

CHINA'S LABOR RELATIONSHIP AND LABOR LEGISLATION

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SUMMARY: I. Labor Legislation Development and Characteristics of Labor Law of China. II. Problems in China's Labor Law Implementation. III. Differences between Chinese Labor Standards and ILO Core Standards. IV. Labor Legislation in China up to Date. V. Labor Relationship Actuality in China and its Regulation.

I am very grateful to Patricia Kurczyn for providing me such a good chance to the "International Social Law Congress", to know many new friends and learn many new things. I am much honored to share with you China's labor relation and labor legislation, here I'd like to address this issue from five aspects.

I. LABOR LEGISLATION DEVELOPMENT AND CHARACTERISTICS OF LABOR LAW OF CHINA

Because of its economic system, China does not go smoothly in its labor legislation. It created a labor law of planned economy era at its founding in 1949, but still took administrative measure the main one to regulate labor relation. In 1979, China chose to reform and opens up and began a transform in economic system. China has progressed greatly in Labor and Social Security Law Legislation since its reform and opening up twenty years ago, along with reform in economic system and market economy setting up. Beginning with 1994's "Labor Law of People's Republic of China", China has made laws, statutes, and regulations on Labor and Social Security one by one, which enables a labor security legal pattern, containing multi-leveled regulations centered on "Labor Law", to basically form. China has made breakthrough in labor law and social secu-

rity law legislation and established the essence of its labor and social security law system. To meet with the need of social economic development, China is speeding up legislation in labor and social security.

1. Related Legislations since the Adoption of "Labor Law of PRC"

Since the adoption of "Labor Law", the State Council of PRC has created administrative regulations like: "Provisions of the State Council on Working Hours of Employees" (emended), "Provisional Regulations on Collection and Payment of Social Insurance Contributions", "Regulations on Unemployment Insurance", "Measures for Taking Holidays, Festivals and Commemoration Days", "Provisions on Prohibition of Child Labor" (emended), "Regulations on Worker's Compensation Insurance", "Regulations on Labor and Social Security Inspection", etcetera, to facilitate its implementation. Ministry of Labor and Social Security has also made rules on labor market management, collective bargaining and collective contract, wage payment, social insurance declaring and handing, with local legislative bodies enacting statutes to help practicing "Labor Law" at local level. Standing Committee of National People's Congress publicized "Occupational Disease Prevention and Treatment Law" in October 2001; "Work Safety Law" in Jun 2002 (provided its implementation from 1st November 2002). China has basically established a legal framework of labor and social security, founding on "Labor Law" and containing laws, statutes and regulations matched with each other.

So far, seven fundamental systems of labor and social security have been set up in China:

A. Employment Promotion System of Chinese Characteristics has Established

Employment concerns the most essential interests of labors'. China has a very large number of people in need of employment, which determines that it must be the focus of labor law legislation. "Labor Law" ordains principle of equal employment and guarantees labors' free selection of profession. Government at the same time decides an employment guideline reading "Workers get employed independently, with market adjustment and government promotion", enabling employment policy of

characteristics of China¹ to be carried out. Employment is promoted through various ways and the system is up.

B. System of Professional Training and Professional Qualification Certificate

According to provisions in "Labor Law", government has made professional category, developed professional norms, carried out professional skills identification with learning certificate and professional certificate, and heightened worker's employment and working capacity too. After decades of efforts, a market-oriented full round, multi-leveled professional training system has been built up, aimed at professional skill improving, considering urban fresh labor force, lay-offs and unemployment people, labor force transferred from countryside and employees the training object, providing trainings before and under employment and for reemployment; also identifications of primary, semiskilled and skilled artificers and so on.

C. Labor Relationship Coordinating System has been Founded

a) China began to regenerate its labor deployment system from 1980s and labor contract has been widely adopted since then. Employment mechanism has made its transfer from government allocation to market collocation; labor relation is now regulated by law instead of administrative power; a system and opinion permitting labors and employers making choice independently and deciding on each's rights and obligation by consultation, is initiating.

b) *Collective contract system gets improved and popularized day by day.* In order to set up a self-regulating system for labor relation in enterprise and to protect legal labor rights as a whole, China began to popularize collective contract system at the beginning of 1990s, with pre-prescripts² on this in many laws. This system is exerting greater and greater

¹ Active employment policy of China includes tax derating, finance devotion, small-sum loan, employment aid and service, social insurance allowance, enterprise staff-reduce control, which enables market play well its role in labor resource deployment as well as government exert its function of social management and public service.

