# Private employment agencies and labour dispatch in China

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#### **Preface**

This paper, written by Liu Genghua, discusses the development of private employment agencies in China, highlighting some of the main issues of concern to the agency industry. The responsibility for opinions expressed in this paper rests with the author, and publication does not constitute an endorsement by the ILO of the opinions expressed in it.

This is one of several research studies prepared in 2013 for the Sectoral Activities Department (SECTOR) on the impact of the Private Employment Agencies Convention, 1997 (No. 181); the framework for operation of such agencies; employment conditions; and treatment as regards such issues as pay, social protection, leave and pensions in selected countries, providing sectoral information as appropriate. The first such paper, on Morocco, was published in September 2011. The 2013 studies – on Argentina, Chile, China, Netherlands, South Africa, Spain, Sweden and Uruguay – consist of (a) statistical and empirical research on private employment agencies and agency work and/or (b) legal research on whether and how the provisions of Convention No. 181 are reflected by laws and regulations and by practice in selected countries. This paper on China was reviewed by Zizhu Zhao.

The initial proposal to carry out this research on the impact of the Private Employment Agencies Convention, 1997 (No. 181) was proposed at the Sectoral Advisory Body for Private Services Sectors in October 2010 and recommended by the Sectoral Advisory Body Meeting in January 2011. The proposal was endorsed at the March 2011 sitting of the ILO's Governing Body. At the March 2012 sitting the Office was asked to bear in mind for future work the views expressed by the participants in the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors (October 2011), as summarized in the *Final report of the discussion*. These research papers were prepared taking into account those views, and are preliminary documents intended – like other SECTOR Working papers – to stimulate discussion and critical comment, and should not be considered as ILO policy papers or documents. The ILO uses the term "private employment agency *industry*" (not "sector", an inappropriate word to refer to such a cross-sectoral industry). We use the term "sector" for a more distinctive and well-delineated category of industries that can be clearly distinguished from other sectors of the economy, and our Department currently works on 22 such sectors.

SECTOR promotes decent work by addressing social and labour issues in various economic sectors, both at international and national levels. By tackling challenges for specific sectors, the International Labour Organization (ILO) assists governments, employers and workers to develop policies and programmes that generate decent employment and improve working conditions in each sector. SECTOR's integrated approach links up with the entire Decent Work Agenda, allowing the ILO to respond comprehensively to specific needs of the sectors in relation to employment, social protection, labour rights and social dialogue issues.

John Myers Head of the Public and Private Services Unit Sectoral Activities Department

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The Chinese Academy of Labour and Social Security is profoundly grateful to the ILO for sponsoring and supporting this research, which is of great interest to us and valuable to China's drive to further regulating the operation of private employment agencies/labour dispatch agencies.

Due to the lack of official statistics on labour dispatch enterprises and agency workers, the only reliable way to conduct this study was a desk review with field study missions. In order to gather first-hand information and carry out policy analysis, I took a week-long field study in several counties and the capital city in Anhui Province. I held six seminars with provincial and county policy-makers, as well as group interviews with representatives of employers and trade unions. During my research, I received tremendous support from the Department of International Cooperation, and the Labour Inspection Bureau of the Ministry of Human Resources and Social Security. The study visits to Anhui Province were invaluable to this research project for findings from the grass-roots level. I would like to register my appreciation to the Bureau of Labour Inspection and the Department of International Cooperation. My sincere thanks also go to the Bureaux of Human Resources and Social Security of Anhui Province, Jinzhai County and Huoshan.

My special thanks go to the following, who have helped make this report a reality:

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Liu Genghua

## 1. Executive Summary

Private employment agencies now play a very important role in China. According to China's Ministry of Human Resources and Social Security, the total number of dispatched workers in China was 27 million in 2011. Although this was much lower than the figure of 60 million provided by the All-China Federation of Trade Unions, through its general survey at the end of 2010, it shows that agency work/labour dispatch has become a key supplementary form of employment, as well as a fast-growing industry in China in the five years since the promulgation of the Labour Contract Law in 2008.

The term "labour dispatch" refers to the practice of hiring employees through an employment service agency as opposed to direct employment. In 2012, the Standing Committee of the National People's Congress issued amendments to the Labour Contract Law of 2008, which came into effect on 1 July 2013. The Amendments were set out with the aim of limiting the overuse of agency workers. The legal instrument reiterates that the primary form of employment is engagement of staff through employment contracts with the ultimate employer rather than through labour dispatch arrangements.

In practice, many companies have used labour dispatch as their main or only method for hiring employees based on the belief that hiring through dispatch agencies could mitigate or avoid employer liability and lower their human resources costs. Against this backdrop, the Labour Contract Law of 1 January 2008 aimed to address this practice by mandating equal rights for employees hired through labour dispatch and "generally" restricting the use of labour dispatch only for "temporary, auxiliary and substitute" jobs. However, employment service agencies have seized the vagueness of the terms "temporary, auxiliary and substitute" (herein and after as "three categories") to argue that there is no real restriction on the use of labour dispatch; as a result, the use of labour dispatch by companies increased rather than decreased. The Amendments to the Labour Contract Law further elaborate on the "three categories" and lay down provisions aimed at:

- gradually restricting the use of labour dispatch to "temporary, auxiliary and substitute" positions;
- achieving "equal pay for equal work" for dispatched employees in relation to directly hired employees; and
- tightening the administration of the private employment agencies through licensing and annual reports, as well as labour inspection.

There are large numbers of agency workers in domestic work in China<sup>1</sup>, where private domestic service agencies usually follow the labour dispatch system or the intermediary service system. Labour dispatch agencies recruit domestic workers as their staff and train them before dispatching them to serve in households. However, user enterprises are now widespread in manufacturing and

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<sup>1</sup> ILO Regional Office for Asia and the Pacific: *Situational analysis of domestic work in China* (Bangkok, 2009), p.3.

other industrial sectors, plus services sectors such as transport; hotels, catering, tourism; commerce; financial and professional services; media, culture, graphical; and postal and telecommunications services; as well as property services (cleaning and security); call centres and IT services.

With the persistent high employment pressure in China and the massive labour migration, mostly rural areas to urban cities/townships, deregulation and flexibilization have become the driving force of China's labour markets. In this context, agency work has become very common for enterprises seeking to have labour flexibility and recruit job seekers, especially rural migrants. However, there are some obvious breaches, such as dispatched workers working in the same work positions for more than 2 years (clearly does not fall within "temporary") or when more than 80 per cent of employees of an enterprise are dispatched workers (clearly does not appear to be "auxiliary" or "substitute" to the business).

As China's legislature authorizes the Ministry of Human Resources and Social Security to fix the percentage of dispatch workers for enterprises and to issue directives on the licensing of private employment agencies, this research suggests curbing the overuse of labour dispatch through tightening the regulation of private employment agencies. According to the Amendments to the Labour Contract Law, the minimum registered capital required to establish a labour dispatch agency was raised from RMB 500,000 to RMB 2 million. New conditions for incorporating a labour dispatch agency were also added, such as having fixed business premises and facilities corresponding to business operations and a management system that complies with laws and regulations.

The paper emphasizes the importance of labour administration and labour inspection in implementing the new provisions. Its scope includes review and analysis of existing legislation, regulations and practice on labour dispatch and changes with respect to the administration of private employment agencies; and a brief overview of the employment agency/labour dispatch industry in China; analysis on the share of dispatch labour in the total workforce.

