



FANGDA PARTNERS  
方達律師事務所

# 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 nearly 800 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, Nanjing, 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 10 qualified lawyers is strategically stationed in Shanghai, Beijing and Guangzhou 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:

## Dedicated Team

We have one of the few focused and dedicated labor and employment practices of the top-tier PRC firms. All of our team members are bilingual (Chinese and English) Chinese lawyers, and some of them have overseas qualifications or have been key members of the employment practices of highly regarded international law firms. All are familiar with both contentious and non-contentious matters, enabling them to have in-depth understanding and insight into the applicable labor and employment legal issues.

## Solid Experience

Our team members have many years' continuous experience of advising clients in a wide range of industries and sectors on labor and employment law. In particular, we have specialist experience in complex cases, including enforcement of non-competition covenants and ESOP-related disputes, and matters involving multiple legal issues, such as trade secrets infringement and compliance investigation.



## Diversified Clients

Our clients range from the Chinese subsidiaries of renowned multinational companies to state-owned and private enterprises in China. They are drawn from a variety of industries, including manufacturing, electronics, healthcare, IT, finance, real estate and automobile. We have gained extensive in-depth knowledge of these industries as a result of building long-term client relationships with clients and delivering to their industry-specific needs.

## Cooperation with Other Fangda Practices

It is a strong feature of Fangda's services delivery that our lawyers across practices work seamlessly together to provide clients with solutions that serve their broader commercial objectives.

## Cross-border Business Capability

We maintain a 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
- Employee Misconduct Investigation
- Mobility and Immigration

## Recognition

Labour and Employment: PRC Firms – Tier 1  
—— *The Legal 500, Asia Pacific, 2022-2023*

Labour and Employment: PRC firms - Tier 2  
—— *The Legal 500 Asia Pacific, 2015-2021*

Employment (PRC Firms) (Band 3)  
—— *Chambers, Greater China, 2022-2023*

Employment (PRC Firms) – Band 3  
—— *Chambers Asia-Pacific, 2015-2021*

Labour and Employment - Recommended  
—— *Asialaw Profiles, 2019-2023*

Labour and employment (PRC firms) - Tier 2  
—— *Benchmark Litigation Asia-Pacific, 2020-2022*



## Our Experience

### Documentation

We assist clients to prepare key documents used in HR management, including, but not limited to:

- On-boarding documents, e.g.:
  - Employee information registration form
  - Offer letter
  - Labor contract
  - Confidentiality and/or non-competition agreement
  - IP ownership agreement
  - Training based bonding agreement
- Company policies, e.g.:
  - Employee handbook (mainly covering employee benefits, personal information protection and process, discipline)
  - Employee invention reward and compensation policy
  - Code of conduct
  - Anti-sexual harassment policy
  - Trade union working rules
- Employee management and departure documents, e.g.:
  - Disciplinary decision/notice
  - Termination agreement
  - Unilateral termination notice (applicable in various scenarios)



## Day-to-Day HR Management

We advise clients on a broad range of employment law issues (proper handling of these issues is a crucial part of the control of risks of non-compliance and employment disputes), including, but not limited to:

- **Issues concerning recruitment, e.g.:**
  - Background check
  - Personal information process
  - Unsettled dispute with former employer (such as confidentiality or non-compete covenants)
  - Design of employment conditions
- **Issues concerning daily management, e.g.:**
  - Work injury or occupational disease
  - Sickness and medical treatment period
  - Performance assessment
  - Position or salary adjustment
  - Disciplinary action
  - Personal information process
  - Anti-sexual harassment and/or business ethics training
- **Issues concerning employee departure, e.g.:**
  - Analysis and decision on termination of employment contract
  - Negotiation or communication with employee on termination of employment contract
  - Employee separation package (such as severance, ex-gratia compensation, compensation for untaken annual leave or bonus/incentive)
  - Enforcement of confidentiality and/or non-compete covenants



## 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, including, but not limited to:

### Disputes regarding legality of termination of employment. For example:

- We represented a leading retailer in labor arbitration and litigation cases initiated in Shanghai and Shenzhen by several of its employees who were terminated for gross misconduct (they were in serious breach of the company's conflict of interest policy), and helped the client to win the cases.
- We represented a US software company in a labor arbitration case initiated in Beijing by its sales director who was terminated for gross misconduct (he fabricated his working experience), and helped the client to win the case.
- We represented a Denmark-based industrial company in labor arbitration and litigation cases initiated in Shanghai and Guangzhou by several of its employees who were terminated for gross misconducts (they were in serious breach of the company's conflict of interest policy), and helped the client to win the cases.
- We represented a UK-based retailer in a labor arbitration and litigation case initiated in Dongguan by a procurement manager who was terminated for gross misconducts (he was in serious breach of the company's anti-bribery policy), and helped the client to win the case (we successfully convinced the court to agree to apply a polygraph test to determine if the employee was telling the truth when he denied that he ever solicited any bribe from the vendor).
- We represented a European satellite company in a labor arbitration and litigation case initiated in Beijing by its former admin assistant who was terminated due to poor performance, and helped the client to successfully defend the claims she made for reinstatement.
- We represented a European industrial company in a labor arbitration and litigation case initiated in Shanghai by an employee who was terminated due to the occurrence of a material change, and helped the client to win the case.



