

# I. Labour Policy Development and Labour Law System Building

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# **I. Labour Policy Development and Labour Law System Building**

## **1. Social Security Legislation**

China's social security system consists of social insurance, social relief, social welfare and special care.

Social insurance refers to the system, under which the state raises social insurance fund and offers financial aid to labourers in the case of permanent or temporary loss of work ability and incomes as result of such unavoidable circumstance as old age, illness, work-related injury, unemployment, child-bearing and death in order to secure their livelihood. Under the planned economy, social insurance system was divided into three parts in accordance with different target groups. First part covered employees in urban enterprises. Enterprises were obliged to make contributions to the social insurance funds, which was managed by local labour administrative departments. Social security for civil servants and employees in institutions and social organisations was financed by allocations from government budgets and administered by local personnel department. As for rural residents, old age insurance and medical insurance schemes were established chiefly in economically developed areas. The schemes were mainly financed by individual's contributions with some financial support from communities, and administered by local civil affairs departments. In 1998 the Chinese government assigned unified administration of social insurance affairs to the newly-established administrative departments of labour and social security.

Social relief system is financed by allocations from government budgets and seeks to assist urban residents who live below poverty line by granting them financial aids. Social welfare system pursues to provide assistance and cares for helpless elderly widows and widowers, orphans and the disabled through establishing old-age homes, children's welfare homes and social welfare enterprises for employing disabled people and other forms. The system is supported by allocations from government budgets and voluntary contributions. Special care system aims at compensating or commending disabled veterans, family members of conscripts, and etc. Presently, civil affairs departments are in charge of social welfare, social relief and special care affairs.

Social insurance is an important component of the social security system. Soon after the founding of the People's Republic of China on October 1, 1949, the State Council enacted *Labour Insurance Regulations of the People's Republic of China* in 1951, which initiated the social insurance system in the new China, including old-age pension, employment injury benefits, sickness benefits, maternal benefits and survivor's benefit, and practiced pooling of insurance fund. However, during the "Cultural Revolution" between 1966 and 1976, China's social insurance management organisations were disbanded and pooling of social insurance fund was cancelled. As a result, the social insurance turned out to be employer's liability insurance. Since 1980s, with the introduction of reforms and opening up policy as well as the establishment of socialist market economy mechanism, China has resumed the pooling of social insurance funds and started reforms in various social insurance schemes such as old-age insurance, unemployment insurance, medical insurance, employment injury insurance and maternity insurance.

In the process of establishing new social security system, China places great attention to the building of the social insurance legal system.

### 1.1 Old-age Insurance

The Chinese government has enacted a series of regulatory documents, such as *Provisional Measures of the State Council on Retirement and Resignation* and *Decision of the State Council on Establishing a Unified Enterprise Workers' Basic Pension System*. In accordance with these documents, the old-age insurance system combining social pooling with individual account has been set up. Tripartite financing mechanism was introduced, under which government, enterprises and individuals share contributions to the old-age insurance scheme. A worker's individual contributions and part of enterprise's contributions go into his(her) individual account for accumulation and the rest goes into social pooling fund. In January 1999, the State Council promulgated *Provisional Regulations on Collection of Social Insurance Contributions*, which stipulated to pool pension insurance fund at provincial level and expand coverage of pension insurance from state-owned enterprises and collective enterprises to foreign funded enterprises, urban private enterprises and urban self-employed entrepreneurs. Beside the compulsory insurance, enterprises are encouraged to establish supplementary

insurance for their employees. At same time, pension-oriented private saving is also encouraged. Currently, China is drafting *Regulations on Basic Pension Insurance*. By the end of 2001, 142 million people were covered by the basic pension insurance. The average monthly pension of retirees from enterprises was increased from 129 yuan in 1990 to 579 yuan in 2001.

