



**Ethical
Trading
Initiative**

Respect
for workers
worldwide

Building good labour relations through collective consultation

GUIDANCE FROM ETHICAL TRADING INITIATIVE (ETI)
FOR GUANGDONG PROVINCE, CHINA

ACKNOWLEDGEMENTS

Ethical Trading Initiative would like to especially thank the following for their contribution and support in developing this guidance:

- support and technical advice provided by the **Guangzhou Municipal Human Resources and Social Security Bureau, Guangdong Provincial Human Resources and Social Security Bureau,**
- special thanks to **Guangdong Provincial Federation of Trade Unions and Guangzhou Federation of Municipal Trade Unions** for their support,
- acknowledgement to Employee Relations Club (ER Club) for helping convene local multi-stakeholders, organise consultative meetings and contribute technical advice to the drafting of the Guidance.

CONTENTS

Why is this guidance needed?	5
Structure of the guidance.....	7

PART 1: COLLECTIVE CONSULTATION IN GUANGDONG PROVINCE, CHINA

1. What is the collective consultation mechanism?	9
1.1 Definitions, scope and principles.....	9
Case study 1 – Committed to a collective consultation system that delivers sustained growth.....	10
Case study 2 – Flagship store of international buyer infringes workers' rights and suffers damage to its reputation	11
1.2 Trade unions in China: structure and roles	12
1.3 What is a collective contract?	14
Case study 3 – Undertaking collective consultation to agree a collective contract for workers in the garments sector to avoid vicious.....	15
competition among enterprises.....	15
Case study 4 – Using collective contracts to find an alternative to downsizing during economic crisis	17
2. Collective consultation: a step-by-step guide	18
2.1. Identifying the parties involved in collective consultation.....	19
2.2. Determining the representatives of the two parties to collective consultation	20
Case study 5 – Democratic elections for trade union officials strengthens the collective contract	22
Case study 6 – Workers in an electronics factory set up their own union.....	24
2.3 Collecting, preparing and sharing the information necessary for consultations.....	26
Case study 7 – Collective consultation on year-end bonus benefits from greater transparency	28
2.4 Initiating the consultation: sending the formal invitation	29
Case study 8 – A management-initiated collective consultation	31
2.5 Statutory procedures for collective consultation	33
Case study 9 – Standardising consultation procedures to ensure legality of collective contracts.....	35
2.6 How to proceed when a dispute arises during the process of collective consultation.....	36
Case study 10 – Collective consultation fails to deliver agreement	37
Case study 11 – Intense consultation and compromise lead to satisfactory collective wage consultation	38
2.7 Behaviour expected of both parties during the process of collective consultation.....	39
3. The validity of collective contracts and dealing with problems during implementation	41
3.1 Are collective contracts still valid if the enterprise changes its operations?	41
Case study 12 – Workers' congress exercises ultimate power to accept or reject collective contract.....	42

PART 2: WHAT ROLE SHOULD INTERNATIONAL BUYERS PLAY IN COLLECTIVE CONSULTATION?

1. Why is collective consultation a sound basis for building good labour relations?	44
2. How can international buyers support collective consultation?	44
Case study 13 – A missed opportunity for international buyers to help build good labour relations.....	45
3. Can international buyers really influence suppliers to engage in collective consultation?	47
3.1 Getting to know your suppliers – management and workforce.....	47
3.2 Promoting constructive dialogue between all stakeholders	48
3.3 Getting to know other stakeholders outside the enterprise.....	49
3.4 Building the capacity of suppliers to engage in collective consultation.....	50
3.5 Assessing how suppliers are implementing collective consultation.....	51
3.6 Reporting on the implementation of collective consultation.....	52
4. Conclusion Changing the paradigm	52
Appendix	53-97

WHY IS THIS GUIDANCE NEEDED?

Over the past few years, China has made enormous efforts to improve working conditions and protection of workers' rights. While workers in Chinese enterprises are becoming increasingly organised and vocal, taking advantage of social media to air their grievances to public audiences, there continue to be violations of Chinese labour law and of workers' rights. As a result, the number of labour disputes is rising sharply – by 15% a year.

Some unresolved disputes have triggered major stoppages, such as at the Taiwanese-owned Yue Yuen shoe factory in Dongguan, Guangdong province, which supplies the likes of Nike, Adidas and Timberland. In April 2014, around 43,000 workers brought the factory to a standstill, protesting that their employer had underpaid their social security contributions. This incident seemed different from others in that supervisors at the enterprise were reported to have noticed the underpayments and raised it with management in the first instance. It was also different because the buyers were very engaged with workers' representatives/trade unions and played a more proactive role in resolving the situation.

Other disputes around working conditions have led workers to take drastic measures, such as the spate of suicide attempts by workers at Foxconn in 2012, which received high-profile international media coverage.

Guangdong province, in South East China, is at the heart of China's export-oriented economy, and includes three of the country's first Special Economic Zones (Shenzhen, Zhuhai and Shantou). The province has ranked top for national gross domestic product (GDP) for 24 consecutive years. It is home to around 170,000 foreign-owned enterprises.

Most of the labour-related incidents reported from China involve enterprises in Guangdong. Workers' demands are mainly around under-paid or delayed wages, poor work conditions, and lack of social insurance (employers' contributions). Many recent actions and work stoppages may well have been avoided if management and local authorities had not ignored workers' grievances or had established regular, effective mechanisms for constructive dialogue with workers.

In order to promote positive dialogue and improve labour relations, the province recently adopted new legislation. The Regulations on Collective Contract (hereafter referred to as *the Regulations*) came into effect on 1 January 2015. Workers and their trade union representatives in Guangdong can now initiate the collective consultation process by requesting that their union approach management to embark on the procedure. If more than half the workforce supports the request, the union is compelled to act. *The Regulations* include the principle that collective consultation negotiations should take place "in good faith" and "on equal foot", setting out rights and obligations for workers and management.

The Regulations are a very welcome development in Guangdong, and provide a strong framework for all stakeholders to promote mutual respect and constructive dialogue. This guidance focuses on putting collective consultation into practice in Guangdong province, although it also provides more generalised information on relevant national laws and bodies.

The Ethical Trading Initiative (ETI) includes more than 90 international buyers and multinational companies among its members. For many of them, China (and especially Guangdong province) is a major sourcing region. These international buyers have long recognised their responsibility to monitor, promote and respect the rights of workers in their supply chain – including the right to engage in collective consultation. Now that the *Regulations* have come into force in Guangdong, international buyers must ensure not only that they understand the new legal requirements but also that their suppliers are implementing them properly. Moreover, ETI's members are all committed to the organisation's Base Code, including social dialogue and collective consultation, which are consistent with China's current policy to promote harmonious labour relations.

Despite the introduction of *the Regulations*, workers and employers in China still have relatively limited experience of and capacity for collective consultation. Approaches are often confrontational and increasingly escalate into larger disputes. *The Regulations* represent an opportunity for buyers – most of whom have considerable experience of collective bargaining – to support their suppliers to genuinely foster social dialogue that supports workers' rights and delivers a sustainable future for the enterprises they depend on for their livelihoods. (Note, though, that the Chinese term 'collective consultation' differs from 'collective bargaining' used in Western economies mainly due to the different cultural context.)

ETI believes that international buyers and suppliers should work together to protect workers' rights to collective consultation and promote positive dialogue. By ensuring that their suppliers' policies are consistent with Chinese labour law, these buyers can make a substantial contribution to implementing *the Regulations* in their supply chains, delivering benefits for workers and enterprises alike.



STRUCTURE OF THE GUIDANCE

This guidance takes buyers and suppliers through each of the steps involved in the procedure for collective consultation, from preparation through to implementation.¹ It focuses on building good labour relations between management and workers at the level of the factory (enterprise), but also includes pointers on when and how both parties (workers and management) should take problems to the next level (upper-level trade unions and employers' associations respectively, as well as relevant local authorities).

The guidance is in two parts:

- ❑ **Part 1** introduces the legal definitions and concepts behind collective consultation, and describes the mechanisms through which it takes place. Each section includes the relevant articles from *the Regulations*, as well as practical information, which can give certain insights. It describes the steps involved in preparing for and initiating a collective consultation, and outlines the conduct expected of both main parties during the consultation. It also considers what to do in the event of a dispute during a period covered by a collective contract.
- ❑ **Part 2** explores the roles and responsibilities of international buyers in relation to collective consultation. It sets out some practical ways in which buyers can promote effective collective consultation among suppliers. It also discusses the different approaches buyers can take to monitor how collective consultation and collective contracts are implemented, and how they can contribute to strengthening the capacity of workers and management to engage in positive dialogue and create an environment in which collective consultation can succeed.

The guidance includes 13 case studies on collective consultation in China covering a wide range of enterprises. Each has two parts: facts and analysis. They have been selected to show some of the common situations encountered and the different ways that enterprises and trade unions have dealt with issues through collective consultation.

The guidance includes relevant information on the trade union system in China (section 1.2). In accordance with the Trade Union Law of the People's Republic of China and other laws and regulations, China has just one recognised trade union – the All-China Federation of Trade Unions (ACFTU). Estimates vary, but it is thought to have between 130 million and 160 million members. All unions set up as grassroots entities are affiliated to the ACFTU; if a trade union is not affiliated, it has no legal status, and therefore cannot be a party to collective consultation. As an instrument of the Communist Party, the ACFTU is tasked with maintaining continuity of production and avoiding work stoppages.

China has not yet adopted a national law to regulate collective consultation, but most provinces now have some regulations that fill this gap to a greater or lesser extent. Hopefully these provincial-level initiatives offer lessons that can be used to develop a more coherent and effective national legislative framework in the near future.

¹ The guidance has been designed to provide general advice for all parties to a collective consultation – principally management and workers. It assumes that enterprises are of a certain size (in terms of workforce) and administrative/managerial capacity.

PART 1

COLLECTIVE CONSULTATION IN GUANGDONG PROVINCE, CHINA

This section defines key terms associated with collective consultation. It explains the scope of *the Regulations* in Guangdong province, and sets out six principles that govern collective consultation. It outlines the structure of China's only legal trade union (the ACFTU), describes the role of the workers' congress in each enterprise, and explains how collective consultation is different from a collective bargaining.

PRACTICAL INFORMATION

How is 'collective consultation' in the Chinese context different from 'collective bargaining', the term typically used in other countries?

There are similarities and differences between the concept of collective consultation, used in the Chinese context, and collective bargaining, used more widely and as defined under the ILO Conventions.

Similarities

- the parties involved (management and workers)
- the procedures and content of the consultation (bargaining)
- the strategy, approaches and techniques needed

In collective consultation and collective bargaining, trade unions serve as the workers' representatives and participate in the consultation or bargaining process with the employer's representatives in accordance with legal procedures. The content covers issues relating to workers' rights and interests, including wage level, welfare and benefits, and working conditions. The consultation or bargaining process aims to reach agreement on the basis of consensus. Both parties need to have appropriate strategies, approaches and techniques, so as to ensure a smooth process and successful outcome.

Differences

1. **Approach:** The two parties to collective bargaining sometimes take a potentially confrontational approach, whereas in China, the concept of collective consultation stresses communication and cooperation.
2. **Form of negotiation:** Bargaining typically takes place through formal and open negotiations, whereas in China, there is more

emphasis on informal and general communications behind-the-scenes.

3. **Protecting interests:** Collective bargaining generally takes a unilateral approach to protecting interests, with management and workers rarely considering the interests of the other party. However, in China, collective consultation emphasises bilateral protection – protecting workers' rights and promoting continued growth of the enterprise and therefore tries to define equal status for the two parties.
4. **Dealing with deadlock:** When collective bargaining reaches deadlock or breaks down, workers may resort to strike action to show their strength and exert pressure, while the employer may take measures such as withdrawing capital or downsizing operations to put pressure on workers. In China, if consensus cannot be achieved through collective consultation or a dispute arises, workers typically abide to keeping harmonious environment and seek support (whether through conciliation, arbitration or a lawsuit) to address the problem.

The theory of labour relations in China is based on the view that as a socialist country, and reflecting its social and cultural system, industrial conflicts are to be addressed through communication and conciliation, and resolved through non-confrontational means.

From a linguistic point of view, in the Chinese context, 'bargaining' or 'negotiation' is an act between two opposing parties or adversaries, or an act between States. With a view to addressing internal, non-confrontational conflicts between groups of people, using the term 'consultation' rather than 'negotiation' is meant to play down any rivalry between the two parties, instead underscoring cooperation, equality and mutual respect.

1. WHAT IS THE COLLECTIVE CONSULTATION MECHANISM?

1.1 DEFINITIONS, SCOPE AND PRINCIPLES

What does the law say?

Article 3 of the *Regulations* defines **collective consultation**,² while the definition of **collective wage consultation** can be found in Article 3 of the *Collective Wage Consultation Provisional Act* (adopted in 2000 by the Ministry of Labour and Social Security):

Collective consultation refers to consultations between employees and management on issues such as remuneration, working hours, rest periods and paid leave, occupational safety and health at work, insurance and welfare.

Collective wage consultation refers to consultations between employees and management on issues such as wage distribution systems and forms, and wage income level within an enterprise. Currently, collective wage consultation constitutes a major component of collective consultation.

Scope of the Regulations

Article 2 of the *Regulations* stipulates that: “**all** enterprises situating in the administrative area of the province” that undertake collective consultation with workers and sign collective contracts are covered by the law. By referring to “all enterprises”, it means all enterprises under the jurisdiction of the provincial administration that conduct collective consultation, regardless of their investment origins or size.

Key principles governing collective consultation

The *Regulations* stipulate, in **Article 4**, some key principles that should guide the process of collective consultation:

- ❑ **Validity.** This means that all the parties involved, procedures and contents of collective consultation must conform to the provisions of national laws.
- ❑ **Fairness.** This means that, in the process of collective consultation, the parties involved are entitled to the same rights (e.g. rights to make proposals, to veto, to endorse and to make statements), and at the same time shall assume shared obligations and responsibilities.
- ❑ **Equality.** This means that, in the process of conducting collective consultation, the parties involved shall remain equal in their legal status. Workers representatives should not be under the command of managers. Neither party should impose its positions on the other.
- ❑ **Consensus.** This means that, in the process of conducting collective consultation, the parties involved shall reach consensus following full expression of their respective aspirations on a good-faith basis.

❑ **Integrity and credibility.** This means that, in the process of conducting collective consultation and after concluding the collective contracts, both parties should act in good faith, keep their promises, and stay honest and trust each other, strictly observing the provisions of the collective contracts.

❑ **Balancing the shared legitimate rights and interests of both parties.** This means that, in the process of conducting collective consultation, each party should not pursue their own interests at the expense of the legitimate interests of the other party, and efforts should be made to balance both parties’ legitimate rights and interests.

Enterprises need to understand the tangible benefits of setting up collective consultation as a regular mechanism through which to conduct labour relations. Collective consultation is conducive to building common interests between workers and management so that both parties can move forward in ways that are mutually beneficial.

² In laws or decrees, there is no definition for consultation but it refers to a process through which all the parties with their respective demands and motives make an effort to reach agreement on the issues of common concern. The issues of common concern by both parties referred to in this guidance are those of working conditions and other work-related matters arising from workplaces or industrial sectors.

Although the process for collective consultation may take time and resources to put in place, it can reap benefits over many years. Case study 1 shows the virtuous cycle that can be created by conducting collective consultation in a regular and rigorous manner over more than 10 years.

Case study 1

Committed to a collective consultation system that delivers sustained growth

Facts

A medium-sized Hong Kong enterprise located in a town in Zhongshan City has around 1,000 workers. It manufactures shoes for a well-known Hong Kong buyer, but also supplies other buyers.

In 2005, under the guidance of the general trade union of the city, the enterprise initiated a collective consultation system. Since then, workers and management have used this mechanism to deliver sustained growth in workers' wages and in the enterprise's profits. It attributes its success with collective consultation to the following:

1. **A good understanding of the problems.** Before putting in place the collective consultation system, the enterprise suffered from high turnover of workers and frequent labour disputes. Neither management nor the union felt it was dealing with issues effectively. Opting for collective consultation was beneficial for both parties. It proved that respecting and meeting workers' requests could enhance the enterprise's cohesion and make it more attractive to buyers, while also motivating workers to improve morale and production – which is fundamental for the enterprise's sound development.

2. **A sincere attitude and creating a good environment for consultation.** At the end of each year, representatives of workers and management would make active efforts to communicate and consult, setting the agenda for collective consultation in advance, and then based on actual performance, promoting the consultation in accordance with the timetable. The process is not rushed or conducted in a token manner, and both parties attach great importance to soliciting workers' views. In 2008, for example, the consultation process lasted for 44 days, during which 2 workers' congress meetings were convened. In 2012, the same process lasted 14 days (from the proposal of the offer to the signing of the collective contract).

3. **Selecting consultation representatives democratically and in accordance with the law.** Workers' representatives consisted of 4 committee members recommended by the trade union committee plus 3 worker delegates recommended by the workshops and branches. These representatives would draft the letter of delegation, to be signed by worker delegates, to ensure their legality. The employer would have 5 consultation representatives, as designated by the manager.

4. **Strict adherence to the agreed procedures.** The enterprise was careful to stick to the legally set procedure at all stages of the process, from preparing the initial offer, to identifying representatives, conducting the consultations, drafting, reviewing and signing the contract, and then publishing and implementing it. It emphasised two stages of the process in particular: the communication phase and review phase. Before and during the consultation process, both parties maintained close communication, and genuinely tried to understand and learn of each other's ideas and thoughts, to reach a consensus. During the review phase, minutes of the consultation meeting and a draft contract were submitted to the workers' council for discussion. The strength of the process is evident for all to see – in 10 years, the draft contract has not once been rejected by the workers' council.

5. **A focus on priorities.** Every year, during preparations before the consultation, both parties focused on key priorities rather than a wide range of issues. For instance, concerning the wage consultation, both parties carefully studied the enterprise's economic performance. On the basis of promoting continued growth, they promoted a joint determination the mechanism for wage adjustment. When other issues were under consultation, both parties focused on achieving mutual satisfaction and benefit. This makes collective consultation a platform on which to build a strong future for the enterprise and its workers.

Analysis

1. Through the collective consultation system, the enterprise put in place **a joint determination mechanism that is compatible with modern business governance**, creating a virtuous win-win cycle for management and workers. Its success deserves recognition, and its experiences should be documented and widely disseminated.

2. Collective consultation enhanced cohesion among trade union members, and made senior managers realise the unique role played by unions in building and sustaining harmonious labour relations.

Case study 2 shows some of the risks involved if international buyers operating in Guangdong province fail to comply with Chinese law and the *Regulations*. It demonstrates why it is prudent that buyers encourage enterprises in their supply chains to establish internal grievance and collective consultation mechanisms.

Case study 2

Flagship store of an international buyer infringes workers' rights and suffers damage to its reputation

Facts

On 23 September 2011, someone who claimed to have worked in the flagship shop of a major international designer in Shenzhen resigned, and together with four other former workers, posted an open letter online addressed to management, calling the stores 'sweatshops'.

The workers complained of inhumane treatment, such as having to apply for drinking water, reporting whenever they wanted to use the bathroom, and pregnant women workers being required to stand for more than 10 hours at a time (one pregnant worker was required to work a night shift, which may have contributed to her subsequent miscarriage). The working day was set at 10 hours, and when leaving the store at 10pm, workers were required to "swipe their off-work cards first and then start work overtime", often staying on for stocktaking or other tasks till 2am, but receiving no overtime pay. The shop also operated a "damage-concerns-all" system, whereby if a product was missing or damaged, the cost would be shared equally by all workers regardless of the cause, even though the enterprise had purchased insurance for each and every item in its shops.

The letter sparked widespread denunciations. Many people questioned how a famous international buyer could treat workers in this way, which seemed incompatible not only with its big-brand status, but also constituted a violation of Chinese labour laws and regulations.

The labour department and general trade union of Shenzhen subsequently made investigations and found that the ex-workers' complaint was generally grounded in facts. They also learned that the workers were agency workers who had been sent from another region and were not recorded at the local labour department – another violation of Chinese laws.

On 12 October, the enterprise involved published a statement, expressing its willingness to accept the criticisms and announcing that it had replaced certain administrators and the manager of the store. It insisted that the enterprise did not permit or tolerate the misconduct it had been accused of, and would continue to work to improve the well-being and conditions of workers in all its stores.

On 25 October, with the involvement of the general trade union in Shenzhen and after a short consultation, workers and management at the enterprise reached a reconciliation agreement, which they agreed not to make public.

Analysis

1. By using agency workers from another region of the country, the Shenzhen flagship store was failing to comply with the legal provision that dispatched labour can only be used for jobs of a temporary, displacing or auxiliary nature. The statement put out by the enterprise said nothing about claims that it had not complied with Chinese law.

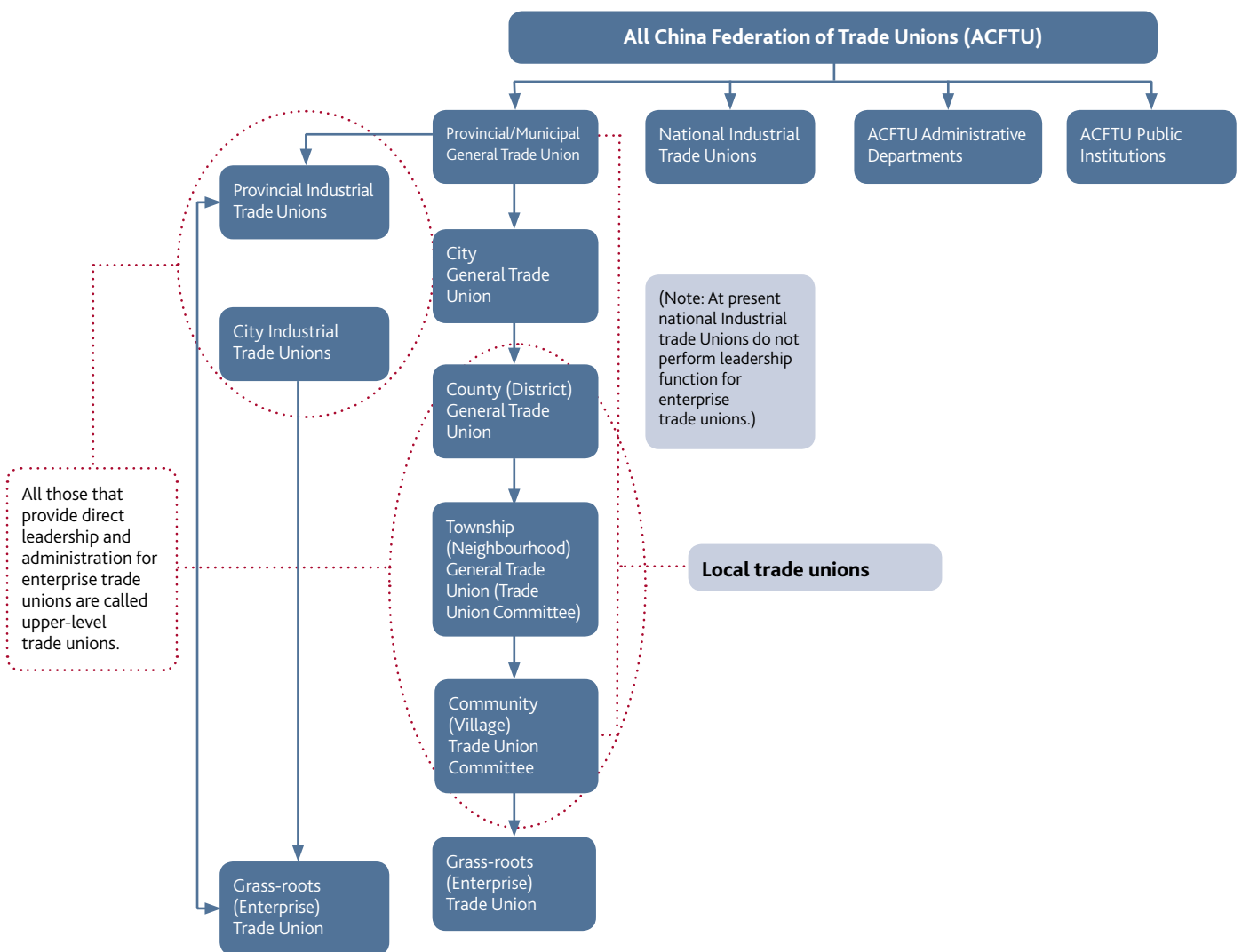
2. The enterprise's reputation was damaged by the episode, with questions around why it only made a statement some weeks after the complaint had been exposed in the media.

3. The fact that management and workers were quickly able to reach a reconciliation agreement after officials from the upper-level trade union got involved shows the value of seeking assistance, and demonstrates the unique role that trade unions can play in resolving labour disputes.

1.2 TRADE UNIONS – STRUCTURE AND ROLES

The All-China Federation of Trade Unions (ACFTU), established in 1925 by the Communist Party, is the only body legally allowed to represent workers (see **Figure 1**). As an instrument of the Party, its principal aim is to preserve stability among the workforce. However, in many cases, workers take action independently, and there are more and more cases where workers elect their own representatives for the duration of a specific dispute. As the demographics of China's workforce change, with younger generations of workers who can air their grievances and complaints to a public audience at the touch of a button or screen, there are likely to be growing demands for democratic participation in the management of enterprises.

Figure 1: Structure of the All-China Federation of Trade Unions (ACFTU)



The role of the workers' congress

In recent decades, the role of the workers' congress (particularly given the prevalence of state-owned enterprises) had been somewhat neglected. However, in 2010, the ACFTU set two objectives: to unionise all companies (targeting foreign-owned companies) and implement collective wage consultation. In Guangdong, *the Regulations* have contributed to revitalising the workers' congress as a mechanism through which management can secure workers' agreement on key aspects of their employment.

The enterprise-level trade union and the workers' congress are two separate entities, and each has a distinct role when it comes to collective consultation. **Table 1** outlines their legal status, functions and responsibilities with regard to collective consultation.

Table 1: Understanding enterprise-level trade unions and the workers' congress

	Workers' congress	Enterprise-level trade union
Definition	An institution that enables workers to exercise democratic management power within the enterprise. It is one part of an enterprise governance mechanism	An autonomous organisation (independent of the enterprise's administration and governance structure) representing workers
Legal status	Recognised by the national Constitution, laws, and governmental regulations	A social entity regulated and protected by law. Needs to be registered with competent authorities in order to be legally recognised
Legal basis	Rules on Enterprise Democratic Management	Trade Union Law, Regulations on Enterprise Trade Union Work
Basic functions	To organise workers to exercise and achieve democratic management within enterprise governance	To represent and defend workers' legal rights and interests
Threshold for establishment	No need for workers to apply for membership	When the number of workers reaches the minimum threshold provided by law. Once established, workers can apply to join voluntarily
Roles and responsibilities in collective consultation	Can exercise veto power over a draft collective contract	Can act as a legal body to represent workers and undertake collective consultation with enterprise management on an equal basis, and subsequently sign the collective contract if adopted by workers' congress

NOTES

Some enterprises establish workers committees – structures set up by the enterprise management. Such structures have no legal status. Thus when an enterprise determines and exercises the functions of a workers' committee, it should not replace those functions of both workers' congress and trade union

1.3 WHAT IS A COLLECTIVE CONTRACT?

What does the law say?

Article 3, paragraph 3 of the *Regulations* defines a collective contract as a written agreement reached between an employing unit and its employees based on the equal consultation covering issues such as labour remuneration, working hours, rest and vacation, occupational safety and health at work, insurance and welfare in accordance with the provisions of laws, regulations and rules.

Collective contracts are different from employment contracts (see box).

In general, a collective contract can be classified as at one of three levels – enterprise level, industry level or regional level – depending on its coverage and the negotiating parties involved. They can also be 'specific' (covering one topic only) or 'consolidated' (covering more than one). Many of the case studies included in this guidance refer to enterprise-level collective consultation and collective contracts. However, collective contracts can also be signed at the industrial (sector) or regional level – between the trade union federation and sectoral or regional employers' federations or associations. They cover similar areas (remuneration, working hours, rest breaks and holidays, occupational safety and health at work, insurance and welfare). Industrial or regional-level collective contracts are common in other countries and may be a good way forward for workers in China (see box).

The Regulations do not particularly aim to stipulate a legal basis for sectoral collective consultation, so do not set out a clear role for trade unions and employers' organisations to negotiate as two parties representing their respective groups. In other words, the negotiating subjects are enterprise trade union and enterprise management rather than sectoral organisations. **Article 6** provides a role for the local trade union federation to "*organise, guide and coordinate*" enterprise-level trade unions to undertake collective consultation; **Article 7** provides a role for enterprise associations, industrial and commercial associations, and business associations to "*help enterprise establish*" a collective consultation mechanism.

