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CHINA

TRENDS IN CHINA'S PERSONNEL MARKET

CHINESE PERSONNEL MARKET: NO "COOLING-OFF" IN SIGHT | INTERVIEW

PRACTICAL TIPS FOR FOREIGN INVESTORS

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CHINESE PERSONNEL MARKET: NO "COOLING-OFF" IN SIGHT

With a serious air and an undertone of concern, the international press commented on the 2014 growth rate of China's economy: the official GDP growth amounted to 7.4% in the end.

The Chinese Government had set 7.5% as the target. The target was missed – making the case clear for many commentators: The Chinese economy is retracting from its hyper-growth in recent years to a new path that will be characterised by smaller GDP growth. A "cooling-off" of the Chinese economy was diagnosed.

The Chinese GDP grew in fact more slowly than in the last 20 years and the indicators from the first quarter of 2015 show that the GDP growth could be even lower in the current year than the "approximate 7%" predicted by the government.

But compared to almost all other economies in the world, this is an extremely substantial value – especially within the context of economic development in the rest of the BRIC region.

India, which came second in the BRIC ranking in 2014, yielded a GDP growth of 4.7%; Brazil 1%. And while Russia is deep in recession this year, the Chinese economy is expanding at an almost unbroken pace – the current figures provide little evidence for a crisis scenario.

The Chinese labour market remains dynamic and the effects of some meta-trends, which have been clear for some time, are beginning to show their effects:

- **Increasing labour costs.** China is moving away from being a low-wage country and becoming less attractive as a production site for companies wanting to supply the world market from here. While the productivity of Chinese workers is increasing, companies, for example those producing textiles, are choosing to relocate to places such as Cambodia or Bangladesh. This decreases the number of employees in low-wage sectors.
- **Increasing labour costs mean increasing incomes.** Ever-increasing real wages have stimulated Chinese domestic demand enormously – although China may lose as a low-wage economy, the population's higher purchasing power implies that "made for China" will become increasingly relevant for companies.
- **Recovery of Chinese companies.** Even though twenty years ago technologically speaking the Chinese economy was still seemingly hopelessly inferior to international companies, today almost all industries are facing strong Chinese competition. Whether in relation to home and consumer electronics or mechanical engineering: Chinese companies are involved in everything, and with much cheaper products they challenge established producers from Europe or America for a market share. Huawei and ZTE have taken international business for communication technology by storm and have long since ceased to dominate only the domestic market. ▶

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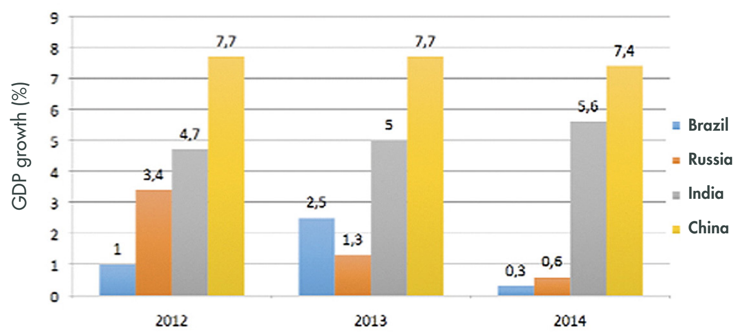
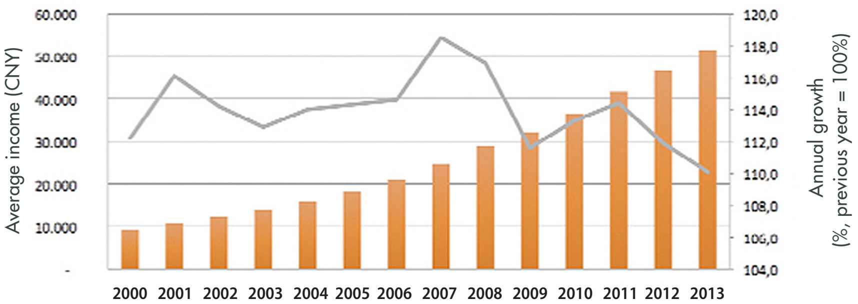
The times when international companies were the undisputed employer of choice for Chinese candidates are over. Chinese companies are becoming more attractive to the extent in which they close the technology gap to international competition and develop a corporate structure rewarding performance and commitment. This is much less the case with large state-owned enterprises, but certainly the case in the rapidly expanding companies in the private sector. These companies very successfully contend for the best brains in a competition of increasing intensity, especially in the cities of Peking, Shanghai and Guangzhou.

GDP GROWTH IN BRIC COUNTRIES*



*www.statista.com

ANNUAL EMPLOYEE INCOME (Ø) AND ANNUAL GROWTH*



*National Chinese Bureau of Statistics www.stats.gov.cn

„NOWADAYS LARGE PRIVATE CHINESE COMPANIES ARE WIDELY CONSIDERED MORE ATTRACTIVE THAN MULTINATIONALS"

Henry Zhu
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A lot has been written about a ‚cooling-off' of the Chinese economy in the international press during the last months. Do you share this view, and do you actually see a downturn in demand for talent?

