

Who has the Right to Make “Law” in China? Populism, Professionalism, and Fragmentation
in China’s Legal Realms

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Abstract

In the post-Mao era, local law-making in China has become more transparent, participatory, and contentious. Law-making, broadly defined to include administrative regulations as well as laws, not only leads to increased contention between the state and social actors, but it can also ignite significant bureaucratic competition and struggle within the local state, between local and central authorities, and between local governments. This paper examines this multidimensional contention through the changes in labor legislation since the passage of the first national labor law in 1995. By examining different patterns of local lawmaking and legislative activism, the paper points to three trends in legislation: legislative coordination, legislative populism, and legislative fragmentation. Legislative fragmentation is a continuing consequence of the fragmented nature of China's authoritarian political system, but the paper also highlights an important new contradiction in China between legal professionalism (a key factor in rule of law development) and public participation in governance (a key factor in democracy).

INTRODUCTION

Legislative activity in China has grown rapidly during the entire reform period, but especially in the past two decades. Law-making, drafting of work reports, and solicitation of public opinion on the impact of new laws are many of the activities now undertaken by People's Congresses at different territorial levels, including the National People's Congress, the Provincial People's Congresses, and People's Congresses at the municipal and county levels. While People's Congress activities are still highly constrained by one party rule and by a lack of real decision-making power, these legislative institutions have long left behind the "rubber-stamp" model of socialist democracy (O'Brien; Tanner 1999, Cho 2006, 2009). Law-making is now profoundly affected by the input and debate that takes place within the congresses. Laws are no longer drafted and revised solely within bureaucratic organs that may have narrow interests and goals in mind. Draft laws are subject to a significant amount of debate and discussion through the forums and procedures set out in the PCs.

This paper first lays out some of these important changes taking place in Chinese lawmaking. In particular, I focus on three important trends: increased government attention to law-making as critical to (local) economic development and integration, relatedly with this attention is an increase in legislative activity, and finally, as a consequence of the increased importance of law, increased social and media attention to law-making. These trends are occurring in an institutional space that is fragmented (from top to bottom) and segmented (by bureaucratic boundaries). In addition to the center-local and bureaucratic turf battles, local law-making in China continues to occur under conditions of local competition for investment and employment. The consequences for legislative activity and legislative output are complicated. Using evidence from the development of labor legislation over the past two decades, I argue here that there are at least three important consequences: increasing incidence of legislative diffusion or coordination between neighboring regions. Second, due to the increased social attention to law-making and impulses from the center to address social injustice and inequality, there are strong central and social forces pushing for greater legislative populism. Finally, I find continued (or even worsened) legislative fragmentation as localities pursue law-making to boost economic growth and competition while social actors and central law-makers support populist laws. Much of the evidence provided here comes from the Yangtze River Delta (YRD), which has been particularly active in the labor legislative realm. In the conclusion, I lay out some ideas for expanding this argument to compare the YRD to the Pearl River Delta and the Bohai Gulf region.

LAW AND LOCAL ECONOMIC DEVELOPMENT

China's economic reform program that began in 1978 was not heavily reliant on the rule of law as a means to bolster the economy. If anything legal development followed economic growth (Clarke, Murrell, Whiting 2008). Peerenboom argues that effective legal development and professionalization is occurring in China's wealthy provinces as industrialization and urbanization foster the same modernization processes seen in other countries (Peerenboom 2007). In the 1980s and 1990s, economic growth was associated less

