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A Study on Human Resource Management Strategy of Foreign Shipping and Port Logistics Companies under the China's New Labor Contract Law

- Focus on Contents and Countermeasures -

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목 차

Key Words: Human Resource Management, China, Labor Contract Law

Abstract

The labor contract Law has been prepared as an important solution for social stability. After long disputes around the orientations of the law, On June 29, 2007, the new Chinese labor contract law is passed. This law reflects the changing labor relations because of economic reforms like restructuring of the state-owned enterprises and so on. This law contains more market-oriented clauses that are supplemented by corporatist scheme supported by trade unions than the first draft.

This law emphasize labor's rights and interests to remove prior labor contract problem. So Chines government see this law as standard law to restructure social relationship and also require firms to corporate social responsibility. Therefore, implementation of the new Chinese labor contract law bring about increasing labor cost, infringement of autonomy for human resource management, rigidity of industrial relations.

Under these situation, Korean shipping and port logistics companies need to introduce

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management system of minimized employment, prepare human resource management in response to long-term employment, maintain favor relationship with trade union, and set up counterplan about risk of a labor dispute.

Ⅰ. Introduction

China is currently emerging as one of the largest countries with direct foreign investments. In 2006 only, there have been a total of 41,473 cases of direct foreign investments, amounting up to US$63.0 billion. Through investments in the Chinese market, foreign corporations look to achieving two major purposes; entering the gigantic Chinese domestic market, and taking advantage of its cheap labor. In particular, most of the foreign companies that operate manufacturing facilities in China have made their investments in order to utilize cheap labor. This investment environment, however, is now increasingly changing. Cheap labor as the biggest advantage to investing in China does not seem to be as attractive as it used to be. A recent study shows that a significant number of the Korean companies that invested in China are now considering moving their operations out of China to other countries due to escalating labor costs in the nation. The level of labor costs in China is presently estimated to be relatively higher than that of the other developing countries like Vietnam or India. When the labor contract law is fully enacted, however, the level of labor costs in China is expected to go up higher than the current level. With an increasing number of the large-sized container terminals opening in China, the country is rapidly emerging as the hub of the Northeast Asian maritime logistics market. This will be driving multinational logistics corporations to meet with cutthroat competitions in the Chinese market. With China having allowed a 100 % stake investment by foreign businesses in the storage, warehouse, and trucking services in late 2004, Korean maritime and port service companies are now advancing into the Chinese market on a full scale.

On June 29, 2007, China passed its Labor Contract Law at the 28th Standing Committee of the National People's Congress. The law went into effect from January 2, 2008. The new labor law is expected to have a huge impact on China both internally and externally. No other country has a bigger influence on the world's trade system than China, as the country has a population of 1.3 billion people and the imports and exports account for 75 % of the total GDP of the nation.[1] China's new

1) Lee Chang-hui, "Current status and challenges of the labor-management relations in China:

labor law can exercise a direct influence on the world's entire economy as well as the foreign businesses operating in the nation. Those companies that already have their operations in China are struggling to prepare themselves for the full-scale enactment of the contract law. Although the Chinese government initiated on the law out of necessity to help improve the nation's labor environment, the companies that have been active under the existing labor law seem to have difficulties adjusting themselves to the new law.

A good number of studies have been conducted to analyze the new labor law since its draft was made public in December, 2005. (Bang Hye-jeong, 2007; Lee Chang-hui, 2005; Lee Seong-woo, 2006; Kim So-young, 2005) The draft law, however, is significantly different from the final content of the law. Our study is based on this need to make another in-depth analysis on the final law. The successful passage of the new labor law will invite restructuring attempts to the traditional labor contracts and labor-management practices that have been in place over the past 20 years, as well as big changes to the way the foreign logistics companies manage their manpower. This study aims to review major provisions of the final labor law, and to suggest the appropriate counter-measures Korean shipping and port logistics companies can take to cope with the law.

Ⅱ. Legislation Process and Background of the Labor Contract Law

1. Legislation Process of the Labor Contract Law

Since the economic reform and Open Door Policy initiated in 1978, China began to aggressively invite foreign investments and has been continuously instituting and revising the labor-related laws necessary to appropriately address the changing labor-management relations and labor environment.

With China's first labor contract law initiated in 1986 for the temporary workers hired by state-owned enterprises, the State Council proclaimed and enacted throughout the nation in the same year the four major Interim Regulations for 'Implementation of the Labor Contract System by State-Owned Enterprises', 'Implementation of Employment by the State-Owned Enterprises', 'Resignation and the Workers Violating

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signs and limits of unionism," 「International Labor Briefs」, 8th ed., 2006, pp.40-41.

Labor Rules', and 'State-Owned Enterprise Workers' Waiting-for-Employment Insurance .'[2)]

On January 1, 1995, the "National Labor Law of the People's Republic of China", China's first labor contract law, was passed and took effect.[3)] The law was meaningful in that it established the nation's first labor contract system based on the market economy, and, modelled on the principles and concepts of civil laws, it defined a labor contract as "the agreement by which labor and management establish the labor relations and clearly stipulate the rights and obligations of both parties," while stressing that a labor contract is a prerequisite to establishing a labor relation. And in 1996, the Labor Ministry announced 『the Notice on Implementation of the Labor Contract System』 to promote the labor contract system throughout the nation's labor-related government agencies. [4)] With the focus of the labor policy heavily placed on having the labor law take root since its implementation, the Chinese government has been trying to help workers organize gong hui (工會)[5)], while strengthening

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2) Bang Hye-jeong, "The signal of the standardization of labor law; the meanings & limits of the legislation of the labor contract law," 「International Labor Briefs」, 8th ed., 2007, pp.106-107.

3) Only 13 years ago, China had a perfectly socialist employment distribution system under which the government or school decided who goes to which workplace or company. As it was the lifelong employment system in principle, companies had to cover all welfare benefits like social security, medical care, children's schooling, etc. once they hired them as employees, and after retirement, also had to cover their pension and medical care. With almost everything covered by the company, people were used to widespread socialist evils that "Whatever you do, nothing changes. You will get paid the same no matter how much you may eat, or how long you may take a rest. The labor law in 1994 was a revolutionary one to reform these evils, and the article 20 of the law, "the time limit of a labor contract", granted legitimacy to the time limit of labor contracts. Details on this point can be found in "A study of the labor law and labor environments in China"; Lee Gyu-cheol (2006), 「International Labor Briefs」, 3rd ed.(2006), pp.72-73.

4) Chen Burei, "The history and recent changes in the Chinese labor laws", 「International Labor Briefs」, 7th ed., 2007, p.14.

