discipline, abuse of company facilities and property, endemic cronyism, nepotism and corruption, over-hierarchical work structures based on time served rather than merit, and many more. Some foreign investors have a policy of never hiring workers with such exposure. This is perhaps harsh as there are exceptions to these rules.

Even in the absence of these factors, other organisational issues arise as a result of the educational system and culture in place. These include an unwillingness to express dissent or engage in original thinking such as in brainstorming sessions, as well as a highly-developed collective sense of identity. The latter, as opposed to the highly individualistic work culture of the United States for example, can result in a reluctance to excel at work over one's peer group. This tendency can result in policies which meet with employee resistance, resentment or friction within the Chinese workplace when they would have been effective elsewhere, for example, encouraging competition to raise productivity or sales. HR managers need to develop a range of customised and effective tools for this work environment.

CHN ¶10-031 Managing change: the role of HR

Mergers and acquisitions

Following China's accession to the WTO, the reduction in the restrictions on the activities and flexibility of WFOEs is apparent. There is already growing merger and acquisition (M&A) activity by and among FIEs, albeit from a very low base. This will result in rapid growth for HR advisory skills on their implementation. In contrast to developed economies, M&A is almost unknown in the traditional China work environment, and therefore one HR task will be communication to internal staff on what is taking place and its implications in a neutral manner.

This type of rapid change has been almost unknown among Chinese enterprises and so will require in-depth preparation and explanation, as well as teamwork amongst the internal communications, PR, finance, and HR departments of a company. This is especially true in terms of retaining morale and key employees. The same intensive teamwork will be necessary to handle the range of similar issues that arise with company restructurings and reorganisation.

Leadership and change

High-level support from the head office could well play an important role in the restructuring process, as will close involvement and communication with the foreign investor's local partners, be they joint venture partners, suppliers and customers or local government bureaux. Getting cooperation and delivering a similar message across all these levels will play a vital role in the successful handling of such large-scale restructurings and M&A projects.

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Best policies and procedures

Many of the same international principles apply to selecting and preparing expatriates to work in China. Perhaps the most important factor is the nature of the job the staff member is being assigned to. If the employee is inheriting an already well-defined set of responsibilities and infrastructure, job training while still offshore can be combined with a lengthy acclimatisation period in-country focused on getting to know his new team. If it is a case of a foreign investment start-up, a different type of preparation (and personality) is necessary, focusing on investigation of the situation and taking the initiative in a flexible manner to meet the company's targets.

A common factor to retaining motivation of expatriate staff is to maintain their links with the office from which they were posted, combined with input from and knowledge of the head office. Regular check-ups should be scheduled including, if appropriate, visits back to the head office and keeping in touch with previous colleagues. In addition, a network should be set up, if possible, of all company employees working in China to build up support and problem-solving mechanisms.

Whether possible or otherwise, an expatriate network can be complemented by funding and encouraging membership in local branches of chambers of commerce or informal clubs and groups of expatriate staff and their families. The embassy or consulate of the staff member involved should be informed of the details of the individual. This is important also when drafting evacuation plans, which are a very important procedure.

Many of the above also apply to acclimatising the staff member and their family. Supporting language studies in this situation is important, even if no great results are expected or achieved. Simple instruction in how to move around the city and purchasing things can reap big benefits and get the whole experience off to a good start. Thereafter, a fine balance must be maintained by those tasked with overseeing this process (usually the regional HR manager) of remaining in touch while not intruding into the privacy of new expatriates.

CHN ¶10-041 Flexible work practices

Flexible work practices are almost unknown amongst the local workforce in China. This is an important reason for hesitation in adopting them for expatriate staff, as it can easily lead to misunderstanding. In addition, with the privileged position of most expatriate workers, including the availability of full-time, live-in home help, there is less justification than exists in other economies. On the contrary, establishing one's position in a new and different working environment often calls for total dedication to the job on a full-time

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benefits for redundant employees who start their own businesses, occupational training for employees seeking a career change, living expenses to certain employees, etc.

Non-compliance penalties

There are no express penalties for violation of these regulations. Labor administrative penalties provided in the *Labor Penalties Provisions* are applicable here. Such penalties are imposed by the labour administration authorities and include disciplinary warnings, fines, forfeiture of illegal income, circulation of the notice of criticism, order of production or business termination, and revocation of the business licence.

CHN ¶20-131 The state council notice on properly dealing with the basic life security and reemployment of state-owned enterprise off-post employees (1998)

This Notice (State Council Notice) was promulgated by the State Council on 9 June 1998 and came into effect on the same date. The State Council Notice applies to SOEs and their employees.

Scope and role

It provides protection for SOE employees who are suspended from duty due to poor management and the financial status of the enterprises.

Non-compliance penalties

There are no express penalties for violation of this Notice.

CHN ¶20-141 Notice on strengthening the management of state-owned enterprise off-post employees and the establishment of reemployment service centres (1998)

This Notice (Ministry of Labor Notice) was promulgated by the Ministry of Labor and Social Insurance on 3 August 1998 and came into effect on the same date. The Ministry of Labor Notice provides the implementing rules for the State Council Notice. Its coverage and scope are the same.

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Non-compliance penalties

There are no express penalties for violation of this notice.

CHN ¶20-151 The labour dispute regulations

The *Labor Disputes Mediation and Arbitration Law* (Labor Disputes Law) was adopted at the 31st Session of the Standing Committee of the 10th National People's Congress on 29 December 2007 and came into effect on 1 May 2008. The law covers most categories of labour disputes between all forms of enterprises and their employees.

Scope and role

The law sets forth the procedures by which to resolve disputes arising from the conclusion, performance, novation, rescission or termination of employment contracts, whether by the employee or employer, and disputes regarding wages, social insurance, benefits, training, and labour protection. The law details the mediation and arbitration process for dispute resolution as well as the penalties for violations.

Employment benefits and social security

The maternity insurance measures ....CHN ¶20-161
The work related injury insurance regulations ..CHN ¶20-171
The old age insurance decision ....CHN ¶20-181
The medical insurance decision ....CHN ¶20-191
The unemployment insurance regulations (1999) ....CHN ¶20-201
The premiums collection regulations ....CHN ¶20-211
The regulations on the Housing Provident Fund ....CHN ¶20-221

CHN ¶20-161 The maternity insurance measures

The *Trial Measures on Maternity Insurance* for Enterprise Employees (Maternity Insurance Measures) were promulgated by the State Council on 14 December 1994 and came into effect on 1 January 1995. The measures cover urban enterprises and their female employees.

Scope and role

Under the Maternity Insurance Measures, only employers are required to pay the maternity insurance premiums. Female employees are entitled to reimbursement for their basic medical expenses and allowances during maternity and to their full salary during their maternity leave.

nature of this sector with attendant risks to a hiring company's image and reputation, as well as the sheer number of such postings and the inability to profile more significant positions.