PRACTICAL INFORMATION

How is a collective contract different from an employment contract?

- ❑ A **collective contract** refers to a contract duly signed between the enterprise as a legal entity and its employees through collective consultation on issues such as occupational safety, working conditions, staff welfare, leave, vacation, remuneration system and pay scales.
- ❑ An **employment contract** refers to a contract duly signed between the enterprise as a legal entity and an employee as an individual, covering issues such as job role, pay scale, term of service, working hours and social insurance.
- ❑ A collective contract is a legally binding instrument that regulates and stabilises collective labour relations between the management and all employees. The terms of a collective contract or employment contract shall not be lesser than the statutory labour standards at national level.

PRACTICAL INFORMATION

Collective consultation mechanism at the industrial level: the way forward?

Although it was proposed many years ago in China, a collective consultation mechanism was only introduced through legislation relatively recently. It is therefore imperative to learn lessons from experience to date. Given the rich experience and established practices of most countries outside China, industry-level collective consultation is believed to be the way forward. Enterprises and unions should be encouraged to be actively involved in supporting industrial associations and trade unions in their localities and regions.

Case study 3 demonstrates the benefits of conducting collective consultation by industry or sector, taking the garments sector in Dongguan, Guangdong province, as an example.

Case study 3

Undertaking collective consultation to agree a collective contract for workers in the garments sector to avoid vicious competition among enterprises

Facts

HM Town, in Dongguan, Guangdong province, has more than 100 garment enterprises, employing more than 100,000 workers. In 2009, just after the global financial crisis, the provincial general trade union piloted sectoral collective consultation in the town. All garment enterprise employers initially reacted negatively to the provincial union's proposal (including wage increases), believing that it was not feasible or affordable, given the pressing problems they were facing. The provincial trade union's working group explained that collective consultation was not just about wage increases, but also how best to promote growth and development of the enterprise.

YC Company, one of the largest garment enterprises in HM Town (whose president was chair of the town's garment trade association), took a leading role in discussions and motivated other enterprises to give serious consideration to the proposals. As a result, the first collective consultation took place in late October 2009 between the garment trade association and the town's trade union. The consultation succeeded in reaching consensus on three issues, and signed a collective contract. First, it set the minimum standards for all the jobs and posts in the garment industry. Second, it set the timeframe and methods of wage payment. Third, it proposed the conditions and range for wage increases.

The first agreement addressed the problem of volatility of labour market costs. The second agreement regulated conduct concerning wage payment – for instance, by cash or through banking cards. If wages could not be paid on time due to a financial problem within the enterprise, the delay was limited to around 15 days only. The agreement effectively protected workers' economic interests and

prevented wage arrears, which was good for stability. The third agreement targeted the most profitable enterprises, seeking to increase their workers' wages by between 3% and 8%.

Both parties to the consultation could ascertain whether an enterprise was deemed profitable or not by using data at the taxation office; the enterprise's status could be announced to a limited number of people belonging to its trade union. This facilitates the two parties to undertake the "second consultation" on wage increases. As a consequence, the collective contract concluded after the consultation was widely welcomed by garment workers.

Analysis

1. **Representativeness of parties to the consultation.** The collective consultation between the industrial confederation of trade unions and the garment trade association reflected true representation. Chief executive officers (CEOs) of larger enterprises were elected into the trade association, which made it a truly representative body, thus increasing the chances of the collective contract being implemented properly.

2. **Responding to the wider situation.** Because the global financial crisis was causing difficulties for the garment enterprises, consultation on wage increases was put aside at first. Instead, it focused on the labour costs of the main jobs and posts, and then at a second stage concluded a collective contract that reflected what enterprises could afford while at the same time protecting workers' interests.

3. **Strict adherence to procedures.** The consultation process strictly followed to the legal procedure, and there was no problem in implementing the collective contract.

As already mentioned, collective contracts can be classified as either consolidated or specific, depending on the collective consultation process.

What does the law say?

A specific-topic collective contract refers to a written agreement concluded between an employing unit and its employees through equal consultation on a certain specific issue such as labour remuneration in accordance with the provisions of laws, regulations and rules.

A consolidated collective contract can include various issues and elements within labour relations; **Article 8 of the Regulations** stipulates eight subjects that can be covered by a collective contract through collective consultation.³

Article 11 stipulates that enterprises and employees may propose “a **wage increase, no increase or decrease**”. The employees’ representatives may put forward demands for a wage increase “*according to the **enterprise annual profit growth**, the wage guidelines of local people’s government, the local wage growth rate, and wage levels of the enterprises in the same region and the same industry*”.

Enterprises may propose either no increase or a decrease in wages based on “*actual **significant financial loss** and comprehensively considering consumer prices, the government wage guidelines and other factors*”.

PRACTICAL INFORMATION

Collective consultation – more than a one-off event

Workers need to be clear about the purpose and significance of collective consultation (particularly collective wage consultation). It is not merely about securing a one-off rise in wages; it seeks to change practice so that instead of the employer determining the level of wages, management and workers both have the right to express their views on wage levels and other related issues (although wages are typically the main issue, working conditions include many other important factors).

Union shop stewards and production team leaders may need training or other capacity building support to understand that it is the mechanism for co-determination (workers having a role in the decision-making) that is as, if not more important than securing a one-off wage increase.

³ These are: “... determination of labour remuneration, increase or decrease; 2. Work hours, mainly including the system of working hours, methods to lengthen working hours, working hours for special classifications of work, and work quota standards; 3. Rest and vacation, mainly including daily rest hours, weekly rest days, annual leave arrangements, holidays for workers who cannot carry out standard work hours, and other holidays; 4. Work safety and health; 5. Social insurance and benefits; 6. Special protection of women workers and minors between the ages of 16 and 18; 7. Liability for breaching the collective contract; 8. Other items that both sides believe should be negotiated.”

Case study 4 shows that under certain circumstances, a 'specific' issue such as a downsizing arrangement during the financial crisis can be settled through collective consultation, to the satisfaction of workers and management.

Case study 4

Using collective contracts to find an alternative to downsizing during economic crisis

Facts

An enterprise that makes domestic appliances in Bao'an District, Shenzhen, has more than 6,000 workers. In early 2009, the global financial crisis resulted in drastically reduced orders. Senior management notified the trade union that it was preparing to downsize 40% of the workers. Meanwhile, it made the situation known to the workers.

After receiving the notice, the trade union immediately undertook a survey among a large number of workers. They learned that most workers did not want the enterprise to downsize and stood ready to 'weather the storm' with management. The trade union convened meetings and put forward several proposals to the employer (outlined below), suggesting measures to overcome the difficulties through collective consultation.

On receiving the trade union's offer, management reacted immediately. To protect its long-term development, the employer was open to options other than downsizing. Provided the union's proposals were rational and feasible, the employer made it known it would be willing to accept.

The trade union representatives proposed four key points. First, not to downsize; based on existing orders, the work schedule could be adjusted to 3 working days and 2 days off (a 5-day working arrangement per week), or each worker could reduce their hours to 5 or 6 per day. Second, during the off-work days, the enterprise and trade union would jointly organise training programmes and competitions to enhance workers' skills. Third, workers taking part in these events in off-work days would receive basic pay (accounting for around 70% of the total wage). When orders increased again and workers needed to work overtime, they would not get an overtime rate (to offset the basic pay they received during off-work days). The amount of compensation would depend on the total payment during the off-work days. Fourth, any workers not wanting to participate in the plan could resign, and the enterprise would compensate them in accordance with the law.

During the consultation process, the trade union repeatedly emphasised that what the enterprise lacked was not cash, but orders. The proposals recognised that the enterprise's most important asset was a stable and flexible workforce, and one that could guarantee quality of the product.

The trade union's proposal to management took into consideration workers' needs on the one hand (for instance, loss of a job would affect the life of the worker's entire family) but also the future of the enterprise on the other (because when orders increase, it would need to recruit more people, spend time and money training them, and possibly not be able to guarantee product quality).

After careful consideration, the employer accepted the trade union's proposal. The two parties then held further discussions and made amendments, and agreed a collective contract between management and workers to see them through the period of low demand.

Analysis

1. Using collective consultation to cover issues other than wages.

This example shows that collective consultation can be an effective tool for resolving numerous work-related issues, not simply wage increases. Collective consultation concerns both workers' interests and the development of the enterprise – two aspects which are completely interrelated.

2. The trade union played an active role in stabilising the enterprise's future. The trade union in this case is a grass-roots trade union that not only represents its workers but also realised the benefits of helping to secure the enterprise's future, carefully balancing the interests of the two parties. This reflects **good consultation and coordination skills**.

3. Senior management keeping an open mind. The senior management showed **respect for the workers** in that it notified the union early on of its intent to downsize, and was willing to listen to the proposals the union put forward. By keeping an open mind, the enterprise was able to respond to the union's positive proposals, and through collective consultation achieved a win-win solution.

2. COLLECTIVE CONSULTATION: A STEP-BY-STEP GUIDE

This section takes you through the steps involved in the entire collective consultation process. It explains who should be involved in representing the main parties, how they should go about collecting and preparing the information necessary to support their proposals, and how to get the process underway. It also looks at implementation of collective contracts agreed during consultation, and what to do in the event of a dispute during a period covered by a collective contract.

In terms of worker representation, it provides guidance on what to do in different situations, including: (1) where the enterprise has a trade union elected according to the law but has no collective consultation system in place; (2) where the enterprise has a trade union but it was not set up through legal, democratic election of worker representatives; (3) where there is no trade union; and (4) in case of a work stoppage. The case studies emphasise the importance of truly democratic nomination and electoral processes for trade union officials.



2.1 IDENTIFYING THE PARTIES TO BE INVOLVED IN COLLECTIVE CONSULTATION

What does the law say?

Article 12 of the *Regulations* stipulates that two statutory parties must be identified to be engaged in collective consultation: one party represents the enterprise management, the other represents employees. Legal representatives of the enterprise may authorise administrative personnel to form a team of consultation representatives on behalf of the enterprise.

Workers' representatives are to be identified through two procedures as stipulated in **Article 13** of the *Regulations*: "selected and assigned by trade union" or "trade union organization organize workers to identify through democratic election".

Trade unions, as the statutory representative of workers' interests, should function as the **organiser and leader** of workers in collective consultation. Therefore, the chief leading member of the trade unions should be authorised as the chief representative of the workers through democratic procedure of nominations. Both parties may invite legal consultants from outside enterprises to participate in consultation; these consultants in general do not assume the position of chief representative.

How many representatives?

Consultations must have an **equal number** of workers' representatives and representatives from the enterprise concerned. There are clear provisions in the *Regulations* (**Article 12 paragraph 2**) on the constituents and number of consultation representatives from the two parties.

Article 12 paragraph 3 also clearly states that the representatives from either party shall not concurrently assume the position of representative of the other.

PRACTICAL INFORMATION

Can workers' committees represent workers in collective consultations?

Workers' committees (sometimes called welfare associations) have been set up in some privately owned enterprises under the guidance of the enterprise management, in which workers participate. They organise welfare, cultural and sports activities, and other philanthropic work. However, they have **no formal legal status as a representative workers' body**. As such, a workers' committee cannot replace trade unions or workers' congresses.

Where an enterprise-level trade union agrees a collective contract with management, the workers' committee must implement the contract (as adopted by the workers' congress).

2.2 DETERMINING THE REPRESENTATIVES OF THE TWO PARTIES

What does the law say?

Representatives of both parties in the collective consultation process should be drawn from the workers and management personnel of the same enterprise. Experts and consultants invited by both parties can attend collective consultations, but in general they do not assume the position of chief representative in the consultation⁴.

In relation to the employer, **Article 13, paragraph 1** stipulates that the legal representative of the enterprise shall determine management representatives. The chief representative in collective consultation should be a legal representative of the enterprise or other member of management delegated by the legal representative in written form.

In relation to workers, various acts and regulations emphasise the need to avoid one person holding two conflicting roles. For example, Article 7 of the Guangzhou Municipal Code on Implementing Chinese Trade Union Law stipulates, "*Working Unit (employer) and its department operating and management responsible people should not be posted/ appointed as union chairperson or vice-chairperson*".

It has been further made clear in the Code on Democratic Election and Management of Guangzhou Municipal Grassroot Trade Union Chairperson that investors/partners of the enterprise and their relatives, as well as foreign workers, should not be recommended as union members. Additionally, within an enterprise, the position of trade union leader should not be assigned to a senior manager within the administration.

The ACFTU's Regulation on Grassroots Union requires that, if an enterprise manager or chief administrator is also the trade union leader, a different leader must be elected to represent the workers in collective consultation, to avoid the inevitable conflict of interests. (Were the manager/administrator allowed to also assume the role of trade union leader in the enterprise, the outcome of the collective consultation process would undoubtedly be questioned and challenged.)

PRACTICAL INFORMATION

Getting the right representatives with a constructive approach is vital for successful collective consultation

Representatives of both parties play a vital role in collective consultation and their approach can ultimately determine whether the process succeeds or fails. To fulfil that role effectively, there needs to be a supportive and engaging environment in which workers can nominate candidates to stand for election, circulate information, discuss candidates' suitability, and elect their chosen candidate following correct procedures.

Workers' representatives in collective consultation: Workers' representatives should ideally have been employed at the enterprise for some years, and therefore familiar with all its operations. They should have some knowledge of labour laws, as well as a good character, exercising sound judgement and honesty in handling cases that come to them. Last but not least, they should have been elected by a majority of voting workers AND through following due procedures. They should additionally be competent and qualified to do their own jobs.

The workers' congress should formulate and approve methods to elect collective consultation representatives, specifying the qualifications candidates should have so as workers can elect representatives who are suitably knowledgeable. It is best to avoid electing individuals who are known to be about to leave the company, as experience shows they usually tend to go for more radical and confrontational approaches.

Employer's representatives in collective consultation: Employers should select or delegate administrative staff who are competent and have proven experience of handling staff relationships respectfully. Ideally, management and workers should broadly agree on the qualifications consultation representatives should possess.

⁴ Collective Contract Provisions (Appendix 1.4) provides in Article 23: The chief representatives from both parties to the collective consultation can authorise in writing professionals outside the employing unit to serve as consultation representatives for their respective parties. The representatives thus authorised shall be no more than one-third of the total representatives of each side. The chief representatives shall not be served by people from outside of the employing unit. Interim Measures on Collective Wage Consultation (Appendix 1.3) provides in Article 12: Each of the two parties to the consultation can delegate in writing professionals outside the enterprise to serve as consultation representatives of its side. The representatives thus delegated shall be no more than one-third of the total representatives of that party.

How to proceed when there is already a union at the enterprise but no system of collective consultation

What does the law say?

Article 13, paragraph 2 provides that the process of determining workers' representatives for collective consultation shall be organised and led by trade unions. Representatives are either "*selected by union*" or "*union organises workers to elect democratically*".

There is a risk that if a trade union is not truly representative, then any contract it negotiates may well be rejected by the workers' congress.



Case study 5 shows how electing candidates to represent workers through a democratic process makes trade unions more effective, and in turn contributes to successful collective consultation. It also shows the complexity of managing democratic elections for worker representatives in a large enterprise.

Case study 5

Democratic elections for trade union officials strengthens the collective contract

Facts

On 17 May 2010 a work stoppage occurred at an enterprise in Foshan. As well as demanding wage increases, the workers also wanted to reorganise their trade union and elect a new chairperson.

In December 2010, the three-year term of the existing trade union committee at the enterprise expired. With the approval of the upper-level trade union, a second session of the workers' congress was convened. Given calls for restructuring the trade union, the election of officials was at the forefront of workers' minds. They wanted the election to comply with trade union laws and regulations (the Trade Union Constitution of China and the policy regulations of the ACFTU and general trade union of the province). They wanted elections to deliver a chairperson that had their universal support, based on an election process that would be truly democratic.

According to the rules, the enterprise set up a **trade union election steering group** to manage the election process. The steering group comprised 25 people in total – 11 members of the incumbent trade union committee (this should have been 13 but 2 members had resigned and left the enterprise, and the by-election had not yet taken place) and 2 representatives from each of the 7 workshop sub-committees.

Under the guidance of the general trade union of the province, the steering group undertook an extensive publicity campaign for the new election. It worked hard to help members understand the significance of the new election, how the process would work, and their rights and obligations as members.

There were six ways that candidates could be nominated to the new committee: (1) **self-nomination**; (2) **mutual nomination among members**; (3) **recommendation from the workshop sub-committees and trade union branches**; (4) **recommendation from incumbent committee members**; (5) **recommendation from the next tier of the trade union**; and (6) **recommendation from the administrative department of the enterprise**. This process produced a total of 42 candidates.

According to the preparatory work plan, only 15 candidates were needed, with 13 to be elected members through an open election. When the steering group realised there were far too many candidates, the provincial general trade union leader pointed out that it was not within the steering group's remit to shortlist 15 out of the 42 candidates. For a truly democratic process, members should have the right to take part in preliminary elections among the 42 candidates. A voting box was placed in each workshop and members voted anonymously to select the 15 official candidates.

The 15 candidates were then submitted to the workers' congress for the next stage of the election process, with 13 subsequently elected. The new committee held its first meeting and voted for a new chairperson and two vice chairs. Throughout the whole electoral process, legal provisions were complied with, which reinforced the

democratic outcome. The new trade union committee had the support of all union members.

After the new committee took office, it undertook collective wage consultation in March 2011. The trade union and administrative department of the enterprise showed mutual respect and both made concessions, reaching agreement to increase the monthly wage by 611 yuan.

Analysis

1. **Union members need to be able to freely nominate candidates for election as union officials** (whether committee members, chairperson or vice chair). Only if workers have this freedom can the electoral process be truly democratic.

2. **The electoral process should follow established procedures.** The six ways of nominating candidates followed the procedures established by the general trade union of the province. These methods had been incorporated into the *Measures to Implement Democratic Election of Enterprise Trade Union Committee* issued by the provincial general trade union. With regard to other stages, like direct voting or indirect voting, and how to count the votes, the provincial union has other concrete instruments to guide the process. It must also be made clear that election of candidates to the trade union committee should be determined by workers and not management. In choosing their representatives, workers should consider certain requirements. First, **balance** – each workshop should have one or more committee members, to enable coordinated trade union work across the whole enterprise. Second, **representativeness** – members from production lines should account for more than 50% of the committee, but middle-level and senior technicians should also be included. Third, legal knowledge – it is better for a trade union committee member to have some legal knowledge for his or her work. Fourth, coordination skills – trade union committee members should be able to coordinate with others within and beyond the enterprise. Finally, readiness to help – a committee member should stand ready to invest their time and energy to serve others.

3. Having **confidence in workers**. The steering group must have confidence that the workers will consider relevant information carefully and make sensible choices. In this respect, the publicity campaign was critical as it clearly explained the five 'requirements' of effective representatives. The results of the preliminary election showed that workers did take these requirements into account in their voting.

4. Democratically electing a trade union committee is only the first step in the union representing workers. **Election does not equal representation.** To win and maintain workers' trust, the union needs to work hard to organise and engage all workers in activities, represent their interests, and conduct collective consultation in a constructive manner. It also needs to deliver good training and education programmes for workers to help them develop their capacities and understanding of the issues involved in collective consultation.

How to proceed when there is no trade union at an enterprise

Where an enterprise has no existing trade union, it may be that workers spontaneously initiate collective consultation with management. The way in which representatives are elected and selected is crucial to the success of collective consultation.

What does the law say?

Article 13, paragraph 2 of the *Regulations* stipulates that, **for a non-unionised enterprise**, the workers (as one party to the consultation) may ask the upper-level trade union to “*organise the workers to select and elect consultation representatives*”, and the results should be “*validated by more than 50% of total workers*”. Then, the chief negotiator will be “*elected amongst the consultation representatives who participate in the consultation*”.

The upper-level union organisation may also be authorised by all the enterprise’s workers to submit a request for collective consultation to the management. It is less feasible for upper-level unions to undertake collective consultation on behalf of workers in an enterprise, especially when it is a large enterprise.

If an enterprise sets up its own workers’ committee, workers’ welfare committee or other structure, whether of its own accord or in consultation with a non-government organisation (NGO), there is no legal basis or authority for such an entity. It cannot therefore act as the workers’ representatives in collective consultation. If an entity that lacks legal status or recognition engages in collective consultation, the collective contracts concluded may be implemented by the two consultation parties on a voluntary basis, however its legal validity risks being challenged should a dispute arises during its implementation.

Case study 6 shows what can happen when workers spontaneously form a trade union and the steps they need to take to secure legal recognition in order to engage in collective consultation.

Case study 6

Workers in an electronics factory set up their own union

Facts

One Guangzhou factory (a joint venture) has 6,500 workers, 5,000 of them women. In October 2013, after consulting a local non-government organisation (NGO), the workers elected representatives to engage in dialogue with their employer, demanding that the employer pay its contributions to social insurance programmes and a public housing fund, and increase wages. In November, the employer stated that the workers had not formed the union according to legal procedures (in terms of requesting the upper-level trade union federation to recognise their affiliation). However, it said it would reply to the workers' request within a month, during which time there would be no dialogue.

Two months later, the employer replied to the workers, stating that it would take three years to make up the social insurance contributions overdue since 2002. The employer also sacked some of the representatives workers had chosen to speak on their behalf. Given the circumstances, the workers proposed that they form a trade union of their own, hoping that this would provide legal protection for their activities.

Analysis

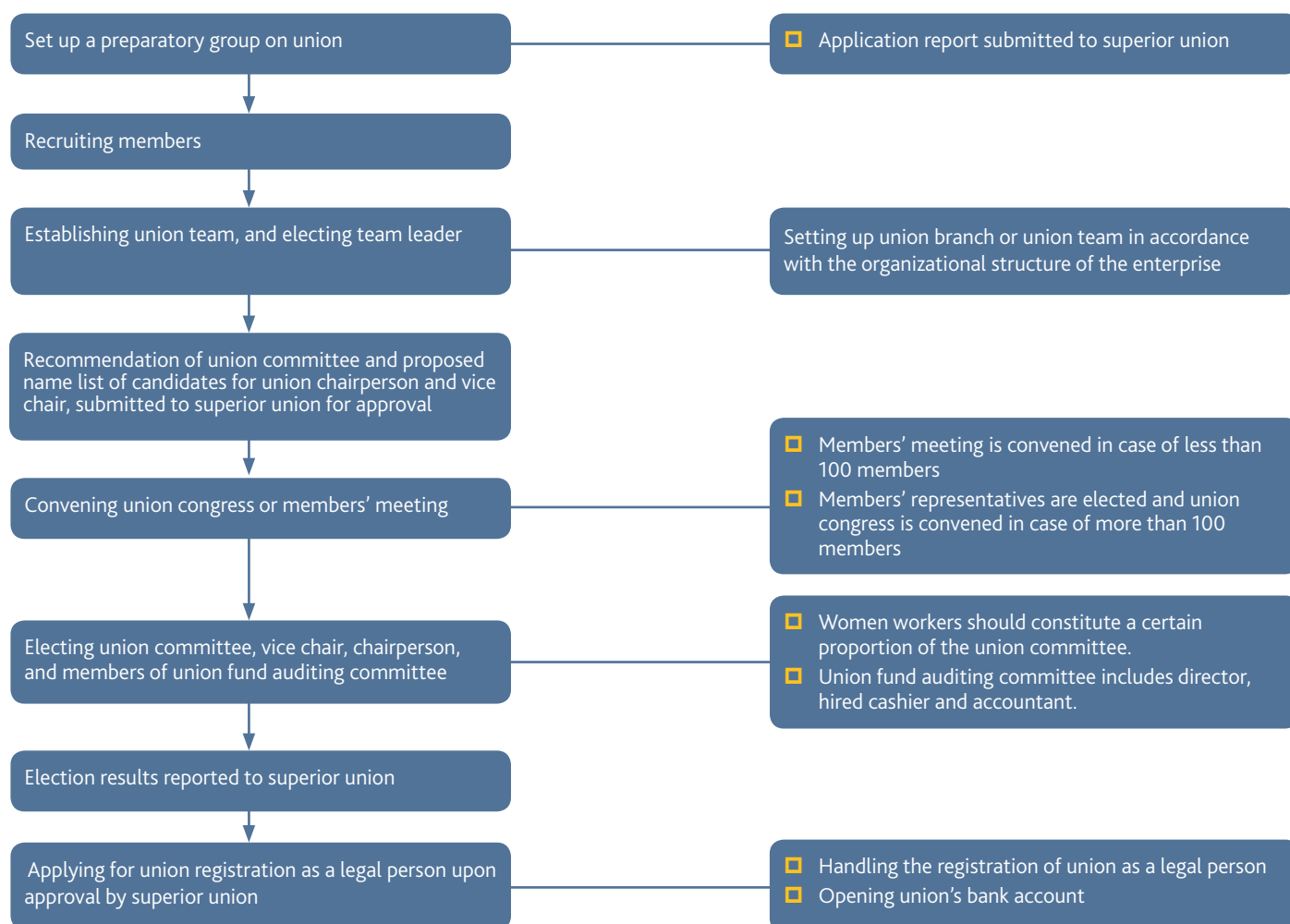
1. When workers express a desire to set up a union, they need sound advice, as well as approval and leadership from the local general trade union. It is vital that they **follow established procedures and channels**. The most important process is to secure legal person status for the grassroots trade union from the local general trade union, in accordance with the law, thus proceeding to become affiliated to the ACFTU. In addition, the plans for holding elections for workers' representatives need to be submitted to the local general trade union for approval.

2. Workers at the factory did eventually achieve recognition of their enterprise-level union by the end of 2014. This shows that official union formation can be a lengthy and complex process, and one that depends on how responsive upper-level union officials are. *The Regulations* do not define the period of time in which the upper-level trade union should respond to workers' requests to establish a grassroots union.

2. Although in some instances workers turn to NGOs for guidance, it should be remembered that there are many limitations of NGOs' role in representing and participating in collective consultation according to Art. 13 of the Regulations.

However, *the Regulations* do not stipulate that establishing a recognised union is a pre-condition for undertaking collective consultation, as long as the upper-level union plays a role in organising the consultation. (In practice, the upper-level union usually guides the first collective consultation and then consults workers about establishing a trade union to undertake collective consultation on a regular basis.) Article 10 of China's Trade Union Law provides that all companies with more than 25 workers should establish a grassroots trade union, and those with less than 25 workers should establish joint grassroots trade unions. Although it is possible – given the caveat in *the Regulations* about upper-level union involvement – for workers to engage in collective consultation without joining a recognised trade union, it is best if the enterprise and its workers set up a formal trade union following established procedures (see **Figure 2**).

Figure 2: How to set up a formal trade union



Protecting the rights of workers' representatives in collective consultation

Workers' representatives participating in collective consultation have explicit legal protection, and management must respect their role in promoting the legitimate rights and interests of the workers they are representing. *The Regulations* (**Article 16**) stipulate that consultation representatives are entitled to certain protections. Unless the individuals concerned violate the provisions in Articles 36 and 39 of the Employment Contract Law, management may not adjust their posts, reduce their wages or welfare treatment, or terminate their employment contract.

Article 16 also stipulates that as long as the consultation representatives are performing their duties within their term of office, their employment contracts shall be subject to automatic extension (to avoid a situation where their contract ends before they have fulfilled their term of office).

2.3. COLLECTING, PREPARING AND SHARING THE INFORMATION NECESSARY FOR CONSULTATIONS

What does the law say?

Article 14, paragraph 2 of *the Regulations* stipulates that materials and documents "*relevant to collective consultation*" should be provided by both parties. However, even though enterprises are obliged to ensure the information is "*true*", and although workers' representatives are obliged to "*keep enterprise' commercial information confidential*" (**Article 15**), *the Regulations* do not specify exactly what documents are to be prepared and which information is to be provided for collective consultations.

Information related to the content of negotiations, requests raised by each party to the other, or requests for information that both parties consider necessary for collective consultation should generally be provided. Trade unions should be more proactive in obtaining reliable and up-to-date information to support their requests for wage increases, such as data on the costs of food, housing and education, rather than always depending on figures provided by the employer.

Can enterprises always afford wage increases?

Although some aspects of Chinese law support collective consultation to agree increases or decreases in wages, most consultations consider workers' requests for wage increases. But if workers' expectations of wage growth exceed the enterprise's capacity to afford increases, collective consultation may run into difficulty, which could be harmful to the interests of both parties in the long term.

