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# Labour administration reforms in China

Giuseppe Casale  
and Changyou Zhu

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INTERNATIONAL LABOUR OFFICE • GENEVA

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## PREFACE

At the beginning of 2012, the total population of the Chinese mainland was 1.34 billion, of which 764 million were in employment, with 359 million employed in urban areas. Each year there are approximately 10 million new entrants to the urban labour market, which must concurrently accommodate between 8 and 10 million unemployed. Rural–urban migrant workers amount to 250 million, a figure which is expected to increase steadily during the Twelfth Five-Year Plan period. The scenario of labour supply exceeding labour demand is expected to persist in the coming decade.

In the context of a national endeavour to achieve a harmonious society that considers individual well-being by 2020, it will be interesting to see how China manages to administer such a large labour force, how more (and decent) jobs can be created and how it will provide social security for all. These are key challenges for the system of labour administration.

China has made unprecedented progress over the past three decades in terms of overall social and economic development, including the development of the system of labour administration covering labour law reforms, employment promotion, social security and labour relations.

This publication provides an explanation of the comprehensive labour administration system in China, including its recent advances, with emphasis on its public services functions, such as public employment, labour inspection and social insurance services. With the recent improvements to both the legal framework and the institutions of labour administration, it is believed that these public services will play bigger and more active roles in ensuring compliance with legislation and protecting the legitimate rights and interests of employers and workers alike.

With the growth of the socialist market economy, law enforcement is becoming more important and has drawn increasing attention from the public and social partners. In this regard, the Chinese initiative of the Twin Networks Management of



labour inspection is taking steps to modernize the labour inspection system that was originally established in 1993. This system plays a crucial proactive role in protecting workers' rights during the rapid process of industrialization and urbanization which the country is undergoing.

Labour administration has played, and continues to play, an important role in initiating appropriate labour and social policies and in governing the largest labour market in the world. As China endeavours to achieve a moderately prosperous society by 2020, labour administration must play an increasingly active role in accomplishing this goal.

## LIST OF ABBREVIATIONS

ACFTU	All-China Federation of Trade Unions
AEP	active employment policy
CALS	China Association for Labour Studies
CASS	China Academy of Social Sciences
CEC	China Enterprises Confederation
CPC	Communist Party of China
CSR	corporate social responsibility
DOHRSS	Department of Human Resources and Social Security
DWCP	Decent Work Country Programme
EPL	Employment Promotion Law, 2007
HRD	human resources development
ILO	International Labour Organization
INTEFP	Institut national du travail, de l'emploi et de la formation professionnelle
LCL	Labour Contract Law, 2007
LIB/MOHRSS	Labour Inspection Bureau of Ministry of Human Resources and Social Security
LSCs	Labour Service Companies
MISLI	management information system for labour inspection
MISSS	management information system of social security
MOHRSS	Ministry of Human Resources and Social Security
MOLSS	former Ministry of Labour and Social Security
MOU	Memorandum of Understanding
NDRC	National Development and Reform Commission
NGOs	non-governmental organizations
NPC	National People's Congress

## Labour administration reforms in China

NWEMC	National Workplace Emergency Management Centre
OSH	occupational safety and health
PES	public employment services
PRC	People's Republic of China
R&D	research and development
SACMS	State Administration of Coal Mine Safety
SAWS	State Administration of Work Safety
SIL	Social Insurance Law, 2010
SMEs	small and medium-sized enterprises
SOEs	state-owned enterprises
TOT	training of trainers
TVEs	township and village enterprises
WSC	Work Safety Committee
WTO	World Trade Organization

# LABOUR ADMINISTRATION SYSTEM IN CHINA

# 1

## Definition of labour administration<sup>1</sup>

Labour administration is defined by the International Labour Organization (ILO) as public administration activities in the field of national labour policy.<sup>2</sup> The term “labour administration system” encompasses all the public administration bodies responsible for and/or engaged in labour administration – whether ministerial departments or public agencies, including semi-governmental and regional or local agencies, or any other form of decentralized administration – and any institutional framework for the coordination of the activities of such bodies, which enables consultation with and participation by employers and workers and their respective organizations. Although the Labour Administration Convention, 1978 (No. 150) does not define a national labour policy, it is commonly accepted that such a policy includes all labour-related matters, such as protection of employment and working conditions, promotion of equal opportunities and fundamental principles and rights at work.

It is clear that a wide range of activities is covered, but not all of these activities come under the direct or immediate supervision of the Ministry of Labour, and so proper coordination within the overall administrative system is needed.

Within the realm of public administration, labour administration is a relatively new arrival. It was not until the late nineteenth century that governments accepted the need for a permanent system of labour administration to regulate labour market forces and improve working conditions. Over time, the responsibility for labour administration was vested in fully fledged ministries dedicated to labour and social matters. During the past century, there has been increasing recognition of the importance of labour administration to national development. Initially, this was manifested in the creation of special labour units attached to ministries of the interior or ministries responsible for economic affairs and empowered to draft, apply and enforce labour laws. The creation of the ILO in 1919 marked a clear watershed, with

many labour ministries coming into being after this date. A concomitant trend was the formation of national labour inspection systems, with powers to enforce the law, which were set up in most member States of the ILO and guided by the Labour Inspection Convention, 1947 (No. 81), one of the most frequently ratified conventions.

Since the early twentieth century, most countries have maintained a viable and active labour administration system, responsible for all aspects of national labour policy formulation and implementation. In addition, labour administrations in ILO member States have contributed to ensuring compliance with international labour standards through various means, including the collection of labour statistics, which are invaluable in identifying needs and formulating labour policy at both national and international levels.

Labour administration is a tool that governments can employ to implement labour policies, to enforce labour legislation and to offer solutions to the various and complex problems faced by the world of work. To have maximum impact, labour administration must act in consultation and cooperation with workers, employers and their respective organizations, in order to foster social dialogue. A better knowledge of the role, functions and organization of labour administration will enable the public both to understand the relationship between social policy and economic policy, and to identify the vast array of services to which most people have access during their working lives.

## Labour administration and its evolution in China

China is a unitary state whose administrative divisions at the local level consist of four levels: provincial, prefectural-level city, county and township. The country is divided into provinces, autonomous regions and municipalities directly under the control of the Central Government. China has 34 administrative local authorities, including 23 provinces, five autonomous regions, four municipalities directly under the Central Government (Beijing, Shanghai, Tianjin and Chongqing) and two special administrative regions (Hong Kong and Macau). “Street offices”<sup>3</sup> in urban areas and townships in rural areas constitute the grass-roots administration in China, and are becoming increasingly important in delivering social services – including human resources and social security services – to the public.

The evolution of labour administration in China can be divided into two stages following the establishment of the People’s Republic of China (PRC) in 1949. The first stage occurred between 1949 and 1978, the year when China launched its reform and opening-up policy. The second stage runs from 1979 to the present.

During the first stage, in November 1949, the Central Government established a Ministry of Labour, which played an important role in creating a labour administration framework and addressing the serious problem of unemployment inherited from the Guomindang Government as well as ensuring the people’s basic livelihoods.

For example, the Labour Insurance Regulations, issued in 1951, and three important codes of practice on occupational safety and health (OSH) laid a regulatory framework for protecting workers' health, safety and welfare at work under the planned economy. However, the ministry was downgraded to a General Labour Bureau of the State Planning Commission in 1970 during the Cultural Revolution, which spanned the decade from 1966 to 1976. The functionality of the labour administration system was seriously impaired in the process.

The second stage of the labour administration development started shortly after the introduction of the economic reform at the end of 1978. China's economic reform was originated in rural areas to improve labour productivity in the agriculture sector. As a result, huge numbers of surplus labourers were liberated from the agricultural sector. The reform was inevitably extended into urban areas, focusing on state-owned enterprises (SOEs) to improve their competitiveness and enhance productivity. The process of economic reform also had to address the rigid divisions between the rural and urban labour markets. In 1982, the Central Government established a Ministry of Labour and Personnel, which was divided into the Ministry of Labour and Ministry of Personnel in 1988. In 1998, the Ministry of Labour changed its name to the Ministry of Labour and Social Security (MOLSS). During this period, one of the milestones of the labour administration development was the adoption of the Labour Law of the PRC in 1994, which summarizes the achievements of the labour administration reforms over the previous decade and provides a legal framework for governing the labour market that meets the requirements of the socialist market economy defined by an important decision made by the Communist Party of China (CPC) in 1993.

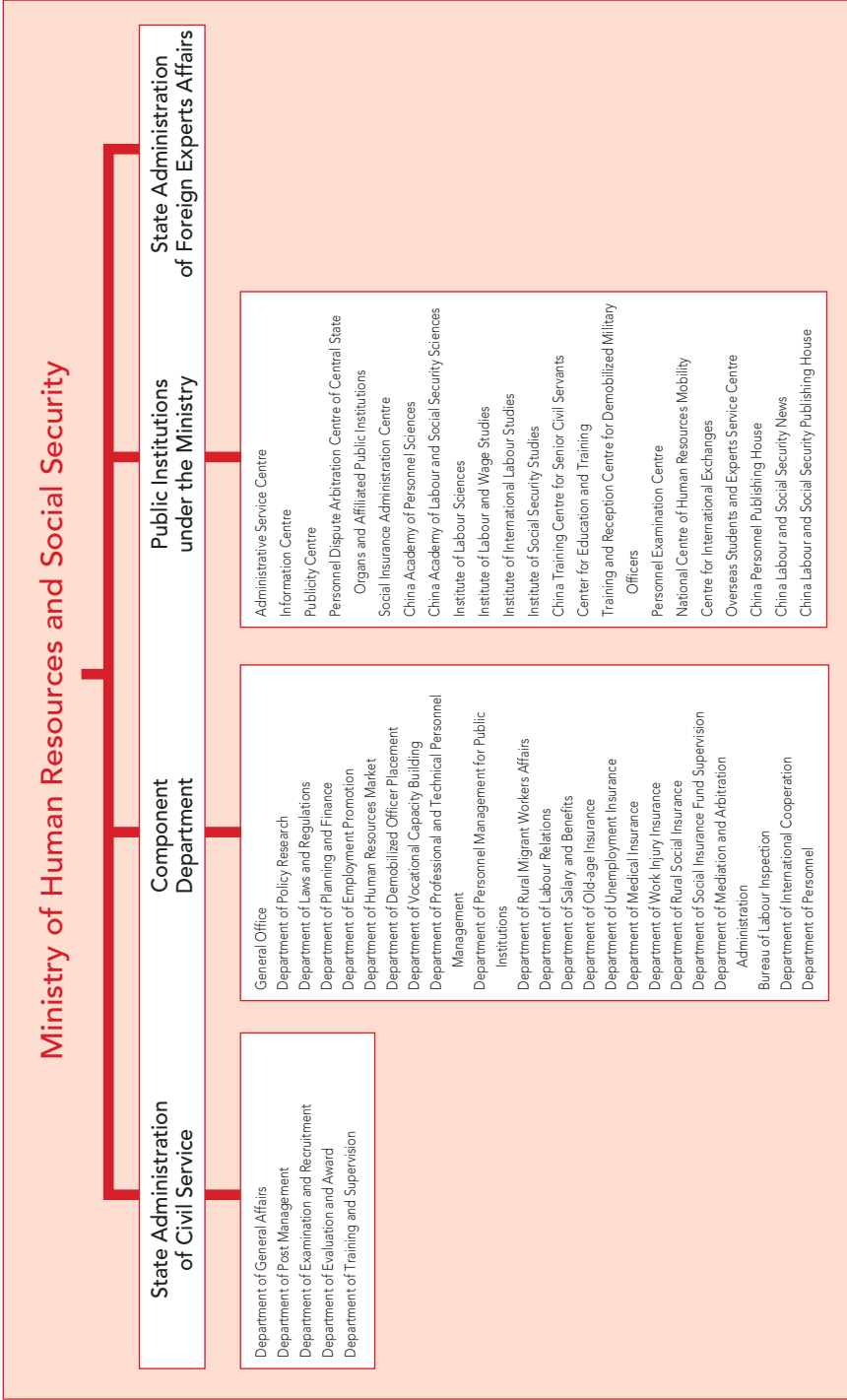
In 2008, the Chinese Government carried out a governmental restructuring reform and established the Ministry of Human Resources and Social Security (MOHRSS), integrating the functions of the former Ministry of Personnel and Ministry of Labour and Social Security. The establishment of the MOHRSS reflected a shift to a more balanced social and economic development strategy which promoted a people-centred principle in labour administration and policy-making. Examples of the shift in emphasis include the adoption of the Strategy of Employment as Priority in economic and social development, supported by the Employment Promotion Law and the realization of universal coverage for old-age and medical insurances.

## The functions and structure of the Ministry of Human Resources and Social Security<sup>4</sup>

The structure of the Ministry of Human Resources and Social Security is illustrated in figure 1.

The main functions of the MOHRSS are concentrated in two areas: first, social management and public service, with core functions in promoting employment, maintaining labour relations and improving the social security system; and, second,

Figure 1 Structure of the Ministry of Human Resources and Social Security



public personnel administration, with core functions in the management of public servants in government organs and public institutions. More specifically, its functions include:

- implementing the employment promotion strategy to achieve the objective of full employment;
- accelerating improvements in various social insurance systems, and establishing and improving the social security system covering both urban and rural residents;
- furthering reform of the income distribution system and promoting the establishment of a rational pattern of income distribution;
- promoting reform of the personnel management system and implementing improvements to the personnel management mechanism;
- implementing the strategy of rejuvenating the nation through human resources development and providing human resources support to the overall establishment of a moderately prosperous society;
- developing harmonious labour relations and protecting the legitimate interests and rights of workers.

The public policy functions of the MOHRSS are underlined in two respects:

- (1) strengthening integrated employment and social security policies for both urban and rural areas, establishing and improving service and protection systems from employment to retirement;
- (2) supporting the integration of the talent market with the labour market, accelerating the establishment of a unified and standardized human resources market, and promoting the rational flow and effective deployment of human resources.

At the public service level, the MOHRSS' functions emphasize:

- (1) enhancing employment promotion and increasing the capacity building of social security, providing public employment services and social insurance services for both urban and rural workers;
- (2) bolstering the labour inspection service and coordinating the protection of migrant workers, diligently safeguarding the legitimate rights and interests of workers.

In specific terms, the main functions of the MOHRSS are to:

- formulate development programmes and policies concerning human resources and social security undertakings; draft laws and regulations on human



resources and social security and organize the implementation, supervision and inspection of this legislation;

- formulate development programmes for human resources markets and policies on human resources mobility, in order to establish integrated and standardized human resources markets;
- take charge of employment promotion; formulate coordinated development programmes and policies on employment in urban and rural areas; improve the public employment services system; establish an employment assistance system; improve the vocational qualification system; establish a vocational training system for workers in both urban and rural areas; take the lead in formulating employment policies for university graduates; formulate policies for the training and award of highly skilled personnel and the promotion of a skilled rural workforce in collaboration with the relevant departments;
- establish a social security system covering both urban and rural residents; coordinate and formulate policies and standards covering social insurance and supplementary insurance for residents in urban and rural areas; organize the formulation of integrated methods for transferring social security accounts nationwide and integrated methods for administering basic old-age pensions; establish policies on basic old-age pensions in state organs and public institutions and gradually upgrade the management of social security funds pooling; establish management and supervision systems governing the budget and final accounts of social insurance funds; participate in the formulation of social insurance funds investment policies;
- be responsible for forecasting, early warning and guidance on employment, unemployment and social insurance funds and develop coping strategies both to manage the information and to administer those funds; implement measures to prevent abuse and to control and adjust financial matters, so as to maintain stable employment and overall balance of payments of social insurance funds;
- formulate salary distribution policies concerning the personnel of state organs and public institutions in collaboration with relevant departments; establish regularly increasing salary mechanisms and salary payment guarantee mechanisms for the personnel of state organs, enterprises and public institutions; formulate policies on benefits and retirement of the personnel in state organs and public institutions;
- guide public institutions in reforming their personnel systems; formulate management policies concerning the personnel in public institutions and manual workers in state organs; formulate policies on management and continuing education of professional and technical personnel; take charge of furthering

reform in the professional job titles system; improve the post-doctoral administration system; be responsible for the selection and training of high-level professional and technical personnel; formulate policies on introducing foreign experts and Chinese intellectuals returning from overseas as well as policies concerning their work and settlement in China;

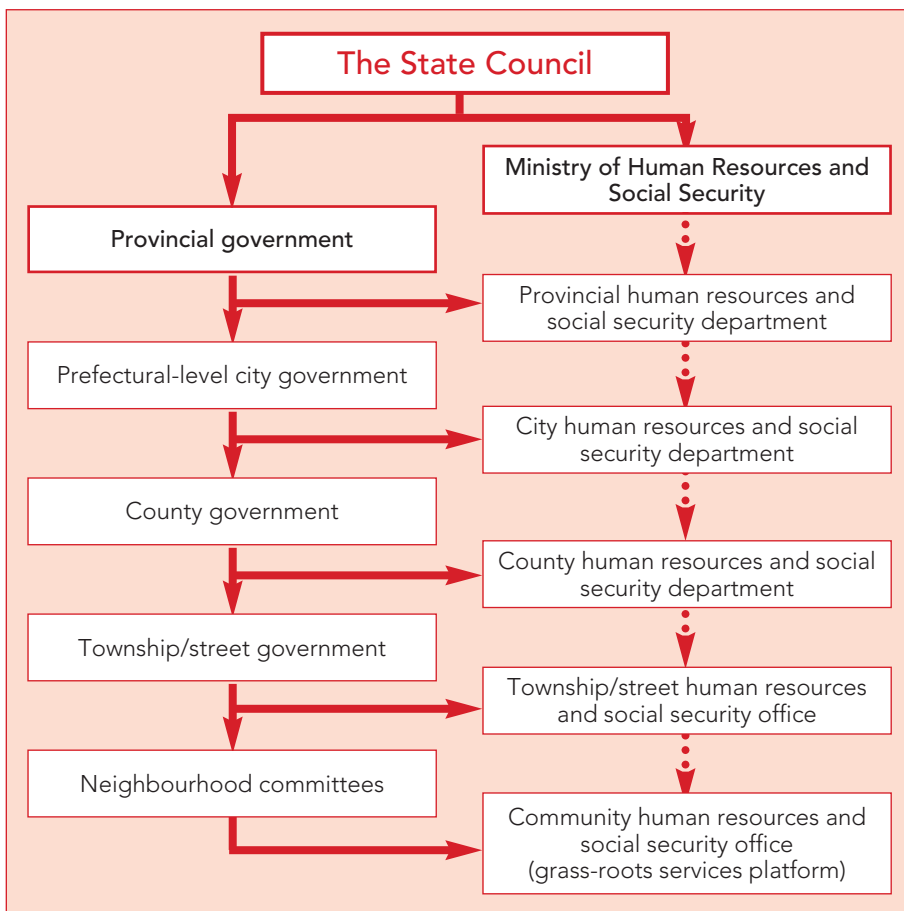
- work out placement policies and programmes for demobilized military officers; take charge of the education and retraining of demobilized military officers; be responsible for managing the delivery of services to demobilized military officers, and offering a choice of re-employment options;
- be responsible for the comprehensive management of civil servants in administrative organs;
- formulate comprehensive policies and programmes concerning rural migrant workers; protect the legitimate rights and interests of rural migrant workers;
- formulate labour and personnel dispute mediation and arbitration systems as well as policies on labour relations coordination mechanisms; draft policies to eliminate child labour and formulate special labour protection policies for female workers and under-age workers; organize the implementation of labour inspection; coordinate workers' labour rights protection; investigate and address major infractions in accordance with the law;
- take charge of the international exchange and cooperation for the MOHRSS and the State Administration of Civil Services; formulate a management system for staff seconded to international organizations;
- discharge other functions as directed by the State Council; administer the State Administration of Foreign Experts Affairs and the State Administration of Civil Service in accordance with the relevant regulations of the State Council.

## Relationships between labour administrations at various levels

The MOHRSS is the highest labour administration organ under the State Council. It develops national labour policies and provides guidance on and supervision of the implementation of policies at local levels. A local labour administration organ belongs to the local people's government at the same level but receives guidance and supervision from higher level labour administration organs. Figure 2 illustrates the relationships between labour administrations at different levels.

The working relationship between the MOHRSS and local human resources and social security departments is dynamic. While the MOHRSS develops, promotes and reviews the national labour policies by various means, such as an annual national

Figure 2 Relationships between labour administrations at various levels



conference in which good practices from selected localities can be examined and lessons learned, the local labour administration, under the direct leadership of the local government at the same level, works hard in an innovative way to address the local situation. In many cases, local initiatives and good practices have been summarized, fine-tuned and developed into national policies.

### Notes

- <sup>1</sup> This section is based on Casale and Sivananthiran (2010).
- <sup>2</sup> Based on the ILO Labour Administration Convention, 1978 (No. 150).
- <sup>3</sup> Street offices are agencies of sub-district administrations in urban areas.
- <sup>4</sup> For further details, see MOHRSS (2008).

# LABOUR AND SOCIAL SECURITY LEGISLATION

# 2

## Introduction

China's legislative power is centralized, with a certain degree of decentralization to local legislatures according to specific local requirements. The legislative organs include the National People's Congress and its Standing Committee, the State Council and its relevant departments, local people's congresses and local government, ethnic autonomous regions, special economic zones and special administrative regions.

The National People's Congress (NPC), the highest organ of state power, has the authority to enact and amend the basic state laws. Legislation of the NPC Standing Committee ranks next to that of the NPC. As the permanent office of the NPC, the Standing Committee also exercises the state legislative powers. Laws made by the Standing Committee outrank all those enacted by any other legislatures except the NPC. They are effective across the entire country, and apply to all individuals and social groups. Laws drawn up by other bodies, unless specifically delegated either by the NPC or its Standing Committee, must be in accord with the laws enacted by the NPC Standing Committee.

In accordance with Article 9 of the Law on Legislation of the PRC, the NPC and its Standing Committee may delegate power to the State Council, which is the highest administrative organ of the Central Government of China, so that it can make the necessary administrative regulations. Regulations enacted by the State Council are subordinate to legislation of the NPC and its Standing Committee.

The State Council is also responsible for leading and managing administrative work in China. Therefore, the State Council guides local governments in their formulation of local rules and regulations and local ordinances, and local rules and regulations of local governments must be in line with the rules and regulations administered by the State Council.

The Law on Legislation clearly stipulates that the relevant departments under the State Council can make rules and regulations within their own respective jurisdictions,

provided that these are in accordance with the law, administrative rules and regulations, decisions and orders of the State Council.

