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**People's Republic of  
China – New Rules for  
Bringing Short-Term  
Assignees into China**

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## flash Alert

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Notice 78, which came into effect on 1 January 2015, aims to regulate the employment of foreign nationals in the People's Republic of China ("China"), together with the Administrative Regulations.

The Chinese Ministry of Human Resources and Social Security, Ministry of Foreign Affairs, Ministry of Public Security, and Ministry of Culture jointly issued the *Trial Implementation on Relevant Formalities for Foreigners to Carry Out Short-term Assignment in China (Notice 78)* on 6 November 2014, to reinforce the rules governing employment of foreigners in China.<sup>1</sup>

### Why This Matters

With the increasing number of business travellers and short-term assignees entering China in recent years, Chinese companies that host foreign individuals for short-term assignment in China from 1 January 2015, should be aware of the changes to the visa requirements and application procedures, and review their corresponding internal procedures to help establish full compliance with respect to the hosting of short-term assignees.

Employers need to exercise care when deploying foreigners in China by distinguishing the purpose and length of their assignment in China in order to apply for the appropriate visa, and foster compliance of their foreign workers with relevant work and residence requirements upon arrival.

It is worth noting that the proof of short-term assignment cannot be extended, which means that foreigners who intend to carry out short-term assignments on multiple visits to China may need to apply for multiple proofs of short-term assignment and visas if their stays in China exceed 90 days in aggregate.

Notice 78 comes into effect on 1 January 2015, and provides clarification on:

- the definition of "short-term assignment";
- the visa requirements and the corresponding application procedures.

### Main Features

According to Notice 78, foreigners entering mainland China to carry out work on a short-term basis ("short-term assignment") and with an intended stay of no more than 90 days, should obtain the Foreigner's Employment Permit (or an approval document for commercial performance by the Ministry of Culture), and the proof of short-term assignment in China in order to apply for a Z visa.

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An application for a work-related residence permit may be required within the validity of the class Z visa, depending on the length of stay of the foreigner.

For the purposes of Notice 78, "short-term assignment" means:

- Completing certain tasks in the field of technology, research, management or provision of guidance, or other work for the Chinese business partners;
- Providing and attending training at sports organizations in China (including coaches and athletes);
- Filming (including commercials and documentaries);
- Fashion shows (including auto show models and filming of advertisements, etc.);
- Engaging in cross-border commercial performances.

Foreigners who wish to enter China for short-term assignments should observe the following procedures:

1. Apply for the Foreigner's Employment Permit from the Ministry of Human Resource and Social Security (or an approval document for commercial performance from the Ministry of Culture) and proof of short-term assignment;
2. Obtain an Invitation Letter from a duly authorized entity or a Confirmation Letter of Invitation issued by the relevant Foreign Affairs Office of a provincial government of China;
3. Apply for a Z visa with the overseas visa offices including, Chinese embassies, consulates, or bodies commissioned by the Ministry of Foreign Affairs.

For foreigners who intend to work in China for a period not exceeding 30 days, the overseas visa offices will issue a visa with a validity of 30 days. The visa holder shall only work in China for a short-term assignment for the period stated on the proof of short-term assignment, and remain in mainland China within the period stated on the Z visa. For foreigners who intend to work in China for a period of more than 30 days, a 90-day work-related residence permit should be obtained within 30 days after arriving in China with a Z visa.

Notice 78 also emphasized the requirement that foreigners from countries which have entered into Mutual Visa Exemption Agreements with China should also obtain a Foreigner's Employment Permit and apply for a Z visa before entering China for a short-term assignment.

Foreigners entering China without following the relevant procedures or working in China beyond the scope stated in the proof of short-term assignment (details shall include the applicant's name, nationality, job description, location of work, and duration of work, etc.) will be regarded as illegally working in China by the Department of Public Security.