The primary concerns for local inspectorates are to check if the user enterprises – when recruiting dispatched workers – meet the "three categories". The emphasis for labour administration would be on the protection of the interests of dispatched workers, and on ensuring the principle of equal pay for equal work for agency workers, most of whom fall into disadvantaged groups, such as rural migrant workers, women, young people, etc. It is, however, too early to evaluate the effective implementation of the Amendment of the Labour Contract Law.

#### 2. Introduction

This paper discusses the framework for operation of private employment agencies/labour dispatch companies and reviews the development of temporary agency employment in private service sectors in the past decade, in particular since the implementation of the Labour Contract Law. By collecting first-hand information about the conditions of temporary agency employment conditions, including the extent of replacement of direct positions by agency workers, the respective responsibilities of private employment agencies, user enterprises, etc., this research aims to provide overall information about labour dispatch in China and to address special concerns in particular sectors, and treatment as regards pay, social protection, leave and pensions as well as social dialogue.

#### 2. 1 Scope of the study and methodology

The scope of this study includes: (i) a review and analysis of the existing legislation, regulations and practice on labour dispatch and suggested changes to the current regulation with respect to the administration of private employment agencies; (ii) a brief overview and analysis of the status of employment agency/labour dispatch industry in China; (iii) analysis on the potential quota or share of dispatch labour to the total workforce in any industry; (iv) policy recommendations to the government and social partners to work together to improve working conditions in agency work.

However, there is a general lack of official reports and statistics. This can be demonstrated by the drastic variation of the estimated total number of agency workers in China. The official estimation by the Ministry of Human Resources and Social Security was about 27 million in 2011, in sharp contrast to the 60 million by the All-China Federation of Trade Unions. Some scholars gave even higher figures. Sarosh Kuruvilla, Mary Gallagher and Ching Kwan Lee (2011) estimated that there are about 75 million dispatched workers in China. There are no official statistics and reports from 31 provinces in China.

In order to get first-hand information, the author undertook a field mission to Anhui Province studying the status of labour dispatch from the county (Jinzhai County and Huoshan County) to the province level. During this week-long field mission, the interviews included the ILO tripartite partners and workplace-level managers as well as agency workers. The author also had individual briefing sessions with officials from legal, social insurance and labour inspection units of the Anhui Province Bureau of Human Resources and Social Security.

## 2. 2 Private employment agencies and labour dispatch

Given the already significant contrast in terms of the various estimates of the total number of agency workers and the fast growth of the agency work phenomenon, this paper will use the terms private employment agency, temporary agency worker and labour dispatch etc. as follows:

• *Private employment agency*: the ILO Private Employment Agency Convention, 1997 (No. 181) defines this as any enterprise or person, independent of the public authorities, which

provides one or more of the following labour market services: (a) services for matching offers of and applications for employment (without the agency becoming a party to the employment relationships that could arise therefrom); (b) services for employing workers with a view to making them available to a third party ("user enterprise") which assigns their tasks and supervises the execution of these tasks; (c) other services relating to jobseeking, determined by the competent authority after consulting the most representative employers' and workers' organizations, such as the provision of information, that do not set out to match specific offers of and applications for employment. Article 7 of C181 further sets out that private employment agencies shall not charge directly or indirectly, in whole or in part, any fees or costs to workers (with some exceptions for certain categories of workers);

- Temporary agency workers<sup>2</sup>: workers with a contract either for service or of employment with the agency, which finds them work in user enterprises on a temporary basis. Such workers may be able to use such arrangements to try out different kinds of work, as a stepping stone to jobs they want, as a way of entering or re-entering the job market or working more flexibly to suit their circumstances, or to move jobs easily and on short notice. However, they may have less control over their work, more pressure and shift work and fewer rights than regular staff colleagues.
- Temporary agency employment/labour dispatch: employment by a private employment agency under a labour contract of limited or unspecified duration with no guarantee of continuation, whereby the worker is hired out to perform his or her work (and under the supervision of) the user enterprise. There is no employment relationship between the agency worker and the user enterprise, although user enterprises may have legal obligations towards such agency workers, especially on health and safety. These arrangements are called "temporary work", "agency work" or "labour dispatch". User enterprises pay fees to the agency, and the agency pays the wages. According to China's Ministry of Human Resource and Social Security in its newly released Several Regulations on Labour Dispatch (Draft for Comments), labour dispatch refers to a method of employment whereby the employer dispatches the employees it recruits to other employers, and the latter employers directly manage the working process of such employees.

#### 2. 3 The Labour Contract Law (2008) and its Amendments (2013)

In 2012, the Standing Committee of the National People's Congress issued the amendments to the Labour Contract Law of 2008.<sup>3</sup>. The amendments came into effect on 1 July 2013. The Amendments were set out with the aim to limit the overuse of agency work. The legal instrument reiterates that the primary form of employment is engagement of staff through employment

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<sup>2</sup> Please see *Private employment agencies, promotion of decent work and improving the functioning of labour markets in private services sectors*, Issues paper for discussion at the Global Dialogue Forum on the Role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Services Sectors, 2011.

<sup>3</sup> Please see Annex for the English Translation of the Amendments to the Labour Contract Law (2008).

contracts with the ultimate employer rather than through labour dispatch arrangements.

Those finalized amendments also provided that the number of staff who are engaged through a labour dispatch company cannot exceed a certain percentage of the total workforce, details of which are to be provided by the Ministry of Human Resources and Social Security (MOHRSS) in a separate regulation.

The amendments raised also the registered capital requirement for private employment agencies from 1 million to 2 million Yuan (about 300,000 USD). As the first-ever amendment to any Labour Code, this legal instrument specifies that the same method of determining compensation must be adopted for regular staff and for an agency worker if he or she performs the same role at the workplace.

#### 3. Overview

There has been a tremendous change in China's labour and employment laws in the 35 years since its Reform and Opening. Prior to the early 1980s, nearly all jobs were allocated to citizens through an administrative bureau. Employees could not choose their employer or terminate their employment. Further, regulations set an expectation that the employee would work for the same employer during their whole working life. Companies in this era could only terminate employees for gross misconduct. This type of labour market and social safety net was termed the Iron Rice Bowl Model because the state or collective enterprises guaranteed job security and benefits to employees without much concerns for the bottom line of enterprises.

In the early 1980s, the government introduced a contract system that attempted to address the low productivity in state/collective enterprises by replacing the Iron Rice Bowl model with short-term labour contracts. This reform is the known as the Labour Reform. At first, state-owned companies resisted this trend and the government succeeded only in minimal reforms. The Labour Law of 1994 liberalized the labour market. The Labour Law, when combined with economic reforms, resulted in more than 40 million lost jobs in state/collective enterprises. As a result of the above reforms, the lifelong employment model was replaced by labour contracts, and China witnessed the emergence of temporary agency employment.

#### 3. 1 Trends in temporary agency employment

During the early 1980s, with the increase of labour mobility and the demand for a higher quality labour force from the collective and state-owned enterprises, government labour bureaux were the first entities to set up labour and employment service agencies with the mandate to broker jobs and provide training to job-seekers. With the flourishing of market economy, the government started to allow the private job agencies to provide job-broking services to massive numbers of rural migrant workers in the early 1990s. Job markets were opened to private agencies, including foreign companies. This was further regulated with the implementation of the Employment Promotion Law in 2007.