5) In the Chinese companies or organizations, we often find small unions of workers called "*gong hui.*" It is usually thought to be equivalent to a labor union, but is quite different from the one we think of in Korea. Supported by the Chinese government, a *gong hui* is designed to work for workers' benefits like the improvement of welfare benefits, labor standards or working environments through negotiations with the management, and can be the main body of collective strikes. But *gong huis,* in general, are not as aggressive as the labor unions in Korea, and usually reach at points of compromise through amicable negotiations. Although most of the *gong hui* members are workers, *gong huis* are different from the Korean labor unions in that the president of the company represents the management. Workers should pay two percent of their salary as the membership fee, while the company paying approximately three percent of the total labor costs to support a *gong hui.* Due to the membership fees, however, there used to be many cases where workers did not want to set up a *gong hui.*

inspections on the corporate labor management practices through revising the entire legal minimum wage system and instituting the labor inspections, but the major focus of its policy was on supporting the operations of companies.

On October 28, 2005, however, the Standing Committee of the National People's Congress deliberated "the National Labor Law of the People's Republic of China" in an effort to protect and strengthen the rights of workers.[6] In December 2005, its draft was proposed through the Standing Committee of the National People's Congress, and in March 2006, a total of 190,000 opinions from various walks of life had been sent in since one month after the draft was made public. In December 2006, the 25th Standing Committee had its second examination to review the amended draft that had reflected various opinions. With some provisions further amended, the 28th Standing Committee of the National People's Congress finally passed the bill in June 2007. The final bill goes into effect from January 1, 2008.[7]

2. Legislation Background of the Labor Contract Law and Basic Principles

1) Legislation Background of the Labor Contract Law

A number of recent occurrences of labor-related problems was one of the main reasons that led China to decide to legislate labor law. The most serious problem was that, despite continued infringements upon workers' rights, there were no specific remedial measures to deal with them. Stressing the importance of establishing a harmonious society as its policy goal, the Chinese government shifted from its "Getting Rich First " theory (先富論) that entails an unbalanced high-growth development to the new "All People Rich " theory (共富論) that focuses on the balanced growth with the distribution of wealth and equality.

The Chinese government judged that, despite the rapid growth of its economy, the overall level of dissatisfactions with the inferior labor environment in China including short-term employment practices, delayed payment of wages, dismissal without due

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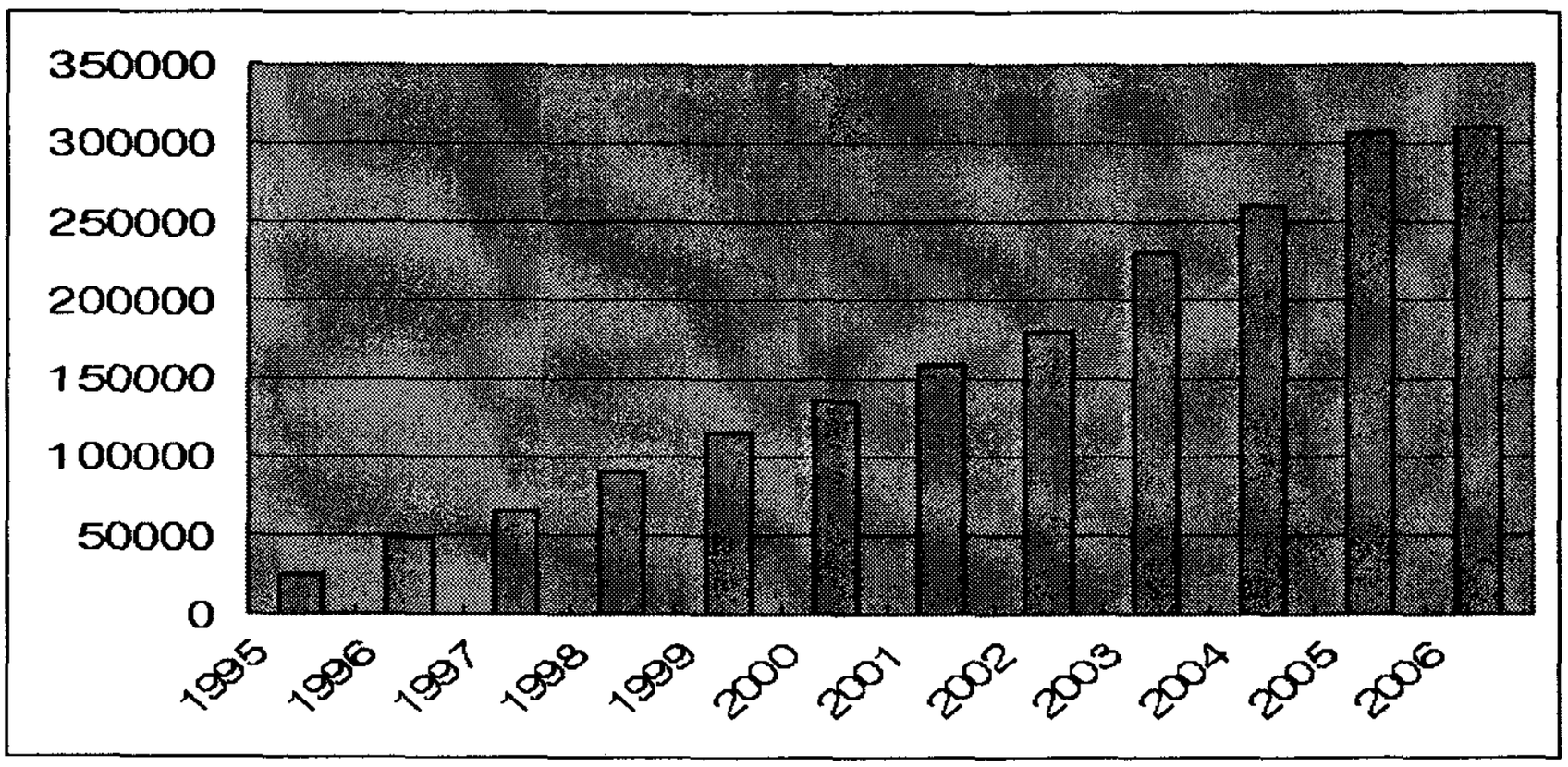
6) Lee Sung-woo, "China's invitation of foreign investment and trends of the labor policies," 「Monthly Maritime & Fisheries」, Serial numbers 261, 2006, pp.29-30.

7) Many discussions by various walks of life have been made on its consistency with the legislation purposes like the protection of workers' rights, development of sciences, realization of a harmonious socialist country, and completion of the legal system protecting the rights to labor, as well as its practical effects and the profit and loss of companies, and the Chinese government is busy preparing its follow-up steps. (Bang Hye-jeong, ibid. page 105)

notice, and poor social securities had escalated to a degree that it can potentially threaten the stability of society. In particular, with the development of market economy have the disputes between labor and management emerged as an important social problem.

