



DEZAN SHIRA & ASSOCIATES

Your Partner for Growth in Asia

How to Dismiss Employees Properly in China

— *A guide for
FIE employers*

**Business Advisory Service (BAS) Team
South China**

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Content

- **Case 1 & 2 Wrongdoing employees**

—*Shared by Richie He*

- **Case 3 & 4 Pitfalls to avoid**

—*Shared by Abby Chen*

- **Case 5 Mass layoff**

—*Shared by Olivia Wang*

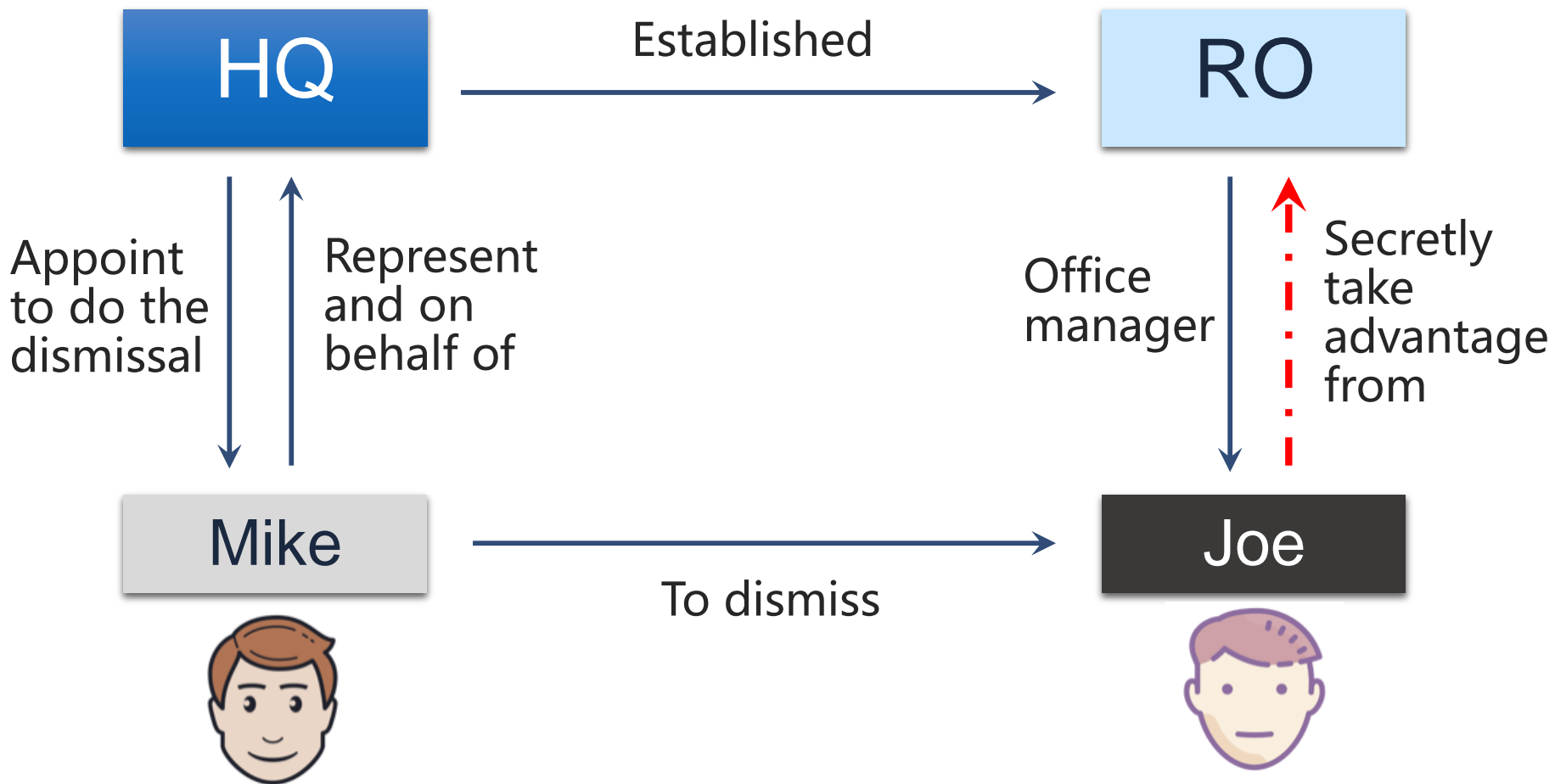
CASE 1

“Tricky Joe”