In the past decade, while maintaining a fast pace of economic development, China has tried harder to protect its labour force. In 2008, in order to regulate the labour contract practice, the government introduced the Labour Contract Law, which rolled back some of the laissez-faire approaches of the previous decade. This new law abolished the system of at-will employment for full-time employees and required employers to provide employees with written contracts. On top of the written labour contracts, whether individual labour contracts or collective labour contracts, the Labour Contract Law requires the employers to pay social insurance contributions, overtime wages and severance fees depending on individual employees' years of service.

Private employment agencies/labour dispatch enterprises have witnessed a steady development in recent years in China. The private employment agencies provide services for matching offers of and applications of employment, services for employing workers with a view to making them available to user enterprises. In general, employment agencies are prohibited from charging fees from workers. With the reform and open market initiatives, private employment agencies

generally have been productive in that they have met both the needs of user enterprises for workforce flexibility and of workers for temporary employment, which refers to labour contracts of limited or unspecified duration with no guarantee of continuation. This explains why private employment agencies have become the temporary staffing industry and mediated work agencies in China in the past decade. Private employment agencies were also able to create a pathway for both the urban unemployed and rural migrant workers moving to cities, helping the vulnerable groups to enter labour markets. In this sense labour dispatch enterprises are sweeping away domestic labour migration obstacles in China. As annual college graduation numbers have surpassed 7 million per year since 2011, it is important to note that private employment/labour dispatch agencies are facilitating the transition from education to work, by providing young graduates of colleges and TVET schools with their first opportunity to gain work experience.

#### 3. 2 Perspectives on labour dispatch

There are different views on the use of agency workers. For instance, some workers' organizations are against "temping". The International Trade Union Confederation expressed its view that agency work is part of a clear strategy by employers to promote triangular rather than direct employment relationships in order to fragment and weaken union membership, collective bargaining, labour regulation and therefore terms and conditions of employment. On the employers' side, user enterprises and private employment agencies both oppose measures that lead to further regulation of their industry.

The EU sees value in both the demand and supply side of agency work, asserting that "temporary agency work meets not only undertakings' needs for flexibility but also the need of employees to reconcile their working and private lives"<sup>5</sup>, The EU also understands the need to regulate this industry, and hence drafted the Directive on Temporary Employment Agency in 2008.

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<sup>4</sup> Please see *Private employment agencies, promotion of decent work and improving the functioning of labour markets in private services sectors,* Issues paper for discussion at the Global Dialogue Forum on the role of Private Employment Agencies in Promoting Decent Work and Improving the Functioning of Labour Markets in Private Service Sectors, Geneva, ILO, 2011.

<sup>5</sup> Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work.

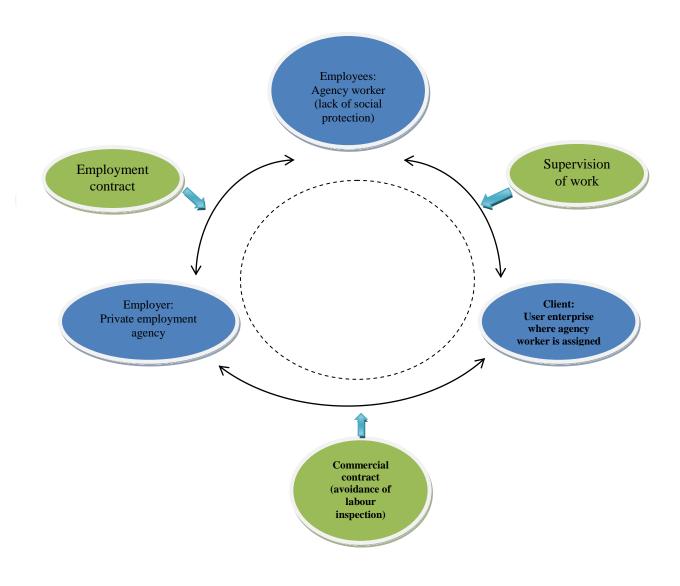


Figure 1 Relationship between private employment agencies, user enterprises and workers

Figure 1 shows both the triangular relationship between the agencies, workers and the user enterprises, it also describes a loop that lacks both labour inspection and social protection. In China, with the comprehensive labour protection measures that accompany the implementation of the Labour Contract Law, employers are still trying to get around these regulations. A phenomenon has emerged whereby private employment agencies recruit workers and send them as temporary staff to factories as required. Dispatched workers are thus often paid less than contract workers doing the same jobs. When dispatch workers are no longer needed by user enterprises, they can easily return to recruitment agencies. Since the implementation of the Labour Contract Law in 2008, the increasing use of dispatched labour has become a contentious issue in China, which emerged as an outstanding feature in China's industrial relations.

According to the ACFTU, in 2011 an estimated 60 million out of the total 300 million urban employees in China were labour dispatch employees. The official figure for labour dispatch workers from the Ministry of Human Resources and Social Security was about 27 million for the same year. Since the global financial crisis and the implementation of the Labour Contract Law in 2008, many firms scrambled to cut labour costs in the wake of rising wages, paying the recruitment agencies to hire workers.

#### Box 1. Labour dispatch has become widespread in the construction industry

Labour dispatch did not begin in the construction industry until the new millennium. During its initial years until 2011, private employment agencies in the construction industry quintupled from 1,193 registered agencies to 6,443 at the end of 2011. Over the same time span, the number of agency workers in the construction industry grew from 343,755 to 2.45 million, an explosion of 712.7%. This was equivalent to growth from 1.53% in 2002 to 6.35% in 2011 in terms of percentage of agency workers to the total workforce in the industry.

In the construction industry, most workers have very little education. A survey conducted by the China Labour and Social Security Science Academy in 2011 showed that in Shandong province, about 80% of construction workers were rural migrant workers, 70% of whom had only completed junior high school. The daily average working hours were around 10 hours without paid leave. Private employment agencies normally provided workers with basic social insurance, employment injury insurance, and commercial accident insurance. Like the findings in this paper, in other industries, agency workers rarely have vocational training opportunities. (Wei, 2012).

Given the magnitude and the fast-growing nature of agency work, the Chinese authorities are taking a stand to improve their regulation of this industry. On 1 July 2013, the new amendments to the Labour Contract Law came into force. The Amendments were set out with the aim of limiting the overuse of agency workers, declaring that the primary form of employment should be engagement of staff through employment contracts with the ultimate employer rather than through labour dispatch arrangements. The amendments also provide that the number of agency workers cannot exceed a certain percentage of the total workforce, details of which are to be provided by the Ministry of Human Resources and Social Security (MOHRSS) n a separate regulation. The key features of the amendments can be summarized as follows:

- **Strict limits on agency work**: Engagement through labour dispatch companies is limited to "temporary", "ancillary" and "substitute" positions only:
  - "temporary" refers to a temporary role of less than six months;
  - "ancillary" refers to a position providing support services to the primary business of the employer; and
  - "substitute" refers to a position in which the staff engaged through a labour dispatch

company temporarily replaces an existing employee where that employee is unable to work due to further study, leave or other reason

- **Equal treatment**: the amendments specify that the same method of determining compensation must be adopted for agency workers and staff engaged directly by the employer if they are performing the same role.
- New requirements for labour dispatch companies: the finalized amendments increase the registered capital requirement for a labour dispatch company from RMB 500,000 to RMB 2,000,000. An additional requirement for a labour dispatch company to have a proper permanent place of business and facilities to carry out its business has also been introduced.
- Administrative penalties: the amendments clarify that any labour dispatch company or employer in breach of any rule related to labour dispatch under the Labour Contract Law may be subject to rectification measures within a prescribed time and, failing which, a fine of RMB5,000 to RMB10,000 for each affected staff member. The imposition of the fine is no longer subject to the qualification that the breach has serious consequences.
- Transitional arrangements: labour contracts and labour dispatch agreements that have been lawfully entered into prior to the publication of the amendments will continue to take effect until expiry, provided that any provision that is inconsistent with the equal treatment requirement is amended to comply with the new requirements. This means that going forward, companies that engage staff mainly through labour dispatch companies without taking into account what positions such staff hold will no longer be able to do so, because only temporary, ancillary or substitute positions can be filled through a labour dispatch company. Existing arrangements, however, will not be affected. Any company running a labour dispatch business must obtain the relevant approvals from the competent Human Resource and Social Security authority by 30 June 2014, in order to provide labour dispatch services for new engagements.

