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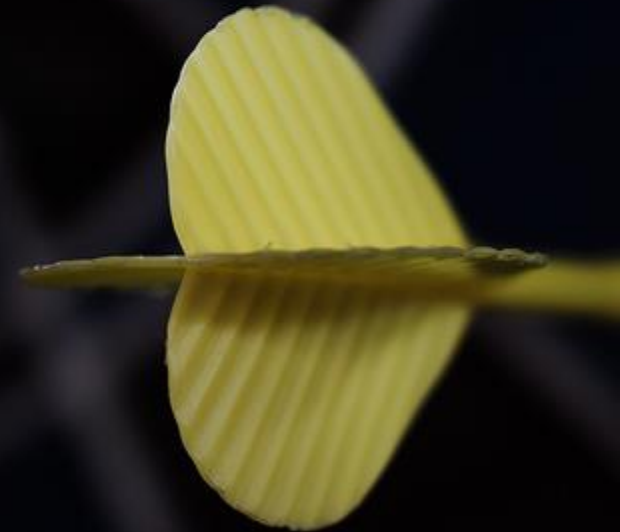
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Doing Business in China: Labor Issues During Relocation

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16th April, 2019

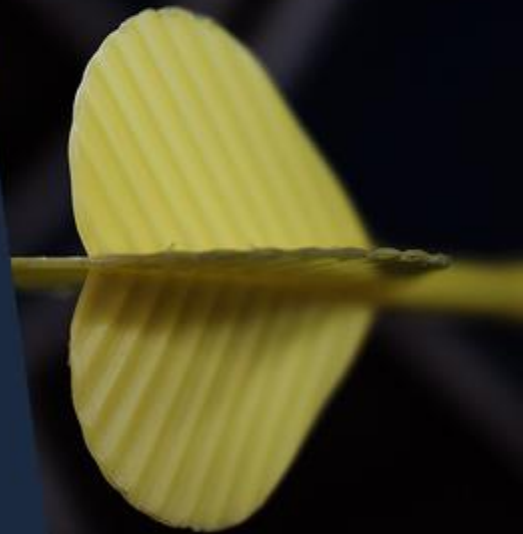


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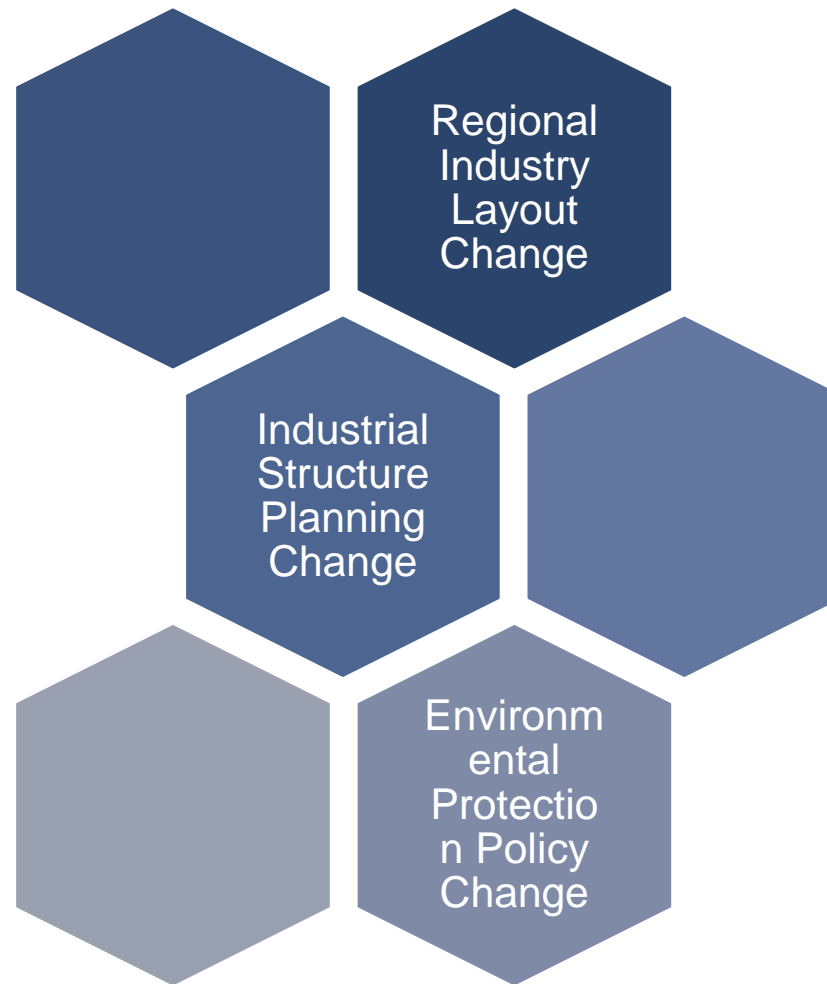
Section 1

