Legal Handbook 5.

Basic of Employment Law in China

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Chapter 01

DEALING WITH EMPLOYMENT LAW

01

LABOR CONTRACT & EMPLOYEE HANDBOOK

- ISI T COMPULSORY TO SIGN A LABOR CONTRACT?

In the case of full-time employment, **a signed written labor contract between the employer and the employee is compulsory**. The contract shall be signed before the end of the first month of employment. If the employer does not enter into a written contract with the employee more than one month has lapsed since they started working the employer will have to pay penalties to the employee up to twice his salary per month of noncompliance.

If an employee still does not have a signed contract one year after starting his/her employment, the employer is automatically deemed to have concluded a labor contract with a non-fixed term.

- WHICH INFORMATION MUST BE PROVIDED IN THE LABOR CONTRACT?

- Identification of the employer: name, domicile and legal representative.
- Identification of the employee: name, domicile, ID card or passport number.
- Term of employment: terms can be open, fixed or designed to end upon the completion of a project.
- Job description and place of work.
- Working hours, rest and leave.
- Remuneration.
- Social insurance and labor protection, working conditions.

In addition to the mandatory provisions specified in the preceding paragraph, the employer and the employee may specify other matters in the employment contract, such as a probation period, training, confidentiality, supplementary insurance and benefits, etc.

Please note that (i) if the employee has worked for the employer for a period of 10 consecutive years or (ii) a fixed-term labor contract has been concluded twice consecutively, the labor contract shall be deemed renewed as a non-fixed term or an open-term contract.

However, according to the Administrative Provisions on Employment of Foreigners in China, the term of the labor contract of foreign employee shall not exceed 5 years, unless the labor contract is duly renewed by the employer with the competent authority in accordance with the law. In other words, if the term of the labor contract of a foreign employee exceeds 5 years or is open-ended, it may be challenged. In practice, according to previous precedents involving disputes based on labor contracts of foreign employees that exceeded 5 years, work permits have sometimes referenced (i) the term agreed in the labor contract (if it is valid), (ii) the term of the valid passport and visa; or (iii) term of the business license of the employer.

- IS IT POSSIBLE TO SET FORTH A PROBATION PERIOD?

The term of the probation period depends on the term of the employment contract but cannot, in any case, exceed 6 months.

Term of Employment Contract	Maximum Probationary Period
Less than 3 months or one-shot job	0
More than 3 months but less than 1 year	1 month
1 year or more but less than 3 years	2 months
3 years or more or open-ended contract	6 months

It is essential to draft and prepare employment contracts, internal employment policies and handbooks for executives and staff for operating in China. Such preparation ensures compliance with Chinese labor law employment requirements. By ensuring their compliance with these restrictions and employing effective human resource strategies, companies can manage employment disputes better.

- HOW TO DRAFT A NON-COMPETE CLAUSE?

According to China labor laws, non-compete provisions shall only be applicable to senior managers, senior technicians or any other employees having an obligation of confidentiality.
The clause shall define the scope, territory, and term of the competition restrictions, provided that the non-compete obligation shall be limited to two years.

A monthly compensation must be defined between the parties (other than severance) due to the enforcement of such a provision. The clause shall also provide for due compensation in case of violation

- HOW IS SENIORITY CALCULATED?

A labor contract can specify that an employee's seniority will be calculated from a date prior to his/her employment with the current company. Under Chinese laws, an employee's seniority is used for calculation of minimum annual leave and calculation of severance payment, for example.

- WHAT IS THE USE OF AN EMPLOYEE HANDBOOK?

The **Employee Handbook** can be considered as a "Code of Conduct" for the employees. It provides for mandatory terms and processes that are not always included in standard labor contracts. The content of the Employee Handbook may differ depending on the industry.

It helps to create a corporate culture and to **institutionalize company values**, so it is easier to demonstrate that an employee has breached the company rules in case of labor dispute. The Employee Handbook shall be signed by every employee and reference to the Employee Handbook shall be made by every labor contract to support the employer's defense in a labor dispute.

EMPLOYMENT– GENERAL RULES

- WHAT ARE THE MANDATORY WORKING CONDITIONS FOR EMPLOYEES IN THE PRC?

- **Minimum Salary:** the minimum salary requirement is determined at the municipal or provincial level. For example, in Shanghai, the monthly minimum salary is RMB 2,480 as of April 1st, 2019.