with formal law than it was with local party policy and connections to the external "patriotic" capital of overseas Chinese in Taiwan, Hong Kong, and Southeast Asia. As localities in China began to develop more extensive ties with the global economy, local law-making began to become more important to the local developmental state, both to manage and improve economic governance and to deal with private disputes and social grievances that arose out of rapid economic growth. In the last ten years, law-making has also been extended to building up a legal framework to manage the externalities of rapid growth, especially the development of a state-based social insurance system (moving from the work-unit based system of the past), the development of legal frameworks to absorb the large numbers of rural migrants into the coastal cities, and the development of more protective laws for workers, migrants, and "disadvantaged groups" as the latter reform period began to produce real "losers" amid increased inequality and rising perceptions of social injustice. As regional economies have strengthened and informally integrated, officials and academics have also called for more attention to legislative coordination and harmonization across territorial boundaries (Yi and Li 2009; Hua 2009, Xu 2007; Wei 2009). These efforts are often to boost capital and labor mobility. As opposed to the earlier period in which local governments were overwhelmingly known for their ability to flout or ignore central laws, today one can find many local governments using law proactively to build their economies. While this is sometimes still part of a strategy to weaken or evade central policies, the increased reliance on law is new.

LEGISLATIVE ACTIVITY

This late attention to law-making in China's local developmental states can be seen through the significant growth in legislative activity, particularly at the local level. This growth in legislative activity is simultaneous with growth in other parts of the legal sphere, including the legal profession, the judiciary, and "rights-defending" (维权) social organizations. In the March 2008 National People's Congress Standing Committee's Report to the NPC, it was reported that China's legal development including legislative activity by three main tiers - the central legislative organ, the National People's Congress, the center administrative organ, the State Council, and the local legislative and administrative organs at the provincial level and below. At the central level, laws made by the NPC or the NPCSC totaled over 300 by 2008. The State Council, the administrative arm of the government, had passed 600 pieces of administrative regulations. At the local level, provincial people's congresses, their standing committees and other legal institutions at the same level had passed over 7,000 pieces of legislation (Chen 2009). These levels of activity are dramatically different from the Mao era, which was marked by little reliance on law and gradual destruction of legal and judicial institutions after 1957. From the Cultural Revolution to the beginning of the reform era, for example, only one law was passed (Peerenboom 2002, 6) while Party edicts, administrative regulations, and mass campaigns substituted for legislation.

Cho's study of local people's congresses and Tanner's work on lawmaking recognized early on the changing nature of local legislative bodies and the increased importance these institutions placed on the drafting of local legislation (Cho 2006, 2009; Tanner 1999). Cho finds that in Shanghai, the promulgation of local laws tripled in the 1990s compared to the previous decade. More strikingly, he notes that, partially due to the heavier workload, fewer laws were reported to the Communist Party for review (Cho 2006). Based on research completed even earlier than Cho's, Tanner also finds the National People's Congress is no

longer a rubber stamp for laws and policies formulated elsewhere. Both at the national and local levels we see increased activity, debate, and contention within people's congresses over draft laws.

MEDIA AND SOCIAL ATTENTION

Legislative battles within people's congresses have caught the attention of Chinese and international media and interest groups with distributive concerns related to draft laws. Some of this attention is a direct consequence of formal reforms to increase public participation and transparency in China's law-making realms, but it is also related to the Chinese media's relative new openness and coverage of domestic political conflicts. In the issue area examined here, for example, the drafting of the new labor contract law in 2006 included a 30-day period for public comment solicited by the NPC on its website and elsewhere. The draft law attracted over 191,000 comments, shocking the government and the NPC, and far exceeding comments for any other draft law in recent time. In comparison, the controversial property law of 2007 received only about 10,000 comments. Portrayed in the media as an epic battle between Chinese workers and greedy corporations (especially foreign businesses operating in China), the public debate over the law drew in (and heightened the visibility of) the ACTFU (the official Chinese trade union), foreign business associations, academics who supported or opposed the law, and foreign and domestic worker rights organizations (Gallagher and Dong, forthcoming).