There undoubtedly has been a cooling-off in the Chinese economy. The long-standing boom had been driven mainly by export, infrastructure and real estate investment. The demand for materials, e.g. steel and other building materials, as well as household electronics, has ever been increasing. The Chinese government has for some time been seeing a bubble coming up, and deliberately took measures to cool the economy off, and strive to transform the structure of the economy from export-driven to innovation-led.

Overall, the manufacturing sector had been developing too fast, and a lot of inventory has been building up which is being terminated now. However, the picture is different in different industries, and some are still in a phase of rapid development.

One of the most obvious trends is that of a digitizing economy and a vibrant internet sector. Baidu, Alibaba and Tencent are the best known examples, but there are many more fast-growing firms in the country. Often boasting exponential growth rates, the internet businesses, however, are yet to make significant contribution to the Chinese GDP. In the mean time, more and more of the "traditional" companies recognize the value provided by the internet, with e-commerce continuously increasing its share. There are lots of creative ideas in the O2O business models, taking traditional businesses online.

The financial services are also a highly impacted sector, for instance, with regards to ubiquitous mobile payment solutions which have surfaced in China. These new technologies are largely being championed by Chinese companies. Chinese companies have also been actively researching their own solutions for the internet of things.

Many international companies have difficulties competing in the digital sector; an example for this is the struggle between Ebay and Alibaba. A lot of international IT companies even announced job cuts, like Yahoo or Microsoft. Although the internet sector is overall growing, international companies are partially being replaced by local enterprises. But of course successful examples like Apple, Amazon and Uber show there is still opportunity in the sector for multinational players with a strong product and an aggressive market approach.

What are the main challenges for recruiting and retaining good employees, especially management, in a booming industry like the IT/internet sector?

With the internet sector being hot, there is huge demand, resulting in a shortage of experts. IT specialists are now not only being sought after by the digital businesses, but also by traditional companies as they move from outsourcing to insourcing and hire these talents directly.

There is a new trend now which further complicates recruiting and retention for international companies: The competition for talent between them and their Chinese counterparts has intensified.

Ten years ago, Chinese talent would strive for moving to the developed countries like the USA. The second priority would have been to work for a multinational business, and Chinese employers would have been third choice only.
Interestingly, the career decision trend has shifted dramatically today. Starting up a new business is now the most popular choice for Chinese talent, and what comes second would be to join a fast growing Chinese start-up. Despite the relatively low salaries, people are attracted by the potential upside provided by share options and the theoretically unlimited potential for career development.
Many employees of multinational companies became disappointed with career ceilings and the fact that most of them cannot influence their company's strategy for the Chinese market. This is why nowadays large private Chinese companies are widely considered more attractive than multinationals. This is true for the IT sector, and also for other industries where Chinese companies are catching up at a fast pace, e.g. security products or electrical equipment.

Do you believe international companies can score with their distinct corporate culture?

Multinationals are nowadays losing talent to Chinese companies. Chinese companies are often more aggressive and less patient for results. People tend to believe that Chinese companies are sometimes better prepared to cater for the local market with its unique requirements. And this is vital in most sectors now.
Ten years ago, the Chinese economy was export-driven. Companies looked at China as a manufacturing region, leveraging low labour cost. Since then, things have changed, labour cost has increased, the local market has grown and shifted from a supply base to a demand base.

In some respect, corporate cultures are merging these days. Many Chinese companies are being founded by people returning from the USA, or managers who have been trained in multinational companies in China. These start-up companies run by such founders work more or less the Western way, cultural differences are no longer a concern. ▶

Where is competition for talent the fiercest?

Compared to the US, people are less mobile in China, with most even being reluctant moving from Shanghai to Beijing. Most companies are headquartered in Tier 1 cities, so there is high demand for talent here, which can only be partly be offset by people moving in from other places.
Many companies manufacture in Tier 2 cities, like Wuxi, Suzhou or Xi'an, as labour cost is lower there. This causes high demand for management in these places, which is hard to be found because of the mobility issues.

LEGAL ADVICE

PRACTICAL TIPS FOR FOREIGN INVESTORS IN DEALING WITH LAYOFFS IN CHINA

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For foreign investors in China, business downturns and their consequences, especially business closings and layoffs, can be daunting. Tales of rebellious employees facing layoffs are legion in China business lore. With proper planning though, such scenarios can be avoided. This article will share practical tips when dealing with redundancies in China.

1. Understanding PRC Legal Requirements for Terminations
Chinese law does not recognize the concept of employment at will. Instead, employers may only terminate employees through mutual agreement, or under specific grounds. Termination without legitimate causes, or in violation of the required procedures, may be deemed as wrongful termination, which could result in fines for the employer or the forced reinstatement of terminated employees.

Depending on the circumstances, different termination procedures may be required. For example, where investors decide to liquidate a company and terminate all employees, employers can terminate employees by unilateral termination notices while paying minimum statutory severance compensation to all employees, as required by law. In contrast, where investors wish to terminate most employees while maintaining the company in a dormant situation, the layoff procedures are more cumbersome and require that employers prove „economic" reasons for layoffs. Further, specific consultations with employees and a filing of termination with local labor authorities are required.