- **Employee contributions**: employers are obliged to pay a part of the social insurance and housing fund and to deduct and withhold employee personal income tax, the portion of social insurance and housing borne by the employees, and related payments from an employee's salaries. Please note that as of to date, in Shanghai Municipality, it is not compulsory to pay social charges for foreigners. However, in cities such as Beijing, Tianjin, Shenzhen, and Nanjing, among many others, social insurance payments are compulsory for foreign employees.

- **Statutory Holidays:** All employees are entitled to enjoy statutory holidays as prescribed by the State each year as follows, subject to the regulations and may be updated in accordance with the current regulations and its updates:
  - New Year's Day, one-day holiday (January 1).
  - Spring Festival, 3-day holiday (the first day, the second day and the third day of the lunar year).
  - Qingming Festival, one-day holiday (the day of Qingming Festival in the lunar year).
  - Labor Day, 1-day holiday (May 1).
  - Dragon Boat Festival, 1-day holiday (the day of Dragon Boat Festival in the lunar year).
  - Mid-Autumn Festival, 1-day holiday (the day of Mid-Autumn Festival in the lunar year); and
  - National Day, 3-day holiday (October 1, 2, 3).

- **Paid Annual Leave**: Employees who have worked for one (1) or more successive years are entitled to a minimum amount of paid annual leave, from 5 to 15 days based on the total number of years since they started work. The employer may approve the applications for paid annual leaves by considering intentions of employees and the current production and work situation. If the employee does not work for the employer for a full year, the number of annual leaves can be adjusted proportionally.

Working duration	Paid Annual Leave
Up to 1 year	0
More than 1 year but up to 10 years	5 days
More than 10 years but up to 20 years	10 days
More than 20 years	15 days

For example, if an employee started work 11 years ago and has been working for the employer for 7 years, such employee is entitled to have a minimum of 10 days of annual leave. An employee's whole working experience is considered for this calculation, and not only his seniority with his/her current employer.

- **Other Statutory Benefits**: In addition to the statutory holidays and paid annual leaves, the employees are also entitled to sick leave, marriage leave, maternity leave, paternity leave, funeral leave, etc. in accordance with the national and local regulations. Employers should standardize the internal policies (for example, application process, proof and evidence and responsible person) and detail them in the employee handbook.

- HOW TO HIRE AN INTERN?

- **Chinese intern**: Chinese labor laws do not apply to interns who have not yet graduated, and their relationship with the company will be regulated under Chinese civil laws. In order to set forth basic rules with interns (office hours, intellectual property, confidentiality, etc.), the company should enter into an internship agreement.
  However, interns who have already graduated from their university will be considered as employees of the company and will need to sign a labor contract, regardless of their working time (full-time or part-time). If the internship is organized by the intern's school or university, the company may have to enter into an agreement with such institutions.
  Chinese laws do not provide for a minimum salary for interns, the amount will be up to the discretion of the company. No social charges shall be paid for interns, but we advise companies to subscribe to accident insurance that covers interns.

- **Foreign intern**: As of to date, China does not issue visas for foreign interns. We observe that China has established programs with some countries for issuance of visas for foreign interns.
  Depending on the intern's nationality and profile, such programs shall be checked to obtain a proper visa.
  Foreign interns studying in Chinese universities may be allowed to carry out internships in China provided that their university has approved them and they have obtained proper visa authorizations .
  The relationship between a foreign intern and a company may be considered as a labor relationship and a proper working permit shall be obtained in this regard.

- HOW TO WORK WITH CONSULTANTS/FREELANCERS?

If the consultant or freelancer is a Chinese national, the company may consider entering into a service contract with the consultant or his/her company. The relationship will be governed by Chinese civil laws and Chinese labor laws will not apply. The consultant will be liable for the declaration of his/her revenues to the Chinese Tax Bureau.

If the consultant or freelancer is a foreigner, you should make sure that he/she will provide his/her services under a registered Chinese company. Foreigners working in China must enter into a labor contract with their employer and obtain a work permit, otherwise they are considered as illegal workers. Your company will then sign a service agreement with the registered Chinese

- WHAT IS A HUKOU AND HOW CAN MY CHINESE EMPLOYEES OBTAIN IT?