Local legislation refers to the local organs of state power that make and amend standard legal documents within their own administrative areas, in accordance with relevant laws. Local legislation is an important aspect of the entire legislative system of the country.

The rules and regulations made by local authorities are subsidiary to the Constitution and the national laws and regulations, but they have the same force as legislation decreed by State Council departments. When there are discrepancies between stipulations on the same issue, a decision should be made by the State Council.

## The legal system of labour relations

Prior to 1994, Chinese employers and workers were regulated by a wide array of administrative regulations, State Council directives and laws passed by the NPC. However, these regulations, directives and laws were neither consistent nor comprehensive. In many cases, rules covered one type of enterprise but not another and employees in different types of enterprises had very different levels of rights and duties.

On 5 July 1994, the Standing Committee of the NPC adopted the Law of the PRC on Labour Law (hereafter “the Labour Law”), based on the labour system reforms and previous work on labour legislation. It came into force on 1 January 1995. The Labour Law was the first national law to comprehensively regulate labour relations and define labour standards – an important milestone in the development of China’s labour legislation. The Labour Law abolished the previous practice of regulating employment relations by category of business ownership, whether private, public or state owned, which used to be treated separately and differently. Enactment of the Labour Law also symbolized the end of the “iron rice bowl” system of lifelong employment by legislating for the labour contract system as the basic mode of employment relations in China.

The Labour Law legalizes other labour relations adjustment systems, such as the labour inspection system, labour dispute settlement system and the collective consultation and collective contract system. In view of the country’s lack of experience in legislating for these new systems, the Labour Law only provides a legal framework and leaves room for future detailed regulations. This is why many Chinese laws will have to be implemented and further improved with promulgation of detailed regulations after experience has been gained and good practices observed.

Entering the twenty-first century, the pace of improvement in labour legislation is accelerating. The State Council issued several regulations to implement the Labour Law. These include the revision of Provisions on Prohibition of Child Labour in 2002, Regulations on Work Injury Insurance in 2003, Regulations on Labour and Social

Security Inspection in 2004, Regulations on Annual Paid Leave of Employees in 2007, Regulations on Employment Promotion for Disabled Persons in 2007, and Special Rules on Labour Protection of Female Employees in 2012. More importantly, 2007 was designated the year of social legislation, as the NPC adopted three important labour laws that year: namely, the Labour Contract Law of the PRC, the Law on Labour Dispute Mediation and Arbitration of the PRC and the Employment Promotion Law of the PRC. Last, but not least, the Standing Committee of the NPC adopted the long-awaited Social Insurance Law of the PRC in 2010, heralding the formation of a legal system of labour relations in China; the system is compatible with a socialist market economy.

## The Labour Contract Law

After more than a decade's implementation of the Labour Law, the social and economic context has changed considerably compared to the situation in 1994. Following the rapid process of industrialization and urbanization that has taken place in the country, approximately 250 million rural migrants are currently employed in non-agricultural sectors in towns and cities, many of whom work without labour contracts or social benefits. Private and small businesses are increasing in number but, for a variety of reasons, the labour contract system is not being implemented efficiently. In addition, malpractice in labour dispatch<sup>1</sup> is rife in the labour market and the situation must be addressed to avoid advantage being taken of loopholes in the law.

### *Open-ended contracts*

The Labour Law codified the use of the labour contract system to regulate labour relations for all workers by requiring either fixed-term or open-ended contracts to be signed between employers and workers. However, an increasing number of businesses are tending to offer shorter and shorter fixed-term contracts, causing unstable labour relations and infringing workers' rights. The Labour Contract Law (LCL) aims to improve job security for employees, specifying that those employees who have completed two fixed terms with the same employer are automatically granted open-ended terms of employment.

### *Labour dispatch*

The issue of labour dispatch was a particularly controversial matter during the process of soliciting public comments and drafting the LCL. This is reflected in the Amendments of the Labour Contract Law (the Amendments), promulgated by the Standing Committee of the NPC on 28 December 2012, shortly after the implementation of the LCL. In accordance with the Amendments, labour dispatch services

are allowed by law but are required to meet higher standards (amendments to Article 57 of LCL) as follows:

- the registered capital of a labour dispatch company is required to be at least Renminbi (RMB) 2 million (equivalent to US\$320,000), while the original requirement under the LCL was RMB 500,000 (US\$80,000);
- a labour dispatch company must have permanent business premises and facilities suitable for the conduct of its business;
- the management system of a labour dispatch company must meet all the legal requirements;
- companies which intend to provide labour dispatch services must apply to labour authorities for the requisite permits. The LCL did not include a permit requirement.

In accordance with the “equal pay for equal work” principle (which falls under the amendments to Article 63 of the LCL), the dispatched worker shall receive the same pay as that received by a worker of the accepting entity in a similar position. The pay to a dispatched worker under the labour contract between the worker and the labour dispatch company, or under the labour dispatch agreement between the labour dispatch company and the accepting entity, must satisfy the above requirement. In addition, more stringent restrictions on the range of positions to which dispatched employees may be appointed (amendments to Article 66 of the LCL) are clearly defined. The Amendments define the “temporary, auxiliary or substitute positions” in the following terms:

- temporary positions cannot last longer than six months;
- auxiliary positions are those that support the main business line, rather than positions within the main business of the company; and
- substitute positions are those which cover employees on maternity leave, vacation or study leave.

In addition to these clear definitions, the number of dispatched workers engaged by an employer may not exceed a certain percentage of its total number of employees. The exact percentage, however, has yet to be stipulated by the labour administrative authority under the State Council.

Importantly, the Amendments specify more severe sanctions for labour dispatch companies (Article 92 of the LCL): if a company provides labour dispatch services without a permit, the labour authorities will confiscate all illegal gains and impose a fine of no less than the amount of the gain but no more than five times the illegal gain. In the event of no illegal gains being made, a fine of no more than RMB 50,000 (US\$8,000) will be imposed. Employers and dispatch companies violating the law may be fined between RMB 5,000 (US\$800) and RMB 10,000 (US\$1,600) per dispatched

worker if they fail to correct the violations within the time period specified by the relevant labour administrative department. In the event of violation of the regulations, labour dispatch companies may have their labour dispatch business permits revoked.

It is expected that the Amendments of the LCL will help to reduce abuse of the system and significantly reduce the number of casual labourers, to ensure that the LCL can be implemented by all businesses in a fair and strictly compliant manner.

### *Collective agreements at regional or sectoral level*

The LCL contains special provisions on collective agreements and, for the first time, it stipulates that in administrative areas below county level, collective agreements applicable to the whole industry or whole area may be concluded between the Trade Union and representatives of the employers in the industries of construction, mining, catering services, etc. The Labour Law provides for a collective contract within the enterprise.

### *Tripartite mechanism for coordinating labour relations*

Article 5 of the LCL stipulates that the labour administration authorities of the people's governments, together with the trade unions and enterprise representatives at the county level and above, shall establish and improve a tripartite mechanism for coordinating labour relations, and jointly study and resolve major issues concerning labour relations. This is also the first time that national labour legislation has regulated this mechanism and reflects the commitment to promoting tripartite consultation on labour relation issues made by China's ratification of the ILO Tripartite Consultation Convention, 1976 (No. 144) in 1990.

Labour relations are basic social relations and the Labour Contract Law is the basic legislation that regulates such relations. The law has attracted significant public attention. During the 30-day period allowed to solicit public comment on the draft labour contract law, the NPC received a total of 191,000 comments, which was the highest number received in the consultation processes for a number of important and controversial laws.

The LCL is intended to regulate the behaviour of both employers and workers and to protect not only employees but also the interests of law-abiding employers, helping to promote fair play in the market economy. Of course, the LCL also reflects the needs of the times, since the establishment of the modern labour contract system and the legal supervision system are necessary steps in transforming China's economic development pattern and upgrading its industrial structures.

## **The Social Insurance Law**

The Labour Law, enacted in 1994, provided for the creation of a modern social security system. Various regulations have since followed, including the Provisional



Regulations on Collection and Payment of Social Insurance Contributions, promulgated by the State Council in 1999, and the Regulations on Work Injury Insurance adopted by the State Council in 2003.

In addition to the nationwide regulations, policies regulating the different social insurance schemes were scattered throughout a range of directives, rules and regulations at both the central and local levels. To encapsulate the good practices of social insurance reforms over the past two decades and to guide their further development, it was both necessary and urgent to have a national law for social insurance.

To address this pressing need, the former Ministry of Labour set up a drafting group for the Social Insurance Law in 1993, and the Standing Committee of the NPC promulgated the Social Insurance Law (SIL) on 28 October 2010 – 17 years in the making. The SIL consolidates various existing rules and regulations and aims to establish a social insurance legal framework that will cover both urban and rural residents, tighten supervision of social insurance contributions, protect legitimate rights of citizens to participate in and benefit from social insurance and ensure that citizens share in the results of development.

The new SIL is the first comprehensive social insurance law in China. It sets out the basic framework, principles and schemes of the social insurance system, which includes five mandatory insurance schemes: basic pension, basic medical, unemployment, work-related injury and maternity. The SIL covers all employers within China and all full-time and part-time employees, as well as self-employed individuals working in the PRC (pension and medical care insurance cover all citizens). The SIL also states that expatriates working in the PRC, including those from Hong Kong, Macau and Taiwan, shall be permitted to participate in the schemes.

According to the SIL, employers have to make contributions to all five areas of insurance and employees need only contribute to the first three items. The SIL has not specified a national rate for the contributions to be made by both employers and employees, which would suggest that the current practice (i.e. contribution rates set by provincial governments and differing from province to province) is to continue.

While there has been no change in the types of social insurance available to workers, the SIL seeks to provide more flexibility to ensure that all participants have access to benefits. The measures are discussed in turn below, with each section summarizing the new contents of the SIL adopted by the NPC in 2010.

### *Pension insurance*

Workers can now enjoy pension insurance benefits even if they have not contributed to their pension account for the prescribed period of 15 years. Previously, workers who reached the mandatory retirement age (generally, 60 for men and 55 for women) but

who had failed to meet the 15-year contribution prerequisite were required to exchange their pension benefits for a lump sum payment rather than enjoying regular basic pension payments until their death. Employees also had the option of delaying their retirement for a further 5 years if doing so would complete the 15-year requirement and make them eligible for a pension.

Under the SIL, employees may now enjoy their pension benefits upon reaching the stipulated retirement age even if the required contribution period has not been met, provided that the employees continue to pay premiums to fulfil the 15-year payment period.

### *Transferability of social insurance between different districts*

Workers now have greater flexibility in terms of job mobility. Traditionally, insurance benefits that accumulated during an employee's employment tenure in one district were not readily transferable to another as social insurance programmes were separately managed according to location. The new social insurance regime is intended to allow employees to work in different localities without anxiety about whether they will be able to retain the full value of payments made to their insurance funds.

### *Inclusion of rural residents*

Under the SIL, rural residents are now eligible to participate in the social insurance schemes formerly enjoyed only by urban employees. In the past, rural residents working outside urban areas did not have an automatic right to social insurance. Furthermore, while rural residents working in cities could participate in social insurance programmes, any programmes available to rural residents were inferior to those enjoyed by their urban counterparts and were not transferable.

The new social insurance programme effectively allows rural residents the option of upgrading to an urban social insurance scheme. Upon cessation of employment, rural resident employees can choose to revert to their rural social insurance programme. As a result of this coverage, the discrepancies between benefits for rural residents and those for urban residents have been considerably narrowed.

### *Reduction of work injury costs borne by employers*

According to previous PRC rules, an employer was obliged to pay an employee who had suffered a work-related injury a hospital food allowance, transportation and accommodation expenses for medical treatment outside the city in which the employee worked, and a lump-sum medical subsidy if the employee's employment contract was terminated due to the injury. Under the SIL, all the above expenses are to be paid from the locally administered work injury insurance fund.

### ***Collection of social insurance contributions***

If an employer fails to make sufficient or timely social insurance contributions, the local social insurance administrative department can require rectification of the omission by the employer within a specified time and impose a late payment penalty of 0.05 per cent per day on the outstanding contributions. If the employer fails to make the overdue contributions and pay the penalty within the specified time limit, the local administrative department may impose fines ranging from one to three times the amount of the overdue contributions.

Furthermore, if any employer fails to comply, the local social insurance administrative department has the right to collect any outstanding amounts from the employer's bank account. If the balance in the employer's account is not sufficient to cover the payment, the department may require the employer to provide guarantees for deferred payment or apply to the people's court for seizure, attachment and auction of the employer's assets.

### ***Strengthening the management and supervision of social insurance funds***

The legislation makes the following provisions:

- (1) Social insurance funds shall be used for designated purposes only, and no organization or individual may encroach upon or misappropriate them and it is stipulated that all social insurance funds shall be deposited in special financial accounts and that specific management provisions shall be made by the State Council.
- (2) The basic pension insurance funds shall, by degrees, be subject to national overall planning. Other social insurance funds shall be gradually subject to provincial overall planning, according to a prescribed timetable.
- (3) In the interests of security, social insurance funds shall be invested and operated in accordance with the relevant provisions of the State Council to achieve secure appreciation of their value.
- (4) Social insurance funds are subject to supervision by the people's congress, administrative departments and a social supervision committee, composed of representatives from employers, trade unions, the insured and independent experts.

### ***Improving social insurance services***

The legislation provides that the following conditions shall be fulfilled:

- (1) Social insurance agencies shall undertake the following: create files for all employers, make accurate records of all personnel participating in social

insurance, premium payments and other social insurance data, and properly keep the original documents of registration and declaration and the accounting documents of payment and settlement. Social insurance agencies shall also make timely, complete and accurate records of the premiums paid by the individuals participating in social insurance, the premiums paid by their employers, the disbursement of social insurance benefits and other personal benefits, and shall periodically send personal benefit records to the individuals free of charge. Social insurance agencies shall pay social insurance benefits on time and in full and provide social insurance consultation and other related services to employers and individuals who may query and check their contribution records and records of receipt of social insurance benefits at social insurance agencies free of charge.

- (2) Social insurance agencies shall be established in the overall planning areas outlined in the legislation. They may, as needed for their work, establish branches and service outlets in their respective overall planning areas, subject to approval of the local social insurance administrative departments and institutional staffing administrative organs.
- (3) The personnel expenses of social insurance agencies and the basic operating costs and management costs incurred from handling social insurance shall be guaranteed by the public finance departments at the same level according to the relevant provisions of the state.
- (4) Social insurance agencies shall establish and improve management systems for business, finance, security and risk control.

### Note

<sup>1</sup> Labour dispatch is a labour arrangement in which a staffing agency enters into an employment contract with an employee and then enters into a dispatch agreement with a host employer, pursuant to which the employee is dispatched to the host employer.



## Preliminary remarks

Labour relations prior to the economic reform's initiation in 1978 were basically unitary, prescribed by the Government's "iron rice bowl" arrangements, which guaranteed job security and steady income and benefits for the majority of people, including military personnel, members of the civil service and workers in various state-run enterprises and institutions.

In the course of establishing and improving the socialist market economy system, employers and workers have become the main protagonists in the labour relations arena, giving rise to an increase in labour disputes. At the same time, diversified economic entities have emerged, including not only traditional SOEs but also businesses backed by foreign investment, joint ventures and private companies, to name but a few. As a result, labour relations in China have become correspondingly complex and diversified. Along with the progressive process of the labour reforms, China has put in place a legal framework, established a labour relations adjustment mechanism, and implemented systems to deal with labour inspection and labour dispute settlement. It has established precedents for collective bargaining between two parties, tripartite consultation between the Government and social partners and governmental supervision enforced by legislation following the principle of combining market adjustment with enforcement of laws and regulations.

The process of reforming the labour relations adjustment mechanism has actively promoted the reform of SOEs and the establishment of a market-orientated employment mechanism. During the course of this unprecedented economic reform and transformation of the country's social structure, relations between governments, employers and workers have been put on a better footing, enabling the realization of a rational allocation of human resources, enhancing labour productivity and maintaining stable and harmonious labour relations.

## The labour relations adjustment system

### *Establishing and improving a labour contract system*

A labour contract is the basis for establishing an employment relationship between any given parties. China introduced a labour contract system in the mid-1980s and, since the 1990s, has actively promoted its adoption. As a result, the first modern Labour Law of the PRC was adopted by the NPC in 1994 and came into force on 1 January 1995. The Labour Law stipulates that an employer and a worker shall establish an employment relationship in accordance with the law, and conclude a written labour contract, with or without fixed terms, or with a period within which the prescribed work must be completed. During the term of the labour contract, the two parties must abide by the principles of equality, voluntariness and unanimity through consultation. More importantly, a collective consultation is legally permitted to conclude a collective contract and this created a new mechanism capable of regulating labour relations at the enterprise level.

The promulgation of the Labour Law in 1994 was a milestone in China's labour legislation development and marked the establishment of the labour contract system in all enterprises in China. It laid the foundation for market-orientated labour and social security reforms and development, and played an active role in promoting China's entry into the World Trade Organization (WTO) in 2001.

Given the historical constraints, the Labour Law is more a legal framework than a labour code. It was updated by several specific laws, such as the Labour Contract Law in 2007.

### *Establishing and improving systems of collective consultation<sup>1</sup> and collective contract*

The collective contract system is not new in China. The Trade Union Law of the PRC, adopted in 1950, stipulates that trade unions have the right to conclude collective agreements with the management of enterprises on behalf of their workers and staff. To facilitate the process, the Ministry of Labour issued an instruction concerning the establishment of labour-management consultation conferences in private enterprises in 1950. However, following the transformation of private enterprises into public-private joint ventures in late 1955, the collective contract system started to decline and was finally dismantled while the state exerted increasing control over enterprises during the late 1950s.

The collective contract system began to revive only after the introduction of the reform and opening-up policy. In 1979, the All-China Federation of Trade Unions (ACFTU) started to promote the collective contract system for SOEs, which was written into the Constitution of Chinese Trade Unions in October 1983. Since then, the ACFTU has promoted the development of a collective contract system in both

private and foreign direct investment enterprises. The Labour Law, adopted in July 1994, legalized the collective contract system and paved the way for its adoption in all types of enterprises. The collective contract system has strengthened the functions of the assembly of workers' representatives and trade unions, and improved the system of workers' democratic participation.

In recent years, the collective contract system has not only been popularized in non-state enterprises, but has also been gradually extended to SOEs. By the end of September 2010, 1.4 million collective contracts had been signed nationwide, covering 2.4 million enterprises and 185 million workers.<sup>2</sup> This is mainly attributed to the adoption of the Labour Contract Law in 2007 and the launch of the "Rainbow Plan" supported by the Tripartite Mechanism for Coordinating Labour Relations.

In 2008, the Government Work Report to the NPC for the first time proposed the promotion of collective consultation systems at the enterprise level, which demonstrated the Government's attitude and determination to progress the issue. In 2010, the MOHRSS, ACFTU and China Enterprises Confederation (CEC) jointly issued the Notice on Further Promotion of Collective Contract System through Implementation of the Rainbow Plan.

The goal of the Rainbow Plan is to build and develop harmonious and stable labour relations, focusing on collective wage negotiations. It upholds the principles of safeguarding the legitimate rights and interests of workers and promoting the healthy development of enterprises, while continuously extending coverage of the collective contract system and improving its effectiveness.

The plan requires collective contracts to be signed within 3 years in all enterprises in which trade unions have been established. For those small enterprises where trade unions have yet to be set up, the plan requires regional and sectoral collective contracts to be signed to extend the coverage.

The notice requires the following measures to be taken to improve the coverage and effectiveness of collective consultation and collective contract:

- (a) Further intensify the advocacy campaign to publicize relevant laws and regulations in relation to collective contract, making full use of radio, television, newspapers, the Internet and other media to give wide publicity to the important role of the collective consultation and collective contract system in order to safeguard the legitimate rights and interests of enterprises and workers.
- (b) Further enhance the relevance and effectiveness of collective consultation, continuing to focus on collective wage negotiations, especially in non-public enterprises and labour-intensive enterprises, to encourage the enterprise and its workers to conduct collective negotiation on wage levels, work quotas and other matters relating to labour remuneration, and to enter into a special collective contract in order to establish a mechanism for normal growth of wages, a wage distribution co-determination mechanism and payment security at the enterprise.



- (c) Further expand the coverage of the collective consultation and collective contract system, actively promoting collective consultation on an equal footing between the enterprise and the enterprise's union on behalf of workers or representatives elected by the workers under the guidance of upper-level unions, to conclude a collective contract. Efforts should also be made to vigorously promote collective consultations at the industry and regional level (mainly below the county level) where there are many small private businesses and labour-intensive enterprises.
- (d) Further promote initiatives of collective consultation, actively supporting enterprises and trade unions in implementing initiatives to carry out collective consultation, especially those initiatives originated by trade unions. Initiatives can focus on enterprises which have not previously engaged in collective consultation or whose collective contracts have expired. In enterprises where trade unions are not yet established, trade unions at a higher level should provide guidance to workers' elected representatives and initiate a process of collective consultation. For an administrative region below the county level with many private small businesses or enterprises within the same industry, a regional trade union organization or sectoral trade union organizations can initiate collective consultation with regional business organizations or industrial associations. If this grass-roots business organization is not yet established, the invitation to initiate collective consultation can be sent directly to enterprises in the region or within the same industry. Meanwhile, businesses or business organizations in a region can also propose an initiative of collective consultation on issues that concern workers' organizations.
- (e) Further regulate the collective bargaining process, enhancing the effectiveness of the collective contract and ensure the legitimacy of representatives from both sides of the collective consultation. Either party can inform the other in writing about a proposed collective consultation. Formal consultation meetings are held to produce a final draft collective contract to be submitted to a workers' representative congress or put before all workers for adoption in accordance with the law, and to be signed by the chief negotiators of both parties.
- (f) Further strengthen the capacity building of the main bodies of collective consultation, continuing to encourage the establishment of grass-roots trade union organizations and employers' organizations. Great efforts are being made to establish trade unions within non-state enterprises, and regional and sectoral trade union federations below the country level. The establishment of employers' organizations at and below the county (district) level should be accelerated to cultivate negotiating bodies representing employers.
- (g) Further improve the guidance and services for collective consultation work, including the establishment of specific advisory agencies and teams of advisers

to provide consultancy facilities to workers' and employers' organizations advising on how to conduct and improve collective consultation and the collective contract system. Governments shall improve the minimum wages system and provide guidelines on wage setting, establishing an information dissemination system on guided wage levels for the labour market and sectoral labour costs.

