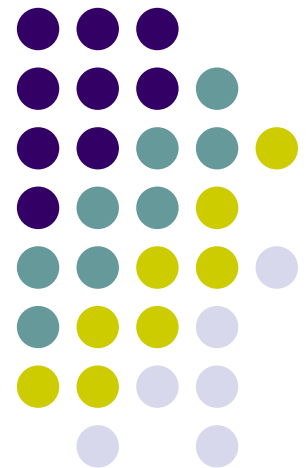
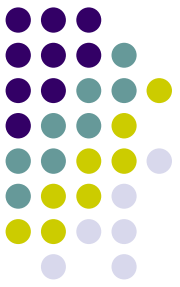


Labor Law and Labor Market Reform in China: Moving the Chinese economy to the next level

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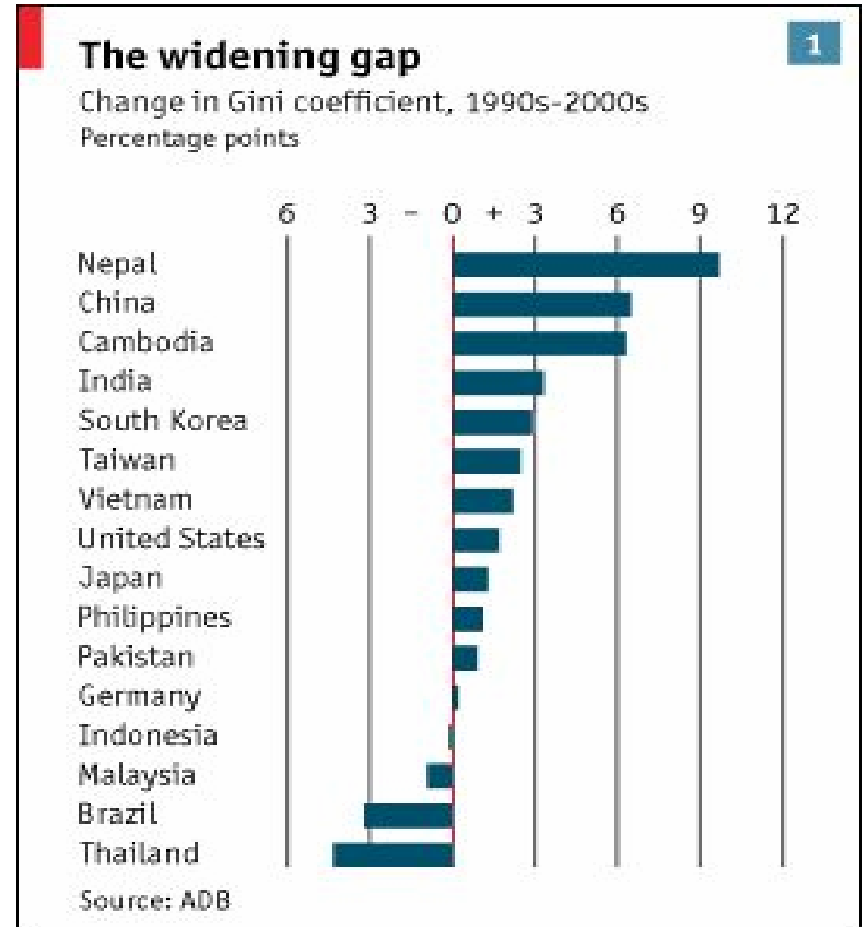
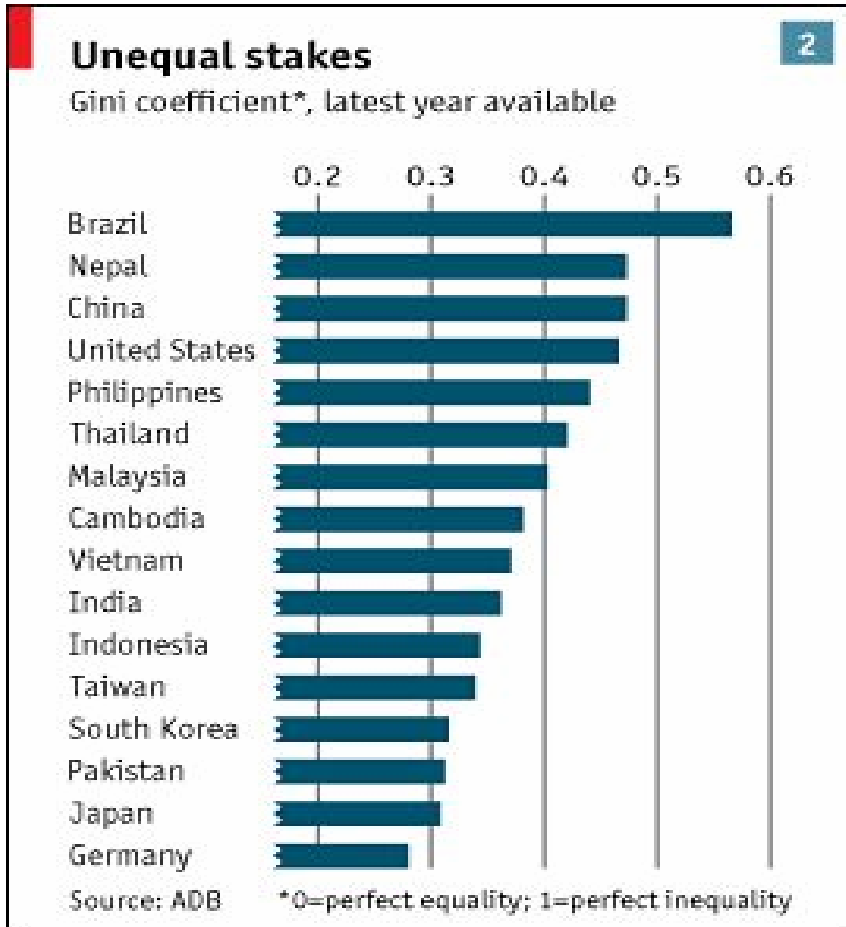
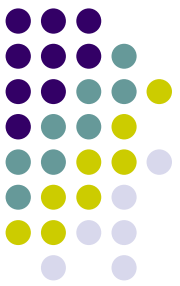