# 4. Focus on law and practice on agency/labour dispatch work

With persistent high employment pressure in China and massive labour migration mostly from rural to urban areas, deregulation and flexibilization have become the driving forces of China's labour markets. In this context, agency work has become very common for enterprises seeking to have labour flexibility, and for job-seekers – especially rural migrants – keen to find jobs in a very short timeframe.

#### 4. 1 The private employment agency industry

Global growth in the private employment agency industry has been facilitated by labour market deregulation, business process outsourcing, offshoring activity and information technology, and increased use of flexible labour by user enterprises. It is also partly driven by people's changing attitudes to finding a more flexible work—life balance.

Despite efforts to find accurate information on the scale and distribution of agency work across industries, the research group fails to find any official statistics. Liu Xukai (2012) in his analysis on the employment agency industry states that "the agency industry is now booming and there are about 30,000 private labour dispatch firms in China". Large agencies benefit from significant scale economies in marketing, purchasing, recruitment and back-office operations. Many smaller agencies specialize in recruitment for specific industries, while others offer such services as staff training for clients. Growth of the private employment agency industry in different countries is also affected by the strength of national labour market regulation (from "strict" to "liberal"), by the wider labour market regimes in which they operate, and by the way in which employment relationships are coordinated and regulated. These relationships can be shaped by government, industry self-regulation and joint labour–management monitoring, or are governed by market forces.

According to CIETT, the global agency industry (excluding China and India) grew rapidly from the mid-1990s – doubling over the period 1994–99 and again during 1999–2007 – but declined in 2008–09 (and 2001–03). In 2009, the global temporary staffing industry boasted over 72,000 agencies worldwide, 169,000 branches and 741,000 agency internal staff. Revenues from human resources services are generated from temporary staffing (the largest segment, accounting for about 72 per cent of the market's total value); search and placement (permanent staffing); and corporate training services. In China, with the implementation of the Labour Contract Law, the private employment agency industry has witnessed "inappropriate prosperity" , providing temporary staffing services, job referring and placement and training services. The field study in Anhui province revealed that the major clients for the agency industry were state-owned

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<sup>6</sup> An Initial Analysis on Labour Dispatch in China, Liu Xukai, 19 April, 2012, www.chinacourt.org.

<sup>7</sup> This terminology refers to the widespread use of dispatch workers to the extent of abuse in China, a phenomenon since the implementation of the Labour Contract Law in 2008.

enterprises, including major telecommunication companies, banks, commercial insurance companies etc., accounting for two-thirds of the temporary staff hired by the private agencies.

It is true that there are large numbers of agency workers in domestic work in China<sup>8</sup>, where non-governmental domestic service agencies usually follow the labour dispatch system or the intermediary service system. Labour dispatch agencies recruit domestic workers as their staff and train them before dispatching them to serve in households. Payments from the household go to the agency, which pays the workers' wages and social security insurance, even when they are between assignments. Intermediary agencies collect placement fees when householders and domestic workers sign a contract, but take no other responsibilities.

However, user enterprises are now widespread in manufacturing; transport; hotels, catering, tourism; commerce; financial and professional services; media, culture, graphical; and postal and telecommunications services; as well as property services (cleaning and security); call centres and IT services.

#### 4. 2 The Labour Contract Law on Labour Dispatch

The Labour Contract Law has a full chapter on agency work, regulating labour dispatch (termed as staff leasing). Article 57 sets the threshold of the registered capital at no less than RMB 500,000. Article 67 prohibits employers establishing a staff-leasing service company to place employees into its own facilities or affiliated facilities. Instead, according to Article 58 "The staff-leasing service companies are the employers that owe the obligations of an employer to its employees. The labour contracts between a staff-leasing service company and the employees shall be fixed term contract with a term of no less than two years. The staff-leasing service company shall pay labour remuneration on a monthly basis. In cases where there is no job available for the employees to be placed, the staff-leasing service company shall pay the employees the minimum wage on a monthly basis."

Article 64 requests adequate protection for the workers employed by private employment agencies regarding freedom of association. The placed employees have the right to join the trade union either of their staff-leasing company or the client company, or to organize unions in accordance with the law, so as to protect their legitimate rights and interests. This provision is also in line with Article 11 of C181.

To ensure the implementation of equality of opportunity and treatment in access to employment and to particular occupations, as stipulated in article 5 of C181, the Law has the provision that "placed employees are entitled to the same pay received by workers employed by the client company for the same work. When a user company has no employee engaged in the same position, the labour remuneration standards shall be determined with reference to the pay rates of the employees engaged in the same or similar positions of comparable companies in the same region.

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<sup>8</sup> ILO Regional Office for Asia and the Pacific: *Situational analysis of domestic work in China* (Bangkok, 2009), p.3.

However, the Law has not made it clear in terms of the conditionality when recruiting agency workers, as Article 66 only states "the placement of employees shall generally be practiced for temporary, auxiliary or substitute jobs." Many of the labour inspectors in Anhui Province interviewed for this research pointed out that this principle is subject to differing interpretation by employers. Due to the vagueness of this principle, many employers – including large-scale state enterprises such as China Telecom – recruit a large number of agency workers in Anhui Province.

With regard to the procedural requirement, the Labour Contract Law has further provisions:

**Article 59** The staff-leasing service company shall reach an agreement with the user enterprise covering issues such as the assigned working positions, the number of assigned workers, the term of placement, the amount and method of payment of labour remuneration and social insurance contributions, as well as the liabilities for breaching the agreement.

The user company shall determine with the staff-leasing service company on the term of placement based on the actual situations of the vacancies available in the user company, and an integrated staff-leasing agreement shall not be split into several short-term placement agreements.

**Article 60** The staff-leasing company shall inform the placed employees of the content of the placement agreements.

The staff-leasing company may not cut the labour remuneration that the user company pays to the employees in accordance with the placement agreement.

The staff-leasing company and the client company may not charge the placed employees any fees.

**Article 61** In case of cross-regional staff leasing, the standards of the placed employee's labour remuneration and working conditions shall be in line with those in the region where the client company is located.

**Article 62** The client company shall fulfil the following obligations:

- (1) To implement the state labour standards and to provide corresponding working conditions and labour protection;
- (2) To inform the employees about the work requirements and labour remuneration standards;
- (3) To pay overtime rates and performance bonuses, and to offer benefits that pertain to the nature of the job;
- (4) To provide the placed employees with the training necessary for their job; and
- (5) To implement a regular wage adjustment system in case of continuous placement of the employees.