Common Reasons and General Strategies



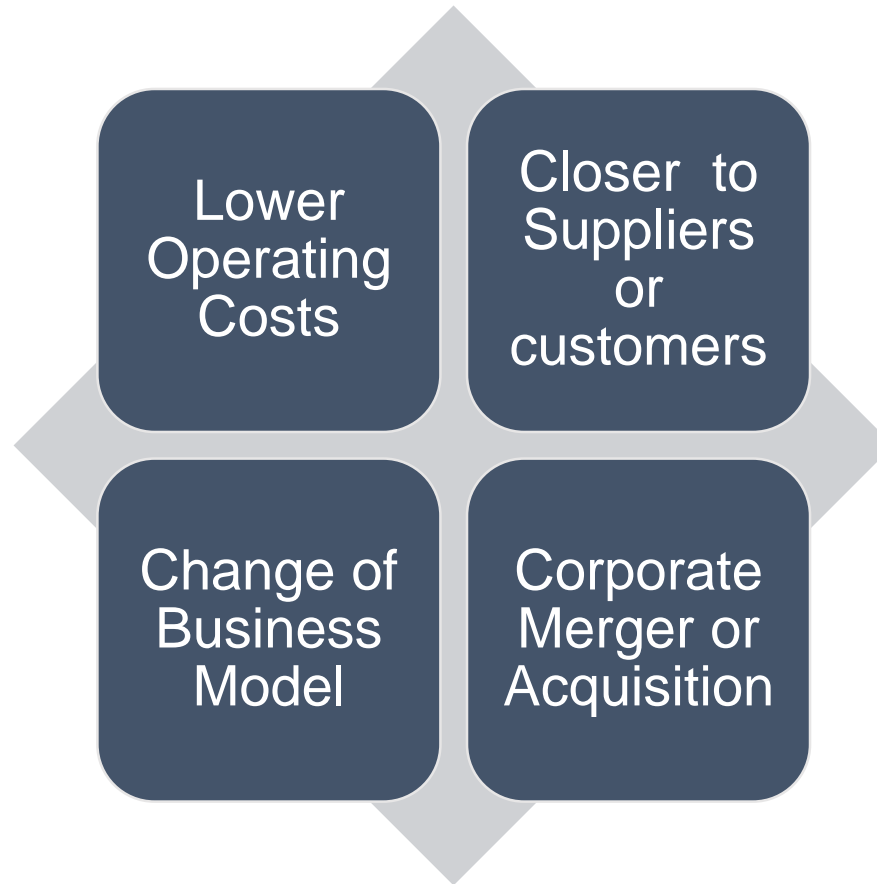
Common Reasons for Relocation

➤ External Reasons

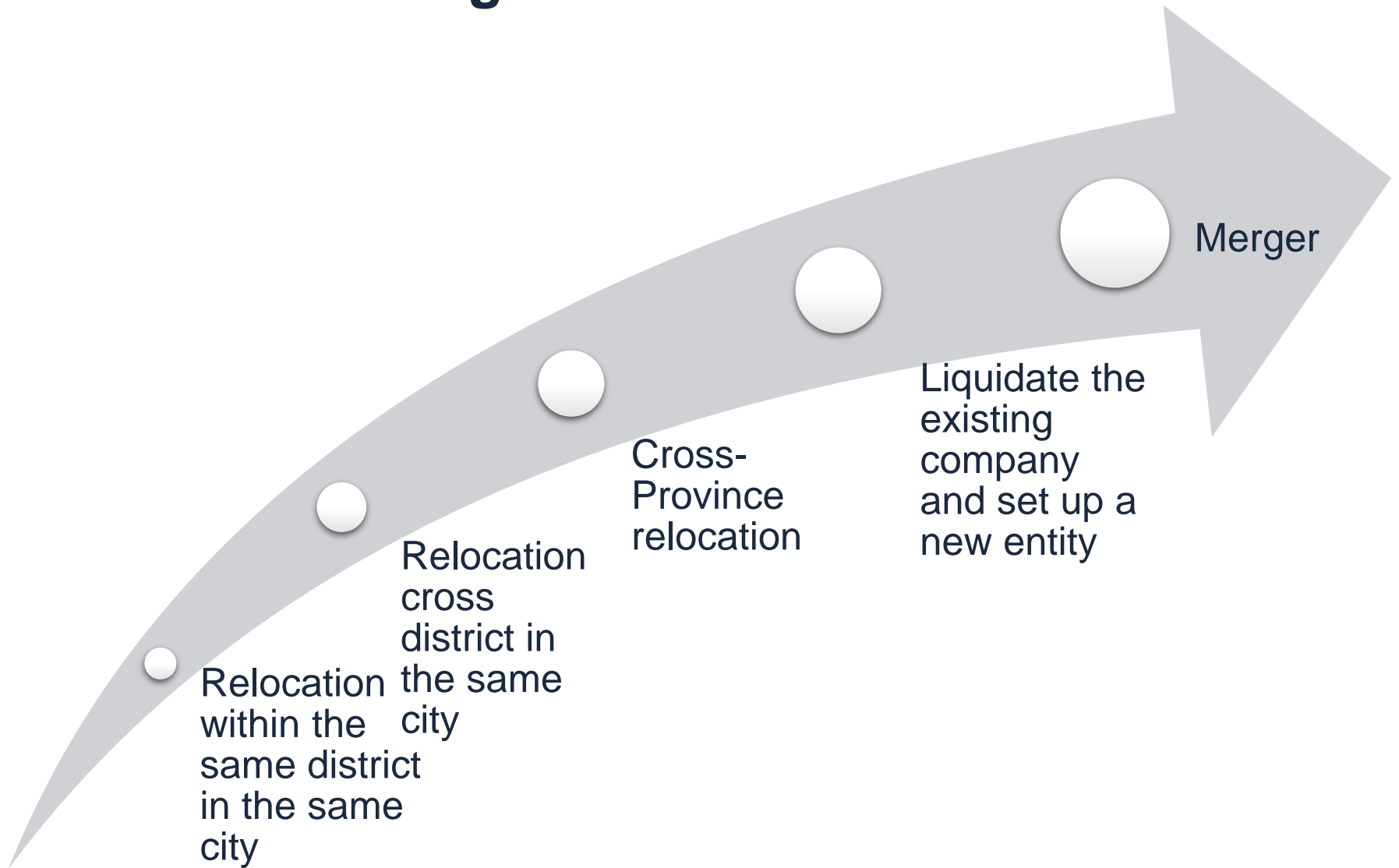


Common Reasons for Relocation

➤ Internal Reasons

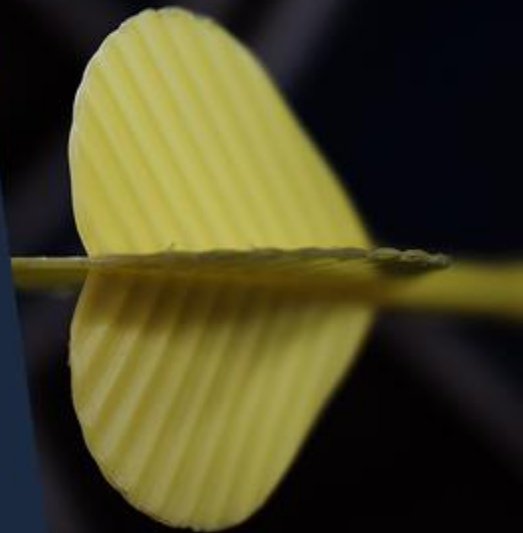


General Strategies



Section 2

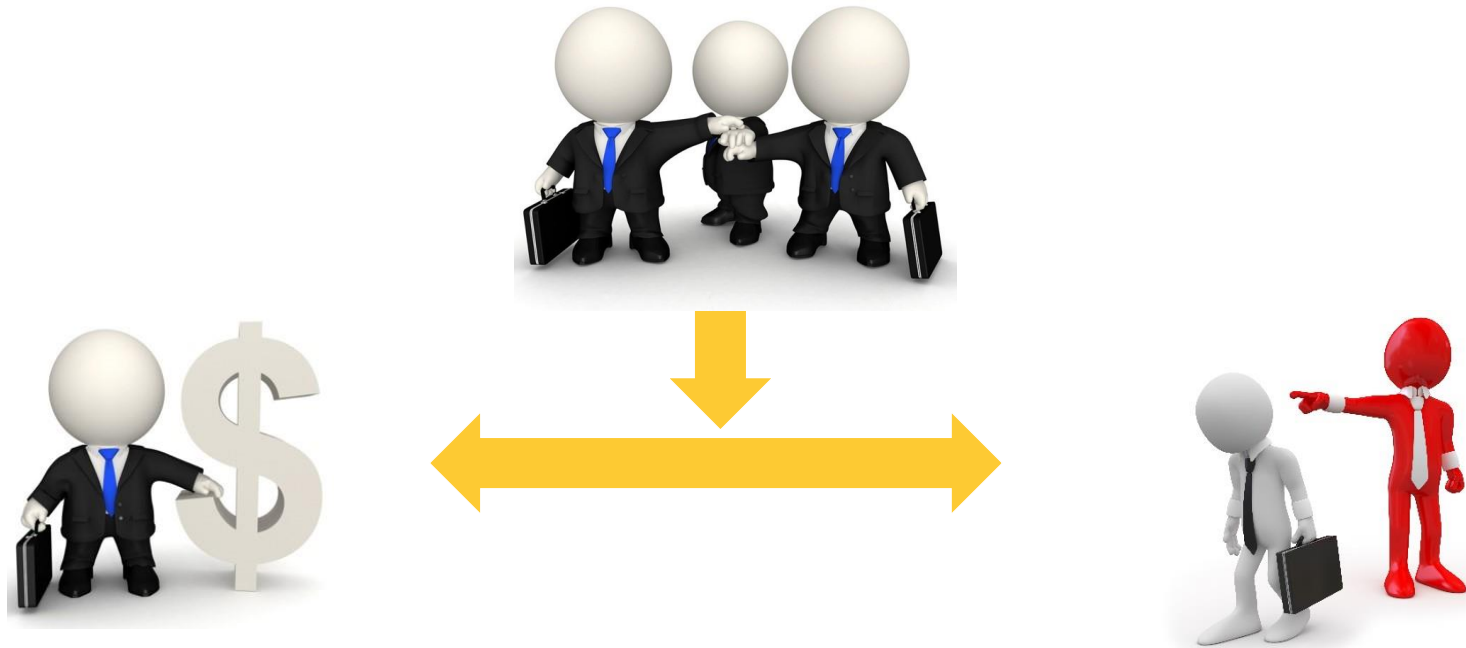
**Employees Settlement
Scheme**



Transfer VS Termination



Transfer VS Termination

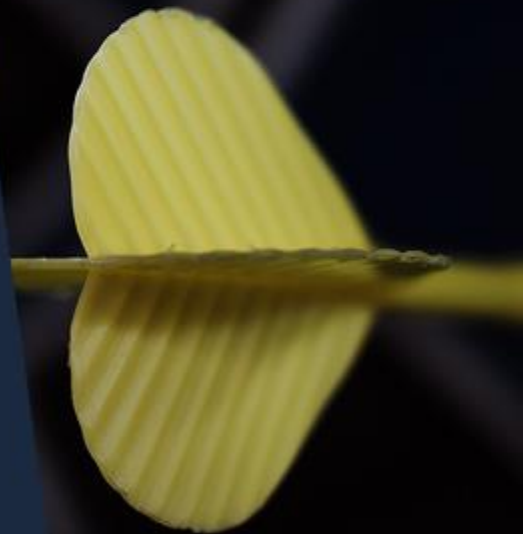


Distinguish the valuable employees from other staff

- Which employees are key to ensure operations?
- Which employees are managing valuable assets?
- Which employees no longer add / protect value?