The number of labor disputes in China is continuously increasing. Most of the labor disputes in China are the disputes between individual workers and their employer, and are comprised of the official arbitrations through labor arbitration organizations and courts, and the lawsuit process.[8] The number of labor disputes filed with labor dispute arbitration committee for arbitration was only 33,000 cases in 1995 but, as of the end of 2006, it soared to 310,000 cases. Labor disputes increased and labor relations became more complicated and diversified along with structure readjustments and renovations of companies over the past decade, and the needs to modify the rules and regulations to meet the changes of times have also drastically increased. As one of the social laws, the labor contract law aims to solve these problems.[9] Being one of the most important labor laws, the labor contract law prescribes the signing, implementation, termination and cancellation of the labor contracts between employment units and workers.

<Figure 1> Arbitrations filed for Labor Disputes by Year (Cases)



Data: China Statistics Yearbook; Each Year

8) Kim Young-jin, "A study on the enactment of China's <labor contract law (draft)>," 「Sino-Russo Study」, Serial number 111, 2006, pp.67-91.
9) Xinhua New Agency, "The impact of the foreign-invested companies upon investments in China is forecast to be insignificant," July 16, 2007

2) Basic Principles of the Labor Contract Law Legislation Background of the Labor Contract Law

First, the labor contract law tries to adjust itself to the existing standards. The enactment of the labor contract law must be based on the adjustment of the existing labor law, civil law, and other laws. It means, while respecting the existing laws, the labor contract law should be designed to improve problems, make up for the contents, heighten the efficacy, and expand its applicability. In its relation to labor law, the labor contract law is a form of labor law of which the provisions related with labor contracts (Article three of the labor contract; labor contracts and collective contracts) are singularly proposed for legislation, and the law carries the enactment provisions of the existing labor law. Compared with labor law, the labor contract law defines the rights and obligations of the employers and workers in detail, and has the same legal effect as labor law.[10] Second, the law takes into consideration the mutual interests of the employers and workers. While shifting from planned economy to market economy, China granted managing rights to employers. Accordingly, the basic principle of labor contract law lies in reasonably adjusting the rights of employers and workers. Third, the law seeks the legal stability and continuity. Referring to the past experiences of the labor contracts enacted in China, the law tries to improve the labor contract system to ensure legal stability and continuity. This means the law does not aim to establish too idealistic a legal system.[11]

Ⅲ. Analysis of the Major Provisions of the Labor Contract Law

1. The Goal and Legal Status of the Labor Contract Law

The labor contract law of the People's Republic of China consists of 8 chapters and 98 articles. Article 1 of the law clearly describes the goal of its legislation saying that "the goal of the law is to put the labor contract system in order, clearly define the rights and obligations of the contracting parties, protect the legal rights of workers, and establish and develop a harmonious and stable labor relationship.

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10) KOTRA, 「Main issues of the provisions of the draft for China's labor contract law; Impacts upon Korean companies and countermeasures」, KOTRA, 2006, pp.1-2.

11) Kim So-young, "The trends of legislation of the labor contract law in China and the draft of the law," 「International Labor Briefs」, 8th ed., 2005, pp.58-59.

The legal status of the labor contract law is related with civil and contract laws as well as the current labor law, and is designed as a special law of labor law, which is a general law. The labor contract law establishes its own area upon the proper rights of a social law, upon which labor law is based. Although its interpretative principle is based on the principles of civil and contract laws, the labor contract law does not entirely accommodate them.[12)]

2. The Application Scope of the Labor Contract Law

In an effort to solve the problems that often arise between hiring units and workers while enacting laws, the labor contract law defines the conceptual scope of a labor relation by stating that "the companies, economic bodies, and civil non-business entities within the territory of the People's Republic of China shall apply the law when establishing labor relations, signing, implementing, modifying, cancelling and terminating a labor contract.", and "those workers who establish a labor relationship with government agencies, and business and social organizations shall follow the law when signing, implementing, modifying, cancelling and terminating a labor contract. (Article 2)"

3. The Essential Contents of the Labor Contract Law

According to 『the Official Gazette on the Business Development by the Ministry of Labor and Social Security』 released by the Ministry of Labor and Social Security and the National Statistical Bureau, the number of the nation's working population stands at 764 million people and the urban working population at 283.1 million as of the end of 2006, and 85.4% of them were shown to be working without any written contract signed. And the results of the labor law execution inspections by the Standing Committee of the National People's Congress show that over 60 % of the labor contracts were short-term ones spanning less than one year. The Chinese government sees the best solutions to the problems are to increase the ratio of the labor contracts concluded and improve the short-term contract practices.

The fundamental solution to the infringement of workers' rights lies in enforcing the signing of labor contracts as the legal basis for workers to exercise rightful execution of their rights, and securing the foundation of a stable labor-management relationship by limiting the short-term contract practices. By expanding the scope of labor contracts,

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12) Kim So-young, "The trends of legislation of the labor contract law in China and the draft of the law," 「International Labor Briefs」, 8th ed., 2005, p.59.

the legislation of the labor contract law tried to embrace within the legal system the contract workers at the public corporations who have been in the blind corners of legal protections, and defined the mutual rights and obligations in order to provide the compulsory remedial measures by mandating the signing of the labor contracts. Through regulations on the financial compensations related with the termination and cancellation of contracts, and on dismissals and lay-offs, the legal standards on labor remunerations were strengthened and the conditions limiting the short-period employment were also established.[13)]

1) The Conclusion of the Contracts

(1) The Conclusion of the Labor Contracts

In labor relations, a labor contract needs to be concluded in order to preclude any potential problems in which the workers may fail to provide written proofs, or have their legal rights guaranteed during labor disputes. the labor contract law stipulates two majors points. First, When hiring workers, employers should prepare and keep a register of staff. (Article 7) During a labor dispute, employers should verify and provide proofs on the labor relations their have with the workers. During inspections, the governmental labor inspection institutions have to check whether such a register is properly managed.

Second, when establishing a labor relation, a written labor contract prescribing mutual rights and obligations[14)] should be concluded. (Article 10) To workers, a written labor contract, while being a document protecting their rights, carries a legal binding force subjecting them to implementing their obligations through labor. Employers are legally obliged to conclude a written labor contract with their workers. In case a labor relation is established without concluding a labor contract, they must

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13) Bang Hye-jeong, "The signal of the standardization of labor law; the meanings & limits of the legislation of the labor contract law," 「International Labor Briefs」, 8th ed., 2007, pp.106-107.

14) **Article 8** When an Employer hires a Employee, it shall truthfully inform him as to the content of the work, the working conditions, the place of work, occupational hazards, production safety conditions, labor compensation and other matters which the Employee requests to be informed about. The Employer has the right to learn from the Employee basic information which directly relates to the employment contract, and the Employee shall truthfully provide the same.
Article 9 When hiring a Employee, an Employer may not retain the Employee's resident ID card or other papers, nor may it require him to provide security or collect property from him under some other guise.

prepare and conclude one within one month from the establishment of such a relatio n.[15)]

(2) Kinds of Labor Contracts and Encouragement of Non-fixed Duration Employment

While the labor law categorizes the terms of labor contracts into the "duration mutually agreed upon by both parties", "the duration which is not specified", and "the duration set by the implementation of a specific project", the repeated short-term contract practices in the actual labor market is still causing instability in labor relations.