01

“Tricky Joe”



01

“Tricky Joe”

HQ

RO

- Concerns:**
- Joe avoids meeting Mike;
 - Joe holds much information of the RO and the suppliers;
 - The other two employees might help Joe secretly;
 - Joe may compete with the HQ by using his sources;

- Power:**
- Having solid evidence of Joe' s tricks;
 - Having budget to pay severance pay;

Joe



01

“Tricky Joe”

HQ

RO

Strategy:

- ✓ Sign NDA with other two employees before expressing the purpose;
- ✓ Appoint 3rd party (DSA) to negotiate with Joe;
- ✓ Warn him about the suspicion of his crime commitment;
- ✓ Terminate by mutual agreement and pay reasonable severance pay;
- ✓ Sign non-completion and non-disclosure agreement with Joe.

Joe

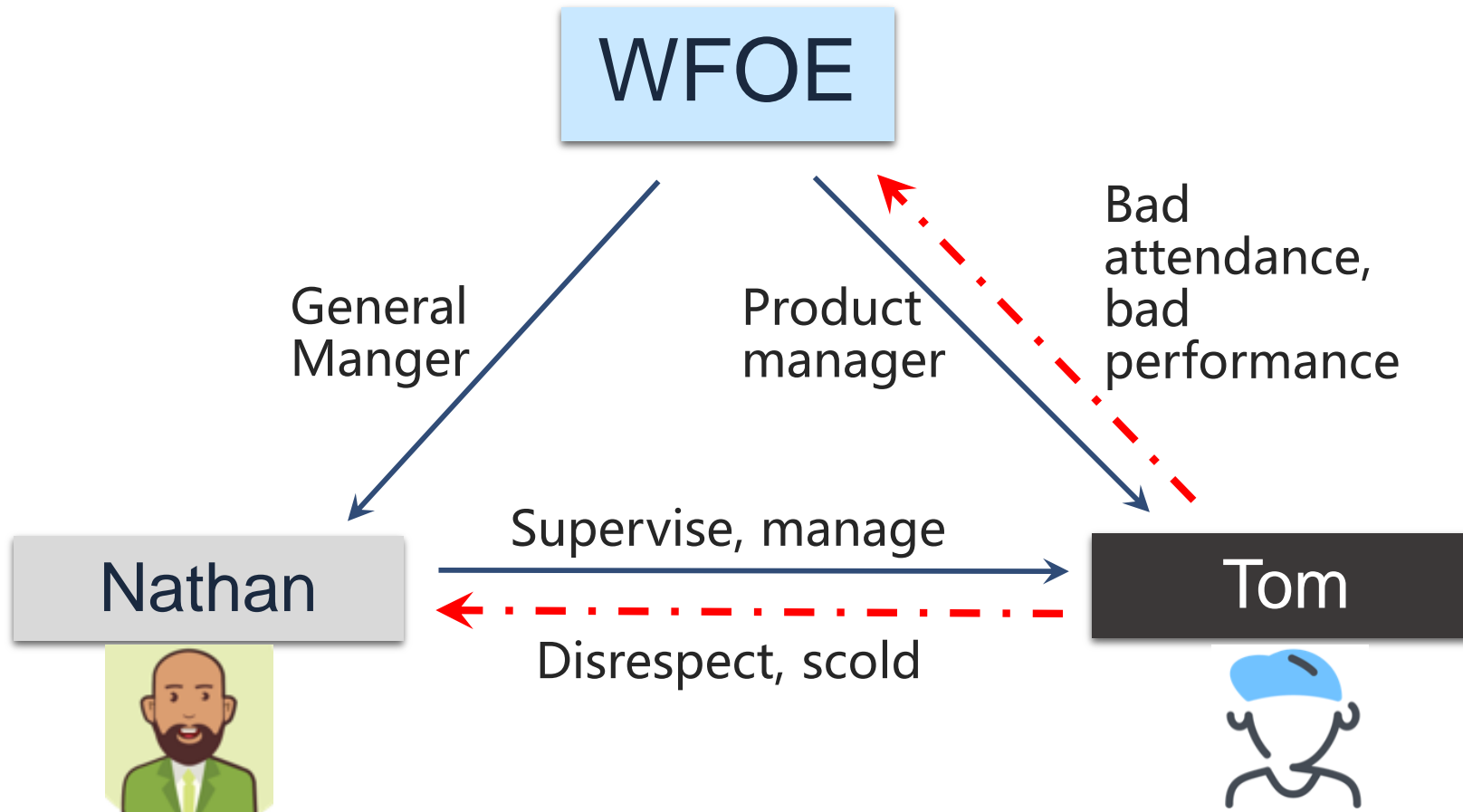




CASE 2

“Troublesome Tom”

