

# Mechanisms for Supporting Worker Voice in China<sup>+</sup>

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## INTRODUCTION

The opportunity for employees to speak-up and participate in decision-making processes has a positive impact on both their individual well-being as well as the well-being of the organization in which they work.<sup>1</sup> Conversely, the inability for employees to speak out may lead to serious unfavorable results for employees' psychological and physical well-being and lead to negative repercussions for the organization.<sup>2</sup> Even in light of these

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<sup>1</sup> Michael R. Bashshur & Burak Oc, *When Voice Matters: A Multilevel Review of the Impact of Voice in Organizations*, 41 J. MGMT. 1530, 1531 (2015); Jian Liang et al., *Psychological Antecedents of Promotive and Prohibitive Voice: A Two-Wave Examination*, 55 ACAD. MGMT. J. 71, 73 (2012).

<sup>2</sup> See Michael Knoll & Rolf van Dick, *Do I Hear the Whistle . . . ? A First Attempt to Measure Four Forms of Employee Silence and Their Correlates*, 113 J. OF BUS.

considerations, workers still face a number of barriers to speaking up in the workplace, including the risk of termination.<sup>3</sup>

In Europe, workers have a non-union option for exercising voice in the European “works councils.”<sup>4</sup> China, too, has long provided—at least in name—non-union institutions of worker participation, called “Staff and Worker Representative Congresses” (“SWRCs”).<sup>5</sup>

There are four defining characteristics of SWRCs.<sup>6</sup> First, SWRCs are defined as “a vehicle of enterprise culture.”<sup>7</sup> Enterprise culture refers to the culture within a specific company. Because of their origins, SWRCs, and by extension workers, have played an important role in shaping enterprise culture in China.<sup>8</sup> Second, SWRCs are identified as “a basic form of grass-roots democracy” because of support for democratic control through SWRCs from the Chinese Constitution and Communist Party documents.<sup>9</sup> Third, SWRCs are “an interface between traditional enterprise governance structure and modern corporate governance structure.”<sup>10</sup> Even though it has no actual legal status, the SWRC continues to be a traditional force in a modern system.<sup>11</sup> Lastly, and most importantly for this work, SWRCs may be one of the main venues through which employees in China can utilize their voices to communicate dissatisfaction, promote constructive change for organizations, and increase perceived fairness of organizational procedures.<sup>12</sup> This manuscript

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ETHICS 349, 349 (2013); Leslie A. Perlow & Stephanie Williams, *Is Silence Killing Your Company?*, 81 HARV. BUS. REV. 52, 52 (2003); see also Michael Knoll & Rolf van Dick, *Authenticity, Employee Silence, Prohibitive Voice, and the Moderating Effect of Organizational Identification*, 8 J. POSITIVE PSYCHOL. 346, 346 (2013); Fons Naus et al., *Organizational Cynicism: Extending the Exit, Voice, Loyalty and Neglect Model of Employees' Responses to Adverse Conditions in the Workplace*, 60 HUM. REL. 683, 706 (2007).

<sup>3</sup> See e.g., Frances J. Milliken et al., *An Exploratory Study of Employee Silence: Issues that Employees Don't Communicate Upward and Why*, 40 J. OF MGMT. STUD. 1453, 1462 (2003); Elizabeth W. Morrison, *Employee Voice Behavior: Integration and Directions for Future Research*, 5 ACAD. OF MGMT. ANNALS 373, 383 (2011).

<sup>4</sup> Cynthia Estlund, *Will Workers Have A Voice in China's "Socialist Market Economy"? The Curious Revival of the Workers Congress System*, 36 COMP. LAB. L. & POL'Y J. 69, 85 (2014). Works councils have not taken root in the United States. *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> Li Haiming, *The Roles Played by the Staff and Workers' Representative Congress in the Formation of Work Regulations*, 37 SOC. SCI. CHINA 152, 156 (2016).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 157.

<sup>12</sup> Worker voice is “the informal and discretionary communication by an employee of ideas, suggestions, concerns, or information about problems . . . to persons who

examines the evolution of the SWRCs in China as a mechanism of worker voice (i.e., the mechanism for workers to be heard) and recommends further protections for workers who speak up.

