



漢坤律師事務所
HAN KUN LAW OFFICES



Employing Staff in China: What You Need to Know

Employment Law in China, a General Overview

Guangzhou Career Day - 1st Edition - October 22nd, 2016

Firm Overview - Han Kun



Han Kun was founded in Beijing in 2004. Today, with more than 150 lawyers in Beijing, Shanghai, Shenzhen and Hong Kong offices in Greater China, Han Kun provides clients with a comprehensive platform of international legal services, including extensive capabilities in the areas of corporate finance, mergers and acquisitions, private equity, venture capital, project finance, domestic and international tax, intellectual property, labor and employment, and dispute resolution, among many others. Han Kun has provided high-quality, first-class legal services to clients and rapidly grown into one of the leading law firms in Greater China.

Firm Overview - Gianni Origoni Grippo Cappelli & Partners

PRESENCE IN ITALY



INTERNATIONAL DESKS

CHINA | KOREA | INDIA | RUSSIA | TURKEY

People

380 Highly specialized lawyers

87 Partners

Expertise

19 Practice Areas

INTERNATIONAL OFFICES

NEW YORK



Year of foundation: **1988**

LONDON



Year of foundation: **1997**

BRUSSELS



Year of foundation: **2006**

ABU DHABI



Year of foundation: **2011**

HONG KONG



Year of foundation: **2014**



Our Alliance

- Han Kun and Gianni Origoni Grippo Cappelli & Partners have a strong and continuative alliance.
- This alliance serves clients with interests in China, as well as Chinese investors with strategic interests in Europe.
- The alliance involves:
 - Combined teams dedicated to specific clients/practices.
 - Client development arrangements.
 - Joint training.
 - Joint consultation and marketing.

Our Alliance

All major Practice Areas in China are covered through this collaboration, including:

Banking
& Finance

Competition Law

Corporate, Compliance &
Regulatory Matters

Dispute Resolution

Domestic & International
Capital Markets

Employment

Fund & Trust Formation

Intellectual Property

Mergers
& Acquisitions

Venture Capital & Private
Equity

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PART I

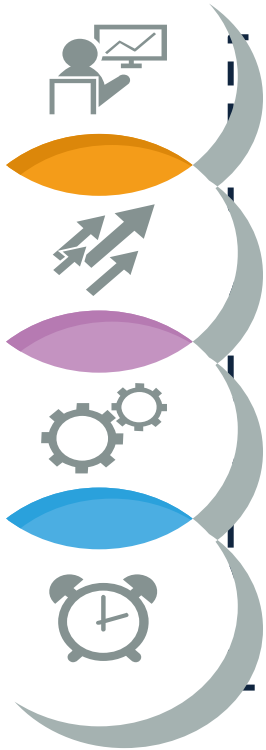
**A Glimpse of the Employment
Law System in China**

1.1 National Laws and Regulations



- ✓ Labor Law of the People's Republic of China
- ✓ Labor Contract Law of the People's Republic of China and its Implementing Regulations
- ✓ Social Insurance Law of the People's Republic of China
- ✓ Administrative Regulations on the Housing Provident Fund
- ✓ Law of the People's Republic of China on Mediation and Arbitration of Labor Disputes
- ✓ Relevant Judicial Interpretations of the Supreme People's Court

1.2 Local Laws and Regulations - Guangdong Province



- ✓ Rules of Guangdong Province on the Administration of Labor Contract
- ✓ Regulations of Guangdong Province on the Payment of Wages
- ✓ Implementing Measures of Guangdong Province for the Social Pension Insurance for Urban and Rural Residents
- ✓ Regulations of Work-Related Injury Insurance of Guangdong Province
- ✓ Provisions of Maternity Insurance of Guangdong Province
- ✓ Regulations of Unemployment Insurance of Guangdong Province
- ✓ Relevant Guiding Opinions of the Guangdong Higher People's Court



PART II

**Tips for Employment in China
from Legal Perspective**

2.1 Establishment of Employment Relationship (1)



Laborers, regardless of their ethnic group, race, sex, or religious belief, shall not be discriminated against in employment.



2.1 Establishment of Employment Relationship (2)



- ✓ whether the applicant has terminated the employment relationship with the former employer
- ✓ whether the applicant is subject to any non-competition and confidentiality obligation



2.1 Establishment of Employment Relationship (3)



- ✓ A written employment contract shall be concluded.
- ✓ If an employer fails to conclude a written employment contract with an employee more than 1 month but less than 1 year after the date on which the employee has started work, the employer shall, each month, pay to the employee **twice his wage**.