Employment agencies and recruitment specialists

In China, employment agencies, recruitment specialists or "head-hunters" have mushroomed over recent years. Due to all the difficulties already mentioned, headhunters have played a larger role in the foreign investment employment scene in China than HR managers are used to seeing such companies play in developed economies. Instead of focusing on very senior-level and highly-remunerated positions, in China such agencies have often become involved in hiring of quite junior level staff of a foreign investor, including secretaries and receptionists. Although no longer uniformly the case, to some extent this still occurs. All major international recruitment agencies are represented in China, alongside a large number of local companies.

From being a bit of a "Wild West" industry in the early years, the headhunting industry is now coming under a greater level of regulation and supervision. However, ethical and other risks still apply to users of some of these agencies. These include internal corruption, poaching staff from one's own client, and others.

Other issues

Another problematic area in China in terms of hiring is that of qualifications and references. Unfortunately, forgery of these documents is common and growing at all levels. While not unknown in developed economies, this is much more prevalent in China. As a result, executives responsible for hiring must be aware of this. Responses can include exhaustive double-checking and verification of such qualifications for more senior levels where their importance is greater, to greater reliance on in-house testing of literacy, numeracy and other basic skills rather than relying on unverifiable documents at lower staffing levels.

CHN ¶30-041 Hiring practices

Hiring practices in China differ to some extent from those in developed economies. Due to a low level of social trust in local society, and the prevalence of negative work and social habits, many HR practitioners suggest satisfying concerns in these areas to be the first priority. This incorporates the point above in CHN ¶30-031 concerning qualifications and reference letters as well as the trustworthiness in general of such documents as the CV. Generally, such verification and other background checking needs to be implemented in-house, and therefore the expertise in conducting this (how to contact universities/previous employers) developed. However, there are

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beginning to be cheaper service providers offering this service. The more well-established international private detective investigation services can also provide this for senior level staff in China.

The use of psychometric testing was growing in popularity a few years ago in China as elsewhere, but has not taken off in a big way. Generally it is accepted although not well-understood.

Interview techniques may have to be adapted to be effective in China. On a general level, the national education system and culture do not encourage assertiveness, curiosity, asking questions of "superiors" and interpersonal skills in general, compared to western societies. Therefore, apparent weaknesses in these areas on the part of candidates may not reflect on the ability or potential of the applicant, but merely represent social norms. As a result, more structured interviews combined with one-on-one interaction, may be required, along with other interviewing techniques, in order to draw out the true abilities of, and differences between, candidates.

Privacy and similar issues are not nearly as sensitive in China as in developed economies. The same applies to racial and multicultural issues as a whole. Apart from the *dang'an*, or personnel file system, discussed in other sections, these can almost be counted as non-issues.

Induction

Introduction ..... CHN ¶30-061
Benefits of induction ..... CHN ¶30-071
Types of induction ..... CHN ¶30-076
Preparing for induction ..... CHN ¶30-081
Who should be involved? ..... CHN ¶30-091
The induction process ..... CHN ¶30-101
Role of the supervisor ..... CHN ¶30-111
Induction in practice ..... CHN ¶30-121

CHN ¶30-061 Introduction

Induction is an extremely important but often underrated part of the recruitment and hiring process. It is sometimes referred to as orientation.

Induction is the process by which a new employee learns about and becomes part of a work organisation. Its overall purpose is to provide the necessary information on the culture, values and priorities of the organisation, facilities and motivation to assist the employee to quickly adjust to a new work environment and to encourage the development of loyalty and enthusiasm towards the organisation.

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employers to require their key employees to provide advance notice of their resignation. Upon receipt of such notice, employers should be able to reserve the right to adjust the employees' positions, such as reducing their duties and responsibilities, in order to protect confidential information.

CHN ¶40-221 Compensation

This clause should clearly state the amount and frequency of the compensation, including discretionary and/or guaranteed bonus and commission provisions.

CHN ¶40-231 Termination of the contract

Under Art 42 of the *Employment Contract Law*, employers are prohibited from terminating an employment contract, except under limited situations enumerated under the law (see CHN ¶80-061).

CHN ¶40-241 Covenant not to compete

According to Art 23 and 24 of the *Employment Contract Law*, for an employee having a confidentiality obligation, the employer may include competition restriction provisions in the employment contract or confidentiality agreement, and stipulate that the employer shall pay economic compensation to the employee on a monthly basis during the term of the competition restriction after the termination of the employment contract. If the employee breaches the competition restriction provisions, the employee shall pay liquidated damages to the employer as agreed in the contract.

The personnel subject to competition restrictions shall be limited to the employer's senior management, senior technicians and other personnel with access to confidentiality information. The scope, territory and term of the competition restrictions (no more than two years) shall be agreed upon by the employer and the employee, and such agreement shall not violate laws and regulations. Under the national law, the amount of consideration for the competition restrictions is subject to agreement between the employer and employee (*Employment Contract Law*, Art 23). Local regulations may dictate the minimum of legally sufficient consideration.

CHN ¶40-251 Liability for breach of contract

Early termination by an employee is allowed under Art 31 of the *Labor Law*, which provides that "an employee shall give 30 days' advance written notice to an employer when terminating the employment contract". The *Employment Contract Law* expressly provides for an employee's right to terminate the employment contract (Art 37).

Unless there is a service term stipulated in the employment contract according to the law, the employer may not require the employee to pay liquidated damages in case of early termination by the employee.

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CHN ¶40-261 Dispute resolution

Arbitration at the Labor Dispute Arbitration Committee is mandatory under the *Labor Law*. If one party is not satisfied with the arbitration award, the dissatisfied party may file a lawsuit within 15 days of receiving the award, depending on the amount at issue and subject matter of the dispute.

Consultation, mediation, and litigation may be included separately or jointly as alternative dispute resolutions, in conjunction with a mandatory arbitration clause in the employment contract.

Varying the employment contract

Introduction .... CHN ¶40-281
Reasons for varying the employment contract .... CHN ¶40-291
Important issues .... CHN ¶40-301

CHN ¶40-281 Introduction

The term "varying the employment contract" refers to those amendments necessitated by changes in the law, by changes to the basis of the contract that call for the inclusion of certain contractual provisions, or by changes in the circumstances beyond the parties' control. Such changes, from an objective point of view, render performance of the original contract impracticable to such an extent that it should be amended or supplemented. Such variation is necessary to adapt the contract to changed circumstances so that the new contract conforms to the will of the parties.

CHN ¶40-291 Reasons for varying the employment contract

Reasons for varying the employment contract may be one of the following:

- an increase or decrease in workload or job responsibilities
- an extension or reduction of the employment contract term
- a change in the nature of the position or duties of the employee, or
- an increase or decrease in the employee's remuneration.

In addition, the employment contract may be modified, with the agreement of the parties, where any of the following events renders performance of the original contract impracticable by either the employer or the employee:

- an enterprise changes product lines or adjusts its level of production to adapt to changes in the market such that certain provisions in the original contract are no longer applicable
- an employee is injured or disabled and is unable to fulfil the responsibilities of his/her original position to such an extent that a suitable change in the employee's position must be made
- certain terms of the original employment contract conflict with newly-promulgated state laws and regulations, and
- force majeure (such as flood, earthquake, war, or other events).