## I. CHINESE STAFF AND WORKER REPRESENTATIVE CONGRESSES

### A. *A Brief History and Overview of Powers*

SWRCs were first developed as part of the Communist Party of China's planned economy for the People's Republic.<sup>13</sup> Under Chairman Mao in the 1950s, the SWRCs were established with the purported goal of "increas[ing] production and improv[ing] staff and workers' capacity in management."<sup>14</sup> But in reality, due to political and other factors, "enterprise management was dominated by factory managers and party secretaries, with workers having little input and less power."<sup>15</sup> Additionally, "workers and their institutions were assigned tasks to perform, but were infrequently consulted on enterprise management."<sup>16</sup>

SWRCs remained powerless until Mr. Deng Xiaoping came into power in 1978 in the wake of the Cultural Revolution, bringing with him the goal of reviving the democratic management system within the state owned enterprises ("SOEs").<sup>17</sup> Under the new plan, the SWRC represented the entire workforce within the SOE and acted as the main player in democratic management.<sup>18</sup> The State Council<sup>19</sup> emphasized that as enterprises gained more

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might be able to take appropriate action, with the intent to bring about improvement or change." Frances J. Milliken et al., *Linking Workplace Practices to Community Engagement: The Case for Encouraging Employee Voice*, 29 ACAD. MGMT. PERSP. 405, 409–410 (2015) (quoting Elizabeth W. Morrison, *Employee Voice and Silence*, 1 ANN. REV. ORG. PSYCHOL. & ORG. BEHAV. 173, 174 (2014) [hereinafter *Employee Voice and Silence*]).

<sup>13</sup> Estlund, *supra* note 4, at 71; *see also* Fei Li, *Whither the Staff and Workers' Congress System in China? A Historical Perspective*, 65 LAB. L.J. 205, 206–08 (2014) (providing a historical overview of the Staff and Workers' Congress System).

<sup>14</sup> Zhu Xiaoyang & Anita Chan, *Staff and Workers' Representative Congress: An Institutionalized Channel for Expression of Employees' Interests?*, 37 CHINESE SOC. & ANTHROPOLOGY 6, 8 (2005).

<sup>15</sup> Estlund, *supra* note 4, at 71.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 71–72; Xiaoyang & Chan, *supra* note 14, at 9.

<sup>18</sup> Estlund, *supra* note 4, at 72.

<sup>19</sup> The State Council refers to China's central administrative authority, which includes the premier and the heads of all executive departments. The State Council, that is, the Central People's Government of the People's Republic of China, is the executive body of the highest organ of state power; it is the highest organ of state administration. XIANFA art. 85, § 3 (1982). The State Council is composed of the following: the Premier; the Vice-Premiers; the State Councilors; the Ministers in

autonomy, the SWRC system should be established in all enterprises, not just SOEs.<sup>20</sup>

The Staff and Worker Representative Congresses of the 1980s were reported to be widely established and well-run,<sup>21</sup> although some scholars contend that the formally powerful role of the SWRCs was just that—a mere formality. The system was still one of “managers under the guidance of the Party committee and the SWRC under the guidance of the Party committee.”<sup>22</sup>

“In 1992, the SWRCs in collective enterprises were given more power than in . . . SOEs by the “City and Township Collective Enterprise Regulation” (“CE Regulation”).<sup>23</sup> Collective enterprises are defined as “economic entities in which assets are owned collectively and ownership is considered to be public.”<sup>24</sup> Though sponsored by the government, collective enterprises such as urban collective enterprises and government owned township and village enterprises (“TVEs”) are not considered SOEs.<sup>25</sup> Urban collective enterprises, public TVEs, and indirectly controlled entities account for a 10% share of China’s non-agricultural GDP, whereas SOEs account for 40%.<sup>26</sup>

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charge of Ministries; the Ministers in charge of Commissions; the Auditor-General; and the Secretary-General. The Premier has overall responsibility for the State Council. The Ministers have overall responsibility for the respective ministries or commissions under their charge. XIANFA art. 86, § 3 (1982).

<sup>20</sup> Estlund, *supra* note 4, at 77–78 (explaining that “collective” enterprises are township and village-level enterprises).

<sup>21</sup> Xiaoyang & Chan, *supra* note 14, at 9 (“[B]y mid-1981, 90 percent of the large and medium-sized enterprises in large cities were reported to have set up SWRCs and, according to a survey, 25 percent were said to be running well, with 60 percent operating more or less satisfactorily.”).