Managers should therefore make full use of the workers' congress platform to brief workers about the enterprise's performance, so as to improve transparency. This should also help to rein in any unrealistic expectations on the part of workers, enabling them to base any claims for a wage increase on an assessment of the enterprise's performance. For worker representatives to make a realistic assessment, management needs to provide them with crucial information about the enterprise's operations. This includes profit and loss statements; statistics on remuneration for workers doing different jobs within the enterprise; remuneration for workers doing similar jobs at other enterprises in the same sector; and welfare expenditure (see box for additional information needed).

Both parties may have access to data they regard as unsuitable for disclosure to the other party. In this regard, *the Regulations* require representatives of both parties to keep the information confidential. If one party's disclosure of sensitive information causes losses to the other party, that party has the right to take legal action by filing a lawsuit.

PRACTICAL INFORMATION

What kind of information do both parties need access to for collective wage consultations?

When undertaking collective wage consultation, employers should provide the following information in accordance with Chinese law:

- ❑ The labour productivity and economic efficiency of the enterprise;
- ❑ The total payroll in the preceding year and an average wage level of workers at the enterprise;
- ❑ The enterprise-level wage guideline and the labour market wage income benchmark published by the local authority of the human resources and social security departments;
- ❑ The Consumer Price Index (CPI) for local urban residents published by the Statistics Department under the local people's government.
- ❑ The local minimum wage standard as well as the average wage growth rate of the regions and industries disclosed by the departments concerned under the local governments.

Case study 7 shows that greater transparency on the part of management, through sharing data on the enterprise's performance, can enable workers to formulate more reasonable and realistic wage demands. In this way, it can contribute to a more transparent process based on mutual knowledge and trust.

Case study 7

Workers in an electronics factory set up their own union

Facts

One foreign-owned company in Foshan, belonging to a well-known international buyer, manufactures domestic appliances (such as refrigerators) that are sold in China and the buyer's home country. Its economic performance is in the upper middle range when compared to similar enterprises in the area.

In January 2012, workers and management at the enterprise undertook collective consultation on bonuses for that year. The employer proposed setting the bonus at 2 months' basic pay – the same as the previous year. Workers put a counterproposal of 4.5 months' basic pay, arguing that the enterprise's economic performance was improving each year, so the year-end bonus should increase to reflect this. Given the large gap between the two proposals, neither side accepted the other's, so the consultation was deadlocked.

At the third consultation meeting, workers' representatives asked the employer to provide them with relevant economic data (in particular profit and growth rate; labour productivity and growth rate; and taxes paid and growth rate). The amount of year-end bonus could then be determined after calculations based on the data. The workers' representatives also listed data they had collected, pointing out that a production team used to manufacture around 800 appliances, but in 2011, their productivity had improved, producing between 1,000 and 1,200 appliances. The workers felt this demonstrated that their hard work had created more wealth for the enterprise, and so they deserved to share the fruits of this success.

The employer was reluctant to provide the data that had been requested, insisting they were confidential. The workers' chief negotiator responded by reminding the employer that they were legally obliged to provide relevant data as part of a collective consultation, and that they, as workers' representatives, were obliged to respect the confidentiality of corporate documents. Whoever violated the law would be penalised by the law. Only by being transparent, sharing information from both sides, and displaying mutual trust could the two parties move forward with the consultation.

The workers' chief negotiator urged the employer to consult a legal advisor, which they did. In the end, the employer did provide the workers' representatives with the information they had requested. This meant the consultation could then proceed quickly. Based on the data, the enterprise proposed a year-end bonus of 3.3 months' basic pay. The workers' representatives had argued that to continue to motivate

workers to improve productivity even more, the year-end bonus should be appropriately raised as an incentive. The workers' representatives succeeded in persuading the employer, and agreement was reached for a year-end bonus of 3.5 months' basic pay.

In this case, before and during the process of collective consultation, the trade union had collected important **external data**. These included: wage consultation guidelines produced by the government (which set upper, median and lower lines taking full account of the economic capacities of an enterprise); data on wage levels across the country, in Guangdong province and the local area; the CPI; wage levels at nearby enterprises; workers' expenses (food and other basics); and changes in housing rents. The **internal data** were provided by the employer, including business sheets, data on profits and profit trends over the past three years, labour productivity and trends, and labour costs and trends.

Analysis

1. Information symmetry is important because data forms vital evidence about performance and trends. **Unless the employer is willing to share key data, it is difficult for workers' representatives to provide evidence to support its views and proposals**, undermining the collective consultation process. Sharing information also benefits the employer, as it means workers' proposals are more likely to be reasonable and realistic, when supported by mutually accepted data.

2. **Employers are legally obliged to provide workers' representatives with relevant economic data** about the enterprise. Buyers should encourage their suppliers to be more transparent and provide all relevant information to workers' representatives to build trust and help both parties reach agreement.

3. **Both parties have rights and obligations when dealing with data as part of collective consultation.** Workers' representatives are obliged not to leak sensitive information and to respect confidentiality. Fearing that workers' representatives may leak confidential data is not sufficient reason for employers refusing to provide relevant data. Should a workers' representative leak any such data, the employer would have legal redress.

4. There is no general rule governing exactly what data the employer should provide. Workers' representatives can make specific requests for information from the employer depending on the consultation agenda, and vice versa.

2.4. INITIATING THE CONSULTATION: SENDING THE FORMAL INVITATION

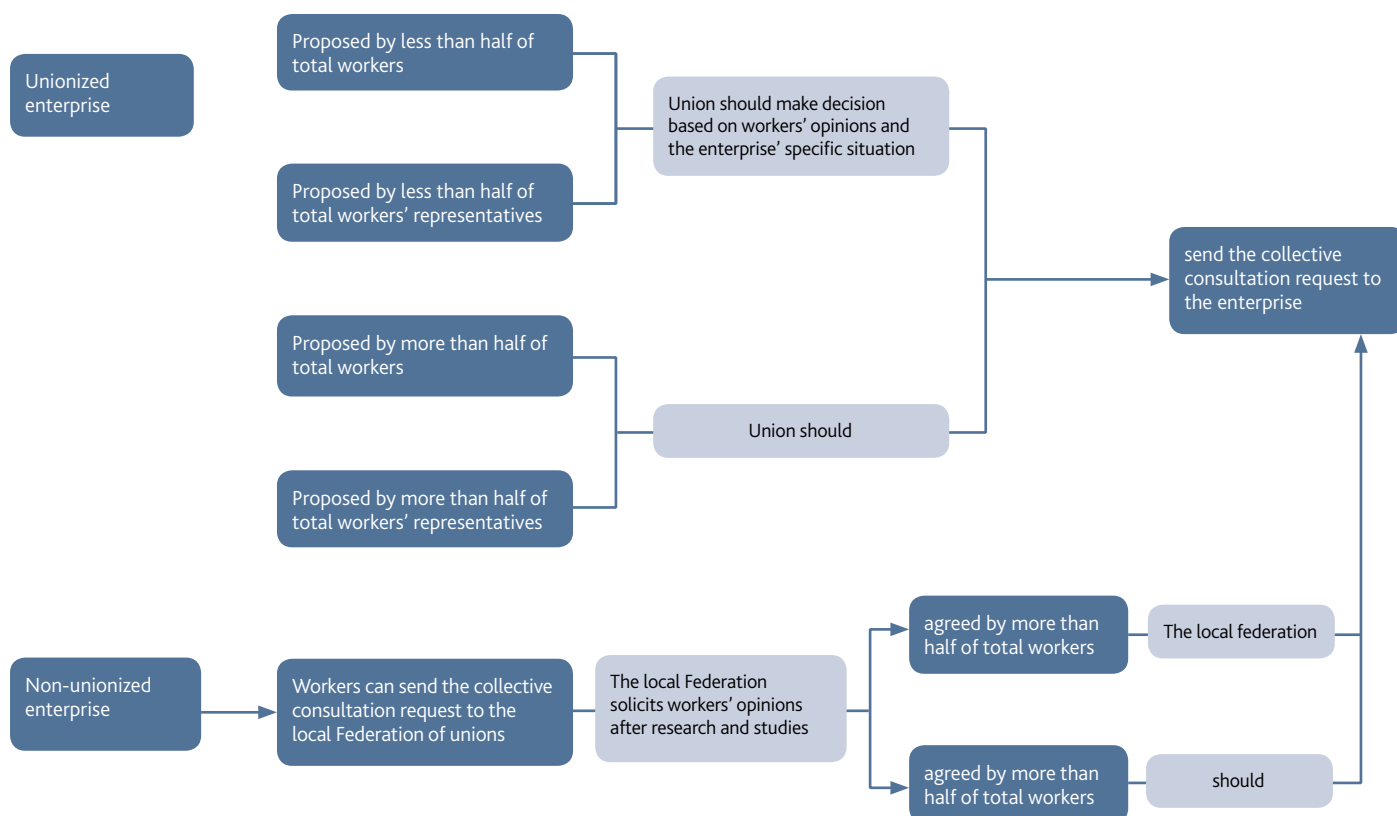
What does the law say?

The law states that whenever the employing unit or workers in that unit deem it necessary to conduct a collective consultation, either party may send the formal request in writing to the other. The procedure is as follows.

a. When workers deem a consultation necessary:

Article 18, paragraph 2 of the *Regulations* outlines the procedures for workers at an enterprise to initiate the consultation, whether or not they are unionised (see **Figure 3**).

Figure 3. Procedures and steps for workers to initiate a consultation (unionised and non-unionised enterprises)

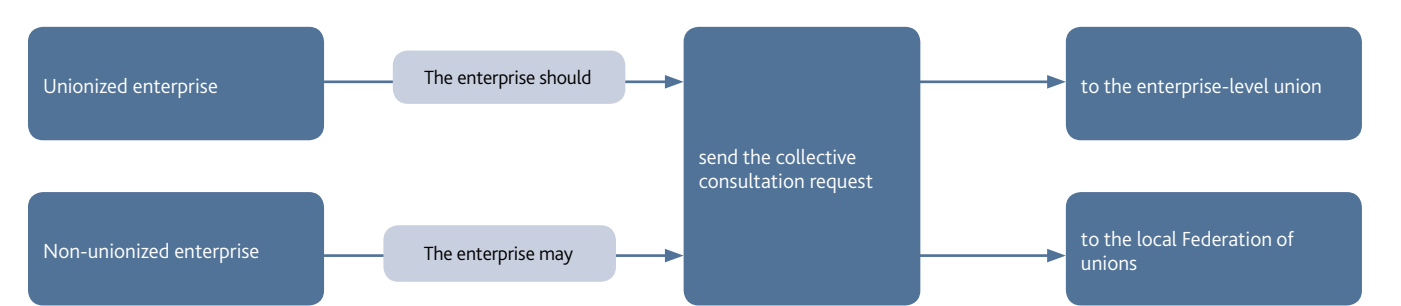


In a non-unionised enterprise, workers may send their request to their local federation of trade unions, which must then solicit workers' views and secure agreement of more than half of all workers in order to proceed. The federation should provide guidance on how the workers are to elect their consultation representatives. The upper federation should facilitate workers to call a workers' congress in order to approve their elected representatives, so that they can send the collective consultation request to management. *The Regulations* do not stipulate specific timescales for these procedures.

a. When management deem a consultation necessary:

Article 18, paragraph 3 outlines procedures for management to initiate the consultation, whether in unionised or non-unionised enterprises (see **Figure 4**).

Figure 4. Process for management to initiate a consultation (unionised and non-unionised enterprises)



In practice, most collective consultations are initiated by workers. In a few cases though, the employer has initiated the process. Case study 8 gives one such example.

Case study 8 A management-initiated collective consultation

Facts

An electrical motors enterprise in Guangdong province is exclusively owned by a foreign investor, and has more than 6,000 workers. As of 2008, the enterprise put in place a collective consultation system. Its effective implementation has motivated workers to deliver good performance, promoted sound relations between management and workers, and contributed to sustainable development of the enterprise.

In February 2011, the workers expressed the view that basic pay and full attendance subsidies were too low, and filed a complaint through the trade union. Management took the initiative and offered to engage in a consultation with union representatives to deal with these two issues: wage increases and full attendance subsidies. The union responded immediately and the process of collective consultation between the two parties began.

In the first round of talks, management proposed a wage increase of 200 yuan for every worker, regardless of job position; this comprised a 150 yuan increase in basic pay, 20 yuan increase in house rental subsidies, and 30 yuan increase for full attendance subsidies. For the typical production line worker, this would mean an increase in basic pay from 1,135 yuan in 2010 to 1,335 yuan in 2011 (a 17.6% increase). Upon receiving management's proposal, the trade union solicited workers' views, and put forward a counterproposal to the second round of the talks. This stated that workers agreed the increases proposed by management for house rental and full attendance subsidies, but proposed that basic pay should increase by 230 yuan instead of 150 yuan (an increase of 24.6% for the typical worker). Management then took some time to consider this proposal.

At the third round of talks, the two parties reached agreement on yet another proposal: basic pay would increase by 190 yuan (21.1%), while increases in house rental and full attendance subsidies would be as per management's original proposal (20 yuan and 30 yuan respectively). The proposal was adopted after discussion at a workers' congress, with 70% voting in favour. It was implemented with effect from April 2011.

Analysis

1. **As noted, it is relatively rare for management of an enterprise to take the initiative in this way and offer to start a consultation** in response to workers' views and requests. The approach taken by management was a strategic one, acknowledging that addressing workers' concerns and maintaining their motivation was in the best interests of the enterprise in the long term.

2. The trade union, following the example set by management, adopted a pragmatic approach and was committed to the consultation. It **demonstrated full respect for management's proposal**, widely soliciting workers' views, as per its mandate. The consequence: it won the trust of management and greater support and confidence from the workers.

3. The consultation took into account **both the financial capacities of the enterprise and its long-term development, and the grievances of workers** who wanted to improve their living standards. Both parties were willing to be flexible and took time to develop and consider revised proposals rather than taking a confrontational approach.

Upon receiving a request to engage in collective consultation, both parties should begin preparatory work (see box) as the best way of ensuring a constructive process and a successful outcome.

PRACTICAL INFORMATION

Management and workers' representatives should consider the following steps before proceeding with a consultation. They should:

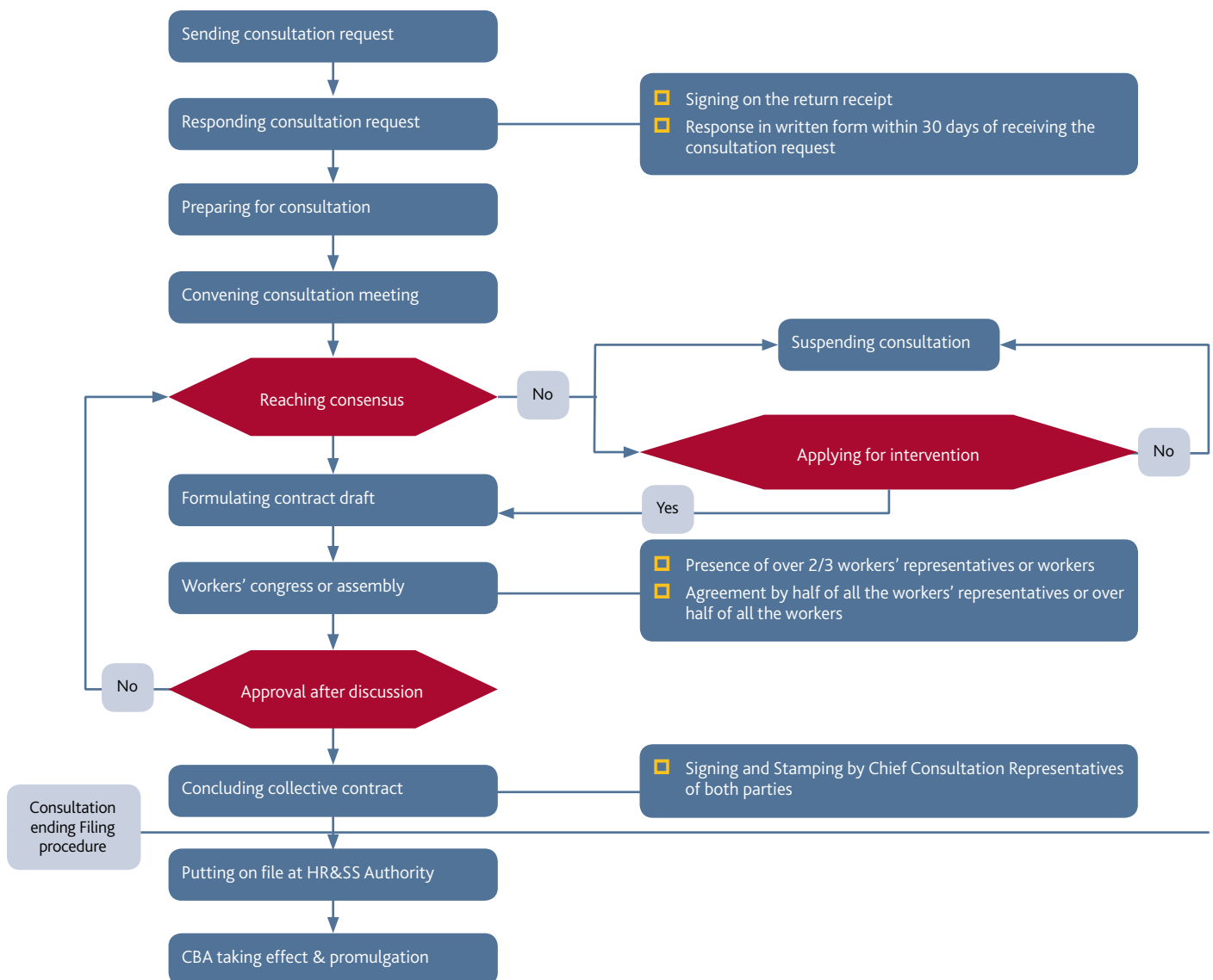
- ❑ Familiarise themselves with relevant laws and regulations
- ❑ Learn about the materials and collect workers' opinions
- ❑ Propose items for discussion, resolutions for decision
- ❑ Decide on issues such as the timing, date and venue; the enterprise should facilitate a meeting space and together with workers' representatives jointly appoint a note taker
- ❑ Jointly appoint a recorder



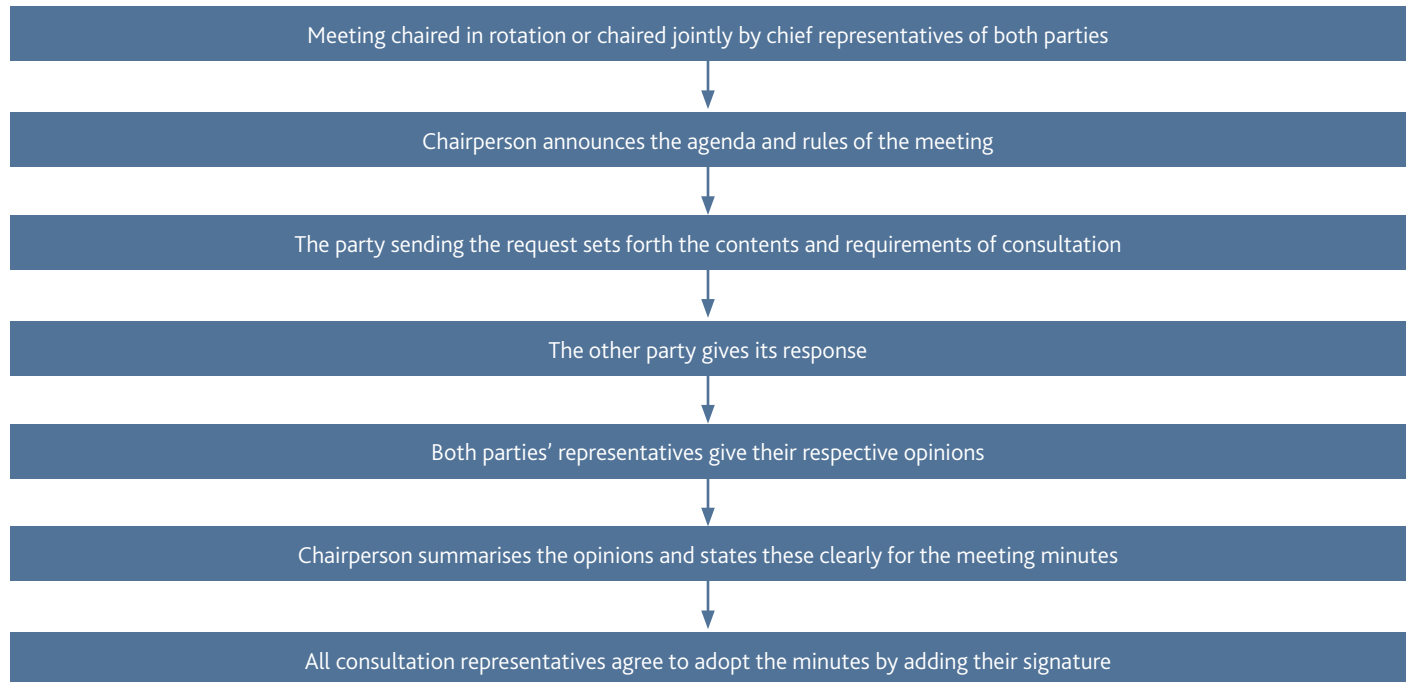
2.5 STATUTORY PROCEDURES FOR COLLECTIVE CONSULTATION

Detailed procedures are mainly provided by **Articles 20, 21 and 26** of *the Regulations*. The steps and procedures for collective consultation and special collective wage consultation are basically the same (see **Figure 5**).

Figure 5. Procedures for the entire collective consultation process



Conducting consultation meetings: key steps



After the initial consultation meeting, representatives of both parties communicate the discussion to their respective constituencies and solicit their views.

Complying fully with the legal procedures for collective consultation is crucial. It is the best way to ensure that the collective contract that results from the consultation process is legal and will be implemented properly. Case study 9 shows the benefits of entering into collective consultations that fully comply with procedures.

Case study 9

Standardising consultation procedures to ensure legality of collective contracts

Facts

In 1997, a solely owned enterprise set up by a famous Japanese buyer in Shunde, Guangdong province, put in place a system of monthly meetings between workers and management. In 2001, it adopted a collective consultation system, which is still in place. This system has served the enterprise well. It has also resulted in a trade union that is highly trusted by workers, which contributes to a promising outlook for both parties.

Collective consultations have covered changes in workers' wages as well as improvements in the whole wage system, alongside housing and transportation subsidies and a public housing fund. It has also led to changes in statutes and policies.

The enterprise has always followed the laws and regulations in its collective consultations, which are undertaken in line with the following procedures:

1. **Offer.** At the end of each year, either the employer or workers submit an offer in writing for collective consultation.
2. **Response.** The other party responds in writing, and both parties determine the timeframe and agenda for the consultation.
3. **Identification or election of the representatives.** Workers are represented by the trade union committee, plus a certain number of elected production line workers, who together form the workers' representative team for the consultation. All employees are notified of the representatives of both parties.
4. **Preparation.** The employer provides data to workers' representatives on production and performance, in accordance with the law. Both sides put forward proposals and justifications on the issues to be consulted.
5. **Consultation.** The first consultation meeting is convened. Sometimes agreement can be concluded in one meeting, but usually two or three are needed, allowing time in between for each party to solicit its constituents' views. Both parties remain committed to mutual respect and mutual concessions.
6. **Draft agreement.** When consensus is reached, the administrative department of the enterprise drafts the contract agreement.

The trade union usually explains details of the deal and the draft agreement to workers.

7. **Review.** The draft contract agreement is reviewed by the workers' congress and put to the vote. In 15 years, the workers' congress has not once rejected the draft agreement.

8. **Signing of agreement.** After the workers' congress has adopted the draft contract agreement, the chief negotiators of both parties sign and conclude the agreement.

9. **Submission for approval.** The agreement is submitted to the local department of human resources and social security for a legal check. If no comment is made, the contract becomes effective from the date of submission.

10. **Publication.** The collective contract is made public to all workers of the enterprise. A public notice is placed in the dining hall, or posted on the enterprise's website.

11. **Implementation.** During the period covered by the agreement, if new circumstances arise, the problem may be resolved through mutual consultation, review by the workers' congress, third-party conciliation, labour arbitration, or lawsuit. Only on one occasion has a change in circumstances necessitated an additional consultation under the existing agreement.

Analysis

1. Following legal procedures is one of the **best guarantees of reaching a collective contract that will be properly implemented.** Though the enterprise in question has a long history of collective consultation, both parties strictly follow procedures as stipulated by law in each annual consultation exercise. They are not tempted to ignore or skip certain stages simply because of the history of good relations between management and workers.

2. **Review of the negotiated agreement by the workers' congress** is a fundamental part of the procedure. It reflects that workers' rights are granted by national laws, and also showcases the nature of collective consultation – that issues concerning workers' rights are jointly determined by the employer and the workers through their representative trade union.

PRACTICAL INFORMATION

The role of the workers' congress in collective consultation

In some enterprises, management may not pay sufficient attention to the workers' congress, and may not furnish it with the support it needs to undertake preparatory work for collective consultation. This may result in the workers' congress adopting resolutions based on ill-informed judgements, which are thus possibly unfeasible. In this case, management cannot simply reject the resolutions. It should learn from the experience and meet with workers' representatives to decide on necessary amendments. The amended proposals should then be submitted to a subsequent workers' congress meeting for approval.

If the resolutions adopted at a previous congress are about to be revised or abrogated, a written statement should be made and any changes approved by a vote at the workers' congress. Only then can revised resolutions come into effect.

2.6 HOW TO PROCEED WHEN A DISPUTE ARISES DURING THE PROCESS OF COLLECTIVE CONSULTATION

What does the law say?

Articles 31–37 of Chapter 4 of the *Regulations* provide procedures for settling any disputes arising during the collective consultation process.

It is to be expected that workers and management begin the collective consultation process with different or even opposite targets. Both parties need to exhibit patience, a strategic approach and goodwill in order to find a satisfactory solution.

PRACTICAL INFORMATION

How to proceed when the collective consultation process becomes deadlocked

While workers and management may begin the process from very different positions, agreement can generally be reached as long as appropriate measures are adopted. Both parties must avoid taking a confrontational approach, and instead try to strengthen mutual trust. In many countries, collective consultation (and the collective contract) does just that – and has proved to be an effective instrument in bringing both parties together to find a solution that is in their mutual interests.

Usually, multiple rounds of consultation are needed to reach a final settlement, which involves compromises acceptable to both parties. If a stalemate is reached, there are some strategies for overcoming this:

- ❑ Temporary adjournment. Both parties agree to a cooling-off period instead of immediately announcing the breakdown of consultations.
- ❑ Both parties should be patient, and seek to maximise common ground while minimising confrontation or discrepancies, ensuring thorough and clear communication.
- ❑ Where necessary, both parties should seek to engage higher-level authorities for mediation. According to law, if no consensus can be reached through consultation, either party may apply for intervention by 'external personnel', including lawyers, higher-level union officials and human resources experts.
- ❑ If mediation fails, consultation shall be terminated at an appropriate time. Then it is a matter of waiting until new circumstances arise, which prompt another request for collective consultation. The earlier failed experience may well lead both parties to adopt a more open-minded approach and be more willing to find a compromise solution.

Case studies 10 and 11 show two situations where collective consultation produced different outcomes. They highlight that it is not only the strategy and attitude of both parties during the consultation process that plays a decisive role, but the quality of daily communication and dialogue before embarking on the process that matters.

Case study 10

Standardising consultation procedures to ensure legality of collective contracts

Facts

A solely owned Japanese enterprise in Guangzhou, which supplies spare parts to Guangzhou Automobile Group, set up a collective consultation system in 2010, and has initiated a consultation on numerous occasions. On 5 January 2015, the employer offered to consult with workers on year-end bonuses for 2014. The trade union responded immediately and selected 13 consultation representatives, with the chairman of the union acting as chief negotiator. The two parties engaged in several rounds of consultation within a two-week period:

- ❑ On January 16 at the first round of the consultation, there was a huge gap between the two parties' respective positions. Management had proposed a year-end bonus equivalent to 2.2 months' basic pay, while workers demanded 6 months' basic pay.
- ❑ At the second round (22 January), the consultation remained deadlocked, with neither party willing to make any concessions.
- ❑ At the third round (24 January), each party made a compromise of 0.5 month, but the consultation then came to a standstill.
- ❑ At the fourth round (26 January), each party made further small compromises. Management offered 3 months, while workers demanded 5.3 months.
- ❑ At the fifth round (27 January), when no agreement had been concluded after 14 hours of negotiation, workers' representatives proposed to put management's increased offer of 3.6 months to a vote at the workers' congress.
- ❑ The workers' congress (28 January) convened in order to vote on the proposal. It voted overwhelmingly to reject management's offer.
- ❑ The next day, at the sixth round of talks, both sides made further concessions. Workers' representatives put forward a new proposal of 3.2 months' basic pay plus 1,900 yuan, which was not too far from the proposed 3.6 months offered by management at the fifth round. However, at this point management suddenly decided to lower the offer to 3.4 months' basic pay and indicated they would make no further compromises. They then announced that the consultation had failed, and workers who would not agree to the offer could resign voluntarily.