“Troublesome Tom”



"Troublesome Tom"

WFOE

Concerns:

- Tom had not committed fatal wrong doings that can trigger the immediate termination without compensation;
- The staff handbook was too rough to find a ground to dismiss Tom without compensation;
- If illegal dismissal, the compensation could be $2N^*$, but budget is limited;

Power:

- Tom continued his importunate behaviors, which would backfire himself someday;

Tom



* N = the employee's average salary of the preceding 12 months before the termination multiplied by the work age of the employee in the current company

Ceiling of the "average salary: triple of the local citizens' average salary of the preceding year"

"Troublesome Tom"

WFOE

Strategy:

- ✓ Keep being friendly and tolerant to Tom;
- ✓ Send reasonable and official reminders and warnings in writing to Tom, and keep them well on file;
- ✓ Dismiss Tom without compensation at the right time.

Tom



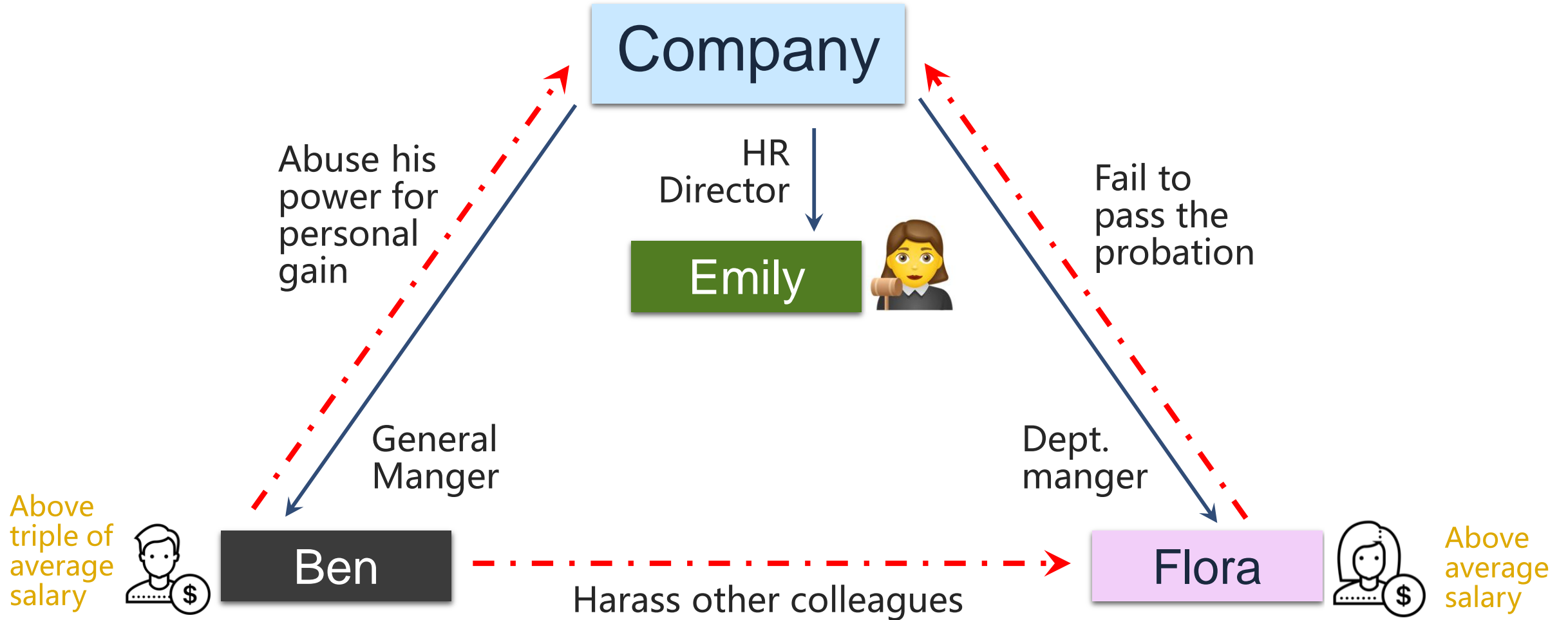
CASE 3 & 4

**“Annoying Ben and
Self-righteous Flora”**



03/04

"Annoying Ben and Self-righteous Flora"