<sup>22</sup> Estlund, *supra* note 4, at 72. Professor Estlund notes:

Most SWRCs met only infrequently—once or twice a year; their day-to-day functions were to be carried out by the enterprise trade union, a “grassroots” affiliate of the ACFTU that was usually dominated by factory management. Therefore, the factory director ordinarily held sway over both the SWRC and the trade union, while all three were subordinate to the CPC, in the person of the Party secretary of the enterprise. *Id.*

<sup>23</sup> Xiaoyang & Chan, *supra* note 14, at 10.

<sup>24</sup> Andrew Szamosszegi & Cole Kyle, *An Analysis of State-owned Enterprises and State Capitalism in China*, U.S.-CHINA ECON. & SEC. REV. COMM’N, 102 (2011), [https://www.uscc.gov/sites/default/files/Research/10\\_26\\_11\\_Capital-TradeSOEStudy.pdf](https://www.uscc.gov/sites/default/files/Research/10_26_11_Capital-TradeSOEStudy.pdf).

<sup>25</sup> *Id.* at 1.

<sup>26</sup> *Id.*

The CE Regulation in its revised form outlines the structure and authority of the SWRC within a collective enterprise as follows:

- The SWRC will be managed by its employees according to its bylaws, and their interests are legally protected. (Article 8)
- SWRCs are “subject to democratic management” via an employees’ assembly, which is the enterprise’s central authority that elects executives, and makes major operational and managerial decisions. (Article 9)
- Employees’ representatives are to be elected by employees. (Article 27)
- The employees’ assemblies have the power to elect and remove enterprise managers, structure levels of compensation and general compensation policy, and decide how and under what conditions employees are to be rewarded and punished in the workplace, along with any other powers defined by the enterprise’s bylaws. (Article 28)
- Employees’ assemblies are obliged to meet at least twice a year. (Article 29)
- The assemblies may establish a committee to continue work on assembly business when the assembly is not actively convening. (Article 30)<sup>27</sup>

Based on the language of Article 28, the employee representatives’ assembly functionality resembles a corporate board of directors, jointly overseeing a corporation. As the analogy goes, employees play the role of shareholders, electing the corporate board themselves (Article 27). In such a unique structure, workers’ voice controls an enterprise, as opposed to a typical SWRC, where only representatives’ deliberation is required.<sup>28</sup>

This revival did not last long with the onset of corporatization of the SOEs.<sup>29</sup> The 1994 Company Law<sup>30</sup> stripped away the power of the SWRCs

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<sup>27</sup> Zhonghua Renmin Gongheguo Chengzhen Jiti Suoyouzhi Qi Ye Tiaoli (中华人民共和国城镇集体所有制企业条例(2016修订)) [Regulation of the People's Republic of China on Urban Collectively-Owned Enterprises (2016 Revision)] (promulgated by the State Council, Sept. 9, 1991, effective Jan. 1, 1992; rev'd by the State Council Jan. 8, 2011; rev'd by the State Council Feb. 6, 2016), CLI.2.267129(EN) (Lawinfochina) [hereinafter Collective Enterprise Regulation].

<sup>28</sup> *Id.*

<sup>29</sup> Estlund, *supra* note 4, at 76.

<sup>30</sup> The 1993 Company Law was passed on Dec. 29, 1993 but did not go into effect until July 1, 1994. It was most recently revised on Dec. 28, 2013 in accordance with the Decision on Amending Seven Laws including the Marine Environmental

by corporatizing SOEs and laying the groundwork for setting up private corporations.<sup>31</sup> Some commentators do not think the Company Law impedes, on its face, the development of SWRCs;<sup>32</sup> nevertheless, commentators generally agree that SWRCs hold little clout in practice.<sup>33</sup> That said, text from the 2005 Company Law gives reason to believe that, at least on paper, SWRCs may now have more clout than some contend:

**Article 18** The employees of a company shall, according to the Labor Union Law of the People's Republic of China, organize a union, which shall carry out union activities and safeguard the lawful rights and interests of the employees. The company shall provide necessary conditions for its labor union to carry out activities. The labor union shall, on behalf of the employees, sign collective contracts with the company with respect to the remuneration, working hours, welfare, insurance, work safety and sanitation, and other matters.

