

Work Safety in China

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Mr. Matteo Zhi, Senior Partner



- Senior Partner of D'Andrea & Partners

- Long experience with Sino-Italian Investment and Legal affairs



- Speaker on topics related to outbound investments in Italy

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**EXCELLENCE
IS NOT A SKILL.
IT IS AN
ATTITUDE.**

Ralph Marston

**HONESTY
IS THE BEST
POLICY.**

Benjamin Franklin

**Clients' satisfaction is our priority,
provide the best service in the fastest
way is our mission!**



Some of our CLIENTS



Main Relevant Legislations

- Work Safety Law (revised in 2014)
- Criminal Law
- Tort Law
- Regulation on Work-related Injury Insurance (revised in 2010)



WHAT WE SHALL NOT FORGET



72 PEOPLE DIED

Kunshan, August 2, 2014

Image downloaded from the internet for which there is no claim

WHAT WE SHALL NOT FORGET



Image downloaded from the internet for which there is no claim

44 PEOPLE DIED

Tianjin, August 12, 2015

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WORK SAFETY LAW

The “Work Safety Law of the PRC” (hereinafter referred as to “WSL”), promulgated for the first time in **2002**, and amended for the latest time in **2014**, starts with a **revolutionary provision** for the **Chinese judicial system** because it provides, in addition to the general promotion of an **equal and sustainable social and economic development**, the expressed **protection of the life** and **safety of the person**. The most innovative point of the normative provision consists of the combination of the **safeguard of property** with already mentioned provisions, a concept of liberal-democratic matrix and explicit “western” inspiration.



LIABILITIES and OBLIGATIONS

Article 5 and Article 19 of WSL

Article 5 determined the **full liability** of the “**Major Person in Charge**” for work safety in the economic activity.

The person indicated as “**Major Person in Charge**”^{*} can be considered the decision maker, that is to say, in practice:

- Legal representative;
- Managing Director;
- General Manager;
- Plant Manager;
- Owner of assets;
- Production & Business operation director;



OBLIGATIONS

Article 18 of WSL

Article 18 specifies the **obligations** of the person in charge:

1. Enforce and improve **safety systems** in the company
2. Arrange the development of policies, roles and **operative procedures** for the safety
3. Develop and enforce the education and **training** for safety in the company
4. Ensure the **actual use** of the safety equipment
5. Carry out **inspections** and controls which are necessary to eliminate (hidden) risks
6. Arrange and enforce **emergency plans** in the case of accidents
7. **Promptly and truly report** work-related accidents



SAFETY MANAGEMENT

1. Full time or part time management

2. Management of “hidden” risks

3. Obligation to keep employees informed

4. Training courses on safety

5. Insurance



1. SAFETY MANAGEMENT

Article 21 of WSL

For specific kind of companies (*) as well as for all companies composed of **more than 100 employees**, there is the obligation to provide for a **work safety management body** or a **full-time** personnel which manages and supervises on the safety; on the other hand, for all the other companies, the possibility to at least have an **part-time management** is expected.

- ✓ Mining companies
- ✓ Waste disposal
- * ✓ Construction
- ✓ Road transportation
- ✓ Production, storage or selling of hazardous substances



1. SAFETY MANAGEMENT

Specifications

Work safety management body indicates the department specialized in the safety management, sometimes it could be set up under the Production Department. Some local governments require to set up Specific Working Group responsible for Safety Production inside the company.

Full-time management personnel indicates the personnel subordinated to the work safety management body (safety department) which is in charge to supervise and manage production; usually is a **person which provides experience and professional certificates** like, for example, the “Certified Safety Engineer (CSE)” or the “BVB-MCS-TJ”.



2/3. MANAGEMENT and INFORMATION

Article 38 of WSL

“Hidden risks” are very important; Article 38 imposes **management and information obligations to employees** in order to identify and eliminate the hidden risks.

