

## **Chinese Legal Protection as to the Cross-border Labor**

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### **Abstract:**

With the in-depth globalization of Chinese economy, a large number of Chinese labors work in international labor market. To provide sufficient protection to this group becomes more and more hard due to various reasons, including terrorism, nationalism, anti-government activities and other factors. In the new era, it would be better to establish a comprehensive legal system which requires the governments (including the central and local governments), industry associations, intermediary institutions and labors to work together in protecting the interests of these Chinese labors who work overseas from both international and domestic levels.

**Key Words:** Cross-border Labor Cooperation, Labor Protection, Regulations on the Management of Cross-border Labor Service Cooperation

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Due to various reasons, such as the uneven economic development of countries, the disproportion of productive resources, the ongoing adjustment of worldwide industrial structure and the new division of labor across the world, etc., working overseas becomes more and more popular. China, which possesses rich human resources and encourages people to work overseas under the so-called “Going Out” policy, has a considerable large amount of cross-border labors. How to protect the interests of these labors becomes a critical issues in China.

## 1. BACKGROUND

This section will give a brief introduction as to the terminology used in China to describe the cross-border labor, the risk these cross-border labors face and legal protection they have according to Chinese law.

### 1.1 The Definitio of Cross-Border Labor Cooperation

There are various terminologies used to discribe cross-border labor, such as “export contract workers”, “cross-border employment”, “international labor migration”, and so on. In China, the legislation and other regulations usually use the terminology of “Cross-border labor cooperation”(this terminilogy will be used hereafter).<sup>1</sup>

According to the different ways of the labor export, the cross-border labor cooperation has broad and narrow definitions. Broad cross-border labor cooperation has the same meaning as labor export. It means that a country export labors to other countries in order to meet the foreign countries’ social or personal need and to earn appropriate remuneration for return.<sup>[1]</sup> Narrow cross-border labor cooperation means to organize and dispatch labors by the intermediary institutions to work in other countries or regions. This article accepts the broad definition.

### 1.2 Current Situation of Chinese Cross-Border Labor Cooperation

In 2011, China dispatched 380,000 labors to foreign labor market, the total number of the workers are more than 4 millions by the end of the year.<sup>2</sup> Chinese cross-border labors are located almost every country and region of the world. Among them, Asia has the largest number (Japan and Singapor are the top two countries), being followed by Africa where Chinese labors mainly distribute in Mauritius, Algeria, South Africa, Sultan and other countries. In other continents, Chinese labors mainly distribute in the United States and Russia. Most Chinese cross-border workers engage in labor-intensive industry and non-technical work, such as, construction, textile, and fishery.<sup>3</sup>

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<sup>1</sup> See Article 2 of the Regulations on the Management of Cross-border Labor Service Cooperation.

<sup>2</sup> The Commerce Department of P.R.C: The chart of all kind of cross-border labors in contracting project and labor service cooperation in 2011, <http://www.mofcom.gov.cn>.

<sup>3</sup> The Commerce Department of P.R.C: The statistics of the cross-border labor service, <http://www.mofcom.gov.cn>.

### **1.3 The Risks in Front of Chinese Cross-Border Labors**

Chinese Cross-border labors are facing various risks, including (1) political risks, mainly include: war and civil unrest, government default, economic nationalism, and terrorism. Such risks have integral threaten, great influence and dangerous towards our workers; (2) business risks, such as the exchange rate risk, the competing risk, the risk of economic policy and the contractual risk. This kind of risks has the characteristics of wide influence and quick diffusion, it always infringes the interests of the Chinese labors as a whole; (3) social and cultural risks, such as the differences in customs, traditions and culture, the host country's hatred towards foreign workers, the extreme nationalism which leads to anti-Chinese activities. Such kind of risk will affect Chinese cross-border labors' long-term interests; (4) risks of natural disaster and accident. Although such risks happen occasionally, it still reflects the fact that the cross-border employers or the Chinese intermediary institutions do not provide sufficient protection to those workers on the one hand, and workers have the weak sense in protecting themselves on the other hand.

### **1.4 The Problems in Chinese Cross-Border Labor Protection**

Cross-border labor cooperation is the dominate part of Chinese services exporting trade and one of important component of Chinese-foreign economic cooperation. Unfortunately, there are some serious problems in Chinese cross-border labor cooperation:

(1) There is no special legislation for cross-border labor protection. The regulations issued by the central government and some rules issued by the local governments are not harmonious, or conflict to some extent.

(2) There are some problems in the administrative system. The Ministry of Commerce, the Ministry of Foreign Affairs, and the Ministry of Human Resources and Social Security share the administrative duties of cross-border labor cooperation. However, the division between these administrative agencies is unclear. Furthermore, the administration of cross-border labor cooperation focuses on micro aspect rather than macro one. As a result, the administration is not standardized and systematic.