The labor contract law categorizes the terms of labor contracts into ① the fixed duration, ② the non-fixed duration, and ③ the duration set by the implementation of a specific project. (Article 12) The fixed-duration labor contract refers to a contract whose period of termination the employer and worker agreed on in a written form (Article 13), while the non-fixed duration labor contract is a contract whose period of termination the employer and worker did not specify (a kind of life-long employment) in a written form (Article 14). The duration based on the implementation of a specific project refers to a contract the employer and worker conclude for the undertaking of a specific project. (Article 15)

Most conspicuous about the labor contract law is that it urges employers to conclude a non-fixed duration labor contract with workers. This encouragement on a non-fixed duration labor contract arose out of the need to protect workers' long-term rights to labor amidst the practical trends of short-term labor contracts in the process of implementing labor law. The purpose of encouraging a non-fixed labor term between the employer and worker lies in helping establishing a long-term and stable labor relation. Traditionally, a non-fixed term labor contract has usually been regarded as a "guaranteed permanent employment." During the reviewing process of the draft labor contract law, the members of the Standing Committee expressed concerns that labor relations might become inflexible due to the conclusion of a non-fixed term labor contract when renewing a contract after two consecutive labor contracts of contract employment. First, through redefining the definition of a non-fixed duration labor contract, the law prescribes that such a contract refers to a contract for which the employer and worker do not specify the termination period. (life-long employment)

Thus, in case no written labor contract is concluded for the existing labor relation established through a labor contract, the situation is understood as both parties have

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15) Gong Ren Ri Bao (工人日報), "China completes the labor contract law," July 10, 2007.

concluded a non-fixed term labor contract, necessitating a timely preparation of a written form of a labor contract. Second, by stating that a non-fixed term labor contract should be signed under three circumstances, the labor contract changed the traditional concept of a non-fixed term contract as a welfare benefit. An "open-ended employment contract" is an employment contract for which the Employer and the Employee have agreed not to stipulate a definite ending date. An Employer and a Employee may conclude an open-ended employment contract upon reaching a negotiated consensus. If a Employee proposes or agrees to renew his employment contract or to conclude an employment contract in any of the following circumstances, an open-ended employment contract shall be concluded, unless the Employee requests the conclusion of a fixed-term employment contract:; (1) The Employee has been working for the Employer for a consecutive period of not less than 10 years; (2) when his Employer introduces the employment contract system or the state owned enterprise that employs him re-concludes its employment contracts as a result of restructuring, the Employee has been working for the Employer for a consecutive period of not less than 10 years and is less than 10 years away from his legal retirement age; or (3) prior to the renewal, a fixed-term employment contract was concluded on two consecutive occasions and the Employee is not characterized by any of the circumstances set forth in Article 39 and items (1) and (2) of Article 40 hereof. If an Employer fails to conclude a written employment contract with a Employee within one year from the date on which it starts using the Employee, the Employer and the Employee shall be deemed to have concluded an open-ended employment contract(**Article 14**). Third, the labor law stipulates that "without concluding a written labor contract between the employer and worker within one year from the employment, a non-fixed term labor contract is thought to have been concluded between them."[16] Such a non-fixed term contract, however, can be cancelled if the legally enforcing elements were cancelled or an agreement was reached between the two parties.[17]

(3) Prerequisite and Mutual-Agreement Provisions of the Labor Contract Law

The labor contract law defines the prerequisite provisions and mutual-agreement provisions to be contained in a labor contract. These provisions prescribe the worker-employing autonomy in the employment units along with the mutually

16) Gong Ren Ri Bao, "China completes the labor contract law," July 10, 2007.
17) Xinhua News Agency, "The impact of the foreign-invested companies upon investments in China is forecast to be insignificant," July 16, 2007.

independent choices by the workers to exercise the labor rights. The law also states that a labor contract should be concluded on the basis of lawfulness, fairness, equal opportunities to choose on one's own, mutual agreement, and good faith.[18] A labor contract goes into effect upon the mutual agreement and signing by the employer the worker of the labor contract. (Article 16) When a labor contract is concluded or modified, or tries to attempt to shirk its legal obligations against the actual intention of any party through fraud, intimidation or threat, the whole, or part of the contract that breached the compulsive provisions of the administrative regulations becomes invalid except for the part that rightfully establishes the rights of the contracting worker.

The labor contract law clearly specifies the prerequisite provisions to be contained in a contract. (Article 17) Within the prerequisite provisions are included the essential statements on the employer and worker, the period of the labor contract, the duties to be performed and job guidelines, remunerations, social insurances, etc. The law also states that things other than the essential items like the probationary period length, on-the-job training, non-disclosure of the job-related secrets, insurances, welfare, service period, non-compete provisions could also be agreed upon by the mutual agreement of the employer and worker. The employer and worker can enter into a renegotiation when a labor dispute arises due to the poorly defined remuneration or service conditions of the initial labor contract. (Article 18)

(4) Nullification of a Labor Contract

If a contract is related with any of the followings, the whole or part of the contract becomes nullified; (1) the contract is concluded against the will of any party through fraud, intimidation or threats, (2) the employer exempted himself of legal obligations and excluded the rights of the worker, or (3) the contract contains any compulsory provisions that go against administrative regulations. Labor administrations, arbitration bodies for labor disputes or the People's Court confirm the nullification of the whole or part of a contract. (Article 26)

The employer should pay for the service that was already provided at the time of the confirmation of the contract nullified. The amount of the labor remuneration can be decided reflecting that of the equivalent job at the same workplace or in the similar line of work (Article 28), and when such a standard line of work is not available, it then can be decided by referring to the labor remuneration guideline

18) Gong Ren Ri Bao, "China completes the labor contract law," July 10, 2007.

announced by the applicable municipal government of the workplace.

2) Implementation of the Labor Contract

By proclaiming that both the employer and worker should fully undertake each party's obligations as stated in the labor contract (Article 29), the labor contract law established the principles of the obligatory implementation of the contracted labor provisions by both parties. It corresponds to a legal requirement for the implementation of the labor contract between the two parties. In reality, however, undesirable cases have been often occurring in which some of the employers breach the law, or force their workers to work against their will.[19] In order to fix the situation, the labor contract law states as follows;

First, employers should pay the remuneration to their workers in accordance with the provisions of the contracts and the state regulations. (Article 30) Second, by strictly complying with the working hours, employers should not force their workers to work overtime or in the illegal manner. Payment for the overtime work done should be made by the employers on the basis of the concerning state regulations. (Article 31) Third, workers' refusal to do illegally forced or dangerous works ordered by their employer should not constitute a breach of the labor contract. (Article 32) Fourth, any changes in the employer's name, corporate representative, chief officer, investors, or the corporate registry do not affect the implementation of the labor contract. (Article 33) And in case a corporate change, or merger/spin-off occurs to the employer, the initial contracts remains to be effective, and the rights and obligations of the labor contract should be borne and undertaken by the successor. (Article 34) Article 33 and 34 clearly define the way a labor contract should be handled under the changes of the employer, or merger/spin-off.