After the employer announced failure of the consultation, some workers began a work stoppage. Despite the efforts of the upper-level trade union, the local government and an automobile buyer – which all coordinated to try to resolve the dispute – the consultation ended, having been unable to reach a solution agreeable to both parties.

Analysis

1. Consultation is based on **readiness to make concessions**. At the latter stages of this consultation, the difference between the two parties' proposals was not major – a mere 0.2 months' basic pay plus 1,900 yuan. If they had engaged in further consultation, consensus could have been reached. However, management appears to have acted bullishly, in unilaterally announcing (after it had reduced its offer) the consultation had failed.
2. It seems that the employer lowered its final offer to 3.4 months to reflect **a policy of the buyer it was supplying**. This has been known to happen in other instances, although it does not seem to be a very positive involvement on the part of the buyer.
3. In this instance, failure of the consultation meant that the employer and the workers lost out. Instead of consolidating mutual trust and respect, the process generated ill feeling and distrust, and relations between management and workers became worse. Workers became less motivated to perform well, which could damage the future productivity of the enterprise. According to a trade union survey carried out after the failed consultation, workers' morale was affected, and there was **no improvement in productivity**.
4. The success of a collective consultation is closely linked to **the quality of routine communication** and exchanges between the two parties, which can go a long way towards **building mutual trust**. It seems that the enterprise in question did not have an institutionalised mechanism for routine communication and exchanges with workers. This led to a situation whereby the two parties were accusing each other of not being genuine during the consultation process, which foreshadowed its ultimate failure.

Case study 11

Intense consultation and compromise lead to satisfactory collective wage consultation

Facts

An enterprise was finding it difficult to recruit new workers. A work stoppage in 2010 over wage demands, and the arrival of a competitor enterprise nearby (paying production line workers a higher salary of 3,500 yuan), put the enterprise under even more pressure.

In 2011, management and workers agreed to undertake a process of collective consultation to reach agreement on wage increases for the year. Within three days, the two parties had concluded five rounds of intense discussions, and the consultation was on the verge of failure. In the end, thanks to both parties making compromises, an agreement was reached.

Round 1: Both parties put forward their proposals. The employer proposed an increase of 430 yuan (more than 20%) for production line workers, whereas the union proposed an increase of 880 yuan (more than 30%). Negotiations adjourned, and the two parties went back to their respective constituents to coordinate positions and revised proposals.

Round 2: Both parties put forward revised proposals, with concessions on both parts, but the gap was still substantial. The employer referred to various economic and performance data it had shared with workers to justify its proposal. The union listened, and asked for some clarifications. Though there remained a large gap between their respective proposals, the negotiations were conducted in a constructive manner.

Round 3: Both parties made further concessions. The union explained the justification behind its proposal. First, the scale of increase represented the will of the workers. Second, an investigation into wage levels in nearby enterprises revealed that the wage level currently paid by the enterprise was not competitive. Third, the trade union was relatively newly established, having been formed after a strike, and needed to demonstrate that it was more effective than its predecessor in representing the voice and interests of workers. By explaining this reasoning, the union hoped to secure support from the employer for its position.

Round 4: Both parties began to significantly adjust their proposals. The employer proposed an increase of 561 yuan, while the union proposed 660 yuan. At this point, the employer suddenly stated that if its proposal was not accepted, it would nullify all previous proposals

and go no further with the talks. In that case, it would submit the consultation dispute to the government agency for arbitration.

The union was not expecting the employer to make this move. At this point, the leader of the general trade union in Guangdong province immediately intervened and emphasised that mutual respect was the cornerstone of collective consultation, so neither side could or should regard its proposal as the final one. Upon the leader's recommendation, the consultation was adjourned. Each party met separately to discuss how to move the process forward, and what areas they could compromise on.

During the adjournment, as authorised by the workers' representatives, the provincial union leader had a private one-to-one consultation with the general manager of the enterprise in the corridor outside the meeting room. They were able to agree that each side would make one more concession.

Round 5: The employer proposed to balance the demands and interests of the two parties at the point of 611 yuan. However, this 50 Yuan concession would be paid every month as a special bonus instead of being classified as basic pay. After a brief discussion, the union agreed to the proposal with a show of hands. At the workers' congress, a substantial majority in favour adopted the outcome of the consultation.

Analysis

1. The trade union had been restructured and had **learnt from experience** from the end-of-year bonus consultation exercise in 2010. The trade union appeared confident and competent in its approach, and was determined to constructively represent the voice and interests of workers.

2. Both parties **made full preparations for the consultation, remained committed to mutual respect and open to making concessions**. Their respective efforts to build harmonious labour ultimately led to the success of the consultation.

3. There was **engagement, guidance and coordination from the upper-level trade union** at a crucial point in the consultation.

4. Expectations of workers and wage levels at nearby enterprises are very relevant factors, but should not be regarded as the decisive factors in determining wage increase at an enterprise.

2.7 BEHAVIOUR EXPECTED OF BOTH PARTIES DURING THE PROCESS OF COLLECTIVE CONSULTATION

What does the law say?

Articles 22–24 of the *Regulations* stipulate what both parties should not do DURING the process of collective consultation. Enterprises in provinces other than Guangdong may be subject to different regulations.

Article 22 of the *Regulations* stipulates that - **Both parties** shall not:

- 1) *reject or postpone or delay collective consultation on purpose without a justifiable reason;*
- 2) *intimidate or lure the other party's representatives;*
- 3) *use violence, coercion or other illegal means to disturb the order of collective consultation;*
- 4) *restrict the representatives' personal freedom, or insult, intimidate or violently hurt anyone;*
- 5) *any acts that may escalate the contradictions.*

Article 23 - The management of an enterprise shall not:

- 1) *restrict or disturb the union from exercising its duties or preventing workers from electing consultation representatives, or retaliate against representatives from the workers' side;*
- 2) *refuse to provide materials necessary for collective consultation or provide false materials;*
- 3) *refuse to implement the mediation agreement of collective consultation.*

Article 24 - The workers shall not:

- 1) *violate the employment contract as agreed and in any way without completing the assigned work;*
- 2) *violate the labour disciplines or force other employees to leave their jobs by various means;*
- 3) *block, impede or even blockade the entrance, exit and traffic arteries, hinder personnel and production means from moving in and out, destroy the enterprise's equipment, tools and facilities, or destruct the enterprise's regular production and operation order and public order.*

PRACTICAL INFORMATION

Avoiding a confrontational approach

A confrontational approach may prevent both parties from considering each other's opinions and positions in a calm and objective manner, thus making it difficult for the consultation to proceed. Management should patiently listen and respond to workers' representatives as they convey workers' opinions, while workers should not threaten a shutdown to force management to comprise.

The consultation may need a period of adjournment to allow both parties to reflect on their positions. Attempts to announce its breakdown should be avoided.

If a stalemate is reached during the consultation, both parties may ask their respective higher-level organisations to intervene and provide mediation (or apply to the local authority responsible for human resources and social security to do the same). Apart from direct intervention, the local authority may also send specialists to intervene (**articles 33–35** of the *Regulations*).

PRACTICAL INFORMATION

In Guangdong, the law protects representatives of both parties involved in the collective consultation

Article 16 of the *Regulations* stipulates that the consultation representatives have legal protection. Management, in particular, should treat workers' representatives on an equal footing. They should try to avoid a situation where workers who might otherwise stand for election fear retaliation on the part of management. Unless workers' representatives have confidence in being fairly treated, they may not be willing to stand for election, so undertaking collective consultation would be problematic.

An enterprise (its management) should fully respect the statutory right of representation granted to trade unions and their representatives, who are elected and mandated by the workers' congress to represent workers' interests and opinions.

If management feel it necessary to get further information from/ among the workers, they shall not bypass the consultation representatives to directly ask any individual worker his or her views. Instead, in a fair and impartial manner, they should solicit opinions by involving a third party, namely the governmental authority or its designated specialists.

If management and/or workers carry out the acts prohibited by Article 24 during the process of collective consultation, the sanctions outlined in Article 40 (see below) are applicable.

Article 40: If management violates the 2nd, 3rd, or 4th items of Article 22 or the 1st item of Article 23, in violation of public security regulations, their actions shall be dealt with according to the relevant provisions of the Public Security Management Punishment Law of the People's Republic of China; if crimes have been committed, those responsible shall be held accountable for criminal activity according to the law.

If workers violate the 2nd, 3rd, or 4th items of Article 22 or the 3rd item of Article 24, in violation of public security regulations, they shall be dealt with according to the relevant provisions of the Public Security Management Punishment Law; if crimes have been committed, those responsible shall be held accountable for criminal activity according to the law.

Legal responsibilities are strictly defined in Article 40 and applicable when the third act described in Article 24 is committed, wherein it amounts to violation of the Public Security Administrative Act or constitutes a crime. However, the first and second acts described in Article 24 are not administratively sanctionable or criminal acts of crime; nor does current Chinese law ban them.

In order to represent workers effectively, trade unions should inform workers about relevant national laws and provincial regulations and emphasise the importance of adhering to these. In the spirit of **Article 27** of China's Trade Union Law, unions should forward workers' claims and demands to management actively and truthfully, while persuading workers who have stopped work to return to their work. Management should accept the reasonable demands of workers.

The next section deals with issues around the validity of the collective contract and how to deal with problems arising during its implementation.

PRACTICAL INFORMATION

How should management respond to extreme collective actions or stoppages by workers during collective consultation?

In case of extreme collective actions and stoppages by workers within the enterprise, management should:

- calmly listen to workers' demands, easing emotions through face-to-face communication, avoiding any words or actions that could easily escalate things.
- if the tensions get out of control, either party can refer to their respective upper-level representative bodies or the local labour inspection authority to ask for mediation. The authority should cooperate with other relevant governmental departments and higher-level trade unions to send officials and unionists to mediate at the enterprise.

Police intervention in factory disputes is only necessary when such disputes escalate into violence and other illegal actions. It is not advisable for the police to intervene in general disputes between workers and management.

Collective consultation should always be the preferable mechanism for resolving issues. It should not be used as a mechanism for raising or resolving complaints.

3. THE VALIDITY OF COLLECTIVE CONTRACTS AND DEALING WITH PROBLEMS DURING IMPLEMENTATION

This section explains when and for how long the contract is valid, and how to deal with any disputes that may arise during that period.

What does the law say?

Article 26 of the *Regulations* stipulates that a draft collective contract will only take effect after it has been submitted by the trade union or workers' consultation representatives to the workers' congress for discussion and approval. If the draft collective contract is vetoed by the workers' congress due to objections over some provisions, collective consultation shall be resumed to revise the draft.

Article 27 says that the collective contract concluded in accordance with the law is binding on the enterprise and all its workers.

The term (duration of time) for which the collective contract is valid should be agreed between the employing unit and the workers at the time of its conclusion; it usually covers 1–3 years and will terminate when the term ends or termination conditions (as agreed by both parties) are met (**Article 28**).

3.1 ARE COLLECTIVE CONTRACTS STILL VALID IF THE ENTERPRISE CHANGES ITS OPERATIONS?

1) Collective contracts remain valid in the event that the enterprise changes its name, legal representative, person in charge, stock ownership, or increases (or decreases) its capital within the period covered by the collective contract (**Article 29** of the *Regulations*).

2) Validity is likely to be affected when the collective contract is not implemented due to force majeure, insolvency, suspended production, or dissolution of the enterprise after negotiation between both parties (**Article 30**).

After both parties reach consensus through consultation, the collective contract needs to be submitted within 7 days of its signature to the authority responsible for human resources and social security, which should also sign the contract upon receiving it (**Article 26**). If the authority makes no response within 15 days of receipt, the contract will take effect from the date of submission. If some terms and conditions are found not to be in compliance with the relevant legal provisions, the contract will not take effect until after the authority has given an official written reply and approval (if necessary).

PRACTICAL INFORMATION

What happens if disputes occur while the collective contract is being implemented?

Working conditions and labour remuneration in the employment contract concluded between the individual worker and the employing unit shall not be lower than the levels agreed in the collective contract; as such, the collective contract takes precedence over the employment contract.

- ❑ If there are major changes in the objective conditions under which the contract is implemented, both parties should seek to address the problems through negotiation and discussion.
- ❑ In the event that there are some deficiencies or careless omissions in the draft contract, both parties should resume consultation in an effort to improve the wording.
- ❑ The contract shall not be revised or modified unilaterally.
- ❑ If neither party is willing to compromise, they may apply to the regional tripartite consultation committee for mediation (this body comprises representatives of the local labour department, employers' organisations and trade unions). Should mediation fail, they may then apply to the arbitral body or even to the judicial court for arbitration or court decision.

Both parties should prepare to launch another round of consultation to revise the draft contract before it can be resubmitted to the workers' congress or other meetings for approval.

Having explained the Regulations governing labour relations in Guangdong province, focusing on the two main parties to collective consultation (management and workers), **Part 2** looks at the role that international buyers can play in helping to build or consolidate harmonious labour relations in supplier enterprises.

Case study 12 shows that even if a collective consultation appears to be failing, with effective intervention from district or provincial-level union officials, the process can be put back on track and reach a satisfactory conclusion. It highlights especially the importance of a worker's congress which can approve or reject a draft collective contract, if it regards the contract terms are not beneficial to the workers.

Case study 12

Workers' congress exercises ultimate power to accept or reject collective contract

Facts

On 21 October 2011, a joint union meeting and workers' congress was held at one enterprise in Huizhou. The main agenda was to review the draft collective contract reached through a collective consultation and to elect the new trade union committee. The plan was that the newly elected chairperson would then sign the collective contract on behalf of the workers.

During the meeting, as the contract was being reviewed, some worker delegates expressed their dissatisfaction with the contract, believing that the union had made too many concessions, and there had not been enough participation from the workers. With regard to the 5 social insurances and 1 fund, some workers were dissatisfied that management had used average wages across the enterprise as the basis for calculating their contributions, rather than the actual wages of each worker – something that did not comply with laws and regulations. Delegates to the workers' meeting and congress were not in agreement with how this had been done.

When some worker delegates expressed their views, some other workers showed their dissatisfaction with the terms of the contract by shouting loudly or even leaving the meeting. This meant the quorum was not met, and the draft contract could not be put to a vote.

When the general trade union of Huizhou and the general trade union of Huizhou Digital Industrial Zone (where the enterprise was located) learned of this, they immediately sent some officials to the site. With their assistance and guidance, the meeting was reconvened the next day. It delayed voting on the draft contract but proceeded to elect the new trade union committee.

The new committee immediately began work, focusing on two aspects: listening carefully to the views of workers and workers' delegates to consolidate their requests and provide guidance; and undertaking an emergency consultation with management, to revise some articles in the draft contract, particularly the most contentious issues for workers (the '5 social insurances and 1 fund'). They argued that workers' actual wages should be used as the basis for calculating employer contributions.

After three days of intensive discussions, the union meeting and workers' congress were jointly convened again. The newly elected chairperson introduced the revisions to the draft contract, explaining that due to lack of experience, the previous collective consultation did not sufficiently reflect workers' requests. The chairperson informed the meeting that the new committee would carefully review what had happened and was committed to listening to workers' views. On this basis, it was hoped that there would be a more favourable outcome of the collective consultation next year. The chairperson's remarks were greatly appreciated by most worker delegates. Then, after a three-hour session of questions and answers, the workers' council voted to adopt the draft contract (with 86% votes in favour).

Analysis

1. This case is very revealing. The workers' delegates had a strong sense of their rights, which the employer may have underestimated. Despite this, the trade union seems to have made too many concessions during the consultation, leading workers' delegates to believe that the draft collective contract was administrator-driven rather than the result of joint consultation and decision. The contract's terms regarding employer contributions to the 5 social insurances and 1 fund did not comply with the laws and regulations. It was no surprise then that the worker delegates opposed it.

2. Although the two parties were in disagreement, neither walked away from the process. They held an emergency consultation, revised the contents of the draft contract, and responded to workers' requests, eventually reaching a compromise agreeable to both parties and thus concluding the contract.

3. The intervention by higher-level trade union officials, providing timely and effective guidance, was critical to a successful outcome. This case shows that for various reasons, many enterprises would benefit from more effective guidance and assistance from the district or provincial trade union, or government agencies and business organisations with sufficient expertise to assist parties in the process of collective consultation.

4. If a draft collective contract either fails to be submitted for voting or is rejected by vote, there are several possible avenues that the trade union at the enterprise can explore:

- ❑ Try to garner workers' support by giving them in-depth explanations of the terms of the draft contract, then reconvene the workers' congress and conduct another vote.
- ❑ Consult with the employer and initiate a new collective consultation. Revise, supplement or even re-write those articles which appear to be the stumbling block (those that most worker delegates disagree with) – or even the whole contract – then resubmit to the workers' congress for a vote. The precondition for this is that the employer must be willing to enter a new consultation.
- ❑ If the employer is not willing to enter another consultation, and the worker delegates refuse to make any concessions, the union can request support for conciliation from the upper-level trade union, or the local department of human resources and social security.
- ❑ The union may apply for collective labour dispute arbitration. However, to date, legal provisions on arbitration are unclear, and it is not certain whether the arbitration agency would consider the application admissible, as it generally only deals with individual labour disputes.

PART 2

WHAT ROLE SHOULD INTERNATIONAL BUYERS PLAY IN COLLECTIVE CONSULTATION?

All parties involved in producing, marketing and exporting goods – management and workers at an enterprise, trade unions, governments, and the international companies that buy export products – share the same interests in promoting good labour relations to maximise productivity, profits and growth. International buyers are increasingly aware of the important role they can play (based on their own experience) as a third 'party' or stakeholder in collective consultation between employers and workers in their Chinese factories or suppliers' factories.

The case studies in Part 1 showed that many Chinese and foreign-owned enterprises in China are already using collective consultation as an effective instrument to negotiate key aspects of employment such as pay, working hours and benefits, and to settle any disputes that arise. They show that many employers are realising that good labour relations are the key to a profitable future.

The case studies also show that China's workers are becoming more organised and increasingly able to elect their own representatives. They are using social media to further their cause, reaching audiences within China and around the world. Buyers know all too well that strikes and unfair treatment of workers can seriously undermine the positive global image they work hard to create for their brands to win customers in ever-more competitive markets.

Clearly, management of an employing unit and the workers they employ are the two main parties in a collective consultation. But the issues that a collective consultation can cover include many that have a strong bearing on the buyer's brand and image among its customers. These include employees' remuneration, working hours, rest breaks and holiday entitlement, occupational safety and health at work, insurance and welfare, etc. Though not necessarily an 'equal' party to the other two in a collective consultation, the buyer is nevertheless closely linked to the operational activities of management and workers at enterprises they source from. The contents of a collective consultation therefore fall under the remit of managing, auditing and verifying suppliers.

1. WHY IS COLLECTIVE CONSULTATION A SOUND BASIS FOR BUILDING GOOD LABOUR RELATIONS?

Collective consultation brings together the interests of investors, managers and workers in an enterprise, through the collective contract. It protects the rights of each party by utilising legal frameworks and standards, and can prevent (or at least limit) any damage to production and reputation caused by labour stoppages or disputes.

There is a strong legal and policy basis for international buyers to promote collective consultation within their suppliers. All international buyers that are members of ETI are committed to observing legal requirements as well as promoting good practice for collective consultation. As well as abiding by local regulations and rules, they should remain committed to monitoring how their suppliers in Guangdong province comply with and implement the provisions enshrined in the Regulations. Supporting collective consultation can help international buyers fulfil their CSR commitments because it is an important indicator of each enterprise's performance in terms of providing decent work, respecting the human rights of its workforce, and implementing sound corporate governance and stakeholder management.

Globally, numerous frameworks and standards have incorporated provisions on the content and implementation of collective consultation mechanisms. These include the United Nations Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1976), the International Labour Standards (ILS), the International Labour Organization (ILO)'s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (1977), and the OECD Guidelines for Multinational Enterprises.

In summary, international buyers should advocate for collective consultation because:

- ❑ it provides a mechanism for regular and effective communication between management and workers' representatives
- ❑ it helps to build good labour relations in the short as well as the long term
- ❑ it regulates terms of employment and ensures fair working conditions for all workers.

However, it is important to remember that international buyers are not one of the main parties to collective consultation, and have no explicit statutory role in the process. That said, they clearly have an important role to play as one of the 'third party' stakeholders in the process, and can do much to support workers and management to build their capacity for collective consultation and reach mutually acceptable solutions to issues.

2. HOW CAN INTERNATIONAL BUYERS SUPPORT COLLECTIVE CONSULTATION?

Many international buyers are frustrated with the shortcomings of the traditional approach to monitoring suppliers' practices. As a 2013 report by Shift, entitled *From Audit to Innovation*, concludes: "Despite the hundreds of thousands of social compliance audits conducted each year to ensure minimum workplace conditions in companies' supply chains, there is little evidence that they alone have led to sustained improvements in many social performance issues, such as working hours, overtime, wage levels and freedom of association."

A more effective approach might be for buyers to engage in genuine dialogue with suppliers to encourage them to adopt collective consultation as the best way to guarantee mutually beneficial labour relations. Part of this involves strengthening capacity of both main parties for collective consultation. International buyers can provide support in many ways, including by:

- ❑ encouraging any suppliers not already using collective consultation to put such a mechanism in place
- ❑ monitoring how their suppliers are implementing collective consultation in order to ensure compliance with key regulations and standards
- ❑ supporting management and workers at supplier enterprises to engage in collective consultation in a fair and constructive manner
- ❑ encouraging workers and management to seek assistance/mediation from their upper-level bodies where necessary in order to overcome situations where talks have reached stalemate, rather than announce breakdown of the consultation.

How to do this in practice is explained in more detail below. It is important, though, that international buyers remain impartial in the actual collective consultation process. The main emphasis should be on encouraging suppliers (workers and management at an enterprise) to engage in collective consultation processes in ways that conform to relevant laws and standards.

Case study 13 shows what can happen when international buyers do not proactively support suppliers in building good labour relations through collective consultation.

Case study 13

A missed opportunity for international buyers to help build good labour relations

Facts

In early June 2015, a Hong Kong-based enterprise that produces goods for a well-known Japanese garment brand announced that it was relocating to the (nearby) administrative region of Shenzhen and began to initiate the move. On 9 June workers at the enterprise began a strike, demanding compensation to meet relocation costs, as well as numerous other outstanding matters (such as payment of pension contributions, overtime pay, and wages for annual leave).

The employer took the view that because the move was within the administrative region of Shenzhen, there was no need to pay workers any relocation compensation according to legal provisions. The employer said nothing about the workers' other demands, including paying outstanding pension contributions. The dispute lasted for more than two months, and was only resolved after interventions from the government and trade union federation. But many problems were left unresolved, and workers tired of trying to resolve them.

On 17 June, the Japanese buyer issued a statement, indicating its "serious concern" over the stoppage at the enterprise, and its hope for "a peaceful resolution of the problem", announcing that "it would not exclude a review of the cooperation, and might consider a termination..."

As is increasingly the case with other labour disputes, the problems at this enterprise received broad coverage both in traditional and social media, at home and abroad. The striking workers set up an online blog with regular posts, which reached a large audience. Some NGOs dealing with workers' rights also got involved, giving information and advice to the striking workers and spreading news of what was happening online.

Analysis

1. The reasons behind this labour dispute were many and varied, which meant it took some time to address the full range of workers' grievances. It appears that the enterprise was not genuinely committed to resolving the conflicts through collective consultation, which partly explains the failure to resolve the dispute quickly.

2. The Japanese buyer underestimated the complexity of the reasons behind the dispute. It did not urge the supplier to find a speedy solution, which damaged its own image among global audiences, prompting some 'netizens' to perceive it as exploiting Chinese workers in 'sweatshops', and calling for a boycott of its products. The international buyer had therefore missed an opportunity to take a more proactive role in assisting the enterprise to engage with workers' representatives in a genuine collective consultation process that would resolve all issues and enable the enterprise to focus on optimising performance and growth.

How can buyers promote collective consultation, in practice?

□ By urging suppliers to establish effective internal grievance (complaint) mechanisms

Internal grievance mechanisms are a vital part of developing good labour relations, and international buyers can support their suppliers to introduce new mechanisms or help improve existing ones. Internal grievance mechanisms can be very useful in defusing problems before they escalate – in this sense, serving as a kind of ‘early warning’ system. An internal, non-judicial grievance mechanism offers numerous advantages for the enterprise and its workers:

- a. **Validity:** Can improve trust between stakeholders and ensures that the principle of fairness underpins the complaints process.
- b. **Accessibility:** An internal grievance mechanism should be readily available to all employees, including rank and file workers.
- c. **Predictability:** The procedure of the complaints mechanism (including the timetable for each stage) is clear and transparent. Employers should clearly state (in the form of a written notice posted where all staff can see) what kinds of issue can be dealt with through the mechanism, which managerial staff will be involved and at what stage, and the possible outcomes.
- d. **Equality:** This ensures that any employee making a complaint has equal access to information and advice, and thus to have their complaints addressed in a fair and respectful way.
- e. **Transparency:** Relevant parties should be adequately briefed on how the complaint is being dealt with at the different stages of the process.
- f. **Compatibility of rights:** This ensures that the outcome of the complaint and any measures recommended to resolve the grievance comply with national laws and regulations as well as internationally recognised standards.
- g. **Sustainability:** If an individual grievance sheds light on measures that could be taken to improve the enterprise’s complaints mechanism, these should be discussed and approved by the relevant body.

The international buyer may consult with the other stakeholders (management and workers) at the enterprise on the design and operation of the internal complaints mechanism, to ensure that procedures are transparent and proper, and that a spirit of positive dialogue underlines the approach to handling and settling complaints.

□ By encouraging suppliers to establish a collective consultation mechanism where none exists

International buyers can do much to encourage suppliers establish new collective consultation mechanisms or improve existing ones. During such a consultation, the three parties should keep continuous and direct communication with each other. In this way, together with the management of the enterprise, buyers can learn about workers’ expectations and understand their demands, and address any newly emerging issues.

There are other ways that buyers can help suppliers implement effective collective consultation mechanisms.

- Putting forward representatives for an advisory committee to oversee implementation of the collective contract: Committee members would comprise representatives of all stakeholders, including management, workers’ representatives, buyer representatives, and government officials. The enterprise would convene regular meetings to monitor implementation of the collective contract, and to discuss subsequent rounds of consultation. Management would be responsible for minuting these meetings.
- Supporting exchanges between trade unions as a way of sharing knowledge and experience: Regular contact and even exchange visits between enterprise-level trade unions to share knowledge, information, organisational techniques and experiences related to collective consultation can strengthen their bargaining capabilities. This can also help workers’ representatives temper workers’ demands and rein in any unreasonable claims, as they will have more information on against which to compare situations. Such exchanges may also promote collective consultation more widely by persuading more enterprises to adopt collective consultation. The buyer should be proactive in supporting exchange visits between unions at its suppliers and the industrial and regional unions, reporting on the outcomes of such exchanges.
- Supporting exchange visits between employers: Buyers can play an important role in advocating or facilitating exchanges between suppliers’ management teams as a way of sharing best practice on collective consultation. Employers could convene regular meetings to discuss national laws and regulations on a whole range of labour relations issues, including collective consultation, industrial action, and the minimum wage. But these meetings could also be a forum in which enterprises exchange developments in their respective sectors, as well as analysing cases where collective consultation has been used successfully to avoid disputes or stoppages. The buyer could send representatives to participate in employers’ exchanges, and ask them to report on the meetings at regular intervals so as to make sure they stay relevant and informative.

3. CAN INTERNATIONAL BUYERS REALLY INFLUENCE SUPPLIERS TO ENGAGE IN COLLECTIVE CONSULTATION?

It may be that some buyers have relatively little leverage with their suppliers (for instance, if it buys a relatively small proportion of the factory's output). In these circumstances, buyers should seek to collaborate with other buyers purchasing from the same enterprise in order to increase their influence. In conducting the partnership, buyers should consider the advantages that can be secured through continuing cooperation, and the disadvantages that would accrue from terminating the relationship.

3.1 GETTING TO KNOW YOUR SUPPLIERS – MANAGEMENT AND WORKFORCE

Although business relationships can change and evolve quickly, there are many ways you can get to know more about the approach taken by an individual enterprise/management team to labour relations (see **Table 2** for some basic questions to ask).