- (h) Further develop management of and compliance with the collective contract. Employers or employers' organizations shall submit the signed collective contracts to the human resources and social security departments for record and review within a specified time, in accordance with the regulations. Human resources and social security departments should register, review and issue an "Opinion Letter of Review" testifying to the legality of the collective contract in a timely manner and in accordance with the law.

This new policy on the promotion of the collective consultation and collective contract system was based on good practices in a number of localities, such as Zhejiang, Fujian, Guangdong and Jiangsu. It was regarded as a positive development by international experts, as C. Lee indicates:

... wage bargaining has been given a new impetus as a key mechanism for equitable and inclusive growth. Under the new policy direction coupled with tight labour market and workers' challenges, the key pillars of labour market institutions, which have grown to maturity for the last decade, begin to function in a new configuration.<sup>3</sup>

### *Improving the labour standard system*

Labour laws and regulations set the minimum labour standards for working hours, rest and vacation, wages, prohibit the use of child labour and provide special labour protection for women, etc. In a general context of social and economic development, working conditions and labour standards are improving correspondingly. For example, weekly working hours have been reduced from 48 hours in the early stages of the reform to 40 hours, and workers can now enjoy longer annual leave following the Regulations on Paid Annual Leave for Employees (2007).

To protect women and minors, China issued the specific Law on the Protection of Rights and Interests of Women and the Law on the Protection of Minors, as well as other regulations, such as Regulations on Labour Protection of Women Workers and Regulations on the Prohibition of the Use of Child Labour. Labour laws prohibit the hiring of people under the age of 16, and punish the exploitation of child labour. The state additionally prohibits all employers from hiring women and young people between the ages of 16 and 18 for tasks explicitly prohibited by state regulations.

To ensure that labour standards are implemented in a consistent manner, the Government solicits input from trade unions, enterprises, specialists and academics

while formulating, promulgating or adjusting labour standards. Labour standards should guarantee basic human rights and promote economic development and social progress and, on this basis, should gradually improve. China values the experience of other countries in formulating and implementing labour standards and, in time, will comply with relevant international labour conventions, in line with the specific conditions of its economic and social development.

### *Improving the system of labour dispute settlement*

Labour disputes are inevitable but should be handled according to the law and in a timely fashion. China resumed the establishment of a labour dispute settlement system in SOEs in 1987. In 1993, the State Council promulgated the Regulations on Labour Dispute Settlement in Enterprises. These regulations encourage both parties in a dispute to solve their problems through consultation and negotiation, and clearly define the procedures and organs responsible for the settlement. According to the regulations, whenever a labour dispute arises between a worker and an enterprise, either party may apply to the labour dispute mediation committee at the enterprise level. If the mediation fails or if neither party wants mediation, then they may apply to the local labour dispute arbitration committee. If either party is dissatisfied with the decision of the arbitration committee, they may file a lawsuit with a people's court.

In 2008, the Law of the PRC on Labour Dispute Mediation and Arbitration was adopted by the NPC, which actively supports institutional and professional personnel capacity building in labour and personnel dispute mediation and arbitration. Mediation and arbitration service capabilities have been greatly enhanced by the following advances:

- the initial establishment of a legal and policy system for labour dispute mediation and arbitration;
- the enhancement of the basic preventative functions of labour dispute settlement;
- the integration of the former labour and personnel dispute mediation and arbitration institutions;
- the construction of arbitration institutions and capacity building of arbitrators' teams.

From 2008 to 2012, the mediation and arbitration institutions at all levels handled a total of 6,023,000 disputes involving nearly 8 million workers. This represented a fourfold increase compared to the total of 1,467,000 disputes between 2003 and 2007.<sup>4</sup> The arbitration case settlement rate is maintained at over 90 per cent. Experience has shown that labour and personnel dispute mediation and arbitration play a pivotal role in safeguarding the legitimate rights and interests of workers and

employers and in promoting harmonious labour relations and social stability as an important part of the mechanism for resolving tensions in a pluralistic society.

### *Setting up a labour inspection system*

Based on the pioneering work on labour inspection initiated in special economic zones such as Shenzhen and Zhuhai, in August 1993 the former Ministry of Labour issued Provisions on Labour Inspection, which symbolized the official establishment of a labour inspection system in China. The Labour Law of the People's Republic of China, adopted in the following year, legalized the labour inspection system.

After 10 years' experience of the system in practice, in 2004, the State Council promulgated the Regulations on Labour and Social Security Inspection, which established a legal and operational basis for labour inspection development in China. It is noticeable that China's labour inspection system has played an important role in enforcing labour laws but further capacity and modernization will be needed to face the challenges brought by the rapid economic and social changes. In 2007, the Law of the People's Republic of China on Labour Contracts further clarified the legal position and, in 2008, the MOHRSS established a Labour Inspection Bureau, which provides guidance to local labour inspectorates and coordinates and develops national policies and joint programmes to ensure the unified implementation of the labour laws in the country. By the beginning of 2012, China had 3,291 labour inspectorates with a total of 25,000 full-time labour inspectors (excluding OSH inspectors).

The year 2013 marks the twentieth anniversary of labour inspection in China. Following the principle of promoting law-based administration and efficient and strict enforcement of laws, China has introduced a nationwide Twin Networks Management initiative aimed at modernizing labour inspection services.

### *Reforming the wage and income distribution system*

A sound income distribution system is fundamental to economic and social development. Since the reform and opening-up process began, China's income distribution reforms have been ongoing and have established an income distribution system that is in line with the basic national conditions and the stage of the country's development. However, there are still some outstanding problems to be resolved in this area: for example, the income gap is widening. The Gini coefficient reached 0.474 in 2012 – above the warning level of 0.4 set by the United Nations.

To address the growing public concern over the widening wealth gap and resolve problems with the existing income distribution, China recently unveiled guidelines to reform its income distribution mechanisms. Further reform will focus on increasing income, narrowing the income distribution disparity and regulating income distribution.

The principle of the reform is to ensure that the people share in the fruits of development, increasing individual income in step with economic development and work remuneration in line with improvements in labour productivity. China should raise the share of individual income in the distribution of national income and increase the share of work remuneration in primary distribution. A proper balance should be struck between efficiency and fairness in both primary and secondary distribution, with particular emphasis on fairness in secondary distribution. China should also improve the primary distribution system to allow factors of production such as labour, capital, technology and managerial expertise to have their due share of income according to their respective contribution. Active measures should also be taken to improve the mechanism of secondary distribution, regulating income distribution mainly through taxation, social security and transfer payments.

The aim is to improve the way in which income is distributed, protect lawful income, increase the income of low-income groups, adjust excessively high income and impose sanctions on illicit income. The guidelines offer directions on an extensive range of policy areas, such as taxation, subsidies, the salary system, financial regulation, household registration and social security.

In particular, in terms of the salary system of enterprises, the guidelines require that SOEs impose ceilings on payments to their senior state-appointed management and ensure that, in general, the salary growth of senior staff is slower than the average level of workers' salary growth.

The percentage of profits that central SOEs have to pay to the Government will be increased by around 5 percentage points by 2015 from the current level and the added income will be channelled into social security.

By adopting these measures, China will broaden its reform of the wage and salary system in enterprises, promote collective wage consultation in enterprises and protect income earned through work.

### *Setting up a tripartite mechanism for coordinating labour relations*

China resumed its activities within the ILO in 1983 and has been influenced by its unique tripartite governance structure. It has ratified the Tripartite Consultation Convention (No. 144), committing itself to the promotion of tripartite consultation and cooperation when designing labour policies and developing and implementing labour laws.

Article 34 of the Trade Union Law of the PRC, amended in October 2001, makes the following provision for the tripartite consultation mechanism:

the labour administrative departments of the people's government at all levels shall, together with the trade unions and the representatives of enterprises at the corresponding levels, establish tripartite consultation mechanisms for labour relations and jointly study and resolve major issues of labour relations.

This is the primary legal basis of the implementation of the tripartite consultation mechanism in China.

In August 2001, the MOHRSS, ACFTU and CEC jointly established a national tripartite mechanism for coordinating labour relations and convened the first National Tripartite Conference for Coordinating Labour Relations, setting a standard and an institutional operating mechanism for China's tripartite consultation on labour relations issues. At present, tripartite consultation mechanisms at provincial and municipal levels have been established and are gradually being extended to the county (district) and industry levels.

Article 5 of the LCL, adopted in 2007, further stipulates that the labour administration authorities of the people's governments, together with the trade unions and enterprise representatives at and above the county level, shall establish and improve a tripartite mechanism for coordinating labour relations, and jointly study and resolve major issues concerning labour relations.

The main roles of the tripartite mechanism for coordinating labour relations are as follows:

- (1) to study and analyse economic–social development trends, policies and institutions and their impacts on labour relations; to coordinate tripartite policy-making and positions, voice opinions and make suggestions on the formulation and implementation of legislation relating to adjusting labour relations;
- (2) to study and analyse the status and development trends of labour relations, conduct tripartite consultation on prominent, nationwide issues, reach consensus and take action jointly with the social partners;
- (3) to establish and improve the working systems for adjusting labour relations, including the promotion of the local tripartite mechanism for coordinating labour relations, the labour contract system, the collective contract system, the enterprise democratic management system and the labour dispute settlement mechanism.

The tripartite mechanism for coordinating labour relations will prioritize the following areas of work:

- continuing the campaign to help small enterprises to implement the labour contract system;
- further promoting the implementation of collective consultation and the collective contract system under the Rainbow Plan;<sup>5</sup>
- carrying out comprehensive campaigns to improve labour dispatch management and practice;
- resolving wage arrears issues for migrant workers;

- conducting collective consultation in good faith to handle collective disputes in order to create harmonious labour relations.

At the same time, China should continue to strengthen the tripartite mechanism for coordinating labour relations and constantly improve its organizational structures and modes of operation.

## Views and opinions

In Chinese traditions, harmonious labour relations are a prerequisite for the construction of a harmonious society. During three decades of reform and development, China has established a comprehensive legal system of labour relations based on the framework of the Labour Law, as well as the latest Labour Contract Law and Law on Labour Dispute Mediation and Arbitration. Simultaneously, China has established working systems for labour inspection, labour dispute settlement and labour relations. However, it is critical to ensure that those working systems fulfil their function and work in synergy when implementing labour laws.

The effective labour relation adjustment system should ensure that the people share the fruits of development. China is working to broaden the reform of the income distribution system, and to raise individual income in line with economic development and increase work remuneration as labour productivity improves. In these efforts, the tripartite consultation mechanism and collective consultation between employers and workers' representatives and trade unions will play an increasingly active role.

The Twelfth Five-Year Plan requires harmonious labour relations to be established in China. It calls for the improvement of the tripartite mechanism for coordinating labour relations by promoting the full potential of Government, trade unions and enterprises to shape an effective benefit-sharing system between enterprises and workers. The Plan requires that the labour contract system be advanced in a comprehensive way and on a larger scale, calls for the enforcement of labour laws to be strengthened and that the mechanism for labour dispute mediation and arbitration be developed and improved.

Having adapted to the new environment, with its profound changes in the economic system, social structure, interest patterns and modes of thinking, those responsible for regulating the labour market and adjusting labour relations should give due consideration to the self-governance mechanisms of social partners, such as collective consultation and the collective contract system, while ensuring that labour administration and its various services and working mechanisms can facilitate this development trend.

## Notes

<sup>1</sup> In Chinese official documents, collective bargaining is called “collective consultation”, emphasizing a non-adversarial process and common ground for negotiation. Collective agreements are called “collective contracts”.

<sup>2</sup> See <http://english.acftu.org/template/10002/file.jsp?cid=68&aid=621> [accessed 13 May 2013].

<sup>3</sup> Lee, C. *Evolution of labour market institutions and industrial relations in China: From liberalization and deregulation to harmonization and rebalancing (1992–2012)*, mimeo (Geneva, ILO).

<sup>4</sup> See [http://www.mohrss.gov.cn/SYrlzyhshbzb/bld/qxp/ldjh/201303/t20130321\\_91702.htm](http://www.mohrss.gov.cn/SYrlzyhshbzb/bld/qxp/ldjh/201303/t20130321_91702.htm) (in Chinese) [accessed 14 May 2013].

<sup>5</sup> The Rainbow Plan is a national programme to promote collective consultation and collective contract, jointly launched by the MOHRSS, ACFU and CEC.





## Main issues

The term “working conditions” encompasses working hours, rest periods and annual leave, wages and special labour protection measures for specific groups of workers. Working conditions are so vital for the quality of workers’ lives that these issues are regulated by labour legislation.

Article 43 of the Constitution of the PRC stipulates that working people in the People’s Republic of China have the right to rest periods. The state provides facilities for rest and recuperation of working people and prescribes working hours and vacation periods for workers.

The Labour Law, in 1994, set out basic labour standards. The Labour Law also provides that lower levels of government should institute a minimum wage system and keep the Central Government informed. The legislation contains a specific chapter on the protection of women and young people (between the ages of 16 and 18 years) at work. It prohibits the termination of labour contracts of pregnant or breast-feeding employees as well as employees suffering from occupational injuries or illnesses.

Article 4 of the Labour Contract Law (2007) stipulates that when the employer formulates, modifies or makes decisions on rules, regulations or important issues that are directly related to the immediate interests of its workers, such as wages, working hours, rest periods and annual leave, OSH, insurance and benefits, training, working discipline or work quota management, etc., the case shall be discussed either with the employee representative congress or with all the employees. The final decision shall be made through consultations with the trade union or the employee representatives on an equal basis. This Article confirms the orientation and promotion of collective bargaining and collective contracts in the new Labour Law, as it aims to establish a democratic mechanism between the two parties to the employment relationship in order to improve working conditions in the interests of both.

The equitable provision of basic public services is one essential means by which governments ensure equality of opportunity for their citizens. Good health, a solid education, protection from the vicissitudes of life and work (such as old age or a work-related accident or medical problem) and access to training and other employment services are all essential if any woman or man is to participate fully in society on a fair and equal basis. The Government's policy goal of "equalization of basic public services" is precisely a call to achieve equality of opportunity in these critical aspects of life by guaranteeing every Chinese woman and man access to an adequate standard of health care, education, social security and employment services.

Realization of the goal of equalization of basic public services is particularly important to allow vulnerable groups of workers to share the benefits of social and economic development and to develop their individual potential for a better life and work outcome. This is also one of the most important preconditions for achieving overall equality of opportunity in the country. It would make China's continued strong economic development more sustainable and contribute more effectively to both economic and human development.

## Labour legislation on working conditions

Labour standards are the minimum measures and criteria legally required to ensure minimum remuneration and working conditions, particularly in terms of working hours, rest periods and annual leave, OSH, wages, and protection of women and young workers.

### *Working hours*

The Labour Law sets out a standard working-hour system under which employees shall work no more than eight hours a day and no more than 40 hours per week. The law also allows the employing unit to extend working hours arising from the requirements of its production or business after consultation with the trade unions and employees, but the extra working time should be less than one hour per day. If such an extension is required due to extraordinary reasons, the extended hours shall not exceed three hours a day, on condition that the health of employees is guaranteed. However, the total extension in a month shall not exceed 36 hours. In addition, the employing unit shall pay employees no less than 150 per cent of the normal wages for the extra working hours.

### *Rest periods and holiday entitlement*

The Labour Law (1994) stipulates that the employing unit shall guarantee that employees have at least one day off in a week. In 1995, the Provisions on Employees'

Working Hours implemented by the State Council reduced the weekly working hours from 44 to 40, which means that there are two rest days per week. For state organs and institutions, the rest days are on Saturday and Sunday, but enterprises have flexibility to arrange weekly rest days independently. The employing unit shall pay employees no less than 200 per cent of the normal wages if extended working hours are arranged on rest days and holiday entitlement cannot be deferred.

The Labour Law also stipulates that employees who have worked continuously for 1 year or more shall be entitled to paid annual leave and entrusts the promulgation of concrete measures to the State Council (requiring a total of 11 statutory holidays a year according to the rule of the State Council in 2007). The employing unit shall pay employees no less than 300 per cent of the normal wages if extended working hours are arranged on statutory holidays.

### *Minimum wages*

Article 48 of the Labour Law stipulates that the state shall implement a system of guaranteed minimum wages and authorizes provincial governments to set specific standards.

The MOHRSS issued Provisions on Minimum Wages in 1993, which came into force on 1 March 2004. The Provisions require provinces to set comprehensive minimum standards with reference to the following factors:

- the average living expenses of local citizens;
- the average wage level of society as a whole;
- individual social security contributions;
- local unemployment rate; and
- economic development level of the specific province.

Two kinds of standards were proposed: a monthly minimum wage was set for full-time workers and an hourly minimum wage for part-time workers.

With economic development and an increasing income gap between social groups, China saw an escalating trend in minimum wage adjustment between regions. In 2012, 23 provinces adjusted their minimum wage levels: Beijing, Chongqing, Fujian, Gansu, Guangxi, Hainan, Hebei, Heilongjiang, Hunan, Inner Mongolia, Jiangxi, Jiangsu, Ningxia, Qinghai, Shaanxi, Shangdong, Shanghai, Shenzhen, Shanxi, Sichuan, Tianjin, Xinjiang and Yunnan.

A National Human Rights Action Plan (2012–15), recently published by the State Council, also proposes the establishment of a standard wage increase mechanism for maintaining 13 per cent growth in the annual minimum wage, and anticipates that the minimum wage level in most regions will reach over 40 per cent of the average wage

of local urban employees. More importantly, the Plan requires efforts to be made to establish and improve the collective wage consultation mechanism and wage payment security mechanism in enterprises, and to ensure that migrant workers and urban employees receive equal pay for equal work.

## Vulnerable workers and equality

Non-discrimination, support for the continual improvement of working and living conditions of women and men, and promotion of equality at work have been fundamental principles underpinning the work of the ILO since its creation in 1919. These principles are an integral component of the ILO's Decent Work Agenda – promoting decent and productive work in conditions of freedom, equity, security and human dignity – and are also reflected in the Chinese labour laws detailed above. All workers have the right to decent work, not only those working in the formal economy, but also the self-employed, casual and informal economy workers, as well as those, predominantly women, working in the care economy and private households.

### Women workers

There were about 137 million urban female employees in China, according to the All-China Federation of Trade Unions, in 2011.<sup>1</sup> The Labour Law contains a specific chapter legislating for the special protection of women and young workers (between the ages of 16 and 18). The Law prohibits women workers from engaging in certain types of work, especially during periods of pregnancy and breast-feeding, as stipulated by the state.

The Law on the Protection of Rights and Interests of Women of the PRC plays an important role in promoting gender equality, and in guaranteeing the lawful rights and interests of women. It stipulates that the state shall guarantee that women enjoy equal rights with men to work and to social security, and that equal pay for equal work shall be applied to men and women alike and women and men shall be entitled to equal welfare benefits.

Article 27 of the Law stipulates that no entity may, for the reason of matrimony, pregnancy, maternity leave or breast-feeding, decrease a female employee's wage, dismiss her or unilaterally terminate the labour (employment) contract or service agreement, unless the female employee requests that the labour (employment) contract or service agreement be terminated, and that no entity may discriminate against women for the reason of gender when implementing the state retirement system.

Recently, the State Council promulgated Special Provisions on Labour Protection of Women Workers, which took effect on 28 April 2012. According to these Provisions, the duration of maternity leave has been increased from 90 days to 98 days following the ILO Maternity Convention, 2000 (No. 183).

For the first time, the Special Provisions stipulate that the employer shall prevent and prohibit sexual harassment in the workplace.

Human resources and social security departments and work safety supervision and administration departments of the people's governments at or above the county level are responsible for the supervision and inspection of employers to ensure compliance with the Special Provisions in accordance with their respective functions, while trade unions and women's organizations should supervise employers' compliance with the Special Provisions in accordance with the law.

## Rural migrant workers<sup>2</sup>

Since the 1980s, a large number of rural migrant workers have flowed into cities and played an important role in facilitating a historic process of industrialization and urbanization. By the end of 2012, the number of migrant workers had reached a total of 263 million people, an increase of 9.83 million over the previous year, including 163 million migrant workers working outside their hometown.

However, migrant workers have faced some policy and institutional barriers to being treated on an equal footing with urban workers. For example, administrative restrictions on enterprises' hiring of migrant rural workers were not lifted until 2000. Since then, the Government has started to take measures to solve the problems experienced by rural migrant workers, such as wage arrears, lack of access to employment services and vocational training, poor living and working conditions, exclusion from participation in social security and exposure to occupational hazards.

In September 2003, the Ministry of Agriculture, the former Ministry of Labour and Social Security, the Ministry of Education, the Ministry of Science and Technology, the former Ministry of Construction and the Ministry of Finance jointly promulgated the National Training Programme for Rural Migrant Workers (2003–10). The Programme emphasizes development of vocational skills and improvement of the employability of rural migrant workers. Starting in 2004, all regions began to introduce the Sunshine Project to offer vocational training funded by the Central Government.

In 2006, the State Council promulgated Several Opinions Concerning Solving Rural Migrant Workers' Issues, which is a comprehensive policy to protect the legitimate rights of rural migrant workers. Its main focus was on the following issues:

- (1) *Low salary and arrears of pay* – establish a salary payment guarantee system for rural migrant workers and raise their salaries.
- (2) *Strengthen the enforcement of labour laws* – strictly implement the labour contract system for migrant workers, safeguard OSH rights, protect the rights and interests of women and underage workers, and prohibit the use of child labour.

- (3) *Improve employment services and training* – gradually realize an equal employment system in both urban and rural areas, strengthen employment services to facilitate worker transfer and enhance vocational training and education of rural migrant workers.
- (4) *Take action to resolve the problem of participation in social security* – include migrant workers in work injury insurance, make membership of medical insurance schemes for serious illnesses compulsory and explore ways to include migrant workers in old-age insurance.
- (5) *Provide other basic public services* – include rural migrant workers in urban basic public services, guarantee that their children will receive compulsory education, provide primary health-care services to prevent diseases and provide immunization for their children.
- (6) *Improve rights' protection mechanisms* – ensure that migrant workers enjoy democratic political rights, reform the resident registration system, protect migrant workers' land rights, provide legal services and legal assistance, strengthen the roles of trade unions and support labour inspection.
- (7) *Promote local employment opportunities* – develop township and village enterprises (TVEs) and support local economic development, improve infrastructure in the countryside, promote both higher employment and better yield of crops, develop small towns in order to increase their capacity for industrial concentration and absorption of population.

The new generation of migrant workers has clearly shifted its attitude towards employment, demonstrating strong awareness of the possibilities of occupational transition to industrial employment. They feel at home working in cities, are better educated, more informed and legally protected.