A Hukou is a system of household registration used in China. This legal document records a Chinese national's name, address, date and place of birth, relatives, marital status, etc., and categorizes each Chinese citizen as either an agricultural (rural) hukou or a non-agricultural (urban) hukou.
Each type of hukou enjoys specific rights (government jobs, subsidized housing, education, and healthcare).
Conditions for obtaining a hukou shall be defined on a case-by-case basis as it depends on several factors related to the personal situation of the employee (hometown, place of residence, salary, education, contributions to social insurance, etc.) and the company (registered capital, place of incorporation, etc.).

Assistance to their employees in obtaining urban hukou and the offer of social welfare are key ways for Chinese companies to recruit elite candidates.

FOREIGNERS EMPLOYMENT IN CHINA

- WHAT ARE THE SPECIAL REQUIREMENTS FOR A FOREIGN EMPLOYEE TO BE HIRED BY AN EMPLOYER IN CHINA?

Foreign employees enjoy the same privileges as local employees in terms of minimum salary, working hours, hygiene and rest standards, and leave provisions. If a foreigner is to be hired by an employer in China, a Work Permit and a Residence Permit must be obtained.
Foreign employees enjoy the same privileges as local employees in terms of minimum salary, working hours, hygiene and rest standards, and leave provisions. If a foreigner is to be hired by an employer in the PRC, a Work Permit and a Residence Permit shall be additionally obtained.

To obtain a Work Permit and a Residence Permit, a foreign employee must **not have a criminal record**, be at least 18 years old, be in **good health**, have a **valid passport** or other travel document, and have the **necessary professional skills required for the relevant position**(generally 2 years of work experience in the relevant field are required).

Foreigners' work permits in China are categorized under A, B or C grades by earning the associated amount of points under the point scoring system, or by fulfilling a condition that directly places them in a given category.

Applicants scoring 85 or more points qualify for Tier A; those scoring 60-85 class as Tier B; and those scoring below 60 fall under Tier C. Calculation of points depends on several criteria such as salary, education, work experience, time spent in China, Mandarin proficiency, location of employment in China, age, etc.

Foreign talents meeting specific conditions (awarded for excellence in their field, prize holder, etc.) can directly have access to a grade A work permit.

Individuals falling into the A category can enjoy several benefits not enjoyed by grade B and C workers, including faster administrative procedures.

- WHAT IS THE PROCEDURE FOR A FOREIGN EMPLOYEE TO OBTAIN A WORK PERMIT AND A RESIDENCE PERMIT?

BEFORE ENTERING CHINA:

- **Online Application**
  The employer should log onto Foreigners' Work Management Service System, submit application information online, and provide relevant electronic materials for preliminary review.

- **Apply for a Notice of Work Permit**
  The employee shall submit the work qualification certificate, the health certificate, the employment contract and other materials to obtain a Notice of Work Permit for Foreigners.

- **Apply for a Work Visa**
  Foreigners shall submit the Notice of Work Permit and other materials to apply for a Work Visa to his/her local the embassy or the consulate of the People's Republic of China in his/her home country.

AFTER ENTERING CHINA:

- **Temporary resident form**
  Within 24 hours after the employee enters the PRC, he/she shall register with the police station where he/she is located.

- **Medical Certificate**
  The employee shall complete a health examination with the local international travel medical center.

- **Apply for a Work Permit**
  Within 15 days after the employee enters the PRC, he/she shall apply for the Work Permit with valid visa, employment contract, health certificate and other required documents. An employee shall not start working before obtaining his/her work permit.

- **Apply for a Residence Permit**
  A work permit allows the employee to work in a specific area of China. Once the Work Permit is obtained, the employee can apply for a residence permit with the competent Exit and Entry Management Authority.

- WHAT ARE THE RISKS OF HIRING FOREIGNERS WITHOUT WORK PERMITS?

- **For the foreign individual**: fines ranging from 5.000 RMB to 20.000 RMB and imprisonment for maximum 15 days can be imposed on a foreigner hired without a work permit.

- **For the company**: fines ranging from 10.000 RMB to 100.000 RMB and gain profit confiscation may be imposed on the company hiring foreigners without work permits.

- Please note that an individual who recommends that a foreigner works without a work permit can also be condemned to pay financial fines ranging from 5.000 to 50.000 RMB.

