

Regulating the Fissured Workplace: the Notion of the ‘Employer’ in Chinese Labour Law

Mimi Zou

The Chinese University of Hong Kong

I. Introduction

The ‘fissured workplace’ is a term used by David Weil to describe fundamental changes in firms’ competitive strategies that have reshaped the organisation of employment in the 21st century. According to Weil, the fissured workplace represents ‘both a form of employment (for example, temporary agency employment; independent contracting) and a *relationship* between different business enterprises (subcontracting, franchising)’.¹ Larger firms have devolved significant risk and responsibility for their workers to a myriad of complicated networks of smaller, lower-level business units through business practices, mechanisms, and organizational forms such as subcontracting, outsourcing, franchising, and supply-chain logistics. As Weil puts it, ‘[w]age setting and supervision shift from core businesses to a myriad of organizations, each operating under the rigorous standards of lead businesses but facing fierce competitive pressures’.² These pressures from the top translate into precarious jobs and deteriorating wages and working conditions for workers at the bottom and periphery of complex, multi-layered contractual chains.

In the context of a fissured workplace, there is a need to re-examine the notion of ‘the employer’ in labour law, which has traditionally imposed various obligations on a particular employing entity towards its employees in the context of a direct employment relationship. In a fissured workplace that may have multiple legal entities intertwined in a range of complex contractual relationships and indirect employment relationships, the notion of the ‘employer’ and thus the question of who should bear the legal responsibilities of employer become extremely problematic.

The phenomenon of the fissured workplace in China and the regulatory dynamics of Chinese labour law in addressing the challenges of fissurisation have occurred against the backdrop of dramatic social and economic changes over the past three decades. It may be argued that what Weil describes as the ‘pre-fissured world’ in the Chinese context is a bygone era under a centrally planned economy whereby the state, as the only ‘employer’

¹ David Weil, *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It* (Harvard University Press 2014) 270 [italics in original].

² *ibid* 8-9.

under this system, directly provided urban employees with cradle-to-grave employment and social benefits — the so-called ‘iron rice bowl’.³

Since the 1980s, China’s economic and social reforms in its rapid industrialisation and urbanisation have fundamentally altered the relationship between the state, labour, and capital. As the country quickly became the ‘factory of the world’ at an unprecedented pace and scale, its role as a key player in global production chains brought about a flexible labour market with an ‘army’ of hundreds of millions of rural migrant workers. The status of Chinese workers was transformed overnight from ‘masters of the socialist state’ into individual subjects of contractual relationships in a market economy with ‘Chinese characteristics’. Employment relations have become incredibly complex and segmented, with enormous variations across localities, economic sectors, ownership structure, enterprise size, and workforce structures.

A multifaceted web of labour laws and institutions has been created, developed, and reformed to respond to China’s rapidly evolving labour market dynamics and challenges. A deregulatory agenda in labour law making and enforcement in the 1990s saw the proliferation of temporary and fixed-term employment contracts and informal employment whereby many workers did not have a signed labour contract. The explosion of worker grievances and labour disputes arising from this period saw the introduction of new pieces of legislation from 2007 onwards that sought to bolster workers’ rights under written labour contracts, enhance employment security, and extend social insurance protections.

The building of ‘harmonious labour relations’ has become the widely espoused policy goal underpinning the evolution of Chinese labour law. Yet, as this paper examines, policymakers’ attempts to address the socially destabilising effects of the fissured workplace have had unintended consequences. In response to more worker-protective laws, firms have devised new organisational strategies and employment practices to sidestep ‘employer’ obligations. In the current phase of China’s economic downturn, accelerating trends of fissurisation have brought to the forefront some major challenges for policymakers arising from the broader social consequences of fissured workplaces. A large number of labour disputes in 2015 have been concerned with violations of basic labour rights and laws such as non-payment of wages and social security payments arising from firms’ downsizing, outsourcing, and closures.

This paper is structured as follows. Part II analyses the extent to which fissurisation has emerged in China, which requires an understanding of the evolution of its labour relations from the ‘pre-fissured’ era to the present. In Part III, the notion of the ‘employer’ in the current labour law framework is examined. I further analyse how Chinese labour law in recent years has sought to regulate the use of labour dispatch (*laowuqianpai*) as the most prevalent manifestation of fissurisation in China. Part IV concludes with an overall evaluation of the current and future challenges for regulating an increasingly fissured workplace.

³ Mimi Zou, ‘The Evolution of Collective Labour Law with “Chinese Characteristics”: Crossing the river by feeling the stones?’ in Roger Blanpain, Ulla Liukkonen and Yifeng Chen, *Law and Fair Work in China* (Kluwer International 2013) 55-72.

II. The evolution of the fissured workplace

The fissured workplace that has emerged in contemporary China cannot be separated from the analysis of labour market policies and laws over the past three decades.

The 'three old irons'

The 'iron rice bowl' has been widely evoked to capture the characteristics of labour relations for the urban workers of China under the former planned economy. Some have referred to an expanded notion of the 'three old irons': the 'iron rice bowl' of lifetime employment and cradle-to-grave social welfare provided by the state (*tie fanwan*); the 'iron wage' of centrally administered and fixed wages that sought to minimise disparities within and across workplaces (*tie gongzi*); and the 'iron chair' of state-controlled appointments and promotion of managers, generally based on the worker's tenure of employment and political orientation (*tie jiaoyi*).⁴

Almost all enterprises under the centrally planned system were state-owned, and a dual system of Party and management control became the basis of enterprise leadership. The basic institutional structure at the enterprise level consisted of the Party committee, the trade union and the workers' congress which was led by the trade union. The general manager often served as the Party Secretary and union secretary of the enterprise. All unions belonged to the sole Party-state sanctioned union body, the ACFTU. With a role as the 'transmission belt' between the Party and workers, trade unions at the workplace were responsible for 'educating' workers and dealing with their grievances. The 'work unit' (*'danwei'*) represented the basic-level organisation that linked workers to the Party, and enabled the Party to directly exert political control over workplaces.⁵

Due to the absence of an actual labour market prior to 1978, the regulatory framework could be better described as a labour administration system. Efforts to introduce labour laws were short-lived during this period. For example, the operation of the Labour Union Law 1950 and several labour regulations concerning state-owned enterprises came to an end in 1956. This was apparently due to ideological reasons within the Party — since the interests of workers and those of the enterprise were theoretically aligned in a socialist society, labour disputes would not be an issue.⁶ Furthermore, there was a general breakdown in China's legal system during the Cultural Revolution, with the courts and legislative systems entirely abolished.

