

劳动合同变更书

经甲、乙双方平等自愿、协商一致，对本合同做以下变更：

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## Remuneration

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## CHN ¶50-001 Definitions and components

"Salary" or "wages" is not defined in the *Labor Law* (see CHN 110-001). Rather, it is defined in the Provisional Regulations for the Payment of Wages (Wage Payment Regulations) issued by the Ministry of Labor in 1994 as "the various forms of remuneration paid to employees in legal currency by employers in accordance with the provisions of their employment contract" (Art 3). The terms "salary" and "wages" are used interchangeably.

Article 4 of the Composition of Total Wages Provisions (Total Wages Provisions), issued by the State Statistical Bureau in 1990, provides that total wages are composed of wages based on time, wages based on piecework, bonuses, subsidies, allowances, overtime payments, and wages paid under special circumstances.

Article 7 defines bonuses as extra payments given to workers as incentives, including production bonuses, economisation bonuses, labour competition prizes, and incentives offered to workers in institutions.

Article 8 provides that allowances refer to payments given to workers to compensate for special expenses arising from their work, such as health allowances, technical allowances and yearly allowances; subsidies include payments to employees as salary insurance against inflation.



Article 10 provides that wages paid under special circumstances include compensation for sickness, work-related injuries, maternity, and family planning leave, wedding and funeral leave, other paid leave and vacations, study programs, and other payments required by the State, as well as supplemental wages and retainers.

### CHN ¶50-011 Items not considered wages

Article 11 specifies items that **should not** be considered as wages:

- bonuses for inventions
- insurance fees and welfare benefits
- pensions
- lectures and other professional work
- food subsidies and employee transfer expenses
- interest paid to employees for purchasing shares and bonds of the employers
- medical and severance pay to employees upon termination of the employment contracts
- processing fees paid to labour units for hiring casual workers, and
- processing fees paid to home workers and contracting fees paid to contractors for goods processing upon orders.

### CHN ¶50-021 Factors influencing wages

Article 49 of the *Labor Law* (see CHN 110-001) provides that the minimum salary standards should be set and adjusted based on the following factors:

- minimum cost of living for employees and the average number of dependents of the employees
- average salary levels in the society
- labour productivity
- overall employment situation, and
- differences in the economic development levels among different regions.

### Collective wage consultation

Article 8 of the *Collective Wage Consultation Trial Measures* (Collective Wage Measures), issued by the Ministry of Labor and Social Insurance in November 2000, provides the basis for setting the employee annual wage levels in collective wage agreements. This should be done through consultation between the employers and the employees, considering the following factors:

- human cost levels of the locality, industry, and enterprise
- average employee wage levels of the locality and industry

- salary guidelines and the labour market wage guidelines issued by the local government
- consumer price index of the local urban residents
- enterprise labour production rate and economic profits
- appreciation of the State-owned assets
- enterprise employees' total wages and employee average wage levels of the previous year, and
- other situations relevant to the collective wage consultation.

In summary, the main factors effecting salary level include the minimum wage requirement, the economic situation of the locality generally and the production and profit situation of the enterprise in particular, the average salary level of the locality and the industry, and other factors unique to the enterprise.

### CHN ¶50-031 Wage fixing

#### General principles

Article 47 of the *Labor Law* (see CHN 110-001) provides that an employer should independently determine its own scheme of wage standards according to law, and based on its own production, business characteristics, and economic position.

Article 46 stipulates that, when implementing its wage distribution system, the enterprise should adhere to the following principles:

#### (1) Payment according to the type of work:

Different levels of remuneration should be determined in accordance with the level of the quality and quantity of the work completed, the degree of expertise, and the physical requirements for the job.

#### (2) Equal pay for equal work:

Where the quality and quantity of work produced by employees is similar, the remuneration provided to employees should also be similar. Also, wages should not differ on account of gender.

#### (3) Increase in wages:

Wage standards should be raised gradually in accordance with economic development levels.

### Collective wage consultation

According to the *Collective Wage Measures*, all enterprises may engage in consultations on collective wages and may enter into collective wage agreements.