You can ask the exact same questions of workers and their representatives. Indeed, employers and employees may give very different answers to the same question. Asking workers these questions may help buyers gain a deeper understanding of workers' needs and challenges. This can also lead to better relations between management and workers, which will aid the development of collective contracts.

Table 2: Questions to ask management and workers at an enterprise

Category of question	Example question	Remarks/comments
Composition of the labour force	How many employees does the enterprise have? What age group do the majority of workers belong to? What ethnic groups do employees belong to? How many male/female workers are there, in which roles? How many workers are migrants, and from which areas do they originate?	
Type of employment contract	How many workers are on full-time contracts and how many part-time? How many are on temporary contracts? Does the enterprise already have a collective contract in place? Are actual working conditions in line with the provisions of the collective contract? Do all employees have social insurance?	
Degree of unionisation	Is there a recognised trade union? How many employees are members? Do workers directly elect their representatives? Do workers directly elect the chairperson? Is there a collective consultation mechanism in place?	
Remuneration	Do workers receive remuneration monthly and on time? How are wages paid? By piece? At what price? Do they receive a bonus? If so, how is it calculated?	
Working hours	What are the total weekly working hours on average? Are working hours acceptable?	
Workplace	Are some workers suffering from occupational illnesses? Is the workplace toxic or dangerous in other ways? Do workers have necessary protection equipment? Are there regular training sessions on occupational safety and health? Are they useful? Do in-house and external safety personnel visit regularly to inspect equipment? Are any improvements made after such checks/auditing? Is the person in charge of these checks impartial (that is, not a member of the management team at the enterprise)?	
Living conditions	What standard are workers' living conditions? Are meals provided by the employer acceptable in terms of quality and quantity?	
Complaints mechanism	Does the enterprise have an internal complaints mechanism in place? If so, do workers use this mechanism to raise grievances? Do management respond appropriately? What are the biggest concerns facing workers at present?	

Conducting research directly with workers or their representatives may well be interpreted as a sensitive process. Adhering to certain guidelines can ensure that the research is informative and transparent. It should:

- ❑ be targeted at shop-floor or production line workers and their representatives
- ❑ involve face-to-face discussions inside the workplace
- ❑ be conducted at regular intervals
- ❑ be carried out by the buyer or third-party institution trusted by the buyer
- ❑ ensure and respect interviewees' confidentiality.

Research findings should always be communicated to those who took part and to the wider workforce. There should be a formal report, which presents the findings in ways that are easy for workers to understand.

Research reports based on interviews with workers at different enterprises would enable international buyers to explore and analyse issues around productivity and labour relations, comparing the situation of suppliers that do and do not have a collective consultation mechanism in place. This would provide reliable evidence with which to improve the buyer's practices in promoting collective consultation.



3.2 PROMOTING CONSTRUCTIVE DIALOGUE BETWEEN ALL STAKEHOLDERS

Maintaining a regular, genuine and constructive dialogue between all the main stakeholders – management, workers, the trade union, relevant government bodies, and buyers – is key to developing sustainable enterprises.

Buyers can contribute to this process by helping suppliers conduct regular meetings (for example, twice a year or quarterly) where management and workers can hear each other's concerns, and prevent any disputes or other issues arising. Suppliers could keep their buyers informed by reporting on the content and outcomes of such dialogues. Such meetings could be a constructive forum for:

- ❑ raising issues causing significant problems for either party (management and workers)
- ❑ sharing information and promoting mutual understanding and respect
- ❑ finding solutions to shared problems
- ❑ seeking common ground.

They could also help management to identify and respond to any pressing concerns before they escalate into a dispute.

If a trade union committee comprises people who are not allowed to hold such positions (based on local trade union regulations and the ETI base code on freedom of association), there are various steps you can take to resolve matters:

1. Verify the situation in terms of worker representation
2. Request a meeting to discuss the issue with management
3. Consult the upper-level trade union
4. Announce re-election of union officers

3.3 GETTING TO KNOW OTHER STAKEHOLDERS OUTSIDE THE ENTERPRISE

Buyers can also help set up regular forums to meet with local governmental authorities and upper-level trade unions and employers associations. In this way, they can take the initiative to learn about local developments in labour relations and build relationships with those who may be able to help should suppliers need intervention or guidance from those upper-level officials. Buyers could also consider commissioning joint research or training with local research institutes or universities, involving suppliers and ensuring that the findings are taken on board to improve labour relations.

Helping workers get their views heard

In the case of non-unionised enterprises or those with inactive unions, buyers should urge management to facilitate the setting up or strengthening of a trade union to represent workers' views and rights. Buyers might seek to engage with the local district union directly to start the dialogue process. As a complementary measure, buyers might help by encouraging establishment of an independent complaints procedure. This is sometimes done by putting in place telephone hotlines for suppliers' employees through a third party (perhaps consultancies or NGOs), thereby supporting the enterprise by providing channels for employees to express their views and have their voice heard (for example, through setting up QQ instant messaging in the workplace or WeChat groups – the mobile phone version). The third party would be responsible for reporting on developments periodically.



3.4 BUILDING THE CAPACITY OF SUPPLIERS TO ENGAGE IN COLLECTIVE CONSULTATION

As some of the case studies in Part 1 showed, building the capacity of those involved in collective consultation processes – whether management or workers’ representatives – is vital to support constructive dialogue and to institutionalise systems that comply with legal frameworks.

It is recommended that international buyers share the benefits of their experience through developing a capacity building plan to aid the process of collective consultation at supplier enterprises. Depending on the existing situation and capacities, this might involve training for management and workers’ representatives, as well as internal auditing procedures to assess implementation of collective consultation and collective contracts, in order to identify any problems before they escalate.

Buyers may recommend to suppliers the content of any training and total hours required to conduct training on the collective consultation mechanism. Training packages should be built around the needs of each stakeholder or party, as follows.

Training for workers: Courses on laws and regulations, including Labor Law, Employment Contract Law, Trade Union Law, and the local Regulation on Collective Consultation; courses on such specific topics as union organizing, establishment of workers’ congress and its role, election of workers’ representatives, concept and significance of collective consultation, collective contract, plans of interviewing workers, enterprise-level complaint mechanism, mediation and arbitration.

Training for trade union committee members and workers’ representatives: As well as the courses already mentioned, workers’ representatives would most likely benefit from training in Criminal Law, Civil Law, the Law on Mediation and Arbitration of Labor Disputes, and the People’s Mediation Law. They would also benefit from courses dealing with specific topics such as the risks of collective consultation and collective contracts, designing plans for collective consultation, studying best practice and failed cases, and mediation/arbitration skills. To aid their preparations for collective consultation, they may also need training in how to collect and interpret relevant economic and other data.

Specialists from relevant government authorities, local trade unions, lawyers and academics could also be contracted to provide training of trainers’ sessions.

Training for management representatives: Courses on laws and regulations, including Labor Law, Employment Contract Law, Trade Union Law, the local Regulation on Collective Consultation, Criminal Law, Civil Law, Law on Mediation and Arbitration of Labor Disputes, and People’s Mediation Law. They may also benefit from courses on specific topics as per those listed for workers’ representatives, including the International Framework of Agreements (IFAs) of the ETI-members-affiliated Global Union Federation (GUF).

3.5 ASSESSING HOW SUPPLIERS ARE IMPLEMENTING COLLECTIVE CONSULTATION

Collective consultation is not a one-off event; it is a continuous process that does not end with the implementation of a collective contract. An enterprise can have a comprehensive written agreement that complies with all regulations and has been arrived at through a process of collective consultation. But if that agreement is not comprehensively and effectively implemented, it will not succeed in improving the enterprise's productivity and stabilising its labour relations to enable future growth.

As already noted, Buyers should urge suppliers to put in place assessment systems through which they can measure how well the collective consultation mechanism is being implemented. This can help the supplier really understand the procedures involved, raise their awareness of relevant laws and regulations, and thereby strengthen their capacity for collective consultation.

The table in Appendix 2 of Part B presents some baseline assessment indicators that can tell you how well an enterprise is complying with laws and regulations around collective consultation.

It is suggested that the assessment follow the procedure below:

- ❑ setting up inspection and assessment groups;
- ❑ investigating the status quo of the collective contract implementation;
- ❑ making a list of all the problems;
- ❑ writing an assessment report stating the implementation outcome;
- ❑ submitting notice for rectification;
- ❑ urging for rectification;
- ❑ reassessment.

To fulfil their obligations in helping suppliers improve labour relations, buyers should urge enterprises to either establish a monitoring mechanism or improve existing mechanisms if they fall short of best practice. This may mean offering human resources (people with relevant skills and experience) to assist from time to time. Buyers should provide guidance and technical support to suppliers to develop such a mechanism where necessary, outlining clear and simple procedures for assessing the implementation of collective consultation.

PRACTICAL INFORMATION

How can an enterprise monitor whether the collective contract is being implemented properly?

To fulfil their obligations, buyers should ask suppliers to submit regular reports (with supporting documents) on how the collective consultation mechanism and any agreed collective contracts are being implemented. These reports should be submitted to management, workers, buyers, and other stakeholders. They should enable buyers to monitor implementation and offer any relevant support or recommendations about possible improvements to the process. Subsequent reports should assess whether changes proposed have been implemented, and with what outcome.

3.6 REPORTING ON THE IMPLEMENTATION OF COLLECTIVE CONSULTATION

By way of good practice, enterprises should report to all stakeholders on how collective consultation is being implemented. Reports should include the following:

- ❑ the timetable for talks and periods covered by a collective contract
- ❑ a capacity building/training plan for both parties involved
- ❑ documents related to communications about the collective consultation mechanism
- ❑ documents related to the complaints mechanism
- ❑ documents related to the assessment/monitoring mechanism
- ❑ minutes of meetings between parties involved in each consultation
- ❑ written agreements concluded by the process.

4. CHANGING THE PARADIGM

International buyers sourcing products from China can have a huge impact on the conditions of workers in enterprises supplying those products. Many buyers now take a more proactive approach to fulfilling their responsibilities, as outlined in key international standards and guidance, including the 2011 UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

In most developed countries, collective consultation has become part of everyday labour relations. In China, though, collective consultation remains at the initial stages, and Chinese-based enterprises lag far behind in terms of understanding and recognition of collective consultation.

Given this context, there is much that international buyers can do to help collective consultation become an integral part of labour relations to ensure a prosperous future for all parties concerned. For example, buyers could support enterprises and their workers by promoting activities such as quizzes, workshops to share best practices in enterprise-level collective consultation, and visits to model enterprises to see what good practice looks like. Buyers might also consider working with local government authorities, trade unions, media and employers' associations to hold awards such as Best Employer, which would further incentivise enterprises to adopt collective consultation and implement it according to best practice.

The following appendix to this guide provides useful excerpts of the law, template documents that will be required during collective consultation process, and handy tools for international buyers looking to promote collective consultation process.

APPENDIX PART A

I. LAWS AND REGULATIONS

- 1.1 Labour Law (excerpts) sourced from the internet
- 1.2 Labour Contract Law (excerpts) sourced from the internet
- 1.3 Interim Measures on Collective Wage Consultation (translated)
- 1.4 Collective Contract Provisions (excerpts) (translated)
- 1.5 Trade Union Law (excerpts) sourced from the internet
- 1.6 Regulations of Guangdong Province on Enterprise Collective Contracts sourced from the internet

II. TEMPLATE DOCUMENTS

- 2.1 Example documents on qualification confirmation of a consultation representative**
 - 2.1.1 Qualification identification of worker side collective consultation representatives
 - 2.1.2 Letter of delegation of worker side chief representative
 - 2.1.3 Letter of delegation of employer side collective consultation representatives
- 2.2 Example documents on qualification confirmation of a consultation representative**
 - 2.2.1 Example of an offer (suitable for worker side proposing the offer)
 - 2.2.2 Example of a response to the offer (suitable for employer side responding to the offer from worker side)
- 2.3 Minutes of a collective consultation (requirements)
- 2.4 Example of a collective contract
 - 2.4.1 A collective contract (an example)
 - 2.4.2 A wage collective contract (an example)
 - 2.4.3 A collective contract on protection of women workers' rights (an example)
- 2.5 An example of the decision by the workers' congress

PART B

- 1. The internal auditing indexes for the enterprise's collective consultation mechanism;
- 2. Checklist for quickly assessing the effectiveness of the collective consultation mechanism.

APPENDIX (PART A)

I. LAWS AND REGULATIONS

ANNEX 1.1

Labour Law of the People's Republic of China (Summary)

- Article 7** Labourers shall have the right to participate in and organize trade unions in accordance with the law. Trade unions shall represent and safeguard the legitimate rights and interests of labourers, and independently conduct their activities in accordance with the law.
- Article 8** Labourers shall, through the assembly of staff and workers or their congress, or other forms in accordance with the provisions of laws, rules and regulations, take part in democratic management or consult with the employing units on an equal footing about protection of the legitimate rights and interests of labourers.
- Article 33** The staff and workers of an enterprise as one party may conclude a collective contract with the enterprise on matters relating to labour remuneration, working hours, rest and vacations, occupational safety and health, and insurance and welfare. The draft collective contract shall be submitted to the congress of the staff and workers or to all the staff and workers for discussion and adoption. A collective contract shall be concluded by the trade union on behalf of the staff and workers with the enterprise; in an enterprise where the trade union has not yet been set up, such contract shall be also concluded by the representatives elected by the staff and workers with the enterprise.
- Article 34** A collective contract shall be submitted to the labour administrative department after its conclusion. The collective contract shall go into effect automatically if no objections are raised by the labour administrative department within 15 days from the date of the receipt of a copy of the contract.
- Article 35** Collective contracts concluded in accordance with the law shall have binding force to both the enterprise and all of its staff and workers. The standards on working conditions and labour payments agreed upon in labour contracts concluded between individual labourers and the enterprises shall not be lower than those as stipulated in collective contracts.

ANNEX 1.2

Law of the People's Republic of China on Employment Contracts (Summary)

- Article 4** Employers shall establish and improve internal rules and regulations, so as to ensure that employees enjoy their labour rights and perform their labour obligations.
- When an employer formulates, revises or decides on rules and regulations, or material matters, that have a direct bearing on the immediate interests of its employees, such as those concerning compensation, work hours, rest, leave, work safety and hygiene, insurance, benefits, employee training, work discipline or work quota management, the same shall be discussed by the employee representative congress or all the employees. The employee representative congress or all the employees, as the case may be, shall put forward a proposal and comments, whereupon the matter shall be determined through consultations with the Trade union or employee representatives conducted on a basis of equality.
- If, during the implementation of an employer's rule or regulation or decision on a crucial matter, the trade union or an employee is of the opinion that the same is inappropriate, it or he is entitled to communicate such opinion to the employer, and the rule, regulation or decision shall be improved by making amendments after consultations.
- Rules and regulations, and decisions on material matters, that have a direct bearing on the immediate interests of employees shall be made public or be communicated to the employees by the employer.

- Article 51** After bargaining on an equal basis, enterprise employees, as one party, and their employer may conclude a collective contract on such matters as labour compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval.
- A collective contract shall be concluded by the trade union, on behalf of the enterprise's employees, and the employer. If the employer does not yet have a trade union, it shall conclude the collective contract with a representative put forward by the employees under the guidance of the trade union at the next higher level.
- Article 52** Enterprise employees, as one party, and their employer may enter into specialised collective contracts addressing labour safety and hygiene, protection of the rights and interests of female employees, the wage adjustment mechanism, etc.
- Article 53** Industry-wide or area-wide collective contracts may be concluded between the trade union on the one hand and representatives on the side of the enterprises on the other hand in industries such as construction, mining, catering services, etc. within areas below the county level.
- Article 54** After a collective contract has been concluded, it shall be submitted to the labour administration authority. The collective contract shall become effective upon the lapse of 15 days from the date of receipt thereof by the labour administration authority, unless the said authority raises any objections to the contract.
- A collective contract that has been concluded in accordance with the law is binding on the employer and the employees. An industry-wide or area-wide collective contract is binding on employers and employees in the industry or in the area in the locality concerned.
- Article 55** The rates for labour compensation, standards for working conditions, etc. stipulated in a collective contract may not be lower than the minimum rates and standards prescribed by the local People's Government. The rates for labour compensation, standards for working conditions, etc. stipulated in the employment contract between an employer and an employee may not be lower than those stipulated in the collective contract.
- Article 56** If an employer's breach of the collective contract infringes upon the labour rights and interests of the employees, the trade union may, in accordance with the law, demand that the employer assume liability. If a dispute arising from the performance of the collective contract is not resolved following consultations, the trade union may apply for arbitration and institute an action according to law.
- Article 78** Trade unions shall safeguard the lawful rights and interests of employees in accordance with the law and monitor the performance of the employment contracts and collective contracts by employers. If an employer violates labour laws or statutes or breaches an employment contract or collective contract, the trade union has the right to voice its opinion or require that the matter be rectified. If an employee applies for arbitration or institutes an action, the trade union shall provide support and assistance in accordance with the law.

APPENDIX 1.3

INTERIM MEASURES ON COLLECTIVE WAGE CONSULTATION

CHAPTER ONE: GENERAL PROVISIONS

- Article 1:** These measures are formulated for the purposes of regulating conduct relating to collective wage consultation and conclusion of collective wage agreement (hereinafter referred to as wage agreement), guaranteeing the legitimate rights and interests of the two parties that have formed labour relations, and promoting harmonious and stable labour relations, and in line with Labour Law of the People's Republic of China and other relevant national provisions.
- Article 2:** These measures govern enterprises within the territory of the People's Republic of China undertaking collective wage consultations and concluding wage agreements in accordance with the law.
- Article 3:** For the purpose of these measures, the term collective wage consultation means workers' representatives and employer's representatives engaging in consultation on an equal footing and in accordance with the law on the enterprise's internal wage and remuneration system, forms of wage payment, and standard of wage and income, and conclusion of a wage agreement on the consensus basis.
- For the purpose of these measures, the term wage agreement means a collective contract specifically concluded on wage matters. When a collective contract has already been concluded, the wage agreement shall be appended to the collective contract and shall be equally valid as the collective contract.
- Article 4:** A wage agreement concluded in accordance with the law is equally binding to the employer and the workers. Both parties shall honour in full the obligations prescribed in the wage agreement. Neither party can modify or revoke the wage agreement arbitrarily.
- Article 5:** The wage and remuneration standard in a contract signed by an individual worker and the employer shall be no less than the minimum standard in the wage agreement.
- Article 6:** Labour and social security administrative departments at and above the county level shall exercise check-up of the wage agreements in accordance with the law, and perform supervision and oversight on the fulfilment of the agreements.

CHAPTER TWO: ITEMS COVERED IN A COLLECTIVE WAGE CONSULTATION

- Article 7:** A collective wage consultation generally covers the following items:
1. Duration of a wage agreement;
 2. Wage and remuneration system, wage standard and form of wage payment;
 3. Average annual wage level of the workers and the scope of adjustment;
 4. Bonuses, allowances and subsidies;
 5. Means of wage payment;
 6. Procedures to modify and revoke wage agreement;
 7. Conditions to terminate wage agreement;
 8. Wage agreement breach liabilities;
 9. Other items that both parties believe should be consulted and agreed upon.
- Article 8:** Consultation on and determination of workers' annual wage level shall follow national macro adjustment policies on wage and remuneration and take into account the following factors in an integrated manner:
1. Levels of labour costs in the region, sector and the enterprise;
 2. Workers' average wage levels in the region and sector;
 3. Wage guidelines and labour market wage guiding level published by the local government;
 4. Consumer price index of urban citizens of the local area;
 5. Labour productivity and economic performance of the enterprise;
 6. National assets maintenance and accrual;
 7. Wage payroll and average pay level of the enterprise workers in the preceding year;
 8. Other circumstances relevant to collective wage consultation.

CHAPTER THREE: REPRESENTATIVES TO COLLECTIVE WAGE CONSULTATION

- Article 9:** Representatives to collective wage consultation shall be identified through the procedures established by the law. The workers shall be represented by the trade union. In a non-unionised enterprise, the workers nominate their representatives through a democratic approach, and the representatives should win the approval of at least half of the workers. The employer's representatives shall be the legal representative and other persons designated by the legal representative.
- Article 10:** Each party to the consultation shall identify a chief representative. The worker chief representative shall be the chairperson of the trade union and the chairperson of the trade union can authorise, in writing, another person to be the chief representative on his or her behalf. In a non-unionised enterprise, the chief representative shall be nominated by the workers' representatives to the collective consultation. The employer's chief representative shall be the legal representative of the enterprise and the legal representative can authorise, in writing, another person from the management to be the chief representative on his or her behalf.
- Article 11:** The chief representatives from the two parties to the consultation shall alternate to serve as the executive chair of the consultation meetings during the whole process of collective wage consultation. The principal functions of the executive chair of the consultation meetings are organisation and coordination of the work on collective wage consultation, and addressing the issues and problems arising out of the consultation process.
- Article 12:** Each of the two parties to the consultation can delegate in writing professionals outside the enterprise to serve as consultation representatives of its side. The representatives thus delegated shall be no more than one-third of the total representatives of that party.
- Article 13:** The two parties to the consultation have equal rights on making proposals, exercising veto and delivering presentations.
- Article 14:** The consultation representatives from the enterprise participating in a collective wage consultation shall be deemed as providing regular services, and shall be entitled to the same benefits of wage, bonus, allowances, subsidies, social insurance and welfare. The legitimate rights and interests of the workers' consultation representatives shall be protected by the law. The employer shall not discriminate against the workers' consultation representatives and shall not unlawfully terminate or modify their labour contracts.
- Article 15:** The consultation representatives shall follow the consultation rules established by the two parties, fulfil their obligations, and honour their commitment to keep business secrets confidential. Neither party of the consultation can resort to unruly acts, intimidation, bribe or deception.
- Article 16:** The consultation representatives shall have a good understanding and appreciation of wage and remuneration matters, solicit extensively the views of all the people concerned, and respond to the questioning from the people they represent on issues related to collective wage consultation.

CHAPTER FOUR: COLLECTIVE WAGE CONSULTATION PROCEDURE

- Article 17:** Either workers or the employer can call for a collective wage consultation. The side calling for a collective wage consultation shall provide the other side with a written proposal for consultation, specifying the time and venue of the consultation and the items covered. The other side shall give a written response within 20 days as of receipt of the proposal, and engage in the collective wage consultation with the other side.
- Article 18:** When the pre-requisites of not breaching the relevant laws or regulations are satisfied, each party to the consultation has the obligation to provide genuine facts and documents related to the collective wage consultation within five days prior to the commencement of the consultation as required by the other side.
- Article 19:** The draft of wage agreement shall be submitted to the Workers' Congress or Workers' General Assembly for discussion and review.
- Article 20:** After two parties reach consensus on the outcome of a collective wage consultation, the administrative department of the enterprise shall be responsible for producing the document of wage agreement. The wage agreement becomes valid after chief representatives of both parties sign and seal the agreement.

CHAPTER FIVE: WAGE AGREEMENT CHECK-UP

Article 21: Within seven days of the signing of the wage agreement, the employer shall submit three copies of the wage agreement and accompanying explanations to the administrative department of labour and social security for check-up.

Article 22: The administrative department of labour and social security shall, within 15 days of receipt of the wage agreement, perform check-up of the legal status of the representatives of both parties to the collective wage consultation, the content and provisions of the wage agreement, and agreement concluding procedure.

If it has no objection to the wage agreement after the check-up, the administrative department of labour and social security shall communicate in a timely manner to the two parties to the consultation the feedback of the wage agreement check-up, and the wage agreement shall become effective immediately.

If it has recommendations to modify the wage agreement, the administrative department of labour and social security shall communicate in a timely manner to the two parties to the consultation its views on the feedback of the wage agreement check-up. The two parties shall organise timely consultation on the recommendations, amend the agreement accordingly, and submit it again to the administrative department of labour and social security.

After 15 days from the submission of the wage agreement to the administrative department of labour and social security, if the two parties to the consultation do not receive the conclusion of the wage agreement check-up, the wage agreement shall be deemed to have the approval from the administrative department of labour and social security, and it shall become effective immediately.

Article 23: The two parties to the consultation shall publish with an appropriate format the wage agreement to all the people from their sides within five days since the entry into force of the agreement.

Article 24: Under normal circumstances, a collective wage consultation shall be organised once a year. Either the employer or the workers can propose in writing to the other side for a consultation within 60 days from the expiry of the existing wage agreement, and engage in the next round of collective wage consultation. The old and new wage agreements should be connected well.

CHAPTER SIX: SUPPLEMENTARY PROVISIONS

Article 25: Issues relevant to collective wage consultation and wage agreement and not covered in these measures shall be governed by the Collective Contract Provisions.

Article 26: These measures shall enter into force as of the date of promulgation.

APPENDIX 1.4

COLLECTIVE CONTRACT PROVISIONS

CHAPTER ONE: GENERAL PROVISIONS

Article 1: These provisions are formulated in line with the relevant provisions of *the Labour Law of the People's Republic of China* and *the Trade Union Law of the People's Republic of China*, with a view to regulating collective consultations and the conclusion of collective contracts, and protecting the legitimate rights and interests of workers and employers.

Article 2: These provisions govern enterprises and public institutions that follow the management style of an enterprise (hereinafter referred to as employing units) within the territory of the People's Republic of China undertaking collective consultations and concluding collective contracts with their workers in accordance with the law.

Article 3: For the purpose of these provisions, the term *collective contract* means the written agreement concluded between an employing unit and its workers through collective consultation process in accordance with laws and regulations on matters of labour remuneration, working hours, rest and leave, occupational safety and health, vocational training, insurance and welfare.

Specific collective contract means a specific written agreement concluded by the employing unit and its workers in accordance with laws and regulations on a specific item in the collective consultation.

Article 4: The employing unit and its workers shall apply the means of a collective consultation to conclude collective contract or specific collective contract and to determine relevant matters. A collective consultation is generally undertaken through consultation meetings.

Article 5: The following principles shall be followed when undertaking collective consultations and concluding collective contracts or specific collective contracts:

1. Compliance with laws and regulations and relevant national provisions;
2. Mutual respect and consulting on an equal footing;
3. Integrity, equity, and commitment to cooperation;
4. Balance of the legitimate rights and interests of the two parties; and
5. Protection from any unruly act.

Article 6: A collective contract or specific collective contract that satisfies these provisions is equally binding to the employing unit and the workers.

The terms of employment and remuneration standard in a contract signed by an individual worker and the employing unit shall be no less favourable than the provisions in the collective contract or specific collective contract.

Article 7: The labour and social security administrative departments at and above the county level shall exercise supervision of employing units and their workers within its jurisdiction, engaging in collective consultations and conclusion and fulfilment of collective contracts. The departments are also checking up the collective contracts or specific collective contracts.

CHAPTER TWO: CONCLUSION OF COLLECTIVE CONTRACTS

Article 8: The two parties to the collective consultation can engage in collective consultation and conclude collective contract or specific collective contract on one or more items listed below:

1. Labour remuneration;
2. Working hours;
3. Rest and leave;
4. Occupational safety and health;
5. Supplementary insurances and welfare;
6. Special protection for women and minor workers;
7. Vocational skill training;
8. Management of labour contracts;
9. Awards and sanctions;

10. Downsizing;
11. Duration of a collective contract;
12. The procedure to modify and revoke a collective contract;
13. The consultation means to address disputes arising from fulfilment of a collective contract;
14. Breach of liabilities of the collective contract; and
15. Other items that the two parties believe should be consulted.

Article 9: Labour remuneration generally includes:

1. Wage level, wage system, wage standard and form of wage and remuneration in the employing unit;
2. Means of wage payment;
3. Means of remuneration for overtime work, allowances, subsidies and bonuses;
4. Means to adjust wages;
5. Wage benefits for the periods of probation, sick leave and home leave;
6. Means of payment of workers' wages (living expenses) under special circumstances; and
7. Other means of labour remuneration.

Article 10: Working hours generally cover:

1. System of working hours;
2. Measures on overtime work;
3. Working hours for special categories of work; and
4. Standard of labour quota.

Article 11: Rest and leave generally cover:

1. Hours of rest in a work day, arrangement of off work days in a week, and annual leave;
2. Rest and leave for workers who cannot follow normal working hours; and
3. Other holidays.

Article 12: Occupational safety and health generally cover:

1. Responsibility system of occupational safety and health;
2. Working conditions and technical safety measures;
3. Safe operation procedures;
4. Standard of labour protection equipment provisions; and
5. Regular medical examinations and occupational hygiene examinations.

Article 13: Supplementary insurances and welfare generally cover:

1. Branches and scope of supplementary insurances;
2. Basic welfare system and welfare facilities;
3. Extension of the duration of medical care and medical benefits; and
4. Welfare system for the workers' relatives.