The client company may not, in turn, place the employees with any other third party.

**Article 65** The placed employees may terminate their labour contracts with their staff-leasing company pursuant to the stipulations in Article 36 or 38 hereof.

Under any of the circumstances stipulated as in Article 39 and items (1) and (2) of Article 40 hereof, the client company may return the placed employee to the staff-leasing company, which may terminate its labour contract with the concerned employee in accordance with relevant provisions of this Law.

#### 4. 3 Further regulating agency work

As requested by the Amendments of Labour Contract Law, Ministry of Human Resources and Social Security of the People's Republic of China released "Several Regulations on Labour Dispatch (Draft for Comments) on 7 August 2013, which aims to clarify several issues regarding agency work services. Some key information concerning the new draft regulations can be summarized as follows:

#### **Applicable scope**

Labour dispatching arrangements are only applicable to the following three types of vacancies:

- Temporary position: A job with a duration of no more than six months
- Auxiliary position: A job that provides auxiliary services to the main or core business of the employer
- Substitute position: A job that can be performed by a dispatched employee in place of a permanent employee during the period when such employee is away from work for study, vacation or other reasons

Moreover, the number of dispatched employees used by an employer in auxiliary positions shall not exceed 10 per cent of its total number of employees.

#### "Equal pay for equal work" principle

The Regulations stipulate that the principle of "equal pay for equal work" shall be applied to all labour dispatching agreements, meaning that the employers shall apply the same remuneration standards for dispatched employees as those for its direct-hire employees who hold similar positions.

Where the employer has not hired any employee holding a similar position, the labour remuneration payable to the dispatched employee shall be determined with reference to those payable to employees holding a similar position in the place where the employer is located.

#### **Punishment**

For employers and dispatching entities that violate the law, if they fail to correct the violations within the time period specified by the relevant labour bureau, they may be fined between RMB 5,000 and RMB 10,000 per dispatched employee, and labour dispatching entities may have their business licenses revoked.

## 5. Key findings

On January 1, 2008 the Labour Contract Law came into effect in the wake of unprecedented economic and financial crisis. With the intent to enforce employment contract practice, however, it turned out that many employers cited economic reasons to unilaterally terminate staff labour contracts and then demanded that the same staff sign contracts with labour dispatch agencies to return anew to the same employment. Personnel sent by labour dispatch agencies had no adequate protection of wages, insurance rights, social security, safety and health, leave, working hours, vocational training opportunities etc.

#### 5. 1 Why do we have "abnormal prosperity" in the agency work industry?

By the end of 2010, data obtained by the All-China Federation of Trade Unions via extensive statistical surveys showed the number of domestic labour dispatch workers had reached 60 million. This figure is surprisingly high in contrast with the official one from the Ministry of Human Resources and Social Security. According to MOHRSS, the said figure is estimated at 27 million, accounting for 7-8% of the national domestic workforce.

Before the promulgation of the "Labour Contract Law", domestic labour dispatch agencies were basically managed by labour departments, social groups and some private agencies. County and municipal level labour security departments had the power to examine and approve labour dispatch agencies and issue them with "Employment Agency Permits". The entry threshold for labour dispatch agencies was 30,000 Yuan (equivalent to 5,000USD). Addressing this low threshold, the "Labour Contract Law" had specifically established an article specifying that labour dispatch work agencies must have a registered capital no less than 500,000 Yuan. The new law also stipulated that labour dispatch requests "generally be for filling temporary, auxiliary or substitute job positions".

In fact the government's legislative intent is that by raising the entry threshold for labour dispatch agencies to such a large margin, direct hire would be the end result. Unfortunately since the implementation of the Labour Contract Law the labour dispatch system appears to have become "abnormally prosperous". Officials from Anhui Province commented that – from the point of view of registered capital – although the entry threshold for labour dispatch agencies was raised by a large margin, the reality was that many labour dispatch agencies had taken a loan for their capital and then registered at the Industry and Commerce Department. As soon as the agency was established some simply repaid the loan and the registered capital became an empty account. The local Industry and Commerce Department is only concerned with registration, and does not investigate subsequent activities of labour dispatch agencies. Because their interests are not at stake, local labour departments are often lax in their management of this.

The Amendments of the Labour Contract Law have revised Article 66, which is underlined by the word "only", replacing "generally" under the old instrument. The effect of this amendment is that it emphasizes that labour dispatch can only be used to supplement a company's directly hired workforce. One of the reasons the labour dispatch model is said to be "abused" is the word "generally". As such, in practice, the implementation of Article 66 is one of the most disputed

areas. There are some obvious breaches, such as dispatched workers who have been working in the same job for more than 2 years (clearly does not fall within "temporary") or when more than 80 per cent of employees of an enterprise are dispatched workers (which clearly does not seem to be "auxiliary" or "substitute" to the business).

In addition to the high numbers of agency workers, another characteristic of the Labour Dispatch model that attracts the attention of the relevant authorities is its adoption by the full range of enterprises, including state-owned, foreign-invested and domestic-invested enterprises. In addition, labour dispatch covers almost all industry sectors, including manufacturing, services outsourcing and research and development centres. In addition, an enterprise may use a dispatch employee in any work position, regardless of the length of employment or level of the position, simply via multiple contracts with private agencies.

Substitute positions are those filled by a dispatch employee because the regular employee in the position is absent from work because of off-the-job education, sick leave, holiday, etc. However, the requirements of "auxiliary" positions are simply vague. Auxiliary positions are non-core business positions that provide support to the company's core business. The Amendment fails to give any further details of what positions fall in the scope of "auxiliary". While it is commonly understood that positions like reception, administrative work, internal IT services, catering, cleaning, security and the like would be considered auxiliary in some sectors, these services could however be core for other sectors.

#### 5. 2 Equal treatment for equal work

The highlight of the Amendment is its enhanced penalties for non-compliance. It provides that the labour authorities can impose a fine between RMB 5,000 and RMB 10,000 per person on a staffing agency or a user entity for every breach and every refusal to rectify the violation. The Amendment also requires MOHRSS to fix a percentage of dispatch workers for enterprises. However the primary factor is the motives of the user enterprises, who are admonished to abolish the malpractice of cutting indispensable labour costs, including social insurance costs and welfare benefits etc. by using dispatched workers.

On the one hand, because many employers do not directly sign contracts with staff, they use this excuse to avoid the regulations of the "Labour Contract Law", docking normal wages and benefits as they please. Some employers even "cut staff" and "drop their burden" whenever it suits them. On the other hand, the records of service of dispatch workers to user enterprises are not subject to regular checks. In some localities, their length of service is forever starting anew. They go back to square one. This labour dispatch "tidal wave" was most serious in Anhui Province in sectors such as petroleum, chemical, telecommunications, finance and banking, aviation, and railways.

On the supply side, the overwhelming majority of dispatch workers are migrant workers from the rural villages, laid-off workers, unemployed urban workers, and secondary school and college graduates. The reality they face is that many user enterprises – by using agencies – provide lower pay and/or benefits to dispatch employees. Although the requirements are equal treatment for equal work, it remains quite vague (not addressing, for example, how equal work/performing equal work should be defined and/or whether benefits are considered part of "pay").

In 2013, the Nanjing Municipality conducted a survey of 91 private agencies and 737 enterprises. This rare and surprising survey found out that there is big difference in terms of wages for regular staff and dispatch workers. The average wages for them are 3909 Yuan and 2715 Yuan respectively. For the top 44 enterprises in this survey, the wage difference has reached to 3000 Yuan, without calculating their benefits.