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Implementation of the Civil Law General Principles Opinion (Trial Implementation) (Civil Law Opinion).

General principles concerning liability for personal injury are set out in Art 119 of the *Civil Law General Principles*, which provides that, where personal injury is caused to a citizen, compensation must be paid for medical expenses, loss of income, living expenses, and other unspecified expenses.

In the event of death of such a citizen, funeral expenses and expenses for the maintenance of the dependants of the deceased must be covered by the party or parties at fault.

Contributory negligence

The *Civil Law General Principles* provide that, where a party who suffers a loss is also at fault for that loss, then the liability of the person who caused the loss may be reduced (Art 131). More detailed provisions on the computation of compensation may be found in the *Civil Law Opinion*.

Medical expenses

Compensation for medical expenses will generally be calculated on the basis of diagnostic proof and medical and hospital bills from the local hospital treating the injured person (*Civil Law Opinion*, Art 144). Expenses incurred in the course of treatment given in another hospital without approval from the relevant medical service department (if approval is required) will generally not be compensated.

Expenses for the unauthorised purchase of medicine unrelated to the specific personal injury or for the treatment of other illnesses may not be compensated. Allowances for loss of working time of a person receiving special nursing care, upon approval by a hospital, may be calculated according to such person's actual losses (*Civil Law Opinion*, Art 145).

Where personal injury causes a person to experience a partial or complete work disability, the living allowance paid to the injured person as compensation may not generally be below the basic living expenses of local residents (*Civil Law Opinion*, Art 146).

Dependents of injured parties who have no other means of livelihood to meet essential living expenses may claim compensation where the injured parties have suffered personal injuries resulting in death or in the loss of their ability to work. The amount of payment for living expenses is determined according to the "actual circumstances" (*Civil Law Opinion*, Art 147).

CHN ¶50-301 Administrative or criminal sanctions

In certain circumstances, sanctions may be imposed on persons held responsible for industrial accidents.

Employers may have sanctions imposed on them under the following circumstances:

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- where an employer provides facilities or health conditions that do not comply with State regulations or fails to provide employees with the necessary safety items and facilities, the local labour bureau or other relevant authorities may issue rectification orders and may, in case of accident, impose a fine on the employer. Should the violation be deemed to be serious, the employer may be ordered to halt production or business operations temporarily (*Labor Law*, Art 92)
- where an employer fails to adopt measures against a latent danger that results in a major accident causing loss of life or property, the "person responsible" may be subject to criminal liability pursuant to Art 397 of the *Criminal Law* and Art 92 of the *Labor Law*. In addition, particular reference should be paid to Art 135 of the *Criminal Procedure Law (Revised)*, which provides sentencing guidelines for such criminal violations: maximum imprisonment or detention for three years in normal circumstances, or maximum imprisonment or detention for seven years in particularly serious circumstances
- where an employer has forced employees to perform dangerous operations that result in a major accident causing loss of life, the "person responsible" may be held criminally liable (*Labor Law*, Art 93), and
- where an employer instructs in violation of rules and regulations, or peremptorily orders, an employee to perform dangerous operations which threaten his/her personal safety, or provides odious working conditions or a severely polluted environment, resulting in serious harm to the physical or mental health of employees, it shall be subjected to administrative punishment; if the said conduct constitutes a criminal offence, criminal liability shall be pursued according to law; if the employee suffers harm as a result of the said conduct on the part of the employer, the employer shall be liable for damages. (*Employment Contract Law*, Art 88).

The *Criminal Law* provides that staff and workers who do not submit to and violate management rules at work or force other workers to encounter risks in violation of such rules, giving rise to serious accidents involving injury or death, will be sentenced to not more than three years of fixed-term imprisonment (Art 134). Where the circumstances are especially serious, the sentence will be extended to between three and seven years of fixed-term imprisonment.

The following sanctions are applicable to **both** employers and employees:

- Article 15 provides for imprisonment for up to seven years where a person negligently causes fires, breaches of dykes, explosions, poisonings, or other accidents that lead to serious injury or death, or causes loss of public or private property, and
- where a person violates regulations concerning the control of explosives, combustibles, or of radioactive, poisonous or corrosive materials, thereby

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CHN ¶50-561 Trade secrets

There is no specific law dealing with trade secrets in China. The term "trade secrets" (also known as "commercial secrets") is defined by the PRC *Anti-Unfair-Competition Law* "as technical information and operational information which have not yet been known to the public and which are of practical use and can bring economic benefits to their lawful owners and which have been protected under confidentiality measures taken by the lawful owners".

However, the law has no express application to employment relations. The major issue relating to trade secrets which concerns employers and employees relates to the non-disclosure of proprietary information and confidentiality obligations. The *Labor Law*, the *Employment Contract Law* and its relevant implementation rules address this issue. Please see the section on "Non-disclosure and Confidentiality in Termination" at CHN ¶80-671.

Case example

CHN ¶50-581 Chai v The company (1999)

Extension of working hours of an ill employee

Facts

On 30 April 1999, the Company requested Chai and others on a list to work overtime during the Labor Day holidays from 1–3 May. Chai told the Deputy Head and the Director that he could not work overtime due to illness, but the Company rejected this excuse. Chai did not come to work during the holidays. On 4 May, the Company decided to suspend his work without pay, viewing the three day holidays as Chai's absence without justification. The Company further refused to pay Chai a bonus for the month because he missed working overtime without a valid reason.

Issues

According to Art 41 of the *Labor Law*, an employing unit may extend an employee's working hours after consulting with the trade union and/or its workers. The extension should not exceed one hour per day. The maximum is three hours per day in special circumstances and 36 hours per month. According to the *Labor Law Implementation Opinions*, where an agreement is not reached, the employing unit may extend the working hours within the limit of the *Labor Law*. Employees may refuse to work overtime if the employer extends working hours in violation of the *Labor Law*. An employer cannot force an employee to work overtime if the employee cannot work due to health or family reasons.

Decision

The Labor Dispute Arbitration Committee revoked the Company's decision and required the Company to pay the proper salary and bonus to Chai.

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TRAINING AND DEVELOPMENT

The role and objectives of training and development .... CHN ¶60-001
Deciding when to train .... CHN ¶60-031
Setting objectives .... CHN ¶60-051
Evaluation of training .... CHN ¶60-101

The role and objectives of training and development

Introduction .... CHN ¶60-001
Trends affecting training and development .... CHN ¶60-011

CHN ¶60-001 Introduction

Training and development in the PRC is receiving more and more attention. In some cases, this attention focuses on technical expertise as the complexity and scale of production being introduced into China by foreign investors continues to rise rapidly. In other cases, the emphasis is more on "soft" skills, such as team-building and enhancing effective communication between the local and foreign managements.