Article 14: Special protection for women and minor workers generally covers:

1. Prohibited scope of labour for women and minor workers;
2. Labour protection for women workers during their menstrual phase, pregnancy, confinement and feeding period;
3. Regular medical examinations for women and minor workers; and
4. Employment and recording of minor workers.

Article 15: Vocational skill training generally covers:

1. Programme and annual plan of vocational skill training;
2. Acquisition and utilization of vocational skill training expenses; and
3. Measures to safeguard and improve vocational skill training.

Article 16: Labour contract management generally covers:

1. Time of signing a labour contract;
2. Conditions to determine the duration of a labour contract;
3. The general principles to modify, revoke and renew a labour contract, and the conditions to terminate an un-fixed term labour contract; and
4. Conditions and duration for probation.

Article 17: Awards and sanctions generally cover:

1. Labour disciplines;
2. Appraisal, award and sanction system; and
3. Procedures of granting awards and applying sanctions.

Article 18: Downsizing generally covers:

1. Downsizing plan;
2. Downsizing procedure; and
3. Application of downsizing and compensation standards for downsized staff.

CHAPTER THREE: COLLECTIVE CONSULTATION REPRESENTATIVES

Article 19: For the purpose of these provisions, the term *collective consultation representatives* (hereinafter referred to as consultation representatives) means people identified through legal procedure and having the delegation to represent the interests of their party and partake in the collective consultation.

The numbers of the representatives for each party shall be the **equal**, at least **three**, and each party shall appoint a chief representative.

Article 20: The **workers'** consultation representatives shall be designated by the trade union. In a **non-unionised** enterprise, the workers nominate their representatives through a democratic approach, and the representatives should win the approval of at least half of the **workforce**.

The **workers'** chief representative shall be chairperson of the trade union **and** can authorise in writing another person to be the chief representative on his or her behalf. In a **non-unionised** enterprise, the **workers'** chief representative shall be identified by the consultation representatives through a democratic approach.

Article 21: The consultation representatives from the employing unit side shall be designated by the legal representative, the chief representative shall be the legal representative or another person from the management delegated by the legal representative in writing.

Article 22: The term of the mandate of the consultation representatives shall be determined by the respective party they represent.

Article 23: The chief representatives from both parties to the collective consultation can authorise in writing professionals outside the employing unit to serve as consultation representatives for their respective parties. The representatives thus authorised shall be no more than one-third of the total representatives of each side.

The chief representatives shall not be served by people from outside of the employing unit.

Article 24: No person can serve both as a consultation representative for the employing unit and for workers.

Article 25: The consultation representatives shall perform the following functions:

1. Participate in collective consultations;
2. Answer questions from their **representatives**, inform timely the people from their party of consultation development, and solicit their views;
3. Provide information and documentation relevant to collective consultations;
4. Represent their party to take part in settlement of collective consultation disputes;
5. Overlook the fulfilment of the collective contract or specific collective contract; and
6. Other functions prescribed by the laws and regulations.

Article 26: The consultation representative shall safeguard the normal production and work in the employing unit, and shall not apply acts of intimidation, bribe or deception.

The consultation representatives shall keep confidential the business secrets that they have acquired during the collective consultation process.

Article 27: The consultation representatives from the enterprise participating in collective consultation shall be deemed as providing regular services.

Article 28: When the labour contract of a consultation representative from the worker side expires during his or her term of mandate as a consultation representative, the labour contract shall automatically extend to the date when his or her term of mandate as the consultation representative ends.

The employing unit shall not terminate his or her labour contract unless the said person commits one of the **following offences**:

1. A severe breach of the labour discipline or rules adopted by the employing unit;
2. Breach of duty and jobbery, and causing great damage to the employing unit; or
3. Prosecution of criminal responsibility in accordance with the law.

During the term of mandate when a consultation representative from the worker side performs his or her duty as a consultation representative, the employing unit shall not adjust his or her post without justified causes.

Article 29: When the consultation representatives from the worker side have disputes with the employing unit over the provisions of Article 27 and Article 28, they can apply to the local arbitration committee of labour disputes for arbitration.

Article 30: The trade union can change the consultation representatives from the worker side; in a **non-organised** enterprise, change to the consultation representatives from the worker side can proceed with approval from half of the workers.

The legal representative of the employer unit can change the consultation representatives of the employer side.

Article 31: In case that any post of the consultation representatives is vacated due to events of representative change, resignation, or force majeure, a new replacement shall be identified within 15 days as of the vacation in accordance with these provisions.

CHAPTER FOUR: COLLECTIVE CONSULTATION PROCEDURES

Article 32: Either party of the collective consultation can propose to the other party in writing for a collective consultation with a view to concluding a collective contract or specific collective contract, and addressing relevant matters.

When one party makes the proposal for a collective consultation, the other party shall give a written response within 20 days as of receipt of the proposal, and shall not refuse to engage in a collective consultation without justified causes.

Article 33: The consultation representatives shall make the preparations as listed below prior to the consultation:

1. Familiarizing laws, regulations and systems relevant to collective consultation;
2. Gathering information and documents relevant to the collective consultation, collecting views of the employing unit and the workers to the consultation proposal;
3. Setting the collective consultation agenda. The agenda can be drafted by the party that makes the proposal for consultation, can also be drafted jointly by representatives designated by the two parties;
4. Setting the timeframe and venue of collective consultation; and
4. Jointly identifying a person other than the consultation representatives to serve as a recorder of collective consultation. The recorder should be neutral and unbiased, and keep secrets for both parties to the collective consultation.

Article 34: The collective consultation meetings shall be chaired by the chief representatives of the two parties alternatively, and follow the following procedures:

1. Announcing meeting agenda and meeting discipline;
2. The chief representative from one party proposing the concrete items and its demands for the collective consultation, the chief representative from the other party responding to the demands from its counterpart;
3. The two parties to the consultation expressing their respective views on the matters under consultation, and engaging in extensive discussion; and
4. The chief representatives of the two parties taking stock of the views expressed. If consensus is reached, a draft collective contract or specific collective contract should be produced, and signed by the chief representatives of both parties.

Article 35: If the parties to collective consultation fail to reach an agreement or any unexpected problem arises, the consultation may be temporarily suspended with the agreement of the two parties. The duration for this suspension, and the time, venue and items covered in the next consultation shall be decided by the two parties through consultation.

CHAPTER FIVE: CONCLUSION, MODIFICATION, REVOCATION AND TERMINATION OF A COLLECTIVE CONTRACT

Article 36: The draft collective contract or specific collective contract agreed upon by the consultation representatives of both parties shall be submitted to the workers' congress or workers' general assembly for discussion.

When the draft collective contract or specific collective contract is discussed by the workers' congress or workers' general assembly, the draft collective contract or specific collective contract can be adopted only when more than two-thirds of workers' delegates or workers are present at the meeting, and half of the workers' delegates or workers are in favour.

Article 37: The collective contract or specific collective contract shall be signed by the chief representatives of the two parties once it has been adopted by the workers' congress or workers' general assembly.

Article 38: The term of a collective contract or specific collective contract is generally one to three years. It shall terminate immediately upon the expiry of the term or satisfaction of the conditions agreed upon by the two parties to terminate the contract.

Within **three** months prior to the expiry of the term of a collective contract or specific collective contract, any party can propose to the other party to conclude a new contract or renew the existing contract.

Article 39: The consultation representatives of the two parties can modify or revoke a collective contract or specific collective contract upon agreement of the two parties through consultation.

Article 40: When there is one of the following cases, the collective contract or specific collective contract may be modified or revoked:

1. The collective contract or specific collective contract cannot be fulfilled due to acquisition, dissolution or bankruptcy of the employing unit;
2. The collective contract or specific collective contract cannot be fulfilled in full or in part due to force majeure;
3. Conditions agreed upon to modify or revoke the collective contract or specific collective contract are met; or
4. Other circumstances as provided in laws and regulations.

Article 41: The collective consultation procedure provided in these provisions applies to modification or revocation of a collective contract or specific collective contract.

CHAPTER SIX: COLLECTIVE CONTRACT CHECK-UP

Article 42: When a collective contract or specific collective contract is concluded or modified, within 10 days since the signing of the contract by the chief representatives from the two parties, the employing unit shall submit 3 copies of the contract to the administrative department of labour and social security for check-up.

The administrative department of labour and social security shall keep a file of the collective contracts or specific collective contracts submitted to it.

Article 43: Collective contracts or specific collective contracts shall be administered within the local jurisdiction. The scope of jurisdiction shall be determined by the administrative department of labour and social security at the provincial level.

For enterprises under administration of the Central Government and employing units that cross different provinces, autonomous regions and municipalities directly under the Central Government, their collective contracts shall be submitted to Ministry of Labour and Social Security or the administrative department of labour and social security at the provincial level as designated by Ministry of Labour and Social Security.

Article 44: The administrative department of labour and social security shall perform legality check-up on the following items over the collective contracts or specific collective contracts submitted to it:

1. Whether the two parties to the collective consultation meet the prescriptions provided by the laws and regulations;
2. Whether the collective consultation procedure is in compliance with the prescriptions provided by the laws and regulations; and
3. Whether any content of the collective contract or specific collective contracts is in violation of national provisions.

Article 45: When the administrative department of labour and social security has any objection to the collection contract or specific collective contract, it shall, within 15 days from the date of receiving the document, communicate a check-up feedback to the consultation representatives of the two parties, and the check-up feedback shall contain the following items:

1. Names and addresses of the two parties to the collective contract or specific collective contract;
2. Time of receiving the collective contract or specific collective contract by the administrative department of labour and social security;
3. Check-up views;
4. Time of concluding the check-up;

The check-up feedback shall be sealed with the stamp of the administrative department of labour and social security.

Article 46: When the employing unit and the workers conclude a new collective contract or specific collective contract after addressing with collective consultation the matters to which the administrative department of labour and social security has raised objection, the employer side shall submit the new text of the contract to the administrative department of labour and social security for check-up in accordance with Article 42 of these Provisions.

Article 47: The collective contract or specific collective contract shall come into force automatically if no objections are raised by the administrative department of labour and social security within 15 days from the date of receiving the contract.

Article 48: For any collective contract or specific collective contract that has entered into force, the consultation representatives shall publicise the contract to all the people they represent with an appropriate form and in a timely manner since the date of entry into force.

CHAPTER SEVEN: CONCILIATION AND SETTLEMENT OF COLLECTIVE CONSULTATION DISPUTES

Article 49: When a dispute arises out of the collective consultation process and the two parties to the consultation cannot resolve the dispute, either party or both parties can apply in writing to the administrative department of labour and social security for conciliation and settlement. When no application is filed, the administrative department of labour and social security can provide conciliation and settlement services when it deems necessary.

Article 50: The administrative department of labour and social security shall gather people from the trade union and employers' organisations at the same level, and the tripartite delegates shall participate jointly in the conciliation and settlement of collective consultation disputes.

Article 51: Collective contract dispute settlement shall be administered within the local jurisdiction. The scope of jurisdiction shall be determined by the administrative department of labour and social security at the provincial level.

For enterprises under administration of the Central Government and employing units that cross different provinces, autonomous regions and municipalities directly under the Central Government, conciliation and settlement of their collective contract disputes shall be organized by the provincial administrative department of labour and social security as designated by Ministry of Labour and Social Security, together with representatives from the trade union and employers' organisation at the same level.

When necessary, Ministry of Labour and Social Security can also organise relevant parties to conciliate and settle the disputes.

Article 52: When the administrative department of labour and social security involves in conciliation and settlement of a collective consultation dispute, it shall conclude the conciliation and settlement within 30 days from the date on which it receives the case.

If the case is not concluded at the end of the term limit, **additional days can be allowed** for conciliation and settlement, and the extension shall not exceed 15 days.

Article 53: Conciliation and settlement of collective consultation disputes shall follow the following procedures:

1. To decide the application for conciliation and settlement receivable;
2. To investigate into the dispute;
3. To study and work out a plan for conciliation and settlement of the dispute;
4. To proceed to the conciliation and settlement of the dispute; and
5. To produce an agreement on dispute conciliation and settlement.

Article 54: The agreement on dispute conciliation and settlement shall document the application of conciliation and settlement, the facts of disputes and the outcome of conciliation. When the two parties cannot reach consensus on some matters under consultation, those matters scheduled for further consultation shall be recorded in the agreement. The agreement on dispute conciliation and settlement shall come into force with signatures and stamps from the people engaged in collective consultation dispute conciliation and settlement, and chief representatives from both parties.

The two parties in the dispute shall honour the agreement on dispute conciliation and settlement once it becomes effective.

CHAPTER EIGHT: SUPPLEMENTARY PROVISIONS

Article 55: When the parties cannot resolve the dispute arising in the process of implementing a collective contract, the party concerned may apply to labour dispute arbitration committee for arbitration in accordance with the law.

Article 56: When an employing unit rejects the proposal from the trade union or workers' delegates for collective consultation without justified causes, it shall be sanctioned in accordance with the Trade Union Law and other relevant provisions in the laws and regulations.

Article 57: These provisions became effective on May 1, 2004. The Collective Contract Provisions promulgated by the former Ministry of Labour on December 5, 1994 have been annulled.

ANNEX 1.5

Trade Union Law of the People's Republic of China

Article 2 Trade unions are mass organisations formed by the working classes of their own free will.

The All-China Federation of Trade Unions and all of its trade union organisations shall represent the interests of the employees and protect the legal rights and interests of the employees.

Article 3 All labourers doing physical or mental work in enterprises, public institutions and government organs within Chinese territory who earn their living primarily from wages shall have the right to participate in and form trade union organisations pursuant to the law, regardless of their nationality, race, sex, occupation, religious beliefs or education. No organisation or individual may hinder them from doing so or restrict them.

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, trade unions shall, at the same time, represent and safeguard the rights and interests of employees.

Trade unions shall coordinate the labour relations and safeguard the labour rights and interests of the enterprise employees through equal negotiation and collective contract system.

Trade unions shall, in accordance with legal provisions, organise the employees to participate in the democratic decision-making, democratic management and democratic supervision of their respective units through the employee representative assembly or other forms.

A trade union must liaise closely with employees, listen to and reflect their views and requirements, care for their livelihood, assist them in overcoming difficulties and serve them wholeheartedly.

Article 9 Trade union organisations at all levels shall be established in accordance with the principle of democratic centralism.

Trade union committees at all levels shall be elected by their general assemblies or representative assemblies. The close relatives of the major principals of an enterprise may not be elected as the members of the basic-level trade union committee of that enterprise.

Trade union committees at all levels shall be responsible to and shall submit work reports to general assemblies or representative assemblies at their respective levels and shall be subject to their supervision.

Trade union general assemblies and representative assemblies shall have the right to change or dismiss their elected representatives or committee members.

Trade union organisations at the higher level shall lead the trade union organisations at the lower level.

Article 10 The trade union of an enterprise, public institution or government organ with 25 or more members shall establish a basic-level trade union committee; if the members are less than 25, a basic-level trade union committee may be established separately, or a basic-level trade union committee be established by the members of 2 units or more, or an organiser may be elected to organise activities for the members. If the number of female employee is relatively large, a trade union committee for female employees may be established under the leadership of the equivalent level trade union; if the number of female employee is relatively small, female employee member shall be included in the trade union committee.

The towns and townships, and urban districts with a relatively large number of enterprise employees may establish the association of basic-level trade unions.

A locality at county level or above shall establish a local all-level federation of trade unions.

Several enterprises of the same industry or in industries of a similar nature may establish a national or local specific industry trade union, depending on their requirements.

The All-China Federation of Trade Unions shall operate uniformly at a national level.

Article 11 The establishment of a basic-level trade union, local all-level federation of trade unions or a national or local specific industry trade union must be reported to the trade union organisation at the next highest level for approval.

The trade unions at the higher level may assign personnel to assist the direct the enterprises to establish trade unions, no unit or individual may obstruct.

Article 12 No unit or individual may cancel or consolidate trade union organisations.

If a basic-level trade union organisation's enterprise terminates its operations or its public institution or state organ is cancelled, the said trade union organisation shall also be cancelled and the case be reported to the trade union at the next higher level.

For the trade union cancelled according to the provisions of the preceding paragraph, the membership of its members may be reserved, and the specific management measures shall be formulated by the All-China Federation of Trade Unions.

- Article 13** The trade union of an enterprise or public institution with 200 or more workers may establish full-time trade union chairman. The number of the full-time working personnel of the trade union shall be determined by the union and the enterprise or public institution through consultation.
- Article 14** The All-China Federation of Trade Unions, local all-level federations of trade unions and specific industry trade unions shall have the legal person status of a social group.
Basic-level trade union organisations meeting the legal person requirements stipulated by the General Principles of Civil Law shall be awarded the legal person status of a social group pursuant to the law.
- Article 15** The terms of office of the basic-level trade union committee shall be three or five years each. The terms of office of the committees of the local all-level federations of trade unions and of the specific industry trade unions shall be five years each.
- Article 16** A basic-level trade union committee shall hold general assembly or representative assembly periodically to discuss and decide on the major issues of the trade union work. The general assembly or representative assembly may be held temporarily upon the proposal of the basic-level trade union committee or more than one third of the trade union members.
- Article 17** During their terms of office, a trade union chairman and deputy chairman shall not be arbitrarily transferred to other positions. When indeed necessary, approval shall be obtained from the respective level trade union committee and higher-level trade union.
General assembly or representative assembly must be held to discuss the dismissal of the trade union chairman or deputy chairman, and the chairman and deputy chairman may not be dismissed unless all members of the general assembly or half the representatives of the representative assembly approve the dismissal.
- Article 18** From the day on which the full-time chairman, deputy chairman or the committee members take their posts, the periods of their labour contracts shall be extended automatically, the periods extended shall be equal to their respective terms of office; if the unfulfilled labour contract periods of the non-full-time chairman, deputy chairman or the committee members are shorter than their respective terms of office, the labour contract periods shall be extended until their terms of office expire. But those committing serious negligence or reaching the lawful age for retirement are exceptional.
- Article 19** If an enterprise or public institution violates the provisions of the employee representative assembly system or other democratic management systems, the trade union of the said unit shall have the right to request corrections and ensure that the employees exercise their rights to democratic management pursuant to the law.
The enterprise or public institution shall handle pursuant to law the matters that shall be submitted to the employee assembly or employee representative assembly for deliberation, approval and decision provided for by laws and regulations.
- Article 20** A trade union shall assist and provide guidance to employees in signing labour contracts with an enterprise or a public institution managed as an enterprise.
A trade union shall represent employees in equal negotiation and signing a collective contract with an enterprise or a public institution managed as an enterprise. The draft of a collective contract shall be submitted to the employee representatives or the complete body of employees for discussion and adoption.
The trade union at the next higher level shall support and assist the trade union in signing the collective contract.
If the enterprise violates the collective contract and infringes upon the rights and interests of the employees, the trade union may ask the enterprise to bear liabilities according to law; if the dispute over the performance of the collective contract can't be settled through consultation, the trade union may submit it to the arbitral agency of labour dispute for arbitration, if the arbitral agency refuses to accept the case or the trade union refuses to accept the finding of arbitration, a lawsuit may be brought before a people's court.
- Article 21** A trade union which believes that an enterprise's or a public institution's punishment on an employee is inappropriate shall have the right to put forward its views on the matter.
When unilaterally cancelling the labour contract with an employee, the enterprise shall notify the trade union of the reasons in advance, if the trade union regards that the enterprise has violated the laws, regulations and relevant contracts and requests that the case be reinvestigated and dealt with anew, the enterprise shall deliberate the views of the trade union and notify the trade union of the handling result in written form.
The trade union shall support and assist the employee who thinks that the enterprise has infringed upon his/her labour rights and interests, and applies for arbitration of labour dispute or brings a lawsuit before a people's court.

- Article 22** If an enterprise or public institution has, in violation of the provisions of labour laws and regulations, infringed, as follows, upon the labour rights and interests of the employees, the trade union shall represent the employees to negotiate with the enterprise or public institution and request the enterprise or public institution to take measures for corrections; the enterprise or public institution shall deliberate and handle the case, and reply to the trade union; if the enterprise or public institution refuses to make corrections, the trade union may ask the local people's government to handle the case according to law:
- 1) pocketing part of the employees' wages;
 - 2) failing to provide labour safety and health conditions;
 - 3) extending the labour time arbitrarily;
 - 4) infringing upon the special rights and interests of female employees and underage employees; and
 - 5) other serious infringement upon the labour rights and interests of the employees.
- Article 23** A trade union shall, pursuant to State regulations, supervise the concurrent design, concurrent construction, and concurrent use of the work conditions, and the safety and hygiene facilities of the main part of the project of a newly constructed or expanded enterprise or of an undergoing technological transformation. The said enterprise or its department in charge shall conscientiously deal with the views put forward by the trade union and shall notify the trade union of the outcome in written form.
- Article 24** If a trade union discovers that an enterprise is breaking rules and regulations by directing or forcing workers to take risks or if distinct and significant hidden dangers or occupational hazards are discovered during the production process, the trade union shall have the right to suggest a resolution, and the enterprise shall study the problem and make a reply promptly; on discovering a situation where the personal safety of workers is jeopardised, a trade union shall have the right to suggest to the enterprise that the workers abandon the dangerous site and the said enterprise must decide promptly on the measures to resolve the matter.
- Article 25** A trade union shall have the right to investigate into the issues of the infringement upon the legal rights and interests of the employees committed by the enterprise or public institution, and the units concerned shall give assistance.
- Article 26** It is necessary that a trade union take part in the investigation and handling of an job-related accident resulting in a fatality or injury or other problems seriously endangering the health of employees. The trade union shall suggest resolutions to the relevant authorities and have the right to require the pursuit of the liability of personnel in charge held directly responsible and other responsible parties. The resolutions suggested by the trade union shall be studied and replied promptly.
- Article 27** If an enterprise or public institution is subject to stop work or slow down measures, the trade union shall represent the employees to negotiate with the enterprise, public institution or other relevant authorities, make known the employees' views and requirements and propose resolutions. The enterprise or public institution shall meet the reasonable requirements raised by the employees. And the trade union shall assist the enterprise or public institution in its work so as to enable the normal production process to be resumed as quickly as possible.
- Article 28** A trade union shall participate in the mediation in relation to labour disputes within its enterprise. Equivalent level trade union representatives shall participate in district labour dispute arbitration organisations.
- Article 30** Trade unions shall assist the enterprises, public institutions and government organs in organising employee collective welfare matters and wage, labour safety and hygiene and social insurance work.
- Article 31** Trade unions shall, in conjunction with the enterprises and public institutions, educate the employees to adopt the attitude towards labour as the nation's master, to take good care of the properties of the State and of the enterprises, shall organize the employees to develop mass rationalisation proposal and technological innovation activities, to undertake after-hours cultural and technical studies and occupational training, and shall organise the employees to develop recreational and sports activities.
- Article 35** The employee representative assembly of a state-owned enterprise shall be the basic-level structure through which the enterprise executes democratic management as it is the body through which the employees may exercise their rights to democratic management in accordance with the legal provisions.
- The trade union committee of a state-owned enterprise shall be the working body of the employee representative assembly and shall be responsible for the daily affairs of the employee representative assembly and for inspecting and supervising the implementation of resolutions of the employee representative assembly.

- Article 36** The trade union committee of a collective enterprise shall support and organise the employees' participation in democratic management and democratic supervision and shall safeguard the rights of employees to elect and dismiss administrative personnel and to determine important issues relating to operational management.
- Article 37** The trade union committees of the enterprises and institutions apart from those provided for in Article 35 and Article 36 of this Law shall organise the employees' participation in the democratic management of the enterprises and public institutions through the corresponding methods of the enterprises and public institutions according to the legal provisions.
- Article 38** Enterprises and public institutions shall listen to the views of the trade unions when studying the important issues relating to the operational management and development; and the participation of trade union representatives is necessary in the meetings convened to discuss matters, such as wages, welfare, labour safety and hygiene, and social insurance, which involve the personal rights and interests of the employees.
- The enterprises and public institutions shall support the trade unions in carrying out their work pursuant to the law and the trade unions shall support the enterprises and public institutions in exercising the right to operation and management pursuant to the law.
- Article 39** The election of employee representatives from the board of directors or board of supervisors of an enterprise shall be subject to the relevant provisions of the Company Law.
- Article 40** A basic-level trade union committee convening a meeting or organising activities for employees shall do so in time outside production or work hours. If it is necessary to occupy production or work hours, prior approval of the enterprise or public institution shall be required.
- If a non-full-time trade union committee member of the basic-level trade union uses production or work hours to participate in a union meeting or undertake the trade union work not more than 3 workdays each month, the member's wages shall be issued as usual and other benefits shall not be affected.
- Article 41** The full-time working personnel of the trade union committees of enterprises, public institutions or government organs shall have their wages, awards and bonuses paid by the units to which they belong. With regard to social insurance and other welfare benefits, the same treatment shall be enjoyed by them as that enjoyed by the said units' employees.
- Article 42** The sources of trade union funds shall be as follows:
- 1) Membership dues paid by union members;
 - 2) Monthly allocations of 2% of the total wages of all of its employees paid to a trade union as funds by the enterprise, public institution or government organ which established the said trade union organisation;
 - 3) Income turned in by the enterprise or public institutions to which the trade union is subordinated;
 - 4) People's government subsidies; and
 - 5) Other income.
- The funds allocated by the enterprise or public institution provided for in item 2) of the preceding paragraph shall be paid before tax collection.
- Trade union funds shall be used primarily to serve the employees and for the trade union activities. Detailed measures on the use of such funds shall be formulated by the All-China Federation of Trade Unions.
- Article 43** If an enterprise or public institution delays or refuses the payment of trade union funds without justified reasons, the basic-level trade union or the trade union at the next higher level may apply to the local people's court for order of payment; in case the enterprise or public institution refuses to execute the order of payment, the trade union may apply to the people's court for enforcement according to law.
- Article 44** A trade union shall work out its own budget and final accounts, as well as its own fund inspection and supervisory systems in accordance with the principle of independent accounting.
- All levels of trade unions shall establish fund inspection committees.
- The fund income and expenditure of trade unions at all levels shall be investigated by the equivalent level fund inspection committees and periodic reports shall be made to the members' general assemblies or representative assemblies and be subject to supervision. A trade union general assembly or representative assembly shall have the right to put forward suggestions on the use of trade union funds.
- The use of trade union funds shall be subject to the supervision of the State according to law.

- Article 49** A trade union shall have the right to submit the infringement upon its legal rights and interests violating the provisions of this Law to the people's government or the departments concerned for handling, or to bring a lawsuit before the people's court.
- Article 50** Those, in violation of the provisions of Article 3, Article 11 of this Law that obstruct the employees from participating in or organizing trade unions according to law or that obstruct the trade unions at the next higher levels from assisting and giving guidance in the establishment of trade unions shall be ordered by the administrative departments of labour to make corrections; those refusing to make corrections shall be submitted by the administrative departments of labour to the people's governments at the level of county or above for handling; those causing serious results by the means of violence or threats and constituting crimes shall be investigated into for criminal responsibilities.
- Article 51** Those, in violation of the provisions of this Law, that make vindictive attacks by transferring the working personnel of trade unions performing their duties according to law from their posts without justified reasons shall be ordered by the administrative departments of labour to make corrections; and shall make compensation if any loss is caused. Those that insult, defame or make personal injuries to the trade union working personnel performing duties according to law and thus committed crimes shall be investigated into for criminal responsibilities; in case a crime hasn't been constituted, the public security departments shall give punishment according to the regulations on punishment in respect to management of public security.
- Article 52** Those, in violation of the provisions of this Law, who commit the following acts shall be ordered by the administrative departments of labour to resume the employees' work and reissue the remuneration that should be paid during the cancellation of labour contracts, or be ordered to make compensation of two times the annual income of the said employees:
- 1) the employees' labour contracts are cancelled because of the employees' participation in trade union activities; or
 - 2) the labour contracts of the trade union working personnel are cancelled because of their performance of the duties provided for by this Law.
- Article 54** For those, in violation of the provisions of Article 46 of this Law, occupying the trade union funds and refusing to return, the trade unions may bring lawsuits before the people's courts, request the return of the funds and compensation for losses.

ANNEX 1.6

Guangdong Provincial Regulations on Collective Contracts for Enterprises

(Passed by the Eleventh Session of the Standing Committee of the Twelfth People's Congress of Guangdong Province on September 25, 2014)

CHAPTER I. PRINCIPLES

Article 1. In order to regulate conduct of collective negotiations, to improve the system of collective contracts, to protect the legal rights of employees and enterprises, and to establish harmonious and stable labour relations, the following regulations are established in light of the situation in this province and in accordance with the "Labour Law of the People's Republic of China," the "Labour Contract Law of the People's Republic of China," the "Trade Union Law of the People's Republic of China," the "Labour Dispute Mediation and Arbitration Law of the People's Republic of China," the "People's Mediation Law of the People's Republic of China" and other legal regulations.