The media attention during the drafting phase is now credited with raising the rights consciousness of Chinese workers and, combined with the economic downturn, to unprecedented numbers of labor disputes since the law's implementation began on January 1, 2008. Labor disputes doubled in that year and continued at a high level through 2009. Lawyers, activists, and officials on the ground attributed this rapid increase to the wide coverage of the law in the press and the lowering of legal costs in another important law of 2008, the Law on Mediation and Arbitration of Labor Disputes. One official in Shanghai remarked that workers are now claiming old rights enshrined in the first labor law of 1994 with the erroneous belief that these rights were just recently bestowed by the new law. Local arbitration and judiciary institutions reported being overwhelmed by labor disputes as workers rushed to make good on the promise of the new law (Southern Weekend, 2009).

LEGISLATIVE TRENDS: DIFFUSION, POPULISM, AND CONTINUED FRAGMENTATION

Given the heightened legislative activity and the attention it now garners in China and abroad, I argue that there are three important trends in China's legislative bodies. First, local governments are borrowing and adopting legislation from other provinces, sometimes as a means to remain competitive or to catch up to regions that are perceived to be more modern or law-based. This legislative diffusion can also evolve to become more akin to legislative coordination, in which two or more provinces or cities collaborate to draft similar legislation to increase economic integration, labor/capital mobility, or other common goals.

Second, the membership of the people's congresses and law-making procedures, coupled with increased media attention to social issues, creates an atmosphere ripe for legislative populism, which can heighten the government's attention to social injustice and the

disadvantaged (and unrepresented) sectors of society, such as migrant workers. Legislative populism can produce laws that are often laudatory in theory but impossible to enforce or implement in practice. These central populist efforts are also undermined by local legislative responses, which are often drafted in a more professional but less transparent way. Social contention over the laws' meaning increases as do disputes and claims around the law.

Finally, these trends outlined above contribute to legislative fragmentation, or what Peerenboom terms as legislative "chaos." In his appraisal of the legislative system, he writes, "The quality of much legislation remains low, in part due to the lack of practical experience and competence of drafters. Laws and regulations are subject to frequent change. Even more worrisome, there is a shockingly high incidence of inconsistency between lower and superior legislation" (Peerenboom 2002, 240). As Peerenboom and others have noted, legislative and policy fragmentation is nothing new in China. It stems first from the structure of the political system, which is divided and fragmented by territorial boundaries, bureaucratic arenas that are not clearly delineated and often overlap, and the dual Party-State structure that pervades each level. It is also linked to the decentralization of the system in the 1980s, which granted local governments more autonomy and decision-making power and more responsibility for their own economic welfare. It is also, at times, a deliberate policy of experimentation and trial-and-error policy making that permits different policies to co-exist across the country and often will grant a locality laboratory status for an untested policy shift. The argument presented here is that this fragmentation is becoming more severe despite reforms and clarifications such as the Law on Legislation passed in 2000. This fragmentation is heightened by the dual forces of populism and professionalism. While rule of law development is often associated with both - increasing the quality of laws and judicial institutions (thus professional) while increasing public participation and transparency, rule of law building in China underscores their contradictions.

LEGISLATIVE DIFFUSION: SHANGHAI'S LABOR CONTRACT REGULATIONS, 2002

The 1994 National Labor Law, the first PRC labor law since 1949, set out principles and general guidelines for employment relations in the reform era. The law set out basic rights and responsibilities of employers and employees in China and was a dramatic step away from the "iron rice bowl" system that had been in place in China's state-owned and urban collective sectors since the 1950s. Some of the important aspects of the law include the national implementation of a labor contract system, which fundamentally ended permanent employment, a system of social insurance that mandated five funds for pensions, medical, unemployment, occupational injury, and maternity insurance, and some minimum standards for working conditions such as working hours, overtime, and vacation.

Many of the principles and policies laid out in the law were still only aspirational. Many of the clauses were too vague to be implemented without local or ministerial implementation regulations, which followed in rapid succession after the 1994 law went into effect. By the end of that decade, there was widespread recognition that supplementary laws were needed to fill in the gaps of this foundational law. Ministry of Labor officials reported plans for a law on individual contracts, a law on collective contracts, a law on social insurance, a law on labor dispute resolution, a law on employment promotion, etc. For many years, however, there was little movement on the national level for more legislation. The central government

was preoccupied with the restructuring of state-owned enterprises, but was also unsure about the direction of many of these policies. For example, how extensive should social insurance be for migrant workers? (The social insurance law is still delayed.) How should collective negotiations and bargaining take place within enterprises? (A law on collective contracts has also been delayed indefinitely.)

These policy and legislative delays at the center provide opportunities for local level experimentation and agenda-setting. Ambitious localities can attempt to influence the subsequent national legislation through their own local legislation. Localities can also study the laws and experiences of other regions, borrowing practices that seem beneficial for economic growth and social stability, the two sine qua non of local cadre evaluation and promotion. Processes of legislative diffusion and legislative coordination become possible.

In 2001 Shanghai moved to draft their own labor contract regulations and put their own imprimatur on the hiring and firing of employees. As one person involved in the draft reported, the delay at the center was an opportunity for Shanghai to provide a model for other regions and possibly the entire nation to follow. The Standing Committee of the Shanghai Municipal People's Congress passed Regulations on Labor Contracts (上海市劳动合同条例) on November 15, 2001. While this local law was not in direct conflict with the National Labor Law in any obvious way, it moved labor contract regulation in Shanghai to favor employers and it did not significantly enhance the rights of Shanghai workers. It also strengthened aspects of the National Labor Law that permitted short-term employment and labor market flexibility through the expiration of term contracts.

In the year or two following the release of the Shanghai regulations, many other provinces and cities passed laws or administrative regulations to regulate labor contracts. In many important issue areas, there is a clear trend of legislative diffusion (perhaps coordination?) with differences between northern and southern provinces and cities. YRD provinces and cities generally provide more market-based and employer-friendly regulations while northern provinces and cities toe the line of the 1994 law and sometimes exceed it in protections for employees. The table below highlights these differences with some examples from restrictions on fixed-term contracts, non-compete agreements (which restrict the rights of the employee post-termination), and restrictions on the right of employers to terminate employees.

(TABLE 1 HERE)

In areas important to employers, especially restrictions on fixed-term contracts, this "Southern School" (南派) of regions followed the Shanghai model of local legislation that took advantage of the vagueness of the central laws and the legislative delay to craft detailed regulations that provided not only increased labor market flexibility but also clarity, albeit not friendly to Shanghai workers. Legislative diffusion created the increasing appearance of "legislative blocs" as different regions adopted different rules.

LEGISLATIVE POPULISM: THE NATIONAL LABOR CONTRACT LAW, 2008

By 2004, the central government began to move actively to address legislative delays in many of the critical areas of labor and employment law. The draft labor contract law, the draft

employment promotion law, the draft law on social insurance, and the draft law on labor dispute resolution all began processes of drafting and review in the subsequent years. The draft labor contract law (LCL) is the most significant of these laws to have been passed into law. (The draft social insurance law is equally important, but has not been passed.) The LCL's journey from the early drafting stages within the Ministry of Labor and Social Security (MOLSS) (now the Ministry of Human Resources and Social Security) to passage by the Standing Committee of the National People's Congress in June 2007 is emblematic of the legislative populism of current NPC law-making.

Scholars of the NPC have long noted its tendency toward more conservative (anti-reform) policies (Tanner 1999; Cabestan 2001). Although in the 1990s this was mostly attributed to elite leadership politics (i.e. Li Peng, then head of the NPC vs. Zhu Rongji, then head of the government), there are important institutional and membership effects that also contribute to NPC policy preferences that are anti-market as market friendly policies are now perceived not necessarily to be "pro-reform" but "pro-rich." In the case of the draft labor contract law, there were three important factors pushing a more populist and protective law. These were the designation of which units could participate in the drafting process, the membership of NPC leadership, especially within the Standing Committee, and finally, the application of a 30-day period of public comment.