² Statutes contains such rules are: "Labor Law", "Trade Union Law", "Regulations on Collective Contract", "Trial Measures on Collective Negotiation on Wages".

influence on labor relation self-coordination between labor collectivity and employers.

c) *System of triplet-negotiation on labor relation has been founded.* It is a learning of successful experience from market economic countries. China has stipulated in “Labor Law” and “Trade Union Law” that, labor administrative departments at various levels under People’s Governments shall, together with representatives from trade union of the same level and enterprises set up triplet-negotiation system, and co-decide on vital issues in labor relation. In August 2001, the first national triplet-coordinating conference on labor relation was convened by Ministry of Labor and Social Security, All-China Federation of Trade Unions and China Enterprise Association. At present, twenty five provinces, autonomous regions, and municipalities directly under the Central Government, such as BeiJing, TianJin, HeBei, ShenZhen have established such systems.

D. Labor Dispute Settlement System has been Adapted

With market economy advancing, labor relation becomes more and more complicated causing labor disputes to grow continually. For the purpose of solving labor disputes legally and protecting both parties’ legal rights and interests, “Labor Law” and “Regulations of People’s Republic of China on Labor Dispute Settlement in Enterprises” provide a resolving mechanism of “one-round mediation”, “one-round arbitration” and “two-round litigation”. From ten years ago, millions of labor disputes have been dealt with by mediation organization in enterprises, labor dispute arbitrating committees and people’s courts. According to statistics from Ministry of Labor and Social Security, in 2004, 260 thousand labor disputes are arbitrated by the committees, increasing 15.2% than 2003, involving 760 thousand labors. Among them are 19 thousand collective labor disputes, increased 72.7% than the late year. 259 thousand such cases are ended by arbitrating committees, with a case-ending- rate of 93.2%.³

E. Labor Standards System has been Settled

China’s present labor standards system is “Labor Law-oriented”, concerning working hours, wages, prohibition of child labor use, special

³ <http://www.molss.gov.cn>.

protection for women and minor workers and occupational safety and health. It develops along with economic and social development. It sets the minimum wage standard that every employer must follow, playing a necessary part of government regulating market and is in favor of protection of fundamental labor rights and interests.

a) *Wage payment scheme keeps improving.* There are clear rules on items, levels, forms, objects and time of wage payment, and also wage payment under special circumstances.

b) *Minimum wages guarantee system.* Thirty provinces, autonomous regions, and municipalities directly under the Central Government have publicized their minimum wages standards, which is very important for securing rights of low-waged labors. And with the Ministry's "Provisions on Minimum Wages" publication on 30th December 2003, this system gets further bettered.

c) *Working hours, holidays and festivals taking system gets perfect further.* Standard working hour per week in China has been reduced from forty eight hours to forty hours and overtime work can get compensation, labor can enjoy holidays and festivals according to law.

d) *Special protections for women workers and minor workers.* The range of works prohibited from women and minor workers are prescribed clearly in law. Employers are obligatory to register for use of minor workers and give them physical examinations regularly.

e) *Occupational safety and health system.* China has kept a close eye on legislation on this field and put forward labor protection guideline like "safety goes first, precaution occupies priority". The 6th Chapter of "Labor Law" made specific provisions on this issue, together with "Mine Safety Law" (1992), "Law on Occupational Disease Precaution and Cure" (2001), "Work Safety Law" (2002) and regulations, provisions, and rules by State Council and the Departments, forms an effective legal system.

F. Labor and Social Security Inspection System is Established

Authorized by "Labor Law", labor and social security departments at various levels set up institutions for labor and social security inspection, enabling a three-classes (at levels of province, district and county) inspective network to shape and the law enforced; in some places, there even are inspective institutions at the level of street community and vil-

lage. In 2004, the State Council created “Regulations on Labor and Social Security Inspection”, making detailed provisions on the inspection procedure and execution measures. Present inspection emphasizes on labor contract signing, social insurance participation, prohibition of child labor use and migrant workers’ wage payment. Now, labor and social security sectors in most of the municipalities have opened a hot line (the number is 12333) special for labor consultation and reporting, which encourages labors to report whenever they find breaking of laws on labor and social security.