### Notes

<sup>1</sup> See [http://www.chinadaily.com.cn/china/2011-03/08/content\\_12132835.htm](http://www.chinadaily.com.cn/china/2011-03/08/content_12132835.htm)

<sup>2</sup> Rural migrant workers are those who are identified as farmers but in fact work in non-agricultural jobs in or outside their hometown.

## Introduction

Labour inspection services play a key role in ensuring that enhanced productivity and respect for national laws protecting workers' rights go hand in hand. Labour laws, whether in the form of public legislation, collective agreements or individual employment contracts, allocate rights and duties to workers and employers to ensure that both share fairly in the wealth they generate. Labour inspection services promote and ensure compliance with labour laws and, as such, enhance the smooth functioning of the labour market. Labour inspection services are an indispensable institution of social policy and sound labour market governance. The ILO has set universal standards for effective labour inspection services: the Labour Inspection Convention, 1947 (No. 81), ratified by 143 member States, and its Protocol of 1995 covering non-commercial services; and the Labour Inspection (Agriculture) Convention, 1969 (No. 129), ratified by 50 member States. Although China has not ratified the two Conventions, most of the principles can already be found in both the law and practice of the country.

The legal framework for labour inspection in China is comprised of a significant number of national laws and regulations, accompanied by a broad array of regulations promulgated at national and provincial levels. The rights, duties and scope of operation of labour inspectors are set out in the Labour Law (1994) and the Regulations on Labour Inspection (2004), specifying the responsibilities and duties associated with labour inspection, and strengthening the law enforcement function of its services.

The recently adopted laws on labour contract, employment promotion, labour disputes conciliation and arbitration in 2007 and one on social insurance in 2009 have strengthened the functions and widened the scope of labour inspection. In addition, the objective of integrating urban and rural areas in terms of labour and



employment matters allocates more enforcement targets to those undertaking labour inspection. There are 34 million urban employing units and nearly 400 million urban employees, including 150 million rural migrant workers. Labour inspectors have to deal with labour protection issues arising from complex employment relationships and from workers' increasing rights protection awareness – particularly as rural migrant workers become better informed.

Labour inspection is an important means by which the Government ensures that labour laws are complied with and the legitimate rights and interests of workers are protected. Labour inspection was officially introduced in China in 1993, just before the adoption of the Labour Law in 1994, to help strengthen enforcement of the Labour Law. China has established 3,291 labour inspectorates at all levels, staffed by a total of 25,000 labour inspectors. In 2008, with the creation of the MOHRSS, the Labour Inspection Bureau (LIB) was established within the new Ministry to aid the development of a national policy and programmes and to provide guidance to local labour inspectorates.

Labour inspection covers all kinds of enterprises, individual businesses and public institutions with regard to a wide range of labour and social insurance issues, such as employment services and employment relationships, conditions of work, payment of wages, minimum wage, hours of work and annual leave entitlement, social insurance participation and contributions, child labour, special protection of young and women workers, anti-discrimination at work, and so on.

To meet the challenges and explore innovative ways of strengthening labour inspection services, in early 2009 the Chinese Government launched a national pilot project of “Twin Networks Management” in 60 cities nationwide, aiming to build a modern, efficient and dynamic labour inspection system to provide quality services to all employers and workers, based on the experience gained in Shanghai and Chengdu. In 2011, the Government decided to roll out the Twin Networks Management practices to all cities across the country.

The Twin Networks Management scheme aims to modernize the labour inspection system to combine provision of quality services to employers and workers with enforcement of the legislation.

## Twin Networks Management

### *Introduction*

Given the limited number of labour inspectors and the large and ever-increasing number of businesses, labour inspectorates in China are facing the challenge of how to improve inspection effectiveness and efficiency by modernizing their services.

Information and communications technology can help labour administration and labour inspection to face up to this challenge by developing a powerful and

integrated management information system. This has already been implemented in some developed countries and is badly needed in China, where the industrialization and urbanization process is rapidly progressing.

The Twin Networks Management project was initiated in Shanghai. In August 1998, Shanghai Municipality began to set up labour inspection squads within the community-based security brigades, which initiated investigations into a dynamic management mode of employing units. In August 2002, the Grid-based Management scheme was piloted in Luwan and Hongkou Districts and then extended to all districts of Shanghai in 2004. There were 964 “grids” with 2,644 labour inspection assistants, which constituted a new labour inspection services network where the key role of labour inspectors was supplemented by labour inspection assistants. Also in 2004, the network-based management structure of labour inspection was established, based on Shanghai’s labour and social security management information system, which enabled information sharing in social insurance, employment services and labour force resources. By drawing on the experience of Shanghai, a number of cities, including Qingdao, Chengdu, Suzhou and the Tianhe District of Guangzhou, introduced Twin Networks Management and achieved solid results.

With a view to strengthening the labour inspection system, the new Ministry of Human Resources and Social Security established the Labour Inspection Bureau (LIB/MOHRSS) in 2008, representing a milestone in labour inspection development in China. In early 2009, the MOHRSS issued an Opinion regarding the Pilot Project of Twin Networks Management of Labour and Social Security Inspection (RENSHEBUFA [2009] No. 4) and a Circular on Pilot Cities for Twin Networks Management (RENSHETINGFA [2009] No. 25), which launched a pilot project on Twin Networks Management in 60 cities across the country.

Based on the success of the pilot project, the MOHRSS decided to roll out the Twin Networks Management practices to all cities at a National Conference on Labour and Social Security Inspection held in Nanning, Guangxi in early 2011.

An advantage of the Twin Networks Management scheme is that it is fully integrated into a nationwide e-government project for employment and social security, called the “Golden Social Security Project”. This project, together with other e-government projects, provides the infrastructure and information support required for developing the management information system for labour inspection (MISLI).

The second phase of the Golden Social Security Project and the Grass-roots Public Service Platform on Employment and Social Security will broaden the coverage of the management information system and expedite the integration of the MISLI with labour markets and social security information systems. There will be, at the final stage, a five-tier national management information system for labour inspection, within which information resources will be collected, transferred and shared in a more coordinated and mutually supportive manner.

## Definition

The *Twin Networks Management* system involves the management of two kinds of labour inspection resources in a comprehensive, efficient and modern way. One network is a grid-based management of labour inspection human resources, including full-time labour inspectors and labour inspection assistants; the other is the network-based information resource. The two networks complement and mutually support each other to help realize a comprehensive, dynamic, modern and standardized organization of labour inspection which covers both urban and rural areas in China.

*Grid-based management of labour inspection* is a management system detailing inspectors' responsibility. Under the system, administrative districts of a city are divided into grids, based on streets (towns) or communities in accordance with the number of employing units and workers, and labour inspection assistants (two for each grid) are assigned to collect and update each company's baseline data and employment practices and report to the Labour inspectors any issues of non-compliance with the enterprises' clear responsibilities and duties.

*Network-based management of labour inspection* is an information management system for labour inspection. The data, collected by the grid-based network, is entered into a database that is designed to be a powerful, dynamic and integrated monitoring and control platform. Its functions cover information sharing, data comparison, dynamic monitoring, classified supervision and inspection, early warning and forecasting, one-shop processing, case management, superintendence and authority, statistics and analysis, institutional and staffing management, etc. It is cross-referenced with information on social security participation and contributions and any previous labour law violations or any apparent risks with a view to setting priorities for future inspections.

## Relevance of Twin Networks Management

The scheme has demonstrated its relevance in the following aspects:

- (a) *Extension of law enforcement from being mainly based in the cities and towns to an integration of urban and rural areas.* The implementation of the Twin Networks Management scheme has strengthened labour inspection services at the grass-roots level. Labour inspection has shifted its focus from the urban workplace level to build a law enforcement and service network that covers all businesses and institutions in both urban and rural areas at all levels.
- (b) *Promotion of the transformation of passive, reactive law enforcement into proactive, preventative enforcement.* To implement the grid-based management system, labour inspectors must have a better understanding and grasp of the employers' labour and employment situations, and be able to employ comprehensive,

dynamic supervision. This has revolutionized labour inspection, which was formerly too strictly confined to the investigation and handling of reported violations, and rationalized the use of inspection resources for targeted inspection. The scheme has therefore been conducive to improving the efficiency and performance of labour inspection services.

- (c) *Promotion of the administration of laws and their enforcement.* The Twin Networks Management system clearly defines the duties and responsibilities of each labour inspector and labour inspection assistant, establishes a working mechanism of combining law enforcement and services as well as the coordination of labour inspectors and labour inspection assistants. It helps to standardize the whole process of case management, which is conducive to regulating inspectors' law enforcement behaviour and to implementing the responsibility system. It also greatly enhances the capacity of labour inspectorates in terms of law enforcement efficiency and effectiveness.

## Grid-based management

The steps which must be taken to implement the grid-based management of labour inspection are detailed below.

### Gridding

“Gridding” refers to dividing inspection jurisdictions, based on street offices (towns), into several grids of responsibility according to the number of employing units and workers as well as the complexity of labour inspection.

Grids can be set at different levels with different functions and authorities. Taking Fengtai District of Beijing City as an example, three levels of grids are classified based on street offices (towns). The first level is a district level grid that includes eight grids, in accordance with the number of existing full-time labour inspectors. The second level includes 22 grids classified by the number of streets and towns. The third level includes 95 grids, classified according to the specific situations in different streets and towns as well as the number of employing units and labour inspectorate personnel. For each grid, four specifications are determined: namely, the specified grid, the specified personnel, the specified responsibility and the specified targets, thereby realizing the grid-based responsibility system.

### Personnel

The staff working in the grids comprise labour inspectors and labour inspection assistants. Each grid is assigned one labour inspector and at least two labour inspection assistants.

Labour inspectors are normally civil servants, who are entitled to conduct investigations and labour inspections within enterprises. Most of them are university

or college graduates with 3 years of work experience in labour and social security administration. They receive mandatory professional training on labour inspection before performing their duties.

According to Article 86 of the Labour Law of the PRC, labour inspectors at the county level or above have the authority to inspect enterprises on their compliance with labour laws and regulations. They can access the relevant documents and visit workshops. While conducting labour inspections, labour inspectors should show their certificates, and the inspection activities should abide by the labour laws and regulations.

Labour inspection assistants are not civil servants but public employees, mainly working at the grass-roots grid of the labour inspection network. Their major responsibility is to collect employers' information and provide legal information and advice to employers and workers at the community level. They provide the most direct and basic information resources for labour inspection.

Labour inspection assistants are normally college graduates recruited through open competition. They have to receive induction training followed by on-job training at least once a year. For example, in Fengtai District, 180 labour inspection assistants were recruited, financed by a dedicated fund from the district government budget. After professional knowledge training, they are responsible for collecting the information of employing units in accordance with the "eight clarities" requirement, that is to be clear about the nature of the employing units, the business location, the legal representative, the contact information, the number of employees, the signing of labour contracts, the social insurance participation and wage payment. Through such data collection, the labour inspectorate acquired clear basic information on the 78,000 employing units in the district and established a system for updating information as well as the database of employment information.

### *Functions of the grid-based management*

The labour inspectors' duty is to investigate and deal with the cases in the grid, and to direct the work of the labour inspection assistants, while labour inspection assistants are in charge of collecting the employing units' information, making them aware of current laws and preventing the violation of regulations. The inspector responsible for the designated "grids" takes overall responsibility for all relevant matters while particular duties are traceable to each inspector involved. With information technology and coordination between the "grids", the areas are connected for information exchanges and resource sharing, which helps to raise the efficiency of organizational management.

### *Network-based management*

Based on the enterprises' database collected by the grid-based network and other information resources, network-based management performs the functions of

information collection and sharing, data comparison, dynamic monitoring, classified supervision and inspection, early warning and forecasting, one-stop processing, case management, statistical analysis and institutional and staffing management. It is cross-referenced with the information from the databases on employment services and social insurance from within the labour and social security department as well as from information databases outside the system.

### *Information collection and sharing*

The fundamental and most important function of network-based management is to set up databases that contain the baseline information of all employing units, information on employers' labour practices derived from complaints or routine inspection visits collected by labour inspection assistants, information on employers' violations or illegal acts arising from the inspection and investigation by labour inspectors, information on labour inspectorates and their inspectors, and the relevant information from the databases managed by other government departments.

Accurate and dynamic data are essential for the efficient operation of network-based management. The databases are updated through two main channels: by regular collection and updating by labour inspection assistants, who upload the data into the MISLI, and through inter-departmental data exchanges. Data from relevant departments, including employment, social insurance, vocational training, statistical and business registration departments, are regularly accessed and shared through an e-government information-sharing system. These exchanges permit necessary information, such as enterprise registration and cancellation, organization codes, social insurance participation and the databases, to be updated automatically.

### *Data comparison and dynamic monitoring*

The interconnection and information exchanges from different databases are the basis of their comparison. Employing units report the information and data to different human resources and social security departments and other governmental departments. Through comparison of those data and information, labour inspectors are able to discover regulation violations or potential problems with employers' labour practices.

### *Classified enterprises and prioritized inspection*

According to their credibility in labour practices and level of compliance with the law, enterprises are classified into different categories of credibility and integrity according to open and transparent standards and then subject to different frequencies of inspection. For example, in the Fengtai District of Beijing, the Management Information System of Labour Inspection can generate the "three-color warning" management function. Enterprise credibility is classified and marked in red, yellow or green in the grid and database in accordance with the compliance performance of employing units. Green indicates employing units with the best

performance, which are visited once every six months by labour inspection assistants. Red indicates employing units with the worst performance, which are inspected once a month. Yellow indicates employing units with intermediate performance, which are inspected once every three months.

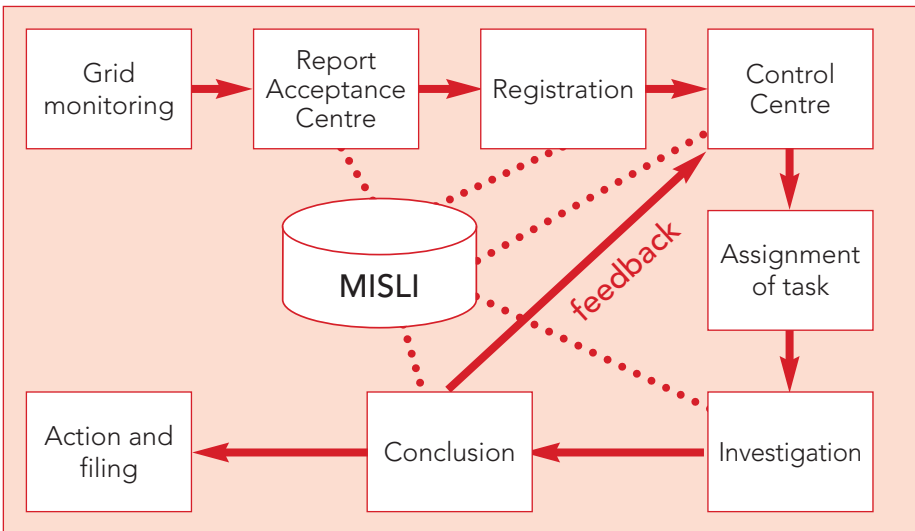
### Management of cases

Network-based management achieves full procedural control of case handling, including receiving complaints or reports, registration, assignment, investigation, conclusion and filing. Each step has a designated responsible person and a time limit to ensure that a case meets the legal requirements before proceeding to the next step with authorization. Information on illegal acts received from a variety of channels will be uploaded into the information network and processed by the control centre, which immediately assigns the task and controls the case handling in a coordinated manner. This procedure shortens the information transmission time, avoids repeated inspections, improves efficiency and ensures the quality of case handling. Figure 3 below illustrates a management process of labour inspection case handling.

### Work evaluation and statistics

The MISLI provides automatic management of various different tasks. According to their authority, the relevant personnel can keep track of real-time task implementation and undertake statistical analysis. This process has made the evaluation work more transparent, fair and just, further improving the labour inspection service.

Figure 3 Case management



Without manual calculation of the statistics, the MISLI can greatly expand the scope of the statistical index to achieve automatic summarizing and, by analysing multidimensional factors, provide statistical support for decision-making and policy-making.

### *Early warning and forecasting*

Through network-based management, labour inspectorates can strengthen the procedures of data comparison and analysis, and regularly integrate and analyse information from complaints, reports and case investigations. Based on the integrated information and analysis, labour inspectorates can study and discover trends in illegal acts, and identify sectors or subject areas where illegal acts are more prone to occur in order to take precautions, conduct proactive and preventative inspections and even launch special campaigns.

## *Requirements for improvements to the Twin Networks Management system*

As China's social and economic transformation accelerates, the diversity of interest groups and of forms of employment is becoming more obvious. There is a growing awareness of workers' rights protection and labour relations issues and social conflicts are becoming increasingly complex. The task of protecting labour rights and maintaining harmonious labour relations is becoming more and more delicate. In the current situation, further promoting the Twin Networks Management system is not only an important and innovative initiative to strengthen social management, it is also a necessary requirement to improve the Government-led mechanism to safeguard the rights and interests of workers. It also represents an important means of establishing the labour and social security inspection services with a combination of scientific and effective management, dynamic monitoring and an emergency response management system to realize the Government's goals of decent work, promotion of social fairness and justice and building a harmonious society. Improving the Twin Networks Management scheme therefore presents both a challenge and an opportunity simultaneously.

To provide guidance on the implementation of the Twin Networks Management system in different localities, the MOHRSS issued a guidance document (RENSHEBUFA No. 79, 2011) concerning Opinions on Furthering the Work of the Twin Networks Management of Labour and Social Security Inspection on 15 July 2011 (hereafter referred to as "the Guiding Document"). This Guiding Document sets concrete targets to complete the implementation of the Twin Networks Management system and stipulates specific requirements for its effective development.

### *Implementation targets*

First, the Guiding Document sets out the principles of the overall planning, classified guidance, prioritized implementation and gradual development of



comprehensive coverage of the Twin Networks Management scheme in the country with the following targets for implementation:

- by the end of 2012, in all provincial capital cities across the country and in 50 per cent of prefecture-level cities;
- by the end of 2014, in 80 per cent of the prefecture-level cities and start to roll out to the county administrative level;
- by the end of 2015, in the township (street) level, all labour and social security inspection will introduce the Twin Networks Management system at a basic level.

Those localities with appropriate conditions can accelerate the implementation of the Twin Networks Management system to achieve an earlier full coverage.

### *Establishing grass-roots grids*

According to the actual situation of each city, based on the towns (street offices) and on the number of employers and workers, the city can be divided into a number of grids which should cover all employing units. The division of grids should take into consideration the provision of convenient services to employing units and workers. Each grid is assigned a responsible labour inspector and at least two labour inspection assistants, who can be full-time or part-time staff working for employment and social security services at the township (street offices) level. Labour inspection assistants are responsible for promoting policies, laws and regulations, collecting employers' information, mediating simple labour disputes, submitting complaints and reports, detecting and reporting illegal labour practices or violations, and handling collective disputes. According to the requirements of grid-based management, the city should establish a labour inspection service network that covers all employers and workers in both urban and rural areas with clearly defined responsibilities for both labour inspectors and labour inspection assistants.

### *Developing the MISLI*

The management information system for labour inspection (MISLI) should be developed at prefecture level, based on the regional overall plan for management information systems for labour and social security, and should apply the unified inspection management system software developed by MOHRSS. Local governments should equip labour inspectorates with the necessary computers and other hardware down to the township level. Labour inspectorates should provide their staff with training in the operation of the equipment and the MISLI. Those cities that have developed their own management information system software should revise and improve the software based on the MOHRSS' Standard on Basic Indicators and Codes for the MISLI (MOHRSS document No. 84, 2010). The long-term plan is to realize an integrated network of the MISLI throughout the country. Important data

should be uploaded and transmitted to the provincial labour inspectorates and to the MOHRSS. The MISLI should integrate the data resources from other employment systems, such as the labour market, vocational training, social insurance, labour disputes arbitration within human resources and social security departments, as well as from other relevant agencies and departments.

### *Regulating the Twin Networks Management system*

All localities should focus on developing regulations and rules for the Twin Networks Management system to lay a sound foundation for its sustainable and systematic development. Examples of steps to be taken include:

- developing management rules to regulate the recruitment, training, appraisal, and reward and discipline of labour inspection assistants;
- developing rules on information collection of employing units to define data items and collection methods, and to maintain and update the data;
- establishing rules on routine visits to employing units in a grid to determine scope, timing, targeting of employers and procedures.

It is also important to regulate the development of the MISLI, including its establishment, operation, maintenance and application.

### *Providing support to implement the Twin Networks Management system*

In accordance with the Twelfth Five-Year Plan for Economic and Social Development in relation to the requirements of strengthening labour and social security inspection services, all localities should allocate funds for implementing the Twin Networks Management system in their local budgets. The funds can be used to recruit labour inspection assistants, develop the MISLI, and provide offices, vehicles and any necessary equipment for labour inspection assistants.

### *Strengthening the leadership*

All localities should attach great importance to the development of the Twin Networks Management scheme and actively seek the support of the local party committee and the government. The Twin Networks Management scheme should be regarded as one of the key projects in protecting and improving the people's livelihood. Provincial human resources and social security departments should develop and coordinate overall planning of the scheme, and formulate an implementation plan to be submitted to the Labour Inspection Bureau of MOHRSS. Detailed guides should be provided to cities and counties to facilitate the active and steady promotion of the Twin Networks Management system in all regions. Municipal human resources and social security departments should devise well-organized work plans to implement it.

The LIB/MOHRSS should be informed of the progress of its roll-out and conduct an evaluation based on the Government's Work Criteria of the Twin Networks Management of Labour and Social Security Inspection.

### Looking forward to a better enforcement policy

The establishment of the Twin Networks Management system has brought about significant changes and injected new vigour into the process of enhancing labour and social security inspection in China. Significant advances are enumerated below.

- (1) *The fundamental work has been strengthened.* Baseline information is established for each employing unit of each grid and followed up by routine visits which allow dynamic monitoring of the employing unit. Meanwhile, the MISLI statistical analysis function provides comprehensive data on the employing units and workers throughout the whole inspection jurisdiction to facilitate the prioritizing of inspections and decision-making.
- (2) *Inspection methods have been regulated and standardized.* Through the Twin Networks Management scheme, inspectors follow a case management flow chart to standardize the inspection procedures in order to ensure that inspection cases run in accordance with unified standards, authority and time frame without hidden agendas.
- (3) *Inspection efficiency has been increased.* By utilizing digital and information technologies, the Twin Networks Management system integrates all the relevant information into the MISLI and can help to detect illegal practices more quickly. It monitors employing units in a more active and detailed way and greatly enhances inspection efficiency.
- (4) *The employment environment has improved.* Through the application of Twin Networks Management, illegal practices were discovered, investigated, corrected and punished quickly, legal awareness of both employing units and workers was enhanced, the implementation of labour protection laws and regulations was promoted, the lawful rights and interests of both employers and employees were protected, the employment environment of inspection jurisdiction was optimized and harmonious and stable labour relations were established.

