China: Industrial relations profile
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## Facts and figures
Area: 9,706,961 square kilometres  
Population: 1.35 billion  
Language: Mandarin  
Capital: Beijing  
Currency: Chinese yuan, CNY ($1 = 8.52 CNY as on 5 June 2014)

### Economic background

<table>
<thead>
<tr>
<th>Economic Indicator</th>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Gross domestic product (GDP) per capita (2011)</strong></td>
<td>€3,943 (approx.) (CNY 35,097)</td>
<td></td>
</tr>
<tr>
<td><strong>GDP growth per capita</strong></td>
<td>8% (% change on previous year)</td>
<td></td>
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<tr>
<td><strong>Inflation rate (2012)</strong></td>
<td>3% (annual average rate of change)</td>
<td></td>
</tr>
<tr>
<td><strong>Average monthly labour costs, in € (2011)</strong></td>
<td>€287 (approx.) (CNY 2,555)</td>
<td></td>
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<tr>
<td><strong>Average labour productivity, in € (2011)</strong></td>
<td>€6,952 (approx.) (CNY 61,879)</td>
<td></td>
</tr>
<tr>
<td><strong>Gross annual earnings, in € (2011)</strong></td>
<td>€4,697 (approx.) (CNY 41,799)</td>
<td></td>
</tr>
<tr>
<td><strong>Gender pay gap</strong></td>
<td>Data not available</td>
<td></td>
</tr>
<tr>
<td><strong>Employment rate (15–64 years) (2011)</strong></td>
<td>76% (defined as employment-to-population ratio)</td>
<td></td>
</tr>
<tr>
<td><strong>Female employment rate (15–64 years)</strong></td>
<td>37% of the total urban full-time workforce on average in 2000s (a)</td>
<td></td>
</tr>
<tr>
<td><strong>Unemployment rate (2011)</strong></td>
<td>4% (b)</td>
<td></td>
</tr>
<tr>
<td><strong>Monthly minimum wage (2011)</strong></td>
<td>Varies by local government area, for example: €157 approx. (CNY 1,400) in Beijing; €182 approx. (CNY 1,620) in Shanghai.</td>
<td></td>
</tr>
</tbody>
</table>

Notes: (a) There are no official statistics on the female employment rate in China. The statutory retirement age for women is five years younger than that for men in the same occupational category. (b) Rural unemployment statistics are not available from the National Bureau of Statistics of China, which only records the registered unemployment rate in urban areas. As a result, the actually unemployment rate may be higher than the official figure.


## Industrial relations: Characteristics, pay and working time

<table>
<thead>
<tr>
<th>Industrial Relations</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Trade union density (%) (2012)</strong></td>
<td>34% (Trade union members as a percentage of all)</td>
</tr>
</tbody>
</table>
### Employees in dependent employment

<table>
<thead>
<tr>
<th>Employers’ organisation density (%) (Percentage of employees employed by companies that are members of an employer organisation)</th>
<th>Data not available</th>
</tr>
</thead>
<tbody>
<tr>
<td>Collective bargaining coverage (%) (Percentage of employees covered by collective agreements)</td>
<td>30% (approx.)</td>
</tr>
<tr>
<td>Number of working days lost through industrial action per 1,000 employees</td>
<td>Data not available</td>
</tr>
<tr>
<td>Collectively agreed pay increase (%) (annual average 2010–2011)</td>
<td>n.a.</td>
</tr>
<tr>
<td>Actual pay increase (%) (annual average 2010–2011)</td>
<td>14%</td>
</tr>
<tr>
<td>Collectively agreed weekly working hours</td>
<td>Working hours are set by the Labour Law (1995), which specifies that workers shall work for no more than 8 hours a day and no more than 44 hours a week on average.</td>
</tr>
<tr>
<td>Actual weekly working hours (2011)</td>
<td>46.2</td>
</tr>
</tbody>
</table>

*Source: National Bureau of Statistics of China (2012)*

### Background

The People’s Republic of China was founded on 1 October 1949 and has been ruled by the Chinese Communist Party for the last six decades. With a population of over 1.3 billion, it is the most populated country and the second largest economy in the world as of 2013. The labour market participation rate is high, because the social security system is basic with limited coverage. At the end of 2011, 57% of the population was in employment (764.2 million) and nearly 47% of those employed were based in urban areas (National Bureau of Statistics of China, 2012). Compared with their counterparts in other countries, Chinese women have a relatively high employment participation rate, making up more than 37% of the total workforce in full-time employment in urban areas (National Bureau of Statistics of China, 2012). It is worth noting that part-time employment is uncommon in China. This is, in part, a result of the low-wage full-employment policy adopted by the socialist government during the state-planned economy period. It is also partly due to the work ethic of the Chinese collectivist culture, according to which work is an obligation and each person should contribute to society in order to be entitled to benefit from it.

### Economic context

The Socialist Chinese economy can be divided into two main periods. The first is the state-planned economic period (1949–1978) during which the state-owned sector was dominant in the urban economy, employing over 78% of the workers in urban areas by the end of 1978 (National Bureau of Statistics of China, 2012). The second and current period, which began in 1979, is characterised by the marketisation of the economy following the adoption of the “open door” policy in 1978 and the subsequent accession of China to the World Trade Organization in 2001. This period has witnessed a deep level of state sector reform in which state sector employment was reduced to less than 19% by 2011 (National Bureau of Statistics of China, 2012). The sharp decline of employment in the state sector, particularly from the mid-
to late 1990s, was achieved mainly through downsizing, plant closure and privatisation of state-owned enterprises as part of the state-driven reform. Begun in the early 1990s with the aim of revitalising the outmoded and largely loss-making state-owned enterprises, the momentum of reform reached its peak in the late 1990s after the then Prime Minister Zhu Rongji announced his reform plan in 1997. Poor-performing state-owned enterprises were given three years to ‘sort themselves out’. In the ensuing five-year period, between 1998 and 2002, over 27 million workers were laid off (National Bureau of Statistics of China, 2003).