Legislative drafting usually begins with the ministerial ranks of the State Council, not the NPC itself. This is a holdover from the 'rubber stamp' era in which the NPC passed laws that had been created within the administrative arms of the government, often interpreting broad CCP policy and their own narrow bureaucratic interests into law. Although drafting continues to begin in this way, legislative drafting is now more consultative and open. The draft LCL began within the MOLSS but was, by the second full draft, then subject to a consultative process involving the All-China Federation of Trade Unions (ACFTU) and the Legislative Affairs Office (法制办公室) of the State Council. Academic study groups also played a more minor role. This remained the case throughout the rest of the legislative process and all subsequent drafts, until the final law's passage in June 2007. Thus, this is a law that is drafted without the official involvement of organizations or associations (such as the 企联, 工商联) that represent the interest of employers or capital. While many Chinese labor laws and regulations have aspired to notions of a tripartite system of consultation and bargaining between the state, labor, and capital, this is not the case in labor legislation drafting. The ACFTU remains a powerful force at this level. The key figure within the ACFTU's legislative affairs office, Guo Jun (郭军) was intent on making sure that the interests of the ACFTU and of workers were addressed in the LCL (Guo 2007).

The lopsided nature of the drafting process is reinforced by the backgrounds and policy preferences of NPC members, especially the more powerful members of the much smaller Standing Committee of the NPC. While membership of "workers and peasants" has fallen over the reform period, most NPCSC members are retired from either government or party organizations or are affiliated with the "mass organizations", such as the ACFTU, the Women's Federation, or the Communist Youth League. The average age of NPCSC members continues to be over 60 years old, though it has fallen somewhat in recent years. While the educational and professional backgrounds of many NPCSC members put them squarely as part of the "elite", for the most part these members represent the interests

of the CCP establishment. Thus, membership of the main body tasked with passage of the LCL was very similar to the membership of the main bodies tasked with drafting of the LCL. This further reinforced aspects of the law that were protective (i.e. pro-worker) and anti-market. The national LCL was also markedly different from the local legislation that was already in place in many southern provinces and cities.

The draft LCL was released for public comment in March 2006 and, as discussed above, attracted more comments than any law in recent memory. (Some observers stated that only the 1954 Constitution attracted more comments in PRC history.) Media attention to the draft law was intense and focused, in particular, on the public comments of foreign business associations, which were largely critical of the law. The American Chamber of Commerce in Shanghai hinted that it would affect China's ability to attract foreign direct investment. There were accusations that key members of the chamber publicly threatened legislators that their companies would divest (撤资)。 Domestic and international NGOs involved in workers' right protection also supported the law and criticized foreign companies' attempts to influence China's labor legislation. For many activists, opposition to the law was taken as evidence of "the race to the bottom" in global production networks as companies forced developing countries to toe the line of mobile global capital.

Given the heightened public attention to the draft law, there was enormous pressure on the drafting group to respond to public opinion, which was heavily in favor of a protective law. While the final law did step back from some key protective provisions that were in the March 2006 public comment draft, the final law incorporated key provisions providing for greater employment security, restrictions on labor contracting (a kind of informalization), and new penalties and liabilities for employers that did not implement the law. The 2008 Labor Contract Law began to reverse the relative flexibility of the 1994 Labor Law.

LEGISLATIVE FRAGMENTATION: ENFORCEMENT AND IMPLEMENTATION OF THE LCL, 2008-

The central government's passage of the Labor Contract Law in 2008 was to put an end to the local variation and experimentation that had occurred prior to this establishment of a "national standard" in the regulation of labor contracts. However, as the law went into effect and began to be implemented in China's localities, the global economic crisis severely affected China's export sectors and threatened to increase the unemployment rate dramatically. The crisis weakened the resolve of the central government to push strict enforcement of the law. Within the NPC and in the media there were calls for the LCL to be rescinded or its implementation delayed. While the NPC leadership rejected these measures, localities responded to the lack of central resolve with initiatives of their own.