03/04

"Annoying Ben and Self-righteous Flora"

Company

Concerns:

- He is GM, having much information of the Company;
- His salary is high, the compensation (2N*) will be huge in worst case;

Power:

- Having evidence about his abuse of his power and his harass to other colleagues;

Concerns:

- She insists on her belief, willing to fight to the end;
- If dismissing her during the same time as the dismissal of Ben, Ben might collaborate with her and use her;
- Female, needs more prudence;

Power:

- Her salary is average, duration of employment is short, the compensation will not be huge even in worst case;



Ben

* N = the employee's average salary of the preceding 12 months before the termination multiplied by the work age of the employee in the current company
Ceiling of the "average salary: triple of the local citizens' average salary of the preceding year"

Flora



03/04

"Annoying Ben and Self-righteous Flora"

Company

Strategy:

- ✓ Tell Ben that the Company is aware of his improper behaviors;
- ✓ Terminate by mutual agreement and pay reasonable severance pay.



Ben

Strategy:

- ✓ Dismiss Flora prior to dismissing Ben, without compensation, so as to set an example for Ben;
- ✓ Compensated Flora during the arbitration procedure, after Ben's case was settled.

Flora



CASE 5

“Dismissing 10, in 1 day”



“Dismissing 10, in 1 day”

Operation difficulty due to epidemic

BJ Co.

Plan to shut down

SZ Branch

Already shut down

Branches in other cities

Mass layoff



10 employees



“Dismissing 10, in 1 day”

Concerns:

- To announce ahead or later, it is a question;
- Dismissing all the employees at one time may cause disorder;

Power:

- Having budget to pay compensation in full according to laws (i.e. N*);

<PRC Labor Contract Law>

Article 44 Under any of the following circumstances, a labor contract shall be terminated:

... (5)...the employer has decided to dissolve prematurely; ...

Article 46 Under any of the following circumstances, the employer shall make economic damages to the worker:

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

SZ Branch

Mass
layoff

10 employees



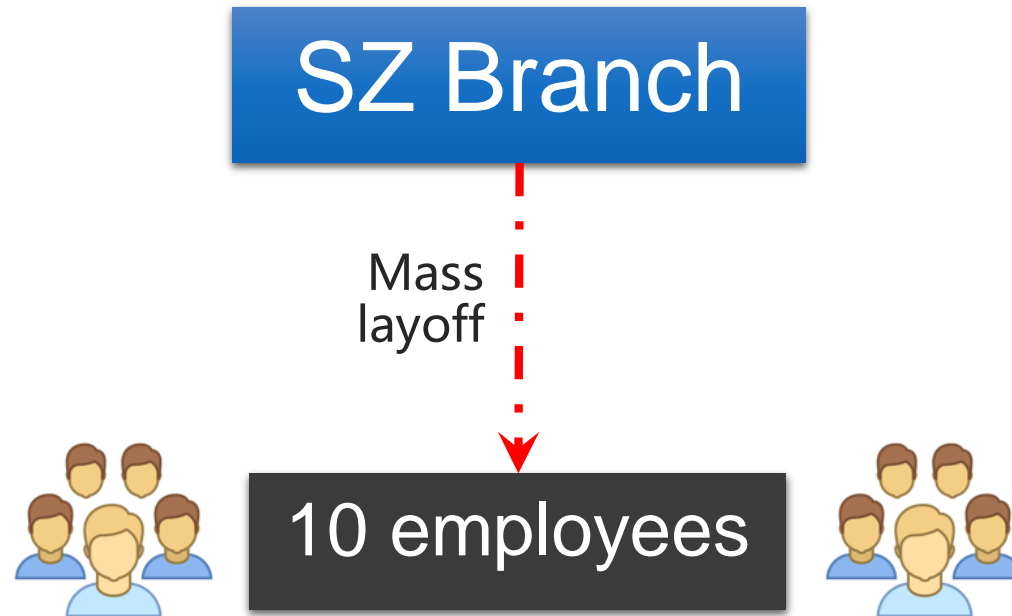
* **N** = the employee's average salary of the preceding 12 months before the termination multiplied by the work age of the employee in the current company

Ceiling of the “average salary: triple of the local citizens’ average salary of the preceding year

“Dismissing 10, in 1 day”

Strategy:

- ✓ Pay compensation strictly according to laws;
- ✓ Termination agreements and relevant documents were well prepared in advance;
- ✓ Get all the important documentation back in the company’ s control BEFORE announcing the dismissal;
- ✓ Talk with each employee one by one separately.



