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China Representative Office Registration and Maintenance Guide (6)

Employment of Chinese Staff by Representative Offices

Representative Offices, also known Permanent Representative Offices or Resident Representative Offices, cannot employ Chinese staff directly. Chinese staff can only be employed through local foreign service companies or other entities designated by the local government. These foreign service companies will enter into employment contracts with Chinese individuals and should be responsible for paying salaries to the Chinese employees and making contributions to social securities and housing provident fund on a monthly basis.

A foreign service company will enter into a service contract with the Representative Office, whereby the foreign service company seconded these Chinese employees to the Representative Office. Therefore, from the legal perspective, Representative Offices and their Chinese staff do not have a direct employment relationship. The Chinese staff are only service providers. The relationship between the Chinese staff and the foreign service companies is an employment relationship.

Since Representative Offices are not employers of the Chinese staff, Representative Offices are therefore not obligated to abide by the Chinese labour law directly. In practice, Representative Offices usually deem themselves to be employers of the Chinese staff and hence abide by the PRC labour law in dealing with the Chinese staff. However, due to the special status of the Representative Offices, they do not have the ability or capacity to provide some compulsory obligations of employers. For example, Representative Offices cannot purchase social securities and housing provident fund for their Chinese employees. On the other hand, foreign service companies are able to provide all such services. And they are required to directly settle the labour disputes arising from the Chinese staff of the Representative Offices in accordance with the PRC labour law. Foreign service companies may require the Representative Offices to reimburse the statutory amount payable to the Chinese staff in accordance with their service contract with the Representative Offices.

The service contract signed between the foreign service companies and Representative Offices normally will include the following provisions:

1. Rights and obligations of both parties;
2. Use and return of dispatched employee;
3. Contract fees and settlement;
4. Liabilities for breach of contract;
5. Termination of contract;
6. Settlement of disputes.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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