Article 2. This Regulation is applicable to enterprises and employees conducting collective negotiations and signing collective contracts in the administrative jurisdiction of this Province.

Article 3. Enterprises shall establish sound collective negotiations and collective contract systems in accordance with the law. Collective negotiations, as used in this regulation, refers to the conduct of negotiations on an equal basis between the employees and the enterprise with regard to labour remuneration, working hours, rest and vacations, labour safety and health, insurance and welfare and other such matters.

Collective contract, as used in this Regulation, refers to the written agreement signed between the employees and the enterprise agreed through collective negotiations.

Article 4. The conduct of collective negotiations and the establishment of collective contracts should follow principles of legality, fairness, equality and voluntary participation, consensus, honesty and trust, taking into account the legal interests of both sides.

Article 5. All levels of the People's Government should strengthen the coordination work regarding labour relations, build and develop harmonious and stable labour relations, and on a timely basis investigate and resolve major problems regarding collective negotiations and collective contracts.

The human resources and social security administration departments of the people's governments above the county level shall establish a tripartite mechanism for the coordination of labour relations in conjunction with trade unions and enterprise organisations.

All levels of the human resources and social security departments shall direct, coordinate and supervise the implementation of collective negotiations and collective contracts according to the law.

Article 6. The local federations of trade unions shall organise, direct, and coordinate enterprise trade unions to conduct collective negotiations and establish and implement collective contracts according to the law.

The enterprise trade unions shall, in accordance with the law, represent employees in conducting collective negotiations, signing a collective contract, and safeguarding the legal rights and interests of employees.

Article 7. Enterprise organisations, such as enterprise associations, industry and commerce federations, industry associations, and chambers of commerce should assist enterprises in establishing sound collective negotiations and collective contract systems.

CHAPTER II. COLLECTIVE NEGOTIATIONS

Section I. Content of Collective Negotiations

Article 8. The employees and the enterprise may undertake collective negotiations with regard to the following subjects:

- 1) Determination of labour remuneration, increase or decrease;
- 2) Work hours, mainly including the system of working hours, methods to lengthen working hours, working hours for special classifications of work, and work quota standards;
- 3) Rest and vacation, mainly including daily rest hours, weekly rest days, annual leave arrangements, holidays for workers who cannot carry out standard work hours, and other holidays;
- 4) Labour safety and health;
- 5) Social insurance and benefits;
- 6) Special protection of women workers and minors between the ages of 16 and 18;
- 7) Liability for breaching the collective contract;
- 8) Other items that both sides believe should be negotiated.

- Article 9.** The employees and the enterprise should follow the principles of wage distribution according to work, and equal pay for equal work. They may carry out specific collective wage negotiations over the following items:
- 1) Wage standards, forms of wage distribution and other wage distribution issues and methods of wage payment;
 - 2) Annual average payment level of employees and the range and methods of adjustment;
 - 3) Wages during the probationary period, sick leave and leaves of absence;
 - 4) Other wage items that both sides believe should be negotiated.
- Article 10.** Collective wage negotiations should take into consideration the following factors comprehensively:
- 1) Labour productivity and economic performance of the enterprise;
 - 2) Total payroll and employees' average wage level in the enterprise in the preceding year;
 - 3) Wage guidelines for enterprises, labour market wage level guidelines issued by human resources and social security administrative authorities;
 - 4) Consumer Price Index issued for local town and city residents by the people's government's statistics bureaus;
 - 5) Local minimum wage, regional and industrial average wage increase levels as issued by relevant government authorities;
 - 6) Other matters related to collective wage negotiations.
- Article 11.** To conduct collective wage negotiations enterprises and employees may propose a wage increase, no increase or decrease. The employees' side may put forward demands for wage increase according to the enterprise annual profit growth, the wage guidelines of local people's government, the local wage growth rate, and wage levels of the enterprises in the same region and the same industry.
- Enterprises may propose no increase or decrease in wages based on actual significant financial loss and comprehensively considering consumer prices, the government wage guidelines and other factors.

Section II. Collective Negotiations Representatives

- Article 12.** To conduct collective negotiations, the enterprise and the employees should select their own negotiations representatives. The collective negotiations representatives (hereinafter referred to as the negotiations representatives) shall have the authority to represent their respective side's interests in collective negotiations.
- The employees and the enterprise shall each have three to nine negotiations representatives and each side appoints a chief negotiations representative. Large enterprises with a large number of employees may appropriately increase the number of negotiations representatives with the consent of both sides. Both sides may also have an appropriate number of observer representatives.
- Negotiations representatives of the enterprise and the employees shall not hold concurrent positions on both sides.
- Article 13.** Negotiations representatives for the enterprise shall be designated by the legal representative of the enterprise. The chief negotiations representative for the enterprise should be the legal representative of the enterprise or other management staff authorized in written form by the legal representative of the enterprise.
- Negotiations representatives for the employees shall either be selected by the trade union or by a democratic election by the staff and workers that is organized by the trade union. The chief representative for the employees should be a leader of the trade union. In enterprises without a trade union, negotiations representatives for the employees are selected in a democratic election by the staff and workers in an election that is organized by the local federation of trade unions, upon the consent of the majority of the enterprise staff and workers; the chief negotiations representative shall be elected by the negotiations representatives participating in the negotiations.
- Replacement and substitution of negotiations representatives shall follow the procedures of designation of negotiations representatives.
- Article 14.** The responsibilities of the negotiations representatives are: 1. To participate in collective negotiations activities, raise negotiations opinions; 2. To collect, keep and provide materials and documents related to collective negotiations; 3. To listen and collect opinions of constituents, to answer inquiries about collective negotiations from the individuals they represent, and to timely report or provide feedback about negotiations to their constituents; 4. To represent their constituents in the handling of disputes during collective negotiations; 5. Other responsibilities as prescribed by laws and regulations.

Article 15. The enterprise should guarantee necessary work time and conditions for negotiations representatives to carry out the duties required by negotiations, and provide true information and documentation related to collective negotiations to the employee negotiations representatives. Negotiations representatives should keep confidential any business secrets of the enterprise. The employee negotiations representatives should provide to the enterprise materials that they possess about collective negotiations.

Article 16. The legal rights of negotiations representatives are protected by law, their negotiations duties are regarded as regular work, enterprises may not adjust their jobs, reduce their wages and benefits without justifiable reasons. If their labour contracts¹ expire during the period when negotiations representatives are performing negotiations duties, said labour contracts are automatically extended until the negotiations responsibilities terminate.

During the period when negotiations representatives are performing their duties, the enterprise shall not terminate the labour contracts of the negotiations representatives, except in situations covered under Article 36 and Article 39 of the "Labour Contract Law of the People's Republic of China."

Section III. Collective Negotiations Procedures

Article 17. Either the employees or the enterprises may initiate a request to negotiate on an equal basis, in accordance with the law. Collective negotiations normally shall be conducted once a year.

Article 18. Collective negotiations requests should be made in written form.

Employees who believe it is necessary to engage in collective negotiations with the enterprise should direct their requests for collective negotiations to the enterprise trade union. The enterprise trade union may decide whether or not to submit a request for negotiations to the enterprise, based on the opinions of the employees and the concrete situation of the enterprise. If half or more of the staff and workers, or half or more of the Staff and Workers Representative Congress propose to negotiate, the trade union should submit a request to negotiate to the enterprise. If a trade union does not exist in an enterprise, employees may make a request to the local trade union federation for collective negotiations. The local trade union federation, upon the consent of half or more of the employees or half or more of the Staff and Workers Representative Congress, should make the request for collective negotiations to the enterprise.

Enterprises that believe there is a need for collective negotiations with employees should submit a request to negotiate to the enterprise trade union. If a trade union does not exist in an enterprise, the enterprise may make a request to the local trade union federation for collective negotiations.

Article 19. When the employees or the enterprise makes a written request to negotiate, the other side should sign on the delivery receipt of the written request to negotiate, and give a written reply within 30 days from the date of receipt, responding to the content of the request point by point, and conducting negotiations on relevant issues. The request for collective negotiations should include time, place and subjects of negotiations, and the reasons for the request.

Article 20. The period of collective negotiations is three months from receipt of the request to negotiate. According to the actual situation of the enterprise, both parties may mutually agree to shorten or lengthen the period appropriately, but the extension should not be longer than 60 days.

Article 21. Collective negotiations are normally conducted by meeting in person, but may also be done in writing or other methods by mutual consent. If one side requests meeting in person, then this method should be used.

When collective negotiations are conducted in person, the chief representatives of both parties chair the negotiations by taking turns or jointly chairing. The minutes of collective negotiations meetings should be signed and confirmed by all the negotiations representatives present. When collective negotiations are conducted in writing, the written opinions should be signed and confirmed by all of the negotiations representatives.

The enterprise should provide a meeting place and other necessary provisions for conducting collective negotiations sessions.

Article 22. During collective negotiations, the employees and the enterprise should conduct collective negotiations in a peaceful and rational manner, maintain regular production procedures, and must not engage in the following activities:

- 1) Refuse or intentionally delay progress of collective negotiations without a justified reason;
- 2) Intimidate or bribe negotiations representatives of the other side;
- 3) Use violence, intimidation or other illegal methods to disrupt, destroy the collective negotiations procedures;
- 4) Restrict the personal freedom of the relevant person, or make insults, threats, or commit violent bodily harm;
- 5) Engage in other actions that may intensify conflict.

¹ Translator's note: "Labour contracts" refers to individual employment contracts, not collective contracts.

Article 23. During the period of collective negotiations, the enterprise must not engage in the following activities:

- 1) Restrict or interfere with the trade union carrying out its activities or with selection of employee collective negotiations representatives, attack or carry out reprisals on employee collective negotiations representatives;
- 2) Refuse to provide information necessary for collective negotiations or provide false information;
- 3) Refuse to carry out a collective negotiations mediation agreement.

Article 24. During the period of collective negotiations, the employees must not engage in the following activities:

- 1) Violate the labour contract and fail to complete job tasks;
- 2) Violate labour discipline, or in various ways force other employees to leave their posts;
- 3) Block, obstruct or seal off access to the enterprise, obstruct employees, materials from entering or exiting the enterprise, destroy the enterprise's equipment and tools, or damage the enterprise's regular production procedures and public order.

Article 25. When agreement is reached in collective negotiations, the enterprise side shall draft a collective contract.

When no agreement is reached in collective negotiations, negotiations may be terminated and a time to resume negotiations may be set up with the consent of both sides.

CHAPTER III. COLLECTIVE CONTRACTS

Article 26. The draft collective contract should be discussed by the Staff and Workers Representative Congress or a meeting of all staff and workers. When the draft collective contract is discussed at the Staff and Workers Representative Congress or meeting of all staff and workers, more than two thirds of the Staff and Workers Representatives or two thirds of all staff and workers should be present. The draft is considered ratified with the agreement of half or more of the Staff and Workers Representatives or half or more of the staff and workers present. Once the draft collective contract has been ratified, it shall be signed and stamped with an official seal by the chief representatives of both negotiations parties, and shall be submitted by the enterprise to the local human resource and social security administration for recording within seven days from the adoption of the collective contract.

If the draft collective contract is not ratified, the negotiations representatives of the employees shall listen to and collect the opinions of employees, and after conducting additional negotiations with enterprise representatives, shall again submit the draft for discussion and ratification.

Article 27. When the collective contract is adopted and begins to take effect according to the law, it is binding upon both the enterprise and its employees; both sides should strictly implement the collective contract. The enterprise should make the collective contract available to all employees within five days after the collective contract begins to take effect.

Article 28. The term of the collective contract shall be from one to three years. The collective contract automatically ends on the expiration date or when mutually agreed conditions of termination occur.

Within three months before the expiration of the collective contract, either side may request to the other side to sign a new contract or renew the current contract.

Article 29. The collective contract remains in effect if during the term of the collective contract the enterprise changes its name, legal representative, principal leaders, stock rights, experiences increase or loss of capital, or other such things.

Article 30. The collective contract may be modified or terminated under one of the following conditions:

- 1) If it is agreed by both sides;
- 2) A part or all of the collective contract cannot be fulfilled due to force majeure;
- 3) The enterprise goes bankrupt, ceases operation, or dissolves so that the collective contract cannot be fulfilled;
- 4) Other situations according to laws and regulations.

Modification or termination of a collective contract follows the procedures of collective negotiations and of the signing of a collective contract as stipulated in this regulation.

CHAPTER IV. DISPUTE HANDLING

Article 31. The employees and the enterprise should handle collective negotiations disputes based on facts, observing legal, orderly and peaceful principles.

- Article 32.** If disputes occur in the process of collective negotiations or the performance of the collective contract, and neither the employees nor the enterprise are willing to negotiate, negotiations fail, or the collective agreement cannot be implemented after having reached settlement, may apply for mediation from lawfully established grassroots people's mediation organisations or organisations with labour dispute mediation capacity.
When an agreement is reached after mediation, the employees and the enterprise should perform the agreement.
- Article 33.** If disputes occur in the process of collective negotiations, the employees may submit requests for mediation to the local federation of trade unions, local federation of trade unions should timely intervene, guide and help the employees and enterprises to carry out negotiations and reach an agreement according to the law.
- Article 34.** If disputes occur in the process of collective negotiations, enterprise organisations should timely intervene, guide, and supervise enterprises to carry out collective negotiations in accordance with the law, help enterprises to maintain the normal production and business order, and coordinate the two sides to reach a consensus.
- Article 35.** If disputes cannot be resolved after the mediation of local federation of trade unions and enterprise organisations, the local human resources and social security administrative department should send personnel or designate someone from a list of collective bargaining experts to mediate.
- Article 36.** If a collective bargaining dispute occurs involving a large number of people and significant influence, the people's governments at various levels should coordinate the departments of human resources and social security, public security, judicial administration, state owned assets supervision and administration, in conjunction with the local federation of trade unions and enterprise organisations to jointly handle the dispute.
- Article 37.** If during collective negotiations in public institution units and related enterprises that provide water, electricity, gas, public transportation, broadcasting and communication, television, public sanitation, healthcare, education, finance, etc., there occurs production or business stoppages, or employees affect the provision of public services, leading to or potentially leading to one of the following consequences, the local people's government may according to the actual situation issue an order to the enterprise units and employees to cease such conduct and restore normal order:
- 1) Harming public security;
 - 2) Undermining the normal social order and the order of residents' lives;
 - 3) Other consequences that seriously threaten public interests. The local human resources and social security administrative department, relevant government departments, local federation of trade unions, enterprise organisations should guide and urge the parties to carry out collective negotiations and resolve the conflicts.
- Article 38.** For disputes pertaining to the enforcement of the collective contract, if negotiations fail, the trade union or the enterprise may apply for arbitration, appeal to a court according to the law.

CHAPTER V. LEGAL ACCOUNTABILITY

- Article 39.** If negotiations representatives violate Article 15 of this Regulation, disclose business secrets and cause losses to the enterprise, they shall assume the liability for compensation according to the law. If crimes have been committed, the violators shall be held accountable for criminal activities according to the law.
- Article 40.** If relevant enterprise management staff violate the 2nd, 3rd, or 4th items of Article 22, the 1st item of Article 23, in violation of public security regulations, it shall be dealt with according to the relevant provisions of "Public Security Management Punishment Law of the People's Republic of China"; if crimes have been committed, violators shall be held accountable for criminal activity according to the law.
If employees violate the 2nd, 3rd, or 4th items of Article 22, the 3rd item of Article 24, in violation of public security regulations, it shall be dealt with according to the relevant provisions of "Public Security Management Punishment Law of the People's Republic of China"; if crimes have been committed, violators shall be held accountable for criminal activity according to the law.
- Article 41.** Public institution units and related enterprises or their employees that violate Article 37 of this regulation, refuse to follow the order of the local People's government and engage in conduct in violation of public security administration, will be charged under the provisions of the "Public Security Management and Punishment Law of the People's Republic of China."
- Article 42.** If staff of enterprise organisations do not fulfil their legal duties or damage the legal interests of enterprises in the collective negotiations, enterprise organisations shall order them to make corrections. If the circumstances are serious, the staff shall be terminated or given sanction in accordance with the by-laws of the organisation.

Article 43. If the trade union staff do not perform their duties in collective negotiations according to law or damage the legal rights and interests of employees, the trade union at the same or higher level shall order them to make corrections; if the circumstances are serious, the staff shall be terminated or given sanction in accordance with the "Constitution of Trade Unions of China." If crimes have been committed, the violators shall be held accountable for criminal activity according to the law.

Article 44. If personnel of a relevant government department in carrying out work regarding collective negotiations are derelict in their duties, abuse their power, or commit favouritism or irregularities for personal interests, the relevant department shall punish them. If crimes have been committed, the violators should be held accountable for criminal activity according to the law.

CHAPTER VI. SUPPLEMENTAL PROVISIONS

Article 45. When the branch of an enterprise, with consent from the enterprise, conducts collective negotiations, signs and implements a collective contract with employees in the branch, it shall abide by this regulation.

Institutions and privately owned non-enterprises which implement enterprise style management shall abide by this regulation.

Article 46. This regulation shall go into effect as of January 1, 2015.

APPENDIX 2.1.1

QUALIFICATION IDENTIFICATION FOR WORKER SIDE COLLECTIVE CONSULTATION REPRESENTATIVES

As recommended by the trade union, and adopted by the ____ session of the workers' congress, ____, ____, and ____ are confirmed to be worker side collective consultation representatives for the year ____, who shall participate in the collective consultation on behalf of all the workers with the employer side representatives.

____ (name and seal of the trade union)
date : _____

Note: The chief collective consultation representative can authorize in writing professionals outside his or her entity to be consultation representatives of his or her side. The representatives hereby authorized shall not account for more than one third of the total representatives of his or her side.

APPENDIX 2.1.2

LETTER OF DELEGATION OF WORKER SIDE CHIEF REPRESENTATIVE

As recommended by the trade union, and adopted by the ____ session of the workers' congress, delegation of ____ as chief representative of the worker side in the collective consultation is confirmed, who shall have full power to exercise the authority of a chief representative and participate in the consultation on behalf of all the workers with the employer side representatives.

____ (name and seal of the trade union)
date: _____

Note: This document is applicable to the situation where the chair of the trade union cannot serve as the chief representative and there is a need to delegate other worker delegate to serve as chief representative. His or her status of chief representative is hereby confirmed with the letter of delegation.

APPENDIX 2.1.3

LETTER OF DELEGATION OF EMPLOYER SIDE COLLECTIVE CONSULTATION REPRESENTATIVES

Delegating entity: _____

Legal representative: _____

Position title: _____

This is to delegate ____, ____, and ____ as employer side collective consultation representatives for the year ____, who shall participate in the collective consultation on behalf of the employer with the worker side representatives.

Delegating entity (seal)

Legal representative (signature)

Date: _____

Note: The chief collective consultation representative can authorize in writing professionals outside his or her entity to be consultation representatives of his or her side. The representatives hereby authorized shall not account for more than one third of the total representatives of his or her side.

APPENDIX 2.1.4

LETTER OF DELEGATION OF EMPLOYER SIDE CHIEF REPRESENTATIVE

Delegating entity: _____

Legal representative: _____

Position title: _____

This is to authorize ____ as employer side chief representative, who shall have full power to exercise the authority of a chief representative and participate in the consultation on behalf of the employer with the worker side representatives.

Delegating entity (seal)

Legal representative (signature)

Date: _____

Note: This document is applicable to the situation where the legal representative of the employer cannot serve as the chief representative and there is a need to delegate other person in the management to serve as chief representative. His or her status of chief representative is hereby confirmed with the letter of delegation.

APPENDIX 2.2.1

AN OFFER FOR COLLECTIVE CONSULTATION FROM THE WORKER SIDE (SUITABLE FOR WORKER SIDE INITIATING THE OFFER)

Company _____,

In line with the provisions of *Labour Law*, *Labour Contract Law*, and, and *Regulations of Guangdong Province on Enterprise Collective Contracts*, the requests from the workers, taking due consideration of the actual circumstances of the company, the trade union proposes that the two parties of management and labour engage in wage consultation for the year _____. The details of the consultation are as follows:

I. Timeline and venue of the consultation

1. Time: it is proposed that the first round of consultation takes place on _____ (date), and the subsequent rounds will be determined by the development of the first round. However, the last round of consultation shall not be later than _____ (date).

2. Venue: it is proposed that the consultation takes place at Meeting Room _____.

II. Items to be placed on the consultation agenda (to be selected based on actual situation):

1. wage and remuneration system, wage standard and form of wage payment.

2. workers' average wage level of the year and the scale of adjustment.

3. rules on working hours and overtime work.

4. occupational safety and health.

5. insurance and welfare.

6. vocational training.

7. other business relevant to consultation.

III. Identification of consultation representatives

In accordance with the relevant provisions, it is proposed that each side assigns _____ (number) consultation representatives. The representatives from our side are: chief representative _____, and other representatives _____, _____, ... and _____.

The management of the company is requested to provide the list of the employer side representatives, so as to facilitate communication and preparatory work prior to the consultation.

IV. Documents to be provided to facilitate the consultation process (to be selected based on actual situation):

.....

Please provide the documents listed above to the worker side chief representative 5 days prior to the commencement of the consultation meeting. The business secrets contained in the documents shall not be revealed by the representatives from our side.

V. Please give a written reply within 15 days after receipt of this offer.

name and seal of trade union
date:

Appendix: Qualification identification of worker side collective consultation representatives

Note: when the chief representative is not the chair of the trade union, letter of delegation of worker side chief representative shall be attached. If there are externally hired representatives, letter of delegation for externally hired collective consultation representatives shall be attached.

APPENDIX 2.2.2

REPLY FROM EMPLOYER SIDE TO A REQUEST FOR A COLLECTIVE CONSULTATION (SUITABLE FOR THE SITUATION WHERE THE EMPLOYER SIDE RESPONDS TO THE OFFER FROM THE WORKER SIDE)

_____ (trade union),

This is to acknowledge receipt of your offer for a collective consultation. Concerning the matters raised in the offer, here are the responses:

1. We agree to the proposed timeline and venue of collective consultation.

2. We agree to the items to be placed on the consultation agenda.

(Or, Our side proposes to add the following items to the consultation agenda.)

3. The consultation representatives from our side are as follows: chief representative ____, other representatives ____, ____,

4. The management has prepared the documents requested, and will provide to you in accordance with the relevant provisions in due course.

(Or, Our side does not agree to have the collective consultation for the year ____, for the reason of ____.)

If you are not satisfied with any of our responses, please inform us timely.

Name and seal of the company

Legal representative (signature)

Date:

Appendix: Letter of delegation of employer side collective consultation representatives

Note: when the chief representative is not the legal representative of the enterprise, letter of delegation of chief representative shall be attached. If there are externally hired representatives, letter of delegation for externally hired collective consultation representatives shall be attached.

APPENDIX 2.3

MINUTES OF A COLLECTIVE CONSULTATION

Time of the consultation:

Venue of the consultation:

Agenda of the consultation:

Employer side consultation representatives:

Worker side consultation representatives:

Proceeding of the consultation: _____.

Recorder (signature):

Employer side chief representative (signature)

Worker side chief representative (signature)

Date:

Date:

APPENDIX 2.4.1

AN ENTERPRISE COLLECTIVE CONTRACT OF GUANGDONG PROVINCE (AN EXAMPLE)

Party A (name of enterprise):

Party B (trade union or worker delegates):

Legal representative:

Number of workers:

Chief consultation representative:

Chief consultation representative:

Position title:

Position title:

Consultation representatives (names and titles):

Consultation representatives (names and titles)

Number of consultation representatives:

Number of consultation representatives:

CHAPTER ONE: GENERAL PROVISIONS

- Article 1** For the purposes of putting in place harmonious and stable labour relations, protecting in accordance with law the legitimate rights and interests of the two parties, and promoting economic performances of Party A, in accordance with *Labour Law of the People's Republic of China* (hereinafter referred to as *Labour Law*), *Labour Contract Law of the People's Republic of China* (hereinafter referred to as *Labour Contract Law*), *Trade Union Law of the People's Republic of China*, *Collective Contract Provisions*, *Regulations of Guangdong Province on Enterprise Collective Contracts*, and other relevant national and provincial provisions, the contract is signed after Parties A and B reach consensus through consultation.
- Article 2** This contract is a written agreement signed by the two parties after collective consultation on labour remuneration, hours of work, rest and leave, insurance and welfare, occupational safety and health, workers' training and other matters, in accordance with the relevant provisions.
- Article 3** When engaging in collective consultation and signing a collective contract, the two parties shall follow the principles of integrity and law-abiding conduct, fairness, consulting on equal footing and of free consent, and commitment to consensus-building, and balance the legitimate rights and interests of the two parties.

CHAPTER TWO: LABOUR REMUNERATION

- Article 4** Party A exercises ____ wage system, and a worker's wage is composed of ____.
- Article 5** Party A pays its workers on ____ (date) each month their wages due for the month (or preceding month) in cash, and shall not have wage arrears or reduced wages. When that date happens to be an off-work day or a national holiday, Party A shall pay workers' wages in the work day immediately before that date.
- Article 6** The wage level for normal working hours paid by Party A to the workers shall not be less than ____ Yuan per month, nor shall it be less than the minimum wage promulgated by the local government (Piece-rate wage system is practised for ____ (jobs), and the price per piece during the contract period is set at ____, and the quota for the normal working hours is set at ____ pieces.)
- Article 7** Taking full consideration of the labour productivity and economic performance of the company, workers' payroll and average wage level of the previous year in the company, enterprise wage guidelines released by the local department of human resources and social security, current wage standard in the local labour market, consumer price index of the local urban citizens as published by the statistics department of the local people's government, minimum wage standard of the local area, and average growth rate of workers' wages for the area and the industry published by the local people's government, and other circumstances pertaining to wage collective consultation, and after consultation, the two parties have reached consensus as follows:

(1) The average wage of all workers will be increased (or lowered) by ____ %.

(2) In the future, when the net profit of the company in the preceding year exceeds ____ Yuan (or growth rate of the net profit exceeds ____ %), the average wage of all workers in the company will increase by ____ %; when the net profit of the company in the preceding year is within the range of ____ and ____ Yuan (or growth rate is between ____ % and ____ %), the average wage of all workers in the company will increase by ____ %; when the net profit of the company in the preceding year is less than ____ Yuan (or growth rate of the net profit falls below ____ %), the average wage of all workers in the company will not increase; and when the loss of the company in the preceding year exceeds ____ Yuan, the average wage of all workers in the company will be lowered by ____ %.

Article 8 The wage of a worker during his or her probation period is set at ____ % of the wage standard for the lowest level of the same job in the company (or ____ % of the wage agreed in the labour contract for the person concerned), and shall not be lower than the minimum wage of the local area.

Article 9 When a worker is absent from work for medical treatment due to illness or un-work-related injury, his or her wage during the nationally prescribed medical leave shall be ____ Yuan per month (or ____ % of the wage agreed in the labour contract for the person concerned), and shall be no less than 80% of the minimum wage of the local area.

Article 10 When Party A needs its workers to extend their working hours for business or production purpose, it shall consult with Party B and the workers, and pay overtime compensations in full in accordance with the provisions of *Labour Law* and *Regulations of Guangdong Province on Wage Payment*.

CHAPTER THREE: WORKING HOURS AND REST AND LEAVE

Article 11 Workers' working hours and rest and leave are set as follows:

(1) A worker works ____ hours a day, and ____ days a week, and has ____ days off per week.

(2) Labour quota is set at: ____.

(3) As the system of normal working hours cannot be followed due to special business or production nature, and based on the jobs covered in the system of flexible working hours as approved by the administrative department of human resources and social security, the jobs ____ shall follow the working hour system of comprehensive calculation.

Article 12 The paid annual leave and other holidays that a worker is entitled to in accordance with the law are: ____.

CHAPTER FOUR: OCCUPATIONAL SAFETY AND HEALTH

Article 13 Party A shall establish and improve the system for occupational safety and health, strictly implement the rules and standards of the State on occupational safety and health, educate its workers on occupational safety and health, and provide regular medical examinations for workers engaged in work with occupational hazards.

When Party A signs contracts with its workers, it shall inform the workers faithfully and list explicitly in the contracts the potential occupational hazards and their consequences, and the protective measures and benefits associated with the occupational diseases, and shall not conceal from or deceive the workers.

