

Chinese commercial law assignment



Congress Executive Summary: China has been one of the favourite places for the Foreign Investment for the last 40 years. Many Foreign Investors have made Equity Joint Ventures in China to expand their business. From late 1970s, China granted for the foreign Investments to come and to operate in China. However, in absence of the Foreign Investments Protection Legislations, China approved the Foreign Investments Legislations in China.

In this study, we will discuss the brief details of the Chinese Market for the Foreign Investments, detail study of the Chinese Labour Law, Workers' Rights in China, Foreign Investments in China, Protection of Foreign Investments, Obligations of Foreign Investment Enterprises to Chinese Workers, Impact of Chinese Labour Law on the Foreign Investments, and Current situations of Foreign Investments in China. The main objective of this study is to understand the situation of Foreign Investments in China, its protection in accordance with the labour law of China, and which are the main reasons to attract the Foreign Investments in China.

How this law impacts on the Foreign Investments and how does it protect the interest of the Foreign Investors to invest more in China. Introduction: China released to trade with other countries to bring in the Foreign Investment in late 1970s. To take the opportunity, many companies entered Chinese market through the equity joint ventures with the other Chinese companies. These all companies were allowed to keep short term investments only except these investments were protected by the law regulated in China.

Chinese government was willing to protect the Foreign Investments so the Government of China also allowed the Foreign Investments legislations in

China. After the approval of the law, Ministry of Foreign Trade and Economic Cooperation (MOFTEC) granted about 22, 245 Foreign Investments in China. This figure increased to about 20% year on year which brought in the about US\$34 billion (approx.) and contractual US\$60 billion (approx.) in 2003 by the way of Foreign Direct Investments (FDI).

China granted 4, 46, 441 Foreign Investments by July 2003 with the total volume of US\$482 billion (approx.) and contractual US\$888 billion (approx.). [1] This figure was more than 30, 000 in Shanghai alone till June 2003 aggregating total US\$70 billion (approx). [2] The figures of Ministry of Commerce of PRC have reached to 22, 772 form January to July 2006 for the Foreign Investments in China which was 7. 63% lower comparing to the last years' figures. Whereas the total volume of the investments was 1. 16% lower comparing to the last year of US\$33 billion (approx. Before the Foreign Investments in China, Government had provided the permanent employment referring it as “ Iron Rice Bowl” to Chinese labour but after the economic reconstruction, the labour and employment system was destroyed. This system was not well-organized as in this system; the wages and the promotion of the worker were not depended on their performance. This system was not accepted by the Foreign Investors and they introduced the Labour Contract System in which the wages and the Promotion were provided as per the performance of the employee.

Many State Owned Enterprises (SOEs) also adopted this system, so as to amalgamate the performance of the employees. The labour situation in China for the Foreign Investment Enterprises (FIE) improved a lot over the period. Though the labour rate in China is very low comparing to the other

countries. However, this is maintained by the FIEs as per the higher production and performance of the employee. [3] Along with the Chinese Economy Development, FDI has also changed the labour system in China. The FIEs have also played a very important role in wage raise for employees.

FIEs pay the higher wages than local firms or the SOEs as these companies are keener to appoint the skilled and the educated employees. [4] Trade Union Law of People's Republic of China: This law was adopted in the fifth session of the Seventh National People's Congress (NPC) on 3 April 1992 and was modified by the Trade Union Law of People's Republic of China on 27 October 2001. The various articles of this law represent the importance of this law. The main issue of this study refers to the balance between economic development of the country and the security of the labour rights.

The Chinese economy has been growing rapidly since 1990s for the regional inequality and coastal inequality. Employees are contracted by the FIEs in which they mention the various issues like workers' duties, power, working situations etc. These contracts are obeyed by rules and laws of labour management. According to Article 6 of Equity Joint Venture Law, the partners of the joint venture must specify the issues of the employees' employment and dismissal according to the law. The Labour Law:

The Labour Contract Law (LCL) is complied by Labour Contract and Collective Contracts. This law deals with various articles of the law which includes Article 16 to 53 under this law. Article 16 states that a labour contract institutes the association between employee and employer that classifies the privileges and responsibilities of both the parties. According to Article 18, the

Labour Contracts can be void if (i) they breach the rules and regulations, (ii) if they are means of fraud and threats.

