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RESTRUCTURING WITH NEW CHINESE CHARACTERISTICS:

The challenging task of managing commercial and labour disputes in China

Troubled times

We've all heard the China stories: a visiting foreign executive being illegally confined to a hotel room; a plant manager being locked inside his own factory; rogue suppliers or distributors from some far corner of the country arriving to protest and surround offices in Beijing or Shanghai; or perhaps worst of all, hundreds of striking employees shutting down a factory for successive weeks. When a multinational is faced with a tough restructuring, how can it effectively avoid both headlines in the papers and red lines on the balance sheet?

MNCs are now faced with a particularly stressful situation. As China's economy is starting to slow, foreign companies are reassessing their footprint in China – and many are finding that they no longer need the facilities, people or partners they had during the years of plenty. However, MNCs are finding that the broader regulatory climate and the psychology of labourers are shifting, making it ever more difficult to safely restructure their operations and prevent a full-blown labour or commercial dispute.

What's changed for companies?

The cost burdens are undeniably rising. In the 2014 European Chamber Confidence Survey, increasing labour cost was the primary human resources concern among their members. In the 2015 AmCham Shanghai survey, one third of their members indicated that the rising costs of operations in China were a "serious hindrance to business".

Foreign businesses are not leaving China - only 6% of corporate respondents to the AmCham survey planned to move out of the country entirely. However, foreign companies are *increasingly choosing to make labour force adjustments*. This includes adjustments to employees, third party suppliers and distributors.

Over 30% of companies surveyed by AmCham noted they have either begun engaging in, or plan to start downsizing and add automation (up 10% from the year before). For European companies, 53 out of 114 who planned to cut costs intended to reduce personnel.

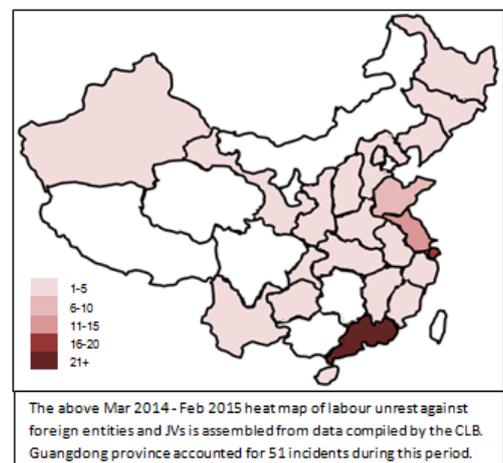
Discontent in the numbers

The China Labour Bulletin (CLB), a Hong Kong-based labour rights organisation, recorded 569 labour incidents of all kinds across the country in Q4 2014, a 3x increase in the number of protests over the same period in 2013. Although Guangdong province remains particularly vulnerable to risks of labour unrest, other locations such as Shandong, Jiangsu, and Shanghai are also prone.

For the twelve months from March 2014 through February 2015, the CLB recorded a total of 130 incidents across China which occurred against foreign-owned or JV entities (almost entirely manufacturers). Of these, the vast majority involved sometimes hundreds of workers demanding wage increases, new benefits, or compensation for restructuring, overtime, and layoffs.

What's motivating workers to act more aggressively?

This dramatic uptick in incidents can be attributed, in part, to three larger forces at play: a "new normal" of economic, regulatory, and technological factors which shifts initiative to the workers:



- **The economic and regulatory climate:** Chinese workers are aware that the wider manufacturing slowdown will mean that once they lose a job, it will be more difficult than it was in the past to find a new one. Simultaneously, China's labour laws place significant power into the hands of workers. In addition, China's Ministry of Human Resources is recommending further legal provisions that would limit companies' abilities to make large scale personnel adjustments.
- **Voicing of grievances:** Workers are increasingly better organised through social media and are using pressure tactics to protect their rights (as they understand them) and wages. Many workers do not trust formal channels for addressing grievances and may feel the need to take measures into their own hands.
- **Reputational awareness:** Workers understand that MNCs seek to avoid reputational damages arising from exposure to the media and to government regulators, both domestically and internationally, so are confident that any threat of public action will be paid attention to.

The tactics used in commercial and labour disputes

Disgruntled workers may escalate along a set of behaviours to force corporations into complying with their demands. Escalation very often proceeds in intensity along the following path:

- Threats or action taken to **leak critical information** to competitors, making threats to go to the press, or disclosure of previously unknown and problematic accounting or sales practices to government agencies.
- **Denial of access** to facilities/offices, a detention of individuals, a strike or refusal to work, shut down of machines and equipment; the vast majority of labour incidents in 2014 involved strikes and denial of access tactics.
- Threats or action taken to **inflict physical damage against facilities and individuals**, extortion of plant management and company executives (even in other locales) or physical assault. Though more rare in China, physical violence does happen.

What can companies do?

China's economic slowdown isn't lifting anytime soon and many companies will look at ways to restructure and streamline their China operations. In an environment where cost-cutting and restructuring will be more aggressively resisted, companies must establish both preventive and responsive mechanisms to limit escalation. Doing so can confine a confrontation from becoming a full-blown crisis and curtail major disruption to business operations:

Stages	Activities
Planning	<ul style="list-style-type: none"> • Map the stakeholders that would be involved in a restructuring – employees, vendors, distributors, local government officials – and identify their needs and motivations; • Locate existing vulnerabilities to infrastructure, assets, and personnel; • Review national and local labour laws to insure your actions and planned offers to employees are in line with legal requirements; • Review existing crisis management and business continuity procedures and insure that management is able to execute; • Consider different scenarios based on stakeholder reactions and your own vulnerabilities, creating risk mitigation and response plans for each.
Communications	<ul style="list-style-type: none"> • For each stakeholder, identify key messages and triggers to address their needs and motivations; • Discuss engagement strategies with local government and police (NOTE, unless you have a prior relationship with the local police, they will often be reticent to get involved until things go wrong); • Plan to monitor social media to get an early warning of trouble.
Execution	<ul style="list-style-type: none"> • Safety and security should be a number one priority • Carefully plan the announcement and communicate clearly using written (in Chinese) and verbal (i.e. town-hall) communications;
Crisis response	<ul style="list-style-type: none"> • Have a security team in place to protect people, critical assets and ensure continuity of operations • Do not concede to extortive threats and demands – develop coercive negotiation strategy that protects both immediate and long term interests.

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