A foreign is considered working illegally if:
- He/she works for a company in China without work permit.
- He/she works for a company in China outside of the authorized field (other company / other occupation) mentioned on his work visa).
- if he/she is a student and the provisions relating to the work-study program are not observed.

- CAN A FOREIGNER SIGN SEVERAL PART TIME LABOR CONTRACTS?

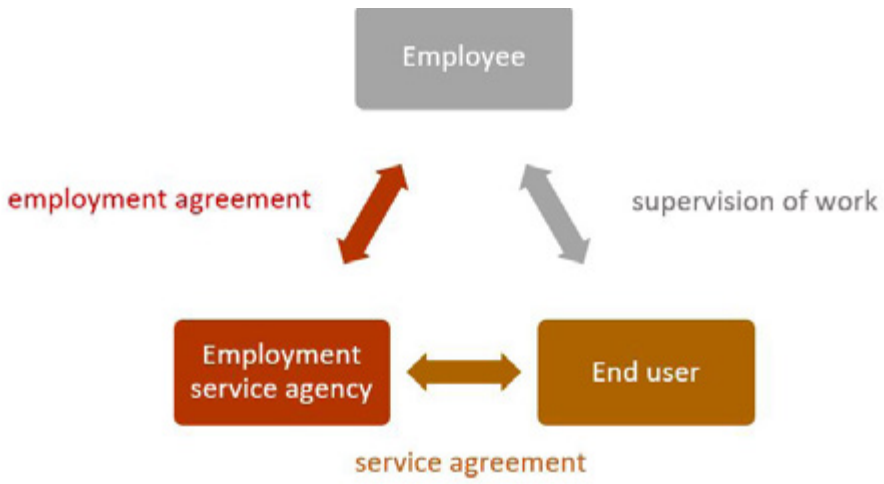
No, according to a Notice from the Shanghai Labor Bureau on the Administration of the Employment of Foreigners in China, a foreigner can only work for the company to which he/she is affiliated with on his/her work visa and must not have part-time employment in other companies, with the exception of companies in the same group.

LABOR DISPATCH

- WHAT IS LABOR DISPATCH?

Labor dispatch is an alternative method of recruitment that refers to the practice of **hiring employees through an employment service agency**. It is used by representative offices of foreign enterprises which are not allowed to directly do business and hire Chinese employees in China. With the enactment of the Labor Contract Law in 2008, it became increasingly common for both foreign and domestic entities to manage and supply their workforce demands. While this option had been legal and very common for many years, when the Interim Provisions on Labor Dispatch (the "Interim Provisions") came into effect on March 2014 and drastically limited labor dispatch agency alternatives and imposed sanctions in case of infringement.

The legal structure for labor dispatch use is outlined below:



- WHAT ARE THE RESTRICTIONS OF LABOR DISPATCHING?

- **10%** – the number of total dispatched employees used by an end-user should not exceed 10 percent of its total number of employees. However, representative offices of foreign enterprises are not subject to such limitation.

- **"Non-core" positions** – labor dispatching is only applicable for temporary, auxiliary and replaceable positions. However, representative offices of foreign enterprises are not subject to such limitations.

- **Two-year fixed term** – the employment service agency's employment agreement with the employee should last at least 2 years.

- **"Equal pay for equal work"** – dispatched employees holding the same positions or doing the same work as directly hired employees shall enjoy the same payment standards of the end-user.

- WHICH ISSUES ARISE WITH INDIRECT EMPLOYMENT?

- The employer in law is removed from the daily control of its employees.
- **Protecting confidential information and intellectual property**: this issue can be resolved by concluding a separate side agreement with the employee covering issues such as confidentiality obligations.

WORKING HOUR SYSTEMS

- WHAT ARE THE MAIN WORKING HOUR SYSTEMS APPLIED IN CHINA?

Working hour systems define the specific working hour, rest period and overtime rate. In China, there are three main working hour systems, i. e. (i) the standard working system, (ii) the flexible working system and (iii) the comprehensive working hour system.

- **Standard working hour system** – is the most common working hour system, where an employee shall work no more than 8 hours per day and no more than 40 hours per week.