Article 14 Workers shall have the right to refuse to operate if the management personnel of the enterprise command the operation in violation of rules and regulations or force workers to run risks in operation; workers shall have the right to criticize, report or file charges against the acts endangering the safety of their life and health.

Article 15 Based on the change of season, Party A shall ensure safe work in high temperatures, and pay compensations to workers working in high temperatures in accordance with the provisions between June and October every year.

CHAPTER FIVE: INSURANCE AND WELFARE

Article 16 Party A shall cover its workers in social insurance schemes of basic old-age insurance, basic medical insurance, unemployment insurance, work injury insurance, and maternity insurance, and pay all social insurance contributions in full and on time in accordance with national, provincial and local provisions.

Based on its economic performance, Party A covers its workers in the following supplementary insurances: ____.

Article 17 The welfare facilities that Party A provides to its workers pertaining housing, transportation, communication, food and drink, leave, and leisure facilities include: ____.

Article 18 Party A provides active support to the trade union for its activities, and gradually improve and optimize workers' playground and working environment. The two parties make joint efforts to develop corporate culture, create harmonious labour relations and enhance the cohesion of the company.

CHAPTER SIX: SPECIAL PROTECTION FOR WOMEN WORKERS AND MINORS

Article 19 Party A is prohibited from engaging women workers in the work within the scope of prohibited work for women workers as stated in the *Special Provisions on Labour Protection for Women Workers*, and shall inform the women workers in writing the jobs in the company that fall within the scope of prohibited work for women workers.

Article 20 Party A is prohibited from engaging women workers during their pregnancy in the work within the scope of prohibited work for women workers as stated in the *Special Provisions on Labour Protection for Women Workers*.

When women workers in their pregnancy cannot perform their assigned work, Party A shall, based on the documentation provided from medical institutions, reduce their workload or arrange them to engage in other suitable work. Women workers pregnant for seven months or more shall not be arranged to extend their working hours or to work night shifts, and shall have certain number of breaks during their working days. The time that pregnant women workers spend on prenatal examinations during their working days shall be counted as working time.

Article 21 Their wages shall be paid to the women workers during their maternal leave, and their existing welfare benefits and full-attendance bonuses shall not be affected.

Party A shall not terminate labour contracts in accordance with Articles 40 and 41 of *Labour Contract Law with women workers during their pregnancy, confinement or nursing periods*.

Article 22 Party A shall provide regular health examinations to minor workers, and strictly implement the *Provisions on Special Protection of Minor Workers promulgated by the State*.

CHAPTER SEVEN: VALIDITY PERIOD, IMPLEMENTATION, LIABILITIES OF BREACH AND DISPUTE SETTLEMENT

Article 23 This contract is effective as of ____ (date) till ____ (date).

Article 24 The consultation representatives shall keep business secrets confidential.

The legitimate rights and interests of the consultation representatives shall be protected by law. Their services in the consultation process shall be deemed as normal work, and the employer shall not change their jobs or lower their wages or any other welfare benefits without justifiable causes. When the labour contract of a consultation representative expires during the consultation process, the contract will be automatically extended to the date when the consultation is concluded. When a consultation representative is engaged in a consultation process, his or her labour contract shall not be terminated by the employer unless there are circumstances as stipulated in Article 36 and Article 39 of *the Labour Contract Law of the People's Republic of China*.

Article 25 The contract can be modified or terminated based on any of the following circumstances:

- (1) The two parties reach agreement after consultation;
- (2) The collective contract cannot be implemented in part or in full due to force majeure;
- (3) The collective contract cannot be implemented due to bankruptcy, production suspension or dissolution of Party A; or
- (4) Other circumstances as stipulated by laws and regulations.

Modification or termination of a collective contract is governed by the provisions pertaining to collective consultation and collective contract signing procedures as stipulated in *Regulations of Guangdong Province on Enterprise Collective Contracts*.

Article 26 Within 3 months of the expiry date of the contract, either party may propose to the other party to sign a new contract or renew this contract.

Article 27 When a party commits a breach of the contract, the liabilities are as follows: _____.

Article 28 When a dispute occurs in the cause of performing the collective contract and solution is not found through consultation, either party can apply for an arbitration or lawsuit in accordance with law.

CHAPTER NINE: AUXILIARY PROVISIONS

Article 29 The issues not covered in this contract shall be governed by the relevant national and provincial provisions. During the validity period of this contract, when the clauses of the contract are in contraction with the relevant national or provincial provisions, the national or provincial provisions shall apply.

Article 30 Within 7 days as of the signing date of this contract, Party A shall submit the contract to the local administrative department of human resources and social security for the purpose of record-keeping. The contract becomes effective when the administrative department of human resources and social security does not raise any objection within 15 days of receipt of the contract.

The contract becomes binding to the enterprise and all the workers when it takes effect according to law, and shall be strictly implemented by both parties.

Party A shall publicize the contract to all the workers within 5 days as of the date of entry into force of the contract.

Article 31 The contract is signed in 3 copies, with each party holding a copy and the third copy submitted to the administrative department of human resources and social security for documentation purpose.

Chief consultation representative of Party A
(signature and seal)

Chief consultation representative of Party B
(signature and seal)

Date:

Date:

APPENDIX 2.4.2

A WAGE COLLECTIVE CONTRACT (AN EXAMPLE)

Party A (name of enterprise):

Party B (trade union or worker delegates):

Legal representative:

Number of workers:

Chief consultation representative:

Chief consultation representative:

Position title:

Position title:

Consultation representatives (names and titles):

Consultation representatives (names and titles)

Number of consultation representatives:

Number of consultation representatives:

- Article 1** For the purposes of protecting workers' legitimate rights and interests, and promoting harmonious and stable labour relations, in accordance with *Labour Law of the People's Republic of China*, *Regulations of Guangdong Province on Enterprise Collective Contracts*, *The Interim Measures on Collective Consultation*, and other relevant national and provincial provisions, the contract is signed after Parties A and B reach consensus through consultation.
- Article 2** This contract is valid from ____ (date) till ____ (date).
- Article 3** The wage clauses in this contract apply to all workers. Any individual labour contract signed between a worker and the company shall not contain a clause that has a lower standard than the minimum standard provided in this contract.
- Article 4** This contract is equally binding to Party A and all the workers. Both parties shall fulfil fully the contract clauses. Neither party can modify or terminate this contract arbitrarily.
- Article 5** During the validity period of the contract, if the State, the province or the city promulgates new wage provisions with higher standards than those in the contract, the new provisions shall apply.
- Article 6** Party A follows the wage system of ____, and workers' wages are composed of ____.
- Article 7** The wage level for workers engaging in work at regular working hours shall be no less than ____ Yuan per month, or no less than the minimum wage standard promulgated by the local government.
- Article 8** Party A follows the system of ____ work days per week, and ____ working hours per day.
Due to the nature of the work and characterises of production, standard working hour system cannot apply. the Human Resources and Social Security Department approved that the flexible hours system will apply to the ____ post, and/or consolidated working hours system to the ____ post.
- Article 9** Party A pays the wages on a monthly basis, and pays the workers the Chinese currency RMB. It pays the workers on ____ (date) each month their wages due for the month (or preceding month) in cash, and shall not have wage arrears or reduced wages, and provides them with their individual accounts of the payments. When that date happens to be an off-work day or a national holiday, Party A shall pay workers' wages in the work day immediately before that date.
- Article 10** Party A practises piece-rate wage system for ____ (jobs), and the price per piece during the contract period is set at ____, and the quota for the normal working hours is set at ____ pieces. The standard of overtime payments for workers covered in piece-rate wage system shall follow the standard as stipulated by laws and regulations.
- Article 11** Taking full consideration of the labour productivity and economic performance of the company, workers' payroll and average pay level of the previous year in the company, enterprise wage guidelines released by the local department of human resources and social security, current wage level in the local labour market, consumer price index of the local urban citizens as published by the statistics department of the local people's government, minimum wage standard of the local area, and average growth rate of workers' wages for the area and the industry published by the local people's government, and other circumstances pertaining to wage collective consultation, after consultation, the two parties have reached consensus as follows,

- (1) The average wage of all workers will be increased (or lowered) by ____ %.
- (2) In the future, when the net profit of the company in the preceding year exceeds ____ Yuan (or growth rate of the net profit exceeds ____ %), the average wage of all workers in the company will increase by ____ %; when the net profit of the company in the preceding year is within the range of ____ and ____ Yuan (or growth rate is between ____ % and ____ %), the average wage of all workers in the company will increase by ____ %; when the net profit of the company in the preceding year is less than ____ Yuan (or growth rate of the net profit falls below ____ %), the average wage of all workers in the company will not increase; and when the loss of the company in the preceding year exceeds ____ Yuan, the average wage of all workers in the company will be lowered by ____ %.

Article 12 The form of payment and standards for bonuses, allowances and subsidies provided by Party A are as follows: _____.

Article 13 The wage of a worker during his or her probation period is set at ____ % of the wage standard for the lowest level of the same job in the company (or ____ % of the wage agreed in the labour contract for the person concerned), and shall be no less than the minimum wage of the local area.

Article 14 When Party A needs its workers to extend their working hours for business or production purpose, it shall consult with Party B and the workers, and pay overtime compensations in full in accordance with the provisions of *Labour Law* and *Regulations of Guangdong Province on Wage Payment*.

Article 15 When a worker is absent from work for medical treatment due to illness or un-work-related injury, his or her wage during the nationally prescribed medical leave shall be ____ Yuan per month (or ____ % of the wage agreed in the labour contract for the person concerned), and shall be no less than 80% of the minimum wage of the local area.

Article 16 When duration of suspension of work or production in Party A caused by factors other than the workers is less than a wage paying cycle (maximum 30 days), Party A shall pay its workers at the rate of normal working time. When duration of suspension is longer than a wage paying cycle, wages are paid by the standard of ____ based on the amount of work provided by the workers. When Party A does not engage its workers in any work, it shall pay the workers living expenses of no less than 80% of the minimum wage of the local area, and the living expenses will be paid till the date when work or production is resumed or labour relations are terminated.

Article 17 Within ____ months of the expiry date of the contract, either party may propose to the other party to sign a new contract or renew the contract.

Article 18 When a party commits a breach of the contract, the liabilities are as follows: _____.

Article 19 When a dispute occurs in the cause of performing the collective contract and solution is not found through consultation, either party can apply for an arbitration or lawsuit in accordance with law.

Article 20 The issues not covered in this contract shall be governed by the relevant national and provincial provisions. During the validity period of this contract, when the clauses of the contract are in contraction with the relevant national or provincial provisions, the national or provincial provisions shall apply.

Article 21 Within 7 days as of the signing date of this contract, Party A shall submit the contract to the local administrative department of human resources and social security for the purpose of record-keeping. The contract will become effective when the administrative department of human resources and social security does not raise any objection within 15 days of receipt of the contract.

The contract becomes binding to the enterprise and all the workers when it takes effect according to law, and shall be strictly implemented by both parties.

Party A shall publicize the contract to all the workers within 5 days as of the date of entry into force of the contract.

Article 22 The contract is signed in 3 copies, with each party holding a copy and the third copy submitted to the administrative department of human resources and social security for documentation purpose.

Party A: ____ Company (seal)

Party B: Trade union of ____ Company (seal)

Chief representative:

Chief representative:

Date:

Date:

APPENDIX 2.4.3

A COLLECTIVE CONTRACT ON PROTECTION OF WOMEN WORKERS' RIGHTS (AN EXAMPLE)

Party A (name of enterprise):

Party B (trade union or worker delegates):

Legal representative:

Number of workers:

Chief consultation representative:

Chief consultation representative:

Position title:

Position title:

Consultation representatives (names and titles):

Consultation representatives (names and titles)

Number of consultation representatives:

Number of consultation representatives:

Article 1 For the purposes of protecting women workers' legitimate rights and interests, promoting equality between men and women, and making joint efforts to create a harmonious society, based on the collective contract signed by the two parties after the consultation on equal footing, in accordance with such laws and regulations as *Law on the Protection of Women's Rights and Interests*, *Labour Law*, *Provisions on Labour Protection of Women Workers*, *Provisions on Health and Hygiene for Women Workers*, and taking due consideration of the relevant statutes and policies in Party A, the contract is signed after Party A and Party B on behalf of all the women workers reach consensus through consultation.

Article 2 This contract is valid from ____ (date) till ____ (date).

Article 3 This contract upholds the principles of consultation on equal foot and mutual respect, and is equally binding for the Party A and women workers.

Article 4 Women workers in Party A shall have equal rights of participating in enterprise democratic management as men.

(1) Women workers have the right to participating in democratic management and consultation of important matters of the company. When Party A releases rules and policies essential to the interests of women workers or addresses important issues affecting women workers' rights and interests, it shall consult with women workers, and listen to the views of women workers' organisation in the trade union.

(2) Women delegates in workers' congress shall have equal number of the women delegates in Party A, and women delegates shall participate in the whole process of collective consultation and collective contract signing.

(3) The two parties undertake close and effective cooperation, and hold meetings at regular or irregular intervals, inform each other circumstances pertaining to protection of women workers' rights and interests in the company, and make joint efforts to explore the new approaches for protecting women workers' rights and interests under the new situation.

(4) Women workers shall not be discriminated against on matters of promotion related to her post, remunerations and welfares, awarding and presenting of honours.

Article 5 Women workers shall have equal rights with men to labour and employment.

(1) It is forbidden to reject women applicants or raise the recruitment requirements for women on the grounds of marriage, pregnancy or nursing. Recruitment and use of child labour are strictly prohibited.

(2) For jobs that do not require high level of technical skills, the probation period for a woman worker shall not exceed one month. The wage level during the probation period shall be no less than 80% of the wage standard for the lowest level of the same job in the company, and shall be no less than the minimum wage of the local area.

(3) Once a woman worker is recruited, her labour contract shall be signed in accordance with law, and the contract shall not contain clauses that place restrictions on the woman relating to love affairs, marriage, and family planning.

(4) When formulating its remuneration system, awarding and penalty rules, and welfare and benefit standards, Party A shall uphold the principles of equality between women and men, and equal pay for the same post. The wage standard shall be no less than that of the same post and that stipulated in the wage collective contract of the industry. Women worker shall be entitled to annual leave with pay as provided by relevant law.

(5) It is forbidden to lower the level of basic pay for women workers or terminate their labour contracts during their pregnancy, confinement or nursing periods, or resort to inappropriate means of post transfer or wage reduction to force women workers to leave on their own.

(6) National laws, regulations and policies shall be followed faithfully to deliver good protection related to work for women.

- Article 6** Women workers shall have the equal rights to education and training as men.
- (1) Recruited women workers shall be provided with technical training on special job-related essential skills and safety knowledge before they start work, and shall have equal chances as men for vocational skill training. It must be ensured that women workers have qualifications for their jobs.
- (2) On vocational qualification testing, participation of skills competitions, advancement of technical positions, and assessment of technical levels, equality between men and women shall be upheld, and there shall be no sexual discrimination.
- (3) Women workers are encouraged to take part in further education of knowledge acquisition and technical skills, and to improve continually their education levels and vocational qualifications. Various channels and multiple forms will be utilized to engage women workers in training programmes of the second skill, and motivate and assist women workers to hold more than 2 vocational qualification through hard work and learning.
- Article 7** Women workers in the company are entitled to special health protection.
- (1) Every year, arrangement shall be made for women workers to have a gynaecological examination, and the time thus spent is deemed as working time. Party A assigns a special department to create standardized health files for its women workers.
- (2) Women workers are entitled to special rest and leave as stipulated by the State when they are in particular physical conditions. On International Women's Day, Party A shall grant its women workers half a day off.
- (3) Women workers are entitled to be covered in and receive benefits from old-age insurance, unemployment insurance, medical insurance, work injury insurance, and maternity insurance.
- (4) _____.
- Article 8** The members of the monitoring group of the collective contract in Party A and women workers' organisation shall organise at least one oversight exercise a year about the fulfilment of this special contract, and inform the workers' congress of the results.
- Article 9** Within __ months of the expiry date of the contract, either party may propose to the other party to sign a new contract or renew this contract.
- Article 10** When a party commits a breach of the contract, the liabilities are as follows: _____.
- Article 11** When a dispute occurs in the cause of performing the collective contract and solution is not found through consultation, either party can apply for an arbitration or lawsuit in accordance with law.
- Article 12** The issues not covered in this contract shall be governed by the relevant national and provincial provisions. During the validity period of this contract, when the clauses of the contract are in contraction with the relevant national or provincial provisions, the national or provincial provisions shall apply.
- Article 13** Within 7 days as of the signing date of this contract, Party A shall submit the contract to the local administrative department of human resources and social security for the purpose of record-keeping. The contract will become effective when the administrative department of human resources and social security does not raise any objection within 15 days of receipt of the contract.
- The contract becomes binding to the enterprise and all the workers when it takes effect according to law, and shall be strictly implemented by both parties.
- Party A shall publicize the contract to all the workers within 5 days as of the date of entry into force of the contract.
- Article 14** The contract is signed in 3 copies, with each party holding a copy and the third copy submitted to the administrative department of human resources and social security for documentation purpose.

Party A: ____ Company (seal)

Party B: Trade union of ____ Company (seal)

Chief representative:

Chief representative:

Date:

Date:

APPENDIX 2.5

THE RESOLUTION CONCERNING ADOPTION OF THE DRAFT COLLECTIVE CONTRACT BY THE WORKERS' CONGRESS

The company convenes ____ workers' congress on ____ (date). The number of accredited delegates stands at ____, and the number of delegates present at the meeting is ____, exceeding two thirds of all accredited delegates. ____, ____, ... and ____ attend the meeting as observers. The meeting delegates have listened attentively the presentations of the draft collective contract and the collective consultation process, and believe unanimously that: the draft collective contract is suited to the actual situation of the company, and protects the legitimate rights and interests of the workers. After a secret ballot, with ____ votes in favour, ____ votes against, and ____ votes in abstention, and the people in favour exceeding half of the accredited delegates, the draft collective contract is adopted.

Date: _____

APPENDIX (PART B)

APPENDIX 1

THE INTERNAL AUDITING INDEXES FOR THE ENTERPRISE'S COLLECTIVE CONSULTATION MECHANISM

Indexes of auditing	Index specification	Assessment note
Major parties involved in consultation	The workers and the management	Interviews with workers: equal consultation
Contents of consultation	1. Labour remuneration; 2. Working hours; 3. Rest and vacation; 4. Occupational safety and health; 5. Supplementary insurance and welfare; 6. Special protection for the female workers and minors; 7. Protection of dispatched workers' rights and interests; 8. Occupational skill training; 9. Employment contract management; 10. Awards and punishments; 11. Laid-offs; 12. Term of collective contract; 13. The procedure of altering and rescinding collective contract; 14. Solutions to the ongoing disputes while implementing collective contract; 15. Liabilities for breach of collective contract; 16. Other matters both parties regard as necessary for consultation.	Referring to the contents of the collective contract, and conduct consultation on one issue or numerous matters.
Contents of collective wage consultation	1. Wage distribution system and pay scale; 2. Way and time of wage payment; 3. Annual wage total and workers' wage average; 4. Range and ways of wage adjustment; 5. Standards of allowance and subsidies as well as the ways of bonus distribution; 6. Wage rates during probation, sick and compassionate leaves; 7. Time of concluding and terminating the collective wage contract, as well as the procedure of altering and rescinding the collective wage contract with workers; 8. Conditions for terminating the collective wage contract; 9. Liabilities for breaching the contract; 10. Other wage-related matters both parties regard as necessary for consultation.	Referring to the contents of the collective contract, and conduct consultation on one issue or numerous matters once every year.
Determination of consultation representatives	3 to 9 representatives for each party, including a chief representative respectively	Accessing the meeting minutes: the number of representatives elected could be more than that of consultation participants.
	The management's chief representative: assumed by the legal representative of the enterprise or the person entrusted by him or her	Accessing the enterprise directory: the chief representative cannot be assumed by enterprise-external personnel.
	The workers' chief representative: assumed by chairperson of the trade union or the person entrusted by him or her	
	Other representatives of the management are determined by the legal representative of the enterprise.	Accessing the enterprise directory, supervising the election and referring to the meeting minutes, ensuring that the management's chief representative do not concurrently assume the chief representative of workers and vice versa.
	Other representatives of the workers are elected democratically by the trade union, workers' congress or assembly. A certain ratio of women representatives shall be elected from the workers for the enterprise with a large proportion of female workers.	

Dismissal and substitute of consultation representatives	According to the procedure of electing the consultation representatives	Referring to the written notice, as one party should notify the other of this move in written form.
Service term of consultation representatives	If no explicit stipulation is made, the service term of the consultation representatives will terminate at the time of the expiration of the collective contract concluded as agreed. If no agreement is reached or no collective contract is concluded during the consultation, the service term of the consultation representatives will terminate upon the ending of the consultation behaviors.	Interviews with the consultation representatives are determined by the party represented by them.
Duties of consultation representatives	1. Participating in collective consultation meetings; 2. Collecting and providing the materials as well as following the developments related to collective consultation; 3. Listening to and collecting the opinions of the other party's representatives, and taking the inquiry of the personnel from their own side; 4. Participating in handling the disputes over the collective contract on behalf of its own party; 5. Other duties provided for by law and regulation.	In the interviews with the management's consultation representatives, they should keep confidential the business secrets they get to know about in the course of consultation.
Guarantee for consultation representatives	1. The management should provide the consultation representatives with working conditions and time necessary for performing their duties; 2. The representatives' preparation for and participation in collective consultation should be regarded as completing required work, and their wages and benefits shall not be affected for those purposes; 3. At the time when the consultation representatives are performing their duties, the management shall not change their posts, discharge their jobs, or lower their ranking without their consent. Nor should their wages and benefits be reduced accordingly; 4. At the time when the consultation representatives are performing their duties, the labour contract, even expired, extends its validity period automatically until the end of their tenure. 5. The workers' consultation representatives, who organize and participate in collective consultation in accordance with law during the working hours, shall also be paid for their work during that period of time.	Accessing the labour contract and interviewing the consultation representatives: At the time when the consultation representatives are performing their duties, the management shall not rescind the labour contract with the representatives, unless otherwise for any situations stipulated by Article 39 of the Labour Contract Law of the People's Republic of China.
Request for consultation	Both the workers and the management have the right to request the collective consultation	
	Procedure of workers sending the request: workers put forward the proposal with the trade union, which will then decide on the necessity of sending the request. Nevertheless, if proposed by more than 1/3 of the total workers or by the workers' congress, it is imperative for the trade union to send the request for collective consultation to the management.	Accessing the letter of request, as the request should be sent in written form.
Duration of consultation	The duration of collective consultation should be within 60 days as of the date sending the request. In exceptional cases, an extension of 15 days is allowed based on the agreement of both parties.	
Ways of consultation	Usually, collective consultation is conducted in the form of convening meetings. Alternatives may include written form or other ways recognised by both parties. But if one side insists on convening meetings for consultation, this form should be adopted	Accessing the meeting minutes: the management should provide the venue for consultation and other conditions regarded as necessary.

Consultation meetings	Provided that meetings are convened for the purpose of collective consultation, they should be co-chaired by the chief representatives of both parties or chaired by them in rotation. It is also possible to invite a third-party recognized by both parties to chair the meeting	Accessing the meeting minutes concerning collective consultation, as they should be signed by all the participating representatives for the purpose of confirmation.
Collective contract draft	If consensus is reached through collective consultation, the chief representatives of both parties shall conclude a collective contract draft.	Referring to the collective contract draft.
Collective contract	The collective contract draft, concluded based on consensus through consultation, should be submitted to the workers' congress or meetings for discussion. The workers' representatives should report the consultation process and the contract draft contents to the workers' congress or meetings. The draft is adopted when over half of all the workers or deputies at the workers' congress give their consent. If approved, the chief representatives of both parties should sign on the draft; if not, representatives of both parties should resume consultation for revision.	Accessing the meeting minutes: Over 2/3 of the total workers or workers' deputies are supposed to be present at the workers' meeting or congress that is convened to discuss the collective contract draft.
Validity of collective contract	<p>After concluding the collective contract, the management should, within 10 days, produce the collective contract in triplicate, and submit to the authority in human resources and social security for review and approval the three copies and their explanatory notes, attached with the following materials: 1. The collective contract signed by the chief consultation representatives of both parties; 2. Certificates testifying the status legitimacy of the consultation representatives; 3. Meeting Minutes concerning the collective consultation; 4. Resolution of the workers' congress or meeting on discussion and adoption of the collective contract draft.</p> <p>The collective contract will take effect if no objection is made by the authority in human resources and social security within 15 days since the receipt of the said materials.</p> <p>The validity period of the collective contract ranges from one year to three years.</p> <p>The collective contract should be strictly observed by both parties after it enters into force, and corresponding supervision and regular inspection systems should be put in place.</p>	<p>Referring to relevant materials and others required by the authority in human resources and social security.</p> <p>Referring to the collective contract: both parties should kick-off consultation to conclude another collective contract three months before the former collective contract expires.</p>

APPENDIX 2

CHECKLIST FOR QUICKLY ASSESSING THE EFFECTIVENESS OF THE COLLECTIVE CONSULTATION MECHANISM

Category of issues	Questions	Remarks
Conformity of collective consultation mechanism	<ul style="list-style-type: none"> • Is a collective consultation mechanism established within the enterprise? • Is collective consultation regularly conducted within the enterprise? • Are the collective consultation representatives of both parties identified in accordance with procedure as agreed? • Where is collective consultation usually taking place? • Who are the major parties involved in collective consultation? • Does the management respond to the consultation request sent by the union representatives within the statutory time? • Does the management fulfil the obligations of information disclosure? (Excluding state secrets, enterprise's technical secrets and management's privacy) • Is agreement reached and collective contract concluded through collective consultation? 	
Degree and extent of employees organised into trade unions	<ul style="list-style-type: none"> • Do the workers apply for union membership by filling in and signing the form themselves? • Are the members of union committees nominated and elected by the workers? • Is the chairperson of the union elected directly by the workers? • Are senior executives (the management) elected or directly appointed as members of union committees? • Does the union establish the mechanism for workers' participation in union's work? • Does the union often convene meetings among workers? How often? • Do the workers participate in the discussion and formulation of union's work plan? 	
Efficiency of workers' consultation representatives	<ul style="list-style-type: none"> • Are the collective consultation contents drafted on the basis of the collective opinions of union members and workers? • Are the consultation representatives of workers elected and approved by the workers' congress? • Does the union publicise the contents and plans of collective consultation to the workers? • Do the workers' representatives conduct the consultation in accordance with the drafted contents and plans? • Does the union publicise in time the developments of collective consultation to the workers in that process? • Does the union inform the workers about the results of collective consultation in time and provide explanation accordingly? • Has the management ever intimidated and threatened the workers' consultation representatives? 	

Objectiveness of collective consultation contents	<ul style="list-style-type: none"> • Are the channels and ways of collecting information necessary for collective consultation legitimate and valid? What are the channels? • Is the information collected, in the opinion of the workers' consultation representatives, adequate? If not, what are the main difficulties? • Have the workers' consultation representatives' ever encountered obstacles while collecting the enterprise's economic information? • Have the higher-level or industrial unions ever provided assistance in collecting information? • Have the higher-level or industrial unions ever provided advice on the contents of collective consultation? • Have the collective contract draft adopted by the workers' congress? • Does the collective consultation ever stuck in gridlock? If yes, how are the problems settled? For example, through mediation or arbitration, or industrial actions or strikes? 	
The completeness of collective contracts and documents	<ul style="list-style-type: none"> • Is the collective contract put on file and approved by the authority in human resources and social security? • Are the collective-consultation-related documents complete? These include the status confirmation of the workers' consultation representatives, letter of authorisation to the workers' chief representatives, letter of authorisation to the management's chief representatives, letter of request for collective consultation by the workers, letter of response to collective consultation by the management, meeting minutes related to collective consultation, resolution of workers' congress or meetings to adopt the collective contract draft, explanatory note needed for applying for the approval of the collective wage contract and the text of collective wage contract. 	
Publicity and Training	<ul style="list-style-type: none"> • Do the management, higher-level trade union and enterprise-level union provide the workers' consultation representatives with training necessary for the understanding of the consultation? • Does the management set up obstacles for the union and consultation representatives in executing training plans? • Has the union conducted survey whether workers are satisfied with the outcome of collective consultation? What is the outcome? • Has the buyer made efforts to promote the establishment and improvement of the collective consultation mechanism? Has it provided necessary assistance and guidance? 	



Ethical Trading Initiative
8 Coldbath Square
London EC1R 5HL
UK

+44 (0)20 7841 4350
eti@eti.org
[@ethicaltrade](https://www.ethicaltrade.org)
[ethicaltrade.org](https://www.ethicaltrade.org)