### Capacity building of labour inspectors

The implementation of the Twin Networks Management of Labour Inspection requires considerable, continuous training and retraining of labour inspectors and labour inspection assistants. Training is the essential part of the labour inspection modernization and development process. Its main intent is to bring about planned

change in inspectors to enable them to perform their work more effectively. It provides them with new knowledge, skills, techniques and new, often substantially improved, attitudes in order to change their behaviour and, as a result, their performance and that of their organization.

### *Appointment of labour inspectors*

The capacity building must start with the recruitment of labour inspectors to ensure that they are appropriately qualified. In accordance with the Regulations of Labour Inspectors issued by the former Ministry of Labour in November 1994, labour inspectors should have 3 years of work experience at a labour administration department and must receive professional training provided by provincial labour administrative departments or a labour administrative department of the State Council in order to gain their labour inspector qualifications and certification. Normally, labour inspectors are university or college graduates recruited through the official examination for recruitment of civil servants. The labour inspectors should update their qualifications every 3 years by undergoing an examination.

### *Training of labour inspectors*

Adequate training of labour inspectors means not only systematic and comprehensive induction training on entry into the service but, equally important, acceptance of the concept of continuous further training of an in-service nature. Accordingly, training may be pre-service, induction, refresher or specialist, or further training, including training for higher levels of responsibility. These different forms of training are complementary and interdependent. They reinforce the importance of a planned and coordinated approach to personnel management and human resources development, based on a clear and comprehensive training policy.

To realize the standardization of labour inspection institutions, professionalism of labour inspectors and regularization of law enforcement, the MOHRSS issued a Circular on the Improvement of Labour and Social Security Inspection Training in May 2010, which explicitly provides for the principles, types and organization of labour inspection training. The principles are detailed below:

- (a) *Scientific planning and institution building.* In accordance with the requirements of labour inspectorate development and professionalism of labour inspectors, labour inspectorates at all levels should develop training programmes for labour inspectors and improve the training system to stimulate labour inspectors' intrinsic motivation and learning potential.
- (b) *Hierarchical, classified training and universal coverage.* Based on positions, jobs, work experiences and localities of labour inspectors, labour inspectorates should organize

the training at different levels and target different groups to enhance the relevance and timeliness of each training session. A national training system to cover all the requirements of labour inspection personnel should gradually be constructed.

- (c) *Practical and applicable training.* Training should serve to orientate labour inspectors within the labour inspection system and focus on difficult and major issues faced by labour inspectors in routine labour inspection services. It should constantly enhance the ability of labour inspectors to apply theories and knowledge gained to guide practice and promote work competencies.
- (d) *Diversified and results-oriented training.* Labour inspectors' training should apply modern concepts of education and training to enrich training content, improve training methods and training management, optimize training resources, augment the assessment mechanism, and constantly enhance the vitality of labour inspection training.

In accordance with the Circular, there are four types of training:

- (1) *labour inspectors' qualification training.* The provincial labour and social security departments usually conduct this kind of training. The trainees are the newly recruited staff of local labour inspectorates. The training includes general knowledge, law enforcement skills, codes of conduct and professional ethics, computer skills, financial knowledge and communication skills. The training combines knowledge acquisition and labour inspection case studies, with a total of 80 hours' class studies plus three months' on-the-job coaching.
- (2) *Labour inspectors' on-the-job training.* On-the-job training is organized and provided by the provincial labour inspectorates to the current labour inspectors. This kind of training aims to enhance professional qualities and attitude and update knowledge and skills, enabling labour inspectors to address new issues and face challenges effectively. Each labour inspector should receive at least 40 hours of on-the-job training every year.
- (3) *Training of managers of labour inspectorates.* The LIB/MOHRSS and provincial labour inspectorates organize this kind of training. The trainees are principals from the local labour and social security inspectorates. The aim is to upgrade the trainees' managerial and leadership capabilities and their decision-making abilities. The curricula include general knowledge, management skills, leadership, communications, psychology and relationships with the media and other organizations.

There is no specific requirement covering the number of hours required for this type of training. In principle, all managers receive one round of training every 3 years.

- (4) *Training of trainers (TOT)*. This training is conducted by the LIB/MOHRSS. The trainees are experienced, hand-picked labour inspectors with adequate teaching skills and expertise in the field of labour inspection. The purpose is to enhance the trainees' understanding of the labour inspection system, master the principles, features, demands and rules of labour inspection training as well as the curricular design, development and teaching methodology. This training puts emphasis on updating teaching materials and course development. It is conducted in a variety of ways, such as theoretical study, group work, scenario simulation and public speeches, which facilitate future training development.

## Main views on labour inspection

China introduced its labour inspection system in 1993 to enforce the Labour Law enacted in 1994. By the end of 2011, China had established 3,291 labour inspectorates at all levels with a total of 25,000 labour inspectors. Labour inspectors have played an active role in enforcing labour laws in the past, but are now expected to play an even bigger role in implementing the labour laws adopted in 2007.

The Twin Networks Management system has provided the tools and infrastructure to modernize labour inspection services in China but the core work rests on the capabilities of labour inspectors and labour inspection assistants. Therefore, the capacity building of labour inspectors is not only an urgent task but also a long-term strategy for the sound development of labour inspection services in China. In particular, it promotes, on the policy side, a gradual move towards a more preventative approach to labour inspection, which requires labour inspectors to have more qualifications and greater abilities to enable them to embrace a dual role as both enforcer and adviser, helping employers and workers to actively comply with the labour laws. On the institution-building side, it promotes the establishment of a new national Labour Inspection Training and Research Centre under the LIB/MOHRSS,<sup>1</sup> and the systematic and comprehensive development of a TOT capacity within that centre and its network of provincial labour inspectorates. A methodologically sound “Training and Operations Manual”, covering all aspect of modern, integrated labour inspection services, would be a useful tool in supporting this concept.

In the past few years, the ILO has been active in assisting the LIB/MOHRSS in this regard and more than 200 labour inspector trainers have received training to help build up the professional capacity of local labour inspectors.

### Note

<sup>1</sup> This was recommended by the joint ILO/MOHRSS Review on Labour Inspection in 2009 and the Report of the Chinese study tour to France and Spain in 2010.



## Occupational safety and health issues

The rapid transfer of the labour force from agricultural to non-agricultural work, booming manufacturing industries, diversified ownership of the economy and forms of employment, and the recent migration of hazardous and labour-intensive industries from urban and coastal to rural and inland areas, all pose serious challenges to safety and health at work.

China has ratified the ILO Convention No. 155 on Occupational Safety and Health, Convention No. 170 on Chemicals, and Convention No. 167 on Safety and Health in Construction. China promulgated two important pieces of legislation, the Law of the People's Republic of China on Work Safety and the Law of the People's Republic of China on Occupational Diseases Prevention and Control (revised in 2010). China has recently adopted the principles of safe development. As promoted by the ILO Convention No. 187 on the Promotional Framework for Occupational Safety and Health adopted by the International Labour Conference in 2006, China has been implementing the National Work Safety Programme (2011–15) and the National Programme for Occupational Diseases Prevention and Control (2009–15).

To strengthen work safety administration and inspection, China established a ministerial-level State Administration of Work Safety (SAWS) directly under the State Council, which is responsible for overall supervision, administration, direction and coordination of work safety across the country. While many local work safety offices have been extended to the community level in recent years, it is recognized that understaffing and weak enforcement capabilities, together with poor coordination between the various inspection bodies, are two of the issues facing occupational safety and health (OSH) inspection services. These and other outstanding concerns must be addressed in order to strengthen China's work safety and health inspection system and thereby secure effective enforcement of the laws.



To strengthen the leadership and coordination on work safety and to develop national work safety policies, the State Council has established a Work Safety Committee of the State Council, led by a vice premier and consisting of ministries, mass organizations and party organizations. The Office of the State Council Work Safety Commission is situated in the SAWS headquarters building. Similar arrangements apply to local governments' work safety committees.

## Functions and structure of the State Administration of Work Safety

### *The main functions of the SAWS*

The SAWS is a national authority responsible for overall work safety administration and supervision, directly under the State Council. Its main functions are:

- (1) to undertake the work of the Office of the State Council Work Safety Commission: specifically, to develop proposals on major policies and measures regarding work safety; to oversee, inspect, direct and coordinate the work of relevant departments and agencies of the State Council and the people's governments of various provinces, autonomous regions and municipalities directly under the Central Government in the field of work safety; to organize nationwide work safety inspections and specialized safety supervision activities as authorized by the State Council; to join the departments and agencies concerned in the deliberation of the work safety aspects of their industry policies, capital investment and technological development; to take charge of organizing investigation, handling and conclusion of cases of major accidents as authorized by the State Council; to organize and coordinate emergency rescue operations for major accidents; to direct and coordinate nationwide administrative enforcement of legislation on work safety; to organize conferences and important activities held by the State Council Work Safety Commission and supervise implementation of resolutions adopted at these conferences;
- (2) to oversee and administer work safety nationwide; to organize drafting of general laws and administrative regulations on work safety, to promulgate general regulations on work safety within industry, mining and commerce and develop work safety policies and standards and rules for work safety in industry, mining and commerce, and to organize implementation; to be in charge of issuance and management of work safety licences to non-coal mining enterprises, within the scope of its duties, and to enterprises producing dangerous chemicals and fireworks;
- (3) to exercise, according to law, the functions and powers of the state to oversee and administer work safety, direct, coordinate and oversee the work of relevant

- departments and agencies on work safety supervision and give professional guidance to regional agencies of work safety supervision in light of the principles of assigning regional work safety supervision responsibility to various levels; to draw up national programmes for the development of work safety; to regularly analyse and forecast the nationwide work safety situation and develop solutions and coordinate efforts to solve major work safety problems;
- (4) to take charge of releasing information on nationwide work safety and exercise overall management of statistics of nationwide workplace injuries and fatalities and analysis of the situation of administrative enforcement of law relating to work safety; to organize and coordinate, according to law, the investigation and handling of major accidents and oversee the outcome of accident investigation and remediation; and to organize, command and coordinate workplace emergency rescue operations;
  - (5) to supervise and regulate safe production of dangerous chemicals and fireworks;
  - (6) to direct and coordinate work safety inspection and testing nationwide and in provinces, autonomous regions and municipalities directly under the Central Government; to organize and supervise management of the accreditation of intermediary agencies that perform inspection and testing, and/or safety evaluation of the operating conditions and relevant equipment (excluding special equipment) of industrial, mining and commercial operations, and/or provide safety training and consulting services;
  - (7) to organize and direct work safety education and publicity nationwide and in provinces, autonomous regions and municipalities directly under the Central Government; to take charge of safety training and assessment of work safety inspection and management personnel; to organize, direct and oversee, according to law, the assessment of workers on special jobs and special equipment operators (excluding coal mine workers on special jobs and special equipment operators) and the assessment of the safety qualifications of principal operators and safety management personnel of industrial, mining and commercial operations (excluding the safety qualifications of coal mine managers); and to oversee the safety training at these enterprises;
  - (8) to coordinate work safety of the industrial, mining and commercial operations administered by the Central Government and to supervise, according to law, their observation of safety laws and regulations and their management of the conditions for safe production and relevant equipment (excluding special equipment), materials and labour safety necessities;
  - (9) to oversee, according to law, the synchronization of the design, construction and commissioning of safety facilities as part of a new, reconstruction or extension

project that falls within the scope of duty of SAWS; to supervise and inspect industrial hygiene at the workplace of industrial, mining and commercial operations (excluding coal mining operations) and manage the issuing of occupational safety and health licences; to oversee the monitoring, control and correction of major sources of hazards and to investigate and penalize those industrial, mining and commercial operations that are not equipped with proper conditions for safe production;

- (10) to organize drafting of programmes for the development of work safety technologies and to organize, direct and coordinate the efforts of relevant agencies and institutions in the research and demonstration of major projects of work safety technologies;
- (11) to implement the system of accreditation of certified safety engineers and to oversee and direct the qualification, examination and certification of certified safety engineers;
- (12) to organize international exchange and cooperation activities with foreign governments, international organizations and non-governmental organizations (NGOs) in the field of work safety;
- (13) to undertake other tasks, as entrusted by the State Council.<sup>1</sup>

Since July 2008, the responsibility for occupational health inspection, which had previously been shouldered by the Ministry of Health, has been transferred to the relevant departments and offices under the SAWS. In October 2010, the Announcement of Opinions on Governing the Division of the Responsibilities for the Supervision and Administration of Occupational Health issued by the State Commission for Public Sector Reform redefined the respective functions of the Ministry of Health and the SAWS and confirmed that the SAWS was to take charge of both the function of occupational health inspection and the development of related standards, while the Ministry of Health remained responsible for issuance of guidance on prevention, diagnosis and identification of occupational diseases. Therefore, the SAWS has assumed full responsibility for OSH inspection on behalf of the state in accordance with both the Work Safety Law and the Law on Prevention and Control of Occupational Diseases.

In addition, the SAWS serves as the Office of the Work Safety Committee (WSC) of the State Council. The main functions of this office include:

- developing recommendations on major policies and measures in regard to work safety;
- supervising, directing and coordinating the efforts of the People's Governments of the Provinces, Autonomous Regions and Municipalities directly under the Central Government on work safety;

- organizing a nationwide work safety campaign and specialized inspection on behalf of the State Council;
- taking part in the safety-related work of relevant government agencies in their development of industrial policies and plans for investment and technological advancement;
- organizing investigations on exceptionally severe accidents and handling the settlement of relevant cases on behalf of the State Council;
- organizing and coordinating emergency rescue operations in the event of exceptionally severe accidents;
- directing and coordinating nationwide administrative enforcement of laws on work safety;
- organizing conferences and major events sponsored by the Work Safety Committee of the State Council and supervising prompt implementation of the decisions made at WSC meetings; and
- undertaking other tasks assigned by the Work Safety Committee of the State Council.

### ***Structure of the SAWS***

Figure 4 details the structure of the SAWS. To better understand the actual functions of the SAWS, the following is a brief introduction to the function of each of the ten technical departments of the SAWS.

#### ***General Office (Department of International Cooperation, Department of Finance)***

The General Office exists to organize and coordinate the operation of the SAWS, and to draft and supervise the implementation of work rules and procedures within the organization; to undertake secretarial work and handle correspondence and information, deal with confidentiality matters, achievements, motions, public complaints and other matters; to plan and implement the managerial systems and organizational staffing and management; to be responsible for finance, expenditure, state assets management and auditing of the SAWS and its affiliated organizations; to organize international exchanges and cooperation on work safety and foreign affairs administration; and to coordinate work for the Office of the Work Safety Committee of the State Council.

#### ***Department of Policy and Legislation***

The functions of this department are to draft work safety laws and regulations; to develop general work safety rules, procedures and standards, and those specific to

industrial, mining, commercial and trade sectors; to organize study on major work safety policy; to undertake enforcement of work safety law, administrative review and administrative litigation; to draft important reports and documents, publish national work safety information; and to organize and guide work safety publicity and news conferences.

### *Department of Planning, Science and Technology*

This department's functions are to draft work safety plans and research and development (R&D) plans; to organize and direct major scientific-technological research, assessment and promotion of application of research results; to take charge of developing work safety information technology; to manage fixed asset investment projects; to supervise and manage work safety social intermediary agents, work safety appraisal, and development of labour protection appliances and safety symbols; to coordinate the work on the simultaneous evaluation of OSH facilities along with the design, construction and delivery of new or technological renovation projects.

### *Office of Work Safety Emergency Rescue (Department of Statistics)*

This office's remit is to draft rules, procedures and standards of work safety emergency rescue, information and statistics; to develop work safety emergency rescue systems and preparedness plans; to organize drills of work safety emergency rescue, coordinate and direct emergency rescue work; to analyse and forecast major industrial hazards risks and develop a national work safety administration evaluation index; to develop OSH information and statistics.

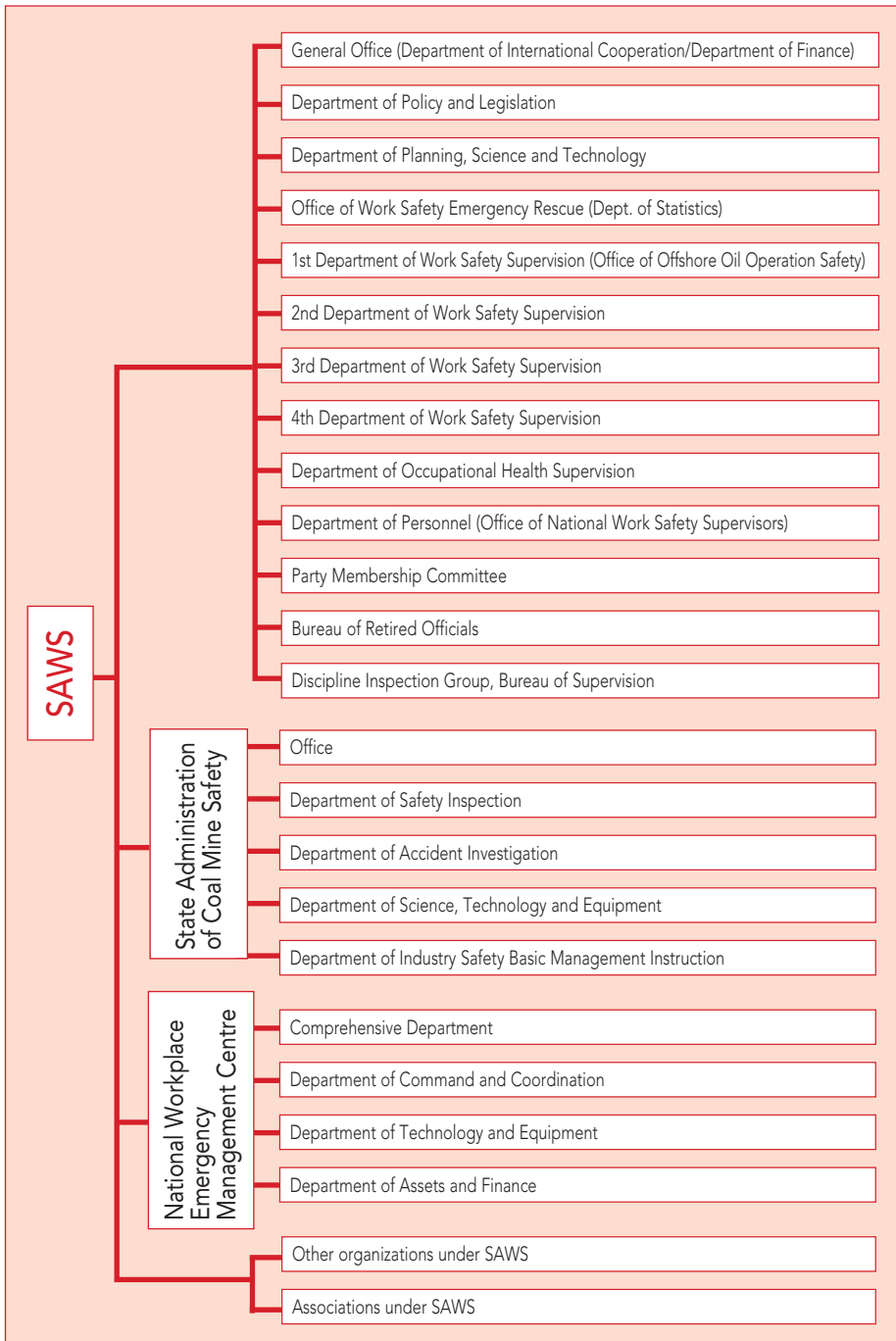
### *1st Department of Work Safety Supervision (Office of Offshore Oil Operation Safety)*

The 1st Department's duties are to supervise the implementation of work safety laws and regulations in non-coal mining and oil industry enterprises and oversee their work safety conditions and the safety of equipment and facilities; to organize the review on the design and delivery of safety facilities in major construction projects; to manage safety permits for mining enterprises; to guide and supervise the adoption of relevant safety standards and the closure of uncertified mines; to undertake supervision and management of offshore oil safety; to participate in investigation and handling of major accidents in relevant sectors, and take part in emergency rescue work.

### *2nd Department of Work Safety Supervision*

This department's functions are to guide, coordinate and supervise the administration of work safety in the sectors with their own safety administrative departments; to participate in the investigation and emergency rescue of particularly serious accidents; to guide and coordinate inspection of work safety with the relevant ministries and undertake any special remedial measures.

Figure 4 Structure of the State Administration of Work Safety



### ***3rd Department of Work Safety Supervision***

The duties of this department are to supervise work safety conditions of chemical (including petrochemical), pharmaceutical, hazardous chemical, firework and firecracker enterprises; to administer permits for work safety in hazardous chemicals production and investigate and penalize unqualified enterprises on work safety matters; to administer work safety in relation to hazardous chemicals; to organize and guide the compilation of a hazardous chemicals profile and registration of domestic hazardous chemicals; to supervise the production and business management of non-medical toxic chemicals; to organize the review of the design and delivery of safety facilities in major construction projects; to supervise the safety standardization work; to participate in the investigation, punishment and emergency rescue of extraordinarily serious accidents.

### ***4th Department of Work Safety Supervision***

The functions of this department are to supervise the implementation of work safety laws and regulations by enterprises in metallurgic, non-ferrous, construction materials, machinery, light industry, textiles, tobacco, commercial and trade sectors and monitor their work safety conditions and the safety of equipment and facilities; to organize the review on the design and delivery of safety facilities in major construction projects; and participate in the investigation, punishment and emergency rescue of especially serious accidents.

### ***Department of Occupational Health Supervision***

This department's duties are to supervise the work of occupational health in industrial, mining, commercial and trade enterprises (excluding coal mining); to draft rules and standards on occupational health; investigate and punish occupational health incidents and illegal practices; to administer certification of occupational health permits; to organize and supervise occupational health training; to organize the reporting of occupational health hazards; and to participate in the emergency rescue of occupational health accidents.

### ***Department of Personnel (Office of National Work Safety Supervisors)***

This department is responsible for personnel management, work performance and rewards within the organization and its affiliated organizations; the management of the examination and registration of certified safety engineers; the supervision of safety training within industrial, mining, commercial and trade enterprises; the daily administrative work of the State Work Safety Supervisors Office. The State Work Safety Supervisors are responsible for the coordination of and participation in the investigation and punishment of extraordinarily serious accidents.