SUMMARY of TIPS

BEFORE Dismissal:

- ✓ Staff handbook properly formulated
- ✓ Evidence properly acquired and saved
- ✓ Wait for the best timing
- ✓ Apply the right legal ground
- ✓ Think about necessity and priority
- ✓ Remember special conditions for female employees

SUMMARY of TIPS

DURING Dismissal:

- ✓ Handover of the important things back to employer
- ✓ Termination upon agreement (with reasonable compensation) **better than** unilateral dismissal
- ✓ Pay compensation strictly according to law
- ✓ Include NDA and non-competition clauses/ agreements, if necessary and possible
- ✓ Shoot off problems one after one separately
- ✓ Use professional 3rd party, not a sympathetic colleague of the dismissed employee's



Q & A

donfil.huang@dezshira.com

Donfil Huang

Manager

Business Advisory Service

Dezan Shira & Associates



THANK YOU!

Donfil Huang

Manager

Business Advisory Service

Dezan Shira & Associates

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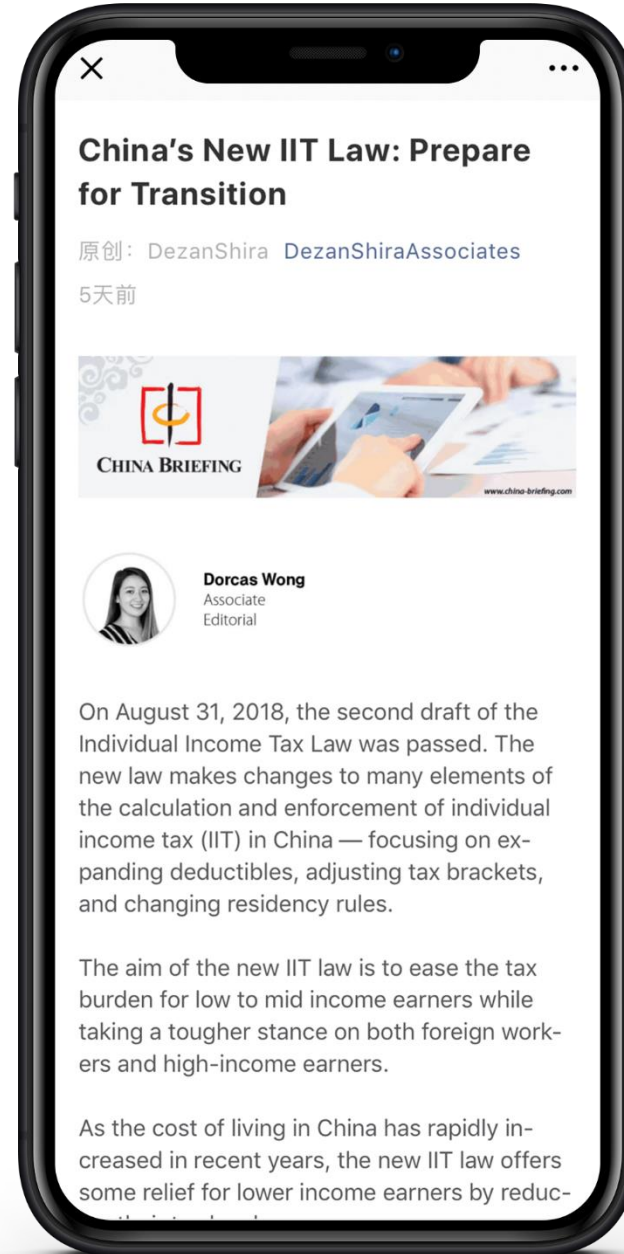


