



Update China Desk China Law Brief

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English Version

China's Supreme Court: New Rules on Employment Law

Dr. Yiliang Dong, LL.M.

On 31 January 2013, the Chinese Supreme People's Court ("SPC") issued the Fourth Judicial Interpretation on Certain Issues Concerning the Application of Law in Cases Involving Labor Disputes ("SPC-Rules IV") which came into effect on 1 February 2013. The SPC-Rules IV are based on the current employment laws and regulations and further detail several practice-relevant issues. Among the new rules, the issue concerning the non-compete clause and compensation rises up to be the most important highlight which covers six of the total 15 articles.

For a long time, there was an uncertainty regarding the question of how much an employer should pay to an employee for the fulfillment of a non-compete clause in case no explicit agreement existed. The SPC-Rules IV provide for the first time an indication for an acceptable ration on a national level: *where a non-compete clause has been reached without any agreement on the amount of compensation for the employee, the employee is, in case that he has fulfilled the non-compete obligation, entitled to claim 30% of the monthly average of his salary over the last 12 months prior to the termination of the labor contract.*

Another interesting point deals with the non-payment by the employer during the period a non-compete obligation is being fulfilled. In practice, an employee often faces the problem that he has to comply with the agreed non-compete clause, while the employer procrastinates

New SPC Judicial Interpretation on Employment Law with Highlight on Non-compete Clause and Compensation

Right to Terminate due to Non-payment by Employer

in the payment of compensation. According to the SPC-Rules IV, an employee is entitled to a release from the non-compete obligation, if the employer has not paid the compensation in compliance with the agreed non-compete and compensation clauses for three months due to its own causes. However, it has not been clarified whether this three-month period shall be a continuous or a cumulative one. In practice, an employer could abuse the deadline by conducting a delay of the payment by almost three months each time.

As regards the question whether an employer could release itself from the non-compete clause during the period of its fulfillment, the SPC-Rules IV confirm the employer's right to terminate on the one hand, while also entitling the employee in such cases to an additional a three-month period of non-compete compensation on the other hand. As to the relationship between the contractual penalty and non-compete obligation in case of breach of this obligation by the employee, the new rules entitle an employer to the right, beyond the penalty paid by the employee, also to request the further observance of the non-compete obligation of the employee.

In addition, the SPC-Rules IV further deal with other practice-relevant issues, such as the procedural connection between labor arbitration and court litigation as well as court mediation, intra-group staff transfer, oral modifications of contracts, the termination without prior notice to the Labor Union and the contractual status of foreigners without work permits.

The Chinese employment law has developed into a complex structure. Besides the Labor Law, the Labor Contract Law, the Law on Mediation and Arbitration in Labor Disputes as well as their implementing rules and many individual regulations, the SPC has hitherto issued four judicial interpretations, in order to deal with plenty of situations arising out of the practical application of these laws.

Additional Compensation for Early Termination by Employer

Contractual Penalty and Continued Observance in Case of Breach by Employee

Dr. Yiliang Dong, LL.M.

董一梁 (法学博士/律师)
Attorney-at-Law PRC (Lü Shi)
China Desk
Heuking Kühn Lüer Wojtek
Tel: +49 (40) 35 52 80-787
Fax: +49 (40) 35 52 80-80
Email: yiliang.dong@heuking.de



**Your Contact:
China Desk**

in cooperation with

Global Law Office (Beijing, Shanghai, Shenzhen) ♦ www.globallawoffice.com.cn

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Berlin
Unter den Linden 10
D-10117 Berlin

Brüssel
Avenue Louise 326
B-1050 Brüssel

Chemnitz
Weststraße 16
D-09112 Chemnitz

Düsseldorf
Georg-Glock-Straße 4
D-40474 Düsseldorf

Frankfurt
Grüneburgweg 102
D-60323 Frankfurt am Main

Hamburg
Neuer Wall 63
D-20354 Hamburg

Köln
Magnusstraße 13
D-50672 Köln

München
Prinzregentenstraße 48
D-80538 München

Zürich
Bahnhofstraße 3
CH-8001 Zürich

www.heuking.de