



Labor and Employment

The Preeminent China-based International Law Firm

Founded in 1993 and one of the most prestigious law firms in the region, Fangda Partners has over 700 lawyers. We serve a wide variety of major clients – including large MNCs, global financial institutions, leading Chinese enterprises and fast-growing Hi-tech companies – on an extensive range of commercial matters through our network offices in Beijing, Guangzhou, Hong Kong, Shanghai and Shenzhen, offering PRC law and Hong Kong law.

We are the firm of choice for clients' most challenging transactions and legal issues in many practice areas. Since we were founded, we have advised on some of the largest and most complex corporate and finance transactions in China, the region and globally. We have also assisted our clients with many renowned and complex cases and arbitrations, compliance and government investigations in the region.

Our service to clients is premised on the dual foundations of strong local law capabilities and a global business outlook. Our lawyers are qualified in many jurisdictions, including the People's Republic of China, Hong Kong SAR, England and Wales, the United States, Singapore and Australia.

Our understanding of the laws and processes in major jurisdictions around the world enables us to advise our clients effectively on the largest and most complicated cross-border matters in China and elsewhere. Our strengths have been widely recognized by our clients and peers. Chambers has commented on our cross-border capabilities in the following terms – “outstanding quality of its lawyers”, “high level of service that is comparable to international firms”, and “strong global outlook”.

Labor and Employment Practice

Human resource is key to the success of any business. In China, one of the challenges of managing human resource is coping with the maze of the constantly-evolving employment laws, regulations and practice at different administrative levels and localities. Our labor and employment practice group helps our clients to do just that.

Our labor and employment specialist team of more than 20 qualified lawyers is strategically stationed in Shanghai, Beijing, Guangzhou, Shenzhen, and Hong Kong to serve both international and domestic clients across a wide variety of industries. We act on virtually all aspects of the laws regarding HR management.

We are well placed to meet our clients' requirements for legal service in their HR management thanks to our following strengths:

- Strong experience and extensive knowledge of China's employment laws and practice combined with business acumen. This enables us to see the clients' employment law issues in their particular commercial settings and provide clients not just with sound legal analysis but also practical solutions.
- Proven ability in serving international clients from different legal cultures. All of our employment specialists are bilingual (Chinese and English) Chinese lawyers. Some of them have overseas qualifications or have been key members of the employment practice of highly regarded international law firms. Our client base includes the Chinese affiliates of many renowned global businesses. Owing to this combination of local knowledge and international perspective, we are uniquely well positioned to serve international clients in their HR management in China.
- A well established employment practice supported by the firm's multi-disciplinary legal team. Employment issues are often intertwined with our clients' other commercial operations. Our employment specialists work seamlessly with our lawyers in other practice areas to provide our clients with solutions that serve our clients' broader commercial objectives.
- Close relationship with Ius Laboris, a leading international employment law practice combining the world's leading employment, labor and pension firms. Through cooperation with member or affiliated firms of Ius Laboris, we are able to serve both domestic and foreign clients on matters involving a cross-border element.

Scope of Services

- Documentation and Daily Issues
- Labor Arbitration and Litigation
- Employee Stock Option Plans (ESOPs) and Incentives
- Labor Due Diligence
- Layoff, Transfer and Restructuring
- Internal Investigation
- Mobility and Immigration