Notice 78 also confirmed that the following circumstances will not be considered as a short-term assignment for the purpose of the requirements stipulated within the Notice where the foreigner's length of stay in China does not exceed 90 days – and another visa should be obtained as noted below.

For the M visa:

- Maintenance, installation, commission, disassembly, guidance, and training for purchased machinery and equipment;
- Providing guidance, supervision, and inspection for projects whose bidding is won in China;
- Dispatching personnel to branches, subsidiaries, and representative offices in China to complete short-term tasks;
- Participating in sport events.

For the F visa:

- Engaging in pro-bono work in China, or volunteers who are paid by foreign organizations;
- Activities which the Ministry of Culture has not indicated as being “commercial performance” on the Approval document.

### **KPMG Note**

Notice 78 focuses on the visa and residence requirements for foreigners who intend to come to China on short-term assignment for a period of no more than 90 days. These requirements are not stated in the existing “Administrative Regulations on the Employment of Foreigners in China” (“The Administrative Regulations”), which only addresses the visa and permit requirements for foreigners who signed labor contracts directly with Chinese employers and foreigners who are dispatched and paid by an overseas company to work in China for a period of more than three months.

Given the cost and time associated with the applications, and with the increasing number of business travellers and short-term assignees entering China in recent years, companies should carefully review the duration of the work to be carried out by a foreign national for the same purpose, in order to help reduce the associated cost and avoid the potential delay in project progress due to these visa application procedures.

Furthermore, Notice 78 does not mention how to apply for multiple proofs of short-term assignments, and it is necessary to consult relevant authorities for the details and procedures. The release of Notice 78 does not only have an impact on companies that dispatch/host business travellers and short-term assignees with respect to visa compliance, but also there are Chinese individual income tax (“IIT”) and social security (“SS”) implications for these types of cross-border transferees. When determining the Chinese IIT obligation of a foreigner dispatched to China, one of the key considerations is who his/her “employer”<sup>2</sup> is. Therefore, companies should carefully analyze the situation and determine the foreigner’s employer as well as the corresponding Chinese IIT obligations for the foreigner when applying for his/her M visa or short-term Z visa. Furthermore, a foreigner’s Chinese SS obligation is currently assessed based on whether he/she holds a work permit. Although further clarification may be needed on whether foreigners with proof of short-term assignment are required to participate in China’s SS schemes, it is recommended that companies take into consideration a series of factors when budgeting for short-term assignments, including the company’s business needs, the individuals’ personal position, and the Chinese IIT and SS implications.

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### KPMG Note (cont'd)

Z visas for foreigners who intend to work in China for less than 90 days were discussed in the exposure draft of the *Ordinance on the Administration of Entry and Exit of Foreign Individuals in China*. However, the short-term Z visa was not included in the final draft of the *Ordinance on the Administration of Entry and Exit of Foreign Individuals in China* due to the absence of related government policies. As a result of a concerted effort by multiple authorities, Notice 78 now provides clarity on the visa requirements for short-term assignees and appears to demonstrate Chinese authorities' intention to strengthen the regulation of foreigners' legal employment and residence in China.

As Notice 78 has come into effect, companies should immediately review their compliance requirements and procedures as well as the cost implications when hosting short-term assignees. Human resources professionals may wish to keep abreast of the relevant procedures and requirements to foster visa compliance for their new short-term assignees, and to review existing assignment types so as to update their internal policies and guidelines. Companies should also consider analyzing the additional compliance requirements and budget for additional costs, such as the cost of filing the relevant application and extension, and the potential IIT and SS costs associated with these short-term assignments.

#### Footnotes:

1 *Notice on the Issuance of Relevant Formalities for Foreigners to Carry out Short-term Assignment in China* (for Trial Implementation, Ren She Bu Fa [2014] No.78) released on 6 November 2014. The Notice is applicable from 1 January 2015.

2 The "employer" is defined by the PRC tax authority as an entity that holds ownership of the employee's work product and assumes relevant responsibilities and risks.

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