy did not qualify as a "major mistake" which would entitle her to revoke the mutual termination contract.[20]

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[18] *Interpretations of the Supreme People's Court on Several Issues Concerning the Application of Law in the Hearing of Labour Disputes (III)* (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（三）) "SPC Interpretation III", effective 14 September 2010, Art 10.

[19] "Female employee requested reinstatement as she found herself pregnant after the termination of employment", available at http://news.hexun.com/2013-03-19/152249181.html (viewed 5 June 2013).

[20] (2010) 沪二中民三（民） 终字第 162 号, ruled 15 April 2010.

9.015 ***Case before Shanghai Pudong District People's Court***

Facts:

A female employee signed a mutual termination contract with the employer. The employee was later diagnosed to have been pregnant at the time of signing the mutual termination contract, and thus she requested to cancel the mutual termination contract on the grounds that she misunderstood her health condition at the time of signing the contract.

Holding:

The court held that the employee's lack of awareness of her pregnancy constituted material misunderstanding upon which the termination contract was reached, so the mutual termination contract should be revoked.[21]

9.016 Statutory severance is generally required to be paid for a mutual termination contract, unless the employee makes the initial request for a mutual termination agreement (which is rare).[22] In practice, an employer will usually need to pay an additional, *ex gratia* amount of compensation to get an employee to sign a mutual termination contract.

3. Automatic Ending of an Employment Contract

"Ending" Versus "Termination"

9.017 The Labour Law, the Employment Contract Law, and applicable local regulations generally make a distinction between the "ending" of an employment contract (*zhongzhi*) and the "termination" of an employment contract (*jiechu*). The term *zhongzhi* generally means the automatic ending of an employment contract upon the occurrence of a certain circumstance that is outside the control of both parties. In contrast, *jiechu* generally refers to either party's or both parties' active decision to terminate the contract.

Conditions for Automatic Ending of Employment Contracts

9.018 People's Republic of China law provides that an employment contract will automatically end upon the occurrence of any of the following circumstances:

(1) its term expires;[23]

(2) the employee has commenced drawing his basic old age insurance pension in accordance with the law;[24]

(3) the employee has reached the retirement age;[25]

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[21] (2010) 浦民一（民）初字第 27916 号, ruled 14 January 2011.

[22] *Notice on Several Issues Concerning Implementation of the Labour Contract System* (关于实行劳动合同制度若干问题的通知), effective 31 October 1996, Art 20; Employment Contract Law, Art 46(2).

[23] Employment Contract Law, Art 44.

[24] *Ibid.*

[25] *Implementation Rules to PRC Employment Contract Law* (中华人民共和国劳动合同法实施条例) "Implementation Rules", effective 18 September 2008, Art 21.

CHAPTER 13. SUPPLEMENTARY PROVISIONS

Article 106.

The People's Governments of the provinces, autonomous regions and municipalities directly under the central government shall determine implementing measures for the labor contract system in accordance with this Law and the actual situation of their regions, and submit the same to the State Council for the record.

Article 107.

This Law shall be implemented as from January 1, 1995.

APPENDIX 2

LAW OF THE PEOPLE'S REPUBLIC OF CHINA ON EMPLOYMENT CONTRACTS

(Adopted at the 28th Session of the Standing Committee of the 10th National People's Congress on June 29, 2007. Effective from January 1, 2008. Amended at the 30th Session of the Standing Committee of the 11th National People's Congress on December 28, 2012 with effect from July 1, 2013.)

Table of Contents

CHAPTER 1. GENERAL PROVISIONS

Article 1.

This Law has been formulated in order to improve the employment contract system, to specify the rights and obligations of the parties to employment contracts, to protect the lawful rights and interests of workers and to build and develop harmonious and stable employment relationships.

Article 2.

This Law governs the establishment of employment relationships between, and the conclusion, performance, amendment, termination and ending of employment contracts by, organizations such as enterprises, individual economic organizations and private non-enterprise entities in the People's Republic of China ("Employers") on the one hand and workers in the People's Republic of China on the other hand.

The conclusion, performance, amendment, termination and ending of employment contracts by state authorities, institutions or social organizations on the one hand and workers with whom they establish employment relationships on the other hand, shall be handled pursuant to this Law.

Article 3.

The conclusion of employment contracts shall comply with the principles of lawfulness, fairness, equality, free will, negotiated consensus and good faith.

A lawfully concluded employment contract is binding, and both the Employer and the worker shall perform their respective obligations stipulated therein.

Article 4.

Employers shall establish and improve labor rules and regulations, so as to ensure that workers enjoy their labor rights and perform their labor obligations.

When an Employer formulates, revises or decides on rules and regulations, or material matters, that have a direct bearing on the immediate interests of its workers, such as those concerning labor compensation, work hours, rest, leave, work safety and hygiene, insurance, benefits, employee training, work discipline or work quota management, the same shall be discussed by the employee representative congress or all the employees. The employee representative congress or all the employees, as the case may be, shall put forward a proposal and comments, whereupon the matter shall be determined through consultations with the labor union or employee representatives conducted on a basis of equality.