G. Social Insurance System has been Found

China’s social security system includes social insurance, social assistance, social welfare, and social preferential treatment and so on. Social insurance is the core part, considered as labor’s “safety net”, “adjuster” for income distribution and “absorber” for economic and social functioning. In recent years, China has put forward complete reform in social insurance system and basically found the framework, which exerts great influence on reform deepening, development promotion and stability maintaining.

a) *Pension insurance system is trough reform and improvement.* “Labor Law” has a history of over ten years, during which reform of pension insurance system keeps deepening, socially planned as a whole with individual account opened, and it has expanded to cover workers in all kinds of enterprises, in institutions of enterprise management, to self-employed persons and to professionals. Under this system, units and individuals pay insurance at one rate; pensions are counted and handed out in one way. Greater efforts are still needed in insurance capturing; planning at provincial and industrial levels needs to be put forward, with insurance managed at local level, to realize pension granting socialized and management of retirees in enterprises socialized. And a unified basic pension insurance system, seasoned with needs of socialized market economy has formed, while reforms in pension insurance for institutions and social organizations are still ongoing.

b) *A complete unemployment insurance system has been established.* China does not really have unemployment insurance system until 1980s, which came into being as a result of labor system reform. In July 1986,

the State Council issued "Provisional Regulations on Wait-for-employment Insurance for Workers in State-owned Enterprises", which symbols the formal initiation of unemployment insurance system in China. In April 1993's "Regulations on Wait-for-employment Insurance for Workers in State-owned Enterprises", the applying spectrum is expanded. In "Labor Law" applied from 1st January 1995, unemployment insurance has been extended to cover all enterprises in China. In Jan, 1999, the State Council enacted "Regulations on Unemployment Insurance", taking the place of 1993 provisions, expanding the coverage to include urban enterprises, institutions, social organizations and their employees, which is the sign of the system's initiation.

c) *The urban medical insurance system has basically set up.* Medical insurance system began to reform before the birth of "Labor Law", but only with an ambiguous model and few places involved. In December 1998, the state council issued "Decision of the State Council on Establishing a Basic Medical Insurance System for Urban Employees", based on the former experience, deciding a basic medical insurance system for urban employees to set up all over the country. It now covers all urban employers and employees, with insurance from both sides socially planned as a whole, combined with individual account. This system can on the whole meet with labors' basic medical need. Medical insurance system for suburban people is still under reform.

d) *Work-related injury insurance system has primarily built up.* It is recorded that during the experimenting period of this system before "Labor Law", only 500 cities and towns in nineteen provinces, autonomous regions and municipalities directly under the central government, together with 11 million people joined this system. In accordance with "Labor Law", which ordains that work-related injury insurance system shall be established, to guarantee that labors can enjoy insurance compensation when work-related injuries or occupational diseases happen, Ministry of Labor and Social Security made "Provisional Measures for Work-related Injury Insurance for Enterprise Employers" to apply the insurance system to whole country. To better this system and strengthen its implementation, State Council issued "Regulations on Work-related Injury Insurance" in April 2003 (it began to apply from 1st January 2004). This regulation broadens the system's coverage; includes all kinds of enterprises, individual businessman who employs to pay the insurance for the employees; perfects mechanisms of work-related injury recognizing,

work capacity appraising and work-related injury insurance treatment; charges law-breakers with heavier legal accountability, speeding up the generalization of this system.

e) *Maternity insurance system gets consummated step by step.* China began its maternity insurance system from 1951, with “Regulations on Labor Insurance of PRC” prescribing it. In June 1988, the State Council issued “Regulations on Labor Protection for Women Labors”, to make adaptations and supplementations to the system, mainly an expansion of its coverage and some changes to the treatment. But this system, designed to have employers in charge of most maternity fees, have caused problems in reality: *I*). It aggravates the burden of employers mainly employing women and also affects employers’ initiative to employ women; *II*). Women employees’ rights can’t be realized usually due to bad economic benefits of their employers; *III*). Some employers are impulsed to infringe upon legal rights of women employees. In fact, some employers set limitations on women employees’ wedding age and maternity; some even state in their labor contract a prohibition of pregnancy or birth during employment. So, after the 1994 “Labor Law”, Ministry of Labor and Social Security created “Trial Measures on Maternity Insurance for Enterprise Employees”, fixing on a system with insurance fund socially planned, compelling employers to pay maternity insurance at a unified percent of total wages, despite their women employees number.