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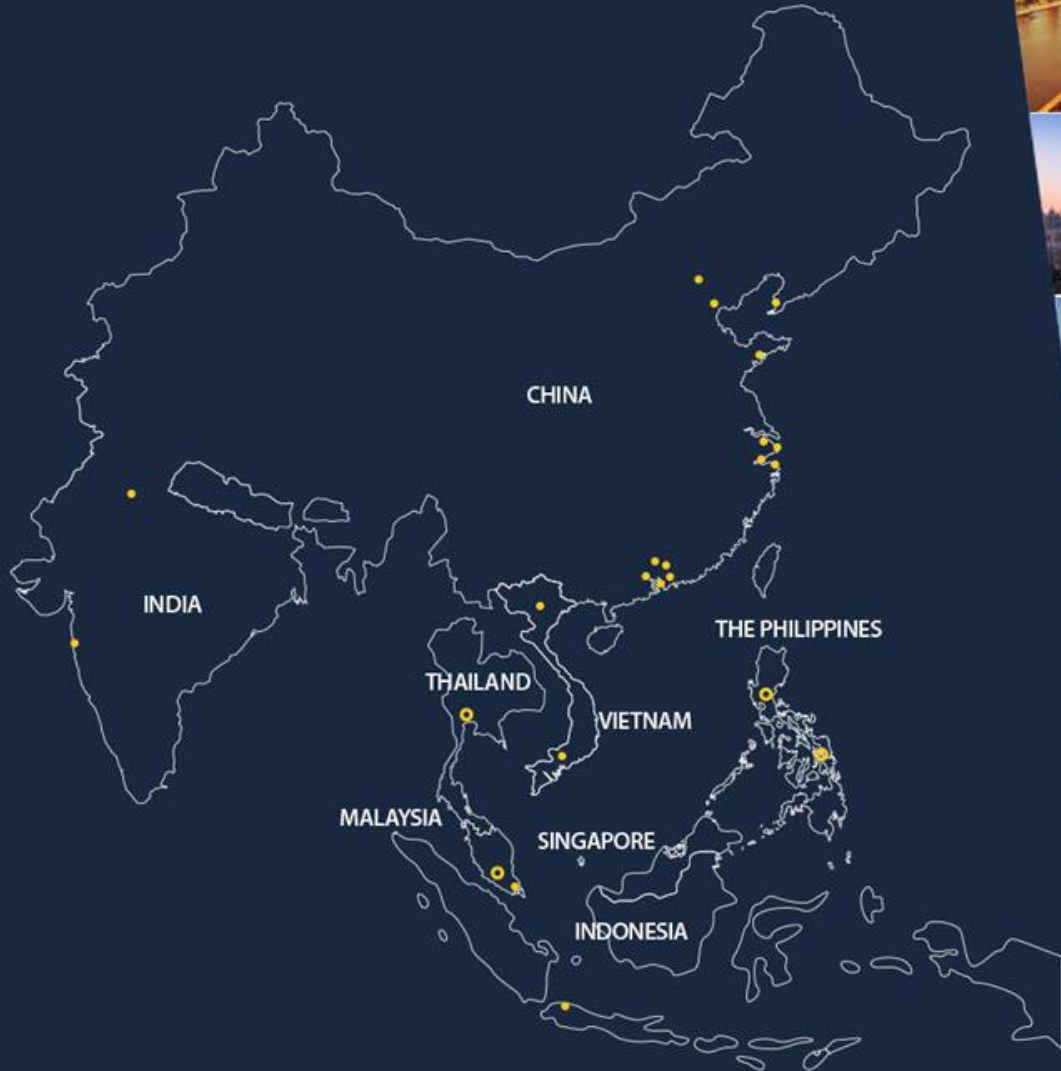
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Global Offices

CHINA

Beijing
beijing@dezshira.com

Dalian
dalian@dezshira.com

Dongguan
dongguan@dezshira.com

Guangzhou
guangzhou@dezshira.com

Hangzhou
hangzhou@dezshira.com

Ningbo
ningbo@dezshira.com

Qingdao
qingdao@dezshira.com

Shanghai
shanghai@dezshira.com

Shenzhen
shenzhen@dezshira.com

Suzhou
suzhou@dezshira.com

Tianjin
tianjin@dezshira.com

Zhongshan
zhongshan@dezshira.com

HONG KONG

hongkong@dezshira.com

INDONESIA

indonesia@dezshira.com

SINGAPORE

singapore@dezshira.com

INDIA

Delhi
delhi@dezshira.com

Mumbai
mumbai@dezshira.com

VIETNAM

Hanoi
hanoi@dezshira.com

Ho Chi Minh City
hcmc@dezshira.com

DEZAN SHIRA ASIAN ALLIANCE MEMBERS

Malaysia
malaysia@dezshira.com

The Philippines
philippines@dezshira.com

Thailand
thailand@dezshira.com

DEZAN SHIRA LIAISON OFFICES

Germany
germandesk@dezshira.com

Italy
italiandesk@dezshira.com

United States
usa@dezshira.com

For more information, please visit www.dezshira.com



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