Under the overall responsibility of the SAWS, there are two vice-ministerial levels of State agencies: the State Administration of Coal Mine Safety (SACMS) and the National Workplace Emergency Management Centre (NWEMC).

### *State Administration of Coal Mine Safety*

The functions of the SACMS are as follows:

- (1) to develop policies for coal mine safety; to participate in drafting laws and regulations on coal mine safety; to develop rules and standards for coal mine safety according to provisions of the relevant legislation; and to propose development programmes and objectives for coal mine safety;
- (2) to undertake state coal mine safety inspections; to inspect and guide the coal mine safety supervision and administration at local government level; to supervise and inspect local governments in their implementation of coal mine work safety laws, regulations and standards, closure of coal mines, coal mine safety enforcement and improvement, rectification and review of accident hazards, and accountability and implementation of coal mine accident responsibility; to make recommendations and suggestions to local government and relevant departments;
- (3) to be responsible for issuing work safety permits for coal mines and the implementation of the coal mine safety permit system; to guide, administer and supervise the examination and issuance of coal mine certification; and to guide and supervise coal mine safety training;
- (4) to be responsible for the supervision and inspection of occupational health in coal mines; to manage the issuing of occupational health licences; to supervise the occupational health conditions of coal mines; to investigate and punish coal mine management in cases of workplace hazard accidents and other illegal practices;
- (5) to be responsible for the implementation of major coal mine safety inspections, specific inspections and regular inspections; to verify the implementation of safety laws and regulations by coal mines and their work safety conditions, the safety of equipment and facilities according to the relevant legislation; and to impose administrative penalties for illegal practices in coal mines;
- (6) to be responsible for the release of national coal mine safety information, collecting and analysing data on nationwide coal mine accidents and occupational hazards, organizing or participating in the investigation and handling of coal mine accidents and supervising the implementation of accident investigations and punishment;
- (7) to be responsible for the safety review and approval of major coal mine construction projects, to organize the design and end-point inspection and



## Labour administration reforms in China

accreditation of safety facilities in coal mine construction projects; and to investigate and punish any failure to meet safety standards in coal mines;

- (8) to be responsible for the organization and coordination of emergency rescue during coal mine accidents;
- (9) to guide scientific research on coal mine safety and organize coal mine equipment, materials and instrument safety inspection;
- (10) to direct coal mining enterprises on basic safety management; to guide and supervise the appraisal of coal mine productive capacity and the closure of coal mines in cooperation with relevant authorities; to review and comment on projects related to technical upgrading activities for coal mine safety, and comprehensive control and utilization of gas;
- (11) to undertake other tasks, as directed by the State Council and the SAWS.<sup>2</sup>

## *National Workplace Emergency Management Centre*

The NWEMC administers overall supervision, as well as workplace emergency rescue activities, coordinating and commanding emergency rescue activities at accidents and disasters, according to the provisions of the national emergency response plan.

Its primary functions include participating in the drafting and revision of national laws and regulations on workplace emergency rescue; organizing the development of a national workplace emergency response plan; guiding and coordinating emergency rescue activities during major accidents, and mobilizing the relevant forces and resources to undertake emergency rescue operations.

## Local work safety administration

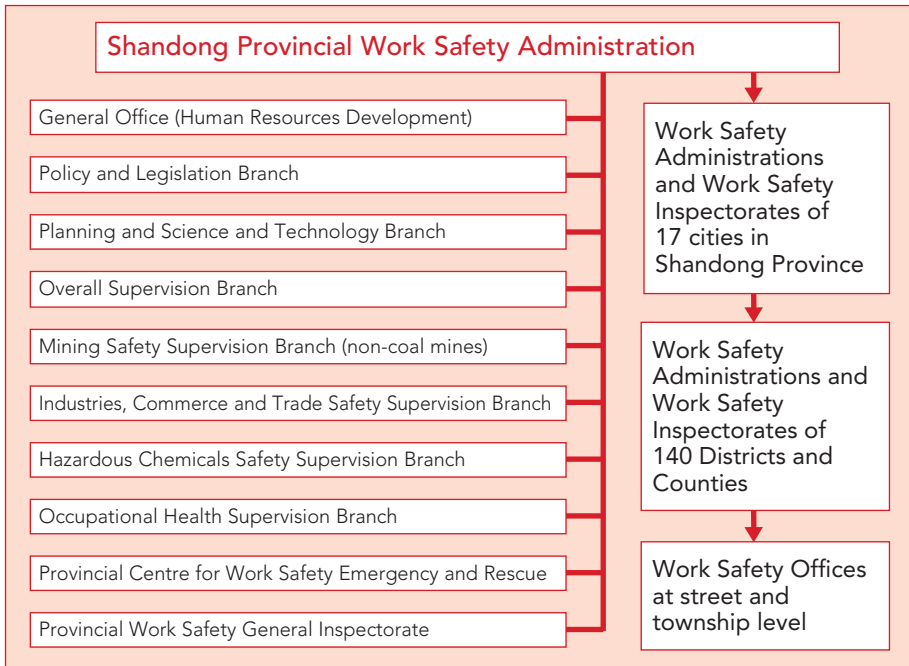
The government at provincial, prefecture/city and district/county level establishes work safety administration at the same level, which receives guidance from the work safety authorities at higher levels. In recent years, work safety inspection services have been extended to street (township) and community (village) levels, which are entrusted by the higher work safety authority to conduct OSH inspection and supervision in businesses under their jurisdiction.

Figure 5 shows the structure of local work safety administration and inspection in Shandong Province.

## OSH inspection services

The SAWS administers over 50 laws, of which 15, including the Work Safety Law, Occupational Disease Prevention and Control Law, and more than 30 other work

**Figure 5 Provincial–city–district/county level OSH administration and inspection, Shandong Province**



safety regulations were issued by the State Council, for instance those covering hazardous chemicals.

In addition, almost 1,000 compulsory national standards and more than 3,000 sectoral (for example, ministry level) safety standards must also be applied by employing units and supervised by the SAWS or other ministries' inspectors.

The SAWS itself has issued more than 100 compulsory technical standards on safety issues in areas such as mines, the chemical industry and fireworks production. It also issues technical Codes of Practice. Finally, the Supreme People's Court's jurisdiction on work safety issues must also be taken into consideration.

To enforce these laws and regulations, more than 20 provinces have established OSH inspectorates at the provincial, municipal and district/county levels and, in some provinces, even at the street or township level. Taking Guangdong Province as an example, in June 2005 the provincial government officially issued the Guangdong Work Safety Inspection Programme, which defines the functions, standardized name and staffing of OSH inspectorates at the provincial, city and district/county levels. The roll-out of this programme marked a major breakthrough in the development of an OSH inspection system in Guangdong Province. In March 2006, the provincial government approved the recruitment of 1,183 OSH inspectors for 21 cities of the province with civil servant status.

In addition, given the province's rapid industrialization and urbanization, some cities in Guangdong have extended OSH inspection services to street or township level by delegating partial enforcement functions to qualified OSH inspectors appointed by community administrations.

To improve OSH inspection services, the ILO and SAWS conducted a joint review on OSH inspection in China in 2010. Among others matters, the OSH review highlighted the following issues for improvement:

### *The need for a holistic approach*

Consideration should be given to integrating the present Law on Work Safety and the Law on Prevention and Control of Occupational Diseases into a new, comprehensive OSH law. Such an integrated new law would address a complete framework of rights and duties of employing units, employers, workers and third parties in preventing adverse health and safety outcomes in the workplace.<sup>3</sup> Given that the SAWS is responsible for both work safety and occupational health inspection in the workplace, local work safety inspectorates should carry out an integrated OSH inspection. It is suggested that the SAWS establish an Occupational Safety and Health Inspection Bureau to develop national OSH inspection policies, to provide guidance and inspection tools for local OSH inspectors and to promote national and international good practices on OSH inspection services.

### *A new law enforcement and prevention strategy (including SMEs)*

National legislation, regulations and standards must be the same for all employing units, but the way in which they are applied, monitored and enforced may vary considerably between small and medium-sized enterprises (SMEs), which are often struggling, and larger, usually capable employing units. This good practice of adjusting the implementation of legislation exists in most industrialized countries, and it is recommended that the SAWS considers adopting a similar new inspection/enforcement strategy after assessing internationally "available" best practice models. Particular attention should be paid to addressing the challenge of the ongoing practice of shifting risky work onto smaller employing units. The extraordinary experience of the SAWS in launching campaigns and training activities should be applied to developing programmes that specifically target SMEs.

### *Employers' responsibility*

The principle of unequivocal employer responsibility, and not just that of the "employing unit" as an organization, but also of the leading legally responsible natural person in the undertaking, should be considered for enshrinement in the law. The

legislative framework should leave no possibility for the employer to pass their civil or criminal liability to any other institution or person.

### *A systematic approach to hazard identification, risk assessment and control*

As a complement to the very effective existing regulations on new projects (the three simultaneous approaches<sup>4</sup>), consideration should be given to embedding the concepts and methods of continuous hazard identification, risk assessment and risk control more systematically within the new OSH law, which will be revised in line with international good practices and the ILO guidelines on OSH management systems. These concepts and methods should also be incorporated into the roles of OSH inspectors in promoting and advising on application of the systematic approach at all levels.

### *Responsibility and liability of other duty holders*

Including a comprehensive, clear definition of all other OSH duty holders and their responsibilities in the revised and integrated OSH law would make it more applicable and easier to implement effectively. However, attention should be paid to ensuring that the employer, both as a legal and a natural person, cannot simply pass responsibility to other duty holders.

### *Inspectors' liability*

A law or regulations on OSH inspection should describe all the possibilities for action, both prevention and enforcement, which inspectors may take, and the circumstances under which they can act. Alternatively, provisions on OSH inspection duties in existing work safety and occupational diseases prevention laws should be cancelled, and reference made to the right of specific competent authorities to enforce the said laws. Inspectors must correctly fulfil their duties, but an employer cannot transfer legal responsibilities to an inspector. Inspectors should be trained in using their discretion (in line with Article 17, paragraph 2 of ILO Convention No. 81). The use of discretion must, of course, also be seen in the context of the individual inspectors' qualifications.

### *Qualifications of inspectors*

One possible and very effective response to the complexity of addressing OSH issues consists of implementing a new human resources development (HRD) policy within the SAWS, resulting in the highest possible level of qualifications of inspectors within each OSH inspection team through improvement of the recruitment and training of inspectors. Highly qualified safety engineers, physicians, industrial hygienists, and even ergonomists and specialists in psychosocial and organizational aspects of work, should

represent a considerable percentage of all serving inspectors. An objective, and ambitious, percentage could be proposed within a given time scale but, for an OSH inspection system as complex as China's, it should not be less than 15 per cent and ideally about 1 in 3 at all inspection levels.

An additional recommendation is to adapt the qualifications at the different levels of inspection to the shifting of dangerous jobs towards relatively small companies or inland regions. The qualifications of inspecting personnel must be such that those inspectors with the highest qualification are in charge of inspecting the companies with the highest risk. It is then also up to the responsible authorities to assess how the current basic organizational concept, consisting of subdivision into different levels of inspection, might be reconsidered to meet this challenge. The net result must be that inspection is carried out in a consistent way at the different levels of the multi-level inspectorate structure: similar risks and related shortcomings in protection must be dealt with consistently.

In the current situation, where occupational health inspection has been transferred to the SAWS, but the necessary tools are not yet in place, strong collaboration is necessary between the health department and the SAWS at all levels, while safety inspectors should be given more training on occupational health.

Highly qualified inspectors are a key element in the ongoing efforts to promote and preserve the independence of the inspectorate's actions and in reinforcing consistency of those actions at different administrative levels of OSH inspection.

From the perspective of providing better protection to employees in all enterprises, it would also be of great help to promote the creation of multidisciplinary, highly qualified prevention support services, which could be either internal or external to the companies, the latter being particularly convenient for smaller enterprises. The presence of such services would constitute a considerable boost for accurate risk assessment and preventive measures in employing units and, at the same time, provide help for OSH inspectorates.

### *Operational aspects of OSH inspection*

A systematic and continuous evaluation of the needs of the SAWS and the ability to adapt the organization's human and technical resources accordingly are required. The recently transferred occupational health responsibilities require a swift, corresponding investment in human resources at all levels.

OSH inspectors should act in accordance with Article 3, paragraph 1 of the ILO Convention No. 81. Their primary functions are enforcement, advice and information to employers and workers, and notification of higher authorities about perceived shortcomings in legal and other aspects of OSH. Inspectors should use their own discretion in evaluating these issues. In addition, they may be required to supervise prevention services.

## *Aspects of organization*

As a provisional solution that meets the requirement of two inspectors for every enterprise visit, though clearly not using this practice to reduce the number of inspection visits, it is proposed that the procedure be modified: one full-time OSH inspector could be accompanied by a part-time inspector or an occupational health expert from the Health Department, depending on the situation in the employing unit.

Separation of management (administration) and enforcement (inspection) responsibilities at all four operational levels by building Law Enforcement Teams is recommended for nationwide implementation. Simultaneously, the issue of inspectors' minimum performance (i.e. productivity) standards and time spent in employing units could be addressed, over and above the current, relatively low number of regular/routine inspections per inspector per year. The goal should be to achieve quality inspections of the most significant risks in workplaces where they are most needed.

## *Registration and notification of work accidents and diseases*

Employing units' liability to comply with the legal work injury insurance obligation should be enforced.

Consideration could be given to setting up a single contact point in each province, prefecture/city and district/county for notification of any occupational diseases, accidents or incidents, which would forward this information to the respective competent parties (e.g. SAWS, MOHRSS and Ministry of Health). In this way, information, which is currently mainly insurance-related, could be used for both enforcement and preventive purposes, at both central and local level.

## *Issues related to sanctions*

Consideration should be given to eliminating the possibility of or need for OSH inspectors to sanction workers, or this should be strictly limited to specific cases of criminal intent or gross negligence. When necessary, inspectors should order employing units to correctly and continuously supervise their employees and to stop unsafe work practices, but should not penalize them. Any disciplinary action to be taken against employees is the sole responsibility of the employer. While reviewing this issue, the opportunity should also be taken to streamline existing formal sanction-issuing procedures.

## *Making better use of employers' organizations, trade unions and their Labour Protection Supervisors*

The current efforts to promote collaboration between the SAWS and the organizations of employers and workers should be substantially increased and should result in a

formal consultation and collaboration mechanism similar to the Tripartite Mechanism for Coordinating Labour Relations established between the MOHRSS, ACFTU and CEC (see Chapter 3).

As a matter of standard, nationwide procedure, OSH inspectors should meet with, invite and insist upon enterprise trade union labour protection supervisors (or any supervisors in employing units) and other workers or workers' representatives accompanying them on every visit, in particular on the shop floor, and should listen to them. Ideally, the SAWS and ACFTU should sign an agreement to promote such collaboration at the enterprise level. (In this context, reference is also made to ILO Convention No. 81, Article 5.)

### *Cooperation between different parties*

The possibility of concluding "Agency Agreements" between the SAWS and other relevant ministries/organizations with responsibility for OSH law enforcement should be explored to ensure that high standards of enforcement are safeguarded throughout the country in a coherent and consistent manner. This could also refer specifically to the issues of diagnosing, monitoring, investigating and reporting occupational accidents and occupational diseases, better controlling multiple employers operating on site simultaneously, and promoting a culture of legal compliance in the workplace.

In addition, formal inter-ministerial committees at national level and inter-departmental committees at provincial/autonomous regional level would represent a structured extension of current best practices.

It should be noted that several parallel state inspectorates operate with responsibilities for labour protection matters under different sector ministries: SAWS, Health, Construction, Agriculture and others (altogether some nine or ten). With the further development of the socialist market economy, certain issues, such as wage arrears, are also becoming relevant to all these agencies.

Therefore, there is a need for better coordination. Ideally, a horizontal institutionalized coordination mechanism for all departments involved in labour law supervision matters should be in place. Such coordination is already required in broad terms under the laws on public administration and other legislation, but it could be made more specific and binding, and be a legal requirement prior to adoption of the respective annual work plans of each sector, focusing particularly on strategy development and information sharing.

There is at present no viable institutional relationship between LIB/MOHRSS and the SAWS, such as an "Agency Agreement" regulating issues of consultation or coordination, or information and data exchange, or other cooperation mechanisms, although both organizations administer labour protection law and intervene in much the same workplaces. Occasionally, there are ad hoc coordination meetings at national and, possibly more frequently, provincial, municipal and local levels.

## Notes

<sup>1</sup> See [http://english.gov.cn//2005-10/20/content\\_80534.htm](http://english.gov.cn//2005-10/20/content_80534.htm) [accessed 15 May 2013].

<sup>2</sup> For further details see Zhu, Yang and Wang (2012).

<sup>3</sup> In 2010, a total of 10,616 fatalities occurred in factories, mines and commerce and trade enterprises according to the SAWS, and a total of 27,240 occupational diseases were recorded according to the Ministry of Health in China.

<sup>4</sup> This refers to the requirement of Article 24 of the Work Safety Law of the PRC that safety facilities for construction projects shall be designed, constructed, and put into operation and use simultaneously with the principal parts of the projects.





## Introduction

Employment is essential for the well-being of people and key to human development. Each year in China, about 10 million people enter the labour market, which must simultaneously absorb between 8 and 10 million unemployed. China has been facing great pressure to create decent jobs for all and employment has been given top priority as a national development strategy.

China has developed and implemented a series of active employment policies since 2002. It has extended the Government's responsibilities in the field of employment promotion, and established systems for employment services, vocational training, employment assistance and employment and unemployment management.

In 2007, China adopted its first ever Employment Promotion Law (EPL),<sup>1</sup> which provides a legal framework for the country to implement the Government's Strategy of Employment as Priority. China has also adhered to the principle of promoting freely chosen employment, market-regulated employment and the Government's promotion of employment. It has promoted a proactive employment policy to encourage employment creation through multiple channels and forms, and expand job opportunities by creating new businesses. After successfully helping laid-off workers from SOEs back into work in the late 1990s and early 2000s, China has recently faced the challenge of helping university graduates, rural migrant workers, urban residents who have difficulty finding jobs, and ex-service personnel to find decent jobs. Various policies have been implemented, including fiscal support, tax preferential policies, employment subsidies, vocational training, business start-up assistance, job security and active labour market measures. In addition, China has invested in improving the human resources markets and employment services and has reformed the unemployment insurance sector.

Thanks to the comprehensive measures put in place, in 2009, a total of 11.68 million new jobs were created in urban areas, which represented an increase of

660,000 compared to the previous year. At the end of 2010, the registered urban unemployment rate was 4.1 per cent, representing a 0.2 per cent decrease compared with 2009.

In accordance with the Employment Promotion Law, the Government is endeavouring to enhance public employment services (PES) to promote employment through various systems and programmes of work creation.

## Active employment policy

### *Background*

During the 1990s, China introduced a policy of economic restructuring and deepened the reform of the SOEs to increase the efficiency and competitiveness of the economy. These reforms resulted in a large number of workers being laid off and needing to find new jobs. At the same time, the urban labour market was already under great pressure owing to the increasing number of new entrants from both urban and rural areas and the unemployed. Confronted by these unprecedented challenges, employment was at the top of the Government's agenda.

In September 2002, the Central Committee of the CPC and the State Council jointly held a national conference on re-employment to deliberate and make policy measures synergistically, and mobilize political and policy support from all relevant departments and local governments to address the employment issues. As a follow-up to the conference, the CPC and the State Council jointly issued a Circular on Further Improving the Re-employment of Laid-off and Unemployed Workers (Document No. 12). To strengthen the coordination of employment policy and its implementation, the State Council decided to establish an inter-ministerial meeting system on the issue of re-employment action and required local governments to do the same in order to create a strong, unified leadership and coordinated approach to implement the policies informed by the Circular.

### *Main contents of the active employment policy<sup>2</sup>*

The joint Circular served as a national policy on employment and re-employment to address employment issues faced in a specific social and economic context. The policy measures taken by the Circular actually constituted an active employment policy (AEP) framework. In 2005, the State Council promulgated another Circular on Further Strengthening the Work on Employment and Re-employment (Document No. 36), which further improved the AEP and was regarded as a milestone in its development. In 2008, the AEP was written into the Employment Promotion Law and its scope of application has been extended to all groups of people in the integrated labour market in both urban and rural areas, well beyond the original targeted workers employed by

the SOEs. The origin, process and development of the AEP provide a good example of how a policy initiative is proposed, implemented, promoted and finalized.

The AEP is a comprehensive socio-economic policy dedicated to employment promotion and job creation. The AEP comprises the following five policy areas:

- (1) macroeconomic policies aimed at maintaining a relatively high rate of economic growth that can create more jobs, including policy measures to maintain GDP growth and make adjustments to the structure of industry, ownership and enterprises in order to enlarge the volume of employment and create jobs;
- (2) preferential policies to assist laid-off workers, in particular those from disadvantaged groups, to find new employment, including policies to allow exemption or reduction of tax and administrative fees, microcredit and employment subsidies;
- (3) active labour market policies to help laid-off workers and the unemployed, in particular disadvantaged groups, to find jobs through job placement services and vocational training in order to increase their employability;
- (4) macro and administrative policies to reduce unemployment, including policy measures to strictly regulate enterprises that wish to displace workers; measures to establish an unemployment early warning system to reduce pressure caused by unexpected rises in unemployed numbers;
- (5) social security policies to guarantee the basic livelihood of laid-off workers on the one hand and to actively help them back into employment on the other. These include improvement of the social security system to provide contingency funding, relieving laid-off workers from financial worries and facilitating the mobility of labourers by maintaining social insurance entitlement through subsidies on their social insurance contributions.

Through the implementation of an enhanced AEP from 2002 to 2007, a total of nearly 28 million laid-off and unemployed workers from state-owned and collectively owned enterprises were re-employed. Through creating jobs in public works, such as infrastructure and community service, nearly 7 million unemployed persons, who were experiencing difficulties in finding jobs, were assisted back into work. More importantly, the AEP succeeded in maintaining a stable employment situation during the process of economic restructuring and SOE reforms.

### *From policy to law*

The case of the AEP once again confirms the close link between policy development and law making. The development and implementation of the AEP has provided a wide range of policy options and solid evidence to test those policies through

implementation and necessary adjustments. It laid a sound foundation for the preparation of the employment promotion law. It is a logical step to institutionalize and legalize those tested policies into a law to ensure the establishment of an institutional and legal guarantee for employment promotion.

