

## 1. Introduction

In 2010-2011, FWF aims to further strengthen involvement of local stakeholders in its local audit teams in China. For this purpose, FWF organises seminars to facilitate the exchange of ideas and expertise. On 24 May 2010, the first edition of the stakeholder & auditor seminar took place. The seminar took place at the Hong Kong Polytechnic University. Discussions were held in Mandarin and English.

This paper summarises the main points of discussion, lessons learned and suggested next steps. The paper will be shared with all seminar participants and will be published on the FWF website. FWF will actively follow up with auditors to embed recommendations into audit practices.

FWF would like to thank [Bread for All](#) (CH) for providing financial support for this seminar.

## 2. Latest developments at FWF & audit manual review

### *Presentation by Ivo Spauwen (Fair Wear Foundation)*

The morning session kicked off with a 'What's new at FWF' session. This roundup included a presentation of FWF's new publication, the Fair Wear formula, and the state of affairs with regard to management system audits and complaints. In addition, FWF presented its strategic plan for China for 2010-2011.

FWF presented the tentative conclusions from its study on wages in the Chinese garment industry 2009, after which auditors and stakeholders gave feedback on the findings. During the discussion it was agreed that the draft paper would be sent to local stakeholders for further comments.

The morning session was rounded up with a review of the most important changes in the FWF audit manual. This presentation included FWF's new wage ladder approach. The wage ladder will allow FWF audit teams to chart wage levels in factories against local wage and income standards. This does not only illustrate how workers' wages measure up to applicable prescribed wage levels, but it also helps chart progress in improving wages in factories, and allows for disaggregation of wage levels across production departments. The review also touched upon other audit elements which relate to the management systems of FWF affiliate members and their factories to effectively work towards sustainable improvements in working conditions.

## 3. Grey areas in labour law on working hours

### *Presentation by Dr. Li Hongjian (Renmin University)*

Dr. Li Hongjian of Renmin University gave an expert presentation which focused on grey areas in Chinese labour legislation with regard to (payment of) overtime work. His presentation included three case study examples to explain how existing labour legislation applies to various working time arrangements in factories which FWF audit teams have come across in factories. In addition several case studies on labour arbitration rulings with regard to (payment of) overtime work were discussed in detail, sparking a lively discussion among participants.

Summary of presentation and discussion:

- Chinese labour law requires that overtime working arrangements must be agreed upon in consultation with workers or their representatives.
- If overtime work during a specific time frame cannot be avoided Chinese labour legislation allows factories to apply for a comprehensive working time system. This gives factories more flexibility in production capacity by allowing them to concentrate the legally allowed amount of overtime working hours of a full month into a single work week.
- To get a permit for a comprehensive working time system it is necessary to apply in writing at the local labour administration department. The application should document reasons for additional working hours and must ensure the legitimate rights and interests of workers, including the total working hours and overtime hours do not exceed statutory working hours and sufficient rest breaks are provided.
- In practice comprehensive working time systems lead to extended regular working weeks. In many factories the amount of regular working hours is equal to the maximum amount allowed by the permit for a limited time span.
- Calculation of overtime pay must be based on (in order of hierarchy):
  1. stipulations in collective bargaining agreements or collective contracts;
  2. labour contract provisions;
  3. non-formal consensus between employer and employees (given that this may be no less than the salary stipulations in the existing labour contracts);
  4. the level of net wages of staff in the last six months;
  5. In extreme cases (in absence of the above) other available documents must be used to compute the overtime pay rate.
  6. If wages in practice fall below the local minimum wage, overtime wages must be computed on the basis of the local minimum wage.
- In case of arbitration on overtime or overtime pay the burden of evidence lies with the employer.

## 4. Gender perspective on audits in China

### *Presentation by Suetwah Choi (Chinese Working Women Network)*

The presentation by CWWN stressed that best practice auditing requires addressing root causes behind an absent or failing gender approach in factories. Auditors should assess all aspects of the labour situation in factories from a gender perspective. A key question in this regard is how the employer can protect women in their reproductive role at the workplace.