2. *Characteristics of China’s Labor Law*

China’s labor law has characteristics below, because of its history and institutionalization.

1. China’s labor law system is giant, taking into consideration labor relations and relations closely related, including employment promotion relations before labor relations built, labor relations during its existence, social insurance relations and labor dispute settlement system, labor inspection system, trade union system which are necessary for labor law being executed.

2. China’s labor law gives labor contract the pith position, regarding it the main measure for labor relation regulation with a separate chapter in “Labor Law” on it. And labor law application from 1994 has also been around labor contract. This characteristic is distinctive even around the

whole world. Whatever the scholars' opinions are, labor contract in China does help break the old system of allocating employment by state plan and realize reasonable deployment of labor resources.

3. China's labor law failed to pay enough attention on collective contract, with only three articles in "Labor Law" mentioning it. Collective contract plays no fundamental role in labor relation regulation; it has developed somewhat in China, but only at a low speed, which is decided by this characteristic of labor law.

4. China's labor law may bear some legal conflicts thanks to a weak central legislation with an active local legislation. China has a large area with a large population and an unbalanced economy differs greatly at different areas, which causes authorization of labor legislative power to provinces, autonomous regions and municipalities directly under central government. These local authorized bodies can make measures on labor contract, minimum wages, and social security in form of local regulations or rules. Usually different regions have different provisions on the same issue, which blocks the unification of labor law and its implementation.

5. The applying scope of "Labor Law" is limited to a great extent. Article 2. "The law applies to all enterprises, individual economic organizations (hereinafter referred to as "employers") and workers bound up by contractual labor relationship".

"The law is also applicable to government organs, institutions, social organizations and workers bound up by labor contracts". As a matter of fact, government employees, personnel in institutions and social organizations, army men in active service, farmers and nurseries for families are exempted from the application of "Labor Law". However, it is under consideration that the applying scope needs an expansion in future.

II. PROBLEMS IN CHINA'S LABOR LAW IMPLEMENTATION

As mentioned before, China since its "Labor Law" came out, toward aims of promoting employment and reemployment, securing labors' legal rights and interests and founding a perfect social security system, has set up or primarily set up seven basic labor security systems by implementing "Labor Law" and related regulations, which is a very great achievement.

However, there are problems in "Labor Law" applying:

1. *Employers Break Statutes and Regulations on Labor and Social Security, Ignoring What the Law Provides, Which is a Severe Problem in China. This is Even Popular in Three Areas*

a) *Rights and interests of some migrant workers who get employed in the city are infringed upon.* Some employers, esp. construction enterprises refuse to sign labor contract with migrant workers, default to pay wages or skimp the workers without a reason, force migrant workers to work overtime and provide no necessary labor protection, which is a threat to safety and health of migrant workers.

b) *Labor rights and interests in some non public-owned enterprises and some small and medium-sized enterprises get damaged.* Some employers refuse to pay social insurance for employees, disobeying law; annul labor contract at will; violate employees' rights of rest and leave.

c) *Rights and interests of workers in some state-owned enterprises which is under transform or reorganization or closing or bankruptcy, are trespassed.* When terminating labor relationship with employers, such employees can not get economic compensation they have claim for; employers did not pay enough social insurance, which makes continuing of employees' social insurance relation very hard; procedures for transition or reorganization are not canonical or transparent and schemes for employee deployment are decided without hearing from employees or being discussed by employee representative conference.

2. *Some Stipulations in "Labor Law" can not fit the Economic and Social Reality Which is Through Profound Changes, Need Earnestly an Amelioration*

At the enactment of "Labor Law", China had just set up its aim of Market Economy system of Socialism in reforming, with its social security system establishment just starting, its active employment policy yet in exploring and its labor relationship adjustment transiting from administrative management to ways of regulating by law. In this context, pre-prescripts in "Labor Law" on social security, employment promotion and macro-regulation of enterprise wages are usually brief principles; criterions on labor relation are monotonous and comparatively light legal accountability is prescribed. However, labor relationship changed a lot

along with social economic development in China, "Labor Law" got embarrassed as its provisions can no longer work or be effective, which presses for revisions and improvement of it, with more specific rules on social insurance and employment promotion policy, a better system dealing with labor relation and labor dispute, and heavier penalty for labor law breach.

