

## Reducing HR Costs Smoothly in the Downturn

Unfortunately, the downturn is not a joke. These days, most companies need to find ways to reduce costs to face lower levels of business and keep everybody happy. The PRC labor Contract Law puts rather strict conditions on employers in changing remuneration or work time or in terminating labor contracts. Besides, there are no provisions in the Chinese welfare system for part time unemployment as available in Switzerland, so that steps to reduce labor costs need to be taken very carefully. On the other hand, subsidiaries with a small number of employees may not reduce their employee beyond a minimum level and keep the competences to serve their customers.

To deal with the current downturn, Chinese companies and Chinese government units are implementing reduction of both working hours (and corresponding income reduction) and reduction of salaries. Can foreign companies do the same?

### Changing Employment Policies

The Labor Contract Law provides that, in case of major changes in the macro economic environment, companies intending to change their policies regarding working hours, rest, leave, benefits to reduce costs shall discuss with the employee representative congress or with all the employees and decide on the issue through consultations with the Trade Union or with employee representatives.

### Reducing Salary or/and Working Time

Additionally, in case economic changes render the labor contracts unpractical, it can be revised under mutual consultation and agreement of both the company and its employees. In other words, if the company intends to introduce any reduction of salaries or working hours and corresponding salaries for part or all employees, it may only happen with the agreement of all employees concerned. Besides, an addendum to the existing employment contract or a new employment contract needs to be signed. (In particular, however, the newly set salary shall be above the city's minimum salary for 100% employment.)

### Downsizing

If consultations with employees do not lead to new employment agreements, the company is allowed to terminate the related labor contract by paying employees the legal compensation. The labor Contract Law also provides the upper limitation of such legal compensation.

However, faced with the alternative of lay-offs, our experience is that employees would rather collectively temporarily agree to reduction of salaries and/or work time, provided the reductions are generally reasonable and are well explained to all those concerned.

In addition, the Labor Contract Law allows lay-offs in the following situations:

1. A company can lay off its employees legally when such company is on the verge of bankruptcy;

2. If a company has serious difficulties in production and/or business operations, the company can lay off its employees; however, in practice, it's always hard to define "serious difficulty", and the company will have to provide evidence of the "serious difficulties" it faces (such as losing 50% of its turnover, for example);
3. The enterprise switches production, introduces a major technological innovation or revises its business method, and, after amendment of employment contracts, still needs to reduce its workforce;

Moreover, If economic or any of the above circumstances makes it necessary to reduce the workforce by 20 persons or more or by a number of persons that is less than 20 but accounts for 10% or more of the total number of the enterprise's employees, the company may reduce its workforce 30 days after it has explained the circumstances to its Trade Union or to all of its employees, has considered the opinions of the Trade Union or the employees and has subsequently reported the workforce reduction plan to the labor administration.

One remark in this regard is that, if the company re-hires employees within six months of lay-offs, the dismissed personnel shall be firstly informed and offered with the job openings.

Finally, as it is often the case in China, the current labor related laws allow for a range of interpretations. As a result, different practices are applied in different locations and different types of circumstances. Understanding the local practice is essential to a successful restructuring, not only to avoid legal difficulties but also because employees are likely to agree with the local practice as well.

Feel free to contact us by replying this email, should you need any support with respect to HR management and the legal situation, such as devising restructuring plans, changing company policies, reducing salaries or staff or minimizing know-how loss.

Anyway, have a very happy April Fools' Day!

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