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YOUR KEY TO  
LABOR AND  
EMPLOYMENT LAW IN



# CHINA

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Jingbo Lu (Jason)

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### Notes on Author

Jingbo Lu (Jason), the Founding Partner and Director of River Delta Law Firm, is a renowned labor and employment law expert in China. Jingbo Lu was, and continues to be, a forerunner and pioneer in the labor and employment law service area for the Mainland of China.

Having practiced for over 20 years, Jingbo Lu has many notable accomplishments, including founding the first professional online labor law service platform [www.laodongfa.com](http://www.laodongfa.com), initiating the first HR periodical “*Labor Law China*”, and launching the first app “*Labor Law China*” for HR services. Jingbo Lu has also acted as a long-term legal consultant for hundreds of multinational corporations, foreign-funded enterprises, state-owned enterprises and private enterprises. He has also provided training of labor and employment law in the Mainland of China, Hong Kong, Singapore, Vietnam, US California and Cambodia for thousands of enterprises over his many years of practice. Jingbo Lu’s outstanding performance in labor law has earned him a strong reputation among his peers, and it has solidified his position as a leading expert in the area of labor and employment law throughout the Mainland of China.

Jingbo Lu’s most notable publications include:

- ◆ *RDL - Golden Key to Employment Law - Management of Employment Termination*
- ◆ *RDL - Golden Key to Employment Law - Management of Female Employees*
- ◆ *A Guide to HR Application of Employment Contract Law*
- ◆ *Dispute and Harmony - Essentials on Labor Dispute Prevention and Settlement*
- ◆ *Legal Practice for Enterprise Recruitment Management*
- ◆ *Management of Employment Relationship of Group Enterprises*

## *Notes on River Delta Law Firm*

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River Delta Law Firm (“RDL”) was established in 2004. Since then, RDL’s team of skilled lawyers has endeavored to instill legal expertise and practical insights into every resolution for its clients. While RDL continues to be oriented by labor law, the firm has expanded its service offering, with our lawyers also excelling in M&A, anti-corruption and compliance investigation, IP law, dispute resolution and other areas of law. We pride ourselves on leading the labor law practice of China, thanks to the firm’s long history and accumulated experience over the years.

River Delta’s headquarters is in the Lujiazui Finance and Trade Zone, with branch offices in Beijing, Suzhou, Shenzhen, Chengdu, Ningbo, Tianjin and Chongqing, as well as a liaison office in the San Francisco Bay Area. RDL is also preparing for the launch of an office in Hong Kong. River Delta operates by an integrated management system between the headquarters and branches, meaning that our clients can enjoy comparable services of guaranteed high quality. River Delta presently has more than 130 lawyers and assistants, among which 80 lawyers specialize in labor law. This constitutes the largest labor law team across all of China.

Along with the achievements of creating our own brand and receiving an excellent reputation, RDL deliberately leverages and integrates external resources, actively seeking partnerships with both domestic and foreign firms in the legal and business professions. In particular, since the establishment of the International Cooperation Center and the Cross-Border Labor and Employment Law Center in 2013, RDL has engaged in extensive cross-border cooperation with law firms outside the Mainland of China. This constantly improves our competence and service quality in relation to cross-border employment disputes. Thanks to the firm’s outstanding performance

across all types of transactions and cases, River Delta has been widely recognized by clients through satisfaction evaluation. From 2011 to 2017, RDL has consecutively ranked as a top employment law firm by Chambers & Partners, Legal 500, and other legal ranking organizations.

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## Preface

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*The Labor Law of the People's Republic of China*, which came into effect on Jan 1 1995, is the product of the reform of China's socialist market economy. The implementation of *the Labor Law* facilitated China's reform. Since the implementation of *the Labor Law*, the employment structures in China have changed dramatically, with some changes including the rapid development of the industrial and service sectors; increasing migrant rural workers; the incorporation of the state-owned enterprises; the standardization of private enterprises and the localization of foreign-invested enterprises. The human resources industry has also flourished in every area, including the human resource legal service.