Towards a flexible labour market

As Deng's proposals for a 'socialist market economy with Chinese characteristics' became cemented in official policy, China's integration into global capitalism fuelled its unprecedented economic growth over the next two decades. The shift to a market-based economy entailed the decentralisation of state-owned enterprises (SOEs) in their personnel management, along with reforms to break the 'three old irons' that were seen to be

⁴ Daniel Ding & Malcolm Warner, 'China's Labour-Management System Reforms: Breaking the 'Three Old Irons'', (2001)18 *Asia Pacific Journal of Management* 315.

⁵ Simon Clarke, Chang Hee Lee & Qi Li, 'Consultative Consultation and Industrial Relations in China' (2004) 42 *British Journal of Industrial Relations* 235.

⁶ Yun Zhao, 'China's New Labor Dispute Resolution Law: a Catalyst for the Establishment of Harmonious Labor Relationship?' (2009) 30 *Comp. Lab. L. & Policy J.* 409.

associated with low flexibility and productivity. New policies were introduced largely to promote economic reform and efficiency, with the aim of making labour less rigid to facilitate China's participation in global competition — thereby meeting 'a key demand of the foreign capital that led China's post-reform economic development'.⁷

This period of economic reform also saw the dismantling of official barriers to urban labour market access by the rural population. At the heart of China's rapid industrialisation and urbanisation has been a labour force of hundreds of millions of rural migrant workers who have moved to the fast-growing coastal cities for employment in the burgeoning private sector. A salient feature of this rural-to-urban migration is the household registration ('*hukou*') system. Without a local urban *hukou*, these workers and their families are not entitled to reside permanently in those cities. Importantly they could not access, in law and in practice, a range of social benefits that their urban counterparts enjoyed.

A handful of China's coastal cities were turned into export hubs as foreign investment poured into the 'factory of the world', staffed by a seemingly abundant supply of low-cost labour. The labour market policy emphasis on job creation in the private sector generated new problems for labour relations as private employers gain increased autonomy in the workplace. While the economic transformation brought about an increasingly flexible labour market, the pre-reform institutions became ineffectual in governing new labour relations that weighed heavily in favour of capital. The tension between the pursuit of economic reform and the need to address the issues of an emerging labour market made it difficult for Chinese policymakers to reach consensus on new labour legislation.

The Labour Law 1994 was a significant breakthrough as the first national law of its kind in China. The Law established the system of labour contracts as the primary means for regulating employment relationships. Its provisions covered a wide range of matters, including the conclusion, variation and termination of labour contracts, a framework for collective consultation, reasonable working hours, paid leave, anti-discrimination, equal pay and a dispute resolution framework among others.

However, the Labour Law also left out significant details. The law did not, for example, cover contract formation in any detail or distinguish employees from independent contractors. There was no restriction on the minimum length of fixed-term contracts, which provided employers considerable freedom in using short-term contracts. Importantly, there was the systemic failure by the state to enforce labour laws and regulate labour relations in a fair and balanced manner. Acute competition among localities to attract and retain investment often led to local authorities relaxing their enforcement of labour standards — some local officials did not consider the 'floating population' of rural migrant workers as warranting any legal protection.

The emergence of fissurisation

Changes in the state's labour policy from the 1980s onwards resulted in the dramatic downsizing of SOE and the removal of the cradle-to-grave social welfare. The pace of such reforms accelerated during the 1990s in the lead-up to China's accession to the World Trade Organisation. The proportion of state enterprises (including SOEs, township and village enterprises, and collectives) declined from 25 per cent of the labour force in 1996 to only 7 per cent in 2003, with 30 million workers losing their jobs in the SOE sector

⁷ Feng Xu, 'The Emergence of Temporary Agencies in China' (2009) 30 *Comp. Lab. L. & Policy J.* 431, 433.

during this period.⁸ The establishment and formalisation of the labour contract system was a decisive step by the state in 'smashing the iron-rice bowl' to facilitate and accelerate economic restructuring.⁹ Not only did the 1994 Labour Law provide for the use of temporary labour contracts which was perceived as enhancing the efficiency of SOEs, it also legitimised the mass redundancies undertaken by SOEs. As Gallagher *et al.* have observed, 'the termination of employment at the end of the contract was done using the language of the law'.¹⁰

The mass layoffs of workers from the state-owned sector during this period also saw the emergence of labour dispatch arrangements. Labour dispatch, as it is referred to in Chinese labour law, is perhaps better known as temporary agency work, labour hire, or on-hire labour in other parts of the world. Labour dispatch became part of the Chinese state's 'active employment' policy as tens of millions of urban employees were laid-off during SOE restructuring and the adoption of the labour contract system. Labour dispatch became a common practice in the state-owned sector for SOEs to cut costs in the restructuring process and to re-engage former direct employees (who were under the 'three-old-irons' system) as fixed-term contract workers. These labour dispatch agencies often operated by the labour bureaus and personnel departments of local governments.

Private labour dispatch agencies also expanded from the 1990s onwards and played a key role in supplying the masses of rural migrant workers to meet the demands of China's rapid industrialisation. Some private agencies started to provide training and job-seeking services for university graduates, first-time labour market entrants, and vocational training school graduates. Many foreign-owned human resources and labour hire companies, including some well-known multinational agencies, also entered China's fast-growing labour dispatch market from the 1990s onwards.

Chinese workers' access to and enjoyment of employment and social rights and protections, in law and practice, became increasingly differentiated based on the type of labour contract or the absence of a formal written labour contract.¹¹ Rural migrant workers were commonly engaged in work without formal written contracts, which made it difficult to prove the existence of a labour relationship when the workers sought to claim wage arrears and other employment and social security protections.

A case study of the construction sector

The abovementioned problems experienced by rural migrant workers (in accessing basic labour protections) have been most acute in the construction sector, which has over 40 million workers employed at the bottom on complex, multi-layered subcontracting chains. Around one-third of rural migrant workers end up working in the construction sector.¹²

⁸ Chang-Hee Lee, *Industrial Relations and Collective Bargaining in China*, 5 (ILO, Working Paper No.7, 2009).

⁹ Eli Friedman & Ching Kwan Lee, *Remaking the World of Chinese Labour: A 30-Year Retrospective*, 48 *British Journal of Industrial Relations* 507-533 (2010); Mary Gallagher, *Contagious capitalism: Globalization and the Politics of Labor in China* (Princeton U. Press 2005).

