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 They consequently either took passive attitude to enterprise operations, or withdrawn capital, deliberately closed business, or randomly dismissed workers.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*,

handle disputes in timely and reasonable manner and bring labour relations into the right trajectory, All-China Federation of Trade Unions issued *Measures for Conclusion of Collective Labour Contract in Private Industrial and Commercial Enterprises* in November 1949. Shortly in April 1950, the Ministry of Labour promulgated *Directions on Setting up Employee-employer Consultation Meeting in Private Enterprises*. According to incomplete statistics, by the end of June 1953 the employee-employer consultation meeting system was established in more than 1200 private enterprises, with 166,000 collective contracts signed. It was illustrated by practical results that employee-employer consultation meeting and collective contract system were appropriate ways to prevent and settle labour disputes.

In early days after the founding of People's Republic of China, People's government attached great importance to the building of legal system for labour dispute settlement. Labour administrative departments were appointed unitary organs to resolve labour disputes. At national level, Department of Labour Dispute Settlement was set up in the Ministry of Labour to take charge of handling major disputes, which had nation-wide impacts, supervising and providing guidance to labour dispute handling organs at local levels. At provincial and municipal level (including municipalities directly under the central government, large administrative regions, economically developed cities directly under provincial government), divisions of labour dispute settlement were created in Labour Bureaus, which were responsible for mediating labour disputes in public and private enterprises. On June 15, 1950 the Ministry of Labour enacted *Rule on Organisational Structure and Working Procedure of Municipal Labour Dispute Arbitration Committee*. According to it, Labour Dispute Arbitration Committee (hereinafter referred to arbitration committee) was composed of director or deputy director of Labour Bureau, and representatives from city Industrial and Commercial Association. If necessary, representatives from other organisations, whose interests might be affected, could be invited to the arbitration committee. Depending on the situation, experts could be invited to attend the proceedings for the purpose of consultation. The post of chair to the arbitration committee should be taken up by director or deputy director of Labour Bureau. Division of Labour Dispute Settlement and any party to the dispute had right to refer the dispute to arbitration committee for arbitration. Further on November 11, 1950, with approval of the State Administrative

Council, the Ministry of Labour promulgated *Regulations on Labour Dispute Settlement Procedure*, which appointed labour administrative departments at all levels as unitary organs to handle labour disputes in state enterprises, public enterprises, public-private jointly operated enterprises and enterprises, affiliated to cooperatives. The *Regulations* contributed to preventing contradictory rulings by different organisations handling disputes, effectively carrying out labour policies and enforcing relevant regulations. By the end of June 1953, labour administrative departments at all levels across China had handled a total of 100,000 disputes, most of which were solved in a reasonable manner. According to *Regulations on Labour Dispute Settlement Procedure*, the labour dispute resolution process consisted of four stages: negotiation within enterprise, mediation, arbitration and litigation. Consultation within enterprise should be resulted in an agreement to be verified and recorded by local labour administrative department. If a dispute which took place in state enterprises, public enterprises, public-private jointly operated enterprises or enterprises, affiliated to cooperatives, failed to be settled through negotiation, it would be passed on to higher-level trade union and corresponding higher-level enterprises administration departments for further negotiation. If it was a private enterprise where the dispute took place, the industrial trade union and guild should provide assistance to the disputing parties so that they could reach agreement. If the dispute could not be resolved internally, the next step was mediation by labour administrative departments. If the mediation failed, the dispute would be referred to arbitration committee for arbitration. If a party refused to accept the arbitration award, it should inform the labour administrative department and bring a lawsuit in People's Court within 15 days from receiving the arbitration award. Otherwise, the arbitration award would come into force legally. In this way, such settlement process not only secured equal negotiation of the parties to a dispute, but also provided the parties with effective means to protect their rights and interests through arbitration and litigation.

2. Interruption of Labour Disputes Settlement System

By 1956, capitalist elements had been transformed into socialist economies. As a consequence, major conflict in China's society turned out from conflict between working class and bourgeois to be conflict between relative slow economic and cultural

