



Newsletter No. 234 (EN)

Secondment of Employees to Hong Kong

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1. Introduction

This newsletter outlines points to consider when an employee from Germany is to work in a Hong Kong company.

2. Employment and secondment contract

First of all, a local Hong Kong employment contract is (almost) always required, otherwise no work visa will be granted. In addition, a secondment agreement should be concluded with the sending company. This serves as a synchronisation, as a constitution of own rights and obligations and as a link between the old German employment contract and the new local contract. This should regulate things such as: Duration of secondment, flights home, health insurance, family integration, family flights home, kindergarten, school, relocation costs, withdrawal costs, vaccinations, language courses, reintegration assistance in Germany, return position, etc.

In addition, a regulation on the original German employment relationship should be included. This can be suspended or terminated (if necessary by mutual agreement).

We recommend linking the effectiveness of the secondment to the issuance of the work visa in Hong Kong and the confirmation of fitness for work in the tropics by a company doctor. This avoids having to pay allowances etc. even though the employee is in fact unable to work in Hong Kong.

3. Visa and work permit

German citizens need a visa or entry permit to work or study in the HKSAR or to

establish a business there. German citizens do not need to apply for a visa in advance for entry and stay of up to 90 days, but will receive a VISA on Arrival at the airport. After leaving Hong Kong (e.g. to Macau or with a visa previously obtained in Germany for the People's Republic of China), a stay of 90 days in Hong Kong can be granted again immediately afterwards, provided that a German passport valid for at least six months is presented on entry. However, if entering Hong Kong with only a visa, foreigners cannot legally start work because they do not have the necessary work permit. It is therefore advisable to apply for the correct (work) visa before entering the country.

The appropriate visa or entry permit can be applied for at the nearest Chinese diplomatic and consular representation. Alternatively, the visa or entry permit application can be submitted directly to the Hong Kong SAR Immigration Department, either by post or through a local service provider.

To shorten the processing time, application forms and supporting documents can first be sent by fax to (+852) 2824 1133. However, the original of the duly completed application form and the required photographs should be sent immediately by airmail to the HKSAR Immigration Department. A visa or entry permit will only be issued upon receipt of the duly completed original application. However, the embassy or consulate route is likely to be less complicated in most cases.

Professionals and specialists wishing to enter the HKSAR apply for a visa under the General Employment Policy (GEP). This requires proof of skills, knowledge or experience that are valuable to the HKSAR and not readily available in it. The GEP is quota-free and not sector-specific.

a) Criteria for approval

An application for a work visa/entry permit to take up employment under the GEP will be considered favourably if:

- there are no security concerns and no known serious criminal offences relating to the applicant;
- the applicant has a good educational background, normally a first degree in the relevant field; however, in special circumstances, good technical qualifications, proven vocational skills and/or relevant experience and achievements may also be accepted;
- there is a vacancy;
- the applicant has a confirmed offer of employment and is employed in an occupation commensurate with his/her academic qualifications or professional experience and which is not readily available from local labour; and
- the remuneration, including income, accommodation, medical care and other fringe benefits, is broadly in line with the market level for professionals in the HKSAR.

b) Entry of family members

Applicants admitted under the GEP may request that their spouse and unmarried dependent children under 18 years of age be allowed to enter the HKSAR under the applicable provisions for dependants. Persons admitted or applying for admission under the GEP are the guarantors of their accompanying dependants in the HKSAR. An application for admission of a family member will be considered favourably if the normal immigration conditions and the following criteria are met:

- There is sufficient evidence of a genuine relationship between the dependent and the sponsor;
- there is no known criminal record of the dependant; and

- the sponsor is able to provide for the maintenance of the dependant at a level well above the subsistence level and to provide adequate accommodation in the Hong Kong SAR.