¹⁰ Mary Gallagher, Sarosh Kuruvilla & Ching Kwan Lee, 'Introduction and Argument' in Sarosh Kuruvilla, Ching Kwan Lee & Mary E. Gallagher (eds) *From Iron Rice Bowl to Informalization: Markets, Workers, and the State in a Changing China* (Cornell University Press 2011) 5.

¹¹ See Sean Cooney, Sarah Biddulph and Ying Zhu, *Law and Fair Work in China* (Routledge 2014).

¹² Sarah Swider, 'Building China: Precarious employment among migrant construction workers' (2015) 29 *Work, Employment and Society* 41.

A multi-tier labour contracting system emerged from the state's restructuring of the construction industry during the 1980s and 1990s. For example, the highest executive organ of the state, the State Council, issued a Regulation that required general contractors or contracting companies to *not* directly employ their blue-collar workers, but instead engage labour subcontractors who were responsible for recruiting the workforce.¹³ The fissurisation of *relationships* between different firms in the construction sector in China is illustrated in the diagram below.¹⁴

Diagram 1: A Typical Chain of Subcontracting in the Construction Sector in China



The diagram shows the multiple layers of contracting and subcontracting between:

- the property developer at the apex of the chain;
- the construction company with the bid that is responsible for the overall project management;
- the main general contractor that is responsible for providing raw materials and labour for the project;
- the labour-supply subcontractors that recruit the workers, manage the day-to-day work division and pay workers wages upon completion of project;
- the labour use facilitators who actually look for workers in their own village networks;
- and the workers who perform the actual labour.

¹³ See Pun Ngai and Lu Huilin, 'A Culture of Violence: the Labor Subcontracting System and Collective Action by Construction Workers in Post-Socialist China' (2010) 64 *The China Journal* 143, 147.

¹⁴ *ibid*, 148.

The most chronic and widespread labour violation in the construction sector has been the non-payment of wages to workers. The multi-layered chain obscures a readily identifiable employer to discharge this basic obligation of the employer under labour law. The subcontractors (most of whom have little capital themselves) usually have inadequate funds to pay workers wages until they are paid by the construction company and developer, usually when the project is completed.

Lower-tier subcontractors have very little bargaining power compared to the construction companies and property developers, which often have close ties with the local government. As Pun and Lu have observed, the local government commonly favours first-tier contractors over lower-tier contractors in construction disputes.¹⁵ Lower-tier subcontractors are often owed payments from those higher up the chain. Therefore, the investment risks of the top-tier contractors are transferred down the chain to lower-tier subcontractors and ultimately, the workers who experience the non-payment of wages, social insurance, and work injuries payments.

Wage arrears in the constructor sector have become a common cause of labour disputes and collective worker protests throughout the 1990s and 2000s. Furthermore, there had been a very low rate of signed individual labour contracts in this sector, which rendered it difficult to resolve disputes over wage arrears where the existence of a formal employment relationship cannot be documented. The limited details on contract formation in the Labour Law 1994 and the broader labour law framework (prior to 2008) also did not help labour arbitrators and courts to deal with the particular problems for workers to prove the establishment of an employment relationship within a complex, multi-layered contractual chain.

Recognising the socially disruptive forces that arose from the large numbers and scale of labour disputes in the construction sector, state organs at national and local levels instigated a three-year 'clean up' campaign to deal with the problems of non-payment of construction funds and non-payment of wages. The State Council issued a Notice on Conscientiously Resolving the Problem of Delayed Payment of Construction Funds in the Construction Sector in November 2003 that instructed various state agencies to strengthen inspection and enforcement efforts and the severity of penalties for breaches. A Work Plan set out a timeline and concrete tasks for a range of actors including the local courts. The Ministry of Human Resources and Social Security (MHRSS) further issued a specific Provisional Measures on the Payment of Wages to Migrant Workers in the Construction Sector in September 2004.

The problems that have arisen from a highly fissured workplace in the construction sector had catapulted wage payment issues to the top of the regulatory agenda. As Biddulph and others have argued, the 'clean up' campaign of wage arrears in the construction sector and its associated regulatory measures had contributed to the drafting of the 2008 labour law reforms, not only in relation to the enactment of specific provisions on wage payments in the LCL, but also the production of considerable information about the nature and causes of the problem to enable better monitoring and enforcement.¹⁶

¹⁵ Ibid, 150.

¹⁶ Sarah Biddulph, Sean Cooney, and Ying Zhu, 'Rule of Law with Chinese Characteristics: The Role of Campaigns in Lawmaking' (2012) 34 *Law and Policy* 373.

Reversing the deregulatory agenda

By the mid-2000s, what became apparent to policymakers were the major deficiencies in the legal framework for dealing with the detrimental effects of fissurisation that, to a considerable extent, emerged from the deregulatory wave of labour market reforms in the 1990s. The rapidly escalating trend of labour disputes over this period revealed significant discontent and frustration among workers over issues of wage arrears and violation of basic employment and social protections. In 1996, China's labour dispute arbitration committees handled 47,951 cases. The number of cases had increased to 350,182 in 2007.¹⁷ While there are no reliable data on strikes, frequent incidences of wildcat strikes and collective workplace disturbances by 'unorganised' workers in the private sector have been on the rise over the past decade.

A wave of worker-protective labour law reforms in 2007 represented an endeavour by Chinese policymakers to 'reverse the deregulation agenda' of the 1990s and to 're-regulate' the labour market with the overarching goal of building harmonious labour relations.¹⁸ The Labour Contract Law (LCL), together with the Labour Dispute Mediation and Arbitration Law (LDMA) and the Employment Promotion Law (EPL) came into effect in 2008. A key objective of the LCL was to regulate the widespread use of fixed-term labour contracts. Employees can now request an open-ended contract if they have been working continuously for the employer for ten or more years,¹⁹ or if they have already been on two consecutive fixed-term contracts with the employer.²⁰ If the employer fails to sign a written contract within a year of employing the worker, an open-ended labour contract shall be deemed as concluded.²¹ As shown in Table 1 below, strong enforcement efforts by the state and trade unions have resulted in the rapid expansion of signed labour contracts after the enactment of the LCL, especially with regards to rural migrant workers.