The Labour Contract as per Article 19 includes the various sections like term of contract, work assignment, labour wages, protection and working situations of labour, labour regulations, termination contract conditions, and responsibility of breach of the contract. A labour contract described in Article 26 and Article 27 cannot be cancelled till: (i) The employees' team has partially or totally lost working capability because of occupational diseases or injuries, (ii) the employees are treated for the injuries or diseases, (iii) as a female employee in time span of pregnancy, puerperal, or breast feeding or (iv) Contract is instructed by laws or rules and regulations. Article 33 of Labour Law mentions the collective contract for the staff and worker as a single unit in relation with wages, working time, safety and health, insurance and welfare and the leave allotted to the labour. This contract is concluded by the trade union for the labour unit. In absence of such unit, this contract is concluded by the representative of the labour unit.

Ministry of Labour and Social Security approved the Provisions on Collective Contract on 20 January 2004 which came into effect on 1 May 2004. Article 3 of Collective Contract refers to the written contract between employees and employer for the wages, working hours, security, insurance and welfare, insurance in accordance with specification of rules and regulations. Article 5 describes the principles to pursue the rules and regulations, discussion between employer and employees, cooperation between both the teams for the working conditions, and provision for the legal rights to the employees.

Labour Security Administration (LSA) according to Article 49 provides the resolution if any dispute is raised between employer team and the labour team with a written application to LSA. The Labour Contract Law: The Labour Contract Law covers the various aspects of the contract like General standards, Conclusions, presentation and modifications in contract, suspension and termination of the agreement, administration and assessment of the contract, legal responsibility, various Special Provisions like Collective Contract, Labour dispatch and part time employment and other supplementary Provisions.

Article 1 of Labour Law refers to the objective of ideal Labour System, determining the privileges and responsibilities of both the parties, security of legal rights of employees, and building up pleasant relationship. Article 2 of Labour Contract Law applies to institution of relationship between employee team and employer team. This applies within state of PRC for the conclusion, performance, modifications, and termination of the contract. Article 3 describes the principles of law, justice, parity, and intervention of the contract. The contract is officially bound as per the law for its conclusion of employer and employee.

The labour contract can be completed for organization of labour relationship as referred to in Article 10. Labour Relationship is concluded within a month from the date of the employment. The Labour relationship shall be considered as instituted on the commencement date of the employment. As per the Collective Contract Article 11, if there is no written agreement between employee team and employer team for the labour wage, the wages

agreed will be paid otherwise the new wage system will be recruited as per the performance of the employees.

As per the report of China, the Labour law of China will cover the better heights of team work and better control as per the new law and it is the most significant that it provides the agreements in all the sectors. From March 2006 to March 2007, the Foreign Investment in China rose to 18.4 percent with US companies which were in race with European Companies for profitable deals. [5] Recruitment of Labour: Any changes in labour contract must be approved to the authority and employees' department. The employees can be recruited by Chinese Management or the Chinese Partner itself.

Foreign Investors employ the labours themselves. The companies publish the campaigns for the qualified applicants. However Labour Management forbids the Foreign Investors to hire the employees those are working with the Government Organizations and SOEs. Because of this many Australian Companies also protested against such rule as they were unable to get the qualified employees in Special Economic Zone (SEZ). Usually, Foreign Investors recruits local people for the various departments of sales, accounting, production or manufacturing.

However, Chinese Government doesn't allow employing any child below age 16 as referred to in Article 16 of LCL as the Government refers to the compulsory education till age of 16. If employers recruit the children below age 16, the Labour Department either ask to make corrections soon or can also enforce the fine or in serious situations, the companies can also be

forced to cancel their business license according to Article 94. Article 8 of LCL states the protection of the employee containing the features like the working situations, working place, obstacles in the working, safety measures etc.

The employer cannot deny providing identity proof to employees and employer can also not ask for the assurance from the employees according to Article 9. In LCL, various Administrative Laws apply to the contract. As referred to in Article 1, if a foreigner employs, any employee in China, (i) he or she should be healthy and above 18 years, (ii) he or she must have expertise knowledge or experience, (iii) he or she should not have any criminal record, (iv) he or she should be verified as an employer team, (v) he or she should have the valid passport or International Travel Certificate (ITC).

And when a labourer recruits the foreigner according to Article 3, an application form should be filled containing all the required information of an employee and sent to the labour authority along with the various documents like Resume of the employee, Purpose statement for the employment, Qualification certificate, Experience Certificate, Health Certificate, and other documents whenever required to the company as described in LCL. Working Terms of the Employees:

As referred to in Article 33, the labours in China must be complied to the rules of working period, rest to the employees and their safety and health matter along with the holidays to be given. According to Article 38, the Labour Law provides one day off at least a week to staff and workers. Article 40 discusses the various festival holidays to be given to the labourers such

as New Year's Day, Spring Festival, International Labour Day, National Day, and other holidays provided by rules & regulations.

The workers had the working terms as per six days a week and eight hours a day before 1994 which were reduced to five and half day a week after 1994 and after 1 May 1995 it again reduced to five days a week. However, if a company want an employee to work overtime, the company must be approved by the Labour Management for the employees of the company.

According to LCL, the worker who has worked more than half a year or longer is sanctioned to fifteen days leaves a year and the workers who have worked less than six months are sanctioned the leaves of five days a year.

However, all the employees are sanctioned for the sickness leaves with more than 2 days of sickness with doctor's certificate. To safeguard the health of the employees, LCL has enforced the various compulsions. According to Article 52, the employer must provide the occupational health and safety measures for the prevention against the accidents and other risks and also teach the employees how to use the equipments of safety. The facilities of safety must match the regulations and standards provided by the Government as referred too in Article 53.

Article 54 of LCL states that the employees must be examined as per the health requirements of the occupation for the safety purpose and the risk involved in the work. According to Article 55, the employees engaged in the exceptional operations, must be given the training and qualified to the responsibilities provided for such operations. As described in Article 56, the employers should not bind any worker for the command which is not to be

followed by him or her as per the safety rules of LCL. If an employer forces to do so, the employees have right refusing that work to complete.

Responsibilities of Foreign Investors: All the Foreign Companies are responsible to assure the rights of the workers. According to Article 3 of LCL, all the workers are given the equal rights for the choice of job, wages for the chosen job, rest and holidays, health and safety against the risk of the job, insurance and welfare of the employees. Article 4 of the law refers that employers should institute the proper rules and regulations ensuring the rights of employees. The companies also need to train all the local employees for the operation they need to perform.

In many SOEs this problem is quite general and because of this many Chinese workers also experienced the accidents because of the shortage of the safety equipments. In such cases, FIEs are regulated for providing the higher safety for the female workers. Employers should also give the equal opportunities to the female workers referred to in Article 13. The cost for appointing the employees in FIEs is higher than other companies in China. Foreign Investors also asked to contribute in insurance and welfare of the employees.

Companies are asked to pay higher wages than the normal when (i) they are asked to work overtime, companies has to pay more than 150 percent of the wage, (ii) the companies have to pay not less than 200 percent on off days, (iii) Companies need to pay not less than 300 percent than normal wages if the work is arranged on statutory holidays as referred to in Article 44. The allocation of remuneration should be made as per the work of the employee

and the wages should be regularly increased as per the economic development as described in Article 46. The wages of the employees varies from the companies to companies.

However the wages should not be lower than the standard wages to be paid as per Labour Bureau. The regulation for minimum wages was passed on 20 January 2004 by Ministry of Labour and Social Security (MLSS) which came into effect on 1 March 2004. Dissolution, Resignation or Retirement Laws: Alike the appointments of the employees, the dismissal, retirement or the resignation are also described in the Labour Contract Law. These laws deal with the dissolution or the termination of the labour contract. A labourer must give a notice before 30 days when he wants the dissolution of the contract as referred to in Article 37.

A labourer can dissolve the contract in the various conditions as follows: i) If the labourer fails to give the protection to the employees. ii) The company fails to pay the wages of the employees. iii) The FIEs fail to pay the premiums for the security of the workers. iv) If employer abuses to follow the rules and regulations of rights and obligations of the worker as made in LCL. The employers can also dissolve the contract in the following conditions as described in Article 39: i) If the company is unable to meet the conditions of employees during audits. ii) If the labourer breaks the rules and regulations of the contract. iii) If the labourer makes huge damages to orders of the contract and causes corrupt dealings. iv) If the labourer is found to have the criminal records later the contract is made. According to Article 26, the employing unit can also dissolve the contract under the conditions when: i) The labourer is not capable to begin the work for which the contract is

made. ii) The labourer remains unqualified for the operations even after the training. iii) The higher modifications in the contract that leads the contract into the conclusion of the contract.

The system of dismissal and resignation was started in July 1995. Comparing to the Government job, it is quite easy to discharge a worker from the FIEs following the rules of LCL. However, the employer must give the advance notice to the employee before a month looking towards the conditions. The procedure of resignation is quite simple compare to the dismissal by FIEs. This is because not to free the employees whenever the companies need to. The resignation is also required to be submitted to the FIEs one month earlier of the resignation.

The retirement age in the Government Organizations and SOEs for males is 60 and for females it is 50. However, in FIEs, these workers can again apply for the job as there is no legal retirement age in FIEs or other private companies. Foreign Investment in China: The FIEs also gets attracted to invest in China because of reasons like extremely low labour costs, biggest buyer market because of the highest population in the world, growing purchase power along with the growing the GDP at more than 8 percent, easy Chinese Laws for the Foreign Investors.

These are the main reasons why most of the companies want to invest in China and those already invested; want to expand their business in China itself. This approach became more positive when in 2001, China joined to World Trade Organization (WTO) as the foreign companies were aware to the practice of WTO. The Chinese Industries are classified into three groups

called Encouraged Investment, Restricted Investment and Prohibited Investment. FIEs cannot invest in the industry like defence and military of China.

Chinese Government has also been providing the various benefits to FIEs in terms of tax advantage like Value Added Tax (VAT), Custom Duties and Income Tax etc. by giving importance by investing in SEZs. [6] Scenario 2007: The investment in China remained steady for the years. The FDI in China has grown year by year. However, in 2007 the total FDI in China was worth US\$74.7 billion in Non Financial sector which was about 13.59 percent higher comparing to the year 2006. The figure of FDI in financial sector was US\$82.7 billion up about 13.8 percent comparing to year 2006.

However, the income tax was reduced to 25 percent than of 33 percent for the year ending in 2007. As per the study, the FDI in Chinese Service Sector like banking, insurance and retail was anticipated to pick up the pace as China had given the boost to the foreign investors. China has also encouraged the foreign funds in finance, insurance and communication sector. The Ministry of Commerce of China has also focused on the quality of FDI rather than just adding the FDI Total. [7] Scenario 2008: The foreign investment in January 2009 has fell down by 32.7 percent year on year basis to US\$7.54 billion as reported by Ministry of Commerce. This fall down was recorded from October 2008 and that felled continuously till January. This was due to the global financial crisis. The crash in January was about 36.52 percent seeing at severe conditions in the time to come. [8] During the year, China used US\$92.4 billion of foreign investment for the economy growth

which was 23.6 percent higher than of year 2007 that help making double digits growth to more than 10 percent which was higher than year 2007. [9]

However, the corrective steps taken by the Government will have positive impact on the economy and can boost the economy against the global financial crisis. Chinese Government has also emphasis on the better structure of foreign investment but this will be as expensive as half the export of the country. The significant steps are taken of increasing the cost of labour, export of energizing products, and appreciation of currency to 20 percent and by ruling out the tax rebates. Even though such steps, the lower export due to global economy downfall will impact on China's industrial production rate and export over the year.

Considering this, it is assumed that China will maintain the stable economic growth in foreign investments because of the improvements in legal and government services for faster modernization. [10] Impact of Chinese Labour Law on Foreign Investment: Focusing on the higher lifestyle and growing foreign investment has given the excellent growth to Chinese Economy. The Labour Contract Law of China has helped significantly in protecting the rights of employees. However, according to All China Federation of Trade Unions (ACFTU), this law has reduced the foreign investments in China. The Draft Law of LCL has also reduced the jobs in China which has very negative impact on Chinese workers. The laws in some of the sectors are more accurate than well developed countries, but the utilization of these laws is the biggest trouble for China. Because of the old version laws remaining in China, the LCL generally will not be forcing the new laws. This can help Foreign Investment to flow in. The effect of the law depends on the government's

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cunning and capability but Chinese people are not ready to accept it. Except some of the Local Government officials, hardly people of China will accept the laws.

This will be more favourable to foreign investors. The poor utilization of laws is due to the avoidance of protecting laws by the employees themselves.

Foreign companies and body of American Chamber of Commerce were successful to avoid the dangerous employees' first draft provisions and the new laws of another draft provided very important developments. The other draft was introduced by Chinese Government to reduce the fortifications to weaken the union power. The National People's Party Congress was under pressure by the labourer body because the law had not allowed any layoffs to the employees.

As European Companies also directed their investments to the labour market, the European Union (EU) was not worried about the negative impact for the European Investments. The Better Law Environment was utilized to attract the foreign investment flow in China. Many public prosecutors disagreed with the LCL with the arguments of focus of the law which failed to meet the regulations of the contract. However, even with these arguments, many companies had very significant past record for the regulations of Chinese Labour Law that help providing better environment for the health and safety.

The new LCL was not going to impact the foreign investment in China as the profits of the companies were more attached with the law. [11] The enforcement of the new law will not much affect the labour cost to the

companies which were firmly attached with the old law. The cost of labour will be within the convenient rate of the economic development of the country. As an argument, the companies can easily manage the new law with the growth of the economy and profitability. As per the law, because of the higher profitability, the labour cost would be rather lower than the old law. [12] The new Law effort was to restrict human resource mobility. [13] Current Scenario of Chinese Labour Law: The Global Financial crisis has leded the diminishing side to all the companies to emerge losses in past year. Many companies have also faced the bankruptcy all over the world. This has affected the Chinese Labour Law as well. The new LCL has forced many companies to cut the costs in the global crisis to cut the production cost and this has leded the companies to cut the labour from the company.

According to the foreign companies, the new law has put the burden of the high cost burden on the companies which has made the companies to reduce the workers from the companies to reduce the production cost. It has been proving difficult to balance the economic growth along with Social Stability. The Global Economic Crisis has also interrupted the growth of Chinese workers in last year. According to a survey, about 80 percent of the employees were not satisfied with the current situation going on in all the companies in China.

According to the survey, about 26 percent of the employees never had any agreement with company while according to 28 percent workers; they were paid less than legal minimum employment. The introduction of the new LCL has drawn companies to leave many of the employees in the recession period all over the world. However, according to the new law of LCL,

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companies now need to take the grant from the local authorities if they wish to dismiss 20 employees or 10 percent or more employees from the company. Even though the regulation, the companies are avoiding to take a grant to dismiss the workers to cope up with the Global Financial Crisis.

As per a view, the new LCL was introduced very early in China. [14] Many companies have also reported the bankruptcy in this global recession and many other are opting to close down the business to avoid the claims of wages of employees. The companies have lost the confidence of economy stabilization and to cope up with the inequality of the liquidity in the global corporate market. [15] Conclusion: As referred in the study, the new Labour Contract Law has both positive and negative impact on the Foreign Investment Enterprises.