3) Cancellation, Termination & Financial Compensation of a Labor Contract

Unlike the existing ambiguities in the cancellation and termination of the labor contracts, the new labor contract law defines in detail the financial compensations to workers at the time of the termination of a labor contract.

(1) Cancellation of a Labor Contract

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19) Gong Ren Ri Bao, "China completes the labor contract law," July 10, 2007.

The labor contract law allows for the cancellation of a labor contract under the following conditions. First, there was an agreement between the employer and worker. (Article 36) Second, the worker either provides a written intention on cancelling the contract to the employer 30 days in advance, or wishes to cancel his/her contract during the probationary period. (Article 37) [20] Third, the worker wishes to cancel the contract due to the faults by the employer.(Article 38)[21] Fourth, the employer wishes to cancel the contract due to the faults by the employee. (Article 39)[22] Fifth, the worker is unable to provide service owing to a disease or any other agreeable reasons causing significant changes than industrial accidents. (Article 40) In the case of Article 40, the employer should either give a written notice to the worker 30 days in advance or dismiss him/her after the additional payment of one month's salary. Sixth, layoffs for remedial purpose can justify dismissal of the workers. (Article 41))[23]

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20) **Article 37** A Employee may terminate his employment contract upon 30 days' prior written notice to his Employer. During his probation period, a Employee may terminate his employment contract by giving his Employer three days' prior notice.

21) **Article 38** A Employee may terminate his employment contract if his Employer: (1) Fails to provide the labor protection or working conditions specified in the employment contract; (2) Fails to pay labor compensation in full and on time; (3) Fails to pay the social insurance premiums for the Employee in accordance with the law; (4) Has rules and regulations that violate laws or regulations, thereby harming the Employee's rights and interests; (5) causes the employment contract to be invalid due to a circumstance specified in the first paragraph of Article 26 hereof; (6) Gives rise to another circumstance in which laws or administrative statutes permit a Employee to terminate his employment contract. If an Employer uses violence, threats or unlawful restriction of personal freedom to compel a Employee to work, or if a Employee is instructed in violation of rules and regulations or peremptorily ordered by his Employer to perform dangerous operations which threaten his personal safety, the Employee may terminate his employment contract forthwith without giving prior notice to the Employer.

22) **Article 39** An Employer may terminate an employment contract if the Employee: (1) Is proved during the probation period not to satisfy the conditions for employment; (2) Materially breaches the Employer's rules and regulations; (3) Commits serious dereliction of duty or practices graft, causing substantial damage to the Employer; (4) has additionally established an employment relationship with another Employer which materially affects the completion of his tasks with the first-mentioned Employer, or he refuses to rectify the matter after the same is brought to his attention by the Employer; (5) causes the employment contract to be invalid due to the circumstance specified in item (1) of the first paragraph of Article 26 hereof; or (6) Has his criminal liability pursued in accordance with the law.

23) **Article 41** If any of the following 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 percent or more of the total number of the enterprise's employees, the Employer may reduce the workforce after it has explained the circumstances to its Trade union or to all of its employees 30 days in advance, has considered the opinions of the Trade union or the

(2) Termination of a Labor Contract (Article 44) & Financial Compensation

First, when the contract reaches its expiration date. Second, the worker died or the court passes a death penalty on, or declares the disappearance of, the worker. Third, the employer files for bankruptcy. Fourth, the employer had its business license suspended, is ordered a stoppage of business, has an advanced decision to cancel the contract, or undergoes any other circumstances due to laws/administrative regulations. (Article 44)

Adding to the provisions, the labor contract law also describes the situations[24] under which the employer has to offer financial compensations, along with the standards for the payments.[25]

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employees and has subsequently reported the workforce reduction plan to the labor administration department: (1) Restructuring pursuant to the Enterprise Bankruptcy Law; (2) Serious difficulties in production and/or business operations; (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; or (4) Another major change in the objective economic circumstances relied upon at the time of conclusion of the employment contracts, rendering them unperformable. (5) When reducing the workforce, the Employer shall retain with priority persons: ① Who have concluded with the Employer fixed-term employment contracts with a relatively long term; ② Who have concluded open-ended employment contracts with the Employer; or ③ Who are the only ones in their families to be employed and whose families have an elderly person or a minor for whom they need to provide. If an Employer that has reduced its workforce pursuant to the first paragraph hereof hires again within six months, it shall give notice to the persons dismissed at the time of the reduction and, all things being equal, hire them on a preferential basis.

24) **Article 46** In any of the following circumstances, the Employer shall pay the Employee severance pay: (1) The employment contract is terminated by the Employee pursuant to Article 38 hereof; (2) The employment contract is terminated after such termination was proposed to the Employee by the Employer pursuant to Article 36 hereof and the parties reached agreement thereon after consultations; (3) The employment contract is terminated by the Employer pursuant to Article 40 hereof; (4) The employment contract is terminated by the Employer pursuant to the first paragraph of Article 41 hereof; (5) The employment contract is a fixed - term contract that ends pursuant to item (1) of Article 44 hereof, unless the Employee does not agree to renew the contract even though the conditions offered by the Employer are the same as or better than those stipulated in the current contract; (6) The employment contract ends pursuant to item (4) or (5) of Article 44 hereof; (7) Other circumstances specified in laws or administrative statutes.

25) **Article 47** A Employee shall be paid severance pay based on the number of years worked with the Employer at the rate of one month's wage for each full year worked. Any period of not less than six months but less than one year shall be counted as one year. The severance pay payable to a Employee for any period of less than six months shall be one-half of his monthly wages. If the monthly wage of a Employee is greater than three times the average monthly wage of employees in the Employer's area as published by the

4) Special Provisions

(1) Collective Contracts

While a labor contract usually reflects the one-sided opinions of the employer, a collective contract is born to provide a legal harmony in the labor relations. Unlike in the traditional labor law, the law defines the obligations of the employer related with collective contracts. The labor contract law reiterates the legitimacy of the gong hui to protect the rights of workers, while granting it greater rights to participation and supervision. In particular, its participation and strengthened roles in the establishment of corporate regulation systems have become the focus of heightened attention. By protecting workers' rights and providing the legal foundation for a harmonious labor-management relation, the labor contract law is expected to bring in many changes to the nature and positions of gong hui.