3. Tough Employment Situation and Pressures from Social Security System Betterment has Brought upon Great Difficulties with "Labor Law" Implementation

"Labor Law" does not only regulate related behaviors, but also promote employment and social security to develop. Its implementation needs obedience and also efforts from all aspects in sufficient employment realization and social security system establishment. But at present and for a very long time in future, China is and will keep facing the tough employment situation, with problems of workers' needs for sufficient employment and an overwhelming large number of workforces needing employment, and the outstanding conflicts between low labor quality and high working requirement.⁴ As for the improvement of social security system, there certainly will be resistance since it is concerning income redistribution and interests of different individuals, different bodies and areas. Besides, pension insurance fund may encounter hardship for lack of fund accumulation historically and coming of aged population; reform in medical and health system does not go with reform in medical insurance system, all these are blockades for perfecting social security system.

It is a real important task for the government to revise "Labor Law" and make statutes and regulations that go with it.

⁴ "2005 will witness an increase of over 0.8 million people at working ages than 2004, but thanks to increase of students recruited by university, decrease of working participating rates and some other factors, the number of people with employment needs may generally keep even with in 2004. Economic development speed of China is predicted to be 8.5% in 2005, with an estimation of another 9-9.3 million people needing employment and 5-5.2 million lay-offs and unemployed people needing reemployment. Among them, people in 40s and 50s with reemployment need would be 1.5 million. It is expected that registered unemployment rate in town might reach 4.1%-4.2%" (Development Research Center of State Council, Yue Songhao).

III. DIFFERENCES BETWEEN CHINESE LABOR STANDARDS AND ILO CORE STANDARDS

China co-initiated ILO in 1919 and became one of the standing director countries in 1944. In 1971, People's Republic of China resumed its seat in ILO and builds a direct contact with ILO. Until now, China has ratified 24 ILO Conventions, including 4 core labor contracts (No.100, No.111, No.138 and No.182).

There are great differences between present Chinese labor standards and international labor standards (core labor standards, esp.):

1. *Freedom of organization.* In China, there is a single trade union system, requiring examination and approval before union setting up or participating, while there is no such requirement for beforehand examination and approval in ILO convention No. 87 and No. 98.
2. *Rights of collective bargaining.* China's "Labor Law" prescribed that employees "may" sign collective contract with employers, however, the use of "should" in ILO convention No. 98 is more favorable for labor rights protection.
3. *Equal employment.* ILO conventions concerning this issue are No. 100 and No. 111, which are ratified by China with the former one only recently. "Labor Law" stipulates clearly labors rights of equal employment, but with a definition sharply narrower than the definition in No. 111 convention. It contains "discriminations" only for four reasons: nationality, race, gender and religious beliefs. However, discriminations based on registered permanent residence and carrying HBV⁵ are rampant in reality here.
4. *Forced labor.* ILO conventions No. 29 and No. 105 are mainly dealing with this, but failed to be ratified by China. However, "International Convention on Civil Rights and Political Rights", who's Article 8 is also about forced labor issue, passed by United Nations on 16th. December 1966 has been ratified by China in Oct, 1998; and in WTO agreements, the only one of core labor standards prescribed straightforwardly is about forced labor (see: provisions on common exceptions in "General Agreement on Tariffs and Trades"), since

⁵ It is recorded that 10% of the whole population of China are HBV carriers. Their living status, their equal employment rights for particular are attracting wider and wider attentions these years.

China joined WTO in due form in December 2001, it is China's obligation to obey this. In China, the related issues are institution of reform through labor and institution of education through labor, where many problems do exist. However, China has begun its reform on this issue and has made great progress.

5. *Prohibition of Child Labor use.* China has kept close eye on this and done a good job. The government has engaged much effort and money in compulsory education, to guarantee children's rights to education; also carried out professional preparatory mechanism for juveniles, enhancing their professional training; and insisted on hitting illegal child labor use strictly. But much hardship exists in the process of its implementation.