## 1.2 Unemployment Insurance

In 1993 the Chinese government enacted administrative regulations such as *Regulations on Insurance against Waiting for Employment for State-owned Enterprise Workers*, *Regulations on Re-employment of Redundant Workers from State-owned Enterprises*. According to the regulations, unemployment insurance system covered state-owned enterprises and institutes with commercialised management. However, the schemes at local level were expanded to cover employees of urban collective enterprises, shareholding enterprises, cooperative enterprises, private enterprises, foreign funded enterprises (Chinese employees only), and employees working on contract basis for government departments and institutions as well as social organisations. *Regulations on Unemployment Insurance*, promulgated by the State Council in January 1999, further expanded its coverage to all types of urban enterprises and institutions, and stipulated that both enterprises and individuals should make insurance contributions. Rural residents, working on contract basis for urban enterprises and institutions, do not pay unemployment insurance contributions, according to the Regulations. By the end of 2001, unemployment insurance covers a total of 104 million workers.

Besides, minimum living standard security system has been set up, which aims at securing livelihood for urban residents with their family income below a certain level. The enactment of *Regulations on Minimum Living Standard Security for Urban Residents* in 1999, symbolises the official establishment of livelihood security system for urban residents. Presently, the system has been established in all cities and county towns throughout the country. A total of 19.36 million people have benefited from the system.

### 1.3 Medical Insurance

In the field of medical insurance, the Chinese government issued a series of regulatory documents, including *Directions on Pilot Reform of Medical Insurance System*, *Directions on Expanding Pilot Reform of Medical Insurance System*, and *Circular on Trying Out Social Pooling of Medical Costs for Serious Diseases* in order to experiment with social pooling of medical costs for enterprise employees and retirees, combination of social pooling and individual accounts for basic medical insurance. In December 1998, by enacting *Decision on Establishing Basic Medical Insurance System for Urban Employees*, the State Council launched nation-wide medical insurance reform with an aim to institute a basic medical insurance system for all urban employing units and their employees. General guidelines for the reform were: low level, wide coverage, cost sharing, combination of costs pooling and individual accounts, multi-tier security and simultaneity of three reforms. While the fundamental principles are set up at the national level, decisions for concrete matters are decentralised to local levels. According to *Provisional Regulations on Collection of Social Insurance Contributions*, basic medical insurance not only covers urban enterprises and institutions, but also government departments and social organisations. Currently, the basic medical insurance system boasts its wide coverage. By August 2002, the system covered 83 million people.

### 1.4 Employment Injury Insurance

In August 1996, the Ministry of Labour issued *Interim Methods on Employment Injury Insurance for Enterprise Workers*, stipulating to replace full enterprise liability with social pooling. In accordance with the regulations, employment injury insurance fund has been set up to provide financial compensations for the workers injured while performing employment duties and render socialised management services. Individual workers do not pay insurance contributions. Currently, the scheme covers 43 million workers from all types of enterprises across China.

At present, the Chinese government is drafting *Regulations on Employment Injury Insurance*, which will cover all urban enterprises and institutions with commercialised management. The provisions of the regulations will be used by other institutions and government departments as reference.

## 1.5 Maternity Insurance

In 1994, the Ministry of Labour enacted *Interim Methods on Maternity Insurance for Enterprise Workers*. In the same year, the State Council issued *Chinese Women's Development Programme for 1995-2000*, setting up the objective of the social pooling of maternity costs for urban female workers. Enterprises, covered by the current scheme, pay a certain proportion (not more than 1%) of the total payroll to the maternity insurance fund for the purpose of social pooling, and individuals do not make contributions. The maternity benefit includes maternity allowance and maternity medical costs. At present, the scheme involves 35 million workers.

In order to settle the disputes relating to social insurance, the Ministry of Labour and Social Security issued *Methods on Settlement of Social Insurance-related Administrative Disputes* in May 2001. The *Methods* include 34 articles and stipulate the scope of application, rights and obligations of the parties to a dispute, responsibilities of dispute –handling organisations, and procedures for settling such administrative disputes.