For example, PES are considered a critical aspect of the AEP. The Government should develop and provide free public employment services. The Employment Promotion Law provides clear guidelines in a chapter on strengthening the public employment service. It is prescribed in the law that governments at or above the county level shall establish public service agencies for employment and provide free services to workers. The law clarifies the precise responsibilities of the PES, and also prescribes that funds shall be set aside within the government budget so that guaranteed funds are available for the PES agencies.

The Employment Promotion Law reinforced the Government's role in formulating and implementing an active employment policy framework. The law (from Article 11 to Article 24 of Chapter II), stipulates the formulation of policies in favour of employment promotion in the fields of industry, fiscal administration, taxation, finance, investment, trade and so on. The Employment Promotion Law also requires the establishment of an integrated, equal employment system and policies in both urban and rural areas, and for different regions and different groups.

## Public employment services

Public employment services (PES) provide fundamental and comprehensive services to promote employment and job security. More specifically, PES:

- provide legal advice to labourers about their rights and benefits;
- offer a job-matching service;
- provide labour market information and analysis;
- administer unemployment registration and benefits;
- provide vocational and skills training information and opportunities, and
- offer special support to disadvantaged groups.

In China, PES form part of the active employment policies. They have been developed in conjunction with the reform of the economic system since the 1980s. The initial phase of the PES development began in the late 1970s, when large numbers of high school graduates (the so-called intellectual youth), around 17 million in total, who had been sent to rural areas to work during the Cultural Revolution, returned to the cities. The peak unemployment rate registered at that time reached 5.4 per cent, the highest since the 1950s. The Government encouraged those young people to organize themselves into enterprises, to pursue self-employment or to be employed through the services of

Labour Service Companies (LSCs),<sup>3</sup> established by labour departments at various levels, thereby creating the initial public employment-oriented services to facilitate matching jobseekers and providers through various services. The employment system and policies have undergone fundamental changes since then. In October 1986, the State Council circulated “four rules” on labour reforms of SOEs. These rules required enterprises to open recruitment to the public and to recruit employees on the basis of open competition. All employees would sign employment contracts. This ended a policy of “the unified recruitment and job assignment” under the planned economy. In the late 1980s, the LSCs, established by the labour departments above the country level, changed their names to Employment Services Bureaux, which are public institutions entrusted by the labour departments to provide all the functions of PES.

In 1992, China officially proposed the concept of fostering and developing the labour market. In 1994, Article 11 of the Labour Law specifically stipulated that local people’s governments at various levels shall take measures to develop various kinds of employment exchange agencies and provide employment services.

The year 2007 was regarded as the year of social legislation in China. The Employment Promotion Law was adopted by the Standing Committee of the NPC, together with the Labour Contract Law and the Law on Labour Dispute Mediation and Arbitration. Article 35 of the Employment Promotion Law stipulated that people’s governments at or above the county level were to establish a sound system to provide public services for employment, set up PES agencies and provide the following free services to workers:

- consultation on employment policies and regulations;
- information about supply and demand of jobs and guidance on rates of wages on the market and vocational training;
- vocational guidance and job recommendation;
- employment aid to people who have difficulty in finding jobs;
- registration of employment and unemployment; and
- other public services connected with employment.

The Employment Promotion Law requires that PES shall constantly improve the quality and efficiency of their services and shall not engage in any profit-making activities, and that the funds for PES shall be incorporated into the government budget at the same level.

To thoroughly implement the Employment Promotion Law and the national Twelfth Five-Year Plan for Basic Public Service System, the MOHRSS and Ministry of Finance issued a joint Circular on Issues Concerning Further Improving the Public Employment Service System in December 2012 outlining the underlying principles of PES:

- (a) *Basic security.* To serve the interest of the public, under the main responsibility of the Government; to provide basic public employment services to promote full employment and optimize the allocation of social human resources;
- (b) *Sustainability.* To improve mechanisms of financial security, management and operation, supervision and accountability to form a long-term mechanism for the effective operation of the PES system; to explore innovative service delivery models, introduce a competition mechanism, and constantly improve the quality and efficiency of service to achieve sustainable development of the PES;
- (c) *Equalization.* In accordance with the requirement to cover both urban and rural areas, and offering access to all, to provide society with a unified, standardized and efficient public employment service, convenient to all kinds of labourers for jobseeking and to employers for recruitment of labourers; to progressively realize the equalization of the basic public employment services among regions and between urban and rural areas.

### Upgrading the service

Currently, the country is improving the PES system based on the following measures:

- (1) *Strengthen PES agencies and duties.* The Government should strengthen the PES agency at provincial, municipal and county levels, to be responsible for formulating and implementing policies of public employment services; coordinating employment administration with its own jurisdiction; developing an information system for PES, and providing the basic public employment services to labourers and employing units within its jurisdiction. More importantly, the Government should establish a grass-roots PES platform at street (township) and community (village) levels. The grass-roots PES platform below the county level is responsible for the public employment service, focusing on employment assistance, implementing various employment policies, conducting labour force surveys and undertaking other employment services to be arranged by higher level human resources and social security departments.
- (2) *Unify the management of PES and the grass-roots platform.* In accordance with the requirements of the unified leadership, unified system, unified management, unified service standards, unified information system, localities should coordinate the planning and institutional building of PES, aiming at the formation of a PES system covering both urban and rural areas. Localities should strengthen the construction of the employment and social security service platform at street (township) and community (village) levels, especially in rural areas, to improve the quality of personnel and means of service delivery and to ensure access to PES.

- (3) *Improve the working systems of PES.* This includes the implementation and improvement of a unified free system of basic services; an employment information service system; a large-scale special employment services activity system; a registration and management system for employment and unemployment; an employment assistance system; personnel and employment record-keeping services; and a monitoring system for the labour market. The Government is currently exploring the possibility of establishing a government purchase system for the basic PES.
- (4) *Improve the levels of specialization and standardization of PES.* According to economic and social development needs, the goal is gradually to expand the scope of basic PES, enhance service items, refine the contents of services, standardize service processes, upgrade service standards, comprehensively improve the quality and efficiency of services and realize the specialization of PES. It is planned that, gradually, a standard system of public employment services will be established, clearly defining facilities, equipment, staffing and other specific standards to provide standardized, convenient, high-quality PES.
- (5) *Improve the level of information services of PES.* The Government should establish a unified national information system of PES with an efficient information indexing system. With the aim of centralizing data, extending services to the wider community, nationwide networking and sharing, the Government should integrate the information resources of various types of employment services and set up core employment information databases at the ministry and provincial levels to form an information network and employment information monitoring system. China should establish an integrated and standardized information system of comprehensive employment administration and services to both urban and rural areas.
- (6) *Improve the performance evaluation mechanism of PES.* Localities should study and set up a performance appraisal and management system for PES, based on workload, effects and cost of services, to continuously improve the efficiency and level of PES.
- (7) *Promote the governance of PES.* PES agencies should establish sound financial management rules and regulations, strictly control the scope of expenditure under the national financial regulations and standards. Human resources and social security departments and finance departments should regularly carry out supervision and inspection of the PES agencies' services and their use and management of funds, identify problems and make timely corrections. PES agencies should further improve their systems of internal supervision and information disclosure and provide the public with information on their work



## Labour administration reforms in China

and use of funds on a regular basis, and accept the supervision of auditing and supervision departments.

### Notes

<sup>1</sup> See <http://www.lawinfochina.com/display.aspx?lib=law&id=6382&CGid=> [accessed 16 May 2013].

<sup>2</sup> One of the major reforms concerning an active employment policy was discussed at the China Employment Forum (Beijing, 28–30 April 2004) organized by the MOLSS in collaboration with the ILO.

<sup>3</sup> See former Ministry of Labour and Personnel, Beijing, 1982, Opinions on Several Issues Concerning Labour Service Companies.

## The social security system

Social security is a fundamental system for ensuring people's livelihoods and adjusting the distribution of wealth. Social insurance is the core element of China's social security system and one of the main functions of the MOHRSS. China has established five social insurance schemes: namely pension, medical care, unemployment, work injury and maternity insurance.

Even though China promulgated the Regulations on Labour Insurance in 1951, which played a historic role in ensuring workers' access to an old-age pension and to medical care as well as other work-related benefits, there was no real social insurance until the early 1990s, following a sequence of reforms initiated in the early 1980s. In 1991, the State Council issued its Decision on Pension Insurance Reform of Enterprises Employees, which officially required pension insurance to be established independent of enterprises and institutions, with a social pooling fund and contributions from the state, enterprises and employees. In 1994, the Labour Law legislated for the establishment of a social insurance system, including old-age insurance, medical insurance, unemployment insurance, work injury insurance and maternity insurance.

After the adoption of the Labour Law, intensive reforms of other social insurance schemes were also piloted with input from the relevant ministries, which caused difficulties for policy coordination and implementation. To strengthen the leadership in the construction of a unified social security system, the Government decided to establish a new Ministry of Labour and Social Security in 1998 by taking over the relevant functions of the ministries of civil affairs, public health and personnel.

Once again, this change of labour and social security administration reflected the need to establish the comprehensive social security system that was required by the socialist market economy.

The adoption of the Social Insurance Law (SIL) in October 2010 was a milestone in developing China's social security system, manifesting the overall progress made over the past 20 years and heralding a new era for its further development.

In accordance with the SIL, the state shall establish a social insurance system consisting of basic old-age insurance, basic medical insurance, work injury insurance, unemployment insurance and maternity insurance, guaranteeing citizens' rights to receive material assistance from the state, following the principles of wide coverage, modest benefits, multi-tiered programmes and a sustainable system.

Based on the SIL and more than two decades of reforms and development of social insurance, the MOHRSS developed the first Five-Year Plan for Social Security (2011–15) to facilitate the establishment of a social security system that will cover both urban and rural citizens by 2015.

The goal and strategy of the Plan are to realize universal coverage of the existing social insurance schemes while reforming and improving them step by step. Recent efforts focus on the integration of government bodies and public institutions into the pension scheme; integration of the basic old-age insurance and basic medical insurance systems for non-working urban residents and the rural population, placing base pensions under a system of unified national planning; and establishment of mechanisms for setting standards on social security benefits and regularly adjusting them. More importantly, in order to respond to the rapid increase in aged population and to ensure the financial affordability of the social insurance schemes, China needs to widen channels for raising money for social security funds, introduce a system to manage the investment operations of social insurance funds, and ensure that these funds are secure and sustainable over time. As an integral part of the social security reform, China is also improving the social assistance system and the social welfare system. Taking advantage of IT technologies, the country has introduced a Golden Social Security Project that is designed to make social security services more convenient, transparent and efficient.

## Extension of social insurance coverage

China has achieved unprecedented progress in improving and extending coverage of social insurance schemes. In the past 10 years, the coverage of China's medical insurance rose from 73 million in 2001 to 1.304 billion in 2011, achieving an almost universal coverage of the population. Pension schemes covered 750 million people in both urban and rural areas at the beginning of 2013.

### *Expansion of coverage of basic old-age insurance*

At present, there are three old-age insurance schemes in China: namely, old-age insurance for urban enterprises employees, old-age insurance for rural residents and

old-age insurance for urban residents. These schemes have achieved full coverage of their target populations.

- (1) *Old-age insurance for urban enterprises employees.* Over the past decade, the coverage of this scheme has been expanded from employees in urban enterprises to include self-employed individuals and people in flexible employment. The number of participants increased from 108 million in 2001 to 216 million in 2011. In the meantime, the number of retirees who receive pensions from this scheme also doubled, increasing from 33.81 million to 68.26 million.
- (2) *Old-age insurance for rural residents.* In 2009, the State Council issued Guiding Opinions on Carrying out the Pilot Projects for Establishing a New Type of Old-age Insurance System for Rural Residents (Document No. 32, 2009), launching a pilot programme to rejuvenate the old-age insurance for rural residents, called Xin Nong Bao in Chinese, meaning “new rural insurance”. This differed from the previous old-age insurance in the following respects. First, in terms of funding sources: in the past, farmers had to pay into the scheme themselves, making it, in fact, a type of personal saving scheme. The new type of scheme has three channels of funding: individuals, collectives and the Government. Second, previous schemes mainly involved farmers’ individual accounts while the new scheme introduced two fund sources for benefits: basic pension benefits and benefits from individual accounts. The basic pension benefit standards depend on such factors as the minimum living standard in rural areas, the poverty line, incentives and supporting policies on family planning and farmers’ income levels, which are decided by the State Council and appropriately adjusted based on economic development and consumer price index changes. The basic benefit standards can be raised based on the local financial strengths and, more importantly, can be incorporated within an integrated old-age insurance scheme in the future.

In 2010, 838 counties in 27 provinces and some districts of municipalities participated in the pilot, involving 102.77 million rural residents with 28.63 million receiving pensions. By the beginning of 2012, the number of participating pensioners, rural residents and counties reached 85.25 million, 326.43 million and 1,914, respectively. Notably, by the second half of 2012, all 2,853 counties in the country had been included in the old-age insurance scheme for rural residents, with 397 million participants and 106 million pensioners.

- (3) *Old-age insurance for urban residents.* With the rapid development of the old-age insurance scheme for rural residents, the issue of old-age insurance for urban residents became more prominent. In June 2011, the State Council held a national conference to launch another pilot scheme for old-age insurance for urban residents and to exchange experiences of good practices during the pilot work in rural areas,

requiring that both schemes should realize full institutional coverage in all localities by the end of 2012. By the end of August 2012, the two schemes together covered a total of 432 million people with 118 million pensioners.

The pace of development of old-age insurance in China is unprecedented. This is attributed to several factors: national economic strength built over the past 30 years of rapid economic development; the institutional role of social insurance in stimulating domestic consumption; the adoption of the Social Insurance Law in 2010 and, last but not least, the political will to protect the legitimate rights of people in the context of the financial crisis and the subsequent global economic recession.

### *Medical insurance for all*

Like old-age insurance, basic medical insurance in China also includes three schemes: basic medical insurance for employees, basic medical insurance for urban residents and the new rural cooperative medical insurance.

- (1) *Basic medical insurance for employees.* The basic medical insurance for employees scheme covers all employing units and their employees in urban areas, including enterprises, government organs, public institutions, civil organizations and private entities as well as the self-employed and people with flexible employment. By the beginning of 2011, this scheme covered a total of 252.27 million people, including 189.48 million employees and 62.79 million retirees.
- (2) *Basic medical insurance for urban residents.* This new scheme was launched under the guidance of the Opinions of the State Council on Guiding the Pilot Work of Basic Medical Insurance for Residents in Cities and Towns (GUOFA [2009] No. 6). The scheme covers urban residents without work, including all students, children and senior residents without work, as well as people who have difficulty in participating in the basic medical insurance for urban employees scheme. By the beginning of 2012, the scheme covered a total of 221.16 million participants.
- (3) *The new rural cooperative medical insurance.* All rural residents are eligible to join the new rural cooperative medical insurance scheme with the household as the base unit. The financing mechanism of the scheme is a combination of family contributions, collective support and government grants. The Government provides subsidies to all the insured farmers, and the farmers make due contributions. In the case of disadvantaged groups, the Government subsidizes their individual contributions. The fund is mainly targeted at subsidizing the hospitalization fees and a portion of the outpatient medical costs of insured farmers. By the beginning of 2011, this scheme covered all counties with

agricultural populations, with a total of 832 million participants, achieving a 97.5 per cent participation rate. The SIL, in 2010, legalized this scheme as one of the social insurance schemes.

Human resources and social security departments administer two urban schemes and health departments are responsible for the rural medical insurance scheme. The total number of participants in the medical insurance schemes reached more than 1.3 billion by the beginning of 2011, almost realizing the goal of universal coverage of medical insurance for all.

### **Extension of unemployment, work injury and maternity insurance coverage**

Unemployment, work injury and maternity insurance cover occupational groups who have established labour relationships. With improvements in the institutional frameworks of the three schemes, the coverage of the schemes has been extended gradually.

- (a) *Work injury insurance.* The number of participants in work injury insurance has increased at the fastest rate. The Regulations on Work Injury Insurance, promulgated in 2003 by the State Council, extended its scope from all types of enterprises to include individual households with employees, public institutions and private non-enterprise entities. In certain provinces, the scheme even applied to civil servants and people working for public institutions. In early 2012, the number of participants reached 176.96 million employees from 43.45 million in 2001.
- (b) *Unemployment insurance.* In accordance with the Regulations on Unemployment Insurance, urban enterprises and public institutions as well as their employees must join unemployment insurance schemes. In recent years, employment in SOEs and collectively owned enterprises has declined dramatically but efforts have been made to include foreign investment backed companies, private enterprises, individual households and the self-employed. By the end of 2011, the number of participants in unemployment insurance reached 143.17 million, up from 103.55 million in 2001.
- (c) *Maternity insurance.* To implement the Trial Measures for Maternity Insurance of Enterprises Employees and China's Women Development Outlines (2001–10) and to combine the promotion with medical insurance, the maternity insurance has extended its coverage to administrative organs, public institutions, people with flexible employment and internal migrant workers. At the beginning of 2012, there were 138.92 million people covered by the maternity insurance, increased from 34.55 million in 2001.

## Social insurance administration and services

### *Social insurance administration system*

The Ministry of Human Resources and Social Security (MOHRSS) of the PRC is the state authority responsible for social insurance administration in China. It takes the lead in establishing and extending a social security system that covers both urban and rural residents, and in coordinating and formulating policies and standards in relation to social insurance schemes for all. The MOHRSS is also in charge of management and supervision of social insurance funds. The MOHRSS is entrusted with administering and supervising social insurance administration and services across the country in an integrated manner. Other relevant ministries and departments of the State Council are responsible for the social security matters corresponding to their respective functions.

The MOHRSS and Ministry of Finance work jointly to strengthen the supervision of nationwide social insurance funds. The Department of Human Resources and Social Security (DOHRSS) of the People's Government puts in place a social insurance funds supervisory agency at each level. The DOHRSS works together and coordinates with the Department of Finance, Audit Office and the Department of Supervision in setting up a cooperative supervisory mechanism.

The tasks of strengthening coordination between government agencies and improving social insurance services have become urgent. First, there is a need to improve the social insurance service structure. Second, there is a requirement to offer expanded services to the scheme participants. Third, the management of social security services should be further standardized, modernized and professionalized. This requires tight social insurance fund investment, extension of social security coverage and upgrading the pooling level of funds, making the individual accounts into funded accounts, expanding fund investment channels, enhancing the rate of the fund investment return, strengthening fund supervision and gradually building up social insurance fund capacity.

### *Improving social insurance services*

At the national level and at each of the three local levels – provincial, prefecture (city) and district (county) – the MOHRSS and DOHRSS establish corresponding social insurance agencies, which are entrusted to perform the following functions: implementing social insurance policies; providing routine social insurance services; managing social insurance funds; and fulfilling other duties in relation to social insurance as required.

A social insurance services system is an important part of the basic public services and labour administration in China. It is mainly provided by social insurance agencies at all levels, relying on banks and various types of designated agencies, as well as

community-based labour and social security offices. This service network is gradually extending to the township and village levels. At present, there are over 8,000 social insurance agencies at and above the county level with a total of 160,000 staff, while there are more than 190,000 services at street, township, community and village levels with a total of 370,000 staff; there are 96,000 hospitals and 113,000 pharmacies covered by the social insurance agencies.

To modernize the social insurance service and keep records of individual contributions and benefits, the State Council approved the development of a computerized Management Information System of Social Security (MISSS), also termed the “Golden Social Security Project”. This system comprises databases from the national, provincial and city levels, which are connected to each other and will provide a unified, standardized MISSS across China. It has the functional modules of social insurance claim processing, public services, fund supervision and decision-making support. By the end of August 2012, 252 million social security cards had been issued, representing the payment of pensions to 77.8 per cent of retirees.

In addition, 229 prefecture-level cities in 30 provinces, autonomous regions and municipalities have opened telephone hotline services, taking an average daily call rate of 20 million. Information services through other means such as text messages, email and microblogging are also available, and have achieved synergies between the different service channels. During the Twelfth Five-Year Plan period, China will start the second phase of the Golden Social Security Project to further enhance the level of social security information services and to achieve the goal of “recording the whole life, servicing the whole life and securing the whole life” of China’s citizens.





# RESEARCH AND NATIONAL PROGRAMMES

# 9

## Research institutions

Research has been instrumental in policy-making, theoretical innovation, improvement of the legal framework and modernization of labour administration in China. Three categories of labour and social security research institutions provide this technical and intellectual support in China.

- (1) *Higher education institutions.* China has about 140 universities and colleges with established labour and social security departments. Some of them are certified by the Ministry of Education to educate master's and doctoral degree level graduates. These higher education institutions have not only provided talented human resources to the public administration, in the shape of human resource managers of businesses, but they have also conducted a variety of research projects covering important areas of labour law and labour administration.
- (2) *National labour and social security research institutions.* Reforms and development of labour undertakings need technical support from theoretical studies and scientific research. In May 1982, the former Ministry of Labour and Personnel established the Institute of Labour Science Studies. The Institute has long been engaged in research in the field of the labour market, employment, vocational training, labour law, labour relations and corporate human resources management. In 1989, the former Ministry of Labour and Social Security set up an Institute for International Labour Studies, focusing on research and studies on international labour organizations and on other labour and social security developments and good practices in other countries. In January 1990, the Ministry established an Institute of Labour Wages, specializing in studies on subjects such as wage theories, fair income distribution, minimum wages, labour costs and guidelines for enterprise wages. In January 1994, an Institute of Social

Insurance Studies was established by the former Ministry of Labour and Social Security, which has played its role in supporting the reform and design of various social insurance schemes.

Based on these institutes, the former Ministry of Labour established a China Academy of Labour Science Research in 1993, which changed its name to the China Academy of Labour and Social Security Sciences in 1999.

Besides the research institutions under the MOHRSS, there are other research institutes, established by relevant ministries and the Central Government: the Social Development Department of the National Development and Research Centre of the State Council; the Institute of Population and Labour Economics of the China Academy of Social Sciences (CASS); the Social Development Institute of Macroeconomic Research of the National Development and Reform Commission (NDRC).

- (3) *Social and professional associations.* The most important of these is the China Association for Labour Studies (CALs), which was founded in January 1982 and is an academic body that undertakes research on labour issues, provides training and consultation and publicizes and shares information. The CALs is a non-profit national association, affiliated with the Ministry of Human Resources and Social Security of the People's Republic of China. It has 68 provincial and municipal group members and 99 enterprise group members. The CALs has eight professional committees: labour law, employment services, labour standards, remuneration, human resource management and development, labour dispute settlement, labour inspection and management of foreign investment enterprises. In addition, other specific associations have been established recently. These include the China Social Insurance Association and the China Employment Promotion Association.