The labor contract law states that, when establishing, modifying and deciding the working regulations or any other major issues of directly interests to the workers like remuneration, working hours, breaks/holidays, safety/hygiene, insurances, job training, work regulations, and management of labor target amount, the process of advanced discussions and suggestions must be carried out with the representatives or the entire workers, to negotiate and make fair decisions with the unions or the representatives of the workers.[26] During the above process, workers can raise objections and have the

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People's Government at the level of municipality directly under the central government or municipality divided into districts of the area1 where the Employer is located, the rate for the severance pay paid to him shall be three times the average monthly wage of employees and shall be for not more than 12 years of work. For the purposes of this Article, the term "monthly wage" means the Employee's average monthly wage for the 12 months prior to the termination or ending of his employment contract.

26) **Article 51** After bargaining on an equal basis, enterprise employees, as one party, and their Employer may conclude a collective contract on such matters as labor compensation, working hours, rest, leave, work safety and hygiene, insurance, benefits, etc. The draft of the collective contract shall be presented to the employee representative congress or all the employees for discussion and approval. A collective contract shall be concluded by the Trade union, on behalf of the enterprise's employees, and the Employer. If the Employer does not yet have a Trade union, it shall.

Article 52 Enterprise employees, as one party, and their Employer may enter into specialized collective contracts addressing labor safety and hygiene, protection of the rights and interests of female employees, the wage adjustment mechanism, etc.

Article 53 *Industry-wide or area-wide collective contracts may be concluded between the* Trade union on the one hand and representatives on the side of the enterprises on the other hand in industries such as construction, mining, catering services, etc. within areas below the

rights to modifying and improving the working regulations when they think the regulations set by the employer are unfair. The employer should announce or notify the workers of the working regulations and major decisions that are directly related with the interests of the workers. (Article 4)

Article 4 of the law is very important to Korean companies doing business in China. In a past case related with the provision, a company fired a female worker who had been absent without leave based on the provisions of the 'working regulations' and the worker filed for arbitration, saying the company didn't notify her of the working regulations in detail. As a result, the company lost the case, because the company, despite the announcement of its regulations in the bulletin board and the web site, could not provide any evidence that it properly undertook the duty of notice by having it signed by the worker. As the case demonstrates, in China, the written documents mutually agreed upon and signed serve as an important criterion for the final judgement in settling a labor dispute. Accordingly, Chinese companies are having a labor contract attached with its working regulations signed by their workers when they join the company, and these documents serve as the base for labor management. From the next year, however, companies may have to pay greater attention to labor management as the new law mandates the working regulations, important labor controlling means, be discussed and established through the mutual agreement with workers. Without having the discussions properly settled between the employer and workers in time, the employer may have to do without an important means of labor management.[27]

By concluding a legally-based labor contract with the employer and establishing a collective bargaining system, labor unions should try to help support and provide assistance so that the legal rights of workers be properly protected. (Article 6) In case an employer infringes the labor rights of its workers in breach of their collective contract, the labor union holds the right to legally request the employer to take responsibility for the case. When a dispute occurs and is not settled through mutual discussions, a labor union can legally file for arbitration or a lawsuit. (Article 56)

(2) Contract for Dispatched Workers

Under the current labor law, the rights of workers are not appropriately protected due to the ambiguities in the responsibilities for workers between the 'dispatching

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county level.

27) KOTRA, 「The new labor contract law and the countermeasures by Korean companies」, KOTRA, 2007, pp.13-14.

company' and the employer. Through its special provisions on dispatched labor and irregular workers, the labor contract law provides a legal foundation to dispatched workers and a range of employment types. The law tries to help standardize the 'dispatched labor', which began to appear with increasing trends towards irregular labor types, by clearly defining the obligations and responsibilities between the dispatching company and employer, and taking measure to protect workers against discrimination in wages or social benefits. At this time of escalating social disparities and ever-widening wage gap, the reconfirmation on paying the same wages on the same labor provided to irregular workers is particularly meaningful.[28] Labor dispatching companies are referred to as "employers" by article 2 of the law, and should complete their responsibility as such. Those companies conclude a labor contract with dispatched workers, and, in addition to the provisions from article 17 of law, should state the company they will be sent to, period of dispatched labor, service they have to provide, etc. Labor dispatching companies should conclude a fixed-term contract lasting at least two years and make monthly payments for the service provided. The companies should also pay to the workers for the period where there has been no service provided at the company they were sent to on the basis of the minimum wages set forth by the municipality government where the workplace is located. (Article 58) Dispatching companies are responsible for requesting the companies employing their workers to implement working standards and conditions, conclude relevant contracts the employing companies (Article 59), decide the workers' obligations divided between the two parties, and finally notify the workers of the contract concluded. (Article 60)[29] When the workers are dispatched to others areas, the working conditions and remunerations they will be entitled to should be executed

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28) Bang Hye-jeong, "The signal of the standardization of labor law; the meanings & limits of the legislation of the labor contract law," 「International Labor Briefs」, 8th ed., 2007, pp. 107-108.

29) **Article 59** When placing Employees, staffing firms shall enter into staffing agreements with the units that accept the Employees under the placement arrangements ("Accepting Units"). The staffing agreements shall stipulate the job positions in which Employees are placed, the number of persons placed, the term of placement, the amounts and methods of payments of labor compensation and social insurance premiums, and the liability for breach of the agreement. An Accepting Unit shall decide with the staffing firm on the term of placement based on the actual requirements of the job position, and it may not conclude several short-term placement agreements to cover a continuous term of labor use.
Article 60 Staffing firms shall inform the Employees placed of the content of the placement agreements. Staffing firms may not pocket part of the labor compensation that the Accepting Units pay to the Employees in accordance with the placement agreement. Staffing firms and the Accepting Units may not charge fees from the Employees placed.

based on the municipality where the workplace of the employing company is located. Both the dispatching and employing companies should fulfill their respective responsibilities as stated in the contract[30], while the dispatching company should conclude a fixed-term contract last at least two years and pay the monthly salary. The employing company should also pay for the period during which there has been no need for service by the workers as per the minimum wages set by the municipality government where the company is located.

Ⅳ. Countermeasures by Foreign Shipping & Port Logistics Companies against the Full-scale Enactment of the PRC's New Labor Contract Law

The Chinese government publicly declared that its new labor law, passed after four modifications for legislation over the past two years, will overcome any potential constraints in enacting the law, improve the traditional labor contract practices, and eventually serve as the basic guide by which to protect workers' rights. Defining the law as the legal standard for readjusting entire social relations, the Chinese government is showing a strong will to enact the law into practice, while urging companies to take social responsibilities under the understanding that improved human resources and labor-management relations contribute to their long-term development.[31] The foreign-invested companies that have been critical of the passage of the bill saying that it would increase labor costs to a raised level, infringe their autonomy in labor management practices, and a resulting rigid labor-management relation could lead the companies to move their operations out of China, finally began to say they express deep consent to the statement that the law seeks to improve working conditions and establish harmonious labor-management relations.

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30) **Article 62** Accepting Units shall perform the following obligations: (1) Implement state labor standards and provide the corresponding working conditions and labor protection; (2) communicate the job requirements and labor compensation of the Employees placed; (3) Pay overtime pay and performance bonuses and provide benefits appropriate for the job positions; (4) Provide the placed Employees who are on the job with the training necessary for their job positions; and (5) In case of continuous placement, implement a normal wage adjustment system. Accepting Units may not in turn place the Employees with other Employers.