(3) The role of the industry association is not fully played. The services provided by the industry associations, such as promoting coordination, collecting information, and advocating policy, cannot satisfied the fast development of cross-border labor cooperation.

(4) The intermediate institutions compete disorderly. Recent years, the intermediate institutions have increased significantly in the number, but most of them are lack in profession, standard management and innovation. This kind of situation will influence Chinese cross-border workers' rights and limit the development of the whole industry.

(5) The cross-border workers' have not sufficient professional knowledge which cannot meet the demand of international labor market. The imbalance of personnel structure and international labor market demand becomes the bottleneck of Chinese cross-border labor cooperation.

(6) There are a number of barriers in the international labor market. In general, cross-border labor mobility is an essential factor for labor exporting and importing countries. However, in order to increase national employment rate and to keep social stability, most countries set up various restrictions on cross-border labor mobility which brings great disadvantage on Chinese labor exportation.

## 2. THE ANALYSIS OF THE RELATED AUTHORITIES

As mentioned above, China has a large amount of labors working overseas who are facing various risks. Naturally, Chinese legislation plays an important role in protecting the interests of these labors. This section will give an analysis on the related authorities.

### 2.1 Overview of Chinese Related Legal System

Chinese legal system as to the cross-border labor cooperation consists of two categories. One is domestic authorities, such as Foreign Trade Law, Labor Law, Labor Contract Law and other respective regulations, Regulations on the Management of Cross-border Labor Service Cooperation”(Come into force on August 1, 2012), other department rules formulated by the ministries and commissions of the State Council,<sup>4</sup> and related local legislation and administrative regulations issued by local governments and departments. Another part is international treaties which was signed and joined by China with other countries, bilateral or multilateral.

The above mentioned authorities stipulate the rights and obligation of the parties concerned in cross-border labor cooperation for the purpose of protecting the rights of Chinese cross-border labors and encouraging the healthy development of cross-border labor cooperation.

### 2.2 The Problems in the Related Authorities

Although China has set up a legal system for cross-border labor cooperation, this legal system has many problems. The first problem is the absence of single and specific legislation for cross-border labor cooperation. The above mentioned legislation, such as Foreign Trade Law, Labor Law, Labor Contract Law, does not concern the cross-border labor legislation directly. Secondly, many specific rules and regulation are just issued by the central and local government or administrative departments whose legal status is obviously lower than those

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<sup>4</sup> Such as , Cross-border Employment Intermediary Management Regulations 2002, Operation Qualification of Foreign Labor Service Cooperation Management Approach 2004, Assignment Operation Qualifications of Foreign Cooperation Management Regulations 2005

enacted by the national legislative institution. Thirdly, there are too many abstract principles in the related authorities which are lack of practicability. Fourthly, some regulations and rules are overlap, inconsistent, and far behind the need of the modern cross-border labor cooperation. Therefore, it is urgent to review and amend if necessary these authorities. Finally, there are great diversity between Chinese authorities with international treaties. It is necessary to change some articles of Chinese authorities for the purpose of harmonization.

### **2.3 The Regulations on the Management of Cross-border Labor Service Cooperation**

The Regulations on the Management of Cross-border Labor Cooperation (the Regulation hereafter) has come into force on August 1, 2012. It is the ad hoc law and provides guidance for the cross-border labor cooperation.

The Regulations has the following positive features. First, the Regulation clarifies certain problems of cross-border labor cooperation and regulates the activities of the cross-border labor cooperation. Secondly, the Regulation expressly establishes the principle of labor protection which would benefit the legal protection of cross-border labors.<sup>5</sup> Thirdly, the Regulation prescribes strict rules for intermediary institutions which are engaged in cross-border labor cooperation. These rules reinforce the supervision from the beginning.<sup>6</sup> Fourthly, considering the importance of the contract in protecting the interests of the cross-border labors, the Regulation designs a specific chapter to regulate important issues as to the contract.<sup>7</sup> Fifthly, the Regulation expresses the duties of the government in cross-border labor cooperation. It regulates the government behaviors and helps to achieve the purpose of service-oriented government.<sup>8</sup> Finally, the Regulation stipulates the legal liability of the parties concerned for any infringement against the articles laid down in the Regulation.<sup>9</sup>

Despite achievements it gains, the Regulation still has the following problems. First, the Regulation is still the administrative rule which may influence its enforcement. Secondly, legal issues concerned in the Regulation are limited. It only focuses on the business activities of labors who work for foreign enterprises or institutions in foreign countries or regions, and keeps silent on other kinds of cross-border labor cooperation.<sup>10</sup> Thirdly, the Regulation designates the Department of Commerce as the supervisory department for cross-border labor cooperation. This design is inappropriate because the labor-employer relationship has different character with the business ones. Considering the nature of labor-employer relationship, it will

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<sup>5</sup> Article 1 of The Regulations on the Management of Cross-border Labor Service Cooperation.