development and increasing demand, as it was pointed out by *Resolution on Political Reports of Eight National Communist Party Conference* that "Socialist revolution has been basically completed and major task of the State turns out from liberation of labour force to protection and development of labour force. In this regard, we must further strengthen legal institution of people's democracy and consolidate the order of socialism construction. The State must gradually and systematically build a perfect legal system in line with reality.[1]" In the respect of legislation for labour dispute settlement, the State should have utilise the accumulated experience to amend *Regulations on Labour Dispute Settlement Procedure* in order to keep it abreast of new social development. However, due to the misconceptions, the principles set up by the *Resolution on Political Reports of Eight Communist Party Conference* was not carried out in practice. On the contrary, mediation divisions and arbitration committees were disbanded, and People's Courts ceased to handle labour disputes. Since then, all labour disputes, which failed to be settled within enterprises, had to be submitted to labour administrative departments in the forms of complaints. In May 1957, General Office of the Central Committee of China Communist Party and Secretariat of the State Council jointly formulated the draft of *Regulations on Competence of Nineteen Central-level Departments in Handling Complaints*, which appointed the Ministry of Labour in charge of dealing with work-related complaints. Later, in accordance with the principles of the draft, Grievance and Complaints Offices were set up in local labour administrative departments. Since then, labour disputes had been dealt with as complaints.

During the 30 years between 1956 and 1986, Complaints and Grievance Offices had rerolved a great amount of labour disputes. However, as it was showed by facts, complaints and grievance system exhibited a lot of disadvantages in handling labour disputes. Firstly, since Complaints and Grievance Offices were not established by provisions of law, their decisions did not have legal binding force. Many suggestions and recommendations proposed labour and personnel departments, through feasible and reasonable, have not been taken into consideration. As a result, the dispute handling process itself tended to be a long haul and labour disputes might not be solved timely. Secondly, without a legally-prescribed dispute handling procedure, enterprise

[1] The resolution was adopted at the Eighth National Conference of China Communist Party on September 27, 1956. *Reference to China Communist Party*, compiled by Central Communist Party School, page 531, People's Publishing House, 1980

administration departments used to be partial to enterprises in dealing with disputes. It was the worst situation when enterprise acted as a referee to handle disputes between itself and employees. In either case, workers were unlikely to have their rights really protected. Furthermore, violation of workers rights often arose from such arrangement and sometimes conflicts between enterprises and workers flared up. Thirdly, since People's Courts did not accept labour disputes, workers had nowhere to turn to for a settlement. To pursue a resolution, some workers committed suicide, while some others perpetrated crimes. All of these did harm to people's life and property as well as the social order. Fourthly, a few of personnel, who dealt with labour disputes with officialdom, negligence and low efficiency, prevented disputes from timely resolution. Sometimes, in order to get their dispute settled, parties to a dispute had no choice but continuously appealing to higher-level Complaints and Grievance Offices, even frequently visiting the central-level office, which consequently was loaded with heavy workload.

3. Restoration of Labour Disputes Settlement System

It was not until the Third Session of the Eleventh Central Committee of Communist Party in 1978 that the labour dispute handling system started restoration and further development with the deepening of reforms and advancement of legal system construction. On July 26, 1980, the State Council promulgated *Regulations on Labour Management in Sino-Foreign Joint Venture Enterprises*. According to the regulations, labour disputes in enterprises with foreign investment should be handled first through negotiation within enterprise. If the negotiation was unsuccessful, any party to the dispute could request for arbitration by provincial-level labour administrative department in the province (including autonomous region and municipality directly under the central government), where the enterprise was located. The arbitration decision can be appealed by any party to the local People's Court. On July 12, 1986, the State Council *issued Circular on Reforming Four Components of Labour System*, urging to strengthen labour and personnel departments and create labour dispute arbitration committees. Although *Provisional Regulations on Labour Contracts in State-run*

Enterprises stipulated three stages of handling labour disputes: negotiation, arbitration and litigation, there was no arbitration committee to handle the disputes.

Along with the deepening of economic and labour system reforms, great changes took place in the pattern of labour relations and interests concerns of the parties. The increasing number of labour disputes made it imperative to speed up legislation in this field. The *Provisional Regulations on Settlement of Labour Disputes in State-run Enterprise*, promulgated by the State Council on July 31, 1987, reinstated the labour dispute settlement system, which had been interrupted for 30 years. Considering difficulty in spreading the system due to the lack of personnel and experience as well as incompleteness of the legal system, the State Council decided that at early stage of restoration, the labour dispute settlement system should only cover state-owned enterprises, where majority of employees worked and where the labour contracts were first introduced. The system would be applied to disputes arising from implementation of labour contracts, dismissal and resignation of employees. Labour disputes in government organs, institutions and social organisations were handled with reference to *Provisional Regulations*. Application of *Provisional Regulations* to other disputes would be determined by provincial government (including autonomous region and municipality directly under the central government). According to the *Provisional Regulations,* when dispute arose from implementation of labour contract, parties had choice of applying to either Enterprise Labour Dispute Mediation Committee or Labour Dispute Arbitration Committee. As for the disputes regarding cancellation of labour contracts, parties should directly appeal to Labour Dispute Arbitration Committee for arbitration. If a party disagrees with the arbitration decision, he can file a lawsuit in People's Court within 15 days from receiving the arbitration award. In case one party failed to implement award upon expiration of the time limit, the other party may petition with the people's court for enforcement of the award. By the end of 1992, a total of 1,000,000 labour disputes was handled, of which 710,000 was solved by Enterprises Labour Dispute Mediation Committees and 290,000 was brought to Arbitration Committees. Among the 290,000 disputes, referred to Arbitration Committees, 240,000 was settled through mediation without filing case, while the rest 50,114 disputes came into arbitration proceedings. Among the 50,114 cases heard by Arbitration Committees, 45,043 disputes was settled by arbitration mediation, accounting for 89%, while the rest