Although less striking, we also found wages discrepancies in Anhui Province. The time has come for employers to comply by reviewing their employment rules and eliminating any that would constitute a violation on their part. For instance, during my study mission in Anhui, it was not difficult to find that some employers expressly provide fewer days of annual leave for dispatch employees than for regular employees.

Under an agency work scheme, the dispatch agency, instead of the host employer, assumes all obligations and liabilities of an employer, such as paying social security contributions and severance for the employees. There have been debates on the use of labour dispatch because it makes it easier for employers to evade liabilities, especially paying social insurance contributions and thus dispatched employees often have less protection than regular employees. It is particularly worth noting that a large number of domestic workers, with females accounting for 90% of them in China, have yet to be covered by social insurance schemes.

#### 5. 3 Administration and enforcement

Labour dispatch is widely used in China to staff companies, both domestic and foreign-invested. There has been much debate on the use of labour dispatch because it makes it easier for employers to evade liabilities, and thus agency workers often have less protection than regular employees. When promulgated in 2007, the *Labour Contract Law* dedicated a chapter making provisions on labour dispatch. In the past 5 years, the use of labour dispatch has continued to grow. The authorities needed to further regulate this scheme by promulgating the Amendment, which further authorizes the Ministry of Human Resources and Social Security to fix the percentage of dispatch workers for enterprises and to issue a directive on the licensing of private employment agencies.

On the one hand, amending the law and improving the legal framework is very important to address agency work from the root of the issues. On the other hand, it would be more so enforcing the law, its amendment and regulation of the Ministry of Human Resources and Social Security.

#### Tightening the control over labour dispatch agencies

According to the Amendment, the minimum registered capital required to establish a labour dispatch agency was raised from RMB 500,000 to RMB 2 million. New conditions for incorporating a labour dispatch agency were also added, such as having fixed business premises and facilities corresponding to business operations and a management system that complies with laws and regulations. This would require the local labour departments to work in collaboration with the chambers of commerce to check on private employment agencies from the start of their application for licenses. Regular monitoring is also needed, which includes ensuring their full compliance in terms of wages registration and paying the social insurance contribution on their employees' behalf.

#### Labour administration and labour inspection with emphasis "equal pay for equal work"

The primary concerns for local inspectorates are to check, when recruiting, if the user enterprises meet the "three categories". The emphasis for labour administration would be the protection of the interests of the dispatched workers, including ensuring respect for the principle of equal pay for equal work for agency workers, most of whom fall in the vulnerable groups, such as rural migrant workers and women etc.

Pursuant to the amendment, a "same-compensation rule" applies to direct-hires and dispatched employees. This means that the remuneration of dispatched employees must be decided with reference to the remuneration of directly hired employees who hold the same type of position. In the absence of directly hired employees, the point of reference should be employees holding the same or a similar position in the local area. The remuneration specified or agreed in both the labour contract between the dispatch agency and dispatched employee and the labour dispatch agreement between the dispatch agency and host employer must be in line with the principle of "equal pay for equal work".

Any labour contract or labour dispatch agreement executed before the Amendment comes into force will remain effective until it expires. However, any provision that does not comply with the equal pay principle must be revised. That principle is not new. The right of equal pay for equal work is a basic principle established by the Labour Law, and employers shall strictly comply with the principle. Equal pay does not simply mean the agency workers should have the same wages, benefits and social insurance coverage. Instead, certain factors, such as an employees' personal work experience, skills and motivation, must be taken into full consideration. Accordingly, employers are allowed to differentiate remuneration for employees in the same work position.

Thus, to a certain extent, flexibility in remuneration is allowed, so as to take into account the qualifications, workload and performance of different employees holding the same positions. The emphasis of the Amendment is to abolish employment discrimination and promote equality of opportunity and treatment in access to employment and to particular occupations.

In order to improve the supervision and inspection of staff agencies, agencies are required to submit an operations report to the local labour authority before 31 March of each year. The annual report includes an audit report, the number and percentage of dispatched employees, the implementation of employment contracts, the membership of employees in trade unions, employee remuneration payments, contributions to social security funds, performance of the workers in user enterprises, and information relating to the subsidiaries and branches of the staffing agency. Through labour administration and labour inspection, local labour departments are also responsible for ensuring that agency workers in any enterprise shall not exceed the fixed maximum percentage of their total employees.

Ensuring "equal work for equal pay" will ultimately drive up the labour costs for user enterprises. Pursuant to the Labour Contract Law, recruitment agencies must sign labour contracts with dispatched employees for a minimum term of two years. Therefore, if the six-month temporary position of a dispatched employee ends within the term of his/her labour contract, and if he/she cannot be dispatched to other positions of the host employer, the dispatch agency will have to bear the costs of the minimum salary payable to the employee until the end of the two-year labour

contract. These costs can be expected to be transferred to the user enterprises pursuant to an agreement with the labour agency.

#### **Public campaigns**

Domestically, labour dispatch has become a supplementary form of employment. The objective is to ensure voluntary compliance from both recruitment agencies and user enterprises. Indeed, local labour departments are given greater authority to monitor local implementation. The amended Article 92 imposes fines on host employers if they violate labour dispatch provisions and do not correct their violations within the time required by labour authorities. The fines range from RMB 5,000 to RMB 10,000 for each illegally dispatched employee (up from RMB 1,000 to RMB 5,000).

However, imposing fines on employers is not the aim and purpose of the Law and its Amendment. According to MOHRSS website, the administrative measures for granting dispatch licenses to labour dispatch agencies, as well as regulations on the percentage of dispatched employees allowed, are being formulated. So, in light of the changes made by the Amendment and the upcoming regulation by MOHRSS, it is advisable for labour departments to have awareness campaigns. Meanwhile, employers' organization could also advise companies (in particular those using labour dispatch arrangements) to take precautionary measures:

- Consult with the dispatch agency and dispatched employees whose positions will no longer be eligible for labour dispatch regarding employment arrangements after the existing labour dispatch agreements and labour contracts expire;
- monitor its dispatch agency, and make sure it obtains a new license;
- evaluate the positions that require labour dispatch and the proportion of dispatched workers in the company so as to make proper adjustments to the employment structure and limit the use of labour dispatch;
- review labour contracts and labour dispatch agreements already fulfilled or to be completed, in order to prevent conflicts with the equal pay principle;
- follow up on implementing details to the Amendment (such as the maximum percentage of dispatched workers).

During both the desk research and the field mission, the strong impression was that there was a lack of official information and statistics in China. Despite efforts to find such information from ILO data and publications, there was not much success. It would be a win-win situation to see strengthened exchanges between China and the International Organizations, in particular the ILO. It would be very advisable for China to take account of both the experiences and the lessons from the international community in the field of agency work regulation. Meanwhile, with dozens of millions of agency workers in China, the international community, the ILO and the CIETT etc. would also benefit from China's experience and knowledge.