## 2. Labour Legislation

### 2.1 Formulation of the Legal System on Labour Dispute Settlement

Labour dispute settlement system was initiated in 1950, which was symbolised by the *Rule on Organisational Structure and Working Procedures of Municipal Labour Dispute Arbitration Committee*, enacted by the Ministry of Labour in June 1950, and *Regulations on Labour Dispute Settlement Procedure* issued by the Ministry of Labour with approval of the State Administrative Council in November 1950. Since 1957, however, due to the planned economy and the unitary public ownership the system was suspended for 30 years until July 31, 1987, when the State Council resumed it by promulgating *Provisional Regulations on the Settlement of Labour Disputes in State-run Enterprises*. To meet the requirements of establishing socialist market economy, the State Council enacted *Regulations on Settlement of Labour Disputes in Enterprises* which covers all enterprises in the territory of China. The adoption of *Labour Law* on July 5, 1994, which stipulates the organisations and procedures to settle labour disputes

in its ChapterX, has symbolised the establishment of labour dispute settlement system in the basic law. Presently, the labour disputes resolution system is based on *Labour Law* as basic law, and supporting regulations and rules, such as *Regulations on Settlement of Labour Disputes in Enterprises*, *Rule on Organisational Structure and Working Procedure of Enterprise Labour Dispute Mediation Committee*, *Rule on Organisational Structure and Working Procedure of Labour Dispute Arbitration Committee* and *Rules on Recruitment of Labour Dispute Arbitrators*.

In the last 15 years, Enterprise Labour Dispute Mediation Committees and local Labour Dispute Arbitration Committees have protected legitimate rights and interests of both employees and employing units by fairly and timely handling disputes in conformity of law. By the end of June 2002, Enterprise Labour Dispute Mediation Committees have succeeded in mediating 1.32 million disputes. Local Labour Dispute Arbitration Committees across China have accepted 815 thousand cases, which involved 2.493 million workers. During the period from 1997 to 2001, People's Courts at all levels have accepted and handled 360 thousand cases. The system has played a significant role in accelerating legal construction in the field of labour and social security, protecting rights and interests of both employees and employing units, as well as facilitating harmonious labour relations and social stability.

However, there are some shortcomings in the labour dispute settlement system. Firstly, some enacted regulations are at low level in terms of effect. Secondly, the procedure for handling labour disputes is so complicated that it tends to be a long haul to get the final settlement. Thirdly, labour contract law, the law substantial for the labour dispute settlement, has not been enacted. At present, in order to keep abreast of the provision of article 8 of *Legislation Law* that arbitration system should be stipulated by laws, the Ministry of Labour and Social Security is making great efforts to develop labour dispute resolution system suitable for Chinese reality and market-oriented economy, so that the Labour Dispute Settlement Law will be included in the legislation list of the People's Congress at an early date.

## 2.2 Achievements in Individual Labour Contract and Collective Labour Contract Legislation

China started to introduce labour contract system in mid-1980s and expanded it in a large scale in the 1990s. As a result, the labour contract system is now widely implemented in all urban enterprises. Currently, state-owned enterprises, collective enterprises and foreign funded enterprises boast highest proportions of employees (95%), with whom labour contracts have been concluded. The figure is 60% for private enterprise and individual businesses. Besides, around 30 million employees have signed labour contracts with rural and village enterprises. To secure the authenticity and validity of the concluded labour contracts, the Ministry of Labour has initiated contract verification system and standardised it by issuing *Methods on Labour Contract Verification* in October 1992, which stipulates the purposes, subjects and procedure of verification. In recent years, the Ministry of Labour and Social Security has speeded up labour contract legislation. Currently, the Legal Affairs Office under the State Council is modifying the draft of *Labour Contract Law*. Local administrative regulations on labour contracts, issued in 2001 in some provinces and municipalities such as Shandong and Shanghai, have provided useful practical experience for the enactment of *Labour Contract Law*.