In accordance with the Constitution and other relevant laws, a company shall adopt democratic management in the form of assembly of the representatives of the employees or any other ways.

To make a decision on restructuring or any important issue relating to business operations, or to formulate any important bylaw, a company shall solicit the opinions of its labor union, and shall solicit the opinions and proposals of the employees through the assembly of the representatives of the employees or in any other way.<sup>34</sup>

Based on the language of the last paragraph, the statute only requires that the company solicit the opinion of the labor movement. But it does not give leverage to the workers and company managers can simply ignore any opinions generated by company outreach. This is an issue because if the company ignores employees' voices, dissatisfaction among the workforce

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Protection Law of the People's Republic of China at the 6th Session of the Standing Committee of the 12th National People's Congress.

<sup>31</sup> *Id.*

<sup>32</sup> *See, e.g.,* Xiaoyang & Chan, *supra* note 14, at 30.

<sup>33</sup> Feng Tongqing, *An Overview of the Workers' Congress System in China*, in *INDUS. DEMOCRACY IN CHINA 200, 201–03* (Rudolf Traub-Merz & King-Lun Ngok eds., China Soc. Sci. Press) (2012).

<sup>34</sup> Zhong Huarrenmin Gong Heguo Gongsifa (中华人民共和国公司法(2005修订)) [已被修订] [Company Law of the People's Republic of China (2005 Revision)][Revised]] (promulgated by the Standing Comm. of the Tenth Nat'l People's Cong. of China, Oct. 27, 2005, effective Jan. 1, 2006), CLI.1.60597(EN) (Law-infochina) [hereinafter 2005 Company Law].

may increase.<sup>35</sup>

### B. *The Comeback of the SWRCs and What it Means for Worker Voice*

The All-China Federation of Trade Unions (ACFTU) provisions established the world's largest union organization, known by the same name.<sup>36</sup> Under Article 2 of Trade Union law of 2001, trade unions are mass organizations formed by the working classes of their own free will. According to the law, the ACFTU and all its trade union organizations shall represent the interests of the employees and protect the legal rights and interests of the employees.<sup>37</sup>

Only one-fifth of SWRC members can be in the higher echelon of management.<sup>38</sup> Though this may give voice to a higher number of employees, it could also create tension within the company. Managers may be reluctant to accept a view from the workforce—particularly criticism from someone lower in the organizational hierarchy. As such, the effectiveness of voice often depends on the content of the message and how it is communicated. For example, voice is more successful when it provides a solution, is given early in the process, comes from a person who is viewed as trustworthy and an expert in the relevant area, and when there is a norm for speaking up in the organization.<sup>39</sup> But employees can be particularly wary of jeopardizing relationships with supervisors through speaking up because supervisors have power over subordinates' pay, promotions, work assignments, and continued employment.<sup>40</sup> Supervisors' skepticism to subordinate opinion is not without

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<sup>35</sup> Robert Folger et al., *Effects of "Voice" and Peer Opinions on Responses to Inequity*, 37 J. PERSONALITY & SOC. PSYCHOL. 2253, 2254–55 (1979).

<sup>36</sup> Trini Leung, *ACFTU and Union Organizing*, CHINA LABOUR BULLETIN (Apr. 26, 2002), <http://www.clb.org.hk/en/content/acftu-and-union-organizing>.

<sup>37</sup> Zhong Huarrenmin Gong Heguo Gongsifa (中华人民共和国公司法(2005修订)) [已被修订] [Company Law of the People's Republic of China (2005 Revision)] [Revised] (promulgated by the Standing Comm. of the Tenth Nat'l People's Cong. of China, Oct. 27, 2005, effective Jan. 1, 2006), CLI.1.60597(EN) (Lawinfochina) [hereinafter 2005 Company Law].

<sup>38</sup> Qiye Minzhu Guanli Guiding (企业民主管理规定 [现行有效]) [Provisions on the Democratic Management of Enterprises] (promulgated by the Cent. Comm'n for Discipline Inspection of the CPC, the Org. Dep't of the CPC Cent. Comm., the State-owned Assets Supervision and Admin. Comm'n of the State Council, the Ministry of Supervision, the All-China Fed'n of Trade Unions and the All-China Fed'n of Indus. and Commerce, Feb. 13, 2012, effective Feb. 13, 2012), CLI.5.17049(EN) (Lawinfochina) [hereinafter Provisions on Management of Enterprises].