A collective wage agreement must contain the following items:



- term of the agreement
- wage distribution principles, standards, and methods
- employee average annual wage level and the scope of adjustment
- bonus, allowance, and subsidy allocation methods
- wage payment methods
- procedures for amending and terminating the wage agreement
- conditions for termination of the wage agreement
- obligations on default, and
- any other issues about which the parties agree.

### CHN ¶50-041 Minimum wage control

Minimum wage refers to the minimum amount of wages an employer must pay to an employee provided that the employee has performed normal work duties during regular working hours.

#### Excluded remuneration

According to the Minimum Wage Provisions, the following items may not be included in the minimum wage:

- overtime pay
- allowances for working during the night shift or afternoon shift, in extreme temperatures, underground, as well as in toxic or hazardous environments, and
- social insurance and other welfare benefits required by laws, regulations and rules.

#### Minimum wage standards

Minimum wage standards are normally determined in the form of minimum monthly wage and minimum hourly wage. Minimum monthly wage standards are applicable to full-time employees and minimum hourly wage standards are applicable to part-time employees.

According to the Wage Payment Regulations, the proposal of minimum wage standards shall be formulated by the labour department of a province, autonomous region or municipality directly under the Central Government together with the local trade union and enterprise/entrepreneur association at the same level. Different minimum wage standards may be applied in different administrative areas within the province, autonomous region or municipality directly under the Central Government. Various local elements such as the minimum living costs, consumer price index, social insurance and housing fund contribution standard, average wage, economic development and employment conditions are generally considered when fixing the

minimum wage standards. The proposal shall be reported to the Ministry of Labor and Social Insurance for comment. If no comment is provided within 14 days after receipt of the proposal, the proposal shall be regarded as agreed. It shall then be submitted to the Government of the province, autonomous region or municipality directly under the Central Government for approval. If approved, the minimum wage standards shall be published in local newspapers and at least one national newspaper within seven days after the approval is granted and filed with the Ministry of Labor and Social Insurance within 10 days after the publication. The minimum wage standards shall be adjusted at least once every two years.

The following table provides the minimum wage for some major cities in China as at May 2011:

City	Minimum monthly wage	Rates per classes of districts
Shanghai	RMB1,280	
Beijing	RMB1,160	
Shenzhen, Guangdong	RMB1,320	
Guangzhou, Guangdong	RMB1,300	Class A District: 1,300/month Class B District: 1,100/month Class C District: 950/month Class D District: 850/month
Chongqing	RMB710-870	Class A District: 870/month Class B District: 750/month Class C District: 710/month
Nanjing	RMB930-1,140	
Tianjin	RMB1,070	

#### Employer's legal liability

Article 91 of the *Labor Law* (see CHN 110-001) and Art 18(3) of the Wage Payment Regulations stipulate that if an employer pays its employees wages less than the local minimum wage, then the relevant labour administration department should order the employer to reimburse the affected employees' wages and/or pay damages, as well as any additional compensation.

Article 30 of the *Labor Contract Law* (see CHN 110-005) states that employers shall pay their employees labour compensation on time and in full in accordance with the employment contracts and State regulations. If an employer falls into arrears with the payment of labour compensation or fails to make payment in full, the employee may, in accordance with the law, apply to the local People's Court for an order to pay; and the People's Court shall issue such order in accordance with the law.



issue for negotiation. In this case, the term has been decided in accordance with local legislation, which may vary from place to place. It is therefore advisable for an employer to make a decision, upon the expiry of an existing employment contract, as to whether it wants to renew or terminate the contract.

### CHN ¶80-741 Case 5

In 1990, Mr Sun signed a two-year employment contract with a Sino-foreign joint venture (the Employer). As agreed by both parties, the contract was to be renewed every two years in a manner such that Mr Sun should fill in an application form subject to approval by the Employer. In June 1996, Mr Sun submitted a letter of resignation, but the Employer persuaded him to take it back. In December 1996 (another time for renewal of the contract) neither Mr Sun nor the Employer mentioned the renewal. In March 1997, the Employer terminated the contract because Mr Sun had submitted his resignation, and stopped paying wages to Mr Sun from April. Mr Sun then filed an arbitration application claiming the right to renew his contract and to be compensated for the unpaid wages.

The arbitration tribunal held that:

- (1) the Employer should renew the contract with Mr Sun within 10 days from the date of the arbitration award, and
- (2) the Employer should compensate Mr Sun for the wages of April, May, and June.