On December 1994, the Ministry of Labour promulgated *Regulations on Collective Labour Contracts*, which stipulated the conclusion and verification of collective labour contracts as well as settlement of disputes. *Provisional Measures for Wage Collective Bargaining*, adopted by the Ministry of Labour and Social Security on November 2000, stipulates that wage collective bargaining is an import component of collective labour contract system. According to the *Provisional Measures*, wage collective bargaining should be conducted between trade union or employees' representatives and enterprise in line with principles of "equal negotiation between parties" and "reasonable increase of employees' wage in accordance with enterprise's development". Wage bargaining should be resulted in collective wage agreement, involving wage distribution, forms of distribution and wage level.



### 2.3 Labour and Social Security Inspection Is the Guarantee for Effective Law Enforcement

In the process of establishing and improving the labour and social security insurance system through legislation, the Chinese government has attached great importance to the law enforcement and legal institutional building. At present, in accordance with China's regionalism, labour inspection agencies have been established in all the labour and social security departments at county and above levels. In performing labour inspection, the labour and social security departments stick to the principles of "Laws must be observed", "Laws must be enforced strictly", and "Violators of laws must be brought to justice". Inspections have been strengthened of compliance with laws and regulations concerning social insurance, wage payment, social security for laid-off workers and labour market operations. As a result, unlawful practices have been timely disclosed, handled and corrected. Labour inspection has played an significant role in regulating labour market operations, harmonising relations between enterprises and employees, safeguarding legitimate rights and interests of both the employees and employing units as well as promoting social stability.

### 3. Problems in the Present Labour and Social Security Legal System and Ideas for Future Improvements

It should be noted that the current labour and social security legal system still fall short of demands of establishing socialist market economy. In the transitional period the system needs constant improvements and strict enforcement. Low level of effect and weak enforcement are the typical features of some regulations in the field of labour relations and social insurance. Social insurance legislation particularly lags behind, and current regulations have narrow scope of regulation and lack standardisation. Meanwhile, much is still to be done to strengthen labour and social security administrative departments and improve their abilities to administer labour and social security affairs in accordance with law.

Chinese government has decided to establish the framework for legal system suitable for market economy within five years. To complete this task, Chinese

government must speed up the legislation process in the field of labour and social security. The general ideas are follows:

In the field of labour legislation, it is essential to formulate supporting laws and regulations on the basis of *Labour Law 1994*, including Employment Promotion Law, Labour Contract Law, Collective Contract Law, Law on Settlement of Labour Disputes, Regulations on Labour Market Management.

In the aspect of social insurance legislation, attention should be paid to enact Social Insurance Law as fundamental law, and based on it to enact supporting regulations, such as Regulations on Basic Pension Insurance, Regulations on Medical Insurance, Regulations on Employment Injury Insurance and Regulations on Maternity Insurance.

## **II. Evolution of Labour Disputes Settlement System**

China's labour dispute settlement system has experienced three stages in its development: establishment, interruption and restoration.

### **1. Establishment of Labour Disputes Settlement System**

In the early days after the founding of the People's Republic of China, misgivings about the Communist Party and People's government were prevalent among capitalists of private enterprises. They consequently either took passive attitude to enterprise operations, or withdrawn capital, deliberately closed business, or randomly dismissed workers. Some capitalists went further to draw over workers, corrupt Communist Party's cadres and make troubles. This aroused dissatisfaction and objection from workers. Meanwhile, some workers took unduly radical actions against capitalists by proposing unrealistic wage and welfare requests. All of these led to strained labour relations and frequent labour disputes. In order to put in practice the principles "Developing production, flourishing economy, giving attention to both public and private economies, and mutual benefits for both workers and capitalists" set up by the *Common Guiding Principles of China People's Political Consultative Conference*,