2008, the year of labor law reform... why suddenly?

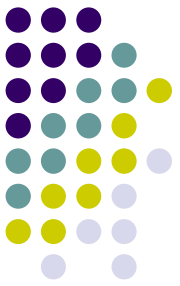


- Employment Promotion Law 1/1/08
- Labour Contract Law 1/1/08
- Mediation and Arbitration of Labour Disputes Law 1/5/08
- Social Insurance Law (under preparation)

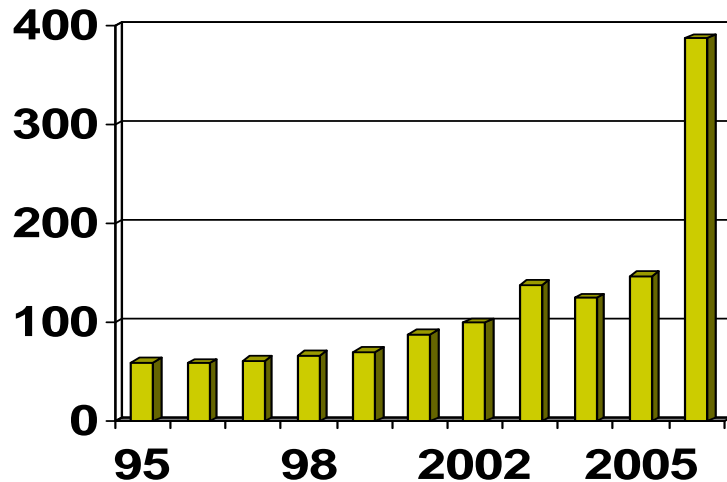
Rising inequality in China and elsewhere



