



Bird & Bird

# China

Employee Invention Laws

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# China – Employee Invention Laws

## Does your country have specific laws governing employee inventions?

Yes, specific laws regulate employee inventions.

### Primary Legislation/Law:

- PRC Patent Law 2020/PRC Technical Achievement.
- Transformation Law 2015 (中华人民共和国促进科技成果转化法).

## What types of intellectual property are covered by your national employee invention laws (patents, utility models, trade secrets, etc.)?

PRC Patent Law defines service inventions as those made by employees in executing employer tasks or mainly using employer's materials/technical resources.

### Coverage/Scope:

- Inventions
- Utility models
- Designs

**Extended Scope:** 'PRC Technical Achievement Transformation Law': Service inventions as trade secrets/know-how may fall under "service-related scientific and technical achievement".

### Broad definition includes:

- Patents and patent applications
- Technical secrets
- Computer software
- Integrated circuit layout designs
- New plant varieties

China Supreme Court Interpretation: *"Technical solutions involving product, process, material and improvements thereof, made with utilisation of scientific and technological knowledge, information and experience"*

## Which categories of employees are covered by your national employee invention laws?

PRC Patent Law applies to inventors/designers of service inventions who are employees.

**Qualification Criteria:** Employee must have made creative contributions to substantive features of the service invention

**Exclusions:** Employees responsible only for:

- Organisational work
- Assistance with material resources
- Other auxiliary work

**Note:** PRC Technical Achievement Transformation Law 2015 is silent on this issue.

## What temporal and territorial restrictions apply to employee invention laws in your jurisdiction?

**Temporal Scope:** Invention must be made during employment to qualify as service invention.

**Extended Coverage:** Ex-employee inventions within 1 year after employment termination are service inventions if they relate to:

- Job Duties with former employer
- Tasks assigned by former employer

**Territorial Scope:** Service invention regulations under PRC Patent Law 2020 and PRC Technical Achievement Transformation Law 2015 generally apply to business activities in China.

## Do the national employee invention laws recognise different kinds of inventions or are all inventions treated equally?

Yes. PRC Patent Law distinguishes between 'service invention' and 'non-service' invention, for example:

**Service Inventions:** Invention made during job duties; any tasks assigned by the employer; or within one year of leaving the job (if related to prior duties). The employer owns these unless agreed otherwise. For service invention, the employer acquires the rights to the invention unless there is an agreement provided otherwise between the employer and employee.

**Non-Service Inventions:** An invention made by an employee falling outside the scope of service invention, the employee acquires the right to apply for patents and the patent rights.

## What is the statutory process of acquiring rights to employee inventions under your national laws? Does the employer acquire rights directly under the law or does the employer need to take separate actions?

The employer automatically acquires rights to a service invention, unless a separate agreement between the employer and employee states otherwise.

## How are employee invention disputes governed in your jurisdiction? Is there a special dispute resolution mechanism / a body for employee invention related disputes?

In China, first-instance jurisdiction over disputes involving ownership, reward, or remuneration for service inventions - including inventions, utility models, plant varieties, IC layout designs, trade secrets, and software - typically lies with specialised IP courts in Beijing, Guangzhou, Hainan, and Shanghai, or IP tribunals within designated intermediate courts.

Design patent - related disputes may also fall under designated district courts authorised by the Supreme People's Court.

There is no separate dispute resolution mechanism specific to employee invention disputes in China.

## Are policies on employee inventions commonly used in your jurisdiction? Are there regulatory requirements for implementation of a policy on employee inventions?

Implementation of an employee invention policy is not mandatory, but the PRC Patent Law encourages to adopt it as best practice.

## Do your national laws on employee invention obligate employers to pay compensation to employees when taking rights to an employee invention?

Yes. Art 15 of the PRC Patent Law provides that once a patent is granted based on the service invention, a reward shall be provided to the inventor or designer of the service invention. Once a patented service invention is exploited, a reasonable remuneration shall be provided to the inventor or designer of the service invention based on its application and economic benefits obtained.

## What are the principles of determining the mandatory compensation according to your national laws on employee inventions?

Under the PRC Patent Law, the reward and remuneration for a service invention are primarily determined based on the agreement between the employer and employee or the company policy.

The PRC Patent Law Implementation Rules further provides that in the absence of an agreement between the employer and employee or if the company policy is silent on the amount of the reward and remuneration:

1. A reward shall be provided within 3 months upon grant of the patent based on the following amount:
  - no less than RMB4000(appx EUR490) for an invention patent;
  - no less than RMB1500 (appx EUR185) for a utility model or design
2. A reasonable remuneration shall be provided upon exploitation of the patents based on the methods and amount provided under the PRC Technical Achievement Transformation Law 2015:
  - If it is transferred or licensed, no less than 50% of the net revenue generated from transfer or licence;
  - If it is used for investment, no less than 50% of the shares or equity proportion generated from using it to secure financing for investment;
  - if it is self-exploited or jointly exploited with others, no less than 5% of the profits generated from exploiting the invention for the first 3-5 years.

## Do your national laws on employee inventions obligate and/or provide for payment of certain fixed amounts or running compensations, such as royalties?

The PRC law allows flexibility and respects the employer and employee's agreement on the ways and the amount on how the reward and remuneration for a service invention can be provided. The PRC Patent Law encourages employers to implement property rights incentive programs, using equity, options, dividends, and other means to enable inventors or designers to fairly share in

the benefits of innovation. The statutory default compensation levels only apply when such an agreement does not exist.



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