Table 1: Proportion of Wage Workers with Signed Labour Contracts²²

	Rural migrant workers			Urban local workers		
	Male	Female	Total	Male	Female	Total
2001	34.60	28.15	31.97	77.23	69.76	74.06
2005	39.15	33.19	36.85	76.37	68.90	73.14
2010	60.44	59.01	59.76	81.24	78.78	80.20

¹⁷ National Bureau of Statistics, *2007 Statistical Bulletin on Labour and Social Security*, http://w1.mohrss.gov.cn/gb/zwxx/2008-06/05/content_240415.htm (accessed 5 February 2016).

¹⁸ Chang-Hee Lee, William Brown, and Xiaoyi Wen, 'What Sort of Collective Bargaining is Emerging in China?' (2014) 54 *British Journal of Industrial Relations* 214.

¹⁹ Labour Law 1994 had a similar but weaker provision where the employee could 'request' to sign an open-ended contract with the employer after ten consecutive years of service.

²⁰ LCL, Art 14(1).

²¹ LCL, Art 14(3).

²² Mary E Gallagher, John Giles, Albert Park, and Meiyang Wang, *China's 2008 Labor Contract Law: Implementation and Implications for China's Workers*, World Bank Policy Research Working Paper 6542 (2013).

The LCL further introduced new obligations on employers to prevent the underpayment of wages, provisions for the transmission of employee entitlements during firm restructuring, and as will be discussed in greater detail later on, controls and restrictions over the use of labour dispatch. Meanwhile, the LDMA focused on improving the procedural aspects of settling labour disputes through the official channels of mediation, arbitration, and litigation. The EPL expanded the grounds of prohibited discrimination in the 1994 Labour Law to include discrimination against migrant workers based on their residential status. The new laws appeared to have raised workers' expectations about improvement of their wages and working conditions, along with better access to pursue their claims through mediation and arbitration. Within the first twelve months of the passage of these laws, official statistics reported a doubling of cases accepted by labour dispute arbitration committees from around 350,182 in 2007 to 693,465 in 2008.²³

This period also saw the stepping up of regulatory efforts to develop collective labour law institutions against the backdrop of a persistent rise of collective labour disputes. In particular, there has been accelerated expansion of formal laws and institutions to promote collective bargaining as a key pillar of labour relations policy since the 2000s. The number and coverage of collective contracts at the enterprise level and increasingly at sector and regional levels to regulate wages, employment conditions, and other workplace issues has also increased considerably. Based on the statistics of the All-China Federation of Trade Union (ACFTU), a total of 1.9 million enterprises signed 1.1 million collective contracts in 2008, covering 150 million workers (or 60.2 per cent of workers) in the urban workforce. In 2011, these figures had increased to a total of 3.61 million enterprises and 223 million workers (or 62.1 per cent of workers in the urban workforce) covered by 1.79 million collective contracts.²⁴ The extent to which collective contracts address the fissurisation of employment will be discussed later in the next part.

III. The notion of the 'employer'

The scope of the 'labour relationship'

The labour law framework applies where a 'labour relationship' has been formed inside China. It should be noted that Chinese labour law has tended to avoid the use of the Chinese terms for 'employment' (*guyong*), 'employer' (*guyongren*), and 'employee' (*shouguren*) for ideological purposes. Based on Marxist notions of labour relations, there is a distinction between a relationship of exploitative exchange under an 'employment contract' (*guyong hetong*) and a socially regulated industrial relationship of a 'labour contract' (*laodong hetong*).²⁵ The 'employer' is commonly referred to as the 'employing unit' or 'work unit' (*yongren danwei*).

The actors of a 'labour relationship' are stipulated in Article 2 of Labor Law 1994:

"This Law applies to enterprises and individually-owned economic organisations (hereinafter referred to as 'employing units') and persons who engage in work ('labourers') who form a labour relationship with them within the boundary of the

²³ National Bureau of Statistics, *Labor Statistical Yearbook 2009*, 9.1 tbl. (China Statistics Press 2009).

²⁴ ACFTU, *2011 Gonghui Zhuzhi he Gonghui Gongzuo Fazhan Zhuangkuang Tongji Gongbao* [2011 Statistical Communique of Trade Union Development and Trade Union Work], <http://stats.acftu.org>; also see *Employment and Wages*, China Statistical Yearbook 2011, available at: <http://www.stats.gov.cn/tjsj/ndsj/2011/indexeh.htm> (accessed 1 February 2016).

²⁵ Cooney, Biddulph and Zhu (n 11) 53.

People's Republic of China. State departments, institutional organisations and social groups and labourers who form a labour contract relationship with them shall observe this Law."

Furthermore, Article 2 of the Labour Contract Law 2008 states that:

"This Law shall apply to the establishment of employment relationship between labourers and enterprises, individual economic organizations, private non-enterprise entities, or other organizations (hereinafter referred to as 'employing units'), and to the formation, implementation, amendment, dissolution, or termination of labour contracts. State organs, public institutions, social organizations, and the labourers with whom they have formed an employment relationship shall observe this Law in the formation, implementation, amendment, dissolution, or termination of labour contracts."

This definition of an 'employing unit' excludes individuals and households.²⁶ The Supreme People's Court has confirmed that disputes between individual or household and domestic workers are not deemed as labour disputes.²⁷ Besides domestic workers, other categories of workers who are not covered by Chinese labour laws include: agricultural workers (other than those engaged as employees in large agricultural enterprises), student interns undertaking work as part of their vocational training, some public sector and military workers, and post-retirement individuals who return or remain in the workforce. These categories are subject to contract and civil law or special public sector rules. Furthermore, the employing entity must be an enterprise or economic organisation that is a formally registered legal entity. This has the effect of excluding workers that are engaged by unregistered organisations or individuals.

A 'de facto' employment relationship

The MHRSS issued the Notice on Relevant Matters related to the Establishment of Labour Relationships 2005 (No. 2) which laid out the criteria for determining whether a de facto labour relationship had been formed, even where there is no written or signed labour contract:

1. The employer and employee meet the legal qualification in the relevant laws and regulations;
2. Workplace rules made by the employer in accordance with the law are being applied to the employee, and the employee is subject to the employer's control and management and carries out the paid work as assigned by the employer;
3. The labour provided by the employee is part of the business of the employer.