In the meantime, the private sector has been encouraged to grow through the removal of policy restrictions and operational barriers, and the provision of financial incentives. The sector provides employment opportunities for those displaced by their state employers, new workers from urban areas and rural migrant workers. Once marginal and marginalised in the state-planned economy due to the ideological clash between capitalism and socialism, the private sector now has a major stake in the economy. Similarly, foreign-invested enterprises and those funded by Hong Kong, Taiwan and Macao have been given more autonomy to operate in China since the mid-1990s, including the permission to set up wholly foreign-owned enterprises. They also have more autonomy in determining their employment policy. However, they are required to pay their workers no less than the local average wage in the same industry.

Labour market context

The labour market in China comprises two parts: the urban labour market and the rural labour market. This section focuses on the urban labour market, which consists of less than 40% of the total employment of the country. Manufacturing is by far the largest sector in this market, measured by employment figures. This is followed by education (mostly state-owned), government organisations and construction. By 2011, foreign-funded enterprises and enterprises receiving funding from Hong Kong, Macao and Taiwan employed less than 6% of the total workforce in urban areas (National Bureau of Statistics of China, 2012). As noted earlier, full-time employment is the norm and women constitute some 37% of the urban workforce.

Workers in the urban labour market include both those who hold urban household registration status (hukou) and those who hold rural household registration status. It is believed that there are over 262 million rural migrant workers engaged in urban employment (China Labour Bulletin, 2013). The vast majority of the rural migrant workers have an informal employment status, even though they have been working in an urban area or doing the same job for many years on a full-time basis. Inferior employment terms and conditions, measured by job security, pay level and working conditions, is a distinctive feature for this category of workers.

The unemployment rate has been relatively low in China, holding at about 4%–5%. However, it is believed that this official figure is an under-estimation, which does not capture under-employment and unemployment in rural areas. The size of the black economy is also unknown. Unemployment benefits are only available to those who have contributed to their social security fund, which is the case for only a relatively small proportion of workers and their employers. In fact, employers’ evasion of social security contributions for their employees has been a major source of tension in labour relations and a challenge to the social policy and administration of the state.

Legal and administrative context

The labour regulation framework of China emerged in the mid-1990s. This framework consists of a series of labour legislation and administrative regulations at the central and local level (Chen, 2011; Taylor et al, 2003). A number of labour laws and regulations have been implemented by the government since the 1980s, including the landmark Labour Law of China (enacted in 1995). In 2007, the government stepped up its legislative activities and passed three major employment-related laws to take effect from 2008. They are: the Labour Contract Law, amended in 2013 (see Cooney et al, 2007 and Cooke, 2011a, for
more detailed discussion of the implementation of these laws); the Employment Promotion Law; and the
Labour Disputes Mediation and Arbitration Law. The passing of these laws signals the government’s
renewed and strengthened determination to provide extended rights protection for workers against the
rising level of labour disputes and an increasingly confrontational industrial relations climate in the
private sector. Employees are afforded greater power to seek justice through the legal channel when these
laws are violated by employers. In 2011, the Social Security Law was passed. Together, this law and the
Labour Contract Law provide a more systematic legal system of social security provision for workers. In
addition, the Trade Union Law (1950, 1992, amended 2001) sets out the roles and responsibilities of the
trade unions, while other labour laws also provide some form of stipulation on the role of the unions.
In addition to these national laws, which are often enacted with additional details at local level, a number
of administrative regulations have been issued by successive governments. These include, for example,
the Labour Market Wage Rate Guideline (1999), the Regulation on Labour Market Management (2000,
now superseded by the Employment Promotion Law), the Special Regulation on Minimum Wage (2004),
These labour laws and regulations provide a legal framework within which the employment relationship
is governed and the labour market is regulated in principle. The primary objective of their implementation
is to achieve a more efficient and equitable labour market. While the labour standards established by the
series of labour laws and regulations of China are not much inferior to those in developed countries, their
effective enforcement remains problematic.
Broadly speaking, the administrative hierarchy of China comprises the central government; provincial,
autonomous municipal government; municipal government; township government; and village
government. There are a total of 27 provinces and 4 municipalities in mainland China. In addition to these
provinces and municipalities, China also has two special administrative regions: Hong Kong and Macao,
which have their own laws and administrative structures. A unique feature of the relevant Chinese laws
and regulations is that the central government provides the broad framework. It is up to the local
governments to devise their own regulations, based on national models, to suit local contexts. This
flexibility is needed in a vast country like China with substantial economic disparities across regions.
However, the decentralisation of interpretation and enforcement also creates opportunities for
implementation slippage, as the power and determination of local government officials and labour
authorities may be circumvented by the competing priority of economic development. Some of them may
even be co-opted by employers. There is often confusion in the implementation of the centrally
promulgated but locally designed and substantiated laws, and the supplementary administrative policy
regulations. It is not unusual for contradictions to arise between laws and regulations.
To date, China has ratified 25 International Labour Organization (ILO) conventions. These include 4
fundamental conventions, 2 governance conventions (priority) and 19 technical conventions. Of the 25
conventions ratified, 22 are in force, and 3 have been denounced (see the table below). The principles of
the conventions in force are incorporated in various labour and industrial relations laws.

<table>
<thead>
<tr>
<th>No.</th>
<th>Conventions</th>
<th>Date</th>
<th>Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td><strong>C100</strong> - Equal Remuneration Convention, 1951 (No. 100)</td>
<td>02 Nov 1990</td>
<td>In force</td>
</tr>
<tr>
<td>2.</td>
<td><strong>C111</strong> - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)</td>
<td>12 Jan 2006</td>
<td>In force</td>
</tr>
<tr>
<td>3.</td>
<td><strong>C138</strong> - Minimum Age Convention, 1973 (No. 138); minimum age specified: 16 years</td>
<td>28 Apr 1999</td>
<td>In force</td>
</tr>
<tr>
<td>4.</td>
<td><strong>C182</strong> - Worst Forms of Child Labour Convention, 1999 (No. 182)</td>
<td>08 Aug 2002</td>
<td>In force</td>
</tr>
<tr>
<td>No.</td>
<td>Conventions</td>
<td>Date</td>
<td>Status</td>
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<tr>
<td>5.</td>
<td>C122 - Employment Policy Convention, 1964 (No. 122)</td>
<td>17 Dec 1997</td>
<td>In force</td>
</tr>
<tr>
<td>6.</td>
<td>C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)</td>
<td>02 Nov 1990</td>
<td>In force</td>
</tr>
<tr>
<td>7.</td>
<td>C007 - Minimum Age (Sea) Convention, 1920 (No. 7)</td>
<td>02 Dec 1936</td>
<td>Not in force</td>
</tr>
<tr>
<td>8.</td>
<td>C011 - Right of Association (Agriculture) Convention, 1921 (No. 11)</td>
<td>27 Apr 1934</td>
<td>In force</td>
</tr>
<tr>
<td>9.</td>
<td>C014 - Weekly Rest (Industry) Convention, 1921 (No. 14)</td>
<td>17 May 1934</td>
<td>In force</td>
</tr>
<tr>
<td>10.</td>
<td>C015 - Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15)</td>
<td>02 Dec 1936</td>
<td>Not in force</td>
</tr>
<tr>
<td>11.</td>
<td>C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)</td>
<td>02 Dec 1936</td>
<td>In force</td>
</tr>
<tr>
<td>12.</td>
<td>C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)</td>
<td>27 Apr 1934</td>
<td>In force</td>
</tr>
<tr>
<td>13.</td>
<td>C022 - Seamen’s Articles of Agreement Convention, 1926 (No. 22)</td>
<td>02 Dec 1936</td>
<td>In force</td>
</tr>
<tr>
<td>14.</td>
<td>C023 - Repatriation of Seamen Convention, 1926 (No. 23)</td>
<td>02 Dec 1936</td>
<td>In force</td>
</tr>
<tr>
<td>15.</td>
<td>C026 - Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)</td>
<td>05 May 1930</td>
<td>In force</td>
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<tr>
<td>16.</td>
<td>C027 - Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27)</td>
<td>24 Jun 1931</td>
<td>In force</td>
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<tr>
<td>17.</td>
<td>C032 - Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32)</td>
<td>30 Nov 1935</td>
<td>In force</td>
</tr>
<tr>
<td>18.</td>
<td>C045 - Underground Work (Women) Convention, 1935 (No. 45)</td>
<td>02 Dec 1936</td>
<td>In force</td>
</tr>
<tr>
<td>19.</td>
<td>C059 - Minimum Age (Industry) Convention (Revised), 1937 (No. 59)</td>
<td>21 Feb 1940</td>
<td>Not in force</td>
</tr>
<tr>
<td>20.</td>
<td>C080 - Final Articles Revision Convention, 1946 (No. 80)</td>
<td>04 Aug 1947</td>
<td>In force</td>
</tr>
<tr>
<td>23.</td>
<td>C159 - Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)</td>
<td>02 Feb 1988</td>
<td>In force</td>
</tr>
<tr>
<td>24.</td>
<td>C167 - Safety and Health in Construction Convention, 1988 (No. 167)</td>
<td>07 Mar 2002</td>
<td>In force</td>
</tr>
<tr>
<td>25.</td>
<td>C170 - Chemicals Convention, 1990 (No. 170)</td>
<td>11 Jan 1995</td>
<td>In force</td>
</tr>
</tbody>
</table>


**Industrial relations context**

The development of the labour market in socialist China can be divided into three periods. During the first period, the labour market was highly regulated or, more precisely, controlled through administrative
policy; this was during the state-planned economy period. Labour mobility was highly restricted and monitored by the *hukou* system – a household registration system where individuals are registered with the local authority regarding where they were born and where they live. The population was divided by two residential statuses: urban and rural. Rural residents were not allowed to enter urban areas for employment.

This restriction was gradually removed during the deregulating period that followed, from the 1980s to the early 2000s, when millions of farmers migrated to urban areas for employment and millions of workers in state-owned enterprises were laid off and forced to seek re-employment in the labour market for the first time. By 2006, 150 million rural migrant workers were working in urban areas, making up 58% of workers in the industrial sector and 52% in the service sector (State Council, 2006). This number is believed to have increased to 262 million by 2013 (China Labour Bulletin, 2013).

The enactment of three major employment-related laws in 2008 marked the beginning of the third period, in which the government seeks to re-regulate the labour market, through legislative intervention, in order to provide greater labour rights’ protection to workers, particularly those outside the state sector. Dealing with the transformation of the economy and the labour market has been one of the most challenging tasks facing the Chinese government. Industrial relations have been developed within this broader context of economic and labour market transformation.

**Main actors**

**Public authorities**

Governments of all levels, and the labour authorities and other law enforcement departments within these governments, are responsible for law enforcement. For example, local labour authorities are tasked with monitoring employers’ compliance of labour laws and regulations through on-site inspections and other mechanisms. They are also involved in the mediation and arbitration of labour disputes. The People’s Court at all levels deals with the litigation of labour disputes. Constitutionally, the court system exercises its judicial power independently. However, the constitution also specifies that the People’s Court functions under the leadership of the Communist Party of China.

**Trade unions**

Only one trade union is officially recognised by the Chinese government – the All-China Federation of Trade Unions (ACFTU). It operates under the leadership of the CCP. The tie between the union and the Communist Party dates back to the 1920s (the union was founded on 1 May 1925), when grassroots union organisations served as party member recruitment bases and provided vital support to the Communist Party by mobilising workers.

Union membership is voluntary. However, once a union is recognised in a workplace, employees are expected, and sometimes coerced, to join. Therefore, in unionised workplaces, the union membership level is high at around 95%, but it has no impact on workers’ bargaining power. By the end of 2011, there were 2.32 million grassroots union organisations in China, with 260 million union members and nearly one million union full-time union officials (National Bureau of Statics of China, 2012).

The roles and responsibilities of the unions are set out in a number of laws, namely the Trade Union Law, the Labour Law, and the Labour Contract Law. According to the Trade Union Law, Article 6:

> the basic function and duty of the trade unions is to safeguard the legal rights and interests of the employees. While upholding the overall rights and interests of the whole nation, the Trade Union Law provides that trade unions should, at the same time, represent and safeguard the rights and interests of employees.
Article 7 further stipulates that the:

*trade union shall mobilise and organise the employees to participate in the economic development actively, and to complete the production and work assignments conscientiously, educate the employees to improve their ideological thoughts and ethics, technological and professional, scientific and cultural qualities, and build an employee team with ideals, ethics, education and discipline.*

In reality, the most important function of the ACFTU at grassroots level is to maintain social stability. Union officials are increasingly caught between the state model and the aggrieved worker constituents (Chen, 2003; Cooke, 2011b; Howell, 2008). This means that they may have to perform a policing role on occasion. Another function of the grassroots ACFTU organisation, particularly in the state sector, is its welfare role, including, for example, organising social activities and visiting employees who are sick or experiencing financial hardship.

**Workplace representation**

In China, the formal ‘representative function’ of the unions, according to the Labour Law, is supplemented by the trade-union-guided Staff and Workers’ Representatives Congress (hereafter referred to as the Workers’ Congress) within enterprises. It is an official mechanism for workers’ participation, through the workers’ representatives, in enterprise decision-making and management. Initially introduced in the late 1940s, the Workers’ Congress has been given an enhanced role since the 1980s as a result of economic reform. But these forums are of little use in advancing workers’ rights (see Zhu and Chan, 2005). An increasing number of private firms have been setting up Workers’ Congress forums in recent years as evidence of law compliance, although this rarely leads to the recognition of a trade union. In practice, these Workers’ Congress forums serve as an extended human resources management function instead of playing an industrial democracy role on behalf of the workers (Cooke, 2012).

**Employers’ organisations**

Unlike developed economies where employers’ associations provide a range of services to their member employers and form pressure groups to influence government policy and legislation, employer associations in China are generally much less well-established and independent. Similar to the ACFTU, the China Enterprise Confederation (CEC)/China Enterprise Directors Association (CEDA) is the only official employer association that the state recognises at national level as the sole representative of employers’ interests. CEC was established in 1979 and CEDA was established in 1983. The two non-government organisations merged to become one institution in 1988. As of 2013, CEC/CEDA had 436,000 members from enterprises with different forms of ownership, representing 34 industrial sectors in 30 provinces and municipalities, and 260 industrial cities and regions. Membership is voluntary. CEC/CEDA’s declared mission is, amongst other things, to serve enterprises and entrepreneurs, to promote enterprise reform and development, and to safeguard the legal rights and interests of employers. However, given that CEC/CEDA is under the leadership of the Communist Party, its relationship with the state is essentially an unequal partnership. It often acts on behalf of the state and helps implement government policies. Its subordination to the state means that CEC/CEDA has limited autonomy beyond state-sanctioned activities (see Unger, 2008, on the relationships between associations and the state). Nevertheless, it is important to note that the lobbying power of Chinese employers is rising outside CEC/CEDA. They are able to form pressure groups rapidly to exert pressure on the government at national level if forthcoming regulations and policies are perceived to have a significant negative impact on their business environment, such as was the case in the passing of the Labour Contract Law in 2008. At grassroots level, even small employers are developing an awareness of the need and the ability to
organise to represent their interests (Cooke, 2012). The law is unclear on whether or not CEC/CEDA has the legal right to participate in collective bargaining, considering that the majority of collective bargaining takes place at enterprise level (see below for further discussion). However, the Minimum Wage Law specifies the participation of employer representatives in setting local minimum wage standards.

**Industrial relations characteristics**

**Collective bargaining**

The notion of collective bargaining was first introduced in employment relations in China in the early 1990s, after the Trade Union Law authorised unions at enterprise level to conclude collective contracts with the employer. The term ‘collective consultation’ instead of ‘collective bargaining’ is preferred by the state in defining the official process of employment relations. It is believed that consultation is a more constructive approach than ‘bargaining’, as it conforms to the Chinese culture of non-confrontation and conflict avoidance. Major issues for collective bargaining are signing the collective contract and wage negotiations. In 1994, the Provisions on Collective Contracts was issued by the Ministry of Labour, which provided detailed regulations to support the collective contract provision outlined in the Labour Law passed in 1995. Trade unions have been given the official role of representing workers for consultation with employers. This position of the unions has been reinforced and expanded in the subsequent amended Trade Union Law and the improved Provisions on Collective Contracts (2004), which superseded the 1994 version. According to Article 20 of the Trade Union Law, the role of trade unions is to represent employees in equal negotiations and in signing collective contracts. Matters that can be concluded in a collective contract include remuneration, working time, rest and holidays, occupational safety and health, professional training and insurance and welfare. In addition, local labour authorities are responsible for facilitating and monitoring the consultation process.

The establishment of this tripartite consultation system is believed to be an important mechanism for the government, trade unions and enterprises to strengthen social dialogue and cooperation in coordinating labour relations. Achievements have been made after a decade’s implementation of the system. According to the ACFTU, 754,000 collective contracts had been signed across the country by the end of September 2005, covering 137,800 enterprises and 104 million workers. Signed collective contracts are said to be widening, to cover a range of aspects of labour standards, although wages remain the major issue (Zhang, 2006). ACFTU is also pushing for collective contracts that provide large coverage, such as region-based and industry-wide collective contracts. However, the system of collective contracts in China that has developed since the late 1990s continues to need much improvement (Brown, 2006; Clarke et al, 2004). It has been argued that the collective consultation system does not provide a truly independent framework for regulating employment relations. The majority of collective contracts were model agreements made between the employer and the union without direct involvement of workers or any real negotiation process. Collective bargaining, where it exists, mostly takes place at enterprise level. The government is trying to promote industry-based bargaining or multi-establishment bargaining coverage for firms (often multinational firms) that have operations in various parts of China. But region-wide or nationwide collective contracts may be too broad to reflect local needs and can enable enterprise managers to ignore local union representatives (Cooke, 2011b). The Wal-Mart (China) example is a case in point (China Labour News Translations, 2008).

**Levels of collective bargaining**

Only a small proportion of workers (less than 30%) in China are covered by collective contract agreements. These agreements have little impact on advancing terms and conditions as they are more of an administrative exercise than a legal tool. In principle, the right to collective bargaining is covered by the collective contract agreement. But, in practice, workers’ representatives or unions lack negotiation skills and bargaining power. Collective bargaining mostly takes place at workplace level, often as a
formality, as noted earlier. Collective bargaining at national, regional, sectoral or inter-professional level remains rare, if it occurs at all. In October 2013, labour rights groups and worker activists jointly devised and published a grassroots blueprint for collective bargaining in China referred to as a code of collective bargaining (劳资集体谈判守则). The aim of the 65-article code is twofold: to provide employers and employees with a practical step-by-step guide to collective bargaining; and to provide a possible template for collective bargaining legislation in China in the future.

Main issues in industrial relations

Minimum wage
The Ministry of Human Resources and Social Security set the first Minimum Wage Law of China on 1 March 2004. The Regulations concerning minimum wages in enterprises were prepared ‘to meet the requirements of developing the socialist market economy, to ensure the basic needs of the worker and his family, to help improve workers’ performance and to promote fair competition between enterprises’. For full-time workers, the minimum wage is set as a monthly minimum wage, while for part-time workers, an hourly minimum wage is set. As living standards vary widely across the country, there is no one set minimum wage in China. Instead, provinces, municipalities and autonomous regions formulate their own minimum wage policies and set the minimum wage levels. This is carried out in consultation with local employers, employers’ associations, and trade union representatives and in view of the economic conditions of the area. Each province has several minimum wage standards to reflect differences in the level of economic development and wage income across the provinces. This local flexibility gives rise to wide variations in practice and in wage standards across the country, with some local governments, such as the Shenzhen municipal government, more proactive than others in setting labour standards. In February 2013, the Chinese government passed a plan that mandates a nationwide minimum wage at 40% of average urban-based salaries, to be fully enforced by 2015 (BBC News, 2013).

Pay developments
The total pay package in China consists of three major components: wage, bonuses, and subsidies and benefits. Under the state-planned economic period (1949–1978), the pay system in China was rigid and centralised. The state unilaterally determined the pay scale for the state sector, where nearly 80% of urban workers were employed. The low basic wage was heavily subsidised by all sorts of workplace benefits, including, for example, a workplace canteen, housing support, transport, medical care, education, paid maternity leave, sick pay and pensions. The pay system was heavily influenced by the socialist ideology of redistribution. Egalitarianism was the norm.

The opening up of the economy in the late 1970s has led to some radical changes in the pay system, as a result of the ongoing reform within the state-owned sector since the mid-1980s and the dramatic growth of the private sector since the 1990s. In the state-owned sector, bonuses have become an increasingly substantial part of the total wage income, although egalitarianism remains the norm in redistribution. In the private sector, wage composition is relatively simple. Performance-related pay is the norm, and the provision of work-related social security tends to be limited, and in some cases non-existent. Wage levels are largely determined by the employers, with little scope for bargaining or workers’ involvement. In theory, the state requires employers to set up a collective negotiation system with their employees to negotiate terms and conditions collectively with the assistance of trade unions. In practice, however, only a small proportion of larger firms have done so, and the extent of the effectiveness of this requirement remains questionable (Clarke et al, 2004). Generally speaking, neither the trade union nor the employees have any real input in wage-setting.

Scholars of the gender pay gap in China generally agree that this gap is relatively small compared with that found in other countries (for example, Bishop et al, 2005; Gustafsson and Li, 2000; Nie et al, 2002; Shu and Bian, 2003; Zhang et al, 2008). While these studies, using national panel data, have not been able
to establish a precise gender pay gap, estimates have ranged from 12% to 24% between 1987 and 2004 (for example, Appleton et al, 2005; Zhang et al, 2008). It is believed that marketisation has led to the erosion of the gender equality that was achieved during the state-planned economic period through strong state intervention. In particular, women with lower skill levels have been more adversely affected throughout the period, indicating a stronger ‘sticky floor’ effect (whereby women are trapped in low-paying work with no opportunity for advancement) (Chi and Li, 2008).

**Agreements on working time**

Full-time employment is the norm in China, where weekly working hours and a maximum number of overtime hours per week are statutorily stipulated. The Labour Law specifies that workers work for no more than 8 hours a day and 44 hours a week on average. Data provided by the National Bureau of Statistics of China show that in 2011, the actual number of weekly working hours was 46.2 in urban areas. This was an increase from 44.6 hours in 2008. More specifically, men worked an average of 47 hours per week, whereas women worked 45.2 hours. Four industrial sectors had the highest number of average working hours: accommodation and restaurants (51.5 hours); wholesale and retail; residential services (49.5 hours); and information transfer, software and information services (49.1 hours).

In reality, however, the actual number of hours worked may be far higher than these official records suggest, since unpaid overtime is common, as is paid overtime work that may not be officially recorded for regulatory and financial reasons. In privately owned or foreign-funded manufacturing plants, long working hours are the norm. It is common for workers to work 60–70 hours per week, with only three rest days a month. Long working hours have often been a source of labour discontent, although sometimes it is the workers who demand overtime work in order to boost their income. Working time was an increasingly important aspect of collective negotiation during industrial action in the 2000s in foreign-funded manufacturing plants. The main purpose was to reduce the long working hours and ensure that those working overtime are adequately remunerated in accordance with the relevant labour laws.

**Industrial disputes**

Industrial disputes in China are covered by the Labour Law, Labour Contract Law, and the Labour Disputes Mediation and Arbitration Law. Strikes are neither legal nor illegal in the Chinese legal framework. China’s economic development, since its adoption of the open door policy in the late 1970s, has been accompanied by growing labour unrest. In the 1990s, workers protested against job losses in state-owned enterprises, as well as unlawful practices and exploitation in sweatshop plants (Gallagher, 2005; Lee, 2007). Since the 2000s, workers in China have increasingly been going on strike and taking similar forms of confrontational industrial actions to seek wage increase and enhancement of other terms and conditions that go beyond the minimum or statutory standard (Chen, 2009; China Labour Bulletin, 2012). In other words, they are taking interest-based actions rather than rights-based actions (Cooke, 2013).

Labour disputes in China are categorised by two groups: individual and collective disputes. According to the National Bureau of Statistics of China, in 2008, a total of 693,465 cases were accepted by the tribunal and courts for resolution, involving over 1.2 million workers. Of these, 21,880 were collective cases, involving 502,713 workers. This means that over 41% of the workers involved in disputes were in collective disputes. In 2011, 589,244 cases were accepted for resolution, involving 779,490 workers. Of these, only 6,592 cases were recorded as collective dispute cases, involving 174,785 workers. This suggests that less than 23% of workers in disputes in 2011 were involved in collective cases. However, the sharp decrease in collective dispute cases channelled through the courts should not be taken as an indication of a decrease in collective disputes in the country as a whole. Three main reasons explain this decrease. One is that while the labour courts are playing an active role in resolving individual dispute cases, they are at the same time actively containing workers’ collective actions in the interest of serving the state’s political goals of maintaining social and political stability (Chen and Xu, 2012). A second reason is that independent litigators and trade unions are now playing a role in mediating collective
disputes, although the proportion of cases they deal with remains relatively small. A third reason is the growth in spontaneous (unplanned, unregistered and unauthorised) collective actions, such as wildcat strikes, since the late 2000s. These actions are often resolved via administrative means through the intervention of local governments, or through negotiations between the workers (via their elected representatives) and the employer, sometimes aided by the unions.

The law in China is ambiguous regarding the right to strike. For example, four versions of the constitution of China (1954, amended in 1975, 1978 and 1982) were enacted since the founding of socialist China in 1949. In the 1954 constitution, there was no stipulation on the right to strike. The constitution enacted in 1975 was the first one to have regulations on strikes. The one enacted in 1978 stipulates that ‘citizens of the PRC have freedom of speech, communication, press, assembly, association, parade, demonstration, and strike’. However, the regulation about ‘freedom of strike’ was removed in the 1982 constitution. Instead, the government takes a pragmatic approach to dealing with strikes and protests, which it does on a case-by-case basis. Strikes against a state employer may be heavily suppressed, while the state may play a more supportive role in the resolution of those against foreign-funded companies.

A labour dispute reconciliation system was established in socialist China in the early 1950s. After a period of disruption during the Cultural Revolution (1966–1976), the system was resumed in 1987, with the promulgation of the ‘temporary regulation for labour disputes reconciliation in state-owned enterprises’. This temporary regulation was amended in 1993 and implemented as the ‘labour disputes reconciliation regulation’. The regulation was later incorporated into the Labour Law that forms the legal basis for settling labour disputes. The Labour Law officially brought all labour disputes in all firms under the jurisdiction of the formal labour resolution system.

The labour dispute resolution system in China consists of three stages: mediation, arbitration and litigation (Taylor et al, 2003). Mediation is the initial procedure that usually takes place in the enterprise, whereby the labour dispute is dealt with through a mediation committee consisting of representatives of the employer, the employees and the trade union or a third party who is acceptable to both parties in dispute. Resolution to the dispute through consultation and voluntary mediation is the approach encouraged by the state. Any agreements made at this stage and beyond are legally binding. If this approach fails, then one of the two parties in dispute can apply to the labour dispute arbitration committee for resolution. An arbitration committee will then be formed to arbitrate the dispute. A dispute case can also be submitted directly to the arbitration committee without going through the initial stage of mediation at the enterprise level, if it is felt that mediation is unlikely to settle the dispute. A dispute case, however, will not be accepted for lawsuit until after it has been through the arbitration procedure. Cases resolved by the arbitration committees are classified by means of mediation, arbitration or others. If either party is not satisfied with the arbitration ruling, then the case can be appealed at the local people’s court. At each stage, emphasis is on resolving the conflict through negotiation, mutual understanding and voluntary agreement between the parties directly involved.

A number of characteristics emerged during the rise in labour disputes, which began after the adoption of the Labour Law in 1995 and peaked in 2009 following the enactment of the Labour Contract Law and the Labour Disputes Mediation and Arbitration Law in 2008. First, the number of labour disputes accepted by the arbitration committees at all levels has been rising each year. Second, wages, social insurance, alteration or termination of employment contracts, and work injury or labour protection have been the major causes of disputes. Third, the nature of the labour disputes appears to be increasingly confrontational and antagonistic. There has been a continuous rise in the proportion of cases settled by arbitration and appeals, and a continuous decrease in resolution by mediation. Fourth, the proportion of cases won by workers appears to be significantly lower than the proportion of cases submitted by them. Fifth, businesses funded by foreign-invested enterprises and Hong Kong, Macao and Taiwan have had the highest share of labour disputes, both in relation to their share of workers and the rate these disputes rose during the 1990s (Cooke, 2008; 2012).

In addition to the official labour resolution system, workers rely on other channels to voice their grievances and seek justice, such as letters and petitions, workplace industrial actions and street protests,
which are often spontaneous. It is worth noting that official statistics on labour disputes, legal or illegal, only reveal a partial picture. The precise number of labour disputes, industrial actions and street protests, and the total number of those involved, may not have been recorded.

**Tripartite concertation**

China is led by the Communist Party. All state institutions and national NGOs in the field of business and employment, such as employers’ associations and trade unions, are led by the Communist Party. In designing new laws and regulations, the legislative authority goes through a consultation process with employers’ associations and trade unions. Employers and workers also have indirect input in passing the laws through their representatives in the National People’s Congress, which is the highest organ of state power in China and is responsible for passing laws.

**Workers’ rights**

As discussed earlier, workers in China are protected, in principle, by a number of laws and regulations (see below for a list of major laws and regulations). Workers have the right to join a trade union on a voluntary basis if a union organisation is set up at enterprise level. They are also entitled to a range of social security provisions: pension, sick pay, maternity leave, work-related injury compensation, unemployment benefits and redundancy pay. The various labour laws, especially the Labour Contract Law, provide basic stipulations regarding key elements in the individual employment contract, including for example, probation, special contracts, suspension, working hours, paid leave, entitlements regarding maternity, equality and pay. In relation to equal opportunities, the law mandates that women are not to be laid off during pregnancy or maternity leave and that there should be equal pay for equal work. Employers are required to contribute to the social security funds of their employees regarding pension, medical insurance, work-related injury insurance, unemployment insurance, maternity insurance and housing. These social security entitlements are provided through employment, but not all employers are compliant. Many use agency workers to bypass these legal constraints to cut costs, as agency workers have less social security protection entitlement in principle and in practice. Therefore, an important element in the enforcement of labour laws by the state is to ensure the employer signs an employment contract with its employees to formally establish an employment relationship. The amendment of the Labour Contract Law in 2013 was aimed at providing more extensive protection for agency workers by tightening the regulations of employment agency firms through more specific stipulations on their responsibilities and operational restrictions.

Private social security schemes are under-developed in China, although a small but increasing number of firms are setting up company-based pension funds for their employees to top up the normal pension scheme. This initiative was promoted by the state.

**Dismissal and termination procedures**

Chapter IV of the Labour Contract Law contains detailed clauses (Articles 36–50) on the discharge and termination of labour contracts between the employer and individual workers. The law is ambiguous regarding collective dismissals, for example, in organisational restructuring.

**Coverage of fundamental rights**

As noted earlier, labour rights provision in China is becoming more extensive and is on par with some developed countries in terms of its level and scope of coverage.

The fundamental rights presented here mainly involve the right to social security entitlement, the right to freedom of association and the right to equality. As noted earlier, while the government is making an effort to improve the social security provision for its workers through the enactment and enforcement of the Social Security Law, the coverage of the workforce remains patchy both in terms of the proportion of workers covered and the range of benefits enjoyed. In spite of the stipulation that six types of social
security entitlements be provided to workers, many employers only contribute to some of them. Work-related injury compensation, pension and sick pay are the most common ones.

**Laws relevant to fundamental rights**
The following laws are relevant to fundamental rights. Please note the cited years refer to the year in which each law was enacted.