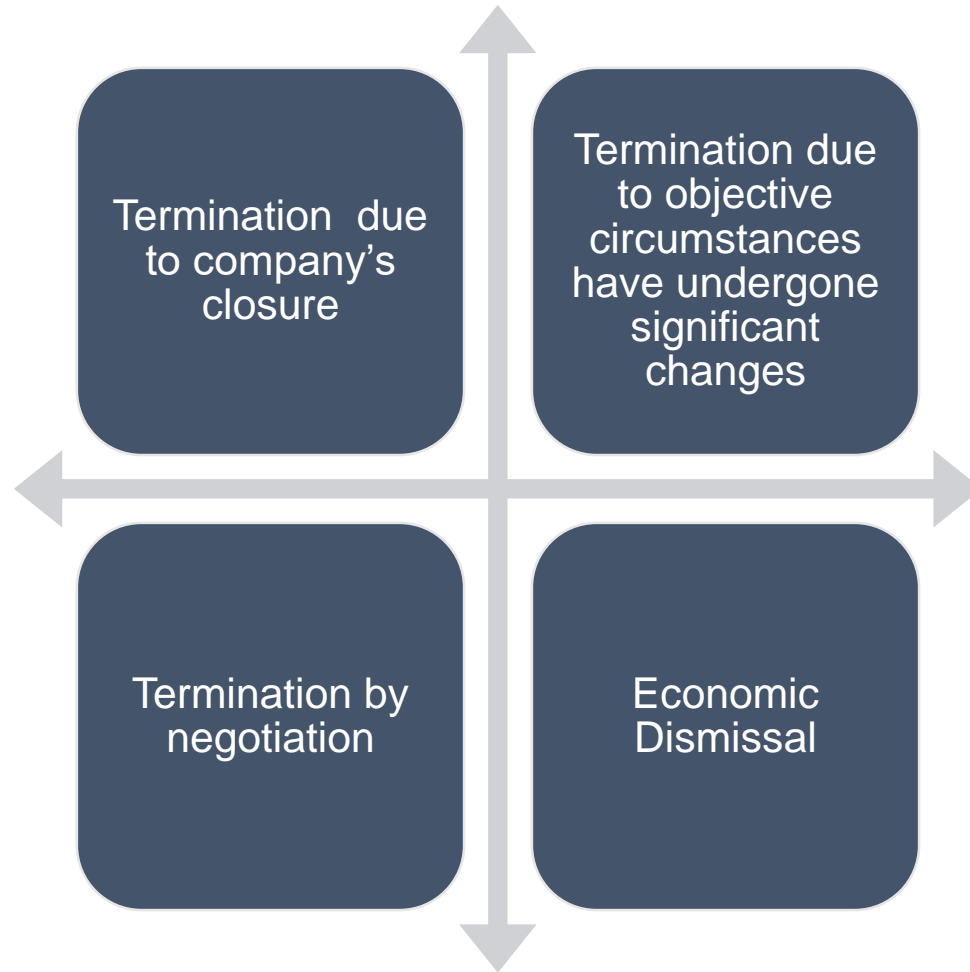
Section 3

Mass Layoff



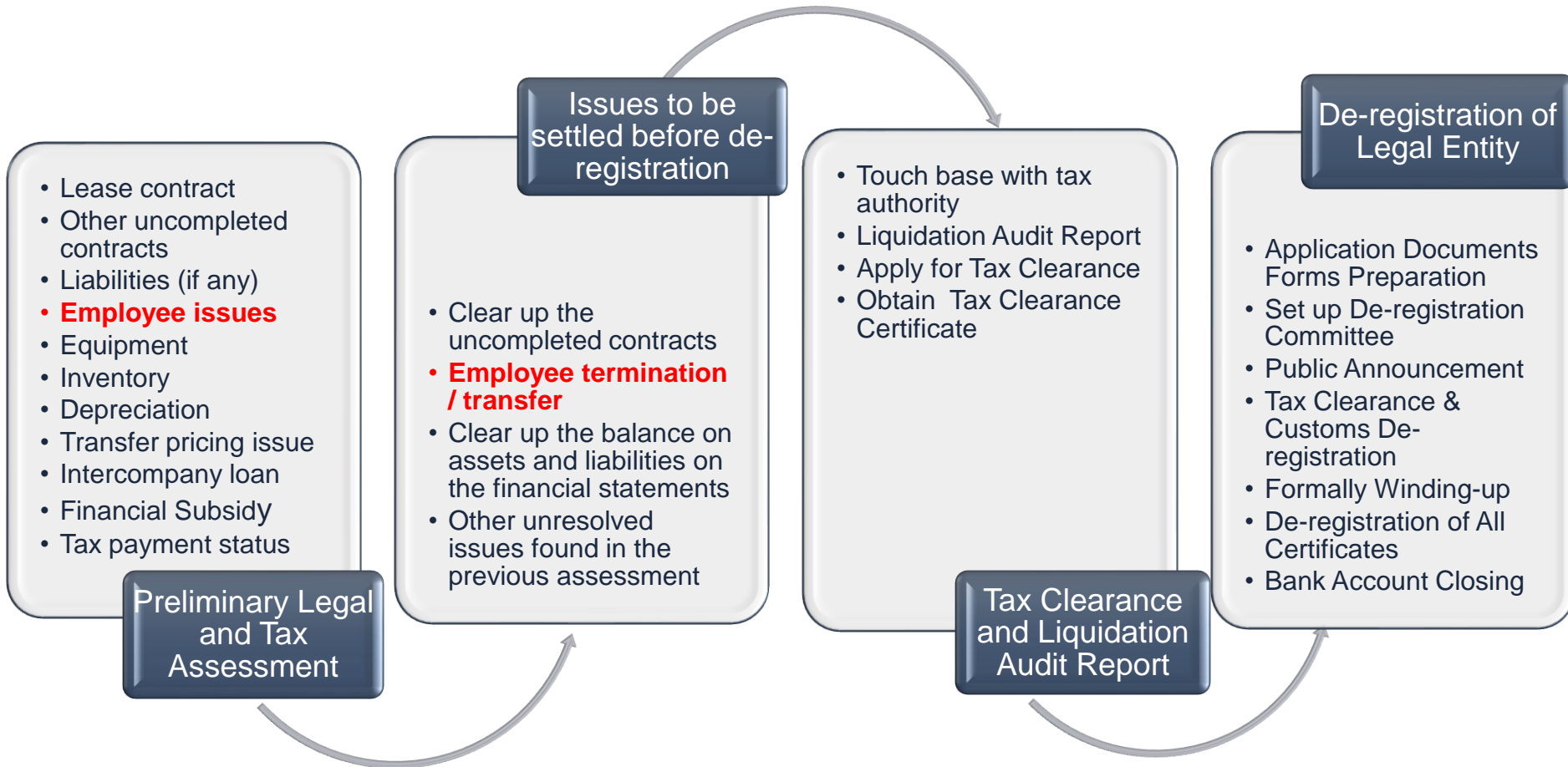
Divers Options of Mass Lay-off

- Following options of mass lay-off could be considered during relocation process



Termination Due to Company's Closure

Liquidation Procedures



Termination Due to Company's Closure

Legal Ground

- **Article 44 of PRC Labor Contract Law**

Under any of the following circumstances, a labor contract shall be terminated:.....

(5) the employer's business license is revoked, the employer is ordered to close down, the employer is revoked or the employer has decided to dissolve prematurely;

- **Article 43 of PRC Labor Contract Law**

An employer which unilaterally rescinds a labor contract shall notify the labor union of the reason beforehand. Where the employer violates the provisions of laws and regulations or the labor contract, the labor union shall have the right to require the employer to make correction. The employer shall study the opinion of the labor union and notify the labor union in writing of the outcome.

Severance Pay

- **Article 46 of PRC Labor Contract Law**

Under any of the following circumstances, the employer shall make severance pay to the worker:.....

(6) the labor contract is terminated pursuant to the provisions of item (4) or item (5) of Article 44;

Termination Due to Objective Circumstances have Undergone Significant Changes

Legal Ground

- **Article 40 of PRC Labor Contract Law**
- Under any of the following circumstances, the employer may rescind the labor contract by giving the employee a written notice 30 days in advance or by making an additional payment of one month's wage to the employee:.....(3) where the objective circumstances for which the conclusion of the labor contract is based upon have undergone significant changes and as a result thereof, the labor contract can no longer be performed and upon negotiation between the employer and the worker, both parties are unable to reach an agreement on variation of the contents of the labor contract.

Severance Pay