Recognition

Labour and Employment: PRC firms - Tier 2

— *Legal 500 Asia Pacific, 2017, 2018, 2019 and 2020*

Employment (PRC Firms) - Band 3

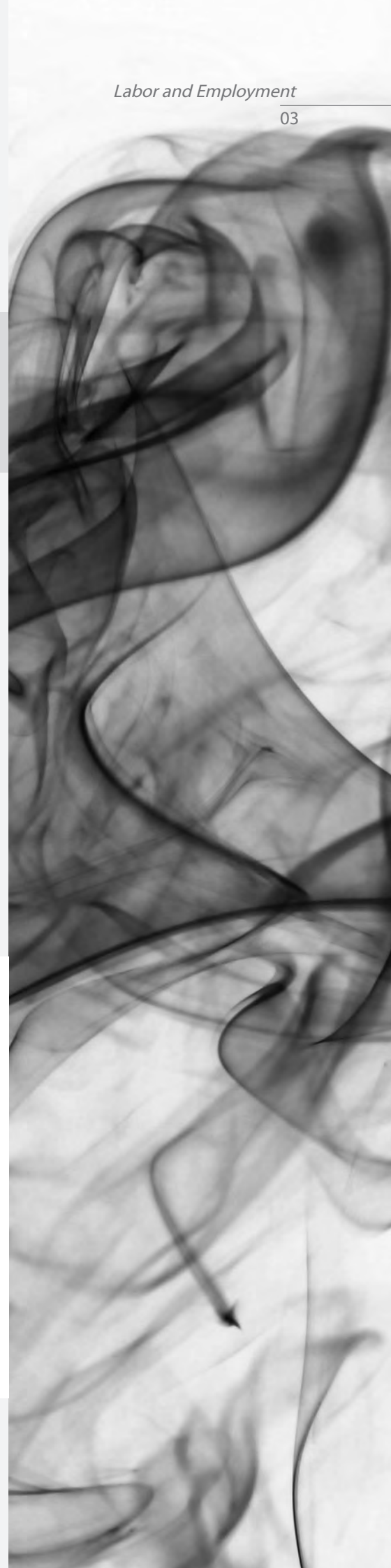
— *Chambers Asia-Pacific, 2017, 2018, 2019 and 2020*

Labour and Employment - Recommended

— *Asialaw Profiles, 2019 and 2020*

Labour and employment (PRC firms) - Tier 2

— *Benchmark Litigation Asia-Pacific, 2020*





Our Experience

Documentation

We assist clients in their preparation of key documents used in HR management, including offer letters, labor contracts, confidentiality and non-competition agreements, employee handbooks, employee invention policies, and codes of conduct. These documents are tailor-made for different categories of employees in China. Among other mandates, we assisted and advised:

- **Philips** to review and revise their employee handbook and on the procedure for the new handbook to be adopted by affiliates in different localities in China.
- **TPG** to adapt their U.S. version of employee handbook to the PRC legal environment, complying with PRC law while staying in line with the company's global policy.
- **Hershey** to review and revise their employee handbooks for their different subsidiaries in China. We also advised the client on the procedures to adopt the revised handbook for their subsidiaries.
- **Roche Diagnostics** on the procedure to adopt a revised Ethics Code and standard operating procedure (SOP).
- **AstraZeneca** on its SOP regarding disciplinary actions involving misconduct.
- **Dealer Tire** to review their employee handbook and draft their employee invention policy for their Chinese subsidiary.



Day-to-Day HR Management

We advise clients on a broad range of employment law issues they encounter in their day-to-day HR management (e.g. hiring, sickness, workplace injuries, occupational illness, statutory benefits, disciplinary actions, demotion, salary reduction and termination). Proper handling of these issues is a crucial part of the control of risks of non-compliance and employment disputes. Among other mandates, we assisted and advised:

- **Hilton** on the termination of several employees whose performance was unsatisfactory, as well as labor dispute with its expatriate senior executives.
- **GE Consumer and Industrial** on the termination of a department head for material dereliction and the reassignment/termination of the employees in the department.
- **Dunnhumby** on its negotiation with an expatriate employee injured during a team building activity on the employee's termination.
- **NYU Shanghai** on the termination of several of its staff.

We regularly advise clients (e.g. AstraZeneca, Bayer, Roche, Temasek, Teleflex, Ametek, Sateri, Zegna, LinkedIn) on a variety of employment law issues, including, among others, statutory annual leave, employment of expatriates in China, disciplinary actions against employees, change of position/remuneration, work injury, bonus, employee training.

We frequently provide training to employees, HR staff and/or department managers of various clients in relation to employment law and practice, compliance with company policies, anti-harassment, and/or business ethics.