Tip 3

Conclusion of
written employment
contracts

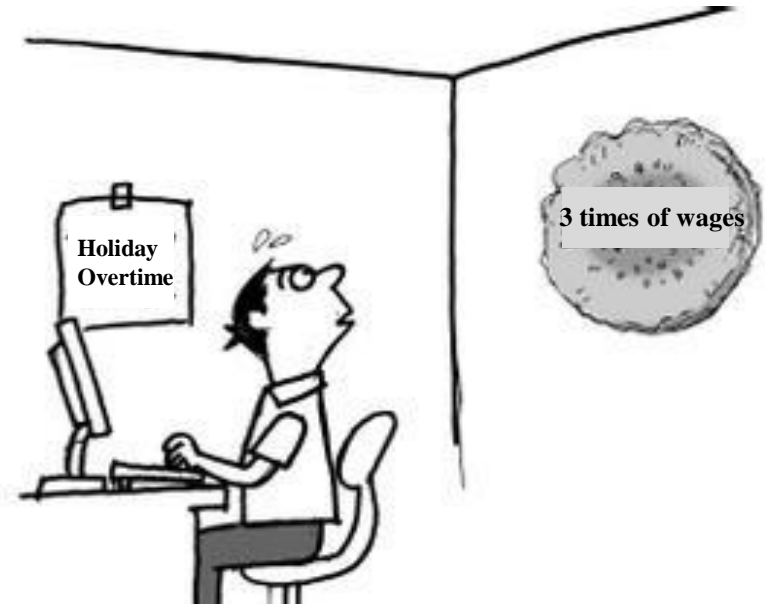


2.2 Maintenance of Employment Relationship (1)

Minimum wages and overtime wages



- ✓ Wages to be paid to laborers shall not be lower than the local standards of minimum wages
- ✓ Overtime payment:
 - no less than **150%** of the normal wages
 - work on off days without any compensatory leave - no less than **200%** of the normal wages
 - work on statutory holidays - no less than **300%** of the normal wages



2.2 Maintenance of Employment Relationship (2)

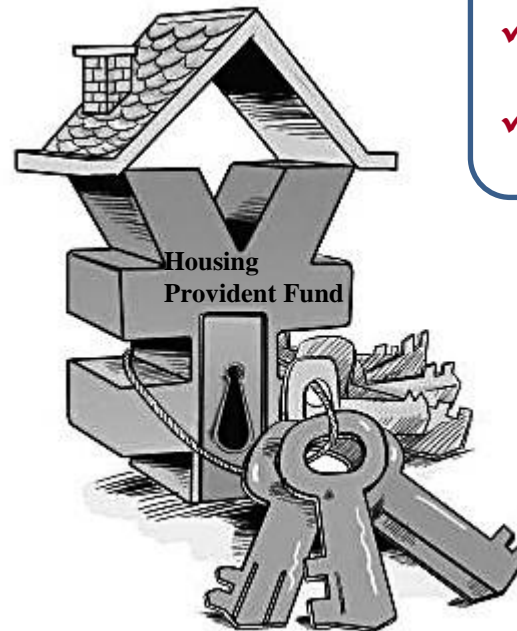
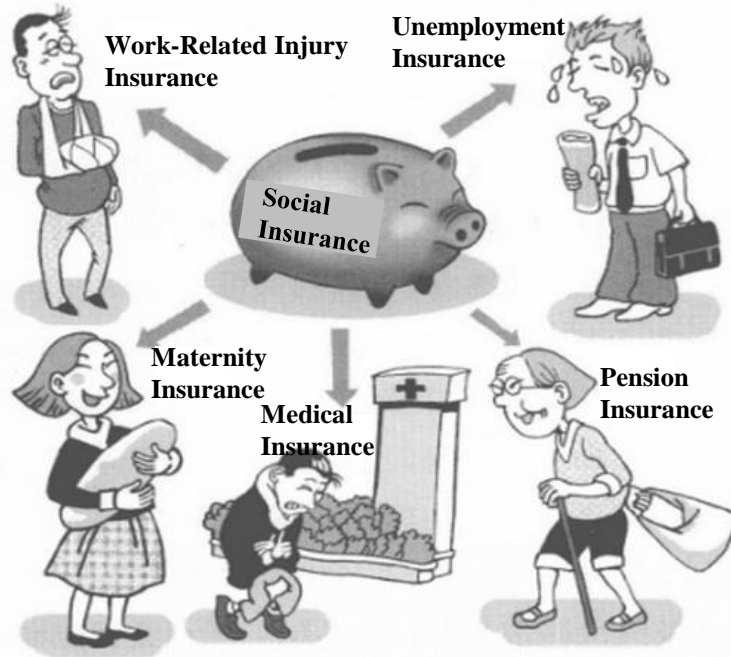
Procedures of employment rules and regulations