In view of different requirements for termination under different circumstances, investors should review the specific situations and relevant PRC law requirements when strategizing how to reduce their China operations, Such planning will help investors better understand the economic and timing costs in terminating employees.

2. PRC Law's Preference for Mutual Termination

Under most circumstances in PRC law, mutual termination is usually the preferred manner of termination, including for the two scenarios mentioned in section 1 above, and will allow employers to avoid some of the more cumbersome procedures that are otherwise necessary.

PRC law allows employers and employees to negotiate a mutual termination agreement, and such mutual termination agreements are generally not subject to rigorous procedures or requirements, such establishing grounds for termination. The parties can agree on a mutual termination with or without cause and effective immediately without prior notice. Under current laws, there are no filing requirements with labor authorities and no limits on the number of employees to be terminated through mutual agreement. However, at a minimum, the terms of mutual termination must offer the statutory severance compensation if such mutual termination is initiated by the employer.

Mutual termination can greatly reduce the risks of labor disputes stemming from terminations as they necessarily entail employees agreeing to the terms of their termination. As such, their ability to challenge such terminations are strictly limited, including claims that the agreement is invalid or was induced by coercion or fraud. In contract, the risk for labor disputes can be quite high with other forms of termination, especially as PRC law grants terminated employees free access to labor arbitration. As a result, employees have little to lose by challenging other forms of termination, whereas employers face uncertainty and legal costs from such disputes.

For all the reasons above, it is highly recommended that employers consider negotiating a mutual termination and release with the employees.

3. Tactics for Negotiating Mutual Termination Agreements

Though mutual termination presents obvious advantages, there is of course the difficulty in reaching terms with employees. Employers will likely need to incentivize employees by offering severance compensation in excess of what employees would otherwise be entitled to under PRC law, and exert whatever other pressure may be available to the employers over employees.

As mentioned above, no specific procedures are required for mutual termination. One recommended strategy is to try to limit the time allowed for employees to review and consider the mutual termination agreement, as employees will often use increased time to organize and demand greater compensation.

Instead, employees should be given the option of (i) signing the mutual termination agreement with compensation in excess of the statutory severance, or (ii) being terminated by the employer unilaterally through notice (assuming the right of such termination), with a requirement that this choice be accepted quickly or else the mutual termination agreement be withdrawn. ▶

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4. Calculating Compensation for Termination
When terminating employees, PRC law requires that employers compensate employees based on the total number of years that the employees have worked for such employers, unless the termination results from serious misconduct of the employee such as a crime or serious violation of company policies.

Aside from statutory severance requirements, employers may need to provide additional compensation to incentivize employees agreeing to mutual termination. When determining the amount of such severance, several factors should be taken into consideration in order to make a comparatively fair termination plan.

Such ex-gratia severance should reflect the length of service years for the employee, with the result that longer-serving employees receive greater amounts. Indeed, where companies attempt to offer equal amounts of ex-gratia severance to all employees, regardless of service length, longer-serving employees often resist such offers.

Employers may also need to pay additional compensation to employees with special protections under PRC law, such as employees with work-related injuries, or pregnant employees/those on maternity leave. PRC law grants certain protected employees protections from unilateral termination, including prohibiting the employer to terminate such protected employees in economic layoff and other grounds for termination by employer. Though such protected employees are allowed to be terminated through mutual agreement, the fact that employer may not be able to terminate them based on certain terminating grounds requires greater incentives to induce such protected employers' agreement to mutual termination.

5. Local Government Assistance with Employee Protests
After a notice of termination is published, it is likely that employees will seek to organize a response to negotiate the terms of termination. In general, many PRC employees are not aware of their statutory rights and will instead organize a response to aggressively pressure employers for compensation. Where such demands are excessive and rejected by employers, confrontations have occasionally occurred in China, even including violence.

It is advisable for employers to consult in advance with the local labor authority and officials of the relevant industrial zone on the terminations to ensure their involvement and assistance. Officials may have strong incentives to help resolve potential conflicts, including: (1) officials do not wish such confrontations to escalate and reflect poorly on them; and (2) officials do not wish employees to obtain unreasonable requests and set precedent for other such confrontations in their region.

If involved in the termination, officials may explain to the employees the PRC legal requirements and local policies on termination, and officials have more credence with employees to explain that their requests may be unreasonable than the employers or their lawyers. And if employers involve officials, such officials are more likely to be sympathetic in subsequent disputes over terminations of unreasonable employees.

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6. Legal Trends to Watch

While mutual termination is usually preferred under PRC law, authorities appear to be considering greater restrictions on mutual termination in future. According to a Draft Regulation on Layoffs by Enterprises, published by PRC authorities on December 31, 2014 soliciting public opinion, employers that intend to terminate more than 20 employees through mutual termination agreements will in future be required to notify the company's labor union or all employees (where there is no labor union) of such termination 30 days in advance, and employers must report to local labor authorities the total number of employees to be terminated by mutual agreement. The draft regulation does not specify whether such notices are a prerequisite for a termination to take effect. Regardless, the adoption of the draft regulation into law would place a heavier burden on employers terminating employees through mutual agreement.