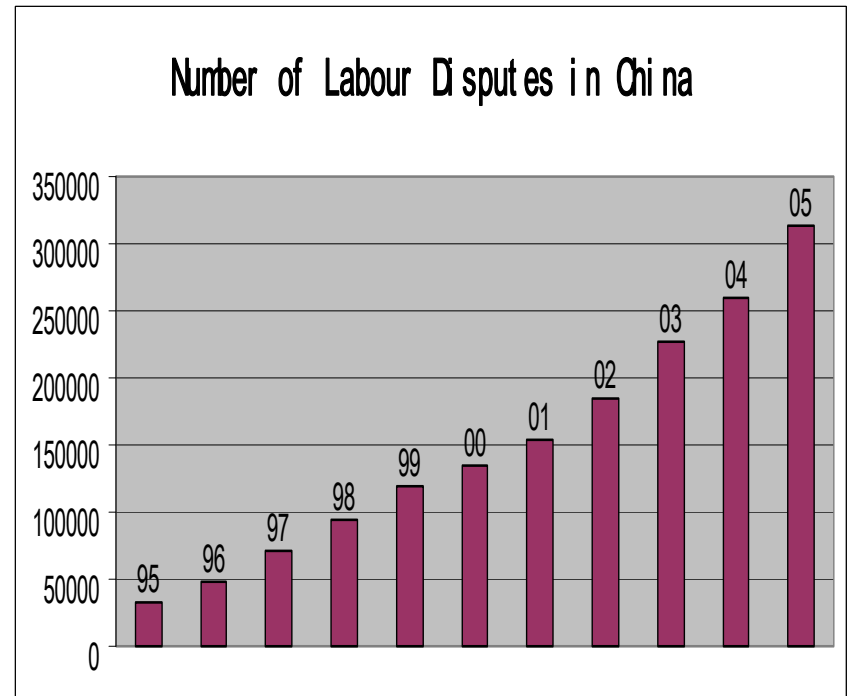
Disputes on the rise in transition economies: Viet Nam and China



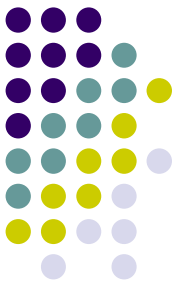
Strikes in Vietnam



Number of Labour Disputes in China

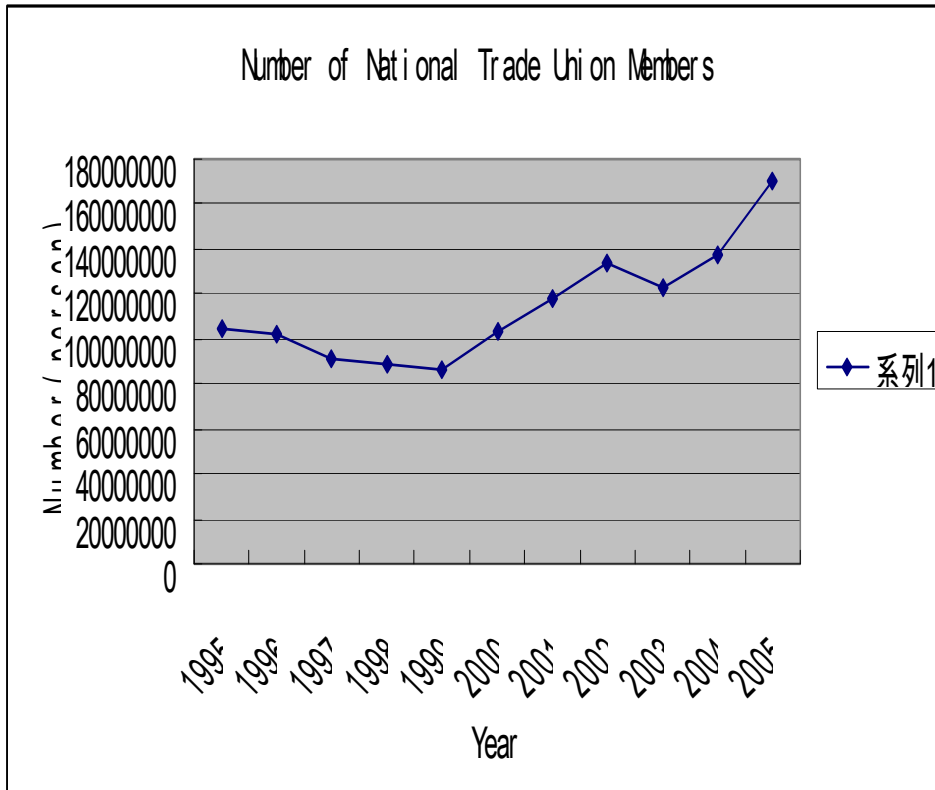
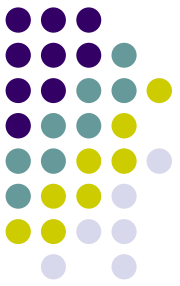