- ✓ The formulation of rules which have a direct impact on employees' immediate rights and interests shall be presented to the employee representative congress or all employees for discussion, and the proposal and advice thereof shall be determined after consultation with the labor union or employee representative on the basis of equality.
- ✓ The employer shall make public of the rules, regulations and decisions on material matters that have a direct impact on employees' immediate interests and rights, or communicate the same to the employees.

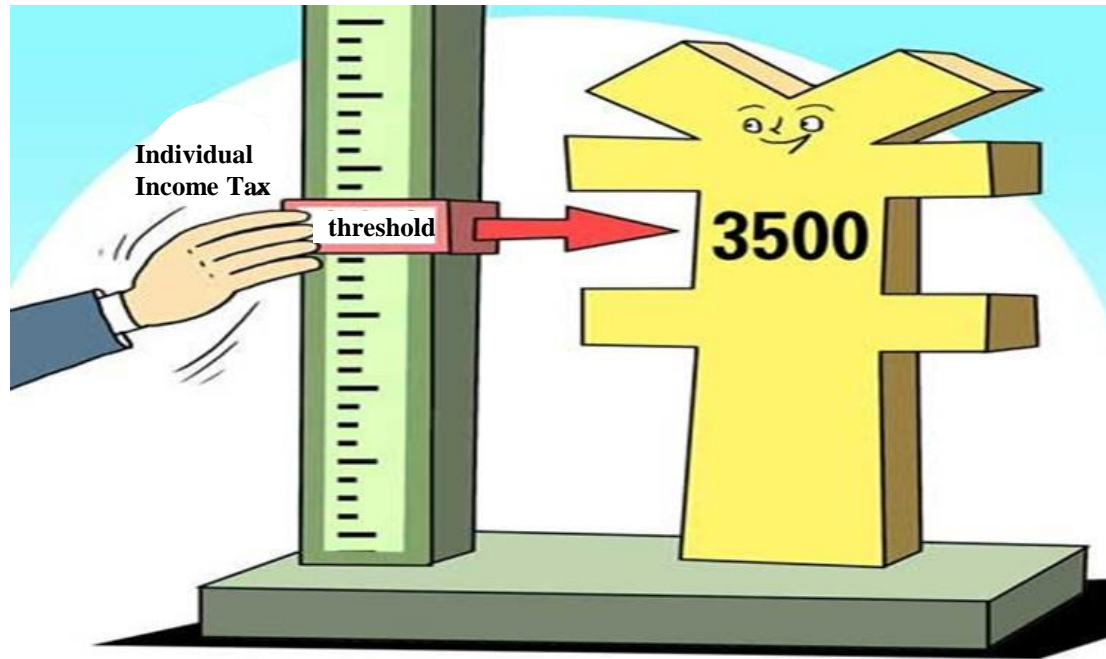


2.2 Maintenance of Employment Relationship (3)



- Tip 3**
- ✓ social insurance
 - ✓ housing provident fund

2.2 Maintenance of Employment Relationship (4)



Tip 4
The employer shall withhold and remit the individual income tax of employees.