IV. LABOR LEGISLATION IN CHINA UP TO DATE

To fit the need of legal system construction of China and solve problems showing up in labor law implementation, the tenth National People's Congress' Standing Committee has already listed "Social Insurance Law" and "Labor Contract Law" in its current legislative programming and the State Council has include "Employment Promotion Law" in its legislative research project. Among those thirty one rogations listed in the Standing Committee's deliberation scheme, six relates to labor and social security, they are: "Law on the Protection of Rights and Interests of Women" (emended draft, already finished), "Labor Contract Law" (draft), "Corporate Law" (emended draft, already finished), "Compulsory Education Law" (emended draft), "Enterprise Bankruptcy Law" (emended draft, already finished), "Civil Servant Law" (draft, already finished).⁶ Lately, the Standing Committee has listed "Law on Labor Dispute Settlement" as a legislative reasoning item.

Hereafter is the latest related legislation:

⁶ Current National People's Congress will have conference in Mar, 2006 and new legislative plans are expected to be raised then.

1. *About “Law of People’s Republic of China on the Protection of Rights and Interests of Women”*

“Law on the Protection of Rights and Interests of Women” (emended draft) has been put forward to the Standing Committee for deliberation on 26th June 2005 and was passed on 28th August.

Emended mainly due to the fact that women’s working rights and interests faces serious infringement and employment discrimination against women is rampant.⁷

It provides that the state secures women’ rights and interests in social insurance, social aides, social welfare and health security; prevents gender discrimination in employment; contains new provisions on strengthening special protection for women workers and renamed the chapter “labor rights and interests” with “rights and interests”.

A hot point attracting most widely attention is that the concept of “sexual harassment” showed up for the first in Chinese legislative field.

2. *About “Corporate Law” Amendment*

“Corporate Law” was published in 1993 and then began to implement. It has been emended twice in 1999 and 2004 and again in February 2005 the amendment was put forward to the Standing Committee for deliberation, and got passed on 27th October 2005, which gives a glimpse on its complexity.

Its contents relating to labor and social security is mainly the problem of democratic management system in corporate.

It is viewed as: “enrichment to provisions on employee democratic management in corporate and protections of employee’s rights and inter-

⁷ According to authorities, violation of women rights and discrimination against women are mainly appears as below: *I*) Employers employ men over women, young over aging, having labor contract avoid agreement on pregnancy, confinement, lactation. Even governments of stat-owned enterprises claim for male only. Some employers require no-pregnancy in five to ten years when employing women. *II*) Special protection for women can not be realized, 40.1% women have no such protection during pregnancy; 25.6% women having no such protection during lactation. *III*) Maternity insurance progressed slowly and badly. *IV*) Some women employees work long time in poisonous and harmful environment, it is particularly serious in rubber, shoe making, chemical, porcelain, foundry and toy production industries.

ests, strengthening protections of employees further, fully demonstrated the socialism characteristics of China's corporate legislation".

Article 9, Article 17 and Article 18 for specific involves labor law.

3. *About "Civil Servant Law"*

"Civil Servant Law" was passed on 27th April 2005 and began to implement on the 1st January 2006. It deals with retirement system, wage and welfare system and arbitration system of personnel dispute, and conflicts between labor relations and personnel relations.

4. *About "Compulsory Education Law"*

The first "Compulsory Education Law" of China began its implementation on 1st June 1986 with its amendment being delivered to examination now. It deals with minimum age for admission to employment and social security for children.

5. *About "Enterprise Bankruptcy Law" (Amendment)*

Deliberated twice by the Standing Committee in June and October 2004, and is waiting for the third by the legislative, which means China's new legislation in bankruptcy has entered a key stage. When the new law, a very important instrument for market economy can finally come out is an issue attracting attentions widely both home and abroad.

In the process of drafting, the real matter which may affect the time of its passing is the discharging order between creditor's rights of assurance and creditor's rights of labor.

There are pros and cons on this. It is viewed that: creditor's rights of labor should gain the priority to fully protect labors. In the light of this opinion, wages and social insurance as debt, should be cleared off with enterprise's bankruptcy estate first; even for estate mortgaged to creditors, its price should be used this way first; only for remains after discharge of creditor's rights of labor, creditors of hypothec have priority over general creditors to be paid off.

While the objections are going like this: such design seems to be protecting interests of labors', but in fact will have negative effect on trade activities in market economy and at last harm the interests of labors' as a

whole, considering the reality of China's economic development and the function of civil and commercial law. So, the view stated above is not a good one to adopt in legislation on bankruptcy.