Variety of social and labour policy initiatives for 'building harmonious society'

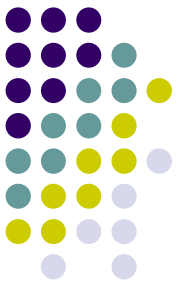


- Reform of labor laws
- Gradual building of unified labor market by phasing out of hukou system (household registration)
- Unionization (as a key pillar of social management) and spread of collective bargaining
- Tripartite coordination system at various levels
- Sign of labor shortage: from unlimited to limited supply of labor
- Domestic consumption as one of engines of economic growth
- Government's strategy of industrial upgrade

Union membership and collective bargaining coverage trends in China

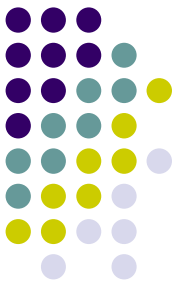


LCL, significant improvement and progress:



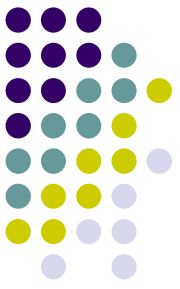
- Part of strategy to balance economic and social interests and reduce rising inequality
- Responds to identified abuses and problems facing many workers through better rights protection
- Covers migrant workers
- Attempts to balance short term flexibility and long term stability
- Places a greater emphasis on the role of dialogue – consultation and negotiation – in determining terms of employment (bi and tripartite)
- Enhances possibility of better law enforcement

LCL updates and supersedes provisions of 1994 Labour Law



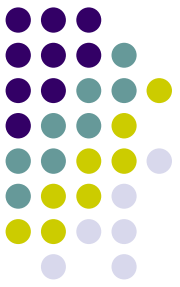
- 1994 Labour Law did not cover migrants
- contained more general rules
- lacked legal clarity on various aspects of employment relations
 - No clear provisions on how contracts are established, how contracts can be amended, and how contracts can be terminated
 - No principles governing proliferating forms of non-standard employment (such as casual work and dispatched workers)

Overview of LCL contents



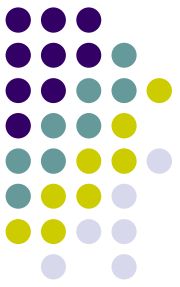
- Applies to all enterprises, economic institutions, employing units, state organs, public institutions, social groups (with some exception)
- Covers all workers
- Requires enterprise rules and regs to be updated
- Requires a labour contract
- Covers: entering, modifying, implementing and terminating a labour contract
- Provides special rules on collective agreements, part time work and labour dispatching
- Provides for supervision and inspection and legal liability

Core Conventions and LCL: Child labour and forced labour



- **Child Labour** conventions (C. 138 & 182): not specifically covered by LCL
 - Laborer can refuse to perform operation which can endanger their lives or health (article 32): implication for prohibition of worst forms of child labor
 - Overall improvement of law enforcement will certainly help to prevent child labour
- Forced labour conventions (C. 29 & 105):
 - Prohibition of bonded labour (article 9)

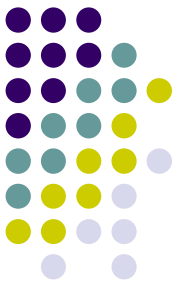
Core Conventions and LCL: Anti discrimination conventions (C 100 & 111)