The courts have applied the above criteria to address employment-related responsibilities in multi-layered contractual relationships. In one case, the People's Court of Linmu County, Shandong Province, ruled that a de facto employment relationship existed between a construction company and a worker of a subcontractor who died on the construction company's project site.²⁸ In 2012, the construction company undertook a

²⁶ MOLSS, *Opinion on Certain Questions during the Enforcement of the PRC Labour Law*, 4 August 1995.

²⁷ The Supreme People's Court of PRC, *Interpretation on the Certain Issues on the Applicable Laws about Hearing of Cases of Labour Disputes*, 1 October 2006.

²⁸ Baker & McKenzie, 'Deceased Worker of Sub-contractor Held to Have De Facto Employment with Construction Company', *China Employment Law Update*, February 2014
<http://www.bakermckenzie.com/files/Publication/4cc22b38-de52-4a8d-a08d->

project as the general contractor. The construction company subcontracted the moulding and carpentry work of the project to an individual contractor, who then subcontracted the work to three other individuals. One of the three individuals further 'sub-subcontracted' some of the work to the worker in this case. In October 2012, this worker died on the project site. The construction company paid RMB 100,000 in funeral expenses to the workers' family. In December 2012, the deceased workers' family filed for labour arbitration, claiming the existence of a de facto employment relationship between the worker and the construction company. In March 2013, the labour arbitration committee ruled in favour of the workers' family. The construction company challenged the arbitration award in the local people's court and argued that since the worker was recruited, managed, and paid by the subcontractor, the company did not have an employment relationship.

The arbitration award was affirmed by the local people's court. The court decided that there was a de facto employment relationship between the worker and the construction company due to the company's subcontracting of construction work to individuals who were not licensed contractors. Neither the subcontractor nor the 'sub-subcontractors' had the legal capacity to hire employees. Based on the MHRSS's Notice, the company must assume the responsibilities of an employer for any worker recruited by an unlicensed contractor (who may be an individual or organisation) to undertake the work.

Employee versus independent contractors

Although it is not the focus of this paper, the distinction between employees and independent contractors who are engaged on a 'contract for services' (*laowu hetong*) has attracted growing regulatory attention in China. The question of 'who is an employee' has attracted considerable interest due to the expansion of the so-called 'gig economy', perhaps most visibly through the growth of online car-hire services such as Uber and a number of highly successful domestic Chinese competitors.

Two recent labour disputes before the local people's court in Beijing examined this issue arising from the claims of two former 'employees' of a Chinese Uber-style mobile ride hail service.²⁹ The plaintiffs in both cases unsuccessfully tried to prove the existence of an employment relationship with the defendant company and presented supporting evidence to the court, including bank statements with regular monthly payments from the company, a driver ID card with the company's name, the provision of a work uniform and a mobile phone, and an induction letter upon joining the company. The 'cooperation agreement' between the plaintiffs and defendant stated that the company would provide an information platform (via its mobile app) to its drivers regarding customer orders. Drivers can provide their services to customers and directly charge customers their fees (set by the company). Drivers must pay a monthly deposit to the company. The company deducts from that deposit a service fee for its information provision after the completion of each order by the driver.

33c128479629/Presentation/PublicationAttachment/b9ef7f79-f2d0-4137-8f8c-42b59ffd62c0/NLChinaEmploymentLawUpdateFeb14.pdf (accessed 1 February 2016).

²⁹ *Labour Dispute between Wang Zhe Shuan and Beijing Yixin Yixing Automotive Technology Development Services Ltd.* Beijing Shijingshan District People's Court Civil Judgment No. 367 (2014); *Labour Dispute between Sun Youliang and Beijing Yixin Yixing Automotive Technology Development Services Ltd.* Beijing First Intermediate People's Court Judgment No. 176 (2015).

In both cases, the court decided that the nature of the relationship between the two parties was not a labour relationship. Of primary consideration was that the plaintiffs could control their own working hours. When and where the plaintiffs worked or rested wholly depended on them. The court also determined that there was no direct payment of a monthly salary from the company and the company in fact charged a 20% information service fee from its drivers. The plaintiffs' arguments regarding joining the company via a formal process of recruitment, interview, and training, and their acceptance of the defendant's company rules in performing their work and the associated disciplinary measures did not seem to have persuaded the court in reaching its decision in both cases.

Regulating labour dispatch arrangements

Background

Perhaps the fastest growing and most rampant manifestation of fissurisation in China, which has attracted the most regulatory attention in recent years, is the use of labour dispatch. Labour dispatch arrangements involve triangular contractual relationships whereby workers are hired by a dispatch agency (*laowu paiqian danwei*) to provide services for a labour-using entity (*yongren danwei*). The labour dispatch agency is deemed to be the 'employing unit' under Chinese labour law.³⁰ The labour-using entity does not have a direct employment relationship with dispatch workers and is not responsible for the payment of wages and benefits to the workers. Instead it has a service agreement with the dispatch agency that includes remuneration for workers.³¹

As discussed in Part II, labour dispatch was used significantly by the state during the restructuring of SOEs in the 1990s as a means of 'smashing the iron rice bowl' and facilitating the introduction of a new labour contracts system. The growth of the labour dispatch industry in recent years, particularly the number of small and medium dispatch agencies, has been linked to the use of labour dispatch arrangements to sidestep the protections introduced by more worker-protective labour law reforms over the past decade.³² Some have argued the LCL has had the unintended consequence of expanding informal work arrangements, as reflected by the substantial increase in the use of labour dispatch since its enactment.³³

The ACFTU estimated that in 2011, there were approximately 37 million dispatched workers, representing around 13.1% of all employees in the urban workforce. This figure represents a substantial increase from the ACFTU's estimate of 25 million dispatched workers in 2006.³⁴ Based on these statistics, labour dispatch is primarily used by SOEs and foreign-invested enterprises that engage 16.2% and 14.2% of dispatched workers respectively. In some large cities such as Beijing and Shanghai, the use of labour dispatch is much higher. Rural migrant workers represent 52.6% of the dispatched workforce. Furthermore, it was found that 39.5% of dispatched workers surveyed had worked for the same labour-using firm for over six years.³⁵ Other studies have highlighted a general lack

³⁰ LCL, art 58.

³¹ LCL, arts 59, 60.

³² Kuruvilla, Gallagher and Lee (n 10), chapter 1.

³³ Ibid.

³⁴ ACFTU, 'Dang Qian Wo Guo Lao Wu Pai Qian Yong Gong Xian Zhuang Diao Cha' ['Survey of China's Current Labor Dispatch Situation'] (2012) 5 China Labor 23.