- **Article 46 of PRC Labor Contract Law**
Under any of the following circumstances, the employer shall make severance pay to the worker:.....
(3) the labor contract is terminated pursuant to the provisions of Article 40;

Termination by Negotiation

Legal Ground

- **Article 36 of PRC Labor Contract Law**

Upon negotiation and consensus between an employer and a worker, a labor contract may be rescinded.

Severance Pay

- **Article 46 of PRC Labor Contract Law**

Under any of the following circumstances, the employer shall make severance pay to the worker:.....

(2) the employer has proposed rescission of labor contract to the worker pursuant to the provisions of Article 36 and has negotiated and agreed with the worker on rescission of labor contract

Economic Dismissal

Legal Ground

- **Article 41 of PRC Labor Contract Law**

Under any of the following circumstances where an employer needs to dismiss 20 or more employees or where the number of employees to be dismissed is less than 20 but comprises 10% or more of the total number of employees of the enterprise, the employer shall explain the situation to the labor union or all staff 30 days in advance and seek the opinion of the labor union or the employees, the employer may carry out the retrenchment exercise upon reporting the retrenchment scheme to the labor administrative authorities:

- (1) *the employer undergoes restructuring pursuant to the provisions of the Enterprise Bankruptcy Law;*
- (2) *the employer has serious production and business difficulties;*
- (3) *the enterprise undergoes a change of production, significant technological reform or change of mode of operation and upon variation of labor contracts, there is still a need for retrenchment; or*
- (4) *the objective circumstances for which the conclusion of a labor contract is based upon have undergone significant changes and as a result thereof, the labor contract can no longer be performed.*

Severance Pay

- **Article 46 of PRC Labor Contract Law**

Under any of the following circumstances, the employer shall make severance pay to the worker:.....