### Comments

In the above case, the Employer did not carry out any termination procedures with Mr Sun at the time of expiry of their employment contract. Instead, the Employer decided to terminate the contract at a later stage when a factual labour relationship had existed for at least three months. Article 14 of the Notice on Certain Issues Regarding the Implementation of the Labor Contract System (issued by the Ministry of Labor on 31 January 1996) discusses this matter. It says that where an employment contract for a fixed term has expired, such a contract shall nevertheless be regarded as renewed if the Employer fails to handle the procedures of termination or renewal of the contract correctly and if a factual labour relationship has been formed between the Employer and the employee. In such circumstances, the Employer is required to renew the contract in a timely manner and to bear the liability for paying damages to the employee if the employee has suffered losses due to the Employer's default.

## INDUSTRIAL RELATIONS

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### CHN ¶90-001 Introduction

China has been in a period of sweeping economic reforms since the 1980s, working to achieve the social and economic standards of the developed Western countries. In order to facilitate the overall reform process, there have been many legal reforms in the areas of commerce, business, foreign investment, and labour.

During this reform period, the number of labour disputes involving foreign-invested enterprises has sharply increased. In response to this, the Government began to take measures to improve the supervision of labour practices and introduced a dispute resolution mechanism. Although for policy reasons, the trade unions have been empowered with certain rights to uphold the interests of the workers, the trend is that the trade unions do not take an active role in resolving labour disputes.

### CHN ¶90-011 Industrial relations legislation

The *Labor Law* (see CHN 110-001) is the principal piece of legislation which governs the relationship between employees and employers. Under Art 33, representatives of workers (generally the trade unions) may conclude a collective contract on behalf of the workers (employees) with an enterprise (employer).

The Regulations on Handling Enterprise Labor Disputes (Labor Disputes Regulations) were promulgated on 11 June 1993 by the State Council. They set out the channels and procedures through which labour disputes may be resolved.

The *Trade Union Law* (see CHN 110-011) was promulgated on 3 April 1992 and revised on 27 October 2001. It sets out the legal position of trade unions and provides for the rights and obligations. However, there are other laws and regulations which specifically deal with the rights of trade unions, particularly in foreign-invested enterprises.



## Collective contracts

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### CHN ¶90-031 Introduction

Collective contracts, also known as collective agreements or group agreements, are written agreements signed between the employee's representatives (usually manual workers) and the employer. Article 33 of the *Labor Law* (see CHN 110-001) and Art 51 of the *Labor Contract Law* (see CHN 110-005) state that representatives of the employees (generally the trade union) may sign collective contracts on behalf of the employees with the employer. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval. After it has been concluded, the same shall be submitted to the labour administration authority. The collective contract shall become effective upon the lapse of 15 days from the date of receipt thereof by the labour administration authority, unless the said authority raises any objections to the contract. Collective contracts have binding effect on both the employees and the employer.

### CHN ¶90-041 Collective contracts v individual employment contracts

Collective contracts are signed in conjunction with, rather than to replace, individual employment contracts. A collective contract aims at addressing the overall terms of employment for the employees at a particular enterprise, including a FIE. All employees of the enterprise and the enterprise itself shall be bound by the collective contract if there is one. According to Art 51, 52 and 53 of the *Labor Contract Law* (see CHN 110-005), a collective contract may be a comprehensive one to cover major aspects of employment or a specific one to cover one of those aspects (which is referred to as "collective contract within specific focus") or one to cover certain industries, eg construction, mining, food and beverage (which is referred to as "industrial collective contract") or certain regions (which is referred to as "regional collective contract"). An individual contract is limited to the terms and conditions applicable to an individual employee, where the terms and conditions cannot be less favourable than those (such as remuneration) stipulated in the collective contract.

It is not mandatory for an employer to sign a collective contract with its employees. However, if the trade union requests the employer to sign a collective contract, the employer may do so.

### CHN ¶90-051 Provisions under a collective contract

The provisions of a collective contract address the respective rights and obligations of the employees and the employer, and other mandatory legal provisions. These provisions must be applicable to all relevant employees. A collective contract should not contain provisions which are applicable only to a particular employee.