However, the negative impact of the law is not going to impact for the long period to the companies as soon as the Global Financial Crisis settles down. The Labour Contract Law has also given the many improved factors to the Chinese labours for the better wage structure and other facilities like health and safety, insurance and welfare etc. Keeping in mind the current situations, the companies may take little time to cope up with the current law structure of LCL, but the final outcome will benefit to both the Companies and the Employees in near future.

Talking about the slow down in the economy and therefore the plunge in the Foreign Investment in China in past year, the companies will tackle the situation of pouring the more funds very soon along with the stability in the Chinese Economy. China has still been remained the magnet for the Foreign

Investors keeping in the mind the lowest labour cost so as to reduce the production cost and through which getting the high profitability.

References: ? Book readings from The Chinese Commercial Legal System 2008, by Blazey, Patricia & Kay' Wah. Workforce Management by “Organizing China” Volume 86, issue 11. ? China Foreign Investment Incentives, ? SinoCast China Business Daily News, Dallas. ? FIE Labour Practices, 1992, China Business Review published by John Frisbie and Richard Brecher. ? “ Effect of Foreign Direct Investment on Urban Wage in China; an Empirical Examination” August 2006 Urban Studies by Ying Ge. ? Book Readings from “ Employment and Labour Law of Foreign Investment Enterprises” by Kui Hua Wang, Deakin University. ? China Daily “ China still a magnet for foreign investors” by Zhi Shan . Report by Xin Chunying, Chairman, National People’s Party Congress (NPC) Law Committee. ? Report by Miao Qiwei, Hiring Manager, Expert of Labour Contract Law, at , NASDAQ Listed Company. ? “ China’s New Labour Law Has Little Negative Impact On Foreign Investment” . ? Report by Wang Guigio, the dean of Chinese and Comparative Law at Hong Kong City University. ? Reported by James Pomfret; Edited by Megan Goldin in “ International Herald Tribune”, The Global Edition of The New York Times, “ Chinese Labour Law Buckles as economy Darkens” ? Article 1 to 57 of Labour Contract Law. Article 94 of Labour Contract Law. ————— [1] According to SinoCast China Business Daily News, Dallas, page 1 China registered 26% increase in FDI in 7 months of year 2003. [2] SinoCast China Business Daily News, Dallas, Page 1, mentions the approvals of more than 30, 000 Foreign Investments. [3] FIE Labor Practices, 1992, China Business Review, Sept ‘ Oct 26 by John Frisbie and Richard Brecher. [4] “ Effect of Foreign Direct Investment on Urban

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Wage in China; an Empirical Examination” August 2006 Urban Studies by Ying Ge [5] “ Organizing China” Workforce Management, 6 November 2007, Vol. 6, Issue 11, Page 14 -15. [6] “ China Foreign Investments Incentives” [7] Published in China Daily “ China still a magnet for foreign investors” by Zhi Shan posted on 28 February 2008 [8] Issue discussed by Zhang Yansheng, the head of International Economic Research Institute under National Development and Reform Commission. [9] Figures reported by National Bureau of Statistics [10] Reported by Wang Hongjiang on 16 February 2009 considering the Global Financial Crisis in Beijing [11] Reported by Xin Chunying, Chairman, National People’s Party Congress (NPC) Law Committee. 12] Reported by Miao Qiwei, Hiring Manager, Expert of Labour Contract Law, at , NASDAQ Listed Company. [13] “ China’s New Labour Law Has Little Negative Impact On Foreign Investment” posted on 17 September 2007 provided by at [14] Reported by Wang Guigio, the dean of Chinese and Comparative Law at Hong Kong City University [15] Reported by James Pomfret; Edited by Megan Goldin in “ International Herald Tribune”, The Global Edition of The New York Times, “ Chinese Labour Law Buckles as economy Darkens” on 28 January 2009 at