5,071 disputes was settled by arbitration ruling, accounting for 11%. 1115 arbitration rulings (22%) were appealed to People's Courts. Among them, 912 rulings were upheld by Courts.

The promulgation of *Provisional Regulations* brought the labour dispute settlement into legal trajectory, which greatly contributed to the protection of legitimate rights and interests of state-run enterprises and workers, maintaining production order and social order, as well as socialist construction. However, along with the establishment of socialist market economy and deepening of labour system reform, labour relations became so diversified and complicated that *Provisional Regulations* was not adequate to cope with the changing situation due to its narrow scope of application to disputes, small coverage of enterprises and lack of clarified arbitration procedure. To deal with the increasing number of labour disputes, there was urgent need to modify *Provisional Regulations* and make detailed stipulations. In this situation, *Regulations on Settlement of Labour Disputes in Enterprises* was adopted by the State Council at the 5th Executive Meeting on June 11, 1993 and came into effect from August 1, 1993, revoking the *Provisional Regulations1987*. The scope of coverage of the new regulations has been broadened to cover a wider range of disputes in all enterprises operating within China's borders, arising from: 1) termination and early termination of labour contracts; 2) failure to comply with state regulations on wage, social insurance, occupational safety, training and welfare benefits; 3) performance of labour contracts and etc. In handling a labour dispute, the arbitration committee shall form an arbitration tribunal. When a dispute takes place, the parties directly involved should try to settle it by discussion and negotiation. If a party refuses to negotiate directly with another party or the negotiation fails, the dispute can be referred to Enterprise Labour Dispute Mediation Committee for mediation. *Regulations* allows direct appeal to local Arbitration Committee. The decision of Arbitration Committee can be appealed to local People's Court. The *Regulations* plays an important role in perfecting labour dispute settlement system, promoting labour legal system construction, protecting enterprises' and workers' rights, maintaining production order and harmonising labour relations, thus contributes to the smooth reforms.

4. Profile of Labour Dispute Settlement System

According the statistics across China including 30 provinces (autonomous regions and municipalities directly under the central government) and Xinjiang construction corps, Labour Dispute Arbitration Committees at all levels in 2001 accepted 154,621 disputes, involving 467,150 workers. By the end of the year, 150,279 disputes, including 8,793 left from last year, had been settled, accounting for 92%. Besides, Labour Dispute Arbitration Committees also mediated 63,969 disputes without filing case.

4.1 Features of the Labour Disputes

- Substantial increase in the number of disputes

In 2001 the number of disputes, accepted by Arbitration Committees, saw 14.4% increase against 2000(The figure was 135,206 disputes in 2000) and 27.6-time increase against 1987, when the labour dispute settlement system first reinstated, 4.7-time increase against 1995, when *Labour Law* came into force. In the respect of workers involved, there was 10.5% increase against 2000(The figure was 422,617 workers in 2000). Disputes were concentrated in eastern coastal regions and economically developed areas. The number of disputes kept rising in state-owned enterprises, while that in share-holding enterprises, companies with limited liability, individual businesses was on rapid increase.

- Rapid rise in the number of collective disputes

In 2001 there was 9,847 collective disputes, a 19.4% increase as compared with 2000. The number of workers involved climbed 10.5% to reach 286,680, an average of 30 workers in each dispute. 66.9% of all the collective disputes (67.7% workers involved) took place in state-owned enterprises, collective enterprises, share-holding enterprises, companies with limited liability and jointly-operated enterprises.

- Increasing difficulty in mediating disputes, and rise in the number of disputes settled by arbitration rulings

Among disputes settled by Arbitration Committees at all levels in 2001, 72,250 was resolved by arbitration rulings (48.1%), a 6.7% increase against 2000; 42,933 was resolved by arbitration mediation (28.6%), a 3.4% decrease against 2000.