<sup>39</sup> Steven W. Whiting et al., *Effects of Message, Source, and Context on Evaluations of Employee Voice Behavior*, 97 J. APPL. PSYCHOL. 159, 159 (2012).

<sup>40</sup> See, e.g., Isabel C. Botero & Linn Van Dyne, *Employee Voice Behavior:*

basis. When voice is challenging the status quo rather than supporting it, managers are more likely to regard the employee as disloyal and threatening; as a result, they are less likely to endorse the message.<sup>41</sup> Similarly, managers are more likely to rate employees who engage in “prohibitive” voice as poor performers.<sup>42</sup>

In 2012, China adopted the Provisions on the Democratic Management of Enterprises providing the basic form of the employees’ congress.<sup>43</sup> The importance of employees’ voice and its operation in organizational practice justifies the comeback of SWRCs. There are three dominating research streams defining employee voice and describing its operationalization. One stream<sup>44</sup> views employee voice as a constructive response to dissatisfaction and alienation in the workplace.<sup>45</sup> Another recently developing research stream questions the notion of employee voice as an outcome of only dissatisfaction. It maintains that employee voice may also intend to promote the effective functioning of the organization.<sup>46</sup> Finally, the third research stream observes the role of voice as a constructive behavior aimed at helping organizations solve problems by focusing on employees’ barriers to engaging in voice.<sup>47</sup>

Voice as a response to dissatisfaction can be illustrated in the Exit/Voice/Loyalty/Neglect (“EVLN”) model.<sup>48</sup> Voice is described as a response to dissatisfaction in four ways: 1) exit, 2) voice, 3) loyalty, and 4)

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*Interactive Effects of LMX and Power Distance in the United States and Colombia*, 23 *MGMT. COMM. Q.* 84, 90 (2009); James R. Detert & Ethan R. Burris, *Leadership Behavior and Employee Voice: Is the Door Really Open?*, 50 *ACAD. MGMT. J.* 869, 870 (2007); James R. Detert & Linda K. Trevino, *Speaking Up to Higher Ups: How Supervisor and Skip-Level Leaders Influence Employee Voice*, 21 *ORG. SCI.* 249, 249 (2010); Amy C. Edmondson, *Speaking Up in the Operating Room: How Team Leaders Promote Learning in Interdisciplinary Action Teams*, 40 *J. MGMT. STUDIES* 1419, 1420 (2003); Wu Liu et al., *I Warn You Because I Like You: Voice Behavior, Employee Identifications, and Transformational Leadership*, 21 *LEADERSHIP Q.* 189, 189 (2010).

<sup>41</sup> See Whiting et al., *supra* note 39, at 159.

<sup>42</sup> Ethan R. Burris et al., *Speaking Up Versus Being Heard: The Dimensions of Disagreement Around and Outcomes of Employee Voice*, 24 *ORGANIZATIONAL SCI.* 22, 22 (2013).

<sup>43</sup> See Provisions on Management of Enterprises, *supra* note 38.

<sup>44</sup> See generally ALBERT O. HIRSCHMAN, *EXIT, VOICE, AND LOYALTY* (1970).

<sup>45</sup> See, e.g., Hsin-Hua Hsiung, *Authentic Leadership and Employee Voice Behavior: A Multi-Level Psychological Process*, 107 *J. BUS. ETHICS* 349, 350 (2012).

<sup>46</sup> *Id.*

<sup>47</sup> Cindy A. Schipani, Frances J. Milliken & Terry Morehead Dworkin, *The Impact of Employment Law and Practices on Business and Society: The Significance of Worker Voice*, 19 *U. PA. BUS. L. REV.* 979, 990 (2017).