Labor Arbitration and Litigation

Disputes with employees are sometimes inevitable. We represent clients in the resolution of employment disputes of different nature across the country. Among other disputes, we represented:

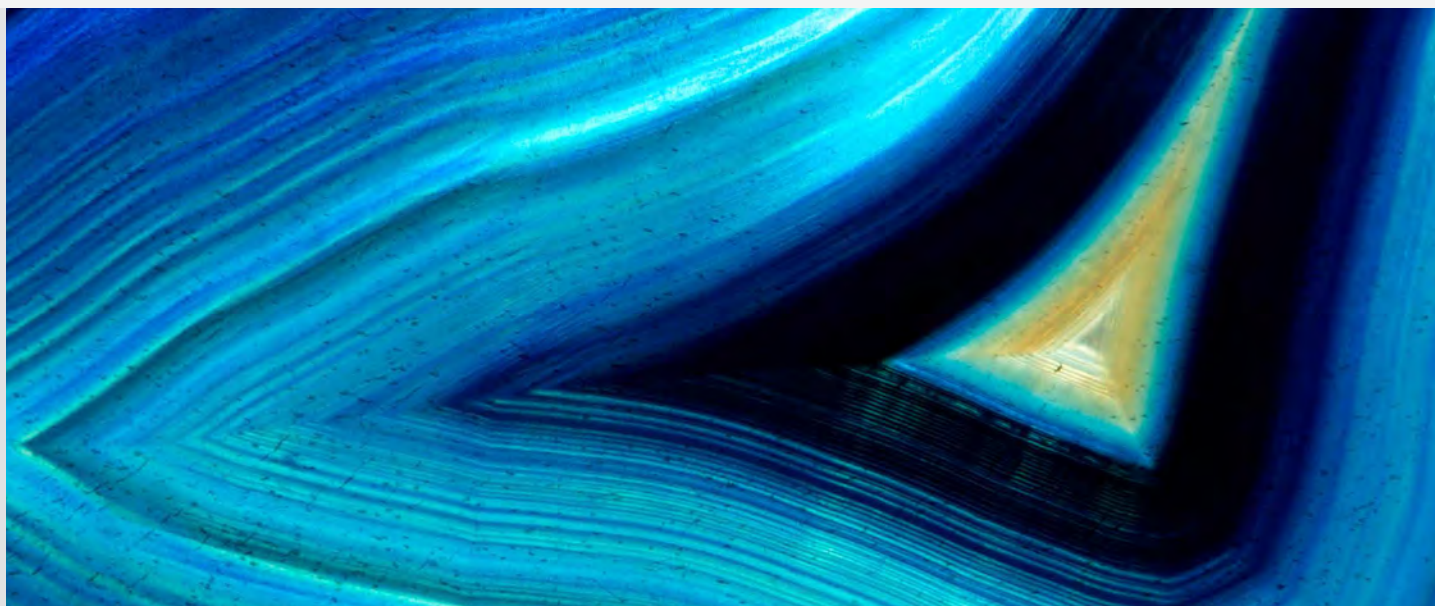
- **Baxter** in the labor arbitration and litigation initiated by an expatriate employee in Shanghai for wrongful termination. The key issue was whether the contractual ground for termination was enforceable. We successfully defended the company in both the labor arbitration and the court litigation that followed.
- **AstraZeneca** in the retrial of a labor dispute case before the Supreme People's Court. The case was initiated by an employee who claimed that he suffered trismania because of his dismissal, and that such illness should be recognized as an occupational illness and the company should compensate him for medical costs. The case went through the labor dispute arbitration, the first instance trial, the second instance trial and the retrial at the provincial Higher People's Court, and finally reached the Supreme People's Court. The Supreme People's Court supported our argument and ruled in favor of the company.
- A subsidiary of a multinational computer company in defending a lawsuit regarding job discrimination initiated by a job applicant. This was the first litigation in Shanghai arising from discrimination of hepatitis pathogen carrier. The legal issues involved were complicated and sensitive given the large number of hepatitis pathogen carriers in China, and the case attracted extensive attention in the media. We helped the client to obtain a first instance judgment in their favor, and to successfully settle the claim before the appellate court.