- **Flexible working hour system** – applies to certain employees whose working hours are impractical to measure according to the standard working system or whose work needs to be done in a flexible manner. In fact, flexible working hour system generally applies to very limited kind of employees, such as senior management personnel, salespeople, field staff and long-distance transportation drivers. The adoption of flexible working hour system requires the pre-approval of the local labor bureau and the employer will usually indicate the positions that will work under this flexible working hour system.

- **Comprehensive working hour system** – also only applies to limited employees who have particular positions in certain industries, mainly those who must work continuously due to specific natures of their work in certain fields (such as transportation, post and fishery) and employees whose work is limited by seasonal and natural conditions in certain fields (such as geologic survey and resources exploration, construction, tourism). The working hours will be calculated over a given period (i.e. a week, month, quarter, or year), known as the "comprehensive calculation period". The adoption of a comprehensive working hour system is also subjected to the pre-approval of the local labor bureau.

- HOW TO DEAL WITH THE OVERTIME WORK?

Under the standard working hour system, the overtime work compensation is generally as follows:

Conditions	Overtime Compensation
Overtime work at weekdays	Not less than 150% of hourly salary
Overtime work at days of rest (normally Saturday and/or Sunday, except otherwise agreed by the employer and the employees)	• Time-off in lieu; or • Not less than 200% of daily or hourly salary
Overtime work at statutory holidays	Not less than 300% of daily or hourly salary

Under the flexible working hour system, only when the overtime work is required on statutory holidays, overtime compensation shall be made at not less than 300% of daily or hourly salary. However, the specific practice may be different from city to city.

Under the comprehensive working hour system, if the actual working hours during a comprehensive calculation period exceeds the statutory standard working hours (i.e. 8 hours/day and 40 hours/week), then the extra working hours shall be deemed as overtime. Under such circumstances, overtime compensation shall be made at not less than 150% of daily or hourly salary. For the overtime work on statutory holidays, the overtime compensation shall be made at not less than 300% of daily or hourly salary.

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REMUNERATION OF EMPLOYEES

Several considerations should be taken into account when calculating individual income taxes and social insurance obligations, including regional differences, local incentives, the taxpayer's country of origin, and the taxpayer's salary structure, among others.

- HOW TO CALCULATE A NET SALARY IN CHINA?

In China, employee's net salary can be calculated according to the following formula:
net salary = gross salary – social insurance (employee's part) – housing fund contribution (employee's part) – Individual income tax.

- HOW TO CALCULATE INCOME TAX FOR EMPLOYEES?

Individual Income Tax ("**IIT**") in China is levied at a progressive rate. The breakdown of IIT rates in China for the year 2020 are:

Grade	Monthly Taxable income	Tax Rate	Deduction
1	>3000	0.03	0
2	<3000≥12000	0.1	210
3	<12000≥25000	0.2	1410
4	<25000≥35000	0.25	2660
5	<35000≥55000	0.3	4410
6	<55000≥80000	0.35	7160
7	<80000	0.45	15160

As of January 1st, 2019, special expenses incurred by employees are additionally deductible from their taxable income. To be specific, the expenses incurred by the employees for the following items can be deducted at a capped or fixed amount from employees' taxable income: children's education, continuing education, medical treatment for serious illness, house rental, repayment of housing loan and support of the elder parents.

- IS IT COMPULSORY TO PAY SOCIAL CHARGES FOR EMPLOYEES IN CHINA?

Both employees and employers are obligated to make contributions. In general, the employer is liable for calculating and withholding the payments for both parties. China's social security system is made up of five different kinds of insurance, plus one compulsory housing fund as shown in the table below.

Category	Employers' contribution rates	Employees' contribution rates
Pension insurance	Around 20%	Around 8%
Unemployment insurance	0.5 – 1%	Around 0.5%
Medical insurance	5 – 12%	Around 2%
Work-related injury insurance	0.5 – 2%	-
Maternity insurance	0.5 – 1%	-
Housing fund	5 – 12%	5-12%

The contribution rates depend on the city where the social insurance is contributed.

- WHAT OTHER BENEFITS CAN BE GRANTED TO EMPLOYEES AND ARE THEY SUBJECT TO INCOME TAX?

The following list includes typical items of benefits granted which are taxable in China. Please note that this is not a comprehensive list:

- bonuses
- expatriate premiums
- cost-of-living allowances
- mobility premiums
- equity-based compensation
- employer contribution to overseas social security.

- WHICH DOCUMENTS SHALL BE PREPARED TO PROVE PAYMENT OF SALARY?