- (4) *the labor contract is terminated pursuant to the first paragraph of Article 41;*

Economic Dismissal

➤ Preconditions

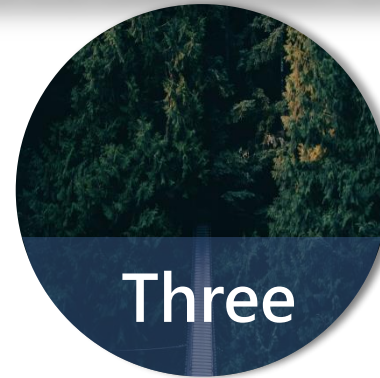
- (1) 20 or more employees to be laid off; or
- (2) Less than 20 but comprises 10% or more of the total number of employees



Employer undergoes restructuring pursuant to the provisions of the Enterprise Bankruptcy Law



Employer has serious production and business difficulties



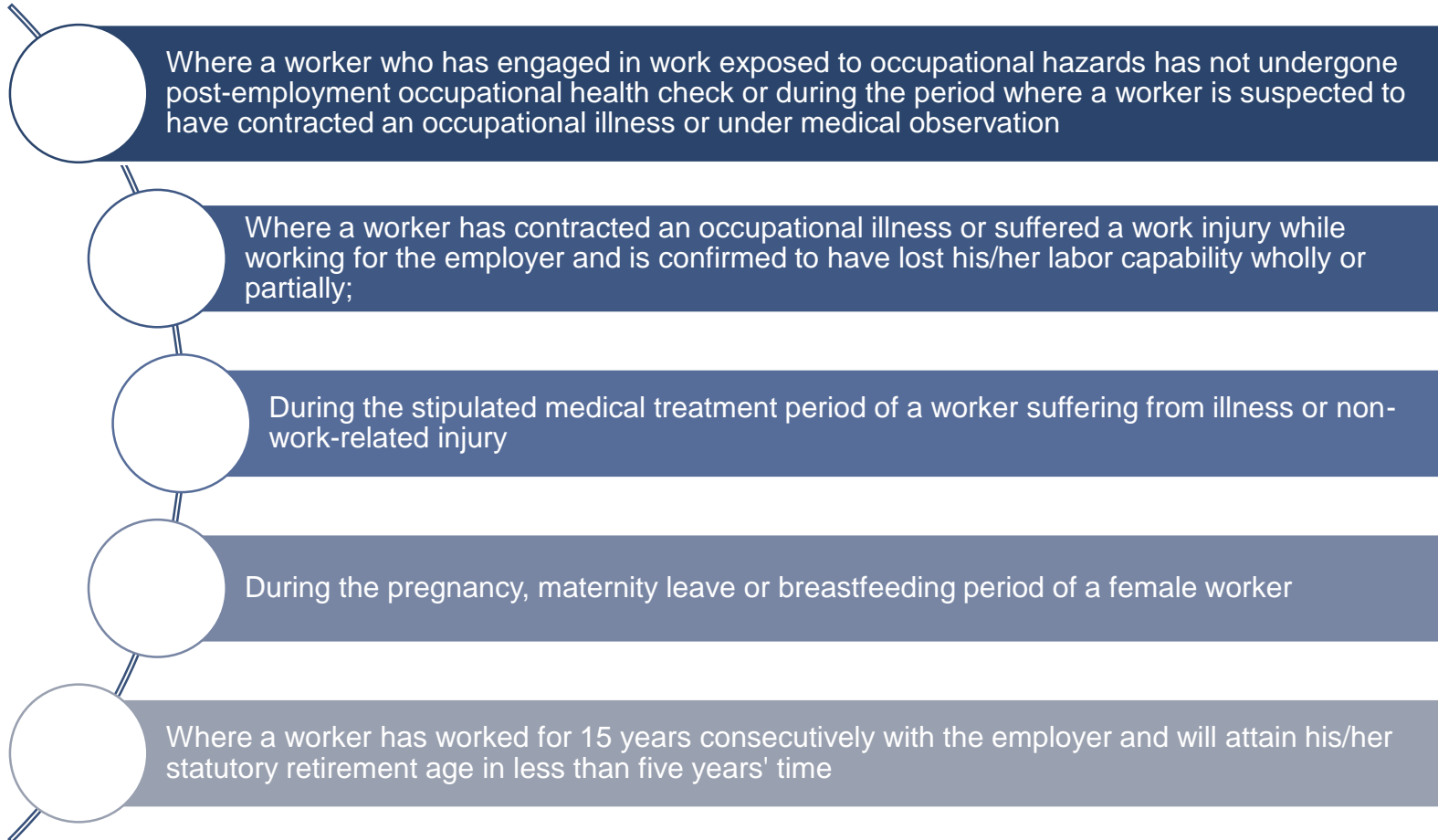
Enterprise undergoes a change of production, significant technological reform or change of mode of operation and upon variation of labor contracts, there is still a need for layoff



The objective economic circumstances for which the conclusion of a labor contract is based upon have undergone significant economic changes and as a result thereof, the labor contract can no longer be performed