- High proportion of disputes appealed by workers and high proportion of disputes won by workers

Among the disputes accepted by Arbitration Committees in 2001, 146,781 (94.4%) was raised by workers, a 6.1% increase against 2000. In breakdown by types of enterprises, the figure was 97% in individual businesses, 95.7% in private enterprises, 95.3% in foreign, Taiwan, Makao, Hongkong-funded enterprises. As for the results, 47.7% disputes was won by workers and 21% by enterprises. The rest was partly won by both parties. The highest proportion (52.7%) of disputes, won by workers, was seen in private enterprises, which was followed by 52.5% in individual businesses and 48.1% in foreign, Taiwan, Makao, Hongkong-funded enterprises.

4.2 Problems in the Labour Dispute Settlement System

4.2.1 Labour Dispute Settlement Process

The current labour dispute settlement process in China is one-track process, consisting of three stages: mediation by Enterprise Labour Dispute Mediation Committee, mandatory arbitration by local Labour Dispute Arbitration committee, and litigation by People's Courts of first instance and second instance. Such process displays some disadvantages: Firstly, it is time-consuming, as it takes around one year to complete the whole process from mediation to judgement by court of final instance. During the long period of waiting for final decision, the relations between parties to a dispute are in strained state, which in turn adversely affects enterprise operations. Secondly, it involves a lot of time and expenditures for parties to a dispute, and a lot of workload and costs for organisations dealing with disputes. Thirdly, such process shows low efficiency. In this regards, there is urgent need to simplify the process.

Since the Labour Dispute Arbitration Committee is set up in labour and social security department and the post of committee director is taken up by representative from the department, arbitration committee is closely tied to government, and therefore show the feature of "administrative arbitration". Furthermore, mandatory arbitration is

against internationally-accepted principle of voluntary arbitration. Therefore, the arbitration system should be brought in line with current international practice and its overall trend of development. Labour dispute arbitration should be conducted on voluntary basis, and arbitration bodies should be civil organisations. It is also necessary for arbitration bodies to make independent arbitration decisions, free of intervention by any administrative department, social organisation and individual.

In this regard, it is suggested that one-track system should be transformed into double-track system, involving free choice of arbitration or litigation. When employing units and employees conclude labour contracts or a labour dispute takes place, the parties should, based on the principle of ”autonomy of will”, make decision in writing, indicating which form of settlement they have selected. If the parties have reached consensus about arbitration, they should include it in labour contract as arbitration clause or sign a separate arbitration agreement. In the case of absence of arbitration clause or arbitration agreement, Arbitration Committees should refuse to accept the dispute. All the disputes, which are not covered by arbitration clauses or arbitration agreements, should be brought to People’s Courts. If the parties have agreed about arbitration settlement, the arbitration award will be final decision and parties must comply with it. In this case, either party will be not able to appeal to People’s Court or any other organisations for modification of the decision. If a party does not implement the arbitration award, the other party can petition with the people's court for enforcement of the award. For the disputes, which are settled through People’s Courts, final judgements will be made at courts of second instance.

Double-track system enjoys many advantages, such as less time-consuming and higher efficiency, lightened financial burden on parties and lower administrative costs for handling disputes. Since it is convenient for both parties to a dispute and organisations dealing with disputes, such a system will be the direction of future reform.

4.2.2 Time limit for arbitration

According to *Labour Law*, the party that requests for arbitration shall file a written application to Labour Dispute Arbitration Committee within 60 days starting from the

date of the occurrence of a labour dispute[2]. The arbitration committee shall accept a petition when a party fails to observe the time limit due to force majeure or other justifiable reasons. If a party petitions to Arbitration Committee beyond the 60-day time limit without justifiable reasons, the Committee shall refuse to accept the dispute and inform the party in a writing ruling, note or decision, stating the reason for refusal. In this case, the party can appeal the decision to People's Court. If the court determines that the time limit expires without justifiable reasons, the court shall reject the appeal.