³⁵ Ibid.

of labour protections as experienced by dispatch workers, including job insecurity, inferior wages and conditions than comparable direct or regular employees, and the common withholding and/or deduction of wages by dispatch agencies.³⁶

Dispatch labour and the Labour Contract Law

The LCL contained numerous provisions to enhance the protection of labour dispatch workers. It attempts to delineate the various legal obligations of the dispatch agencies and labour-using firms.³⁷ The labour dispatch agency is deemed to be the 'employing unit' as defined in the LCL and shall perform the obligations of the employing unit for its employees.³⁸ The labour contract between the worker and the agency must specify matters such as the entity that the worker will be dispatched, the duration, and the role/position of the dispatch assignment. There is a minimum term of two years for the fixed-term contracts concluded between the dispatch agency and worker.³⁹ The dispatch agency must also pay workers their wages on a monthly basis. Where is no work during a particular period, the agency must pay the worker an amount equivalent to the minimum wage of the locality where the agency is located.⁴⁰ The agency must also inform dispatched workers of the content of the dispatch service agreement it had signed with the labour-using entity.⁴¹ This agreement must included the following content: the positions which the workers are dispatched to, the number of dispatch workers, the duration of dispatch, the amount and terms of remuneration and social security payments, and liability for breach of the agreement.⁴²

In regulating the practices of labour-using firms, the LCL places restrictions on the use of labour dispatch only for 'temporary, auxiliary, or substituting positions'.⁴³ A labour-using entity is prohibited from establishing its own labour dispatch service for the purpose of dispatching workers to itself and to its subsidiaries.⁴⁴ Furthermore, the LCL requires the labour-using entity to decide the length of using labour dispatch on the basis of actual organisational needs and not divide an assignment of a longer continuous period into several short-term dispatch agreements.⁴⁵ The labour-using entity must also provide labour dispatch workers with the labour rights and protections in accordance with national laws and regulations, overtime pay, performance-based bonuses and other benefits related to the job, regular wage increases, and essential on-the-job training based on the needs of the position.⁴⁶ The principle of 'equal pay for equal work' is also applicable to dispatch

³⁶ Feng Xu, 'Temporary Work in China: Precarity in an Emerging Labour Market' in Judge Fudge and Kendra Strauss (eds) *Temporary Work, Agencies and Unfree Labour: Insecurity in the New World of Work* (Routledge 2014) 143-163; Juliana So, 'Exploring the Plight of Dispatch Workers in China and How to Improve their Conditions: a Preliminary Study' (2014) 17 *The Journal of Labor & Society* 531; Ka Ni Li, 'Re-Conceptualizing the Notion of "Employer": the Case of Labor Dispatch Workers in China' (2015) 40 *Brooklyn Journal of International Law* 619.

³⁷ LCL, art 58.

³⁸ *Ibid.*

³⁹ LCL, art 58.

⁴⁰ LCL, art 58.

⁴¹ LCL, art 60.

⁴² LCL, art 59.

⁴³ LCL, art 66.

⁴⁴ LCL, art 67.

⁴⁵ LCL, art 59(2).

⁴⁶ LCL, art 62.

workers. An amendment to the LCL in 2013 clarified this principle as providing dispatch workers the right to enjoy the same remuneration rates paid to directly employed workers in a comparable position in the labour-using firm.⁴⁷

If a labour dispatch agency violates the provisions of the LCL, it will be subject to rectification orders by the labour administrative authorities, fines of 1,000-5,000 per person, or/and revocation of business licence for serious offences.⁴⁸ This direct imposition of legal liability on the dispatch agency for violations of the LCL reflects its status as the 'employing unit'. There is no equivalent provision for the labour-using entity. However, if there is any damage caused to dispatch workers, the LCL stipulates that the dispatch agency and the labour-using entity are jointly and severally liable with respect to compensation.⁴⁹

Further restrictions in 2013

The enhanced worker protections introduced by the LCL (such as the restrictions on the use of fixed-term contracts and dismissals) seem to have prompted greater use of labour dispatch by firms to avoid the heftier legal obligations. As Ho and Huang also claim, the 'explosion' of the labour dispatch industry in recent years has largely taken place 'in technical compliance with the LCL'.⁵⁰ The requirements to set up a dispatch agency were fairly minimal: a standard business registration and registered capital of RMB500,000.⁵¹ There was no need for any other special authorisation. Labour dispatch became an increasingly profitable sector that had few formal mechanisms of regulatory oversight.⁵²

The response of policymakers to the perceived inadequacy of the LCL to address the problems with labour dispatch was to introduce further amendments to the LCL in 2013 and its implementing rules, the Interim Provisions on Labour Dispatch (IPLD) issued by MHRSS in 2014. The amended LCL clearly states that direct labour contract is the basic form of employment in enterprises and that labour dispatch is a supplementary form.⁵³ Other changes brought in by the amended LCL include: increasing the registered capital minimum for dispatch agencies to RMB 2 million and requiring agencies to obtain an administrative license with the local labour bureau and register as a dispatch agency with the local industry and commerce office;⁵⁴ refining the equal pay principle for dispatched workers;⁵⁵ stipulating certain mandatory issues to be included in the dispatch agreement;⁵⁶ and requiring dispatch agencies to register and pay social insurance for dispatched workers in the locality of the labour-using firm.⁵⁷

⁴⁷ LCL, art 63.

⁴⁸ LCL, art 92.

⁴⁹ LCL, art 92.

⁵⁰ Virginia Harper Ho and Huang Qiaoyan, 'The Recursivity of Reform: China's Amended Labor Contract Law' (2014) 37 Fordham International Law Journal 973.

⁵¹ LCL, art 57.

⁵² Ho and Huang (n 50).

⁵³ LCL, art 66(1).

⁵⁴ The Ministry of Human Resources and Social Security Notice on the Effective Implementation of Labour Administrative Permit (promulgated 21 June 2013, effective 1 July 2013).

⁵⁵ LCL, art 63.

⁵⁶ IPLD, art 7.

⁵⁷ IPLD, arts 18 and 19.