6. About "Labor Contract Law" (Draft)

In the face of problems that employers avoid obligations toward employees and evade written labor contract,⁸ even deny factual labor relations already existing; and that some employers abuse probation, infracting labor interests violently, China has speeding up its legislation on labor contract. Ministry of Labor and Social Security has done with all the drafting work, legalization office of the State Council has organized examination and argumentation on it and on 24th December 2005 the 19th session conference of the 10th Standing Committee of National People's Congress has make a deliberation on it, so labor contract law has entered legislative procedure, with related work carried out intensely.

7. About Emending "Labor Law"

In labor realm of China, "Labor Law" is the basic law, prohibiting contravene from any other laws or regulations on labor and social security. Its faultinesses will certainly get in the way of related law making, obstructing a harmonious and unified labor and social security legal system to come into being. So it is high demand both in theoretic circles and business world to make a timely revision of "Labor Law". Correlative departments are now preparing actively with research, study and argumentation and will bring up a revision to the Standing Committee when time is mature, to suit the change of the economy and society and to meet with the new need of present labor and social security work.

Besides, "Employment Promotion Law", "Social Insurance Law" and "Law on Labor Dispute Settlement" are under drafting or discussion.

⁸ According to statistics from a spot check in 2004, labor contract signing rate for employed persons fell nearly 10 hundred cent, in construction industry and service industry this is even worse with a rate of 40%. Migrant workers' labor contract signing rate was only 30%.

V. LABOR RELATIONSHIP ACTUALITY IN CHINA AND ITS REGULATION

1. *Actuality and Characteristics of China's Labor Relations*

Profound changes have taken place in China's labor relations since its reform and opening up. Especially after the WTO accession, ownership and management styles get pluralized, causing a more complicated labor relation in enterprise. More and more labor disputes arise and labor relation becomes more and more important. China now is still under social transform, which is predicted to be time-consuming, labor relations at this time shows several specialties below:

a) *Further marketization of labor relations.* Market economy requires enterprises to play by market rules and join market competition. Redeployment of production material and labor resources is imperative under this situation, a new labor relation carrying agility, multiplicity and flexibility, specialties of marketization is forming, breaking the traditional single, stable, immobile one under planned economy system. There is breakthrough in China's labor relation, especially in state-owned enterprises.⁹ Labor relations in China is changing from a heavy political one, of coherent interests, controlled in administrative manner to a one based on economic interests, of harmonious interests and regulated by market mechanism.

b) *A trend of internationalization of labor relations.* It is mainly the result of WTO accession, with subjects of labor relations and the rules applied herein both internationalized. Joining WTO is necessary choice of China and also a significant step for China toward world economy. China has made great success in attracting overseas investment since its reform and opening up twenty years ago. Almost half of nowadays global top five hundred companies have set up enterprises or sub-organs in China. The increase of foreign investment and globalization demand that China's labor relations work in accordance with internationally

⁹ The manifestations are: in the transform of state owned enterprises, the marketization of labor relations could be divided into three stages "double course—combined course—single course": from the end of 2000, it is lay-off plus unemployment—double course; from 2001 to the end of 2003, it is combined course—lay-offs are accepted by reemployment center, staffs are reduce for economic reasons in a way in compliance with market discipline; from 2004, it is single course, all unemployed people are taken into coverage of unemployment insurance, active and supportive policies are made to help people get reemployed.

agreed “Game Rules”, international labor standards and conventions, for example: to present an open labor market, to build collective bargaining on wages and triplet-negotiation system. All these bring about China’s labor relation internationalization.

c) *A labor relationship more diversified and complicated.* As we noted before, China is under social transform and is in a time of knowledge, various ways of employment exist in different ownerships and present us this characteristic.

2. Actuality and Characteristics of China’s Labor Dispute

After the adoption of market economic system, the process of legalization has speeded up, with labor relation subjects’ legal awareness getting stronger, especially the arousal of labors’ awareness of rights-defending. Labor relation gets more and more complicated, together with the above factors, causing the number of labor disputes soaring year after year (see table).