- Article 3 of LCL emphasizes principles of equality and fairness among others
- It establishes principle of equal pay, equal work (but not ‘equal pay for work of equal value’)
- Employment Promotion Law Chapter 3 on fair employment
 - Requires enterprises and employment services to provide equal opportunities, fair employment conditions and not to discriminate.
 - Equal rights provisions for women and men, ethnic minorities, disabled, rural workers in cities with urban workers, carrier of infectious diseases (however, it does not cover discrimination on the grounds of political opinions and religion).
 - Legal recourse for violations

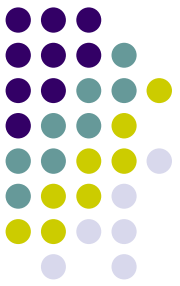
Core Conventions and LCL:

Freedom of Association ?



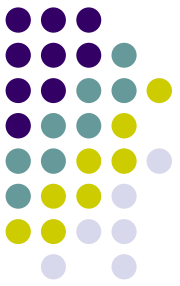
- C. 98: Article 4: matters with a “direct bearing on the immediate interests of its labourers concerning labor remuneration, working hours, rest and vacations, OSH, social insurance and welfare, employee training, work discipline and work quota management etc shall be discussed by the assembly of laborers’ representatives or all the laborers. The assembly of laborers’ representatives or all the laborers, as the case may be, shall put forward a proposal or comments, whereupon the matters shall be determined through negotiations with trade unions or employee representatives on the basis of equality
- Article 43 (unilateral termination of contract and union’s role)
- Article 51-56 on collective agreements, including industry-wide collective bargaining (article 53)
- Article 64: union representation of dispatched workers
- C. 87?: one union system is further embedded...

Short term adjustment shock



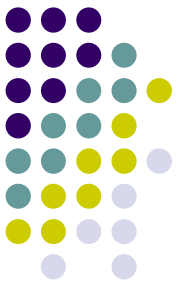
- LCL creates adjustment costs to enterprises in short term
- With new rules on contract forms and termination, for example, enterprises may have to adjust other aspects of human resource management such as wage structure, working time arrangements and work organizations to maintain or enhance their overall productivity and flexibility.

Better workplace with higher productivity in longer term



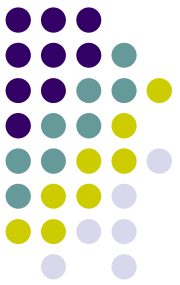
- But in longer term, enterprises will adjust their HRM policies to the new legal and institutional framework and find a new equilibrium where stability generates productivity gains and industrial upgrade.
- It would require, however, that the government and social partners should work together to ensure smooth transition while ensuring the rule of the law. In particular, small companies may face some acute transition problems which may require targeted assistance.

Shifting investment from China to other countries due to LCL?