- A U.S.-based software company in the labor arbitration initiated by their former China sales director who was terminated due to gross misconduct, and helped the client to win the case.
- A Denmark-based industrial company in labor arbitration and litigation initiated by its former regional sales manager in Beijing who was terminated due to breach of conflict of interest rules, and helped the client to win the case.
- A European satellite company in labor arbitration and litigation initiated by its former admin assistant in Beijing who was terminated due to poor performance, and helped the client to successfully defend her claims for reinstatement.
- **LEM**, a subsidiary of Danaher Corporation, to initiate labor arbitration against a senior manager for embezzlement.
- **Rolls Royce Marine** in labor arbitrations initiated by two of its former procurement employees who had been dismissed due to serious violation of the company's rules on the use of IT equipment and avoidance of conflict of interest, and helped the client to successfully settle the claim.
- A subsidiary of **Singapore Telecommunication** against a former senior manager in a trade secret infringement case.
- A leading food processing and packaging company in a labor dispute arbitration and litigation case against a former employee about termination of his employment due to gross misconduct, and helped the client to win the case.
- A renowned global chemical company in a labor dispute case against a former employee (a senior marketing manager) for her breach of the non-competition agreement, and helped the client to win the case.
- A state-owned real estate developing company in a governmental hearing proceeding initiated by one of its former employees, whose complaints dated back 10 years. Helped the client successfully defend her claims during the hearing proceeding.
- A U.S.-based spraying equipment manufacturer in a labor dispute arbitration case against one of its former sales engineers concerning breach of non-compete covenant, and helped the client to win the case.
- A high-tech company in a labor dispute arbitration and litigation case against its former technical director for breach of non-compete covenant, and helped the client to win the case.

Internal Investigations

We help clients to investigate, often in tandem with investigations conducted outside China, employees' fraud, corruption, breach of business ethics and other types of misconduct. We also advise clients on their legal positions and suggest course of actions appropriate to the particular cases. Among other mandates, we advised:

- A leading multinational chemistry and healthcare company on its investigation of a non-compliance matter involving an operational team and the vendors of its China subsidiary.
- A leading multinational pharmaceutical company on its investigations of various non-compliance matters involving several sales teams in different regions of China and the disciplinary actions against the wrongdoing employees.
- A leading European pest control company on its investigation of a non-compliance matter involving several senior executives of its China subsidiary.
- A major European bank on its investigation of a non-compliance matter involving an operational team of its China subsidiary.
- A leading semiconductor manufacturing company on its investigation of a non-compliance matter involving a senior manager and the vendors of its China subsidiary.
- A leading U.S. car part manufacturing company on its investigation of a non-compliance matter involving a terminated employee and two high-level managers of its China subsidiary.
- A leading U.S. medical appliance manufacturing company on its investigation of a non-compliance matter involving a senior sales manager of its China subsidiary.
- A Sino-foreign joint venture university on its investigation of a non-compliance matter involving its procurement team.
- A Denmark-based supplier of protective coatings on its investigation of a non-compliance matter involving the sales team of its China subsidiary.



ESOPs and Incentives

Incentives are important in terms of attracting and retaining talented employees, but are also easy to give rise to disputes. We regularly represent clients in disputes cases involving ESOP or other incentives. We also help clients draft, review and localize their ESOP or other types of incentive plans (including, phantom shares, stock appreciation rights, long-term incentive plans, and retention bonus plans). Among other cases, we represented:

- A European pharmaceutical company in an ESOP dispute case involving one of its former employees in Shijiazhuang, Hebei Province.
- A leading e-commerce company in two cases concerning ESOP disputes initiated by its former employees, and helped the client to settle one case and win the other one.
- A U.S.-based investment company in an ESOP dispute case involving its former Chinese CEO in Shanghai.
- An individual, formerly the technical director, in an ESOP dispute case against his former employer.
- A U.S.-based medical appliance company in the localization of its ESOP for the purpose of better incentivizing its local management team in China.
- A local entertainment company in several ESOP dispute cases involving three of its current employees who had established a competing business.
- A U.S.-based leading provider of advanced, high-performance process control metrology and inspection systems in drafting of a long-term incentive plan for its China management team.
- A U.S.-based leading consulting company in changing its incentive plan for its management team in China.

We have advised many companies on ESOP schemes, and on various issues concerning the formulation, amendment and implementation of ESOPs and other types of incentive plans.