The employer shall record in writing the amount, time, name and type of salary and other necessary information in relation to payment of salary. The employer shall maintain such records for at least two years for future reference. The employer shall provide a salary checklist for each employee upon salary payment.

MANAGING EMPLOYMENT DISPUTES AND TERMINATING EMPLOYMENT CONTRACTS

In the PRC, labor disputes have increased dramatically in recent years and employers are facing an uncomfortable new reality that employees know their rights and will challenge management to defend them.

Furthermore, due to the better protection of employees and the improved labor dispute solving mechanism, labor disputes will be characterized by an increase in collective disputes and conflicts between competing interests.

- HOW TO RESOLVE LABOR DISPUTES IN CHINA?

Either the employer or the employee may refer a dispute to the relevant Labor Dispute Arbitration Committee within the Municipality where the company is registered for settlement. Complaints must be filed for arbitration within a delay of one year period , which shall be calculated from the date a party comes to know or is expected to have known the infringement of its rights.

-UNDER WHICH CIRCUMSTANCES CAN AN EMPLOYER DISMISS AN EMPLOYEE?

Without notice: an employer can dismiss an employee without notice and no severance payment only in limited circumstances, such as serious violation of workplace's rules or if the employee is convicted of a criminal offence or during the probation period if the employee is shown not to satisfy the conditions of employment.

With notice: an employer may dismiss an employee with a 30-day notice or by paying one month of salary in the following circumstances:

- If the employee is unable to assume his/her original duties or any new duties after returning from treatment for illness or injury.
- If the employee is not qualified for the position and remains unqualified even after receiving training or being transferred to another position.
- After mutual consultation, if the employer and the employee cannot reach an agreement to modify the employment contract when the purpose for which the employee was originally hired does not exist anymore.

- HOW TO DISMISS AN EMPLOYEE WITH POOR PERFORMANCE?

An employer who wishes to **terminate on the grounds of poor performance** needs to:

- Establish that the employee does not meet the role requirements.
- Train the employee or seek other employment options within the employing organization.
- Respect a 30-day notice or payment in lieu.
- Pay financial compensation to the employee.

Given the difficulties of terminating labor contracts in the PRC, the expiration of a **fixed-term contract** provides a convenient and lawful way to end employment relationships.

However, financial compensation shall be paid upon the expiration of a fixed-term contract.

- UNDER WHICH CIRCUMSTANCES IS AN EMPLOYEE ENTITLED TO FINANCIAL COMPENSATION?

- The employee terminated the employment contract for violations committed by the employer.
- The termination of the employment contract was mutually agreed upon by the employer and the employee after such termination was proposed by the employer.
- The employment contract is terminated by the employer on any grounds requiring 30 days' prior notice to the employee.
- The employment contract is terminated by the employer as part of a collective dismissal.
- The employment contract is a fixed-term contract coming to an end and not renewed, unless the employer proposed the same or better terms for renewal, but the employees still refused.
- The employer's business license was revoked, or its business was ordered to close down.

- HOW IS FINANCIAL COMPENSATION CALCULATED?

Financial compensation shall be granted to an employee based on its years of service with the employer at the rate of one month's wage for each full year of service. If the period of service was less than 6 months, a half month's average monthly salary will be paid to the employee and a period of service of not less than six months but less than one year shall be counted as one year.

«Monthly wage» refers to the employee's average wage during the 12 months prior to the termination or ending of his/her employment contract. It includes the hourly wages or piecework wages and other monetary incomes such as bonuses, allowances and subsidies. It may also include the overtime payment.

If the monthly wage of an employee is three times greater than the average monthly wage of one employee for the previous year as published by the People's Government of the Municipality where the employer is located (equivalent to 26,294 RMB for Shanghai in 2019), financial compensation shall be paid to him/her at the rate of three times the average monthly wage of staff and employees and for a maximum period of service not exceeding 12 years.

If the labor contract is terminated illegally by the employer, double the financial compensation shall be paid.

- WHAT ARE THE RULES APPLYING TO MASS LAYOFF IN CHINA?

China Labor Contract Law sets forth the conditions to carry out personnel cutbacks involving at least 20 persons or a personnel cutback involving less than 20 persons but accounting for at least 10% of the enterprise's workforce. For example, a mass layoff could be conducted if the employer is experiencing serious difficulties in its production and operations - please note that there is no guidance to appreciate such criteria.