<sup>6</sup> *Ibid.*, Chapter 2.

<sup>7</sup> *Ibid.*, Chapter 3.

<sup>8</sup> *Ibid.*, Chapter 4.

<sup>9</sup> *Ibid.*, Chapter 5.

<sup>10</sup> *Ibid.*, Article 2 & Article 19.

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be better to impose the power of supervision on the Department of Labor.<sup>11</sup>

### 3. SUGGESTIONS TO IMPROVE PROTECTION SYSTEM OF CROSS-BORDER LABOR COOPERATION

Since the situation on how to protect cross-border labors becomes more and more complicated, it is urgent to improve the protection system. This could be achieved by two ways. The one is to establish certain systems and correct some problems in legal authorities. Another one is to impose legal duties on the parties concerned.

#### **3.1 To Establish Certain Legal Systems and Correct Some Problems in Legal Authorities**

1. To establish a comprehensive legal system for Chinese cross-border labor cooperation. First of all, it is urgent to review all current authorities and make sure there is no any confliction between and unreasonable articles among them. Secondly, it is necessary to initiate the legislative process to promulgate specific legislation, such as Cross-border Labor Cooperation Law, as soon as possible; Thirdly, based on the new enacted legislation, more detailed judicial explanation or administrative rules need to be issued for the purpose of implementation.<sup>[4]</sup>

2. To expand the scope of Chinese relevant authorities to cover all kinds of cross-border labor cooperation.

3. To set up specific articles in the Criminal Law to punish any criminal activities against cross-border labors cooperation.

4. To set up specific and efficient labor disputes settlement and review mechanism. At present, the parties concerned under labor dispute must pursue arbitration first. Only if any of them does not satisfy with the decision, can he then has the right to sue. Such a mechanism is low in efficiency which is not suitable to solve the disputes arising from cross-border labor cooperation. Furthermore, arbitration is not good for the disputes of cross-border labor cooperation since their unique features. Therefore, it is necessary to establish a more reasonable and efficient labor dispute settlement mechanism.

5. To strengthen international communication and co-operation. It would be better for the government to participate in multilateral negotiations and conclude bilateral and/or multilateral treaties on the protection of cross-border labors. Thus, any disputes between contracting parties could be solved by international conventions rather than the state law.

#### **3.2 To Impose Legal Duties on the Parties Concerned**

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<sup>11</sup> *Ibid.*, Article 4.

Besides above mentioned suggestions on current legal system, another important aspect in protecting the interests of Chinese cross-border labors is to impose legal duties on the parties concerned, including the governments, the industry associations, the intermediary institutions and the labors. First, it is the duty of the government to protect Chinese cross-border labors. The government can work in the following aspects: (1) to pay more attention on cross-border labor protection from the strategic aspect. (2) to build up a reasonable administrative system and mechanism of governance; (3) to establish and improve risk assessment system and the emergency response mechanism for cross-border labor cooperation.

Second, various industry associations are playing more and more important role in cross-border labor cooperation area. Thus, the industry associations shall engage in the following work: (1) to enhance communication between the government, the intermediary institutions and the labors; (2) to provide training service to cross-border intermediary institutions and labors; (3) to participate in the consultations and negotiations with foreign institutions for the interest of Chinese cross-border labors.

Thirdly, the intermediary institutions have contractual responsibility in protecting Chinese cross-border labor according to the contracts or legal duties imposed by legislation and regulations. Generally, they have the following duties (1) to improve the awareness of Chinese cross-border labors as to any risks in front of them; (2) to set up the scheme as to the risk prevention; (3) to actively communicate with the government of foreign countries where the labors work; (3) to provide education for cross-border labors; (4) to fulfill their social responsibilities, such as making sure the welfare of labors and protecting environment.<sup>12</sup>

Finally, it is the most important aspect in cross-border labor cooperation is to enhance various self-protecting abilities of the labors themselves, such as to improve their professional skill; (2) to utilize legal means to safeguard their legitimate rights and interests, and (3) to establish more industry associations for the purpose of enhancing cooperation between labors.<sup>[5]</sup>

#### 4. CONCLUSION

Chinese cross-border labors' safety, property and other legal rights and interests are one of essential part of national interests. Chinese government, industry associations, intermediary institutions, and cross-border labors work together to protect the rights of these labors. However, there are still a lot of unsatisfying problems in Chinese legislation and regulations. It is urgent to establish a comprehensive legal system both in international or domestic level to make sure cross-border labors' legal interests are getting well protected.

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<sup>12</sup> Xinghuan net: Cheng Yi-ming, 'How can China protect 20million cross-border citizens', <http://news.xinhuanet.com>

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