31) Bang Hye-jeong, ibid.

The labor contract law, however, could eventually exercise a negative influence upon companies due to its intrinsic nature of '寬進嚴出' (easy employment and difficult dismissal) to companies, and '寬進寬出' (easy employment and easy resignation) to workers.[32] When the law goes into effect on a full scale, it will likely worsen the flexibility in labor contracts, and greatly weigh on companies as they have to pay a certain form of severance payments to the workers whose term of employment expires. In the long run, cheap labor, one of the China's biggest merits that have so far invited foreign companies to the nation are likely to disappear.[33] In fact, the EU Chamber of Commerce once pointed out in its suggestions for the improvement of the draft labor contract law that "the strict provisions of the draft bill are expected to constraint the flexibility, and drive up their production costs in China, making the foreign businesses rethink about continuing their operations in China. The enactment of the law would exercise negative influences upon the social stability and economic development of China." President of the Association of the Human Resources for Multinational Corporations stationed in Shanghai said "the enactment of the law would drive us to give up our investments in this country." The full-fledged enactment of the law will accelerate the movements of human resources within the nation, and make the employment of workers much tougher and the bargaining power of labor unions much stronger, eventually increasing the number of labor disputes.

The Korean companies doing business in China are already faced with tougher market situations including fierce competitions, escalating shortage of labor, and soaring labor costs. The labor shortage continues to deteriorate due to the unbalance in the supply and demand of high-quality human resources, struggling for workers among competitions, frequent changes of jobs by skilled workers rendering the securing of the workers much tougher, increasing refusal by inland workers to work in remote places due to soaring living costs, etc. The unbalance in the supply and demand of high-quality human resources is driving the wages to increase by 10 percent each year, and this situation is rapidly worsening with the help of the local governments struggling to raise the level of the minimum wages.

As the full-scale enactment of the law under these circumstances is expected to raise labor costs and labor management expenses, the management system needs to be

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32) Some of the experts in this area say that, "while giving autonomous rights to workers, the labor law deprives companies of their managing rights with increased administrative interferences."

33) Xinhua News Agency, "Foreign companies split over the draft 《labor contract law》 (1)," May 17, 2006

restructured to lower the reliance on human labor, improve the employment and resignation system matching the new labor law, and reestablish the overall labor management system. As for the detailed countermeasures, companies are required to readjust their management strategies to fit with the soaring labor costs. Under the current situations in which companies are being urged to raise the minimum wages and expand social insurance programs due to the Chinese government's policy of 'reducing the wage gap, the enactment of the law is directly related with the increases in wages and tougher labor management activities. The labor-intensive companies, among others, are likely to suffer the most in their profits. As part of their countermeasure, companies are being asked to introduce an improved management system including the automation of the manufacturing facilities, expanding the outsourcing of the non-essential works, and other efforts to minimize labor. Adding to the efforts, brand-new labor management strategies like the reallocating of personnel and reorganization are also needed to deal with the new labor environments.

Secondly, restructuring the personnel-labor management system should be initiated to cope with the long-term employment environments. As the number of the workers employed for a long period of time is sure to increase, refurbishing working regulations as well as maintaining a competitive working morale should be the foundations for the other labor management programs including promotions, service assessments and piecework system. As the Chinese government is strongly encouraging companies to adopt non-fixed duration labor contracts (life-long employment), and the administrative guidance is expected to be accordingly strengthened, it would most difficult for companies to hire their workers on a short-term employment system. Life-long employment, however, will be lowering the workers' service morale, producing much lowered productivity. And the escalating wages and financial compensations concerned with dismissals or lay-offs due to the long-term employment will likely weigh on companies in the long run.

Accordingly, companies need to properly mix their strategies to cope with their specific business environment, including limiting the non-fixed term employment to the core high-quality staff, and trying to maintain the non-essential personnel hired on a fixed term employment. One of the more detailed options Korean companies could take would be the extending of the fixed-term employment for a longer time. They may need to make the generally-agreed employment term of one year to run for three to six years, and, with the three-year employment system, companies can have additional merits of being able to extend the probationary period length to 6 months. Companies can also take advantage of the labor dispatching system. Companies could

either indirectly employ the workers hired by the employer in the form of the dispatched workers through a labor dispatching company or transfer the workers who just completed the first fixed-term contract, or who are in their 9th year of employment into being indirectly hired through a labor dispatching company. In other strategies, company could avoid the provisions of the labor contract law by expanding the employment contracts with irregular workers (part-timers), trainees, or the recipients of endowment insurances. (retirees) Lastly, companies could adopt the method of rehiring the workers after a temporary suspension of the employment, in which the company temporarily terminates their employment at the time of the expiration of a labor contract. This method, however, runs the risk of losing the potential labor dispute lawsuits as this goes against the Chinese government's aim of the legislation to stabilize the labor contract law.[34)]

Thirdly, companies need to establish a cooperative relation with gong huis, or labor unions. Through its specially prepared provisions, the labor contract law emphasizes the importance of the role of a gong hui in the collective contracts, and grants gong huis greater powers in many aspects including the negotiations and adjustments for the protection of workers' rights, and the filing of lawsuits against employers. Accordingly, establishing a cooperative relation with gong huis is essential to the implementation of the provisions of the labor contract law including the conclusion of a collective contract. The companies that do not have a gong hui are recommended to have the initiative to establish one friendly towards the company.

Lastly, companies need to establish risk management strategies to cope with potential labor disputes. Risk management functions should be particularly strengthened in the areas that are potentially liable to cause disputes like the payments of social insurances, or overtime payments. Companies can be held responsible for the resignation of workers and payment of financial compensations as the non-payment of social insurances or overtime allowances can constitute the "defects"[35)] in the implementation of a labor contract. With "defects" in the implementation of a labor

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34) KOTRA, 「The new labor contract law and the countermeasures by Korean companies」, KOTRA, 2007, p.8.

35) Four kinds of 「defects」 : ① The employer did not fulfill the labor protective or working conditions as prescribed in the labor contract; The worker was forced to go on a vacation or stop working. ② The employer failed to pay the fixed amount of a salary or pay it on time; ex) deferred payment, insufficient payment of overtime allowances ③ nonpayment of social insurances, insufficient or partial payment of social insurances; (ex: only endowment insurance was paid) ④ The rights of a worker was infringed due to illegal provisions of the company's regulations; policy of the nonpayment of the overtime allowance

contract, workers will be entitled to a voluntary resignation anytime they want, as well as financial compensations. This provision on the payment of financial compensations was made to encourage employers to strictly comply with the new labor contract law, one of the representative regulations to protect workers' rights. The law, however, is particularly important to Korean companies. As long as employers are not in perfect compliance with the law, it is very likely workers would make a bad use of the law. The provision might have provided a well-grounded foundation by which workers can freely resign and ask for the payment of financial compensations by using even minor defects in the fulfillment of the contract by their employer as pretext, which would have been impossible otherwise.[36] Now that the law went into effect from January 2, 2008., companies should be able to take precautionary measures to protect themselves against any potential labor dispute-related complaints by workers through strict compliance with the law, transparent labor management system, and consultation with outside experts.