It was in 2015, the 20<sup>th</sup> year since the implementation course of *the Labor Law*, the 20<sup>th</sup> year of practicing as a lawyer, and the 12<sup>th</sup> anniversary of my establishment of River Delta Law Firm, that I decided to write this book. Confronting several setbacks, the book is finally finished 2 years later. Even in these 2 years, some major labor-related policies in China have emerged, including the implementation of the "universal two-child" policy, the plan to raise the retirement age, the plan to combine maternity insurance and basic medical insurance, and changes to Chinese policies on employment of foreigners. Fortunately, although different understandings in labor and employment law exist in local practice, and the labor-related policies have changed at the national level, China is a complex but unitary country. Comprehensive knowledge about state policy contributes to a deep understanding in local practice, and thus the former is the focus of this book.

This book is conceptualized as the first practical book introducing Chinese labor and employment law which is authored by a Chinese legal practitioner. The book provides an overview of



*the law*<sup>①</sup> which is useful for foreign enterprises operating in China or who deal with Chinese companies. It is also useful for foreigners seeking a basic understanding of China's labor and employment law. Additionally, we trust that the book is useful for comparative study by human resources professionals working in multi-national enterprises and international labor law experts.

This book has adopted the structure of *the Labor Law*, rather than using labor law theory as a basis. The book adopts an enterprise management approach and is written with a global vision. The book initially establishes the general rules governing the employment relationship and integrating the experience of River Delta Law Firm's native lawyers.

Nevertheless, the regulatory framework governing Chinese labor and employment relations is inherently complex. There are numerous and convoluted laws, regulations and cases governing different aspects of employment, with new exceptions emerging almost immediately as principles are established. This is the reflection of the historical development of China's labor and employment legislation, and the rapid industrial changes occurring today. This book does not purport to cover all of the complex and growing field of employment relations.

In addition to the constant proliferation of new laws and exceptions, the words in existing laws often take on new meanings to adapt to changing practical realities. The consequence is that the rights and obligations of employers regularly change. Inherent tensions between employers and employees will always characterize the employment relationship, no matter how harmoniously the drafters of legislation wish it to operate. The number of labor disputes is still increasing over the past few years. Collective stoppages and group incidents occur from time to time. Meanwhile, as the new economy corporations rise, the instinct to evade compliance with laws, including labor laws, still widely exists. This leads to a clear conflict between regulation and development, while

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① *The content of this book is intended only to provide a summary and general overview on Chinese employment law. It is not intended to be comprehensive, nor does it constitute legal advice. The author has attempted to ensure that the content is accurate, but does not guarantee the accuracy of the book for your circumstances. You should seek specific legal or other professional advice catered to your circumstances and should not act or rely on any of the content in this book.*

the undercurrent value is the collection and analysis of the big data based upon the arithmetic and code, even generating the conflict between artificial intelligence and human beings. Therefore, the reform of labor and employment law in China is always ongoing.

## *Acknowledgment*

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The contents of this book comes from my practice as a lawyer, a managing partner of a law firm, a part-time arbitrator, a member of the Political Consultative Conference and as other social affiliations, but the soul lies in the professional legal team of River Delta Law Firm.

In the 2 years writing process, my colleagues Xinbei Cao (Summer), Fan Huang (Freddy), Licheng Shen (Will), Xinyue Wang (Alice), Anqi Xiang (Angela), Normand Gauthier, Zhe Yang (Bryan), Lili Wang (Lily) and Ting Fei (Vicky) dedicated themselves to drafting and enriching the contents of each chapter. Xiaorong Qu (Cathy), senior partner of River Delta Law Firm, and Yanhong Geng (Rosy), partner of River Delta Law Firm, assisted me by reviewing the book thoroughly. Normand Gauthier, as a foreign consultant from Canada, provided a brief comment on the whole book. They are all excellent legal practitioners in labor and employment law, combining their in-depth knowledge and experience into legal practice.

I also want to acknowledge the contribution of Emily Setter, an Australian graduate of Industrial Relations and Human Resource Management, for reviewing the book from a foreigner's perspective. My young, energetic and talented associate Qing Shi (Tony) compiled this book and provided useful information in the overview of the book.

In the end, I would like to thank for my lovely wife, Yunxia Liu, who has supported me in all aspects of my life. My team and family are the most invaluable things and I cannot thank them enough for their encouragement and motivation during my authoring of this book.

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