- ✓ Prompt enforcement of **technical and management measures** to discover and eliminate the above mentioned risks
- ✓ **Keep employees informed** about risks
- ✓ **Screening and elimination** of the risks



4. TRAINING

Article 41 of WSL

According to the Article 41, each “**business entity**” has the following duties: to organize **training courses** on work-related **safety** for its employees; keep employees informed about risks; general transparency duties concerning safety; other emergency measures.

NOTE: Keep all training courses trackable and with records.



5. INSURANCE OBLIGATIONS

Article 48 of WSL

“Production and business entities shall, in accordance with law, purchase work-related injury insurance and pay insurance premiums for their employees”.

The company has the obligation **to provide work-related injury insurance** and to **pay** the insurance **premiums** for all its employees. Work-related insurance is contained in social insurance which the company pays each month for the employee.

Other than the statutory insurance, the company could also purchase **commercial insurances** such as Employer Liability Insurance, Safety Production Responsibility Insurance etc as a supplemental protection.



LIABILITIES



MONITORING AND ADMINISTRATIVE AUTHORITIES

Article 59 – Article 61 of WSL

Entrusted to strictly carry out monitoring and administrative duties are, *in primis*, **local Governments** (Article 59) and their “work safety administrative departments”, who are also in charge to draft **annual plans of supervision and inspection**, and to carry out these activities for the safeguard of work safety as well.

The mentioned “Relevant Authorities” have to be intended as the **Safety Production Supervision Committee/Bureau**.

Article 61 specified that the relevant authorities while commencing inspections and monitoring operations **shall not charge any fee** to the companies and shall not demand the companies to buy **designated brand** of safety equipment, facilities.



LIABILITIES OF THE EMPLOYER

According to the Work Safety Law this liability is divided in three levels:

Civil

Administrative

Criminal



Civil level

WHO

Workers injured because of accidents caused by safety defects of the work place are entitled to **compensation for the damages** from the company in which they work, in addition to benefit received from the work-related injury insurance according to the Article 53 of the Law.



Administrative level

Chapter 6 of WSL, 25 articles in total

Respect to the previous regulation a substantial **increase of fines** is reported.

- ✓ For minor cases, a period in which the responsible **can rectify the situation of hazard/risk** is granted; when this period elapses fines are imposed.
- ✓ For more serious cases, in addition to fines the **business license suspension** is imposed.



Administrative level

Art.91 of WSL

- If the major person-in-charge of a production or operation entity **fails to perform the duty of work safety management** (NO ACCIDENT RESULTED) according to the provisions of the Law,
 - ✓ He or she shall be ordered to **make correction** within a prescribed time limit;
 - ✓ If he fails to make correction within the prescribed time limit, the major person-in-charge shall be fined **not less than CNY20,000 but not more than CNY50,000**, and the production or operation entity shall be ordered to **suspend production or business for rectification**;



Administrative level

Art.92 of WSL

- If the major person-in-charge of any production or operation entity fails to fulfill his duties of work safety administration in accordance with the Law, **resulting in any work safety accident**,
- ✓ **The punishment of removal** from his or her office is to be imposed;
- ✓ If received such punishment, he or she may not be the major person-in-charge of any production or operation entity **within five years starting from the day when the criminal penalty is executed or from the day when he is given the punishment**;
- ✓ If the major person-in-charge is liable for any **serious or especially serious work safety accident**, he shall **NEVER** be the major person-in-charge of any production or operation entity in the industry;
- ✓ The work safety regulatory departments shall impose fines on the major person, **30% 40% 60% and 80% of annual revenue** respectively for **ordinary, respectively serious, serious and especially serious accident**.