The Regulations for Collective Contracts were promulgated by the Ministry of Labor and Social Insurance (formerly known as the Ministry of Labor) on 20 January 2004 and became effective on 1 May 2004. They have replaced the former set of rules with the same title promulgated by the Ministry of Labor and Social Insurance on 5 December 1994 and became effective on 1 January 1995. According to Art 8 to 18 of the Regulations for Collective Contracts, a collective contract may be reached in respect of one or more than one of the following subjects:

- remuneration, including the wage standards, and distribution and payment methods, etc
- working hours, including working hours system, overtime measures, working hours for special jobs, etc
- rest and holidays, including daily rest time; weekly rest days, annual leave and holidays, etc
- working safety and sanitation, including responsibilities of working safety and sanitation, working conditions and safety measures, safe operation rules; regular health examination and occupational health examination, etc
- supplemental insurance and welfare, including types and scope of supplemental insurance, basic welfare system and facilities, extension of medial period and the relevant treatment, etc
- special protection for female employees and employees who are minors, including categories of labour prohibited to be performed by female employees and non-adult employees, protection for female employees during special periods (eg pregnancy), regular health examination for female employees and non-adult employees, etc
- occupational skill training, including plans for occupational skill training projects, the use of funds for occupational skill training purpose, etc
- employment contract administration, including the time for execution of employment contracts, conditions for determination of the term of



employment contracts; general principles on modification, early termination and renewal, etc

- (i) award and punishment, including working disciplines, system of evaluation, award and punishment and procedures for award and punishment
- (j) redundancy, including plans for redundancy, procedures for redundancy and implementation measures and compensation standards
- (k) term of the collective contract (generally one to three years)
- (l) procedures for modification and termination of the collective contract
- (m) provisions for the consultative handling disputes arising from the performance of the collective contract
- (n) liabilities for breach of the collective contract, and
- (o) other terms which both the employees and the employer think fit.

### CHN ¶90-061 Modification or termination

Article 40 of the Regulations for Collective Contracts provides that during the term of a collective contract, the contract may be modified or terminated early if any of the following situations occurs:

- the contract cannot be performed due to the reasons such as merger, dissolution or bankruptcy of the employer, etc
- the contract or any part of it cannot be performed due to the reasons such as force majeure, etc
- the occurrence of the contractual conditions for modification or early termination
- other situations provided for by laws, regulations and rules.

### CHN ¶90-071 Significance of collective contracts

Collective contracts set out general terms and conditions of the employment between the employees and the employer. Apart from the statutory rights of the employees (which are normally also included in a collective contract), the terms of a collective contract are usually relied on by the employees to substantiate their demands to the employer or in the labour disputes against the employer. On the other hand, a collective contract usually includes a provision requiring both the employees and the employer to comply with the dispute resolution mechanisms and procedures in resolving labour disputes.

## Trade unions

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### CHN ¶90-091 Legislation

The establishment and governance of trade unions and their obligations and powers are governed by the *Trade Union Law* (see CHN 110-011), promulgated by the National People's Congress on 3 April 1995 and revised on 27 October 2001.

The purpose of the *Trade Union Law* (see CHN 110-011) is to ensure trade unions' position in national political, economic and social life, to define trade unions' rights and obligations, and to enable trade unions to serve socialist modernisation.

A few additional laws also set out certain rights of the trade unions. These are the *Foreign-Owned Enterprise Law* (FOE Law) and the *Sino-Foreign Equity Joint Venture Law* (EJV Law).

### CHN ¶90-101 In-house and national unions

Under the *Trade Union Law* (see CHN 110-011), all employees are given the rights to organise a trade union of the enterprise in which they are working, and a trade union of a particular industry or within a particular industry, and a national trade union, the ACFTU. (This applies to both manual and mental employees, regardless of nationality, race, sex, occupation, religious beliefs and educational level, and includes foreign employees working in China.)

Article 10 provides that:

- (1) Trade unions of enterprises, institutions, or organs:

- with 25 or more members shall set up a grassroots trade union committee, and
- trade unions with less than 25 members may set up a grassroots trade union committee, or have one set up by members of two or more units, or elect one organiser to organise activities among members, and
- any enterprise, institute, or organ with relatively more women employees may set up a women's employee committee.

- (2) Trade unions at the township level, towns, and urban streets: