

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

1. **Does corruption occur in China in the sale of commercial properties?**
2. **What form does this corruption take?**
3. **Are employees subject to non payment of their financial entitlements when businesses close down?**
4. **Are there requirements for employers to act in a responsible manner regarding their employees when their business is closing down?**

RESPONSE

1. **Does corruption occur in China in the sale of commercial properties?**
2. **What form does this corruption take?**

The information provided in response to these questions has been organised into the following two sections:

- *Property Rights Law of the People's Republic of China*; and
- Corruption in Land Transactions.

Property Rights Law of the People's Republic of China

According to *The Property Rights Law of the People's Republic of China 2007*, all land is owned by the State or collectives. Private persons now have the right to ownership of all property except land: The right to use the land can be transferred for a fee or by land grant. These use rights can be alienated, mortgaged and inherited. A copy of *The Property Rights*

Law of the People's Republic of China 2007 is included as Attachment 1 (*Property Rights Law of the People's Republic of China* (Promulgated 16 March 2007 & Effective 1 October 2007), Lehman, Lee & Xu PRC Law Firm website – Attachment 1).

The China Law Blog focuses on business law in China and is written by Dan Harris and Steve Dickinson, international lawyers who work for the boutique International Law Firm of Harris & Moure. Dickinson authored a paper on the new property law and Harris posted it on the China Law Blog in four instalments. The main points made in this paper are:

- The National People's Congress of the Peoples Republic of China (PRC) adopted the law on 16 March 2007. The law is effective from 1 October 2007. The “law provides for basic ownership rights in immovables (real property) and movables (personal property)” (Dickinson, Steve 2007, ‘China’s New Property Law, Part I – Introduction’, China Law Blog, 15 May http://www.chinalawblog.com/2007/05/chinas_new_property_law_part_i.html – Accessed 19 December 2008 – Attachment 2);
- The law creates a unified registry for all interests in land: ownership of land, ownership of buildings and fixtures on the land and mortgages affecting the land, buildings and fixtures. The “law provides that ownership or any change in ownership of land or buildings and fixtures is effective upon registration in the official land register” (Dickinson, Steve 2007, ‘China’s New Property Law, Part II – General Principles, China Law Blog, 16 May http://www.chinalawblog.com/2007/05/chinas_new_property_law_part_i_1.html – Accessed 19 December 2008 – Attachment 3);
- All land in China is owned by the State or collectives. Under the law, private persons now have the right to ownership of all property, including buildings and fixtures, except land:

B. Division 5: Ownership Rights of the State and Collectives and Ownership Rights of Private Persons.

1. Ownership rights of the state. This Division provides that the state owns all land not owned by collectives. The state also owns natural resources, radio wave spectrums, cultural relics, mineral resources, military installations and basic infrastructure. The rights of the state with respect to ownership are exercised by the State Council.

2. Ownership rights of collectives. Collectives own agricultural land and land for residential purposes located in rural villages and townships. Collectives also own businesses founded by collectives using their own capital. A major issue in China is that the term “collective” is quite vague.

...3. Ownership rights of private persons. Private persons have the right to ownership in their income and basic property such as homes, items of daily use, tools, and materials of trade. The ownership right extends to their savings and capital investment in businesses. The right to inheritance is guaranteed. In addition to natural persons, the right of ownership of legal persons is also protected. Where the state, collectives and natural persons all invest in a single legal person, the rights of all three are protected on an equal basis depending on the amount of the investment (Dickinson, Steve 2007, ‘China’s New Property Law, Part III – Rules of Real Property Ownership’, China Law Blog, 17 May http://www.chinalawblog.com/2007/05/chinas_new_property_law_part_i_2.html – Accessed 19 December 2008 – Attachment 4);

- According to Section 118, “The holder of use rights enjoys the legal right to occupy, use and take benefit from the immovable or movable property owned by another person.” Use rights can be alienated, mortgaged and inherited:

A. Division 10: General Principles

In addition to defining use rights, this division provides the following:

1. As a general rule, the state follows the policy of transfer of use rights in land and natural resources to others in exchange for a fee.
2. After use rights are granted, the owner does not have the right to interfere in the enjoyment of such rights on the part of the holder of use rights.
3. When the government seizes land through eminent domain, the holder of use rights in that land is entitled to compensation under the same terms as the owner of the land.