One additional and increasingly widely-used method of training is executive coaching of both local and foreign managers. This specialisation, usually based on extensive one-on-one sessions, aims to identify weak points in senior-level executives' working methods and styles and to devise solutions to these.

Factors driving change

The traditional mainland China workplace has not invested in continuous training. This is due largely to the somewhat static nature of the working environment in all sectors. With a small number of notable exceptions, Chinese enterprises have not been adaptive organisations, failing to keep up to speed with global competitors. As such, the pressing need to train the workforce at every level to be able to adapt to change and master a whole range of new skills that have driven training and development programmes in developed economies has not been at the forefront. Yet arguably this area is of prime importance for organisations to grow and develop their business.

Instead, the training infrastructure that does exist has largely been driven by a political agenda of promoting government policies and maintaining tight control of the workforce. Two factors can be taken into account here by foreign investors and their HR managers. Firstly, they will not find a mindset or infrastructure conducive to world-class training and development amongst their Chinese partners, and will to a large extent need to build this from scratch. Secondly, programmes to empower workers and staff outside the auspices of the official union structure may be looked on askance.

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Where the individual has contributed to the basic old age insurance scheme for less than 15 years, he/she is entitled to a lump sum payment of the balance of his individual basic old age insurance account, rather than monthly payments.

However, since the function of the basic old age insurance scheme is to maintain the basic living standard of retired employees, the benefits a person can receive from it are limited.

Penalty

According to the *Premiums Collection Regulations*, violators are subject to an order of correction, fines, disciplinary dispositions, criminal penalties, or late payment fee for delaying payment of premiums. These penalties are for employers that do not conduct proper social insurance registration, do not properly keep relevant accounts and information, or that delay payment of the social insurance premiums, including the old age insurance premiums.

CHN ¶70-101 Enterprise supplemental old age insurance scheme (Enterprise pensions)

The term "enterprise supplemental old age insurance scheme" under the law refers to an old age insurance scheme provided in addition to the basic old age insurance scheme. The State encourages enterprises to establish these on behalf of employees;and enterprises may decide at their sole discretion whether they will implement it.

The *Enterprise Pensions Trial Provisions*, issued by the Ministry of Labor and Social Insurance on 30 December 2003 and effective on 1 May 2004 has replaced the *Opinions Concerning the Establishment of Enterprise Supplemental Old Age*, issued by the Ministry of Labor on 29 December 1995 (Supplemental Old Age Insurance Opinions), to lay down the guidelines on implementation of supplemental old age insurance scheme on a trial basis.

Qualifications for participating enterprises

The supplemental old age insurance schemes voluntarily established by employers and employees are referred to as "enterprise pensions" under the Enterprise Pensions Trial Provisions. An enterprise pension may be established if the enterprise satisfies the following basic requirements:

- it participates in the basic old age insurance plan scheme and fulfilling its contribution obligations
- it has corresponding economic strength and ability, and
- it has established a collective consultation and negotiation mechanism.

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Procedural requirements

Collective consultations and negotiations between the enterprise and its trade union or employees' representatives are required to decide upon the establishment of an enterprise pension and to adopt the enterprise pension plan. An enterprise pension plan shall cover the following issues:

(1) scope of participants

(2) sources of funds

(3) management of individual accounts of enterprise pension

(4) management of pension funds

(5) method of calculation and payment

(6) conditions for payment

(7) organisational administration and supervision method

(8) suspension of contribution, and

(9) other agreed matters.

The adopted enterprise pension plan shall be reported to the local labour administrative departments above the county level. The plan will come into effect if the government department does not raise any objection within 15 days after its receipt.

Sources of contributions

The contributions to an enterprise pension fund are made jointly by the employer and its employees. The employer is allowed to deduct the individual contributions from the salaries paid to its employees. The contributions made by the employer every year shall not exceed one-twelfth of the enterprise's total payroll expenses of the preceding year. The enterprise pension fund is comprised of the contributions made by the employer and its employees and the gains from the fund investment.

Individual old age insurance account and payment

The contributions made by the employer will be credited into the employee's individual account according to the ratios provided by the enterprise pension plan and the contributions made by the employee himself will be fully credited into his individual account. Net gains from fund investment will also be credited into the employee's individual account proportionally. When the employee retires, he may withdraw the balance of this account either in a lump sum or in instalments. If he decides to withdraw the pension payment in instalments, any balance of this account will be inherited by the heir(s) upon the employee's death.

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The State Council Decision on Establishing Urban and Township Employee Basic Medical Insurance System (Medical Insurance Decision)

Promulgated by the State Council on 14 December 1998 and came into effect on the same date, this decision applies to the SOEs, collective enterprises, foreign invested enterprises, private enterprises, government offices and institutions, social organisations, and private entities and their employees.

It requires these entities to set up the basic medical insurance system for their employees and contains detailed guidelines.

The Unemployment Insurance Regulations

These regulations cover the SOEs, urban collective enterprises, foreign-invested enterprises, private enterprises, and urban institutions and their employees. The regulations provide details on the funding, administration, eligibility, and benefits of unemployment insurance.

CHN ¶70-691 Employee welfare

The Labor Law

Article 76 of the *Labor Law* lays down the principle that employers should create conditions for the improvement of collective welfare and enhancement of welfare benefits for their employees.

Ministry of Finance, Notice on the Increase of the Allocation Ratio of Welfare Funds and Adjustment of the Allocation Basis for Welfare Funds and Education Expenditures for State-owned Enterprises Employees (SOE Welfare Funds Notice)

SOEs are required to make contributions equivalent to 14% of the aggregate amount of an employee's wages (minus various bonuses) to the EWF. The EWF is sometimes referred to as the "welfare fees" (Fu Li Fei).

As indicated by the relevant enterprise finance rules, the EWF normally is used for following purposes:

- medical expenses for employees (including the premiums for the social medical insurance schemes)
- wages paid to internal medical staff and medical administrative fees
- expenses for travel to other places to receive medical treatment for work-related injuries
- subsidies for needy employees
- wages of staff of enterprise-funded facilities such as baths, barbers, nurseries, and kindergartens, and
- other expenditures set aside from the employees' welfare fund in accordance with the stipulations of the state.

Contributions to the EWF are listed as costs and expenses of the enterprise and are therefore deductible before taxation.

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The Ministry of Finance, Supplemental Provisions on Implementation of the New Enterprises Financial System in Foreign-invested Enterprises

They require an allocation of part of the after-tax profits to the EBWF. This fund is to be used for collective welfare items such as non-recurrent bonuses to employees, subsidies for purchase, construction, and repair of houses for employees, etc. The allocation to the EBWF is to be determined by the board of directors.

These rules also provide that an FIE should allocate the welfare fees for the local employees but they do not specify the rate. Many FIEs and SOEs allocate 14%. Some FIEs choose to make welfare fee payments to their employees instead of setting up an EWF. (This saves the trouble of setting up and managing such a fund.)

According to relevant tax rules, if the annual aggregate of those payments does not exceed 14% of the total wages of all employees, then the FIE is allowed to deduct those payments as expenses before taxation.