If, while a decision is being made on the implementation of an Employer's rule, regulation or material matter, the labor union or the employees are of the opinion that the same is inappropriate, it or they are entitled to communicate such opinion to the Employer, and the rule, regulation or matter shall be improved by making amendments after consultations.

Rules and regulations, and decisions on material matters, that have a direct bearing on the immediate interests of workers shall be made public or be communicated to the workers by the Employer.

Article 5.

The labor administration authorities of People's Governments at the county level and above shall, together with labor union and enterprise representatives, establish a comprehensive tripartite mechanism for the harmonization of employment relationships, in order to jointly study and resolve major issues concerning employment relationships.

Article 6.

A labor union shall assist and guide workers in the conclusion of employment contracts with their Employer and the performance thereof in accordance with the law, and establish a collective bargaining mechanism with the Employer in order to safeguard the lawful rights and interests of workers.

CHAPTER 2. CONCLUSION OF EMPLOYMENT CONTRACTS

Article 7.

An Employer's employment relationship with a worker is established on the date it starts using the worker. An Employer shall keep a register of employees, for reference purposes.

Article 8.

When an Employer hires a worker, it shall truthfully inform him as to the content of the work, the working conditions, the place of work, occupational hazards, production safety conditions, labor compensation and other matters which the worker requests to be informed about. The Employer has the right to learn from the worker basic information which directly relates to the employment contract, and the worker shall truthfully provide the same.

Article 9.

When hiring a worker, an Employer may not retain the worker's resident ID card or other papers, nor may it require him to provide security or collect property from him under some other guise.

Article 10.

To establish an employment relationship, a written employment contract shall be concluded.

In the event that no written employment contract was concluded at the time of establishment of an employment relationship, a written employment contract shall be concluded within one month from the date on which the Employer starts using the worker.

Where an Employer and a worker conclude an employment contract before the Employer starts using the worker, the employment relationship shall be established on the date on which the Employer starts using the worker.

Article 11.

In the event that an Employer fails to conclude a written employment contract with a worker at the time its starts to use him, and it is not clear what labor compensation was agreed upon with the worker, the labor compensation of the new worker shall be decided pursuant to the rate specified in the collective contract; where there is no collective contract or the collective contract is silent on the matter, equal pay shall be given for equal work.

Article 12.

Employment contracts are divided into fixed-term employment contracts, open-ended employment contracts and employment contracts to expire upon completion of a certain job.

Article 13.

A "fixed-term employment contract" is an employment contract whose ending date is agreed upon by the Employer and the worker.

An Employer and a worker may conclude a fixed-term employment contract upon reaching a negotiated consensus.

Article 14.

An "open-ended employment contract" is an employment contract for which the Employer and the worker have agreed not to stipulate a definite ending date.

An Employer and a worker may conclude an open-ended employment contract upon reaching a negotiated consensus. If a worker proposes or agrees to renew his employment contract or to conclude an employment contract in any of the following circumstances, an open-ended employment contract shall be concluded, unless the worker requests the conclusion of a fixed-term employment contract:

(1) the worker has been working for the Employer for a consecutive period of not less than 10 years;

(2) when his Employer introduces the employment contract system or the state owned enterprise that employs him re-concludes its employment contracts as a result of restructuring, the worker has been working for the Employer for a consecutive period of not less than 10 years and is less than 10 years away from his legal retirement age; or

(3) prior to the renewal, a fixed-term employment contract was concluded on two consecutive occasions and the worker is not characterized by any of the circumstances set forth in Article 39 and items (1) and (2) of Article 40 hereof.

If an Employer fails to conclude a written employment contract with a worker within one year from the date on which it starts using the worker, the Employer and the worker shall be deemed to have concluded an open-ended employment contract.

Article 15.

An "employment contract with a term to expire upon completion of a certain job" is an employment contract in which the Employer and the worker have agreed that the completion of a certain job is the term of the contract.

An Employer and a worker may, upon reaching a negotiated consensus, conclude an employment contract with a term to expire upon completion of a certain job.

Article 16.

An employment contract shall become effective when the Employer and the worker have reached a negotiated consensus thereon and each of them has signed or sealed the text of such contract.

The Employer and the worker shall each hold one copy of the employment contract.

Article 17.

An employment contract shall specify the following matters:

(1) the name, domicile and legal representative or main person in charge of the Employer;

(2) the name, domicile and number of the resident ID card or other valid identity document of the worker;

(3) the term of the employment contract;

(4) the job description and the place of work;

(5) working hours, rest and leave;

(6) labor compensation;

(7) social insurance;

(8) labor protection, working conditions and protection against occupational hazards; and

(9) other matters which laws and statutes require to be included in employment contracts.

In addition to the requisite terms mentioned above, an Employer and a worker may agree to stipulate other matters in the employment contract, such as probation period, training, confidentiality, supplementary insurance and benefits, etc.

Article 18.

If a dispute arises due to the fact that the rate or standards for labor compensation or working conditions, etc. are not explicitly specified in the employment contract, the Employer and the worker may renegotiate. If the negotiations are unsuccessful, the provisions of the collective contract shall apply. If there is no collective contract or the collective contract is silent on the issue of labor compensation, equal pay shall be given for equal work; if there is no collective contract or the collective contract