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China

New Labor Law will be effective from 1 January 2008

Employers are required to enter into written contracts with all employees. Employment contracts are classified into "fixed term" type or "indefinite term" type. There are detailed requirements on the contract terms and strict requirements on termination of an indefinite term employment contract.

If an employer does not put a fixed term employment contract into written form, the employment will automatically become an indefinite term employment contract after one year. A fixed term employment contract will also become an indefinite one after renewal for twice.

New Anti-monopoly Law passed on 30 August 2007

The Anti-monopoly Law will be effective on 1 August 2008 which aims to ensure fair competition and regulate market order. It prohibits monopolistic agreements but also imposes protection on innovation and technology.

Detailed rules can be obtained at the Central Government Website: <http://www.gov.cn/flfg/fl.htm>

Hong Kong

Intellectual Property Department has revised and updated various chapters of the Trade Marks Registry Work Manual: *Absolute Grounds for Refusal; Sound Marks; Assents by Personal Representatives; and Variation and Rectification of Registration*. You may get a copy at their website:

http://www.ipd.gov.hk/eng/whats_new/news.htm

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You are welcomed to suggest interesting topics to us by email to : info@darehabere.com

We will manage to address your concern in future issues.

Company Accounts

Shareholders' Right to Company's Accounting Books

In most places such as Hong Kong, England and US, shareholders have no right to access the company's accounting books and could not make enquiries on the company's financial affairs except at the annual general meeting (AGM) each year.

The division of powers and responsibilities within a



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Dare & Habere Consulting Ltd. specializes in providing tax, transaction advisory, dispute support and corporate services.



Briefing on China company setup and management can be found at our website:

http://darehabere.com/dhe/ekc/dhe_kc_cf.html

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company requires the directors to have accounts properly prepared and to provide shareholders copies of audited financial statements at each AGM. In general, shareholders could only monitor the company's financial affairs through appointment of directors and auditors in AGM.

Shareholders of China companies get a wider and more flexible right on monitoring the company's financial affairs. The Company Law of the People's Republic of China (revised in 2005) Article 34 provides that a shareholder may request to examine the accounting books of the company.

Formality

Article 34 further provides the procedures on making the request:

- (1) The shareholder shall submit a written request to the company and state his motives.
- (2) The company may reject the request if consider the request is for any improper purpose that may damage the company's legitimate interests. It shall, within 15 days, give a written reply and explanation to the shareholder.
- (3) On the rejection, the shareholder may plead the People's Court to demand the company to approve the examination.

Meanings of "examination" and "legitimate interest"; acceptable grounds of request; and extent of examination are not clear yet. Disregard such technical terms or arguments on legal person/governance issues, the right in itself confers shareholders especially foreign investors more protections on their investment in China.

Human Resources Management

Waived the Right of Termination for Misconduct

Employee fraud is costly to every employer. If it really happened, some employers will choose to terminate the concerned employee summarily or even report the case to the police or ICAC.

Where the matters involved senior level and/or substantial amount,

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We provide the following services :

Tax

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Restructuring & Compliance
Investigation & Dispute
Transfer Pricing
International Tax

Transaction Advisory

Acquisition & Divestment
Business Valuation
Due Diligence
Forensic Accounting
Dispute Analysis & Litigation Support

Corporate Services & Consulting

Business Setup & Incorporation
Company Secretarial Service
Accounting & Assurance
Risk Assessment & Control
Financial Management & Advisory

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employer might choose to settle the matter by compromising with the concerned employee and/or *asking him/her to resign* in order to prevent any further damaging effect on company's reputation.

In a court case, where the company's internal auditor found that the sales director should be responsible for the fictitious sales figures entered in the company's books on China business, the employer terminated the employment of the sales director by giving him salary in lieu of notice of termination (paid 1 month's salary instead of 6 months' salary under employment contract). The employee sued his employer.

The court agreed that the employee's conduct was inconsistent with due and faithful discharge of his duties. But, the employer had waived its right to dismiss by having elected to terminate the contract on payment in lieu of notice. He should pay the employee all entitlements under the contract of employment accordingly.

So, if an employer waived his right of summary termination for a serious misconduct, he should also pay all the compensation or payment required by law. (Reference: *Li Heung Sang v. Compuware Asia Pacific Ltd.*, HCA No. 9271/2000 & HCA No.378/2001)

Dell, the global PCs supplier, recently hit by accounting problems. Its internal audit found evidence of misconduct and accounting errors in March 2007.

See our Control & Risk Assessment Services at:

http://darehabere.com/dhe/eds/dhe_ds_cr.html

Life/Balance

Top of The World – Barrow, Alaska (II) (cont'd)

(by Mr. Eric CK Yeung, a traveler who is very keen on exploring scenic places)

Barrow is a small place where you could feel of Arctic but don't have to drive a long way from Western Canada and spend for seven to ten days on a round trip of an inland sight. The normal cruise ship tour from Vancouver, B.C. will only let you have a distance look at the south tip of Alaska, like Juneau.

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Aurora can be occasionally seen in the region except during the midnight sun period.

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Trust • Value • Commitment

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In Barrow, you can experience Arctic culture at a shorter period of travel time. In the Inupiat Eskimo cultural program, you may enjoy the ceremonial song and dancing, playing traditional games, or watch a demonstration of local crafts. Walk to the shores of the Arctic Ocean and get an unforgettable experience by dipping your toe in the frigid waters of the Ocean.

Barrow is a small city. You can easily get around attractions within one day trip. If you have a long haul trip to North America, like Toronto or New York, take two or three days stopover in Anchorage and fly to Barrow. Then, depart on evening flight. [2007 Rates: around US\$469.00 – US\$669 / person depends on Fairbanks or Anchorage]

Among the motels/hotels, one of the largest is called "Top of the world". Room rate is comparatively higher in summer but yearly average rate is around US\$150 per night.

The local travel tour companies operate some tour like "Tundra Tour" or you may take a "4 X 4" Alaska taxi around. Surprisingly there are restaurants which provide different kinds of food including Mexican, Japanese and Chinese styles.

Further details can be obtained at:

<http://www.northernalaska.com/barrow.cfm>

If you are interested to receive our future e-News or publications, you may send us an email, or submit the filled-in form at our Knowledge Center webpage: http://darehabere.com/dhe/ekc/dhe_kc.html

Reminder

- 2 Oct 2007 - Extended due date for Individual Tax Return of sole-proprietorship business with tax representative.
- 31 Oct 2007 - Deadline for submitting further extension for company's profit tax return (year ended 31 March 2007) that has current year loss.
- 15 Nov 2007 - Extended due date for submitting company's profit tax return for year ended 31 March 2007.

Note: Your notice of assessment or personal assessment should reflect the 50% (max. HK\$15,000) tax rebate in 2006-07. Taxpayers received rental income or has a sole-proprietorship or partnership may elect personal assessment to enjoy the rebate.

Tax Holdover : Consider an application for holding over of payment of provisional profits tax if the assessable profits for the year of assessment are likely to be less than 90% of that of the preceding year of assessment.

This publication is only a brief summary or introduction on the interested or related topics. It does not constitute any accounting, legal investment or other professional advice. If you would like to have in-depth information, please contact us or specific professional advice should be taken before acting on the topics covered. Dare & Habere Consulting Ltd. and ARA & Associates are independently owned and operated.