The PRC Company Law (Company Law)

Under the old *Company Law*, a company was required to allocate 5–10% of their after-tax profits to the "statutory provident fund" (SPF) for the employee's collective welfare purposes. The revision of the *Company Law* in late 2005 has deleted such provision.

According to the *Enterprise General Financial Rules*, revised on 4 December 2006, and the *Enterprise Accounting System Rules*, other enterprises must also contribute to the SPF (this does not include FIEs, which are obligated to contribute to the EBWF, the equivalent of SPF). It is likely that the deletion of such requirements by the *Company Law* will lead to the revision of the relevant provisions of these rules so that an SPF will no longer be required for any type of enterprise. It also remains to be seen whether the laws on FIEs will also be revised to remove the requirement on contribution to the EBWF.

Regulations on the Administration of Housing Provident Fund (HPF Regulations)

These rules require State institutions, SOEs, city and town collective enterprises, FIEs, city and town private enterprises, and non-profitable organisations, together with their employees, to make a contribution equal to a certain percentage of the employees' wages to a long-term housing provident fund.

The HPF system, which forms part of the social insurance system, was established to assist employees' needs in purchasing, building, and renovating their residential houses.

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CHN ¶80-311 Alternatives to dismissal

According to Art 25(2) of the *Labor Law*, where an employee violates labour discipline or the rules and regulations of the enterprise, the employer is allowed to dismiss him/her if such violation is serious. Article 39(2) of the *Employment Contract Law* has deleted the wording "labour discipline", so only a serious violation of an employer's rules and regulations constitutes cause for summary dismissal.

There is no clear definition for what is "serious". Past court cases, which are not binding but provide guidance, indicate that if the employee is a first-time offender and/or shows repentance, the violation may not be regarded as serious and therefore may not justify dismissal.

The *Labor Law* and the *Employment Contract Law* permit companies to formulate their own rules provided that they are not in violation of laws or regulations. Article 4 of the *Employment Contract Law* further provides that when an employer formulates, revises or decides on internal regulations or material matters, that have a direct bearing on the immediate interests of its employees, such as those concerning labor compensation, work hours, rest, leave, work safety and hygiene, insurance, benefits, employee training, work discipline or work quota management, the same shall be discussed by the employee representative meeting or all the employees. The employee representative meeting or all the employees, as the case may be, shall provide proposals and comments, whereupon the same shall be determined through consultations with the labour union or employee representatives conducted on the basis of equality. Internal regulations and decisions on material matters, that have a direct bearing on the immediate interests of employees, shall be made public or be communicated to the employees by the employer. The purpose is to ensure that the company's rules can serve as the basis for making a decision to dismiss an employee if the company has adopted the rules through the abovementioned legal procedures.

In practice, for the purpose of avoiding any possible violation of the laws or regulations, companies should refer to the *Rewards and Punishments Regulations* when preparing their rules. Internal disciplinary rules like those contained in the *Rewards and Punishments Regulations* are likely to be recognised by the labor dispute arbitration committee or court.

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Courts and tribunals

Jurisdiction .... CHN ¶80-321
Legislation .... CHN ¶80-331
Legal framework .... CHN ¶80-341
Consultation .... CHN ¶80-351
Mediation .... CHN ¶80-371
Arbitration .... CHN ¶80-421
Litigation .... CHN ¶80-521

CHN ¶80-321 Jurisdiction

China has a four-level court system: the Supreme People's Court sits in Beijing; the Higher People's Courts sit in the provinces, autonomous regions, and special municipalities; the Intermediate People's Courts sit at the prefecture level and also in parts of provinces, autonomous regions, and special municipalities; and the Basic People's Courts sit in counties, towns, and municipal districts. The Special Courts handle matters affecting military, railroad transportation, water transportation, and forestry.

The Supreme People's Court is the judicial organ of the highest level in China and is responsible to the National People's Congress and its Standing Committee. The Higher People's Courts may try the cases that materially influence the area within its jurisdiction.

The Intermediate People's Courts may try any:

- major foreign-related cases
- major cases within its jurisdiction, and
- cases designated by the higher people's courts (including maritime cases and patent disputes, etc).

The Basic People's Courts are the trial courts for most cases, including labour dispute cases. Any trial court decisions may be appealed to the courts at the next higher level. The appeal decisions of such higher courts are final and binding.

CHN ¶80-331 Legislation

The legislation governing labour disputes resolution is as follows:

- *Labor Law (1994)*
- *Labor Disputes Mediation and Arbitration Law (2007)*
- *Explanation on Questions Regarding the Governing Law for the Trial of Labor Disputes (2001)* (Governing Law Explanation)
- *Explanation on Questions Regarding the Governing Law for the Trial of Labor Disputes II (2006)* (Governing Law Explanation II).

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The labour dispute arbitration committee may appoint ex-judges, scholars, lawyers or human resources or trade union professionals to be arbitrators (Art 20).

Time frame

The party that requests arbitration should file a written application with the Labor Arbitration Committee within one year from the date he knows or should have known that there has been a violation of his rights or interest (Art 27).

Procedures

Upon receipt of the application, the arbitration committee will follow the following procedures:

(1) Within five days of receipt of the application, the committee will determine whether or not to accept the case (Art 29).

(2) If the case is accepted, the committee should send a copy of the application for arbitration to the respondent within five days from acceptance of the case. If the case is rejected, the committee will state the reasons (Art 29–30). A common reason for rejecting the application is that the case involves economic interests between the parties arising from contractual relationships or from relationships other than a labour relationship.

(3) The committee will establish an arbitration tribunal to handle the labour dispute raised in the application. Such a tribunal is usually composed of three arbitrators, but if the case is relatively simple and straightforward, the committee may decide to appoint only one arbitrator (Art 31).

(4) Within 10 days of receipt of a copy of the application for arbitration, the respondent has to submit a response and relevant evidence to the committee. The respondent's failure to submit the response and the evidence, or a delay in submitting the same will not affect the hearing of the case (Art 30).

(5) The committee will inform the parties of the constitution of the tribunal within five days from the date of acceptance of the application (Art 35).

(6) Five days in advance, the tribunal will inform the parties of the date, time, and place for the arbitration hearing. If either party fails to attend the hearing without reasonable ground or retreats during the hearing without the arbitration tribunal's consent, the tribunal may (in respect of the applicant) dismiss the case or (in respect of the respondent) may give an award in favour of the applicant in the respondent's absence (Art 35–36).

(7) Either party may appoint authorised representatives to attend the hearing, provided that the names of the appointee and a validly signed or sealed appointment letter must be filed with the committee. The

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appointment letter should state appointed matters and the scope of power of the appointee (Art 24).

(8) The tribunal will first consider the facts. Based on those facts, it will attempt to initiate mediation between the parties with a view to settle the dispute amicably. The tribunal will then prepare a written settlement agreement which will become legally effective from the date of service of the settlement agreement on the parties (Art 42).

(9) If the mediation fails, the tribunal will proceed with the hearing and make an arbitration decision within 45 days from the date of the application for arbitration (Art 43) based on the majority view of the arbitrators (Art 43 & 45). Subject to the approval of the committee, the time limit for delivering the arbitration decision may be extended by a maximum of 15 days (Art 43).

(10) If either party is not satisfied with the arbitration decision, it may appeal to the People's Court within 15 days from the date of receipt of the arbitration decision (except for certain decisions which are final on the employer, see CHN ¶80-501). Failure to appeal within the time limit will cause the arbitration decision to take immediate legal effect (Art 47–48 & 50).

(11) If either party fails to comply with the arbitration decision, the other party may apply to the People's court for mandatory enforcement (Art 51).

CHN ¶90-331 Litigation

In a labour dispute, if either party is not satisfied with the arbitration decision, it may appeal to the People's Court. The dispute must be first arbitrated. Without satisfying this condition, the parties cannot bring the dispute before a court.

There are certain disadvantages in starting litigation proceedings in order to resolve a labour dispute. It is both costly and time-consuming to obtain the court's judgment. Employers may run the risk of being required to disclose certain confidential information, such as operational and management policies or procedures, to the public when the case is heard before the court.

In practice, it is uncommon for the employer and the employees to resolve a labour dispute by litigation. Nevertheless, if the parties choose to do so, the *Civil Procedure Law* will apply.

CHN ¶90-341 Avoiding disputes

Employment contracts

The most effective way to avoid a labour dispute is to have a comprehensive employment contract with the employees. It is recommended to use plain

Article 23 A labour contract shall be promptly terminated on the expiry of its term of duration or when conditions occur for termination of the labour contract as agreed by the parties concerned.

Article 24 The parties to a labour contract may dissolve a labour contract, subject to agreement following consultation.

Article 25 An employer unit may dissolve a labour contract in any of the following circumstances:

(1) where it is proved, on the expiry of the probationary period, that a worker has failed to meet employment requirements;

(2) where a worker has seriously violated labour discipline or the rules and regulations of the employer unit;

(3) where a worker has committed serious dereliction of his/her duties or has practised favouritism or other irregularities resulting in serious losses being incurred by the employer unit;

(4) where a worker has been accused of criminal liability in accordance with the law.

Article 26 An employer unit may rescind a labour contract in any of the following circumstances, however, written notice shall be provided to a worker in person, thirty (30) days in advance:

(1) where, after undergoing a period of medical treatment, a worker with an illness or non-work-related injury is unable to perform his original work duties and is also unable to perform another job arranged by the employer unit;

(2) where a worker is not competent to perform the job and remains unqualified even after training or being moved to another post;

(3) where a labour contract can no longer be implemented due to major changes in the objective conditions which were relied on as the basis for concluding the labour contract and an agreement to amend the labour contract cannot be reached by both parties through consultation.

Article 27 If an employer unit genuinely needs to reduce staff during a period of statutory reorganisation due to the unit being on the verge of bankruptcy or due to major difficulties in its production and business operations, the trade union, or all workers and staff, shall be informed of the facts of the situation thirty (30) days in advance; and staff may be reduced after the opinions of the trade union, or all workers and staff, have been heard, and a report made to the labour administration department.

Where an employer unit has retrenched staff in accordance with the provisions of this Art. and recruits workers within six (6) months, those staff who were retrenched shall have priority in recruitment.

Article 28 If a labour contract is rescinded by an employer unit in accordance with the provisions of Art. 24, 26 or 27 of this Law, appropriate compensation shall be provided pursuant to relevant State regulations.

Article 29 An employer unit shall not be permitted to rescind a labour contract in accordance with the provisions of Art. 26 or 27 of this Law in any of following circumstances:

(1) where a worker suffers from an occupational disease or a work-related injury and has been confirmed as being totally or partially unable to work;

(2) where a worker suffers from an illness or injury form which medical treatment within a stipulated period is allowed;

(3) where a female worker is pregnant, on maternity leave or within the stipulated period for nursing;

(4) in other circumstances as stipulated in laws and statutory regulations.

Article 30 If a labour contract is rescinded by an employer unit which has been deemed improper by the trade union, the trade union shall have the right to object. If an employer unit is found to have violated laws, statutory regulations or the labour contract, the trade union shall have the right to demand correction; the trade union shall support and assist a worker who applies for arbitration or takes legal proceedings against the employer unit.

Article 31 A worker rescinding a labour contract shall inform the employer unit in writing thirty (30) days in advance.

Article 32 A worker may, at any time, advise the employer unit to terminate a labour contract in any of the following circumstances:

(1) during the probationary period;

(2) where an employer unit forces the worker to work through means of force, threat or illegal restriction of personal freedom;

(3) where an employer unit fails to pay labour remuneration or to provide work conditions stipulated in the labour contract.

Article 33 The workers of an enterprise may enter into a collective contract on labour remuneration, working hours, rest days and holidays, labour safety and hygiene, insurance and welfare and other related matters. A draft collective contract shall be submitted to the workers congress, or to all of the workers, for discussion and adoption.

A collective contract shall be signed by the enterprise and the trade union on behalf of the workers; or shall be signed by the enterprise and a representative elected by the workers.

Article 34 A collective contract, after signing, shall be submitted to the labour administration department. A collective contract shall be deemed to take effect if the labour administration department raises no objections within fifteen (15) days of receiving the collective contract.

Article 35 A collective contract signed in accordance with the law shall have legal binding force on the enterprise and all of its staff and workers. The working conditions and labour remuneration standards stipulated in a labour contract which has been signed by an individual worker and an enterprise shall not be lower than those stipulated in a collective contract.

Chapter 4 — Working Hours, Rest Days and Holidays

Article 36 The State shall implement a system of daily working hours for each worker not in excess of eight (8) hours and average weekly working hours not in excess of forty four (44) hours.

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Article 88 Under any of the following circumstances, the employer shall be subject to administrative punishment pursuant to the law; where the case constitutes a criminal offence, criminal liability shall be pursued in accordance with the law; where a worker suffers damages, the employer shall bear compensation liability:

(1) the employer uses means such as violence, threat or illegal restriction of personal freedom to coerce a worker into provision of labour;

(2) the employer gives orders which violate the rules or force a worker to engage in risk work which endangers the worker's personal safety;

(3) the worker is subject to humiliation, physical punishment, beating, illegal searches or detention by the employer;

(4) bad working conditions and severe environmental pollution which causes the worker to suffer serious damages to physical and mental health.

Article 89 Where an employer violates the provisions of this Law in failing to show written proof of rescission or termination of labour contract to the worker, the labour administrative authorities shall order the employer to make correction; where the worker suffers damages thereto, the employer shall bear compensation liability.

Article 90 Where a worker violates the provisions of this Law in rescission of labour contract or violates the provisions of a labour contract on confidentiality obligation or non-competition restrictive covenant and causes the employer to suffer damages, the worker shall bear compensation liability.