Economic Dismissal

➤ Exceptions

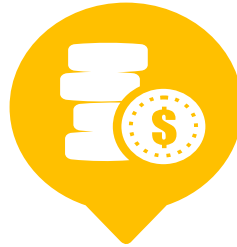


Economic Dismissal

- The following staff shall be given priority to be retained:



Staff who has entered into a fixed-term labor contract of a longer period with the employer

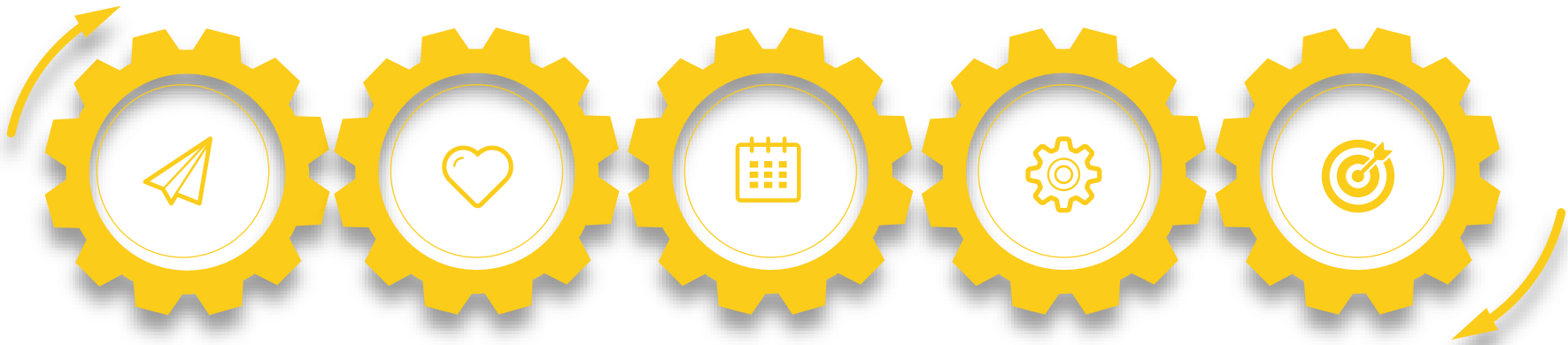


Staff who has entered into a non-fixed-term labor contract with the employer



Staff whose family members are not employed or who needs to support aged or under-aged family members

Potential Risks of Mass Layoff



Group labor disputes might be triggered

Company's production task may not be completed during the interim period because employees do not cooperate with company

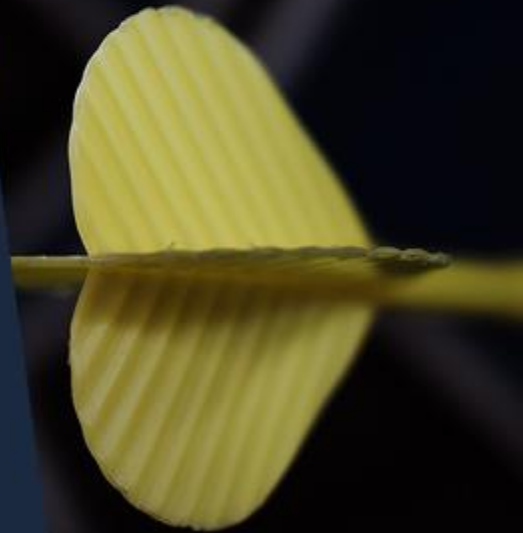
Some employees might complain to local government authorities which may trigger government's administrative inspection

Some employees may complain to company's business partners which will impact mutual cooperation relationship

Some management staff might control all the original certificates and seals of company and refuse to return

Section 4

Severance Pay Calculation



Severance Pay Calculation

➤ after 1st January 2008

Severance pay shall be paid to a staff based on his working years.
6 months \leq Working Years \leq 1 year **severance payment: 1 month's wage**

Working years $<$ 6 months **Severance payment: 0.5 month's wage**

Monthly wage: **cap 300% of local social average monthly wage**

Under above condition, the total amount of severance pay **shall not exceed 12 years.**

The monthly wage shall mean the average wage of a staff over past 12 months before the termination of the labor contract.

Monthly wage is staff's gross salary, **including hourly wage, piecework wage, bonus, allowance, subsidy, etc.**

Monthly wage is less than local minimum monthly wage, the severance payment should be calculated on the basis of local minimum wage.

If the period for which the employee has worked is less than 12 months, the monthly wage shall be calculated on the basis of **on his/her actual working years.**

Severance Pay Calculation – Illegal Termination



Compensation
– double
severance pay

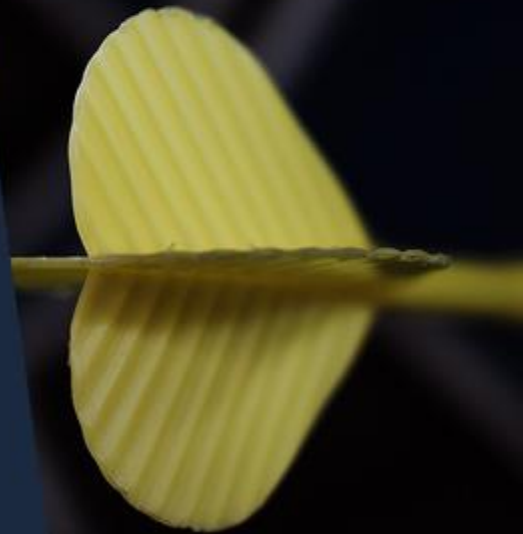
Resume current
labor contract

If employee's labor contract cannot be resumed, company has to pay the compensation to the employee which is double severance pay.