The IPLD sets a 10% cap on the proportion of dispatched workers in the labour-using firm's workforce.⁵⁸ This is intended to give substance to Article 66 of the LCL, which requires the labour-using firm to control the number of dispatch workers. A company will not be allowed to engage new dispatch workers until it has reduced the existing number to the required proportion. Companies have been given two years from 1 March 2014 to comply with the new rules and to file an adjustment plan with the labour authority.⁵⁹

The IPLD gives further substance to the requirement that labour dispatch is restricted to 'temporary, auxiliary or substitute' positions under the LCL.⁶⁰ The ambiguity of this provision under the original LCL provided firms with considerable scope to justify the 'need' for labour dispatch.⁶¹ Under the IPLD, a 'temporary' position refers to a position of no more than six months. An 'auxiliary' position refers a 'non-major business position' that provides support or services to the business. Such positions require the employer to consult the employees' representative congress or all employees, and to negotiate with its trade union or employee representative. Finally, a 'substitute' position is where the original employee in that position is absent for a period of time due to study, leave or other reasons.

The IPLD also considers forms of 'sham' outsourcing and subcontracting that is disguised as labour dispatch to be covered under the Provisions.⁶² However, it is still unclear what types of arrangements would fall within the ambit of this provision. The inclusion of the provision itself arguably reflects, to some degree, policymakers' concern that firms may attempt to sidestep the restrictions on the use of dispatch labour under the amended LCL with new forms of labour outsourcing and subcontracting practices that are subject to less or no legal regulation.

Dispatch labour and occupational health and safety issues

The obligations of labour dispatch agencies towards dispatch workers in the area of occupational disease and work injury have also been strengthened by the amended LCL and IPLD, with the aim of limiting the opportunities for contractual risk-shifting between the dispatch agency and labour-using firm. The labour dispatch agency has legal liability for providing workers with work injury insurance 'but may negotiate with the labour-using entity over the compensatory approach'.⁶³ Meanwhile, the labour-using entity has responsibility over the workers' diagnosis and assessment of occupational diseases, which is regulated by a separate legal regime.⁶⁴

Major amendments to China's Work Safety Law in 2014 also recognised the particular occupational health and safety issues faced by dispatch workers. Dispatch workers are subject to the same rights and obligations under the Work Safety Law as direct employees of the labour-using entity.⁶⁵ The labour-using entity must also include dispatch workers in the overall work safety management system of the firm. Both the labour-using entity and the dispatch agency have work safety training and education obligations to the

⁵⁸ IPLD, art 4.

⁵⁹ IPLD, art 28.

⁶⁰ IPLD, art 3.

⁶¹ Ho and Huang (n 50) 101.

⁶² IPLD, art 27.

⁶³ IPLD, art 10(1).

⁶⁴ IPLD, art 10(2).

⁶⁵ Law of the People's Republic of China on Work Safety 2002 (Work Safety Law), art 58.

dispatch workers.⁶⁶ Failure of the labour-using entity to provide workplace training and education gives rise to legal liability such as fines and the suspension of the firms' production.⁶⁷

Collective labour relations and dispatch workers

Article 64 of the LCL provides for the right of dispatch workers to join the trade union of the labour dispatch agency or the labour-using entity or to organise such unions in accordance with the law, so as to protect their own lawful rights and interests. It may be argued that the policy rationale for providing dispatch workers with the choice of joining the union of the agency or labour-using entity, or to organize a union (within a legal framework that provides only for affiliation to the ACFTU) is to recognise the particular difficulties of union participation for this group of workers, such as frequent changes in workplaces and the dispersion of dispatch workers across different labour-using firms.

Dispatch labour has become a particular of concern for the ACFTU as labour disputes involving the labour dispatch workforce grew sharply over the past decade. The ACFTU and its local union federations used their political influence to push for the amendments to the LCL in 2013. There was extensive disagreement among different interest groups and policymakers in the lead-up to the amendments. The ACFTU had been pushing for more restrictive regulations on the use of labour dispatch. Enterprises, including many large central SOEs that used dispatch workers, had strongly opposed any legislative restrictions. The Ministry of Human Resource and Social Security highlighted the role of labour dispatch in job creation and labour flexibility, especially in the context of policy concerns over the Chinese economy in the aftermath of the 2008 global financial crisis. The ACFTU submitted to the National People's Congress in 2011 and 2012 two comprehensive reports on the widespread problems of dispatch labour and proposed legislative restrictions. The ACFTU particularly urged the inclusion of an objective cap on the use of labour dispatch during the drafting process of the 2013 amendments.⁶⁸

Over the past 15 years, there has also been an accelerated expansion of laws and institutions to promote 'collective negotiations' (collective bargaining)⁶⁹ as a central pillar of Chinese labour relations policy. While a vast majority of collective contracts are at the enterprise level, there has also been growing regulatory interest in relation to collective negotiations and collective contracts concluded in a certain sector and/or within a set geographical region (usually up to municipal level) between trade unions and groups of employers in the same sector. Collective wage bargaining at the sector and regional levels has been developing in certain localities in recent years.⁷⁰

The number and coverage of collective contracts at various levels to regulate wages, employment conditions, and a range of other workplace issues has also increased considerably. However, the focus has largely been on the quantity of signed collective contracts, with numerical targets set for local trade union federations and local governments. The quality of collective contracts in practice has generally been quite weak,

⁶⁶ Work Safety Law, art 25.

⁶⁷ Work Safety Law, art 94.

⁶⁸ Lu Zhang, *Inside China's Automobile Factories* (Cambridge University Press 2015) 178-179.

⁶⁹ The literal terms found in Chinese labour law refer to 'collective negotiations' or 'collective consultations', which are deemed to be less confrontational than 'collective bargaining'.

⁷⁰ Lee, Brown, and Wen (n 18).

as Chinese trade unions continue to face institutional and capacity challenges in its ability to represent workers.⁷¹

There has been the emergence of collective contracts specifically seeking to regulate the rights and interests of dispatch workers. One such example was a dispatch labour collective contract entered into by a dispatch agency and five labour-using entities in a county in Nanjing in 2008, which covered nearly 30,000 dispatch workers. The collective contract explicitly set out the responsibilities of the agency and labour-using firms in relation to protecting the various rights and interests of workers. The trade unions from the dispatch agency and the labour-using firms constituted the labour side for the negotiations.⁷² However, it seems that collective negotiations on labour dispatch issues remain a contested agenda among the various actors. The final version of the recently enacted 2015 Guangdong Regulation on Collective Bargaining took out a reference to the protection of labour dispatch workers in an earlier draft of the Regulations. The original provision would have allowed for labour dispatch issues to be included in the content of collective agreements not only at the enterprise level, but also in sector-level and regional-level collective contracts.