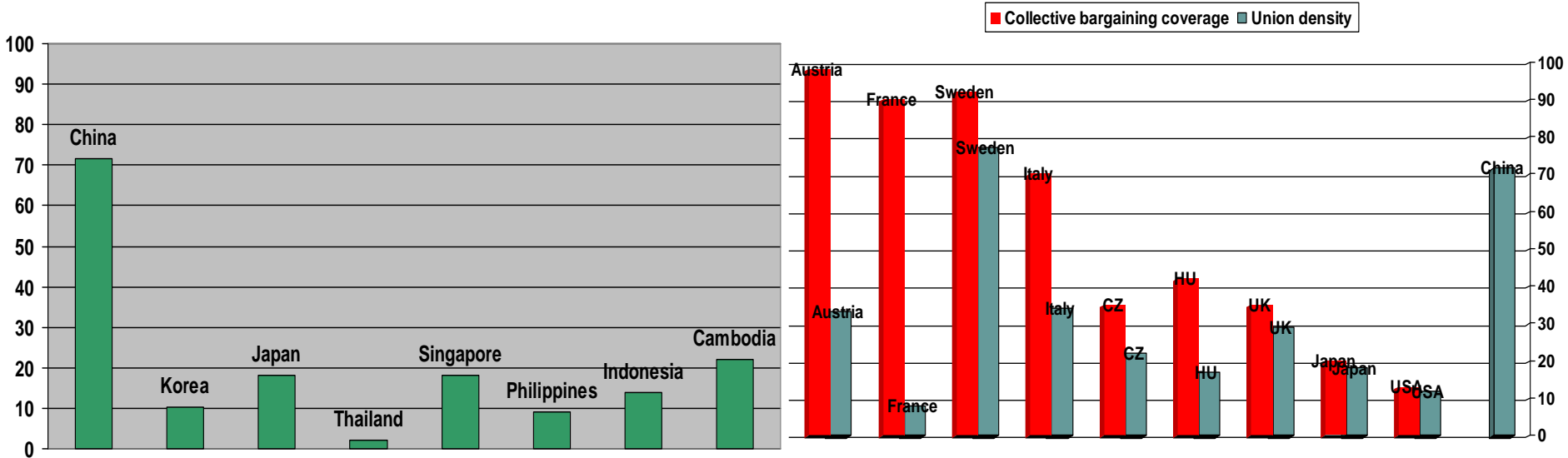
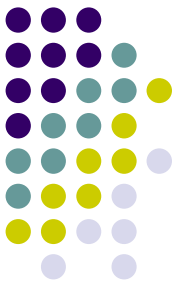
- The degree of protection offered by LCL is not higher than neighboring developing countries. For instance, Vietnam (and Cambodia as well,) has similar or stronger protection of workers' rights since the revision of Labour Code in 2002, including similar regulations on contract forms and their termination, and right to strike.

Future scenarios



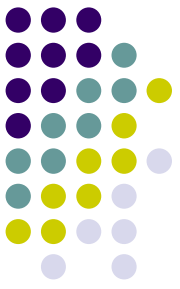
- Longer and more secure employment contract
 - Would firms' flexibility strategy focus on outsourcing and dispatched workers?
 - Upgrade combination of flexibility dimension: contract flexibility, wage flexibility, working hour flexibility and work organization reform
 - Would better job security lead to workers' choosing 'voice' rather than 'exit' option?
- Requirements for consultation with workers and their representatives
 - Would it strengthen role of trade unions at the workplace?
- Interplay between business coping strategy for flexibility and cost reduction, union strategy for LCL implementation and workers' choice will gradually shape emerging Chinese patterns of labour relations and employment relations at the workplace.

Union Density and Collective Bargaining Coverage (2006: China 2007)



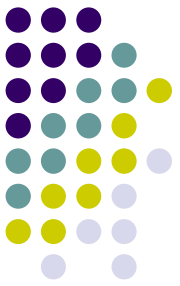


Enforcement of written contracts



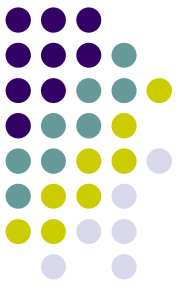
- LCL requires employment contracts to be in writing (except casual employment); if employers fail to do so, they face liability for double wages (article 10 & 82).
- When there is no written contracts or contracts are invalid, the pay and conditions of workers in similar positions as well as collective contracts (from which individual contracts cannot derogate) provide relevant benchmarks (article 18 & 55)

Entering into a labour contract



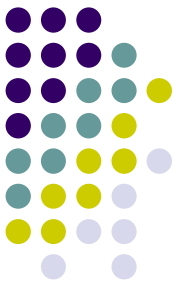
- Requires disclosure of job info to employees and limits inquiry of personal info taken from applicants/employees to that which is directly relevant to the labour contract (Article 8)

Consultation clause on work rules



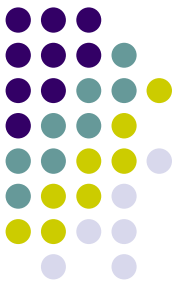
- Article 4 provides that where an employer devises or makes changes to work rules which 'have a direct bearing on the interests of its workers, it must submit the rules to the employees' congress or where there is no such mechanism, to all the employees. Then, workers may make proposals and comments. These comments lead to a 'decision through consultation with union or the workers' congress on a basis of equality'.