### Disputes regarding legality of termination of employment. For example:

- We represented a renowned global chemical company in a labor arbitration and litigation case against a former employee (a senior marketing manager) in Shanghai for her breach of the non-compete covenant (we assisted the client in collecting evidence proving that the employee had been breach), and helped the client to win the case.
- We represented a US-based spraying equipment manufacturer in a labor arbitration case against one of its former sales engineers in Shanghai for his breach of the non-compete covenant (we assisted the client in collecting evidence proving the employee had been in breach), and helped the client to win the case.
- We represented a startup high-tech company in a labor arbitration case against its former head of technology in Shanghai for his breach of the non-compete covenant (we assisted the client in collecting evidence proving the employee had been in breach), and helped the client to win the case.
- We represented a renowned global high-tech company in a labor arbitration and litigation case against one of its former senior technical staff in Beijing for his breach of the non-compete covenant (we assisted the client in collecting evidence proving the employee had been in breach), and helped the client to win the case.
- We represented a renowned global industrial company in a labor arbitration case against one of its senior technical staff in Qingdao for his breach of the non-compete covenant (we assisted the client in collecting evidence proving the employee had been in breach), and helped the client to win the case.
- We represented a company in the electric car industry in a labor arbitration case against a former senior executive in Shanghai for his breach of the non-compete covenant (we assisted the client in collecting evidence proving the employee had been in breach), and helped the client to win the case.

### Other types of disputes. For example:

- We represented a state-owned real estate developing company in a governmental hearing proceeding initiated in Shanghai by one of its former employees, whose complaints dated back 10 years, during which we helped the client to successfully defend claims made against it.
- We represented a renowned global industrial company in a case initiated by the family of one of its former employees who had died as a result of an alleged work injury, and helped the client to successfully defend the claim.
- We represented a US investment company in labor arbitration and litigation cases initiated in Ningbo and Shanghai by its former China president concerning an employee incentive plan, and helped the client to win the arbitration and the cases.



## Employee Misconduct Investigations

We help clients to investigate various misconducts of employees (including sexual harassment and workplace, among others), and also advise clients on their legal position 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.
- Advised 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.
- Assisted a German chemical company on its investigation of a female employee's sexual harassment allegation against her supervisor.
- Assisted a medical start-up on its investigation of a female employee's workplace bullying allegation against her supervisor.
- Assisted a renowned education company on its investigation of an employee's workplace bullying allegation against his supervisor.
- Assisted a renowned pharmaceutical company on the negotiation and communication with its China president, against whom several employees had complained about workplace bullying.

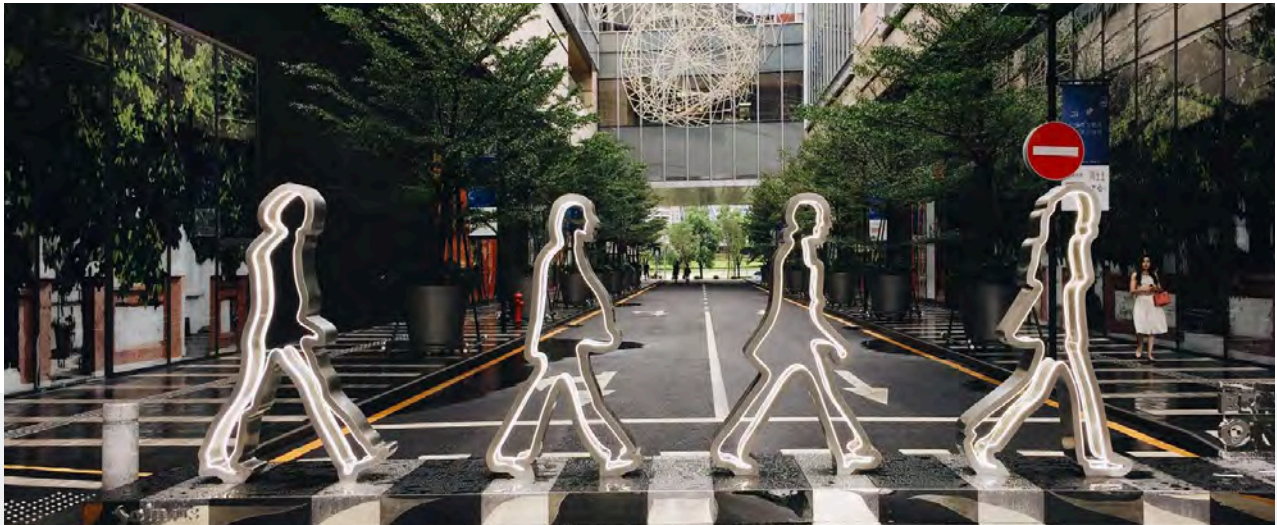


## Employee Incentives

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

- 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.
- An individual, formerly the technical director, in an ESOP dispute case against his former employer.
- A US-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 US-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 US-based leading consulting company in changing its incentive plan for its management team in China.
- A start-up in the opto-electronic industry on its ESOP for its executives and other core employees.
- A start-up in the semiconductor industry on its ESOP for its executives and other core employees.





## Layoff

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

- A US 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 US 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 team to execute the layoff.
- A US 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 US industrial company on its layoff of more than 500 employees due to restructuring in Inner Mongolia, Xiamen 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 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 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.
- 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.



## 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 US-based investment firm to conduct labor due diligence in its acquisition of two business lines of another leading US 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 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.
- A US-based industrial company to conduct labor due diligence in its intended purchase of 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 US-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

Allowing for COVID-related restrictions, travel to and/or work in China has become increasingly frequent for non-Chinese employees of multinational companies with business operations in China. We 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 US 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 US electronics company on the employment of a foreign senior management in Shanghai, and helped apply for the work permit.
- We advised a UK clothing company on the extension of a work permit and residence permit in Shanghai, and aided the extension.
- We advised a US aerospace company on immigration matters relating to its dispatch of its US-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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