Statistics about disputes in China from 1994-2003

| Year | Total number for labor dispute (case) | Total number for people involved in labor disputes (person) | Total number for collective disputes (cases) | Total number for people involved in collective disputes (person) | Percentages of collective disputes in all labor disputes (%) | Percentage of people of collective disputes in people of all labor disputes (%) |
|------|---------------------------------------|---|--|--|--|---|
| 1994 | 19098 | 77794 | 1482 | 52637 | 7.75 | 67.66 |
| 1995 | 33030 | 122512 | 2588 | 77340 | 7.83 | 63.13 |
| 1996 | 47951 | 189120 | 3150 | 92203 | 6.56 | 48.75 |
| 1997 | 71524 | 221115 | 4109 | 132647 | 5.74 | 59.99 |
| 1998 | 93649 | 358531 | 6767 | 251268 | 7.22 | 70.68 |
| 1999 | 130191 | 473957 | 9043 | 319241 | 7.52 | 67.36 |
| 2000 | 135306 | 422617 | 8247 | 259445 | 6.09 | 61.39 |
| 2001 | 155000 | 467000 | 9847 | 287000 | 6.35 | 61.46 |
| 2002 | 184000 | 608396 | 11024 | 374956 | 5.99 | 61.6 |
| 2003 | 236000 | 800000 | 11000 | 515000 | 4.86 | 61.6 |

All statistics from: Statistic Yearbook of China on Labor and Social Security (1995-2004).

Conclusions could be drawn from the table above:

a) Labor disputes keep increasing continuously. From 1994, the promulgation of "Labor Law" to 2003, labor disputes totally mounted over ten times.

b) Dispute of that period is mainly disputes over rights, on labor contract, wages or incomes, social insurance and welfare and occupational safety and health.

c) The main cause for these disputes is employees' efforts to defend their rights.

d) There is growth in collective disputes (people of collective disputes cover more than 2/3 of people involved in all labor disputes) and collective activities. The growth of collective disputes takes up 6% of the total number with people involved taking up 60%, which is a specialty of China's labor disputes.

3. Characteristics of China's Labor Dispute Resolution Scheme

a) Individual labor disputes are the majority.

b) Collective dispute is usually disintegrated into individual disputes.

c) A well-worked collective labor dispute resolution mechanism is absent in China.

d) The main solutions are "one-round Mediation", "one-round Arbitration", and "two-round litigation".

— "One-round Mediation", parties in dispute can choose on their own whether to go through Mediation procedures at enterprise level (principle of voluntary).

— "One-round Arbitration", labor dispute arbitration is stipulated as preceding placed procedure (necessary procedure before litigation).

— "Two-round litigation", people's Courts try labor dispute in compliance of Code of Civil Law as civil dispute (make final decisions after the second round of judicial procedure).

4. Problems Existing in China's Labor Dispute Settlement Mechanism

In its tens of years practice, China's labor dispute settlement mechanism has exerted great influence, but also showed many flaws on the other hand:

- a) Labor dispute takes long time to be resolved.
- b) Mediation in labor dispute settlement is not ideal.
- c) Obvious administrativization of labor arbitration.
- d) Civil trial and labor arbitration play by different rules.
- e) Labor dispute settlement costs government too much.

5. Discussions on its Reform

In discussion about how to reform China's labor dispute settlement mechanism these years, some constructive suggestions have been made:

a) Separate arbitration from litigation and case finishes after the second round of arbitration (it mainly stresses the role of arbitration, with first disputes sorted into two kinds by "interests" and "rights" and then accepted separately by arbitrating committee and courts, maintaining a double-course scheme).

b) Separate arbitration from litigation and case ends after one round of arbitration or one round of trial (it stresses mediation procedure, with a system of arbitrator choosing and separate labor arbitrating institutions setting up).

c) After one round of arbitration and one round of litigation hereafter, a case can finally end (it is an adaptation of present mechanism, a double-course scheme which gives both parties chances to choose; still stresses labor mediation, with a re-discussion procedure attached; mediation instrument has legal power, implemented by court).

d) Labor court sets up in People's Court, carrying out specialized trial.

6. Progresses in Reform

It is objective demand of Socialized Market Economy development as well as socialized harmonious society construction to further better China's labor dispute settlement mechanism.

a) "Law on Labor Dispute Settlement of People's Republic of China" has already been listed in the Standing Committee's legislative programming and related drafting and researching work is being carried out.

b) "Opinions on Improving Labor Dispute Mediation Further" (triplet-conference on state labor relations), co-created by Ministry of Labor and Social Security of PRC, All-China Federation of Trade unions, China Enterprise Federation/China Enterprise Association, is now put into effect all around China.

c) Ministry of Labor and Social Security has set up institutions in several provinces and cities to experiment with "specialization of labor arbitrating institutions".