Article 91 Where an employer employs a worker who has not rescinded or terminated his/her labour contract with the existing employer and causes the existing employer to suffer damages, the employer shall bear compensation liability jointly and severally.

Article 92 A labour secondment unit which violates the provisions of this Law shall be ordered by the labour administrative authorities and the relevant authorities to make correction; where the case is serious, a fine ranging from RMB1,000 to RMB5,000 per person shall be imposed and the business licence shall be revoked by the administration for industry and commerce; where a seconded worker suffers damages thereto, the labour secondment unit and the secondment employer shall bear compensation liability jointly and severally.

Article 93 For illegal acts and crimes committed by employers which do not possess legitimate business qualifications, legal liability shall be pursued in accordance with the law; where a worker has provided labour services, the unit or its capital contributory(ies) shall pay labour remuneration, economic damages and compensation to the worker pursuant to the relevant provisions of this Law; and shall bear compensation liability if a worker suffers damages thereto.

Article 94 Where an individual contractor violates the provisions of this Law in recruiting workers and the workers suffer damages thereto, the organisation which awards the contract and the individual contractor shall bear compensation liability jointly and severally.

Article 95 Labour administrative authorities and the relevant authorities and their personnel that are guilty of dereliction of duties, non-performance of statutory duties or exercise of official powers in violation of law which cause a worker or an employer to suffer damages shall bear compensation liability; person(s)-in-charge and other directly accountable personnel shall be subject to administrative punishment; where the case constitutes criminal offence, criminal liability shall be pursued in accordance with the law.

Chapter 8 — Supplementary Provisions

Article 96 Where the laws and administrative regulations or the State Council provide otherwise for the conclusion, performance, variation, rescission or termination of labour contracts between institutions with their staff under the existing employment scheme, such provisions shall prevail; where there are no provisions, the relevant provisions of this Law shall prevail.

Article 97 Existing labour contracts concluded pursuant to the law prior to the implementation of this Law and valid as of the date of implementation of this Law shall continue to be performed; the number of instances of consecutive conclusion of fixed-term labor contracts stipulated in item (3) of the second paragraph of Article 14 shall be computed with effect from the renewal of fixed-term labour contracts following the implementation of this Law.

Where a written labour contract has not been concluded for a labour relationship established before the implementation of this Law, a written labour contract shall be concluded within one month from the date of implementation of this Law.

Where a labour contract valid as of the date of implementation of this Law is rescinded or terminated following the implementation of this Law and whereby economic damages shall be paid pursuant to the provisions of Article 46, the duration for economic damages shall commence from the date of implementation of this Law; where an employer is required to pay economic damages to a worker pursuant to the relevant provisions prevailing before the implementation of this Law, such relevant prevailing provisions shall be complied with.

Article 98 This Law shall be effective 1 January 2008.

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leading bodies of the unit undertaking a project. The leading bodies shall remain stable so as to be held responsible for the construction project through to the end.

Article 6 The parties involved in the undertaking of a contract project under the economic responsibility system shall define the content, conditions, responsibilities, economic rights and interests in the undertaking through consultation, contracts or other legal procedures. They shall co-ordinate closely to ensure the fulfilment of the contract tasks.

Chapter II — Forms Of The Responsibility System

Article 7 In accordance with the characteristics and concrete conditions of construction projects, various forms of the responsibility system may be adopted, in which, for example:

(1) the building unit must fulfill its contract with the higher-level department in charge of a project;

(2) the unit in charge of construction must fulfill its contract with the superior department in charge of a project or the building unit;

(3) the department at a lower level in charge of a project must fulfill its contract with the superior department in charge;

(4) construction projects which require comparatively simple building techniques and a comparatively greater labour force, such as railway roadbeds, highways, water conservation projects and buildings for civil use, may be undertaken by units organised in a unified way by localities taking full responsibility;

(5) a comprehensive development unit or a designing unit must fulfill its contract with the department in charge;

(6) if the necessary conditions exist, a building unit may assume full responsibility to a region or a department for the fulfilment of building tasks, not referring to specific projects.

Article 8 In implementing the economic responsibility system for the undertaking of a construction project by a unit, no matter what form of responsibility system may be adopted, tasks shall be made concrete for people at each level in the unit.

If a department, a bureau or a building unit undertakes a project, it shall conclude a contract with a construction unit in accordance with the requirements for the undertaking of the project. The economic responsibility system shall be instituted at every level within a construction unit.

In accordance with the requirements set for the undertaking of a contract project, the unit responsible for it shall sign agreements or contracts with the units concerned, such as the surveying and designing institutes, material and equipment supply units, so as to ensure the fulfilment of the tasks undertaken.

Article 9 In a region or a department where necessary conditions exist, a construction project may be undertaken by way of issuing calls for tenders on a trial basis. Concrete rules for implementation shall be worked out by the relevant departments and regions, but shall be reported to the State Planning Commission for the record.

Chapter III — Basis for Contract Projects

Article 10 In undertaking construction projects under contract, the procedures for capital construction shall be followed, preconditions for construction shall be fulfilled, and approval of documents describing design tasks, initial design and general budgetary estimate shall be obtained. These projects shall be included in the investment plans for fixed assets under the administration of relevant departments at various levels.

For those projects involving ''five fixed items'', that is, where the construction scale, the total investments, building time limit, economic results and the main conditions for co-ordination are all fixed, the items serving as the basis for undertaking the contract projects shall be re-examined and approved.

Article 11 Norms for undertaking contract projects shall be calculated and determined in accordance with the existing quotas and standards approved by the state or a department, a province, a municipality or an autonomous region. In the absence of unified quotas and standards, norms shall be worked out jointly by the designing and construction units and the Reconstruction Bank in accordance with the principle of average advanced level, and reported to the department in charge for approval.

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Chapter IV — Content of Contract Projects

Article 12 Any unit undertaking construction projects shall be responsible for the following main items:

1. It is responsible for investment. The amount of investment shall be determined by the approved designing budgetary estimate or the approved budget of the construction blueprint. According to concrete conditions, contracts for investments may be based on either the designing budgetary estimate, the budget of construction blueprint, including the safety factor, or the cost of building per square metre of a project.

2. It is responsible for building time. Building time shall be determined according to the reasonable time limit set by the state plan or by the superior department in charge.

3. It is responsible for quality. The relevant technical standards, norms and the quality required by the design of the project shall be taken as the standard for checking the quality of the project.

4. It is responsible for the amount of important materials used, taking as its standard the amount of principal materials set in the list provided by the designing papers or the list of principal materials agreed upon by the contracting parties.

5. It is responsible for the formation of comprehensive productive capacity. In building an industrial project, the principal and subsidiary parts and the part for handling the ''three wastes'' shall be constructed at the same time in compliance with the designing stipulations and turned into comprehensive productive capacity to suit the designed scope of construction. For projects of some industrial branches, the units undertaking them are responsible for the duration of time within which the designing productive capacity shall be reached. For non-

(2) During his/her term of appointment a foreign national shall not be permitted to lend a work permit to another person or to carry it outside the territory of China. When a foreign national leaves his/her post, the work permit shall be recovered by the issuing authority.