In such case, the employer shall present the circumstances to the labor union or all of the staff and employees 30 days before submitting the report to the labor bureau, obtain the written opinion of the employees representative or of the labor union, report its personnel cutback plan to the labor administrative department and pay severance pay in consideration of termination.

The relevant labor bureau (as defined in the Circular on Report by Employers on Implementation of Workforce Downsizing issued by Shanghai Municipal Human Resources and Social Security Bureau on January 8, 2009) will issue a written receipt.

According to the Circular on Report by Employers on Implementation of Workforce Downsizing issued by Shanghai Municipal Human Resources and Social Security Bureau on January 8, 2009, the employer who contemplates a downsizing shall provide supporting documents and information to the labor bureau justifying the need for downsizing and details of such plan.

The reporting done by the employer to the labor bureau is for registration and not for approval from the labor bureau. However, the labor bureau may refuse to issue the written receipt of the report and order the employer to rectify its project.

According to our experience and to our consultations with our contacts with several labor bureaus in Shanghai, the labor bureaus have a very strict appreciation when deciding whether the reporting done by the employer complies with the conditions set forth by Chinese law for mass layoff. Chinese administrations can arbitrarily decide whether to accept or reject an application that is submitted to them. In practice, there is little chance that the labor bureaus will issue the written receipt of the report approving the mass layoff. Consequently, this means that mass-lay offs are generally still not implemented in China. Companies still negotiate mutual termination agreements with each of their employees in case of mass lay off.

- IS IT POSSIBLE TO UNILATERALLY TERMINATE AN EMPLOYEE BECAUSE THE COMPANY IS FACING FINANCIAL DIFFICULTIES?

An employment contract will automatically terminate by operation of law if the employer is declared bankrupt, its business license is rescinded, or it is ordered to close down in accordance with the law.

In such event of termination, the employer is required to pay financial compensation to the employee.

COLLECTIVE CONTRACTS

The staff and workers of an enterprise and their employer may conclude a collective contract on matters such as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc., through bargaining conducted on an equal basis. The draft of the collective contract shall be submitted to the meeting of representatives of staff and workers or all of the staff and workers for deliberation and approval.

Where the contents of the internal rules and systems formulated by an employer are inconsistent with the agreed contents of a collective contract or a labor contract, contract agreement shall have a preferential application.

A collective contract shall be concluded between the labor union, as the representative of the enterprise's staff and workers, and the employer. If a labor union has yet to be established, the collective contract shall be concluded between the representatives selected by the workers on the advice of the labor union at the next higher level and the employer.

The staff and workers of an enterprise and their employer may conclude collective contracts for specific issues such as work safety and hygiene, the protection of the rights and interests of female employees and the wage adjustment mechanism.

In regions at or below the county level, an industry-wide collective contract or region-wide collective contract may be concluded between labor unions and enterprise representatives in industries such as the construction industry, mining industry and catering service industry.

Once a collective contract is concluded, it shall be submitted to the labor administrative department. If the labor administrative department does not express any reservations concerning the collective contract within 15 days after the date of receipt thereof, such contract shall take effect.

A collective contract concluded in accordance with the law shall be binding on the employer and the workers. Sector-wide and area-wide collective contracts shall be binding on the employers and workers in the industry or area in the region concerned.

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TRADE UNIONS

Trade unions represent and protect the legal rights of employees and shall be established by the employees rather than the employers. If there are 25 or more trade union members in an entity, a trade union standing committee shall be established.

- WHO SHALL CONTRIBUTE TO THE TRADE UNION'S FUNDS?

Once a trade union is set up, the sources of trade union funds are as follows:

- Membership fees paid by union members.
- **Contributions paid by the employer** in an amount equal to two percent of monthly payroll of all the employees.
- Incomes derived from enterprises to which the trade union is subordinated.
- Subsidies from the government.
- Other incomes.

- IN WHICH SITUATIONS SHALL THE TRADE UNION BE INVOLVED?

- Assisting employees in entering into employment contracts.
- Negotiation and execution of **collective agreements**.
- Negotiations in case of **any unilateral termination** made by the employer, and in any violation of employees' lawful rights.
- Assisting employers to administrate **employees' benefits**.

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