2.2 Maintenance of Employment Relationship (5)

Special protections for female employees



- ✓ maternity leave and breastfeeding leave
- ✓ work down the pit of mines, or work with Grade IV physical labor intensity as prescribed by the State, or other work forbidden to women — **prohibited**
- ✓ types of work prohibited to be arranged for women during their menstrual periods, pregnant periods or breastfeeding periods
- ✓ limitation on termination of employment contract during pregnancy, confinement or breastfeeding period



2.3 Termination of Employment Relationship (1)

- ✓ termination on agreement
- ✓ termination by employees - written notice 30 days in advance
- ✓ unilateral termination by employees when employers violate certain conditions
- ✓ unilateral termination by employers when employees violate certain conditions (employees with negligence)
- ✓ termination by employers in certain situations - written notice 30 days in advance or payment of 1 month wages (employees without negligence)
- ✓ economic layoffs



2.3 Termination of Employment Relationship (2)

- ✓ economic compensation - situations and standards
- ✓ non-competition agreement - pay economic compensation to the employee on a monthly basis during the non-competition period (which shall be no more than 2 years after termination of employment contract)



Tip 2

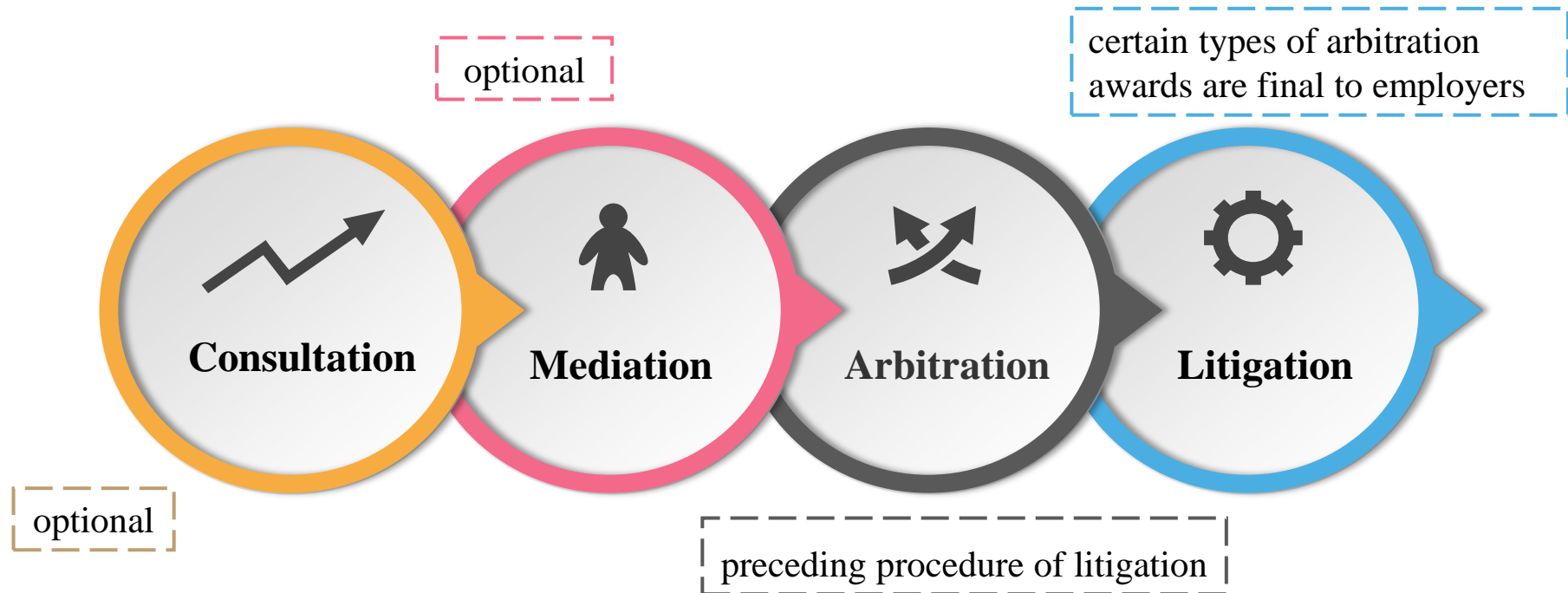




PART III

Employment Disputes Resolution

3.1 Procedures of Employment Disputes Resolution

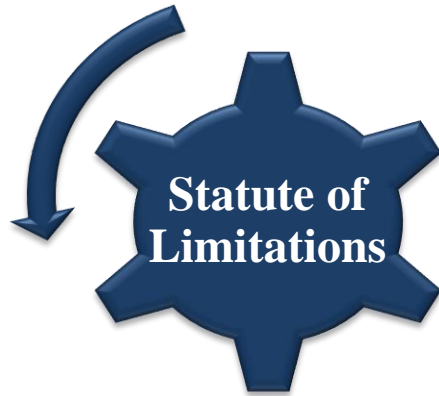


3.2 Types of Employment Disputes

Employment Disputes

- ✓ disputes arising from the confirmation of employment relations
- ✓ disputes arising from the conclusion, performance, alteration and termination of employment contracts
- ✓ disputes arising from name removal, dismissal, resignation or vacation of office
- ✓ disputes arising from working hours, rest days and leave days, social insurance, fringe benefits, training and labor protection
- ✓ disputes arising from labor remunerations, work injury medical expenses, economic compensation or damages
- ✓ other employment disputes prescribed by laws and regulations