(3) A work permit issuing authority shall send copies of the foreign employees' work permits to the departments of labour and personnel and public security where the enterprise is located, for their records.

The issue of work permits to foreign nationals in foreign investment enterprises is serious policy work. All regions and departments are therefore requested to strengthen the administration of issuing work permits to foreign nationals in foreign investment enterprises in accordance with the abovementioned provisions.

The Ministry of Foreign Economic Relations and Trade

The Ministry of Labour and Personnel

24 July 1986

REGULATIONS CONCERNING THE LABOUR PROTECTION OF FEMALE STAFF AND WORKERS

CHN ¶110-081

Adopted on 28 June 1988 at the Eleventh Regular Session of the State Council. Promulgated on 21 July 1988 and effective from 1 September 1988.

Article 1 These Regulations are formulated in order to safeguard the lawful rights and interests of female staff and workers, to reduce and solve the special difficulties encountered by female staff and workers in their labour and work (hereinafter collectively referred to as ''Labor'') due to their physiological characteristics, and to protect their health, so as to promote socialist modernisation.

Article 2 These Regulations shall apply to the female staff and workers of all state agencies, mass organisations, enterprises and units (hereinafter collectively referred to as ''Units'').

Article 3 Any unit which is suitable for women to engage in labour may not refuse to employ female staff and workers.

Article 4 During the pregnancy, maternity leave and nursing period of female staff and workers, their basic salaries may not be reduced and their labour contracts may not be cancelled.

Article 5 It shall be forbidden to arrange for female staff and workers to engage in labour in mine pits, labour involving physical labour of the fourth (4th) degree of intensity as specified by the state, or any other kind of labour to be avoided by female staff and workers.

Article 6 During the menstrual period of female staff and workers, the Units employing them may not arrange for them to engage in labour at high altitudes, in low temperatures or involving contact with cold water, or labour involving physical labour of the third (3rd) degree of intensity as specified by the state.

Article 7 During the pregnancy of female staff and workers, the Units employing them may not arrange for them to engage in labour involving physical labour of the third degree of intensity as specified by the state or any kind of labour to be avoided during pregnancy, and may not extend their labour hours beyond the usual labour day. For those who are no longer competent at their original Labor, the volume of labour shall be reduced, or other labour shall be arranged, according to a certificate from a medical department.

Generally, no night-shift labour may be arranged for female staff and workers in or past the seventh (7th) month of pregnancy and they shall be given certain rest periods during their labour hours.

The time spent by pregnant female staff and workers antenatal examination during labour hours shall be deemed to be labour hours.

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assuming responsibility for implementation of the contract, in accordance with the principles of the party in charge of operations being the party responsible for filling in reports.

Article 10 If a foreign project contracting company assigns or sub-contracts contract fulfillment duties to a non-foreign project contracting company, the foreign project contracting company shall be responsible for reporting target indicator statistics for the various items.

Article 11 The US dollar shall, without exception, be used as the monetary indicator unit for the various items relating to foreign contracting and labour service statistics. The various types of currencies shall be converted into US dollars. Contract amounts shall, at the time of signing of the contract, be converted into US dollars at the rate stipulated for the respective type of currency in the country (region) where the project is located pursuant to the intermediate price (namely, the buying and selling average price) conversion rate. Other indicators shall be converted in accordance with the exchange rate determined pursuant to the financial affairs of the company itself during the reporting period.

Chapter IV — Types of Statistical Report Forms and Requirements

Article 12 Statistical report forms in this System include the following six types:

1. Foreign contracting and labour service project monthly statistical report (''Jingmao Chengtong Form 1'').

This form shall reflect the contract amount for new contracts signed that month for foreign contract engineering and labour service cooperative projects, the fulfilled operating amount and details of personnel changes.

2. Foreign contracting and labour service project comprehensive annual statistical report (''Jingmao Chengtong Form 2'').

This form shall comprehensively reflect the overall situation as regards foreign contract engineering and labour service cooperative projects during the report year. Details of contract amounts, operating amounts and the number of persons overseas at the year's end shall be filled in pursuant to actual numbers, while the economic performance indicators for other items may be calculated and filled in pursuant the actual figures in financial accounting reports for the first three quarters of the year, plus the projected figure for the fourth quarter.

3. Detailed annual report on newly signed foreign contracting and labour service project contracts (''Jingmao Chengtong Form 3'').

This form shall reflect the national (regional) distribution of newly signed contracts during the report year.

4. Detailed annual report on the implementation of foreign contracting and labour service project contracts (''Jingmao Chengtong Form 4'').

This form shall reflect the national (regional) distribution of contracts implemented during the report year and progress details.

5. Foreign contracting and labour service project personnel annual statistical report (''Jingmao Chengtong Form 5'').

This form shall reflect the number of persons dispatched overseas and their composition, number of persons returning from overseas, number of persons overseas at the year's end, annual average number of persons overseas, fatalities overseas, etc, during the report year.

6. Foreign contracting and labour service project economic performance annual statistical report (''Jingmao Chengtong Form 6'').

This form shall reflect the actual economic performance of foreign contracting and labour service projects during the report year.

Article 13 The various type of statistical reports in relation to foreign project contracting companies shall, without exception, use a 16mo format. Within 10 days of the end of each month for monthly statistical reports (Jingmao Chengtong Form 1), within 20 days of the end of each year for Jingmao Chengtong Forms 2 to 5 and within four months of the end of each year for Jingmao Chengtong Form 6, one copy of each form shall be submitted to the MOFERT comprehensive planning department and foreign economic cooperation department respectively and, at the same time, copies shall be presented to the relevant authority in charge or the foreign economic relations and trade office (commission, bureau) of the province, autonomous region, directly administered municipality or municipality with independent planning status, as well as its same level statistics department.

Chapter V — Organisation and Control of Statistical Work

Article 14 All foreign project contracting companies must establish a complete examination and, verification system for statistical reporting, fill in report details accurately in strict accordance with the provisions of this System, ensure that all writing on reports is done carefully and neatly, that numerals are written clearly and that all information filled in is correct. Statistical reports may only be released after being signed by the person responsible for statistical work and the tabulator and affixed with an official seal.

Article 15 The various foreign project contracting companies must improve their leadership in the area of statistical work and assign one deputy general manager to be in charge of statistical work. Each company shall, pursuant to its business circumstances, establish a statistical body or decide on a department to be responsible for statistical work and designate statisticians, as well as safeguard the rights of statisticians and enhance the professional quality of the position of statistician. Relative stability must be maintained with regard to statisticians' work positions. If a statistician is transferred to another post, a job hand-over and take over system must be established to ensure the continuity of statistical work.

Article 16 The overseas representative offices of foreign project contracting companies and overseas specialist teams shall, depending on work requirements, be equipped with statisticians, define statistics-related duties and carry out supervision and inspections.

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