# Annex 1: China National People's Congress Standing Committee – Decision on amending the PRC Labour Contract Law, 2012

(Adopted at the 30<sup>th</sup> session of the 11<sup>th</sup> National People's Congress Standing Committee on 28 December 2012)

The State Council decided to make the following amendments in the China Labour Contract Law:

- **I. Article 57 is amended as follows:** "Operators of dispatched worker agencies shall meet the following conditions:
- a. Registration capital of not less than two million Yuan;
- b. A fixed place of business, and facilities fit to conduct the business;
- c. A system of dispatch management in place, in accordance with laws and administrative regulations;
- d. Other conditions stipulated by laws and administrative regulations.
- "In order to begin operating a dispatch business, administrative approval should be obtained from labour and administrative departments; the company will be registered once it is licensed. In cases where these conditions are not met or approval is not obtained, neither companies nor individuals are permitted to operate a dispatch business."
- **II. Article 63 is amended as follows:** "Dispatched workers enjoy the right to receive equal pay for equal work as compared to regular workers. Employers shall follow the principle of equal pay for work of equal value. Dispatched workers shall get the same pay as regular workers at the same post. If there is no regular worker at that post, dispatched workers' wage setting should be referred to a similar post in a local company.
- "The remuneration indicated in the labour contract signed between the dispatch agency and the dispatched workers shall be in compliance with the provisions of the preceding paragraph."
- III. Article 66 is amended as follows: "Employment with a labour contract is the basic employment form in China. Labour dispatch is a supplementary form, and it only applies to temporary, auxiliary or substitute jobs.

"The above-mentioned temporary jobs means employment that lasts no longer than six months; auxiliary jobs mean positions to provide services for core business; alternative jobs are positions taken by other workers during a certain period, to replace regular workers because of their full-time study, vacations and other reasons.

"Employers should strictly control the numbers of dispatched workers, which must not exceed a certain percentage of the total workforce. The specific proportion will be stipulated by the labour administration departments under the State Council."

**IV. Article 92 is amended as:** "In cases of violation of this law, and/or any unauthorized operation of a dispatch business, illegal business will be stopped by the labour administration department, and the illegal income will be confiscated. A fine of more than the total income and less than five times the total income will be imposed; if there is no illegal income made, a fine of less than fifty thousand Yuan will be imposed.

"Labour dispatch agencies and [user enterprise] employers who violate this law will receive a warning to take corrective measures within a time limit, but if they fail to do so, they will be fined five to ten thousand Yuan per person. The agencies' labour dispatch license will be revoked. If damage has been done to the dispatched worker, the agency and the [user enterprise] employer shall assume joint liability."

#### This decision is effective as of July 1, 2013.

Existing labour contracts and labour dispatching agreements shall remain effective until they expire. However, any articles that do not comply with the principle of equal pay for work of equal value need to be adjusted accordingly. Agencies that operate in the dispatching business shall apply for the proper license and amend their company registration within one year from the date of July 1, 2013. The specific measures will be made by the labour administration department of the State Council in conjunction with the relevant departments under the State Council regulations.

The PRC Labour Contract Law will be re-promulgated with amendment, in accordance with this decision.

#### Annex 2: Interim Provisions on Labour Dispatch, 2014

#### Decree of the Ministry of Human Resources and Social Security No.22

The Interim Provisions on Labour Dispatch deliberated upon and adopted at the 21st executive meeting of the Ministry of Human Resources and Social Security held on 20 December 2013, are hereby promulgated and shall become effective on 1 March 2014.

Yin Weimin, Minister of the Ministry of Human Resources and Social Security
24 January 2014

#### Interim Provisions on Labour Dispatch

#### **Chapter 1. General Provisions**

Article 1. The Interim Provisions on Labour Dispatch (hereinafter referred to as the Provisions) are hereby developed in accordance with the Labour Contract Law of the People's Republic of China (hereinafter the Labour Contract Law), Implementation Regulations for the Labour Contract Law of the People's Republic of China (hereinafter the "Implementation Regulations") and other applicable laws and administrative regulations in order to regulate the Labour dispatch practices, safeguard the legitimate rights and interest of the workers and promote the development of a harmonious and stable labour relationship.

Article 2. The Provisions apply to the labour dispatch service provided by a labour dispatch service provider and the employ of dispatched workers by an enterprise (hereinafter referred to as an employer).

The Provisions also apply to the employ of dispatched workers by a partnership such as an accounting firm or a law firm incorporated by law, a foundation or a private non-enterprise entity.

#### **Chapter 2.** Scope and proportion of employment

Article 3. An employer may employ dispatched workers in temporary, auxiliary or substitute job positions only.

For the purpose of the preceding paragraph, a temporary job position refers to a job position that survives for no longer than 6 months, an auxiliary job position refers to a non-main business job position that provides services for main business, and a substitute job position refers to a job position that can be taken by other workers instead as a result that an employee of an employer

fails to work due to full-time study, leave and so on over a certain period of time.

Before an employer determines an auxiliary position in which dispatched workers will be employed, its employees' congress or all employees shall hold discussions and provide proposals and opinions, and the employer shall negotiate with the labour union or employees' representatives on an equal basis, and the matters concerned shall be announced internally.

Article 4. An employer shall strictly control the number of dispatched workers it employed, which shall not exceed 10% of the total number of employees.

For the purpose of the preceding paragraph, the total number of employees refers to the sum of the number of employees with a labour contract with the employer and the number of dispatched workers the employer employed.

An employer that calculates the proportion of the dispatched workers it employed refers to an employer that may conclude a Labour contract with its employees in accordance with the Labour Contract Law and its Implementation Regulations.

#### Chapter 3. Conclusion and performance of a labour contract/labour dispatch agreement

- Article 5. A Labour dispatch service provider shall conclude a written labour contract with the workers to be dispatched for a fixed period of at least 2 years by law.
- Article 6. A labour dispatch service provider may agree with the workers to be dispatched on the probation period by law. However, it may agree on one probation period with the same worker to be dispatched only.
- Article 7. A labour dispatch agreement shall specify the following:
- (1) Title and nature of the job position in which the dispatched worker will be employed;
- (2) Job location;
- (3) Number of the dispatched workers and the dispatch period;
- (4) Amount and payment method of labour remuneration determined in accordance with the "equal work, equal pay" principle;
- (5) Amount and payment method of the social security insurance premium;
- (6) Work hours, vocation and leave;

- (7) Related benefits for the dispatched workers during work injury, birth-giving or illness;
- (8) Occupational safety, health and hygiene and training;
- (9) Expenses such as economic compensation;
- (10) The term of the labour dispatch agreement;
- (11) Payment method and criteria of the labour dispatch service fee;
- (12) Liability for breach of the labour dispatch agreement;
- (13) Other matters that shall be included in the labour dispatch agreement as set forth in the laws, regulations and rules.
- Article 8. A labour dispatch service provider shall perform the following obligations for the workers it dispatched:
- (1) Inform the dispatched workers of the matters stipulated in Article 8 of the Labour Contract Law, rules and regulations that shall be observed as well as the contents of the Labour dispatch agreement in a truthful manner;
- (2) Establish training policies to educate and provide the dispatched workers with pre-service training and safety education;
- (3) Pay to the dispatched workers the labour remuneration and other benefits in accordance with the requirements of the State and the labour dispatch agreement by law;
- (4) Pay the social security insurance premium and complete the social security insurance related formalities for the dispatched workers in accordance with the requirements of the State and the labour dispatch agreement by law;
- (5) Urge the employer to provide the dispatched workers with labour protection and other occupational safety, health and hygiene conditions by law;
- (6) Provide the proof of dissolution or termination of a labour contract by law;
- (7) Provide assistance in resolving a dispute between the dispatched workers and the employer;
- (8) Other matters specified in the laws, regulations and other rules.
- Article 9. An employer shall, in accordance with Article 62 of the Labour Contract Law, provide the dispatched workers with the position-related welfare benefits without any discrimination against the dispatched workers.