...C. Division 12: Urban Land Construction Use Rights

Under the system established by the Land Management Law, land in urban areas owned by the government is transferred to persons for development. For the most part, the Property Law follows the provisions of the Land Management Law. The key clarifications and adjustments in the Property Law are as follows:

1. Land use rights can be transferred for a fee or by land grant.
- ...2. Land use rights must be reduced to writing and must be registered in the appropriate land registry.
3. Land use rights can be alienated, mortgaged and inherited in the same manner as ownership rights. All changes must be registered in the appropriate land registry.
4. Under current law, land use rights in residential property is for 70 years, in industrial property for 50 years, and in recreational property for 40 years. The Property Law addresses the issues surrounding expiration of land use rights as follows:
 - a. For residential property, the land use right will automatically renew at the end of its term.
 - ...b. For non-residential property, the Property Law does not change to existing law. Existing law provides that at the end of the term, the holder of land use rights may apply for an extension, with the state having total discretion as to whether to grant or deny the extension. If no request for an extension is made, or if the extension is denied, then the land use right reverts back to the state. At that time, all ownership interest in buildings and fixtures also reverts back to the state with the state having no obligation to reimburse the owner of the buildings and fixtures (Dickinson, Steve 2007, ‘China’s New Property Law, Part IV – Real Property Use Rights’, China Law Blog, 18 May http://www.chinalawblog.com/2007/05/chinas_new_property_law_part_i_3.html – Accessed 19 December 2008 – Attachment 5).

Corruption in Land Transactions

Sources, quoted below, report that land transactions are a major source of corruption in China.

An article dated 13 June 2008 in *The Asia Times* reports that “China has for years been trying to make the sale and use of land more transparent.” The article notes that land sales are “a major source of official corruption” in China. According to an investigation by the National Audit Office (NAO), “Illegal transfers, corruption in land deals, and buying land from villagers for non-agricultural use instead of through public tender or auction, is rampant in major cities”. The article continues:

Since 2004, the government has banned the sale of government sites through bilateral agreements between developers and local governments and ordered that land be sold by way of tenders, auctions or a stock listing.

Some cities have given a flexible interpretation to the rules and the auction system has often existed in name only, resulting in a lack of competition among developers and the winning developer being able to secure the land at below its true market value.

...Separately, the governments illegally deducted (or exempted) 4.8 billion yuan in land-grant fees from investors and even gave state-owned land free to attract investments, Zhai [of the NAO] said.

...Pressures to maintain the pace of economic expansion may be a factor behind some fee mismanagement, with some governments keen to speed up growth inviting big developers to invest in their cities by offering “flexible terms”, according to Yi Xianrong, a researcher with the institute of finance and banking under the Chinese Academy of Social Sciences (CASS).

“As local governments hold private negotiations with developers before sites are offered for public tender or auctions, the developers are able to get land at lower-than-market price, and so the existing land market management system exists in name only,” he said.

...Private land negotiations between local governments and interested parties are common as it is rare for more than one developer or prospective buyer to be interested in a particular site, said a Hong Kong toy manufacturer, who preferred to remain anonymous (Chung, Olivia 2008, ‘China’s land income leaking away’, *Asia Times*, 13 June http://www.atimes.com/atimes/China_Business/JF13Cb01.html – Accessed 19 December 2008 – Attachment 6).

An article dated 4 June 2008 by *Reuters* also reports on the NAO investigation which audited 11 provincial capitals. The article reports that “city governments regularly cut prices for big investors”. According to Zhai of the NAO, “Some local governments just wanted to accelerate growth rates and they used all kinds of preferential land policies to attract investors.” Zhai added that “[p]ossibilities of personal corruption and embezzlement should not be ruled out”. The article notes that “[s]maller cities and rural cities are under much higher pressure [than provincial capitals] to attract outside money” (Xin, Zhou 2008, ‘China finds rampant problems in official land deals’, *Reuters*, 4 June, Alibaba.com website http://resources.alibaba.com/topic/302298/China_finds_rampant_problems_in_official_land_deals.htm – Accessed 19 December 2008 – Attachment 7).

An article dated 3 March 2008 by *Xinhua News Agency* reports that the Shanghai Municipal Land Trading Market was inaugurated on 1 March 2008. The main concerns of the Market “are transfers and leases of land use rights for commercial developments or industrial purposes, division and transfer of the use rights of large patches of land for development, housing construction and the transfer of land accompanying it.” The article reports that in the

past in Shanghai, “such trading was not conducted openly and often done in a murky and substandard manner, turning it into a hotbed of corruption.” Prosecutors have filed a lawsuit against Yin Guoyuan, former Deputy Director of the Shanghai Housing, Land and Resources Bureau, for failing to account for the sources of 8.1 million yuan and \$US40,000 found in his possession. It is alleged that Yin accepted bribes from real estate developers in return for favourable treatment in land use applications between 2000 and 2006 (‘Market for all land transactions’ 2008, *Xinhua News Agency*, 3 March, China.org.cn website http://www.china.org.cn/government/policy_updates/2008-03/03/content_11459894.htm – Accessed 19 December 2008 – Attachment 8).

An article dated 9 January 2008 by *Xinhua News Agency* reports that “China has resolved 9,029 cases of fraud, illegal land seizures and other violations in the real estate industry since last March, some involving local officials, the Ministry of Construction said”. The Ministry of Construction started a crackdown on the real estate sector in March 2007, “after it declared that the industry had become a hotbed of corruption.” The article continues:

Some local administrative officials were involved, mostly abusing their licensing or supervisory power in return for illegal gains, which took various forms.

“Some didn’t impose penalties required by laws and regulations, while some illegally issued planning, construction, pre-sale or demolition permits to developers,” the ministry said.

“Some cases involved power-for-money deals between property companies and officials from supervision departments,” it said.

...“The industry suffers institutional loopholes in preventing and combating corruption, especially collusion between government officials and businesses,” said Construction Minister Wang Guangtao at a conference last February (‘China cracks down on property-sector malpractice, corruption’ 2008, *Xinhua News Agency*, 9 January, The Central People’s Government of the People’s Republic of China website http://english.gov.cn/2008-01/09/content_853908.htm – Accessed 19 December 2008 – Attachment 9).

An article dated 5 December 2007 in *The South Morning Post* reports that some cities “rigged the auction system to ensure that pre-selected developers won the bidding and secured the land at below its true market value.” According to Ashley Howlett, head of the Chinese international law firm Jones Day, “Legally, to offer land by way of tender, auction or listing is the only way to acquire land-use rights for the purposes of industrial, commercial, tourism, entertainment and commercial premises, unless there is only one candidate interested in such land-use rights, which we believe is rare in practice”. The article reports that the Chinese Government “was now trying to enforce the regulation.” The article also reports that five ministries will jointly inspect land-use rights granted from January 1, 2005 to December 31, 2007 and the inspections will focus on the planning, legality of granting methods/procedures, payment of land premium and the use of the granted land.” The article continues:

Since 2004, the central government has prohibited the sale of government sites through private negotiation between developers and local governments. Instead, all such sites had to be sold by way of tenders, auctions or a listing.

But property consultants said the interpretation of the rules was “flexible” in some cities that rigged the auction system to ensure that pre-selected developers won the bidding and secured the land at below its true market value.

“Not all cities attract interest from developers in their land available for auction,” a property agent said. “To speed up their economic growth, some governments of these less popular cities will invite big developers to invest by offering ‘flexible’ terms.”

Typically, this would see the two parties agree on terms and conditions and the design of a development plan on the government site before it was offered for public tender or auction.

As the conditions were tailor-made to suit the bidding proposal from the developer, rivals would usually not bother to compete, the agent said.

Owing to that lack of competition the winning developer was able to get land at lower than market price (Sito, Peggy 2007, ‘Property deals to come under scrutiny’, *South China Morning Post*, 5 December – Attachment 10).

An article dated October 2007 by a Senior Associate at the Carnegie Endowment for International Peace reports that “[c]orruption in China is concentrated in the sectors with extensive state involvement” including the sale of land user rights and real estate. The article reports on a 2006 study of 3,067 corruption cases which “found that about half of the officials or individuals engaged in corruption related to infrastructural projects and land transactions” (Pei, Minxin 2007, ‘Corruption Threatens China’s Future’, *Carnegie Policy Brief* 55, October, Columbia International Affairs Online website, pp.2-3 – Attachment 11).

An article dated 20 January 2007 in *The China Daily* reports that “[s]oon after a State-owned enterprise (SOE) in Xinyang, Henan Province, was announced bankrupt, its former president won the bid to buy the company, according to a recent report by China Youth Daily.” The article continues:

The whole process of bankruptcy and bidding was manipulated to facilitate the buyout by the former president, going against market law, the will of the company employees and the rules for an open bid.

After the deal was sealed, the company became the personal asset of the former president and the local government celebrated a success in SOE reform.

In the country’s efforts to further SOE reform, numerous examples of similar situations could be found. Former SOE officials headed the purchase of the companies, mostly at modest prices for the assets (‘Workers’ voices must be heard’ 2007, *China Daily*, 20 January, p.4 http://www.chinadaily.com.cn/cndy/2007-01/20/content_788108.htm – Accessed 22 December 2008 – Attachment 12).

According to Zhu Lijia of the China National School of Administration and reported on 22 November 2006 by *Xinhua News Agency*, “Land development is a “power intensive” and “capital intensive” area and a breeding ground for corruption”. The article continues:

In October 2004, the State Council issued new land administration regulations; in January 2005, the central government issued guidelines on combating corruption, stipulating open bidding on construction projects and intensifying the supervision of land transactions; last July, two more documents were issued regarding bids for state-owned land and transfer of ownership of state-owned land.

“Regardless of these rules and regulations, local governments or some local officials still colluded with businessmen on land deals,” said Zhu Lijia.

...“Local governments are the source of supply of both land and commercial residential buildings. They make the rules and arbitrate the land game,” he said.

...Despite the rules on open bidding, public bidding accounted for only 14.57 percent of land ownership transfers in 2002. The figures rose to 26.81 percent, 28.86 percent and 35.06 percent in 2003, 2004 and 2005, but that still means that two thirds of land is transferred far from public scrutiny.

“These figures show that the market is not playing the role it should,” Zhu said (‘Land transactions, hotbed for corruption in China: expert’ 2006, *People’s Daily*, source: *Xinhua News Agency*, 22 November http://english.peopledaily.com.cn/200611/22/eng20061122_324155.html – Accessed 19 December 2008 – Attachment 13).

An article dated 3 March 2006 in *China Daily* reports that a “recent central government document said commercial bribery was widespread in six areas: construction, land use, property transactions, distribution of medicine, government procurement and development of land resources.” The article reports that “[c]ommercial enterprises and businesses gaining an unfair advantage through bribery widely existed in almost every trade in China, especially among...development of land resources.” The article reports on the case of Wang Daosheng, former Deputy Secretary-General of the Hunan Provincial Government, who “was arrested for assisting a private company buy a local state-owned medicine manufacturer for a low price” (‘Top Officials Vow to Fight Against Corruption’ 2006, *China Daily*, 3 March, China.org.cn website <http://www.china.org.cn/english/2006/Mar/160020.htm> – Accessed 19 December 2008 – Attachment 14).

A book on private and public corruption in China published in 2004 states that the “State Bureau of Land Administration, which, as its name suggests, allocates land resources, is where corruption is especially severe, and it appears in the majority of cases that come to light.” The book continues:

The power to allocate and distribute resources is still basically in the hands of the government and its officials, who, at all levels, remain the ultimate arbiters of who gets what. This reality gives appointed officials in ministries with control over resources, such as the State Bureau of Land Administration, the State Planning Bureau and financial organizations and institutions (state banks and securities companies, for example), considerable opportunities for rent-seeking activity. The methods these people resort to in order to gain advantage are hardly subtle and crystallized in the acceptance of bribes and the diversion of public funds. In 1995, there were a number of cases that serve as typical examples of this kind of corruption: Yan Jianhong, who served first as the Deputy Director of the Guizhou province Planning Committee and later as the Managing Director of the Guizhou CITIC, and Wang Jianye, head of the Shenzhen Planning Bureau’s Department for Finance and Trade. These government departments are in a position to approve or deny the use of materials and resources designated in government plans, as well as control the use of capital and various funds, which, in the particular environment of China’s “twin track” pricing system, amounts to nothing less than possessing the Midas touch. It is not rare for a single authorized “approval note” to immediately transform such people into millionaires.

...The State Bureau of Land Administration, which, as its name suggests, allocates land resources, is where corruption is especially severe, and it appears in the majority of cases that come to light. The investigation into the activities of Wang Ju, Deputy Mayor responsible for urban construction in the city of Shenzhen, ended with prosecution in 2001. The case found that 32 officials were involved in corrupt activities and the affair enveloped almost all

officials working at the city's Land and Urban Construction departments. The sheer amount of cash involved left the public—already accustomed to large-scale corruption—in a state of shock. The Wang clan, via Wang Ju's daughter Wang Tao and her control of the project, harvested 120 million yuan in profits from the Windsor Square real estate development alone. According to government regulations, the plot was worth 150 million yuan, but Wang Ju ordered his subordinate, the Deputy Director at the Shenzhen Land Planning Bureau, Pang Chenghong, not to go through official land value procedures when dealing with the Windsor project. The price was subsequently valued at 27.6 million yuan, 122 million yuan less than its real value (Qinglian, He 2004, 'On Systematic Corruption in China and its Influence', *Private and Public Corruption*, Chapter 9, Rowman & Littlefield, Maryland, danke4china website <http://www.danke4china.net/ywyz/7.htm> – Accessed 19 December 2008 – Attachment 15).

3. Are employees subject to non payment of their financial entitlements when businesses close down?

The information provided in response to these questions has been organised into the following four sections:

- Bankruptcy in China;
- Unpaid Wages;
- Recent Protests;
- Imprisoned Workers.

Bankruptcy in China

The information provided below covers SOEs and privately owned factories.

An article dated 9 October 2008 in *The Economist* reports that only a few thousand companies will declare bankruptcy during 2008 in China although unofficially “local manufacturing groups believe many more than that will go out of business in the southern province of Guangdong alone.” The article reports that “the only trace left by most of these firms will be rusting locks on their old front gates.” The article continues:

This is because Chinese business owners who wish to shut down their companies have three options: to reach informal agreements with employees, trading partners and the government; to file under the auspices of a court; or to walk away.

A Shenzhen manufacturer who recently tried to close by informal agreement describes the process as almost impossible. He had to negotiate separately with over a dozen government agencies, including tax, labour and even the fire department; each had demands that changed by the day. Then there were skittish suppliers, one of whom blockaded his firm's entrance. “Everyone just wanted more money,” he says. “That is why most people just shut down overnight.” The only thing everyone agreed on was the need to avoid the local courts ('Bankruptcy in China – Silent busts' 2008, *The Economist*, 9 October http://www.economist.com/business/displaystory.cfm?story_id=12380989 – Accessed 22 December 2008 – Attachment 16).

The Enterprise Bankruptcy Law of the People's Republic of China 2006 was promulgated on 27 August 2006 and came into effect on 1 June 2007. A copy of *The Enterprise Bankruptcy Law of the People's Republic of China 2006* is included as Attachment 17 (*The Enterprise Bankruptcy Law of the People's Republic of China* (Promulgation date 27 August 2006 & Effective date 1 June 2007), Lehman, Lee & Xu LLP website

<http://www.lehmanlaw.com/resource-centre/laws-and-regulations/company/the-enterprise-bankruptcy-law-of-the-peoples-republic-of-china.html> – Accessed 17 December 2008 – Attachment 17).

According to MWE China Law Offices, *The Enterprise Bankruptcy Law of the People's Republic of China 2006* replaces *The Bankruptcy Law 1986* which only applied to SOEs. Under *The Bankruptcy Law 1986*, “employee claims were paid first, before those of the creditors.” *The Enterprise Bankruptcy Law of the People's Republic of China 2006* applies to all entities that hold legal person status and “secured creditors in relation to their secured assets shall be paid first, and employee claims and other welfare shall be paid from unsecured assets (Article 109)” (Huang, John, Huang, Ken & Raicht, Geoffrey T. 2008, ‘Analysis of China’s New Bankruptcy Law’, *China Law Alert*, October, MWE China Law Offices website, pp.1-2

<http://www.mwechinalaw.com/documents/mwechinalaw1008.pdf> – Accessed 17 December 2008 – Attachment 18).

An article dated 9 October 2008 in *The Economist* reports that the new bankruptcy law “is incomplete and poorly understood.” The article continues stating that “[e]ven firms that might recover by restructuring under court protection are reluctant to use it, says Helena Huang of the law firm Kirland & Ellis” (‘Bankruptcy in China – Silent busts’ 2008, *The Economist*, 9 October

http://www.economist.com/business/displaystory.cfm?story_id=12380989 – Accessed 22 December 2008 – Attachment 16).

An article dated 26 November 2008 by *XFN-Asia* reports that despite the introduction of the new law and mounting factory closures “there has not yet to appear a single filing for bankruptcy or any aggressive push to protect workers through the legal system, insiders said.” The article reports that local governments have been stepping in to pay laid-off workers:

Despite the introduction of legislation guaranteeing protection of fired workers and companies facing insolvency, factories in trouble have taken little notice.

Moreover, the government has not shown much faith in the courts, choosing to intervene directly to protect workers.

...Hong Kong-listed Smart Union Group – which supplies three of the world’s largest toy producers – shut two toy manufacturing plants in Guangdong last month. Over 6,000 workers at the two factories lost their jobs prompting the local government to dole out 24 mln yuan to cover two months of unpaid wages.

...In Shenzhen, the local government used 8.55 mln yuan to cover payments to the 1,200 workers laid off at BEP International’s appliance factory in the south China city.

Guangdong’s labor authority said it was in the process of setting up a “benefit fund” to help workers who find themselves, illegally or otherwise, thrown out of work and looking for unpaid wages – a situation that has often sparked violent and fatal confrontations with authorities.

...But among all the factory closures and layoffs, there has yet to appear a single filing for bankruptcy or any aggressive push to protect workers through the legal system, insiders said.

With some companies simply shutting their doors without going through official procedures, China's legal system is looking a bit limp.

"In terms of protecting companies turning insolvent and protecting the workers of those companies suffering as a consequence, the law is not holding up very well," Lauffs [Head of Baker & McKenzie, Hong Kong] said.

...The enterprise bankruptcy law took effect in June of last year with provisions for workers to maintain their right as secured creditors in the case of insolvency. No insolvency case has yet arisen and local governments have already stepped in to secure assets ('Focus – China factory closures put new labor, bankruptcy laws to test' 2008, *XFN-Asia*, 26 November, Chinese stock information website <http://www.chinesestock.org/show.aspx?id=28037&cid=17> – Accessed 19 December 2008 – Attachment 19).

An article dated 27 August 2006 by *Xinhua News Agency* reports that "SOEs that announce bankruptcy before June 2007 can be closed down with the aid of government bailouts and could pay laid-off workers first." The article reports that 3,658 SOEs closed with government subsidy support between 1994 and 2005 and the Chinese Government set aside 33.8 billion yuan to help bankrupt SOEs settle with laid-off workers in 2006 ('China: More on Chinese legislature adopts corporate bankruptcy law' 2006, *BBC Monitoring Alert*, source: *Xinhua News Agency*, 27 August – Attachment 20).

An article dated 13 June 2008 in *The Economic Observer* reports that the "special treatment" for SOEs declaring bankruptcy will end after 2008. This policy provides that when SOEs declare bankruptcy "all assets must be used for settling back-pay with employees before paying off the bank debt." According to official statistics, by the end of 2008 this policy will have provided compensation for 10.18 million employees. According to the Ministry of Finance, 30 billion yuan was used for this policy in 2007 alone (Yi, Kang & Biqiang, Wang 2008, 'Special Bankruptcy Out for SOE's Coming to an End', *The Economic Observer*, 13 June <http://www.eeo.com.cn/ens/Politics/2008/06/13/103009.html> – Accessed 19 December 2008 – Attachment 21).

Unpaid Wages

An article dated 20 December 2008 by *Xinhua News Agency* reports that "[t]here are increasing cases in China of foreign investors who do not go through the formalities of declaring bankruptcy, but instead slip away, leaving behind equipment, unpaid wages and debts. Most of those fleeing investors were in small and labor-intensive companies" ('China seeks foreign aid to pursue overseas investors who flee' 2008, *China Daily*, source: *Xinhua News Agency*, 20 December http://www.chinadaily.com.cn/bizchina/2008-12/20/content_7325428.htm – Accessed 19 December 2008 – Attachment 22).

According to a Freedom House report published on 17 November 2008, "Incidents of worker unrest have risen notably in China over the past decade, motivated by issues like dangerous working conditions, layoffs, and unpaid wages." According to Freedom House's annual report published on 2 July 2008, "Despite the fact that workers lack the legal right to strike, there has been a growing wave of strikes over layoffs, dangerous working conditions, unpaid wages, and benefits." Freedom House notes that the "reaction of local officials varies, with most offering partial concessions to workers while detaining strike leaders" (Freedom House 2008, *Freedom in the World – China (2007)*, 2 July – Attachment 23; and Freedom House

2008, *Freedom of Association Under Threat The News Authoritarians' Offensive Against Civil Society*, 17 November, p.13 – Attachment 24).

The Fédération Internationale des Ligues des Droits de l'Homme (FIDH) and the World Organisation Against Corruption (OMCT) published their annual report on 19 June 2008. According to FIDH and OMCT, “throughout 2007, the Chinese authorities pursued their systematic violation of human rights and continued to muzzle all forms of dissident opinion against a backdrop of increasing social protests, in particular against the forced evictions of citizens from their homes, the expropriation of peasant farmers from their lands, unpaid wages, and local authority corruption” (Fédération Internationale des Ligues des Droits de l'Homme & World Organisation Against Corruption 2008, *Steadfast in Protest – Annual Report 2007*, 19 June – Attachment 25).

According to Human Rights Watch's *World Report 2008: Events of 2007*, the “restriction on legally sanctioned labor activism coupled with increasingly tense labor disputes in which protesting workers have few realistic routes for redress have contributed to increasing numbers of workers taking to the streets and to the courts to press claims about forced and uncompensated overtime, employer violations of minimum wage rules, unpaid pensions and wages, and dangerous and unhealthy working environments” (Human Rights Watch 2008, ‘China’, *World Report 2008: Events of 2007*, 31 January – Attachment 26).

An article dated 12 February 2005 in *The Korea Herald* reports on the rising number of worker protests in China. The article reports that there were 100,000 protests in 1999 and that the annual number has probably increased since then. The causes of the protests are “unpaid wages and pensions; sudden and massive job terminations; corrupt officials held responsible for the bankruptcy of some industrial enterprises; and an end to most socialist privileges and benefits”. The Chinese government “is determined to keep news of all disturbances out of the media – or at least play down their size and disruptiveness”. The article notes that “so far, the regime has succeeded in maintaining overall stability through control of the media (thereby preventing one protest movement learning about and linking up with others); by buying off angry unemployed workers with temporary stipends; and by suppressing and imprisoning those it cannot dissuade” (Solinger, Dorothy 2005, ‘Rising worker protests in China’, *The Korea Herald*, 12 February – Attachment 27).

Recent Protests

An article dated 27 November 2008 in *The Tibetan Review* reports that as “factories close down and official corruption, highhandedness and apathy continues unabated, China has been seeing far more and much bigger protests in recent times.” The article provides the following information on recent protests over unpaid wages following bankruptcy:

Some 600 workers of a subsidiary in Shenzhen's Longhua township of Hong Kong-listed Peace Mark Holdings, a watchmaker, staged protests during the week over unpaid wages and severance benefits, reported Radio Free Asia (RFA), Washington, Oct 24. The company had gone into liquidation. “If nothing comes out by Friday (Oct 24), we will protest at the municipal government,” a worker surnamed Song was quoted as saying.

Labour affairs officials at the Longgang township government in Shenzhen ended a protest by around 900 workers of Gangsheng Electronics, a bankrupt Hong Kong- invested electronics supplier, by paying them three months' back pay totally received 3.1 million yuan (U.S.

\$453,00) and promising them their severance pay once the factory they had worked for is stripped of its assets, said the RFA report

More than 1,000 workers of Chunyu Textile Company took to the streets on Oct 27 in Wujiang city of Jiangsu province in eastern China, blocking four downtown streets, after their employer apparently fled abroad, leaving four months of wages unpaid, reported the AFP Oct 28, citing Hong Kong-based Information Centre for Human Rights and Democracy. The protesters only agreed to disperse after a city official emerged, promising to find a solution to their plight

The report also said that in the southern Chinese export hub of Dongguan in Guangdong Province, the owner of Smart Union, a Hong Kong-listed toy factory, one of the largest in the city, fled after his company went bust earlier in October, leaving 7,000 workers jobless and owed back pay. Many of those workers protested, forcing the local government to help pay some of the back wages.

More factory closures and resultant protests were expected. As many as half of all toy manufacturers in the Pearl River Delta could go out of business within the next two years, reported China's official China Daily newspaper Oct 21, citing an industry expert. Speaking in an interview with Guangzhou Daily, Wang Zhiguang, vice-chairman of the Dongguan Toy Industry Association, had said: "Of the 3,800-odd toy firms in Dongguan, no more than 2,000 are likely to survive the next couple of years ('As economic hardships bites, China hit by more and bigger protests' 2008, *Tibetan Review*, 27 November <http://www.tibetanreview.net/news.php?cat=2&&id=1503> – Accessed 19 December 2008 – Attachment 28).

Imprisoned Workers

According to the US Department of State's *Country Reports on Human Rights Practices 2007*, the International Trade Union Confederation "protested violence against workers claiming unpaid wages and urged the government and police to ensure the safety of labor activists and their organizations" (US Department of State 2008, *Country Reports on Human Rights Practices 2007 – China*, 11 March, Section 6a – Attachment 29).