Significant improvement on wage payment



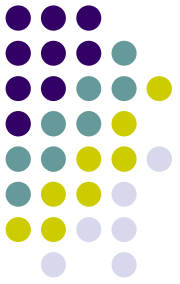
- LCL imposes broad obligations on employers to pay employees their remuneration in full and in accordance with their contracts and PRC laws (article 30).
- LCL prohibits forced overtime and strengthen penalty rates for overtime must be paid in accordance with the Labour Law (article 31).
- It prohibits bonded labour (article 9).

Permissible forms of labour contracts and their termination (1)



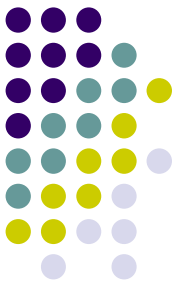
- Business interests sought to reduce limits on and costs of termination, while workers interest groups pushed for job security and compensation in case of dismissal. Result:
- Four categories of contracts
 - Fixed
 - Non-fixed term
 - Specific task or project based short term contract
 - Casual (part time): no more than 4 hours a day and no more than 24 hours a week with the same employer
- Employee can request conversion to non-fixed term contract after two successive fixed term contract.

Permissible forms of labour contracts and their termination (2)



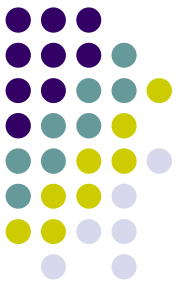
- Termination of fixed and non-fixed term contracts.
 - Termination by consent (article 36)
 - Summary termination (for misconduct or during the probation period) (article 38-39)
 - Mass redundancy: termination of more than 20 persons or 10% or more of the workforce (article 41)
 - Termination by 30 days notice (article 37 & 40)
- Article 40: Termination by notice is justifiable when
 - Worker is incapacitated as a result of non work related injury
 - Worker is incompetent despite training or alteration of position
 - There is a 'major change in the objective circumstances relied upon when the contract was made
- Procedural rule
 - When employer initiates termination, employer must advise trade union of reasons for dismissal which may object that termination is not in accordance with the law or contract
- Financial compensation
 - One month pay per year of service in all four cases of termination (consent, summary, mass redundancy and termination by notice)

Dispatch workers or labour hire



- All dispatch workers must be engaged under fixed term contracts of a duration of no less than 2 years (article 58).
- The labour hire firm must ensure that dispatch workers receives at least the minimum wage on a monthly basis, even when they are not placed (article 58)
- Arrangements between labour hire and user firm must be governed by a formal contract detailing the placements and the payments to be made, including social insurance payments (article 59).
- Dispatch workers must be paid at the same rate as workers in the user firm performing similar work (article 63)
- **Note: It has not been yet decided on what kind of jobs or sectors dispatch workers will be allowed for (not allowed for). It will be decided through implementation decree.**

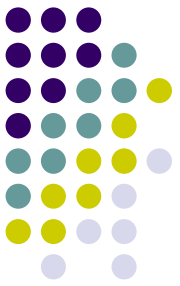
Supervision, Inspection and Legal Liability



- Authority in above county local labour departments
 - Scope of inspection authority expanded to include enterprise rules, entering into and dissolving labour contracts, labour dispatching, working hours, rest and leave, payment of remuneration, participation in social insurance and payment of benefits, (in addition to child labour, OSH)

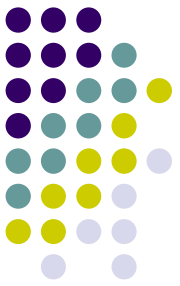
Legal recourse in complaints to labour or other officials, arbitration and litigation

Part III Employment Promotion Law



- Generally provides overall policy guidance on active employment creation, vocational education and training, fair employment, institutional responsibilities and functions, employment aids including targeting persons who have difficulty finding jobs, financial measures, supervision and inspection and legal responsibilities

Fair Employment (Chapter III)



- Requires enterprises and employment services to provide equal opportunities, fair employment conditions and to not discriminate.
- Equal rights provisions for women and men, ethnic minorities, disabled, rural workers in cities with urban workers, carrier of infectious diseases.
- Legal recourse for violations