Date of the occurrence of a labour dispute, according to the *Explanations on Some Questions in Implementing Labour Law* issued by the Ministry of Labour on August 4, 1995, is defined as date when a party knows or should know that his rights have been infringed upon. In fact, the date of occurrence of dispute between parties does not always coincide with the date of infringement on a party's right. Therefore, the date of occurrence of dispute should be defined as date when a party requests another party for restitution of his right. Here we will not discuss the definition of "date of occurrence of labour dispute" in depth. The problem we want raise is the time limit, which is shortened by *Labour Law* from 6 months to 60 days (6-month time limit was set up by *Regulations on Settlement of Labour Disputes in Enterprise*). It is understandable that the change was made out of good intention to speed up the resolution of disputes. However, the 60-day time limit for arbitration is too short as compared with 2-year time limit for litigation. As arbitration is the mandatory stage of labour dispute settlement process, it is a common occurrence that parties to a dispute lose right of judicial action just because of expiration of time limit. Also, as there is no detailed explanation on "justifiable reasons for expiration of the time limit", it becomes a subject of subjective conclusion of court or arbitration personnel. This sometimes leads to different decisions over the same dispute. It is also worth mentioning that sometimes parties can not get their rights protected, if they have spent too long time on negotiation and mediation so as to the time limit for arbitration expired. Therefore, detailed explanation on "justifiable reasons for expiration of the time limit" and legal institution of "interruption of time limit" should be formulated to supply the existing gap in order to better protect parties' rights and interests.

---

[2] According to the *Regulations of Settlement of Labour Disputes in Enterprises*, a party to a labour dispute should petition for arbitration to the arbitration committee in writing within 6 months from the date when he knows or should know that his rights have been infringed upon.

4.2.3 “Access control” for dispute handling personnel

Arbitration is a sub-judicial or judicial activity, which concerns labour law, trade unions law, civil and commercial law, economic law, administrative law, criminal law, procedure law as well as theory of law and etc. To carry out such activity, arbitrators and judges must have knowledge of theory of law and be familiar with relevant laws, regulations and government policies. Otherwise, they would not be competent to handle disputes.

Labour administrative departments, people’s courts and trade unions attach great importance to the training of arbitrators (both full-time and part-time), judges and legal workers in trade unions. No one can take up such positions before passing special examinations. In the case of arbitrators, labour administrative departments hold examinations and grant accreditations to successful passers. Names of the accredited arbitrators are publicised within labour administrative departments. Such accreditation system plays significant role in ensuring settlement of disputes in conformity of legal provisions, protecting parties’ legitimate rights and interests, harmonising labour relations and promoting economic and social development. However, since only a small number of arbitrators have legal education background, they are not well-qualified to handle labour disputes. In this regard, access control system should be introduced to select labour dispute arbitrators in order to enhance the quality of arbitrators and quality of dispute handling. It is suggested that unified national qualification examination should be held to select arbitrators, except for the ones with long years of work experience in the profession.

In 1997 legal aid system was introduced in China with an aim to ensure fair legal protection, perfect social security system and improve human rights protection system. Legal aid refers to the legal system, in which lawyers, notaries and grass-root level legal workers provide persons living in poverty or parties of special cases with free-of-charge legal service or on fee-reduction basis under the guidance and coordination of state legal aid organisations. Beneficiaries of such system usually are persons who are insolvent or partly insolvent to pay fees for legal services duo to poverty (The standard for poverty is determined by local government department). Legal aid system applies to the following cases: 1)claim for damages resulted from performing public duties; 2)claim for

survivor’s benefits, pension, social insurance benefits and wage; 3)other cases if necessary. Legal aids are granted in the forms of: 1) offering legal advice; 2) drafting legal documents; 3)acting as legal counsel in civil or administrative proceedings; 4)non-litigation affairs; 5)issuing notarial deeds; 6)other forms. With focus on handling labour disputes, trade unions provide its members living in poverty, its workers and grass-root level trade unions with legal aids in forms of offering legal advice, drafting legal documents, acting as legal counsels in arbitration and litigation proceedings in order to safeguard their legitimate rights and interests.

Application for legal aids should be made to the local legal aid organisation in the jurisdiction of people’s court handling the case. The organisation will determine whether to offer legal aids

Lawyers, notaries and grass-root level legal workers are requested to provide free-of-charge legal aids in certain amount as stipulated by provincial department of justice, and they also have to render paid services assigned by legal aids organisations. If they refuse to perform the duty or perform it in such a negligent manner that brings about great loss to aids recipients, legal aids organisations may suggest that relevant departments impose punishment on them or refuse to renew their licenses.

III. Organisations to Handle Labour Disputes

1. Enterprise Labour Dispute Mediation Committee

An enterprise may set up a labour dispute mediatian committee to be responsible for mediating labour disputes within the enterprise. The mediation committee is usually composed of representative(s) of employee(s), representative(s) of the enterprise, representative(s) of the enterprise trade union. The employees' representative(s) is nominated by the congress of employees' representatives or employees' congress. The enterprise representative(s) is appointed by the enterprise director or manager. The enterprise trade union representative(s) is appointed by the enterprise trade union committee. The number of members to the mediation committee should be determined through negotiations between employees' congress and the enterprise director or