Administrative level

Art.94 of WSL

- Where a production or operation entity commits any of the following acts, such entity is to be ordered to make correction within a time limit, and **may be fined not more than CNY50,000**; in the event of failure to make correction within a rectification, and be fined **not less than CNY50,000 but not more than CNY100,000**, and the persons- in-charge bearing direct responsibility and other persons subject to direct liability are to be fined **not less than CNY10,000 but not more than CNY20,000**:
 - ✓ failing to **establish a work safety management office** or be staffed with work safety management personnel as required;
 - ✓ failing to **carry out work safety education and training** for the employees, dispatched laborers and intern students as required, or failing to faithfully inform them of the related work safety matters as required;
 - ✓ failing to faithfully **record the information on work safety education and training**;
 - ✓ failing to faithfully **record the checking and controlling of hidden dangers of accidents** or failing to notify the employees of the same;



Administrative level

Art.103 of WSL

- Any agreement with any of the employees **to exempt or mitigate** the liabilities that the company has to undertake due to casualties of employees in work safety accidents shall be invalid.
- The major person-in-charge shall be fined **no less than CNY20,000, but no more than CNY100,000** for such conduct.



Criminal Level

“Criminal Law” Article 134

Where **anyone violates the provisions concerning the safety management in production or operations** and **thus causes any serious casualty or any other serious consequences**, one shall be sentenced to fix-term imprisonment of **not more than three years or detention**. If the circumstances are **extremely severe**, one shall be sentenced to fix-term imprisonment of **not less than 3 years but not more than 7 years**.



Criminal Level

Criminal Law Article 135

Where **the facilities or safe work conditions fail to meet the relevant provisions of the state** so that any **serious casualty or any other serious consequence** is caused, the persons directly in charge and other directly responsible persons shall be sentenced to **not more than three years of fixed-term imprisonment or detention**. If the circumstances are extremely severe, one shall be sentenced to fixed-term imprisonment of **not less than three years but not more than seven years**.



Criminal Level

INTERPRETATION OF THE SUPREME PEOPLE'S COURT AND THE SUPREME PEOPLE'S PROCURATORATE ON SEVERAL ISSUES CONCERNING THE APPLICATION OF LAW IN HANDLING CRIMINAL CASES OF ENDANGERING PRODUCTION SAFETY

- having caused **one or more deaths or three or more grievously injured person**
- having caused **direct economic losses of not less than CNY1 million**; and
- other cases having caused serious consequences or major safety accidents.
- **Not more than three years of fixed-term imprisonment or criminal detention**



Criminal Level

INTERPRETATION OF THE SUPREME PEOPLE'S COURT AND THE SUPREME PEOPLE'S PROCURATORATE ON SEVERAL ISSUES CONCERNING THE APPLICATION OF LAW IN HANDLING CRIMINAL CASES OF ENDANGERING PRODUCTION SAFETY

- having caused **three or more deaths or ten or more grievously injured person**
- having caused **direct economic losses of not less than CNY5 million**; and
- other cases having caused serious consequences or major safety accidents.
- **Not less than three years but not more than seven years of fixed-term imprisonment**



THE OBJECTIVE LIABILITY

Tort Law of the People's Republic of China, 2010

The Tort Law is the Law about the Chinese **Non-contractual Liability**

It recognizes the **objective liability** – or liability “with no fault” – in specific cases, for example:

- ✓ Damages caused to third party (Art.34)
- ✓ Environmental pollution damages (Art.65)
- ✓ Buildings collapsing damages



RECAP

Accident



The employer will have the obligation to COMPENSATE CIVIL DAMAGES

Infraction

Of the law or regulations



The employer will be subject to ADMINISTRATIVE AUTHORITY sanctions

Infraction

of criminal law



The employer will incur in CRIMINAL LIABILITIES



THE VIRTUOUS COMPANIES

Article 16 of WSL

The Article 16 stipulates the assignment of **awards to** work safety related **virtuous companies**.

