

FREEMAN BRIEFING

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A Labor of Love: Will the Labor Contract Law Bring About A Harmonious Society?

In many respects, an inexhaustible supply of low-cost labor is taken for granted as part of the Chinese economic equation. The willingness of the migratory masses to venture eastward from China's center for the sweatshops and gritty factories of China's coasts is the great legend of China's thirty-year miracle. Likewise, a tolerance for lousy working conditions by workers, by the general public and by government at all levels, has been taken for granted by business owners and investors for much of the past three decades.

Times have changed. Beginning in late 2004,¹ southern China first began to experience mild labor shortages. Costs for labor accordingly began to rise, and firms increasingly were forced to compete for scarcer workers by offering improved labor conditions. Indeed, by mid 2008 some estimates suggested that thousands of businesses in the Pearl River Delta were shuttering their doors as a result of higher labor costs.

Public attitudes began to change as well. A series of lurid labor scandals dominated China's media during 2007, for example; including a shocking slave labor case involving kidnapping of children forced to work in kilns in northern China;² and a sensationalistic set of alleged labor abuses by multinational fast food and toy companies in southern China.³ Clearly, for both foreign and domestic businesses in China, recognizing the changed circumstances and adapting is critical. What the change may signify to civil society in broader terms may be even more significant.

¹ Barboza, David. "Shortage of Cheap Labor in China," International Herald Tribune, April 3, 2006.

² Elegant, Simon. "Slave Labor in China Sparks Outrage," TIME, June 20, 2007

³ Batson, Andrew and Mei Fong. "China Toils Over New Labor Law," Wall Street Journal, November 5, 2007

This article reviews Beijing's efforts to manage both the change in market conditions and the shifting public attitudes through legal means. Its success, or lack thereof, in implementing these means may well be a watershed of the Hu Jintao era.

The Genesis of the Labor Contract Law

China's most comprehensive worker-related legislation, the Labor Contract Law, was passed by the National People's Congress on June 28, 2007, and implemented on January 1, 2008. The passage of the Law reflects concern among officials that certain side-effects of economic growth were undermining China's "harmonious development". One of these side-effects was the situation in which existing labor laws were not enforced and various practices such as non-payment of wages, paying below the local minimum wage, compulsory overtime, and the widespread non-payment of social security contributions. Such practices sparked numerous flare-ups of unrest among workers, particularly in Guangdong province, where much of China's light manufacturing is concentrated. The rise in labor-related unrest is evident in government reports which show that 500,000 disputes were submitted for arbitration in 2007: this was an increase of 11.9% over 2006, and a more than 300% increase since 2001.⁴

Labor unrest poses a direct challenge to the legitimacy of the economic and political system that has allowed such practices to flourish. Compounded by unhealthy trends in other sectors of Chinese society, social unrest has come to be seen by senior leaders as a threat to the Communist Party itself, whose monopoly on political power has depended on its ability to fulfill its promise to make life better for the Chinese people. Under the leadership of Hu Jintao, the Communist Party's adoption of the so-called "scientific concept of development" reflects the senior leadership's determination to not let economic growth come at the expense of social stability and sustainable development.⁵ This commitment to striking a better balance among various goals is the inspiration for not only the Labor Contract Law, but also for strengthened regulation and enforcement in the areas of environmental protection, health care, tax collection, and price controls.

⁴ Kwan, Charles. "China's Labor Contract Law: The Long View," Deloitte LLP Chinese Services Group, June 2008.
http://www.deloitte.com/dtt/cda/doc/content/us_csg_June_Monthly_Commentary_2008%281%29.pdf

⁵ Kwan, Charles. "Sichuan Earthquake Reaffirms Need for Balanced Development in China," Deloitte LLP Chinese Services Group, May 2008.
http://www.deloitte.com/dtt/cda/doc/content/us_csg_May_Monthly_Commentary.pdf

The Labor Contract Law is just one of several laws (e.g., the Employment Promotion Law and the Labor Disputes Mediation and Arbitration Law) passed by the NPC to promote social stability by protecting the interests of workers.⁶ According to experts, the Labor Contract Law pulls together statutes from existing laws and adds best practices already in place in major cities such as Beijing and Shanghai.⁷ Prior to the Law's passage, the State Council launched a public consultation period, and received input from various business groups (both domestic and foreign) and labor constituencies on the draft law. The draft faced considerable opposition from elements of the business community, who feared that the law would raise costs to a point that operations would no longer be profitable. The most vigorous protest came from the legions of small and medium sized enterprises (SMEs) owned by Hong Kong, Taiwanese, and South Korean entrepreneurs, whose ability to operate on razor thin profit margins depended upon various forms of non-compliance with labor regulations.⁸ The Chinese government took the concerns of the business community under advisement, and some modifications were made as a result. By and large, however, the Law was adopted as it was initially conceived.⁹ The fact that implementation of the law was delayed until January 1, 2008 allowed companies some 6 months to examine their current employment practices and make plans for realignment to conform with it.¹⁰

⁶ Kwan, Charles. "China's Labor Contract Law: The Long View," Deloitte LLP Chinese Services Group. June 2008.
http://www.deloitte.com/dtt/cda/doc/content/us_csg_June_Monthly_Commentary_2008%281%29.pdf

⁷ Rothman, Andy. "Labor Law Impact," CLSA Asia-Pacific Markets. February 1, 2008.

⁸ Adams, Jonathan and Ko Shu-ling, "Judgment Day," Far Eastern Economic Review. March 2008. p.32-35.

⁹ The National Labor Committee. "New Chinese Labor Contract Law: Foreign Corporations' Opposition to the New Chinese Labor Contract Law and Their Impact," September 2007.
<http://www.nlcnet.org/article.php?id=473>

¹⁰ "China Issues Labor Contract Law," China Matters: Paul Hasting's Newsletter for Investing & Operating in the People's Republic of China, June 2007.
http://www.paulhastings.com/assets/publications/736.pdf?wt.mc_ID=736.pdf

The Labor Contract Law: What It Is and What It Isn't

The Labor Contract Law intends to improve the standing of employees vis-à-vis their employers by requiring parties to enter into written contracts that detail their mutual obligations. The Contract Labor Law addresses numerous issues including:

- the information that both employer and employee are to provide to the other party;
- the conditions under which the worker is entitled to an indefinite-term contract;
- the mechanisms through which employer and employee may settle disputes over compensation and work conditions;
- the role of labor unions as intermediaries;
- the conditions of the probationary period;
- the conditions of the training period and the non-compete period;
- the conditions under which a contract may be declared invalid;
- the right of workers to demand back pay or refuse to work;
- the conditions under which a laborer can dissolve his contract and those under which the employer may dissolve the contract;
- the conditions under which employers dissolving a contract must pay special compensation;
- the conditions under which creation of enterprise, industry, or region specific collective contracts may be negotiated;
- the conditions under which labor dispatching units may enter into agreements with client unions and employees;
- the conditions for part-time employment;
- the extent of oversight to be exercised by government authorities;
- stipulations on the rights of laborers to report infringement upon interests;
- the extent of liability employers will incur if found to be in violation of the Labor Contract Law.¹¹

The Labor Contract Law mandates that employers offer one of three types of contracts to potential employees: a project-based contract, a fixed-term contract, or an indefinite-term contract. The type of labor contract will vary according to the employees' seniority, proximity to retirement, as well the number of fixed-term contracts previously signed. The letter and spirit of the law encourages the

¹¹ Various Articles, National People's Congress Standing Committee, "Labor Contract Law of the People's Republic of China" Unofficial Translation by Dong Bao Hua and Ashley Russell, Cornell University, June 2007.

signing of indefinite-term contracts. The requirement that the law offer certain employees indefinite-term contracts was vigorously protested by employers because it strictly limited the circumstances under which they could dismiss such workers. This sparked fear among employers of creating “iron rice bowl” employment whereby employers would be obliged to provide life-time jobs irrespective of redundancies and market conditions, leading to reduced efficiency and profitability.¹²

Another major objection voiced by the business community is over the requirement that social security premiums be paid for all employees and that employees be appropriately compensated for overtime. For those enterprises (mainly small and medium labor intensive enterprises) that have long avoided paying social security premiums and overtime wages, being forced to do so will significantly add to their costs.¹³ A third area of contention is the so called “non-compete clause” which requires that employers pay a premium to employees who, due to their possession of certain trade secrets, are barred from seeking employment with a competitor enterprise for a certain period of time.¹⁴

The Labor Contract Law stipulates that the local labor union shall play a role in the establishment of contracts, establishment of workplace rules, monitoring contract performance, reporting violations, and providing support to laborers who request arbitration or litigation.¹⁵ Under the direction of the State Council, the All-China Federation of Trade Unions (ACFTU) has inserted itself into labor/employer relations at the local level, and since 2006 has played an increasing role in managing labor disputes.¹⁶ The business community has been opposed to this assertion of authority by the ACFTU, and was successful in lobbying for the removal of requirements that employers negotiate with labor representatives when devising workplace policies and conducting layoffs (the law now only requires “consultation”).¹⁷ It is no surprise then that the ACFTU

¹² Ren Bo. “Lingering Wrangle Over China’s Labor Law,” *Caijing Magazine*. April 17, 2008. <http://www.caijing.com.cn/20080417/57436.shtml>

¹³ CSC Staff. “New Labor Contract Law Raises China’s Labor Costs,” *ChinaStakes.com*. February 14, 2008. <http://www.chinastakes.com/story.aspx?id=206>

¹⁴ Ren Bo. “Lingering Wrangle Over China’s Labor Law,” *Caijing Magazine*. April 17, 2008. <http://www.caijing.com.cn/20080417/57436.shtml>

¹⁵ Various Articles, National People’s Congress Standing Committee, “Labor Contract Law of the People’s Republic of China” Unofficial Translation by Dong Bao Hua and Ashley Russell, Cornell University, June 2007.

¹⁶ Open Source Center. “China: A Landmark Labor Contract,” July 15, 2008.

¹⁷ The National Labor Committee. “New Chinese Labor Contract Law: Foreign Corporations’ Opposition to the New Chinese Labor Contract Law and Their Impact,” September 2007. <http://www.nlcnet.org/article.php?id=473>

has taken a strong public stand against the lobbying by businesses to water-down some provisions of the law.¹⁸ ACFTU representatives have been very public in insisting that the Labor Contract Law will not significantly increase operation costs for law-abiding enterprises.¹⁹

Hands Across the Water: Andy Stern & the Unionization of Wal-Mart in China

The unionization of employees at Wal-Mart stores in 2006 was a major event in global business/labor relations. This process started with behind-the-scenes organizing by the ACFTU and ended with Wal-Mart's management permitting the establishment of unions at all of its stores in China.²⁰ Very few of those who know about Wal-Mart's unionization in China know about the role of Andy Stern, President of the Service Employees International Union (SEIU), in this process. Since becoming President in 1996, Mr. Stern has worked to reverse the waning influence of the union movement. One element of this strategy has been to "go global": by cooperating with labor movements in other countries, the SEIU has sought to increase the bargaining power of unions in their dealings with multi-national companies.²¹ Since 2002, Mr. Stern has travelled to China numerous times and has worked with the ACFTU to improve the latter's capacity to organize in the private sector.²² This capacity-building assistance coincided with the Chinese government's push to limit labor unrest by extending the reach of the ACFTU to preempt disputes between employers and employees.²³

¹⁸ *Ibid.*

¹⁹ Xinhua News Agency. "China's Trade Union Official Upholds Labor Contract Law, Denying Cost Rise," March 8, 2008. http://news.xinhuanet.com/english/2008-03/08/content_7744349.htm

²⁰ Chinese Labor News Translations. "The Emergence of Real Trade Unionism in Wal-Mart Stores", May 4, 2008. <http://www.clntranslations.org/article/30/draft>

²¹ Kirkland, Rick. "The New Face of Money", Fortune Magazine. October 10, 2006. http://money.cnn.com/magazines/fortune/fortune_archive/2006/10/16/8390290/index.htm

²² Rayasam, Renuka, "SEIU's Andy Stern; Going Global," US News & World Report. June, 5, 2007. http://www.usnews.com/usnews/biztech/articles/070605/5stern_print.htm

²³ Lague, David. "Unions Triumphant at Wal-Mart in China," International Herald Tribune. October 13, 2006. <http://www.ihf.com/articles/2006/10/12/business/unions.php>

6 Months On: The Observed Outcomes of the Labor Contract Law

Six months have passed since China began requiring employers to comply with the Labor Contract Law in their hiring practices. Some may doubt the ability to draw conclusions about the impact of a law after such a short period.

Nonetheless, at this point it is useful to begin to ask questions about the Labor Contract Law's effect on business operations. If one asks the question, "Has the Contract Labor Law added to the costs of doing business in China?", the simple answer would be "Yes". Yet such an answer only scratches the surface. To draw useful conclusions about the social utility of this policy, we need to ask a host of other questions as well. For example: To what extent have employers complied with the law? How much have costs risen because of the Labor Contract Law? How have employers responded to the consequent rise in costs? (e.g., Have they absorbed the costs or passed them on to consumers? Have they left the area, left the country, or gone out of business all together?) To what extent have conditions for employees improved? Have the costs to businesses been outweighed by the benefits to workers?

On these questions and others, the jury is still out. Because the period of observation has been limited, most of the available evidence is anecdotal. Empirical evidence will provide a better idea of the impact that the Labor Contract Law has had upon employers and employees alike. The anecdotal evidence is inconclusive: some reports indicate that many SMEs that previously didn't comply with labor laws have actively complied with the Labor Contract Law.²⁴ There are other reports that indicate widespread non-compliance, forcing resource-strapped authorities to look the other way.²⁵ The existence of conflicting observations is to be expected at this early stage: given that hundreds of thousands of employers will be affected by this law, it will take considerable time for the majority of companies to transition to compliance. Some companies, seeing the writing on the wall, have moved quickly to follow the letter of the law.²⁶ Other companies, seeing that the final directives on the law's implementation have yet to be issued, have put off compliance in the hope that there may yet be a way to avoid a painful adjustment.²⁷

²⁴ IHLO. "New Labour Contract Law: Myth and Reality Six Months After Implementation," <http://www.ihlo.org/LRC/WC/270608.html>

²⁵ Ren Bo. "Lingering Wrangle Over China's Labor Law," *Caijing Magazine*. April 17, 2008. <http://www.caijing.com.cn/20080417/57436.shtml>

²⁶ IHLO. "New Labour Contract Law: Myth and Reality Six Months After Implementation," <http://www.ihlo.org/LRC/WC/270608.html>

²⁷ Southern Weekend [Nanfang Zhoumo]. "Contract Labor Law Implementation Regulations: Will Employers be the Ones Left Laughing?" [Laodong Hetongfa Shishi Tiaoli: Laoban Xiao

The predicament of labor intensive SMEs is only part of the picture. Large enterprises and state owned enterprises, which have generally abided by the law in the payment of wages, social security, and overtime, have not been significantly impacted by the law. Also, high tech companies, with high-value added and a small number of employees, have also been minimally impacted.²⁸ According to one survey of stock-market listed firms in a variety of sectors, none of them anticipated the Labor Contract Law having a significant impact upon their operations or profitability. Given that labor costs generally account for only 10% of production costs, these firms were more worried about the squeeze that increased energy and raw material costs put on profit margins. These firms are most opposed to provisions of the Labor Contract Law that limit flexibility in firing and layoffs, a matter that would be of particular concern during a merger or restructuring²⁹.

It is worth noting that Labor Contract Law is only one factor that has contributed to rising costs, particularly in regions with high concentrations of low-tech, labor-intensive industry. For all companies, the major contributors to increasing costs are the rising price of raw materials and energy inputs, increased taxes, higher environmental standards, the elimination of export rebates, the appreciation of the yuan, and regional labor shortages.³⁰ Surveys conducted by the American Chamber of Commerce, Booz Allen Hamilton, and the Federation of Hong Kong Industries show that a number of foreign owned/invested companies plan to move some or all of their operations either to another part of China or out of China entirely in response to rising costs in the Pearl River Delta.³¹

Rising labor costs have no doubt contributed to the movement of factories out of the Pearl River Delta to inland areas where certain incentives have been left in place.³² However, only a small portion of this rise in labor costs can be

Dao Zuihou?] May 20, 2008.

http://www.nddaily.com/sszt/jiulong/200805/t20080520_754550.shtml

²⁸ CSC Staff. "New Labor Contract Law Raises China's Labor Costs," ChinaStakes.com. February 14, 2008. <http://www.chinastakes.com/story.aspx?id=206>

²⁹ Rothman, Andy. "Labor Law Impact," CLSA Asia-Pacific Markets. February 1, 2008.

³⁰ Adams, Johnathan & Ko Shu-ling. "Judgment Day," *Far Eastern Economic Review* March 2008, p. 32-35

³¹ Cha, Ariana Eunjung. "New Law Gives Chinese Workers Power, Gives Business Nightmares." *Washington Post*, April 11, 2008. <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/13/AR2008041302214.html>

³² Adams, Johnathan & Ko Shu-ling. "Judgment Day" *Far Eastern Economic Review* March 2008. p. 32-35

attributed to compliance with the Labor Contract Law.³³ The upward pressure on wages in zones of long-standing foreign investment is more an outgrowth of regional labor shortages that exist at all skill levels. An investigation conducted in Jiangsu and Zhejiang by the China International Corporation Ltd. revealed that a tight labor market has caused wages for migrant workers to grow at an annual average rate of 10-15%.³⁴ Given the high concentrations of manufacturers offering similar products, competition is fierce and profit margins are low. This has made it difficult for producers to shift the burden of rising labor costs onto consumers. Instead, they will either have to relocate to reduce costs or be put in the unenviable position of reducing prices to stimulate sales.³⁵ This inland migration of labor intensive, low-margin industries is seen as desirable on a macro-level in that it both jumpstarts economic development in China's interior and creates space for the economies of coastal provinces to move further up the value chain.

From May 8 to May 20 of this year, the State Council issued the *Draft Implementing Regulations for the PRC Labor Contract Law* (the "Draft Regulations") for public comment. The 45 articles of the Draft Regulations are directed at resolving ambiguity and controversy generated by certain stipulations of the Labor Contract Law. Typically, implementing regulations are issued at the same time as the law itself. The fact that the Draft Regulations were circulated for comment nearly a year after passage of the law is indicative of the extent to which stakeholders from the grassroots to the highest levels of office are at odds over the Labor Contract Law.

Chinese experts emphasize that the draft is not a revision of the Labor Contract Law but rather a clarification of areas of the original law that were unclear.³⁶ For example, Article 9 of the draft makes clear that the starting point of the 10 year seniority period (after which workers have to be offered open term contracts) cannot be reset through "voluntary resignation"; such seniority builds with the first day of employment under the first contract with a particular employer. This closed a loophole that had been used by companies such as Huawei

³³ Rothman, Andy. "Labor Law Impact," CLSA Asia-Pacific Markets. February 1, 2008.

³⁴ CSC Staff. "New Labor Contract Law Raises China's Labor Costs," ChinaStakes.com. February 14, 2008. <http://www.chinastakes.com/story.aspx?id=206>

³⁵ *Ibid.*

³⁶ Gongren Ribao. "Laodong hetongfa shishi tiaoli caoan: 14 tiao yinfa zhenglun de beihou," [Contract Labor Law Implementation Regulations Draft: Background on 14 Controversial Articles], 6/4/08, http://news.xinhuanet.com/legal/2008-06/04/content_8311831.htm

Technologies Co to avoid offering open term contracts to long-time employees through a “voluntary resignation” scheme.³⁷

Though written to introduce resolution to the debate over aspects of the Labor Contract Law, the Draft Regulations have actually incited controversy of their own: critics point to Article 28, which lists the 14 circumstances under which an employer may terminate an open contract. Article 28 consolidates language that appears as part of 4 separate articles of the Labor Contract Law. The repackaging of these provisions was done to make it clear to employers that they in fact do not have to shoulder the burden of “lifetime employees”.³⁸ The problem for many workers and advocates is that the Draft Regulations separated these 14 provisions from the conditions with which they appear in the Labor Contract Law. Though the conditions are still in force, there is great concern that employers will be more emboldened by the revised language to terminate open ended contracts.³⁹

To facilitate the implementation of the Labor Contract Law, many provincial and municipal governments formulated contract templates, which they subsequently published on their websites for the use of employers. These contracts were intended to ensure basic compliance with the terms of the Labor Contract Law. However, an analysis of contracts created by five major local governments (those of Beijing, Shanghai, Guangdong, Shenzhen, and Suzhou) revealed major omissions.⁴⁰ The problems caused by such omissions are compounded by the modifications to the templates made by employers: employees are often not informed that changes have been made by the employer, and are thus left with the impression that the entire contract is a product of (and thus has the approval of) the local government.⁴¹ There are also many reports of irregularities in the contract signing process: reports of workers being asked to sign contracts that have blanks, signing without being given a chance to read the contract, or employees not receiving their own copy of the contract, are common.⁴² The potential pitfalls in the contracting process are supposed to be

³⁷ Xinhua News Agency. “Draft Implementation of Regulations for Labor Law Issued,”. May 5, 2008. http://www.chinadaily.com.cn/bizchina/2008-05/09/content_6672455.htm

³⁸ Gongren Ribao. “Laodong hetongfa shishi tiaoli caoan: 14 tiao yinfa zhenglun de beihou,” [Contract Labor Law Implementation Regulations Draft: Background on 14 Controversial Articles], 6/4/08, http://news.xinhuanet.com/legal/2008-06/04/content_8311831.htm

³⁹ *Ibid.*

⁴⁰ IHLO. “New Labour Contract Law: Myth and Reality Six Months After Implementation,” <http://www.ihlo.org/LRC/WC/270608.html>

⁴¹ *Ibid.*

⁴² IHLO. “New Labour Contract Law: Myth and Reality Six Months After Implementation,” <http://www.ihlo.org/LRC/WC/270608.html>

mitigated by the monitoring and intervention of the local or enterprise-level ACFTU. However, recent research indicates that the unions fall short of this mandate: in smaller factories, where employment conditions historically have been the worst, the ACFTU either plays little role or is completely absent.⁴³

At this point, some six months after implementation, the Labor Contract Law has made limited progress towards improving conditions for employees and creating an enduring employer/employee relationship. Some observers remain skeptical about the trajectory of this law, given the government's inability to monitor and enforce compliance with other well-intentioned laws in the past.⁴⁴ There is also reason to be skeptical about claims that the law has contributed to the downfall of export manufacturing in coastal areas. Given that the export manufacturing sector is in the midst of a historic transition, it is difficult to determine which aspects of this transition are attributable to the provisions of the Labor Contract Law and which aspects are due to other economic and regulatory factors. There is even still ambiguity over the future of the law itself: legal and human resource experts believe that the Labor Contract Law is still unclear on many points. Therefore, further clarifications, such as those provided by the Draft Regulations, are likely to be forthcoming.⁴⁵

Looking Down the Road: Wider Implications of the Labor Contract Law

No major policy decision can be implemented without winners and losers. As stated earlier, with regards to the Labor Contract Law, the losers will most likely be those enterprises whose ability to operate on razor thin profit margins depended upon various forms of non-compliance with the law. There is no doubt that some of these enterprises will be forced to either relocate (to interior provinces or abroad, where costs are lower) or go out of business entirely. This “shake-out” will have a positive impact on the industrial structure of the coastal provinces, as the labor pool shifts from lower to higher value added production.⁴⁶ Removing the ability of enterprises to generate profits through

⁴³ *Ibid.*

⁴⁴ Rothman, Andy. “Labor Law Impact,” CLSA Asia-Pacific Markets. February 1, 2008

⁴⁵ “China Releases Draft Implementation Regulations for New Labor Contract Law,” Pacific Bridge, Inc. – Asian HR Newsletter, Volume 8, Number 6, June 3, 2008.

<http://www.pacificbridge.com/asianews.asp?id=363>

⁴⁶ Kwan, Charles. “China’s Labor Contract Law: The Long View”, Deloitte LLP Chinese Services Group. June 2008.

http://www.deloitte.com/dtt/cda/doc/content/us_csg_June_Monthly_Commentary_2008%281%29.pdf

illegal labor practices will force those remaining to compete more on quality, and thereby create a better business environment overall.⁴⁷

Chinese leaders face a dilemma in deciding whether the cost born by losers is justified by the benefit reaped by others. Throughout the 20th century, labor and industry have been at odds over the extent to which profits should be shared with employees through higher wages. There is no easy answer to this question, and it is the burden shouldered by leaders to make decisions that have critical impact upon the lives of so many. There is no question that China needs to move in the direction in which the Labor Contract Law has taken it. The speed with which China should move in this direction is a topic more worthy of debate. How fast is too fast? What is the economic tradeoff between raising costs to employers (which could compel factories to shut down, undermine the incentives to entrepreneurship, and risk increased unemployment), and raising wages for workers (which could raise living standards, increase domestic consumption, and generate economic growth)?

The Labor Contract Law demonstrates the commitment of China's leaders to limiting the negative consequences of China's unprecedented run of economic expansion. Looking beyond the economy of the past is vital to China's development over the next 50 years. Given its demographic trends (which are heavily influenced by the one-child policy), China will not be able to rely indefinitely upon vast pools of cheap surplus labor. Given China's likely trajectory that it will grow old before it becomes rich, taking decisive steps towards creating an economy that emphasizes high-value added production is a forward looking and necessary step for a country facing a labor-scarce future.

Many long-time China observers question the leadership's capacity to sustain the level of commitment required to ensure high levels of compliance with the Labor Contract Law. The law seeks to put an end to a certain way of doing things that was par for the course for nearly 30 years. There are those who are both powerful and wealthy who have an interest in continuing to do things the way that they have long been done. Thus, it remains to be seen whether the good intentions inherent in the law will be scuttled by the realities of the Chinese political matrix. Will the right hand know what the left hand is doing? Or might the right hand continue to turn a blind eye?

Fortunately, there is reason for optimism that has more to do with the laws of economics than the laws of politics. China's current and projected regional labor

⁴⁷ *Ibid.*

shortages put employees in a position of a buyer in a buyer's market. If they don't like the treatment that they receive at one employer, workers can vote with their feet and take their labor elsewhere. We have started to see the effect of this in Guangdong, where employers are in the position of having to compete for scarce workers by raising wages. It is possible that this dynamic will compel employers to improve working conditions as well. If this trend continues, it will do more for the plight of the everyday worker in China than the letter of the law could ever have done.

One positive outgrowth of the process that created the Labor Contract Law and the Draft Regulations is the awareness generated by workers at all levels of the importance of contracts as a guarantor of their interests.⁴⁸ This awareness will increasingly empower employees to be self-advocates, placing pressure on employers to comply with both the letter and spirit of the law.⁴⁹ This has implications for the development of civil society as a whole, as people increasingly recognize the virtue of contracts and of the rule of law in general. As individuals and groups accept that laws can be effectively used to regulate the interests of various parties, these parties will increasingly seek to influence the law-making process. The announcement in April that the National Peoples Congress Standing Committee will publicly post for comment all future draft laws will facilitate broader constituent input into the law-making process. To the extent that public input is transparent, rules-based, and heeded by lawmakers, the process of soliciting public input can be considered a shift towards democratic governance in China. However, despite current trends, the movement towards a system of broader participation in the law-making process is likely to face numerous challenges. Interest groups that once profited from special access to decision-makers naturally will resist the empowerment of competing interests that heretofore have not had much of a voice in the political arena. As China's political and legal systems become more inclusive, it will be interesting to see whether this process will be accompanied by a reduction or a surge in conflict between newly empowered interest groups and those groups whose star is in decline.

For further information on this report please contact: Orlando Crosby at ocrosby@csis.org

⁴⁸ IHLO. "New Labour Contract Law: Myth and Reality Six Months After Implementation," <http://www.ihlo.org/LRC/WC/270608.html>

⁴⁹ Harney, Alexandra. "Bye Bye Cheap Labor," *Far Eastern Economic Review*. March 2008. p.29 – 32.