The duration of stay of these family members is usually linked to the duration of stay of their sponsors. Subsequent applications for extension of stay will only be considered if the applicant continues to meet the criteria for entry as a dependant (including the fact that there has been no change in circumstances which would otherwise have led to the loss of the applicant's sponsorship, e.g. change in marital relationship between the dependent spouse and the sponsor or death of the sponsor) and the sponsor remains a bona fide Hong Kong resident living in the HKSAR. Such dependants shall not be prohibited from taking up employment or study in the HKSAR.

c) Processing time

The processing of applications for visas/entry permits for employment usually takes four weeks once all the necessary documents have been received. The embassy/consulate or the immigration authority can only start processing the application once all the necessary documents and information have been received.

All applications are processed and decided by the embassy / consulate or the immigration authority. The approval of applications is discretionary and subject to changes in government policy. The Director of Immigration reserves the right to reject an application even if it meets all criteria.

In addition to the GEP, visas/entry permits for employment can also be obtained through the following schemes:

Technology Talent Admission Scheme (TechTAS)
Investment as Entrepreneurs

Training
Foreign Domestic Helpers
Imported Workers

4. Residence permit

Unlike in the People's Republic of China, where a residence permit ("Working-purpose Residence Permit") is required in addition to the visa and work permit, no special residence permit is required in Hong Kong.

5. Compulsory registration in Hong Kong

Unlike in Germany (Residents' Registration Office) and the USA, for example, where foreigners who are only staying temporarily in the country have to report their valid address to the Immigration and Naturalization Service every three months, there is no separate obligation to register in Hong Kong. There is therefore no institution comparable to the German Residents' Registration Office.

6. Social security

a) Germany

In addition to questions of labour law and immigration law, there is always the problem of how to deal with the German social security system in the case of an assignment.

Hong Kong has not concluded a social security agreement with Germany and is therefore a so-called non-contractual foreign country. This means that there is no obligation to pay social security in Germany. This means that on the one hand the employee and employer no longer have to pay into the German social security system, but on the other hand the employee's social security protection also ceases.

The only exception is if the employee is seconded abroad in accordance with § 4 SGB IV. In this case, the German social security regulations pursuant to § 4 SGB IV continue

to apply to an employee during his employment in Hong Kong.

The prerequisite for this is that

- it is a posting within the framework of a continuing employment relationship in Germany;
- the duration of the employment abroad is limited in advance or by its nature in terms of time (preferably precisely regulated in the secondment contract); and
- the employment relationship continues in Germany. This requires in particular that the employee temporarily employed abroad remains organisationally integrated into the business of the German employer sending him/her abroad and that essential elements of an employment relationship are fulfilled. In addition, it is a prerequisite that the employment contract entitlement to remuneration is directed against the seconding employer and that the seconding employer actually also bears the final economic cost of the remuneration and is entitled to claim it as an operating expense for tax purposes.

A secondment therefore exists if an employee temporarily moves outside the scope of German social security law on the instructions of the German employer and is thereby integrated into a foreign company, so that he may also pay taxes and other fiscal charges to the local authorities abroad, because he may have another local foreign employment contract (temporary or limited to a certain duration), which is usually mandatory.

In this case, the obligation to be insured as an employee in the German social security system continues (so-called "Ausstrahlung", § 4 I SGB IV).

It is important to check and agree with the authorities in each individual case whether the "Ausstrahlung" applies. Otherwise, other possibilities can be used to remain in the German social security system (e.g. voluntary continued insurance).

b) Hong Kong

As there is no social security agreement between Hong Kong and Germany, a possible exemption from contribution payments in Hong Kong is only possible according to national regulations. This may lead to double insurance. In Hong Kong, compulsory contributions must be paid into the pension insurance scheme. In addition, there is a levy for continued payment of wages in the event of illness and maternity protection. However, Hong Kong does not have compulsory contributions to health or unemployment insurance. A possible exemption, provided the employee is covered by social security in Germany, is shown below.

In contrast to European standards, Hong Kong social security law is much more employer-friendly and offers employees far less protection than in Germany. Nevertheless, it is essential to know about the existing obligations if you are an employer in Hong Kong. Employers are only required to cover their employees in four areas. Firstly, a kind of "Mandatory Provident Fund" (MPF) and secondly, accident insurance for work-related accidents must be taken out, as well as the granting of parental leave and continued payment of wages in the event of illness.