## National programmes

China's Five-Year Plan for National Economic and Social Development is a critically important tool mandated by the Government to achieve its development objectives by mapping out in five-year cycles the country's future progress via guidelines, policy frameworks and targets for policy-makers at all levels of government. The national Five-Year Plan is supplemented by local and specific (sector) five-year plans.

In 2011, China adopted the Twelfth Five-Year Plan for National Economic and Social Development (the Twelfth FYP), which sets out Government priorities for the next five years (2011–15). The Twelfth FYP continues the broad policy direction of the Eleventh FYP (2006–10), which was considered a major policy shift for the Chinese Government as it moved away from a focus on economic growth towards a

more balanced and sustainable growth pattern, under the “balanced society” and “scientific development perspective” policy frameworks.

The Twelfth FYP stressed the need to change working methods and take new steps in scientific development, to upgrade industries and develop new competitiveness, to promote green development and establish a resource-saving and environmentally friendly society, to improve living standards and public services. Over the next 5 years, the average annual growth rate of the economy is expected to be 7 per cent, focusing on significant improvements in quality and efficiency.

Based on the Twelfth FYP, the MOHRSS developed a specific twelfth five-year plan for human resources and social security undertakings. The main objectives of this sectoral plan are listed below.

- (1) *Make efforts to realize full employment.* Employment promotion will be the top priority for economic and social development and fair employment opportunities will be provided to all those in the labour market. A total of 45 million new jobs will be created in urban areas, about 40 million rural workers will shift to non-agricultural jobs and the urban registered unemployment rate will be kept below 5 per cent.
- (2) *Realize universal coverage of social insurance schemes.* Based on the experience obtained from pilot activities, basic pension insurance and medical insurance will be provided to the entire population. Focus will be on the participation in social insurance schemes of urban citizens, migrant workers, workers in the informal economy and people with flexible employment. In line with social and economic development, the level of benefits will be gradually improved. Pensions for those who have retired from enterprises will be increased steadily. Rural residents and urban unemployed residents over 60 years of age will be provided with a basic pension. For the three basic medical insurance schemes (that is, medical insurance for workers, medical insurance for urban residents and the new rural cooperative medical insurance), the reimbursement rate for hospital treatment will be increased to 75 per cent, 70 per cent and 70 per cent respectively. A total of 800 million unified social security cards will be issued, covering 60 per cent of the population.
- (3) *Accelerate the establishment of a sound income distribution system.* Mechanisms to ensure regular salary increases and to guarantee payment of wages will be improved. Income increases will be synchronized with economic growth, and salary increases with productivity improvements. The minimum wage standard in most areas will exceed 40 per cent of the average local urban salary.
- (4) *Introduce more stable and harmonious labour relations.* The labour contract system will be fully implemented and collective bargaining and collective contracts will be more widely applied. Progress will be made in building grass-roots labour

arbitration organizations as well as establishing arbitration courts. Dispute settlement mechanisms will be further improved with the aim of achieving a 90 per cent settlement rate for the arbitration cases handled. The labour inspection system will be further improved and a proactive and preventative approach for labour inspection, based on Twin Networks Management, will be established so that workers' rights are effectively protected.

- (5) *Significantly improve public service capacity.* The basic public services institutions for human resources and social security are well established; now their facilities and equipment must be improved; information networks must be interconnected and integrated; service procedures are to be scientifically standardized; service quality levels must be constantly improved with qualified and professional teams in order to provide standardized, convenient and highly efficient services for the public.

## China and the ILO

China resumed its activities with the ILO in 1983. The ILO's China country office was opened in Beijing in 1985, which greatly enhanced technical cooperation between the ILO and China as the country urgently needed to participate in international activities and to learn from international good practices as soon as possible after the start of its reform process. Since then, many projects and activities on a variety of topics, such as international labour standards, employment, vocational training, labour relations, labour inspection, OSH and social security, have been conducted in the country.

The cooperation can be divided into two periods: one between 1983 and 2000, and the other one from 2001, the year in which the Memorandum of Understanding (MOU) was signed, to the end of China's Twelfth Five-Year Plan.

### *The period from 1983 to 2000*

During this period, China actively participated in the development of international labour standards and recognized the ratification of 14 ILO Conventions by the former Government in 1984 (see the list of ILO Conventions ratified by China in table 1). The international labour standards and technical cooperation via numerous seminars, study tours and expert consultative missions provided China with knowledge of international good practices and experience in reforming national labour policies and institutions and in drafting the Labour Law that was adopted in 1994. The Labour Law was a milestone in the history of labour legislation development in China, and facilitated the reforms of SOEs and the process of China's transition from the planned economy to a socialist market economy. Since then, the ILO has continued to provide technical consultative services to China, helping to improve the legal framework of labour and social security legislation. For example, in 2009,

**Table 1** List of ILO Conventions ratified by China

Convention	Date of ratification	Status
C7 Minimum Age (Sea) Convention, 1920	2 Dec. 1936	Outdated
C11 Right of Association (Agriculture) Convention, 1921	27 Apr. 1934	Active
C14 Weekly Rest (Industry) Convention, 1921	17 May 1934	Active
C15 Minimum Age (Trimmers and Stokers) Convention, 1921	2 Dec. 1936	Outdated
C16 Medical Examination of Young Persons (Sea) Convention, 1921	2 Dec. 1936	Active
C19 Equality of Treatment (Accident Compensation) Convention, 1925	27 Apr. 1934	Active
C22 Seamen's Articles of Agreement Convention, 1926	2 Dec. 1936	Active
C23 Repatriation of Seamen Convention, 1926	2 Dec. 1936	Active
C26 Minimum Wage-Fixing Machinery Convention, 1928	5 May 1930	Active
C27 Marking of Weight (Packages Transported by Vessels) Convention, 1929	24 June 1931	Active
C32 Protection against Accidents (Dockers) Convention (Revised), 1932	30 Nov. 1935	Active
C45 Underground Work (Women) Convention, 1935	2 Dec. 1936	Active
C59 Minimum Age (Industry) Convention (Revised), 1937	21 Feb. 1940	Outdated
C80 Final Articles Revision Convention, 1946	4 Aug. 1947	Active
C100 Equal Remuneration Convention, 1951	2 Nov. 1990	Active
C111 Discrimination (Employment and Occupation) Convention, 1958	12 Jan. 2006	Active
C122 Employment Policy Convention, 1964	17 Dec. 1997	Active
C138 Minimum Age Convention, 1973	28 Apr. 1999	Active
C144 Tripartite Consultation (International Labour Standards) Convention, 1976	2 Nov. 1990	Active
C150 Labour Administration Convention, 1978	7 Mar. 2002	Active
C155 Occupational Safety and Health Convention, 1981	25 Jan. 2007	Active
C159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983	2 Feb. 1988	Active
C167 Safety and Health in Construction Convention, 1988	7 Mar. 2002	Active
C170 Chemicals Convention, 1990	11 Jan. 1995	Active
C182 Worst Forms of Child Labour Convention, 1999	8 Aug. 2002	Active

the ILO provided its written comments on the draft Social Insurance Law and then organized a high-profile seminar in Beijing to discuss the draft and comments in detail with participants from the congress, State Council, relevant ministries and social partners.

Numerous policy-makers, employers, trade unionists and scholars have benefited from participation in ILO activities. They have gained a better understanding of the fundamental principles and rights at work, technical issues in the application of international labour standards and international good practices and lessons learned. Many of them became pioneers in the process of reforming labour policies, legislation and institutions, and prepared the country to move towards a socialist market economy, symbolized by China's entry into the WTO in 2001.

One good example of this collaboration was the creation of an official Tripartite Consultation Mechanism for Labour Relations. In June 1983, representatives of the former Ministry of Labour, ACFTU and CEC attended the International Labour Conference in Geneva for the first time after China's resumption of its activities in the ILO. Their attendance represented a delegation of three main bodies of tripartite consultation at the national level. China also ratified the Tripartite Consultation Convention (No. 144) in 1990. In 2001, the first national conference on tripartite consultation was held, symbolizing the official formation of the mechanism at the national level.

Taking the ILO as a platform, China rapidly fostered bilateral exchanges and cooperation with many developing and developed countries. The ILO facilitated and promoted this cooperation among member States, becoming the source of many bilateral projects.

### *The period from 2001 to 2015*

The signing of an MOU between the Ministry of Labour and Social Security and the ILO in 2001 marked a new direction in the relationship. It defined a framework for cooperation, based on China's national priorities and the ILO's Decent Work Agenda. Subsequently, a Decent Work Country Programme (DWCP), shaping the ILO's work in the country, was agreed. The DWCP has four priority areas:

- promoting employment and employability, and reducing inequalities – with a particular focus on the unemployed and internal migrants;
- promoting better labour-management relations, and effective labour market institutions and labour laws;
- extending and improving social protection;
- promoting fundamental labour principles and workers' rights.

Since the signature of the MOU, the Chinese Government and the ILO have made efforts to strengthen consultation and communication on key labour issues. In 2004, the ILO and the Chinese Government jointly organized the China Employment Forum in Beijing to promote the Decent Work Agenda in China.



While China continues to learn good practices from the experiences of other countries throughout the world, the cooperative programmes have also enabled the ILO and its member countries to better understand China, and to channel attention and support from other countries into the reform and development which is being carried out in China. The Asia Employment Forum, which was jointly organized by the Chinese Government and the ILO in 2007, marked another milestone in terms of cooperation. Meanwhile, China has enriched the international communities' experience through its own practices in meeting the employment challenges in the globalization context, and has made contributions to the achievement of the Decent Work Agenda throughout the world. Recently, the Chinese Government, for the first time, donated US\$1 million to support technical cooperation – via the framework of South-to-South Cooperation – through the ILO.

Over the past decade, the MOU and DWCP have been framework documents for the ILO and the MOHRSS, as well as other social partners, in achieving the objectives of the Decent Work Agenda. This interaction has also served to strengthen coordination and cooperation in areas of common concern, to enhance consultation and discussion and to promote further in-depth study.

Through technical cooperation activities, the ILO has gained a better understanding of China's national conditions and needs while providing technical and financial support. China has drawn on advanced international experience in the course of its own reform and development, meanwhile sharing with the world China's practices and experience. The two sides have been engaged in positive interaction, more active mobilization and integration of resources and more in-depth cooperation and exchanges.

## Memorandum of Understanding

Upon the conclusion of the MOU in 2001, and by mutual consent, a Joint Committee was established and a Joint Committee Meeting has been held biannually to review and assess the implementation of the MOU. Over the years, a total of six meetings of the Joint Committee were convened in both Beijing and Geneva. The latest one was held in Beijing in November 2011.

Over the past decade, China and the ILO have carried out a series of cooperation activities in areas such as ratification and implementation of ILO Conventions, consultation on employment and social insurance legislation, business start-up training, green jobs, labour inspection and OSH, protection of rights and interests of migrant workers, etc. These activities are closely related to the four technical fields in the MOU and based on the practical needs of China. They have played a positive role in promoting the improvement and implementation of China's human resources and social security policies. At the same time they have also raised awareness of the ILO's concepts, such as business start-up training, decent work, green jobs, labour administration and labour inspection.

## *Selected areas of cooperation*

### *Labour inspection*

Given the important role of labour inspection in enforcing the labour laws, the DWCP in China identified an anticipated country outcome: labour law enforcement and labour inspection improvements for better protection of workers' rights. At the request of the MOHRSS, the ILO and MOHRSS organized a joint review of labour inspection in China in September 2009 and a high-level workshop on capacity building of labour inspection in December 2009 in Xian, Shaanxi Province, to present eight key Recommendations to the MOHRSS and to discuss a strategy for ILO/MOHRSS technical cooperation on labour inspection. In 2010, China participated in the ILO/Norway Programme on Strengthening Labour Inspection Services. This first technical project on labour inspection between the ILO and the MOHRSS provided a good opportunity to enhance China's labour inspection capacity by learning from the international good practices documented in the relevant ILO Conventions and a modular training manual and to bring Chinese labour inspectors into international networks of labour inspection. The project received additional financial support in 2011 to continue the cooperation by focusing on training of trainers (TOT) for each of the 31 provinces. It is hoped that this TOT approach will help to strengthen the capacity of labour inspectorates throughout the country through the application of the defined training responsibilities of labour inspectorates at central, provincial and city levels. To this end, the project also organized a study tour to Spain and France in June 2011 to suggest to China the option of establishing a national training centre for labour inspectors, following the good practices in INTEFP in Lyon, France and in the ITSS School, in Madrid, Spain.

DWCP in China has a strategy to integrate labour inspection into almost all ILO projects and programmes within China, such as projects on non-discrimination, gender equality, young migrant workers, anti-trafficking, OSH, CSR, HIV/AIDS and green jobs, etc. In April 2011, the ILO/MOHRSS workshop on the emerging challenges in the world of work and labour inspection was held in Weifang, Shandong Province. Senior labour inspectors from central and local labour inspectorates were trained in ILO core Conventions and the abovementioned technical issues. In the meantime, the expertise built and products produced by the project have been shared with other ILO activities to maximize their impact.

A high-level consultation for policy-makers on the Labour Inspection Convention, 1947 (No. 81) was held to improve understanding and promote the ratification of that Convention. ILO specialists introduced Convention No. 81 and its accompanying Recommendation in great detail and provided information on the national experiences of those countries that had ratified the Convention, as well as requirements for the submission of implementation reports following ratification. Officials from the Labour Inspection Bureau of MOHRSS and the Policy and Legislation Department of the State

Administration for Work Safety respectively gave presentations on the current situation and key issues concerning labour inspection in China, including inspection in the field of OSH. The representatives expressed hopes that the cooperation with the ILO in the field of labour inspection would continue to strengthen.

### *Occupational safety and health*

The ILO has continuously promoted a preventative safety and health culture in collaboration with the Chinese constituents. Since 2002, SAWS and ILO have sponsored a biennial China International Forum on Work Safety, which has become a high-profile international platform. Since 2003, ILO and SAWS, together with social partners, have held events to observe the World Day for Safety and Health at Work on 28 April. The ILO has published the second edition of a bilingual National Profile Report on OSH. A number of ILO codes of practice, Guidelines on Occupational Safety and Health Management System and training manuals have been translated into Chinese and put onto CD-ROM for public information and dissemination.

The ILO has worked with SAWS and social partners in helping to improve OSH in SMEs. The ILO Work in Small Enterprises (WISE) training manual has been published in China and applied in various technical projects.

In 2010, the ILO and SAWS jointly conducted an OSH inspection review followed by a national workshop to discuss the findings and recommendations. The ILO has organized national and international training courses to train OSH inspectors' trainers as a follow-up to the review.

### *Gender equality*

The ILO and the MOHRSS together with other social partners have been working on mainstreaming gender equality in all areas, taking measures to strengthen legislation to protect women workers' rights and to eliminate inequality and discrimination in the labour market.

- (1) *Promotion of Gender Equality in the World of Work Project.* The MOHRSS, in cooperation with the ILO, has been working on improving laws and regulations to protect women workers, to promote decent work for domestic workers, to advance international labour standards and equality-related issues, and to combat discrimination.
- (2) *Promotion of the ILO Convention on Decent Work for Domestic Workers, 2011 (No. 189) and its accompanying Recommendation No. 201.* The MOHRSS and the social partners have been taking proactive measures to support the development and implementation of international labour standards to promote decent work for domestic workers. The ILO is providing technical support to China to develop national legislation and policies for the improvement of employment conditions of domestic workers.

- (3) *Management of domestic service agencies.* In 2010, the MOHRSS carried out a special study on developing regulations for domestic service agencies and the domestic service industry in developing countries. The study made policy recommendations to improve the management of domestic service agencies and to strengthen the legal protection of domestic workers.
- (4) *Strengthening labour inspection from a gender perspective.* Training materials on labour inspection and gender equality have been translated into Chinese and included in the *Labour Inspection Training Manual*. Labour inspectors from 31 provinces have received training.
- (5) *High-level presence at the ILO/ACFTU Promoting Gender Equality Seminar held during the Shanghai Expo.* Representatives from the MOHRSS shared their practices and experience in terms of improving employment statistics, including sex-disaggregated data and gender mainstreaming in the promotion of gender equality.

## Challenges and priorities

China has the second largest economy in the world. Yet, China remains a developing country. Its GDP per capita ranks one hundredth in the world – less than half the global average. According to the UN standard of US\$1 a day, 150 million people in China still live in poverty. China faces serious challenges due to its uneven, uncoordinated and unsustainable development. These challenges include:

- an unbalanced economic structure;
- weak capacity for innovation;
- uneven development between rural and urban areas;
- the coexistence of high demand for jobs, labour shortages and skills mismatch;
- the need to make social security benefits portable and the system more equitable and sustainable;
- the need to improve wage adjustment mechanisms and systems to guarantee wage payments;
- the income gap;
- the need to improve tripartite consultation on industrial relations mechanisms, dispute settlement mechanisms and labour inspection;
- growing industrial conflicts;
- weak capacity to provide public services in the field of human resources and social security to fully meet popular demand.

## *Priorities for future cooperation*

### *Employment promotion*

First, more active employment policies will be implemented, especially through more favourable tax and microcredit guarantee policies. Industrial infrastructure will be upgraded and assistance will be provided to the central and western areas to create more job opportunities. Low-carbon economic growth will be promoted, policy research on employment promotion will be carried out, ways to promote green jobs will be explored, and great efforts will be made to expand employment through economic transition.

Second, targeted employment services and assistance will be strengthened. More emphasis will be placed on university graduates, migrant workers and vulnerable groups.

Third, employment will be further promoted through business start-ups. A performance review will be undertaken as the entry point to positively promote the establishment of “business start-up oriented cities”. Business start-up services systems will be established and improved and the programme to support university graduates seeking to start up businesses will be further implemented in order to make full use of the multiplier effect of business start-ups on employment promotion.

Fourth, training in employment skills, vocational skills, and start-up skills will be carried out on a large scale to improve the employability of workers.

Fifth, public employment services will be strengthened. Public service and human resource service organizations will be reviewed in order to explore possible integration of services, to strengthen capacity building, to expand and improve service functions and to offer targeted services. The construction of the national employment information monitoring platform and national recruitment information service platform will be accelerated. Public employment services will be provided in a more equitable and professional manner, making full use of information technology.

### *Social security*

First, the social security system will be further developed. The rules and regulations needed to fully implement the Social Insurance Law will be rapidly developed. Successful pilots of the new rural pension scheme and urban residents’ pension scheme will be actively promoted. A study will be carried out with a view to improving the regular adjustment mechanism for the basic retirement pension scheme. Pension reform for staff in government and affiliated institutions will be positively promoted. Research will be carried out in order to develop linkages between various social insurance schemes.

Second, social security coverage will be extended, focusing on workers in the informal sector, those in flexible employment and migrant workers. The collection of social insurance premiums and supervision of social insurance funds will be strengthened to ensure the secure operation of the funds. The investment policies of social insurance funds will be further studied.

Third, policy implementation will be strengthened. Portability of pension rights will be improved. Reform of the reimbursement system for outpatient treatments will be carried out and the benefit levels for participants refined.

Fourth, structural issues in the social security system will be addressed. Budgets for social insurance funds will be determined in a scientific manner. Capacity building of social insurance service organizations will be carried out and an improved information system developed.

### *Labour relations*

First, further efforts will be made to implement the labour contract system. Supervision of labour dispatching will be improved. Enterprises with special working hours will be more closely supervised and will receive guidance on how to achieve compliance with the law. The tripartite mechanism for coordinating labour relations will be further strengthened and the creation of harmonious labour relations will be facilitated.

Second, the establishment of a mechanism to provide regular salary increases will be promoted. There will be continued focus on collective wage bargaining. Gradually, a collective contract system will be established. Guidance will continue to be provided on areas such as minimum wage standards to encourage wage adjustments in a timely and reasonable manner.

Third, the arbitration of labour disputes will be promoted. The development of grass-roots level organizations to handle labour dispute arbitration and the construction of arbitration courts will be strengthened. Efforts will be made to prevent labour disputes in enterprises. Interdepartmental emergency settlement mechanisms will be rapidly set up to handle major collective labour disputes and the efficiency of labour dispute arbitration organizations will be improved.

Fourth, the labour inspection system will be strengthened. Specialized inspection will be carried out in enterprises with regard to the implementation of the Labour Contract Law and Social Insurance Law, focusing on labour contracts, payment of wages and social insurance contributions, respect for working hours and labour protection. Labour inspection management and effectiveness will be improved through the application of the Twin Networks Management system and capacity building of labour inspectors.



China has set a goal of building a moderately prosperous society by 2020, employing the people-oriented Scientific Development Perspective strategy. The priority of this development is to ensure that China's people enjoy the right to education, employment, medical and old-age care, and housing so they can have a better life.

The people-oriented Scientific Development Perspective requires that China must promote economic and social development as its top priority to address all problems; that China must make the people-first principle its core requirement, and continue to take steps to enable the people to share the fruits of development and to promote the development of well-rounded individuals; that China must make pursuing comprehensive, balanced and sustainable development its basic requirement, and continue to expand the path of development that leads to increased production, prosperity and a better ecosystem; and that China must take a holistic approach to its fundamental way of moving forward and keep the people motivated to do their best, find their proper place in society and live in harmony.

The way forward is full of challenges: these include the continued huge pressure in the demand for decent jobs creation; a rapidly ageing population with an approximate annual increase of about 6 million in the numbers of elderly citizens; increasing income gaps between social groups; the need for improved social dialogue; and, last but not least, the uncertain evolution of the global financial crisis and economic recession.

Thanks to the rapid economic development of the past three decades, China is now the second largest economy in the world. Living standards have been significantly improved. Efforts to improve the people's well-being have been intensified; urban and rural employment has continued to increase; individual income has increased; a basic social security system has been established; labour relations have been stabilized. More importantly, social and political stability has been maintained, which creates an enabling environment for further reforms and development.



Labour administration with sound, responsive labour policies and institutions plays an increasing role in ensuring people's well-being and achieving the goal of building a moderately prosperous society by 2020. China has put in place, among others, the Strategy of Employment as Priority, with tested active employment policies; realized universal coverage of old-age and medical insurance; improved the labour and social security laws, and established institutions and mechanisms for sound labour relations.

As the most populous country in the world, China, for the first time, saw a decrease of 3.45 million in the working-age population (comprising 16 to 59 year-olds) in absolute numbers in 2012. This change will exert an impact on the supply–demand relationship of the labour force and, accordingly, on possible policy responses on many fronts. It also serves as a reminder to pay more attention to the protection of the workforce and the improvement of the quality of human resources. Labour administration and labour inspection are expected to play an even more significant and active role in the near future.

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