By 2009 several localities released High Court interpretations of the 2008 legislation. This judicial activity was once again focused in the south, with judicial explanations coming from Shanghai, Jiangsu, Zhejiang, and Guangdong. These explanations provided some important clauses that benefitted employers, with the intention to weaken the impact of the national laws. The reliance on the judiciary for local implementing guidelines is also interesting in the context of increased public attention and support for the protections offered by the LCL. Judicial opinions and explanations are not subject to the same degree of transparency or participation as local legislative institutions, such as the People's

Congresses. These interpretations were not publicly debated nor were they produced, like the draft LCL, through consultation with “competing” interests, such as the local trade union.

Trends are not uniform, however, even within China's more open and reformist southern provinces. Since the passage of the LCL, the People's Congress of Shenzhen Special Economic Zone has passed regulations that further strengthen restrictions of the LCL and empower local trade unions to more effectively negotiate with employers. Shenzhen also has plans to pass collective contract negotiations that enhance the power of workers' representatives in the bargaining process.

CONCLUSION

The cycle between local experimentation and national consolidation continues in the aftermath of the passage of the controversial LCL. As with the period between the 1995 Labor Law and the LCL in 2008, we again see legislative divergence and fragmentation as local areas adjust the new law to their own conditions and economies. It is probably not very surprising that the cities and provinces with large numbers of foreign and private enterprises involved in labor-intensive manufacturing are the same localities generally pushing for less protective laws and greater labor market flexibility. (Shenzhen's emphasis on collective rights is an interesting outlier!) This is a normal political response to important local constituencies who vote with their feet as they choose where to place the next factory. However, given the increased media and social attention to law-making, there is likely to be much more open conflict between the two poles of populist and pro-growth ideologies.

In subsequent work on this topic, I will expand my analysis to focus on the regional coordination and compare trends in the three main centers of industrial production in China: the Pearl River Delta, the Yangtze River Delta, and the Bohai Gulf Region. The paper currently juxtaposes a pro-market ideology (南派) with a pro-populist/socialist ideology (北派) that prioritizes government regulation and restrictions on employment relations. But this is a simplification. Within the south, there is some evidence of a third road: reduced government regulation but increased space to workers' organizations and trade unions. If there is again a relatively long period of central legislative delay, which after the furor of the LCL and the economic crisis is perhaps very likely, we may be entering into a new period of legislative diffusion and competition as local governments in China attempt to balance their pursuit of growth against the populist tendencies growing at the center and in society.

CITATIONS (STILL INCOMPLETE)

Cho, Young Nam. 2006. "The Politics of Lawmaking in Chinese Local People's Congresses." *The China Quarterly*.

Cho, Young Nam. 2008. *Local People's Congresses in China: Development and Transition*. New York: Cambridge University Press.

Clarke, Donald, Peter Murrell and Susan Whiting. 2008. "The Role of Law in China's Economic Development." In *China's Great Economic Transformation*. New York: Cambridge University Press.

Guo, Jun. 2007. "Several Problems to Follow Closely After the Third Reading of the Draft Labor Contract Law," 劳动合同法 (草案) 三审后值得关注的几个问题。 *China Labor* 23. (June).

Hua, Guoqing. 2009. "我国城立法协调研究。 *Academics in China* 2 (March).

Peerenboom, Randall. 2002. *China's Long March Toward the Rule of Law*. New York: Cambridge University Press.

Peerenboom, Randall. 2007. *China Modernizes: Threat to the West or Model for the Rest?* New York: Oxford University Press.

Wei, Li. 2009. «Thoughts on the Establishment of a Legal Mechanism of Labor Cooperation in the Pan Pearl River Delta Area,» (建立法治型“泛珠”区劳务合作机制机的思考).

Xu, Rusong. 2007. «Research on the Problem of Legislative Coordination between Two Provinces and One City in the Yangtze River Delta.» (长三角两省一市立法协调问题研究) *The Rule of Law Forum* 22:6 (November).