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36) KOTRA 「The new labor contract law and the countermeasures by Korean companies」 KOTRA, 2007, p.10.

<Appendix> Comparisons of the Major Provisions of the New Labor Contract Law and the Existing Labor Law[37]

Provisions	Current Labor Law	Labor Contract Law
Conclusion of a Written Labor Contract	○ Only stressed the principle of a written contract	○ Mandatory conclusion of a contract from 1 month~1 year from employment ○ Payment of double the wages when 1 year exceeded without a contract ○ To be regarded as a 「non-fixed term」 contract when 1 year exceeded
Modification of Contract	○ Subject to mutual agreement	○ Only a written contract is legally valid
Employment	-	○ Acceptance of deposit or ID card when employing prohibited
Probationary period length	○ Maximum six months	○ 1-6month period permitted as per contract ○ To submit evidence when dismissing during probationary period ○ Payment of 80% of fixed wages and exceeding the minimum wage level
Financial Compensation (Expiration of Contract)	○ No need to pay upon the expiration of the contract	○ Obligatory payment upon the expiration of a contract ○ 1-month salary per year (0.5~1year: 1month, less than 0.5year:1/2month) ○ Limits on high-salaried workers: 3 times the average wages & 12 months
Dispatched Labor	-	○ Conclusion of fixed-term contract lasting at least 2 years with a dispatched worker ○ Collective indemnities imposed on both dispatching and employing companies
Non-fixed Term Labor Contract	○ Upon 10 years of service and mutual agreement	○ Obligatory conclusion of a non-fixed term contract; ① those who served more than 10 years ② for the 3rd contract after 2 consecutive fixed-term contracts ○ When violated, payment of double the wages as counted from the date of obligatory conclusion
Establishment of Labor Rules	○ Stipulated the principle	○ For establishing, discussions with labor unions & internal notice mandated
Conclusion of	○ Stipulated the	○ Granted the concluding rights to labor

37) KOTRA 「The new labor contract law and the countermeasures by Korean companies」 KOTRA, 2007, p.7.

a Collective Contract	principle	union (when not yet established, the upper labor union to guide)
Illegal Dismissal	○ Stipulated the principle of compensations	○ Continued employment as per worker's intention; paying indemnities (double the financial compensations) otherwise
Worker Dismissal Procedure	○ Notice to labor union after dismissal	○ Obligatory notice before dismissal, with labor union granted rights to submit a suggestion to employer
Worker's Right to Cancel Contract (Company's Mistake)	○ Non-performance of provisions of a labor contract (wages, working conditions)	○ When defects occurred to the fulfillment by employer of the labor contract (failure to pay the entire wages on time, nonpayment of social insurances) ○ Payment of financial compensations necessary
Limits on Dismissal	○ Industrial disease patients, during treatments, childbirth, etc.	○ New addition: from 15 years of service to less than 5 years before retirement
Layoff	○ Notice to labor union 30 days prior to a layoff & report to labor authority	○ When reducing 20 (or one tenth of all personnel) or more persons ○ Discussions with labor union 30 days in advance & report to labor authorities ○ Long-served or needy workers to be preferentially excluded from reduction
Non-compete	○ Principle of non-disclosure of business secrets	○ Limited to those with high-technologies, commercial secrets and management staff ○ Limit permissible for 2 years maximum
Agreement of Service Period after Training	-	○ Agreement on service period/penalty permissible for training programs of special technologies ○ Penalty not to exceed training expenses
Limits on Agreement on Penalty	-	○ Penalty permissible for only 2 items for violations of obligatory service period and non-competes after training
Order for Payment of Wages in Arrears	-	○ Workers are granted the rights to apply to court for the payment order

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<요 약>

중국 신노동계약법 시행에 따른 외자 항만물류기업의 인적자원 관리전략에 관한 고찰: 주요 내용과 대응방안을 중심으로

한병섭 · 김병구

2007년 6월 29일, 중국은 전국인민대표대회 상무위원회 제28차 회의에서 노동계약법을 통과시켰다. 동 법규는 2008년 1월 1일부터 시행된다. 새로운 노동제도는 중국 대내·외적으로 큰 영향을 미칠 것으로 전망되고 있다. 중국의 새로운 노동제도는 중국 내에서 활동하고 있는 기업들뿐만 아니라 세계 경제에도 직접적인 영향을 미칠 수 있다. 이미 중국 내에서 활동하고 있는 기업들은 노동계약법의 본격 시행에 대비한 대응 방안 마련에 부심하고 있다. 중국 정부는 노동환경 개선의 필요성 때문에 노동계약법을 제정했으나, 이미 기존의 노동법 하에서 활동해온 기업들은 당분간 새로운 제도에 대한 적응에 적잖은 어려움을 겪을 것으로 예상되고 있다.

이번 중국의 신노동계약법은 기존 근로계약의 문제점을 개선하고 노사관계를 규범화하여 노동자들의 권익을 보호하기 위한 기본 지침임을 강조하고 있다. 그러므로 근로계약법을 전체 사회 관계를 재조정하는 법률 규범으로 보고, 중국 정부의 집행 의지와 적절한 실행조치를 시험하는 동시에, 기업이 인력자원과 노사관계관리가 장기적 발전에 도움이 된다는 점을 인식하고 일정한 사회책임의식을 갖도록 요구하고 있다. 이에 따라 노동계약법 실행은 노동비용 및 기준의 상승, 기업의 인력자원관리에 대한 자주성 침해, 노사관계의 경직화과 같은 문제점을 외자기업들은 지적하고 있지만, 또 한편으로는 이번 법안의 입법 성공에 대해 '노동계약법이 근로조건 개선과 노사관계의 조화 발전을 그 목표로 한다는 데에는 동의를 표하고 있다.

이러한 상황 하에서 노동계약법이 본격 시행될 경우 인건비 상승, 노무관리 부담 증가가 예상됨에 따라 인력 의존도를 낮추는 방향으로 경영체제를 정비하고 신노동계약법 시행에 대비한 직원 채용·퇴직제도, 급여시스템 등 제반 노무관리 시스템의 재정비가 요구된다. 예를 들어, 고용 인력을 최소화하는 경영체제의 도입, 장기고용 상황에 대응하는 인사노무관리체제의 정비, 공회와의 협력적 관계 구축, 노동쟁의 리스크 관리 대책 등을 수립할 필요가 있을 것이다.

□ 주제어 : 중국, 신노동계약법, 고용, 노사관계, 노동쟁의