Article 10. In the event that a worker dispatched by a labour dispatch service provider is injured in an incident while working for an employer, the labour dispatch service provider shall apply for determination of job injury by law, and the employer shall assist in the investigation/verification for the purpose of determination of job injury. The labour dispatch service provider shall bear the liability for job injury insurance, but it may negotiate with the employer over the compensatory approach.

In the event that a dispatched worker applies for the diagnosis and/or assessment of an occupational disease, the employer shall be responsible to deal with the matters relating to the diagnosis and/or assessment of the occupational disease, and provide the materials such as the dispatched worker's occupational history, history of exposure to the occupational disease and test results of hazardous factors at workplace for the occupational diseases that are necessary for the diagnosis and/or assessment of the occupational disease in a truthful manner, and the labour dispatch service provider shall provide the dispatched worker with other materials necessary for the diagnosis and/or assessment of the occupational disease.

Article 11. In the event that the administrative license of a labour dispatch service provider is not renewed upon expiry or its labour dispatch service license is rescinded or revoked, the labour contract already concluded with its dispatched workers shall continue to be performed until expiration by law. Both parties a labour contract may dissolve the labour contract through negotiations.

Article 12. Under any of the following circumstances, an employer may return a dispatched worker to the labour dispatch service provider concerned:

- (1) The employer comes under the circumstances specified in Item 3, Article 40 and Article 41 of the Labour Contract Law;
- (2) The employer is declared bankrupt, revoked of its business license, or ordered to close down or cancel registration by law, decides to dissolve in advance or not to continue the business upon expiry of the business period; and
- (3) The labour dispatch agreement is terminated upon expiry.

During the period of time when the dispatched worker has no job after being returned, the Labour dispatch service provider shall pay remuneration to the dispatched worker on a monthly basis at least in accordance with the minimum wage rates set by local people's government.

Article 13. In the event that a dispatched worker comes under the circumstances specified in

Article 42 of the Labour Contract Law, prior to the expiry of the dispatch period, the employer concerned shall not return the dispatched worker to the labour dispatch service provider in accordance with Item 1, Paragraph 1, Article 12 of the Provisions. The dispatched worker may be returned only by extending the dispatch period upon its expiry until the disappearance of the circumstances.

#### **Chapter 4.** Dissolution and termination of a Labour contract

Article 14. A dispatched worker may dissolve its labour contract with a labour dispatch service provider upon a 30 days' prior written notice. He/she may dissolve its labour contract with a labour dispatch service provider upon a 3 days' prior written notice during the probation period. The labour dispatch service providers shall inform the employer concerned of the dispatched worker's notice to dissolve the labour contract in a timely manner.

Article 15. In the event that a dispatched worker is returned by an employer in accordance with Article 12 of the Provisions, the labour dispatch service provider concerned may dissolve the labour contract with the dispatched worker if the dispatched worker who is to be re-dispatched does not agree with the labour dispatch service provider to maintain or improve the conditions agreed upon in the labour contract.

In the event that a dispatched worker is returned by an employer in accordance with Article 12 of the Provisions, the labour dispatch service provider concerned may not dissolve the labour contract with the dispatched worker if the dispatched worker to be re-dispatched does not agree with the labour dispatch service provider to decrease the conditions specified in the labour contract except where the dispatched worker requests to dissolve the labour contract.

Article 16. The labour contract between a labour dispatch service provider and a dispatched worker is terminated when the labour dispatch service provider is declared bankrupt, revoked of its business license, or ordered to close down or cancel registration by law, decides to dissolve in advance or not to continue the business upon expiry of the business period by law. The employer concerned shall negotiate with the labour dispatch service provider over the proper placement of the dispatched worker.

Article 17. In the event that a labour dispatch service provider dissolves or terminates its labour contract with a dispatched worker pursuant to Article 46 of the Labour Contract Law or Article 15, 16 of the Provisions, it shall provide the dispatched worker with economic

compensation.

#### Chapter 5. Social security insurance in a trans-regional Labour dispatch

Article 18. In the event that a labour dispatch service provider in a region dispatches a worker to another region, it shall obtain the social security insurance coverage for the dispatched worker at the place where the employer concerned is located, and pay the social security insurance premium in accordance with the rules at the place where the employer concerned is located, and the dispatched worker is entitled to the social security insurance benefits in accordance with the provisions of the State.

Article 19. In the event that a labour dispatch service provider dispatching a worker to an employer has set up a branch at the place where the employer is located, the branch shall complete the formalities for obtaining social security insurance coverage and pay the social security insurance premium for the dispatched worker.

In the event that a labour dispatch service provider dispatching a worker to an employer does not set up a branch at the place where the employer is located, the employer shall complete the formalities for obtaining social security insurance coverage and pay the social security insurance premium for the dispatched worker on behalf of the labour dispatch service provider.

#### Chapter 6. Legal liability

- Article 20. Any violation of the provisions of the Labour Contract Law and its Implementation Regulations concerning labour dispatch by a labour dispatch service provider or an employer shall be dealt with in accordance with Article 92 of the Labour Contract Law.
- Article 21. In the event that a labour dispatch service provider dissolves or terminates a labour contract with a dispatched worker in violation of the Provisions, the case shall be subject to Article 48 and Article 87 of the Labour Contract Law.
- Article 22. In the event that an employer violates Paragraph 3, Article 3 of the Provisions, the competent department in charge of human resources and social security shall order it to take corrective actions and give it a warning; in the event of any damage caused to the dispatched worker concerned, the employer shall be liable to make compensation by law.
- Article 23. Any violation of Article 6 of the Provisions by a labour dispatch service provider

shall be dealt with in accordance with Article 83 of the Labour Contract Law.

Article 24. In the event that an employer returns a dispatched worker in violation of the Provisions, the case shall be subject to Paragraph 2, Article 92 of the Labour Contract Law.

#### **Chapter 7.** Supplementary Provisions

Article 25. The employ of dispatched workers by the permanent representative office of a foreign enterprise or by the representative office of a foreign financial institution in China as well as the employ of international oceangoing seafarers by a seafarer employer in the form of labour dispatch is exempted from the restrictions on the proportion of dispatched workers employed for temporary, auxiliary or substitute job positions.

Article 26. Labour dispatch as referred to herein do not include the dispatch of employees of an employer to overseas areas for work or to a family or natural person to provide labour service.

Article 27. The employ of workers by an employer in the form of labour dispatch in the name of contracting and outsourcing shall be dealt with in accordance with the Provisions.

Article 28. In the event that the number of dispatched workers employed by an employer exceeds 10% of the total number of its employment prior to the effective date of the Provisions, the employer shall develop a scheme for employment adjustments, and reduce the proportion to the specified level within 2 years from the effective date of the Provisions. However, labour contracts concluded by law prior to the release of the Decision of the Standing Committee of the National People's Congress on Amending the Labour Contract Law of the People's Republic of China and labour dispatch agreements whose expiry date is 2 years from the effective date of the Provisions may continue to be performed until expiry by law.

The employer shall file for record the scheme for employment adjustments it develops with the local competent administrative department in charge of human resources and social security.

The employer shall not employ new dispatched workers before reducing the number of dispatched workers prior to the effective date of the Provisions to the specified proportion as required.

Article 29. The Provisions shall become effective as of 1 March 2014.

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