Under this circumstance, employee is able to back to the office and continue the employment with company.

Section 5

Case Study



Case Study I

Background:

- Mr. A joined a Shanghai manufacturing company on 1st January 2003. He entered into an open-term labor contract with company on 1st January 2013. His average monthly salary is RMB 8,000.
- On 14th February 2017, he found he got cancer according to the body check-up report. Doctor requested him to have an operation immediately and take a rest at home for 3 months after operation. His medical treatment period was from March to May 2017.
- On 25th April 2017, due to group's restructuring plan, the manufacturing company has to be closed and all the employees would be dismissed including Mr. A.



Whether Mr. A can be terminated?

If yes, how to calculate the compensation for Mr. A?

- 1. Severance pay: $(8,000 \times 5) + (8,000 \times 9.5) = 116,000$ RMB**
- 2. Medical subsidy: $8,000 \times 6 = 48,000$ RMB**

Case Study II

Background:

- Mr. B entered into an open-term labor contract with a dispatch company on 25th June 2017, and the dispatch company sent Mr. B to work in a manufacturing company. The probationary period for Mr. B is 2 months.
- On 27th August 2017, after probation period, Mr. B was fired by dispatch company with the reason of manufacturing company's closure.
- On 28th August 2017, an agreement signed by Mr. B and the manufacturing company which regulates that manufacturing company will pay the severance pay, while dispatch company did not stamp on this agreement.
- Thereafter, Mr. B requests the manufacturing company to perform the agreement and pay the severance pay.



This agreement is effective or not?



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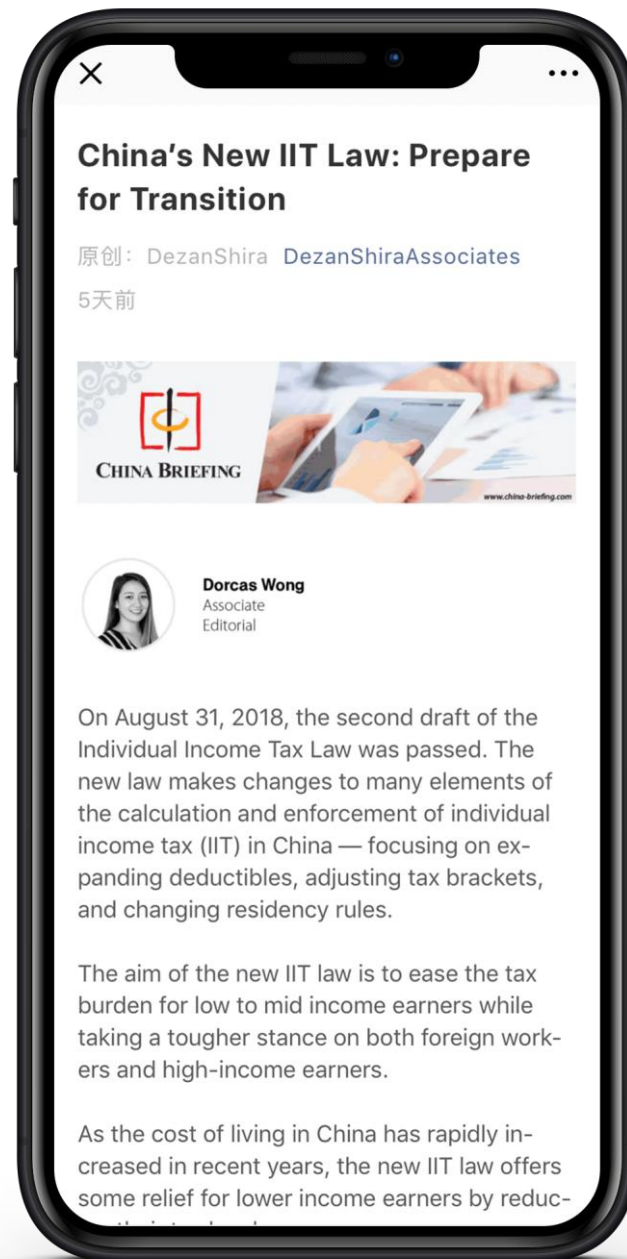


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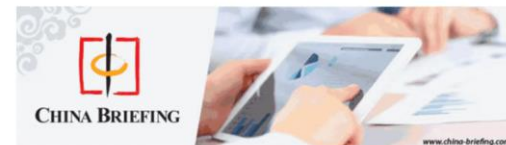
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China's New IIT Law: Prepare for Transition

原创: DezanShira DezanShiraAssociates

5天前



Dorcas Wong
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Editorial

On August 31, 2018, the second draft of the Individual Income Tax Law was passed. The new law makes changes to many elements of the calculation and enforcement of individual income tax (IIT) in China — focusing on expanding deductibles, adjusting tax brackets, and changing residency rules.

The aim of the new IIT law is to ease the tax burden for low to mid income earners while taking a tougher stance on both foreign workers and high-income earners.

As the cost of living in China has rapidly increased in recent years, the new IIT law offers some relief for lower income earners by reduc-



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