Other legal and 'soft law' measures

It should be further noted that China's tort liability regime recognises an expanded notion of the 'employer' in relation to the employer's vicarious liability for its workers' tortious acts that cause damage to third parties. According to the Tort Law 2012, if during a dispatch arrangement, the dispatched worker causes damage to a third party due to performance of working tasks, the entity accepting the dispatch arrangement shall be subject to tort liability.⁷³ This means that, from a vicarious liability perspective, labour-users are treated like employers and therefore bear corresponding risks for some workers who are not their direct employees.

In dealing with the deleterious consequences of fissured workplaces for worker protection, a relatively under-developed area of regulation has been the use of 'soft law' measures. There have been some innovative developments in recent years. One prominent example is the ILO's Sustaining Competitive and Responsible Enterprises (SCORE) programme for small and medium enterprises (SMEs). Around 99 per cent of all private registered enterprises in China are SMEs.⁷⁴ In the context of fissured workplaces, SMEs have been on the receiving end of risk transfer associated with the fissurisation of employment by the large firms.⁷⁵ Many SMEs in China are embedded within global supply chains and face significant pressures to be competitive and productive in order to access market opportunities nationally and internationally.⁷⁶

⁷¹ Zou (n 3).

⁷² Wan Yi Caijing (Money.163.com) 'Can collective contracts resolve the dilemma of labour dispatch', 18 February 2008, <http://money.163.com/08/0218/07/44VF2OCU00251RJ2.html> (accessed 16 February 2016).

⁷³ Tort Law 2010 (PRC), art 34.

⁷⁴ ILO, 'Sustaining Competitive and Responsible Enterprises (SCORE) Project Phase I' http://www.ilo.org/beijing/what-we-do/projects/WCMS_142938/lang--en/index.htm (accessed 16 February 2016).

⁷⁵ Weil (n 1).

⁷⁶ ILO, Sustaining Competitive and Responsible Enterprises (SCORE) Project Phase I, http://www.ilo.org/beijing/what-we-do/projects/WCMS_142938/lang--en/index.htm (accessed 15 March 2016).

SCORE is a modular training programme aimed at developing cooperative labour relations in SMEs through training and capacity building activities for employers and workers in five areas: workplace cooperation, quality management, clean production, human resource management, and occupational health and safety. In Phase I of the programme (2009-2013), SCORE China worked with the official employers' association, China Enterprise Confederation (CEC), in several provinces across the country in the machinery manufacturing, auto parts, and garments sectors. Phase II of SCORE China (2013-2017) focuses on training local organisations to run ongoing SCORE training to SMEs, independent of the ILO and international donors.⁷⁷ To this end, the ILO has signed cooperation agreements with the CEC and the government agency responsible for work safety, the State Administration of Work Safety, to gradually take over the lead of SCORE training after 2016.⁷⁸ To date, SCORE China has trained 145 trainers, 120 enterprises, and more than 1,500 workers and managers.⁷⁹ A recent evaluation of the programme has shown encouraging results at the enterprise level, including 'improved working conditions, remarkable cost savings and greater efficiency through workplace dialogue and cooperation, workers' participation and collective actions and investment in training'.⁸⁰

IV. Conclusion

As observed in other parts of the world, the emergence of the fissured workplace in China has accompanied deregulatory policies associated with goals of increasing flexibility for enterprises (particularly SOEs) and facilitating job creation during economic and labour market restructuring. The fissurisation of work in China has taken place in the context of the country's fundamental transition to a market-based economy with 'Chinese characteristics' over the past three decades. The conceptualisations of the 'employing unit' and the 'labour relationship' in the two main pieces of labour legislation in China (Labour Law 1994 and LCL 2008) have remained limited in their scope and coverage, with the effect of excluding certain groups of workers such as independent contractors and domestic workers. The threshold requirement of proving a labour relationship before one can pursue a formal claim for non-payment of wages and/or other rights violations becomes highly challenging in complex, multi-layered contracting chains such as those commonly found in the construction sector.

This paper has focused on the use of labour dispatch as the fastest-growing and most prevalent manifestation of the fissured workplace in China today. Labour dispatch arrangements have destabilised labour relations by creating ambiguity around which entity has the responsibility for a range of 'employer' obligations under labour, social security, and health and safety laws. It was not until the LCL in 2008 that sought to regulate labour

⁷⁷ ILO, Sustaining Competitive and Responsible Enterprises (SCORE) Project Phase II, http://www.ilo.org/beijing/what-we-do/projects/WCMS_238771/lang--en/index.htm (accessed 15 March 2016).

⁷⁸ ILO, 'ILO signs agreement with Consulting and Training Centre of China Enterprise Confederation for implementing Score project', Press Release, 01 April 2014; ILO, 'ILO signs agreement with the State Administration of Work Safety for implementing Score project', Press Release, 08 April 2014.

⁷⁹ ILO, SCORE China Newsletter (No. 7), November 2015, <http://us8.campaign-archive1.com/?u=5b3287fed6963b8cf74f149d2&id=2d253fc371&e=8443d219f1> (accessed 15 March 2016).

⁸⁰ *ibid.*

dispatch issues for the first time in Chinese labour law. Yet, the LCL's heightened standards of labour protections were associated with firms' (actual and/or perceived) increase of compliance burden and costs, which increased the demand for labour dispatch.

In addition to clarifying the obligations of the dispatch agency and labour-using firm, the amendments to LCL in 2013 seem to have facilitated litigation by dispatch workers to challenge illegal practices as well as stricter administrative oversight by local regulators.⁸¹ Nevertheless, there remain significant gaps in Chinese labour law in relation to addressing 'sham' outsourcing or subcontracting and other forms of non-standard employment arising from fissurisation. Furthermore, there is still a long way to go in developing collective bargaining laws and institutions at the enterprise level and higher levels to effectively protect dispatch workers' rights and interests. The development of 'soft law' measures such as the ILO's SCORE training programme for SMEs offers some potential for filling some of these regulatory gaps.

In the midst of China's current economic downturn and industrial restructuring, many firms in certain sectors (such as the labour-intensive, lower-end manufacturing sector) are responding to competitive pressures and financial hardship through outsourcing, downsizing, restructuring, and other means of survival. The stakes are high for the ACFTU and the state in the attempt to build 'harmonious labour relations' in an increasingly fissured workplace, which brings with it ever greater possibilities for industrial conflict and social instability.

⁸¹ Ho and Huang (n 50) 1017-1020.