3.3 Other Tips for Employment Disputes Resolution



Generally, within **1 year** from the date the parties know or shall have known the infringement of their rights



Arbitration

Generally, within **15 days** after receiving the arbitration award



Litigation

Employment disputes shall be handled by the employment dispute arbitration commission **at the place where the employment contract is performed or at the place where the employer locates.**





PART IV

**Special Tips for Employment of
Foreigners**

Special Tips for Employment of Foreigners

- ◆ Certificates of the PRC of Permitting the Employment of Foreigners (《中华人民共和国外国人就业许可证书》)
- ◆ Work Permits for Foreigners (《外国人就业证》)





Speaker Introduction

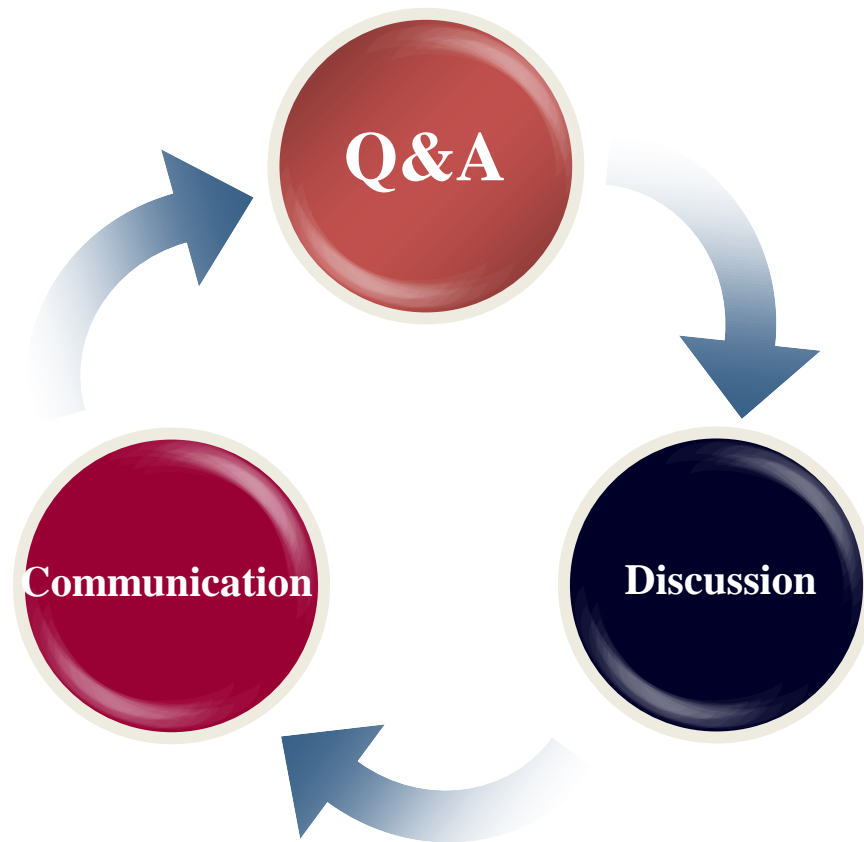
Speaker Introduction

Bing Xue

Practice Areas and Professional Experience: Mr. Xue specializes in taxation, capital markets transactions, mergers and acquisitions, and foreign direct investment. Mr. Xue joined Han Kun in September 2010. Before joining Han Kun, Mr. Xue practiced tax law for more than four years with PricewaterhouseCoopers (August 2006 to April 2009) and DeHeng Law Firm (May 2009 to August 2010). With solid knowledge and practice experience in PRC tax practice, Mr. Xue represents a significant number of multinational and domestic companies, handling various tax and legal issues related to their investments, including tax consulting/planning, tax compliance, mergers and acquisitions, IPOs and foreign direct investment.

Qualifications: Member of the PRC Bar

Q&A





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Thank you !