However, foreigners working in Hong Kong are exempt from compulsory pension insurance if they are members of a pension scheme in their home country or are employees of the European Union.

The minimum monthly contributions for both the employer and the employee are 5% of the employee's gross income. The maximum amount for both parties is HKD 1,500 (approx. EUR 170) per month. If the employee earns less than HKD 7,100 (approx. EUR 800), he or she is exempt from paying contributions, but the employer must still pay contributions. The upper limit for the assessment of contributions is 30,000 HKD (approx. 3,400 EUR), so that if the monthly

income exceeds 30,000 HKD, the employee and the employer must each pay a maximum of 1,500 HKD (approx. 170 EUR) per month into the MPF. The entire contribution must be submitted by the employer.

For tax purposes, the MPF contributions are deductible as business expenses for the employer up to a contribution amount of 15 % of the total annual employee income. Employees can also deduct their contributions up to a maximum of HKD 18,000 (approx. EUR 2,100). Voluntary contributions paid by the employee in excess of this amount are not tax deductible.

In addition to the MPF system, another compulsory insurance scheme is the Employees Compensation Insurance (ECI). According to this, every employer is obliged to insure his employees against damage and injuries resulting from a work-related accident or an accident during working hours. Accidents resulting in both injury and death of the employee are covered for the payment of compensation. Medical and legal costs are also covered under the regulations.

Often, ECI is included in an office insurance policy. Costs start from about HKD 500 (about EUR 50) per year, depending on the type of work performed and the amount of office insurance per employee.

c) Summary

Social security issues should be discussed with the employee as early as possible before the secondment begins. If the "Ausstrahlung" is desired, the contract must be drafted accordingly. It is also advisable to clarify this with the social security institution in order to avoid surprises later on.

If the "Ausstrahlung" is not desired (which can be the case especially with longer-term secondment), this is also possible in the case of a corresponding contractual arrangement.

Last but not least, if “Ausstrahlung” is not desired, voluntary continued insurance in the German social security system or on a purely voluntary basis with private insurers should always be considered in order to avoid gaps in the insurance process.

7. Aspects of tax law

a) For the employee

Hong Kong generally taxes according to the territoriality principle. The question of whether there is a tax liability in Hong Kong depends on whether the income in question is earned in Hong Kong or paid from Hong Kong. The following criteria are used to classify the income:

- Where was the employment contract negotiated and concluded?
- Is the employment performed in Hong Kong or outside Hong Kong?
- Where is the employer located (in Hong Kong or not)?
- Where does the employee receive his salary (in Hong Kong or outside Hong Kong)?

Only if all four factors are outside Hong Kong is there so-called "non-Hong Kong employment", i.e. the income is not taxable in Hong Kong. Income for activities in Hong Kong is usually taxable there as well, since a

Hong Kong employment contract is required for the visa to be issued.

If the employee is also liable to tax in Germany (e.g. if he or she continues to maintain a tax residence in Germany and is thus subject to unlimited tax liability), double taxation under domestic law (including Sections 34c, 34d EStG, Section 26 KStG) can only possibly be avoided by crediting the foreign (Hong Kong personal income tax) tax against the German tax or by deducting the foreign tax from the income. There is no double taxation agreement between Germany and Hong Kong that would solve this problem. Nor is it apparent that a corresponding DTA will be adopted in the near future.

b) For the seconding company when the employee is seconded in a subsidiary company

In a situation where the employee is working in a Hong Kong subsidiary, it is worth considering issuing an invoice to the subsidiary which should roughly correspond to the employee's costs plus a surcharge of approximately 5% to 15%. This service invoice for the "transfer" plus mark-up is then a deductible operating expense in the subsidiary. In the parent company this leads to a (small) taxable profit.

We hope that we have been able to help you with this information.

If you have any further questions, please contact:

Lorenz & Partners (Hong Kong) Ltd

Flat/RM A, 12/F, Ritz Plaza,

122 Austin Road,

Tsim Sha Tsui,

Hong Kong SAR

Tel.: +852 2528 1433

Email: hongkong@lorenz-partners.com

www.lorenz-partners.com