Summary of presentation and discussion

- Auditors should take the issue of 'human dignity in professional and private environment' as a starting point. Certain situations cannot be accepted, such as dormitories for female workers which can randomly be accessed by male

- security guards, or the absence of curtains in dormitory windows or doors in toilets.
- Women may often get positions that are paid below the level of positions that are typically given to men, or do not receive equal pay for equal work. Auditors should in this regard address underlying factors behind a failing gender balance in HR practices. For example women may often be turned down for interviews for certain positions.
  - Women tend to be underrepresented at management level and in worker representation. Auditors should be sensitive of factors contributing to this situation, such as management selection behaviour for certain positions. It is important to bear in mind that equality in numbers does not mean equality in practice: tacit structures and processes must be addressed as well.
  - It is common for pregnant workers not to apply for maternity leave. Pregnant workers resign from their position and travel back to their home town as they are implicitly or explicitly discouraged to take maternity leave and current workplace practices regarding working hours, wages and workplace health increase the likelihood of miscarriage. Female workers tend to feel they are not in the position to defend their rights in relation to maternity.
  - Female workers are disproportionately impacted by overtime work from a physical point of view and due to their reproductive role.
  - Factories tend to lack appropriate mechanisms for complaints regarding sexual harassment or abuse. This results from a lack of openness on management level, which is often male-dominated. In addition factories tend to be reactive instead of proactive, especially with regard to the issue of harassment.

The seminar in 2010 will generate input for the gender gap analysis FWF is currently undertaking regarding its existing practices. During the follow up seminar in 2011 FWF staff, auditors and stakeholders together will assess to which extent FWF has been effective in strengthening its approach on gender in China.

## 5. Asian Floor Wage Campaign

### *Presentation by May Wong (Globalization Monitor)*

Globalization Monitor gave a presentation on the Asian Floor Wage campaign, which yielded a wage benchmark for six Asian countries, including China. On the basis of a formula which specifies the cost of food and non-food items for workers and takes purchasing parity into account, AFW has calculated that the floor wage amount for a regular working week in China equals 1,638 Yuan RMB/month.

Summary of presentation and discussion:

- FWF will use the AFW benchmark for China in its wage ladder, which will be included in all audit reports from July 1 onwards. The wage ladder will help FWF illustrate how wages in specific factories measure up to the AFW benchmarks and other wage standards. It will also help FWF chart progress in improving wages at factory level over time.

During the follow up seminar in 2011 it will be assessed to which extent progress has been made in the process of implementing payment of living wages in Chinese garment factories. Metrics for this discussion will be provided by wage ladders that are compiled

as part of the audit process. During the follow-up seminar auditors will share their expertise from the past year, and stakeholders will be encouraged to reflect on this process and contribute to further steps forward.

## 6. NGO position on social insurance reform

### *Presentation by Suki Chung (Labour Action China)*

Labour Action China addressed the major problems with regard to the Chinese national social insurance system. Payment of social insurance is a problematic issue for migrant workers in China. As a result of the existing system, migrant workers from rural regions lose most of their accumulated social security fund if they migrate away from the municipality where they have been employed, as transfer of insurance money between local governments is not centrally coordinated. As a result, migrant workers tend not to participate in the system, and factories do not pay their share of social insurance to workers.

The central government now acknowledges that the current system needs to be reformed. In response LAC and six other labour NGOs developed a common position which is used to influence the reform process initiated by the central government. It includes a set of recommendations towards the central government, employers and workers.

Summary of presentation and discussion:

- The main factors behind existing problems with social insurance are:
  - A failing management system and divergent regulations implemented by different levels of governments;
  - Absence of a rural-urban/interprovincial transfer mechanism;
  - Unclear and non-unified system of contribution between government, enterprise and individual;
  - Workers are not willing to contribute as a result of low awareness of benefits of insurance;
  - Corruption and misappropriation of social security funds.
- It is problematic for employees to take legal action against employers if social insurance is not included in the employment relationship. As a result of existing legislation an employee can only seek arbitration after resigning from the employment relationship. During the employment relationship, an employee can only file a complaint against the administrative body involved.
- The above problems lead to several widespread violations among employers:
  - Not providing social insurance for workers according to legislation and / or only provide social insurance to a fraction of all employees;
  - No provision of insurance in proportion to salary but a monthly fixed amount which is below the prescribed amount;
  - Requiring workers to sign a voluntary agreement not provide social insurance;
  - Including social insurance in labour contracts as a part of workers' wages.



#### Auditor & stakeholder meeting China (May 2010)

- The shared NGO position includes the following recommendations:
  - Whole-factory coverage of all five legally required social insurances must be ascertained (pension, industrial injury, unemployment, medical care and maternity);
  - The system should be non-voluntary. No 'voluntary non-subscription agreement' should be signed between enterprises and workers;
  - There should be a tripartite contribution by the state, employer and individual employee.
  - As a working social insurance system requires trust building between workers, companies and governments it is recommended to begin with aspects of social insurance that are beneficial to workers and employers on short term, such as industrial injury insurance.

FWF will embed the above recommendations into the various aspects of its work in China. During the follow-up seminar in 2011, the latest developments in the social insurance reform process will be discussed by FWF auditors and stakeholders.