

risk of loss of freedom for serving as legal representative of a company in China

Description

I have written a quite comprehensive post explaining the concept of legal representative of a Chinese company (click [here](#) for details).

Just recently, a new instance of foreigners being banned from leaving China prompted me to remind expat employees in China of the risk of loss of freedom for serving as legal representative of a company in China.

It is a simple case where an expat from Mexico was ordered to stay in China before clearing the debts of wages owed by the company to the employees. It seemed unfair to ban the foreigner from leaving China for the fault of a company in which he or she does not even hold any equity interests at all. More ironically, this Mexico expat was made legal representative of the company without knowing what consequences might follow and the shareholder of the company has just been changed into someone the expat does not know at all. Apparently, there is some scheme going behind at the price of the expat freedom.

You can imagine how painful and miserable when the affected expat cannot even go back to his home.

More seriously, China has enacted a new law in 2011 criminalizing of nonpayment by companies of salaries and wages owed to employees and if a company is found guilty, their responsible persons (always including the legal representative) will also subject to criminal liabilities and sanctions.

For expats that are appointed to be the legal representatives of Chinese companies, the risk of being banned from going back to your home countries shall be fully considered and mitigated upon acceptance of the appointment. The following measures shall be considered for mitigating the risk:

(1) consulting a Chinese lawyer to understand what liabilities might arise in the course of serving as legal representative of Chinese companies (including foreign invested companies), and ensure that you know that you are not only taking up power and privilege but also risk and liabilities when you decide to be a legal rep of a Chinese company.

(2) entering a special agreement addressing the risk with the company and/or shareholder in which a clear compensation clause shall be stipulated allowing the affected expat to receive financial compensation for the suffering of being unable to travel out of China.

(3) in case that the expat legal representative senses that the company might run into serious financial trouble or lawsuit, the legal representative shall immediately take actions to remove himself from the legal rep position. This voluntary resignation and removal can be inserted in the above-said agreement with the company and/or shareholders.

For related articles on travel ban/restriction in China, you can start a read of the following posts:

- (1) [Sorry, Sir you are banned from leaving China;](#)
- (2) [You won't be so lucky every time.](#)

Date Created
February 2013
Author
admin

Shanghai Landing Law Offices