Layoff, Transfer and Restructuring

The changing market sometimes requires businesses to make difficult decisions, including laying off employees. We constantly advise clients on layoff of employees due to various reasons such as restructuring, relocation, liquidation, M&A, and business downsizing. Among other mandates, we advised:

- A U.S. industrial company on its layoff of more than 1,000 employees due to liquidation and closure of one of its local entities in Shanghai. We helped the client to prepare all legal documents, develop the negotiation strategy and action plan, and execute the negotiation.
- A U.S. energy company on its layoff of more than 20 employees due to restructuring. We helped the client to successfully terminate all of the target employees within the planned timeline and severance budget.
- A European coffee maker on its layoff of more than 150 employees due to business cessation in Guangzhou. We helped the client to prepare all legal documents, develop the communication and action plans, communicate with various authorities, and execute the employee face-to-face meeting.
- A British retailer on its layoff of more than 300 employees based in five different cities in China due to store closure (including Shanghai, Suzhou, Beijing, Chengdu and Wuhan). We helped the client to prepare all legal documents, develop the communication and action plans, and negotiate with non-cooperative employees.
- A U.S. industrial company on its layoff of more than 50 employees due to liquidation and closure of one of its factories in Beijing. We helped the client to prepare all legal documents, and develop the communication and action plans, and also guided the client's HR to execute the layoff.
- A German industrial company on its layoff of more than 60 employees due to restructuring in both Inner Mongolia and Beijing. We helped the client to prepare all legal documents, develop the communication and action plans, communicate with various authorities, and execute the employee face-to-face meeting.
- A European electronics company on its layoff of more than 80 employees in one of its China based factories. We helped the client to prepare all legal documents, and communicate with the local authorities.

Labor Due Diligence

Labor due diligence is an integral part of the due diligence process of various business transactions. We are often engaged to conduct labor due diligence in transactions such as equity acquisitions, mergers, restructurings or joint venture formations. Among other mandates, we assisted:

- A U.S.-based investment firm to conduct labor due diligence in its acquisition of two business lines of another leading U.S. industrial giant. As part of the global level deals, our due diligence focused on all of the seller's more than 10 China subsidiaries.
- A leading SOE in the steel industry to conduct labor due diligence in its intentional acquisition of a local SOE based in southwest China.
- A China-based pioneering electric car maker to conduct labor due diligence in its acquisition of a subsidiary of a leading automotive corporation in China. The deal was aimed at acquiring the license for automotive manufacturing of the target company.
- A U.S.-based industrial company to conduct labor due diligence in its intended purchase another industrial company. As part of the global-level deal, our due diligence focused on the seller's two China subsidiaries.
- A European semiconductor manufacturer to conduct labor due diligence in its intended purchase of a high-tech start-up company. As part of the global level deal, our due diligence focused on the seller's China subsidiary.
- A U.S.-based company in the aerospace industry to conduct labor due diligence in its transactions with two local companies in China for the purpose of establishing joint ventures. The labor due diligence was part of the general due diligence aimed at identifying compliance risks in relation to the JV partner's business.

Mobility and Immigration

Travel to and/or work in China has become increasingly frequent for non-Chinese employees of multinational companies with business operations in China. We frequently advise clients on issues relating to mobility and immigration issues, and also assist clients in the application of both visas and (if applicable) work permits. For example:

- We advised a U.S. consulting company on the application of the registration of "Foreign High-level Talents" for a foreign director in Shanghai, as well as the application of the student visa and dependent visa for his family members.
- We advised a U.S. electronics company on the employment of a foreign senior management in Shanghai, and provided assistance to apply for the work permit.
- We advised a UK clothing company on the extension of the work permit and residence permit in Shanghai, and provided assistance to apply for the extension.
- We advised a U.S. aerospace company on immigration matters relating to its dispatch of its U.S.-based employees to Shanghai and Zhejiang.
- We advised a UK trading company on the application of the business visa in Shanghai, and provided assistance to make the application.
- We advised a Japanese electronics company on the employment of foreign employees in China under short-term working assignments and the application of the short-term work permit.
- We advised a European commercial company on specific requirements for the legalization process under the application of the work permit in China.
- We advised a European industrial company on the application of the tourist visa and family reunion visa in China.

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