*The state shall confer **awards** on entities and individuals which have made outstanding achievements in improving work safety conditions, preventing work safety accidents, and participating in rescue operations, among others”.*



Work-related Injury Overview



WORK RELATED INJURY

Provided by the Implementing Regulations of the Law

- ✓ Who is injured in an accident at work **during working hours** in the **workplace**
- ✓ Who is injured in an accident while engaging in **preparatory** or **finishing-up** work related to work before or after working hours in the workplace
- ✓ Who is injured in an accident **for his performance of job duties** during working hours in the workplace
- ✓ Who suffers from an **occupational disease**
- ✓ Who is injured at work , at its **whereabouts**, or during a **business travel** related to the performance of his job duties
- ✓ Who is injured in a **vehicle accident** while going to or coming back to his residence from work.



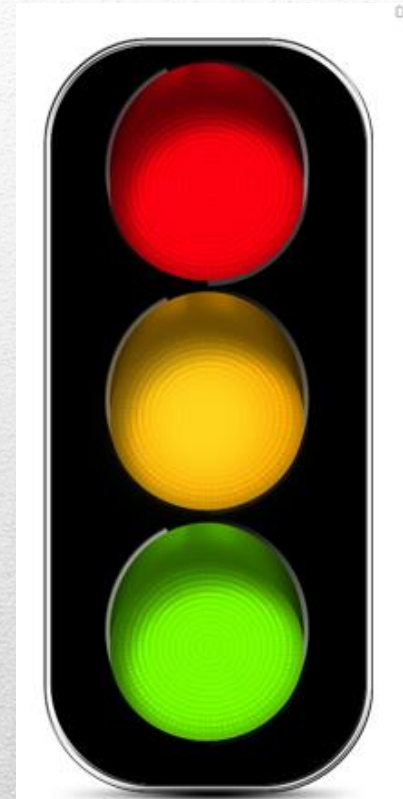
SEVERITY of work-related injury

The severity of work-related injury is summarized in 10 DEGREES:

GRADE 1 → The most **SERIOUS** injury

GRADE 10 → The **LIGHTEST** injury

The severity shall be **estimated by doctors**, according to the provisions of the “Appraisal standards for disability degree of workers involved in industrial injury and occupational disease” issued by the “*General Administration of Quality Supervision Inspection and Quarantine of the PRC*”.



PAYMENT of work-related injury



WHAT TO PAY

1. One Lump Sum Disability Allowance (一次性伤残补助金)
2. Monthly Disability Subsidy (伤残津贴) ---- ONLY for Grade 1-6
3. One Lump Sum Medical Allowance (一次性工伤医疗补助金)
4. One Lump Sum Disability Employment Allowance (一次性伤残就业补助金)

PAYMENT of work-related injury

WHO MUST PAY



If the company **did not buy** work related injury insurance, the company shall pay. If **bought** the insurance,

The **social insurance fund** will pay:

- One Lump Sum Disability Allowance (一次性伤残补助金)
- Monthly Disability Subsidy (伤残津贴) ---- for Grade 1-4 (because the employee is forced to quit from work)
- One Lump Sum Medical Allowance (一次性工伤医疗补助金)

NOTE: Even if it's the social insurance that will pay, it will pay to the company and the company shall pay to the employee.

PAYMENT of work-related injury

WHO MUST PAY



The company will pay:

- Monthly Disability Subsidy (伤残津贴) ---- for Grade 5-6 (if the company can maintain the work position of injured employee, they will not pay).
- One Lump Sum Disability Employment Allowance (一次性伤残就业补助金)

PAYMENT of work-related injury

WHEN TO PAY



1. One Lump Sum Disability Allowance (一次性伤残补助金) – Generally speaking **after one month** when the assessment for disability is made.
2. Monthly Disability Subsidy (伤残津贴) – Monthly payment till the retirement.
3. One Lump Sum Medical Allowance (一次性工伤医疗补助金) – At the termination of employment.
4. One Lump Sum Disability Employment Allowance (一次性伤残就业补助金) – At the termination of employment.

AVOID THAT, BEFORE IT IS TOO LATE



Work Safety in China: examples









Suggestion to PROTECT YOURSELF



**1. PERSONAL
TRAINING**

**2. EXTRA
INSURANCE**

**3. CONSTANT
INSPECTIONS**

THANKS

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