- Trade Union Law (1950, 1992, amended 2001);
- Labour Law of China, the first major piece of employment law of China (1995);
- Labour Contract Law (2008, amended 2013);
- Promotion of Employment Law (2008);
- Labour Disputes Mediation and Arbitration Law (2008);

**Administrative regulations**
Earlier relevant administrative regulations are:

- the enterprise minimum wage regulation (1993);
- the temporary regulation for labour disputes reconciliation in state-owned enterprises (1987), which was superseded by the labour disputes reconciliation regulation (1993), which was later incorporated into the Labour Law;

In 2000, the Ministry of Labour and Social Security issued the ‘collective wage consultation trial implementation measures’. Following this, in 2004, the Ministry issued the Provisions on Collective Contracts, which regulates the acts of conducting collective negotiations and the signing of collective contracts. In the same year, the Special Regulation on Minimum Wage superseded the 1993 regulation. Finally, 2008 saw the introduction of the Regulations on Employment Services and Management.

In principle, the above laws and regulations are applicable to workers with an employment contract: those who have a formal employment relationship with their employer, including those employed in ‘self-employed businesses’, which are defined as those privately owned businesses that employ no more than eight workers in addition to the owner manager. In practice, the enforcement of labour laws is often elastic. Despite the central government’s attempt to enforce the laws, employers’ non-compliance with labour laws and regulations is quite common.

**Maternity**
Relevant laws for maternity leave are the Labour Law, the Labour Contract Law, the Social Security Law and the ‘special regulation on female workers’ labour protection (draft)’, an administrative regulation issued by the State Council in 2012. According to these laws and the special regulation, maternity pay and the medical cost of childbirth should be covered for workers whose employers have contributed to the maternity social security fund. Workers whose employers have not made a social security contribution will have to bear the cost themselves. Workers are not required to contribute to the maternity social security fund to be entitled to the benefit. However, enforcement of workers’ entitlement is not stringent. The 2012 regulation specifies maternity leave entitlement to be 98 days in the case of a normal birth of one child; an additional 15 days is to be awarded for difficult births and every additional child in the same birth.

**Sick leave**
Relevant laws for sick leave are the Labour Law, the Labour Contract Law and the Social Security Law.
Similar to maternity leave and pay, sick leave and pay are part of the social security provision specified in the legislation. However, enforcement is not stringent, and entitlement relates to the length and status of employment, as well as contributions to the social security premium by the employer and the worker. The laws do not specify a pay rate, which is often proportional to the normal wage payment of the sick employee, contingent upon their length of employment with the same employer. Instead, this proportion is determined by the employer, giving rise to variations of practices.

Health and safety

Chapter VI (occupational safety and health) of the Labour Law stipulates employers’ responsibilities in this area. Several articles of the Labour Contract Law also outline employers’ responsibilities and workers’ rights on health and safety. The Social Security Law stipulates employees’ rights to work-related injury insurance and compensation. However, health and safety standards remain relatively low in certain industries in China, especially in privately owned manufacturing plants, mines and construction sites.

Discrimination

There is no clear definition of what constitutes discrimination in the labour laws in China. The term ‘discrimination’ is used in the Employment Promotion Law. In particular, Chapter 1, Article 3 stipulates that ‘No worker seeking employment shall suffer discrimination on the grounds of ethnicity, race, gender or religious belief’. Chapter III of the Employment Promotion Law, ‘Fair Employment’, contains seven articles (Articles 25–31), which prohibit discrimination on the grounds of gender, race, disability, and rural origins. Chapter VIII, Article 62 of the same law further stipulates that ‘In the event of any employment discrimination in violation of the provisions of this Law, the relevant worker(s) shall be entitled to initiate legal proceedings in the People’s Court’. However, the law falls short in providing details on how individuals can seek justice should they feel discriminated against by companies recruiting workers. The term ‘discrimination’ is not stressed in the Labour Law or the Labour Contract Law. However, there are articles in both laws that stipulate the right to equality. For example, gender equality is mentioned in the Labour Law. Equal pay for equal work is emphasised in several articles of the Labour Contract Law. It is important to note that the Labour Contract Law covers a broader category of workers in the equality context – addressing gender, race, disability and residential status – than the Labour Law, which mentions gender only. This indicates that Chinese lawmakers are taking an increasingly inclusive approach towards legislating equality.

Right to join trade unions

Legal provision regarding the right to join trade unions is mostly covered by the Trade Union Law. Workers are entitled to join a trade union. However, union membership is by no means an indication of union strength, as most grassroots union representatives lack competence, resources and bargaining power. Many union chairmen at enterprise level are appointed by the management and often carry dual functions of managers and union chairmen even though the law stipulates against such a combined appointment.

Right to access vocational training

The legal provision regarding this issue is set out in the Employment Promotion Law. In particular, Chapter V (Articles 44–51) outlines the responsibilities of local government and employers regarding occupational education and training.

Right to access unemployment benefits

The legal provisions regarding entitlement to employment benefits are set out in the Labour Law, the Labour Contract Law and the Social Security Law. According to the Social Security Law, in order to
qualify for unemployment benefits, both the unemployed person and their ex-employer must have contributed to the social security premium for one full year. A person is entitled to a maximum of 12 months unemployment benefits if they, along with their ex-employer, have contributed to the social security premium for at least 12 months but less than 5ive years. For those who have contributed for 5ive years but less than 10 years, the unemployment benefit entitlement is for a maximum of 18 months. For those who have contributed for more than 10 years, the entitlement is for a maximum of 24 months. The right to unemployment benefits exists in principle, but only a very small proportion of the country’s workforce can actually benefit, and for a very limited period of time. This is in large part due to the limited social security contributions made by both employers and workers.

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