A number of workers have been imprisoned for protesting against unpaid wages following bankruptcy. A selection follows.

- Xiao Yunliang and Yao Fuxin were sentenced in May 2003 to four and seven years of imprisonment respectively for their parts in the mass protests in Liaoyang in March 2002. The 2,000 workers from Liaoyang Ferroalloy Factory together with 15,000 workers from five other factories "were protesting against alleged corruption in the factory – which they argued had directly caused its recent bankruptcy – and calling for unpaid wages and other owed benefits, including pensions, to be paid to the workers." The health of the pair "has been deteriorating" in prison with prison authorities "providing them with little or no medication or other medical care." On 23 February 2006, Yunliang was released from prison, however, human rights NGOs report that "Xiao and his family continued to suffer harassment after his release." Fuxin remains in prison "in very poor health, and authorities denied his family's request for medical parole" ('List of Imprisoned Labour Activists in China' 2005, *China Labour Bulletin*, June – Attachment 30; International Confederation of Free Trade Unions 2006, *China, Peoples Republic of: Annual Survey of Violations of Trade Union Rights (2006)*, 7 June – Attachment 31; US Department of State 2007, *Country Reports on Human Rights Practices 2006 – China*, 6 March, Section 6a – Attachment 32; US Department of State 2008, *Country Reports on Human Rights*

Practices 2007 – China, 11 March, Section 1c ‘Prison and Detention Center Conditions’ – Attachment 29);

- On 8 February 2004, “Mr. Wang Hanwu and eight other workers from the Tieshu Textiles Factory in Suizhou City, Hubei province, were detained by police following a mass public demonstration by over 1,000 workers...The Tieshu workers were protesting against the recent bankruptcy of the factory, which they alleged had resulted from extensive corruption on the part of the factory's managers. According to the now unemployed workers, the factory still owed them more than 200 million Yuan (around \$20 million) in unpaid wages and medical benefits, pension payments, and the shares of factory stock that workers were forced to buy some years ago and which are now worth only a quarter of their original value. “Disrupting social order” cases were successfully brought against three of the laid-off workers, resulting in sentences of up to one year in prison” (Fédération Internationale des Ligues des Droits de l’Homme 2005, ‘Asia’, *Situation of Human Rights Defenders*, 31 March, p.229 – Attachment 33);
- In May 2005, “Kong Jun and Li Xintao, employees of the bankrupt state-owned Huamei Garment Company, were convicted of disturbing social order and government institutions after they asked the Shandong provincial government to act against their employer for failure to pay workers’ wages and insurance benefits” (US Department of State 2006, *Country Reports on Human Rights Practices 2005 – China*, 8 March, Section 6a – Attachment 34);
- Hu Jing, a laid-off workers’ representative from the bankrupt Jianshe Motorcycle Corporation in Chongqing, “was forcibly sent to a psychiatric institution in November 2007 for his attempts to claim unpaid wages in Sichuan” (‘Imprisoned Workers’ 2008, *China Labour Bulletin* <http://www.china-labour.org.hk/en/node/100014> – Accessed 19 December 2008 – Attachment 35).

4. Are there requirements for employers to act in a responsible manner regarding their employees when their business is closing down?

No requirements for employers to act in a responsible manner regarding their employees when their business is closing down were found amongst the sources consulted.

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UK Home Office <http://www.homeoffice.gov.uk/>

US Department of State <http://www.state.gov/>

United Nations (UN)

UNHCR Refworld <http://www.unhcr.org/cgi-bin/texis/vtx/rsd>

Non-Government Organisations

American Bankruptcy Institute <http://www.abiworld.org/>

Amnesty International <http://www.amnesty.org/>

China Labour Bulletin <http://www.china-labour.org.hk/en/>
Fédération Internationale des Ligues des Droits de l'Homme <http://www.fidh.org/>
Freedom House <http://www.freedomhouse.org/>
Human Rights Watch <http://www.hrw.org/>
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Topic Specific Sites

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Kirkland & Ellis LLP <http://www.kirkland.com/>
Lehman, Lee & Xu LLP <http://www.lehmanlaw.com/>
MWE China Law Offices <http://www.mwechinalaw.com/>

Search Engines

Google <http://www.google.com.au/>

Databases:

FACTIVA (news database)
BACIS (DIAC Country Information database)
REFINFO (IRBDC (Canada) Country Information database)
ISYS (RRT Research & Information database, including Amnesty International, Human Rights Watch, US Department of State Reports)
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