Yi, Ling and Li Yifei. (2009). "Coordination Countermeasures for Differences and Conflicts in Social Security Regulations and Policies in the Yangtze River Delta." (长三角社会保障法规政策差异冲突及其协调对策)。

LAWS AND REGULATIONS CITED

The Labor Law, 1994

The Labor Contract Law, 2008

The Law on Mediation and Arbitration of Labor Disputes, 2008

The Law on Legislation, 2000

The Employment Promotion Law, 2008

Shanghai Municipality Regulations on Labor Contracts, 2001
Jiangsu Province Regulations on Labor Contracts, 2003
Guangdong Province Regulations on Labor Contracts, 2003
Zhejiang Province Rules on Labor Contracts, 2002
Hangzhou City Regulations on Labor Contracts
Ningbo City Rules for the Implementation of Labor Contracts, 2002
Hebei Province Regulations on Labor Contracts, 2002
Tianjin Municipality Regulations on the Implementation of the Labor Contract System, 2002
Beijing Municipality Regulations on Labor Contracts, 2001
Regulations to Promote Harmonious Labor Relations in the Special Administrative Region
of Shenzhen [Shenzhen jingji tequ hexie laodong guanxi cujin tiaoli], issued 23
September 08, effective 1 November 08
Jiangsu High People's Court and Jiangsu Labor Dispute Arbitration Committee Circular on
the Use of the PRC Law on Mediation and Arbitration in Labor Disputes [jiangsu
sheng gaoji renmin fayuan jiangsu sheng laodong zhengyi tiaojie zhongcai
weiyuanhui yinfa guanyu shiyong zhonghua renmin gongheguo laodong zhengyi
tiaojie zhongcaifa ruogan wenti de yijian de tongzhi], issued 10 October 08
Jiangsu High People's Court Guiding Opinion on the Handling of Labor Dispute Cases in
Economic Crisis [jiangsu sheng gaoji renmin fayuan guanyu zai dangqian hongguan
jingji xingshi xia tuoshan shenli laodong zhengyi anjian de zhidao yijian], issued 27
February 09
Guangdong High People's Court and Guangdong Province Labor Dispute Arbitration
Committee Guiding Opinion on Questions about the Use of the Labor Dispute
Mediation and Arbitration Law and the Labor Contract Law [guangdong sheng gaoji
renmin fayuan guangdong sheng laodong zhengyi zhongcai weiyuanhui guanyu
shiyong laodong zhengyi tiaojie zhongcaifa laodong hetongfa ruogan wenti de zhidao
yijian], issued 23 June 08
Shanghai High People's Court Circular on Questions about the Use of the Labor Contract
Law" [shanghai shi gaoji renmin fayuan guanyu yinfa guanyu shiyong laodong
hetongfa ruogan wenti de yijian de tongzhi], issued 3 March 09

TABLE ONE: LOCAL LABOR CONTRACT REGULATIONS, PRE-2008
North and South Comparisons

	Date passed	Restrictions on Fixed Term Contracts	Regulation of Non-Compete Agreements	Restrictions on Right to Terminate
SHANGHAI	11/15/01	No restrictions	Yes	Equal to national law
NINGBO, ZHEJIANG	6/20/02	No restrictions	Yes	Less than national law
HANGZHOU, ZHEJIANG	11/18/02	No restrictions	No	Equal to national law
JIANGSU	10/25/03	No restrictions	Yes	Equal to national law
ZHEJIANG PROVINCE	11/18/02	Must sign open contract after ten years tenure	No	Exceed national law
BEIJING	12/13/01	10 year tenure rule. Also open contracts for “model workers”, retired servicemen, and farmers who have been assigned work due to loss of farmland.	No	Exceed national law
HEBEI	5/13/02	10 year tenure rule	No	Equal to national law
TIANJIN	1/18/02	10 year tenure rule. Also open contracts for men over 45 and women over 40 (with 15 years work experience).	No	Equal to national law