<sup>48</sup> See Bashshur & Oc, *supra* note 1, at 1536.

neglect.<sup>49</sup> Conveying dissatisfaction actively takes the form of exiting or speaking up. Loyalty and neglect are passive responses: loyalty reflects hope of recovery, whereas neglect accepts that recovery is not possible.<sup>50</sup> Neglect may lead to a number of inefficiencies such as reduced interest or effort, increased lateness or absenteeism, increased errors, or the use of company time for personal business.<sup>51</sup> The theory contends that allowing employees to exercise their voice in a workplace helps to eliminate or improve a situation that would otherwise cause alienation or dissatisfaction. In turn, it will reduce the likelihood that an employee will decide to quit.<sup>52</sup> Employees who do not have the option to quit will tend to withdraw and slip into neglect.<sup>53</sup> In this model, in addition to the union representation model, participation in suggestion systems, like SWRCs, is one of the primary voice mechanisms.<sup>54</sup>

Employees' ability to express views to decision-makers provides another reason to re-introduce SWRCs. It may also bolster workers' belief in the existence of organizational justice in their workplace.<sup>55</sup> In such cases, employees perceive decisions as more fair and inclusive, regardless of actual outcome.<sup>56</sup> Other studies have found a positive relationship between process control and the perceived fairness of outcomes.<sup>57</sup> Under this theory, personal control is defined as an employee's subjective belief in her "ability to effect a change, in a desired direction, on the environment."<sup>58</sup> Employees generally

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<sup>49</sup> See generally Dan Farrell, *Exit, Voice, Loyalty, and Neglect as Responses to Job Dissatisfaction: A Multidimensional Scaling Study*, 26 ACAD. MGMT. J. 596, 596 (1983).

<sup>50</sup> See *id.* at 604.

<sup>51</sup> Caryl E. Rusbult et al., *Impact of Exchange Variables on Exit, Voice, Loyalty, and Neglect: An Integrative Model of Responses to Declining Job Satisfaction*, 31 ACAD. MGMT. J. 599, 601 (1988).

<sup>52</sup> Empirical studies have provided some support for this theory. See, e.g., Derek R. Avery et al., *Does Voice Go Flat? How Tenure Diminishes the Impact of Voice*, 50 HUM. RESOURCE MGMT. 147, 148, 154 (2011); Roderick D. Iverson & Douglas B. Currihan, *Union Participation, Job Satisfaction, and Employee Turnover: An Event History Analysis of the Exit-Voice Hypothesis*, 42 INDUS. REL. 101, 105 (2003).

<sup>53</sup> See Schipani et al., *supra* note 47, at 980.

<sup>54</sup> See Bashshur & Oc, *supra* note 1, at 1532.

<sup>55</sup> See Robert J. Bies & Debra L. Shapiro, *Voice and Justification: Their Influence on Procedural Fairness Judgments*, 31 ACAD. MGMT. J. 676, 676 (1988).

<sup>56</sup> See Bashshur & Oc, *supra* note 1, at 1535.

<sup>57</sup> See Yochi Cohen-Charash & Paul E. Spector, *The Role of Justice in Organizations: A Meta-Analysis*, 86 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 278, 302 (2001); Jason A. Colquitt et al., *Justice at the Millennium: A Meta-Analytic Review of 25 years of Organizational Justice Research*, 86 J. APPLIED PSYCHOL. 425, 436 (2001).

<sup>58</sup> David B. Greenberger & Stephen Strasser, *The Development and Application of a Model of Personal Control in Organizations*, 11 ACAD. MGMT. REV. 164, 165

wish to see themselves as active members of the organization, rather than passive cogs in the machine.<sup>59</sup> Lack of perceived personal control is linked to such negative consequences as dissatisfaction, stress, decreased performance, withdrawal symptoms, destructive tendencies, and sabotage.<sup>60</sup> In addition, under the “group value” theory, fair procedures with effective voice options make members of the group feel like more valued members of the organization,<sup>61</sup> reducing uncertainty and increasing individuals’ feeling of control over the processes that lead to outcomes.<sup>62</sup> Perceptions of procedural fairness increases commitment and trust, thus improving “relational” aspects of the workplace.<sup>63</sup> Put simply, one feels more valued if treated fairly at the workplace.

Of course, the positive outcomes that result from increased worker voice depend on the effectiveness of the SWRC. If voices are ignored, dissatisfaction increases<sup>64</sup> and productivity decreases.<sup>65</sup> One of the most frequently expressed reasons for silence is that employees “did not think it would do any good to speak up.”<sup>66</sup> Because of the risks involved in speaking up at work, employees are unlikely to speak up if they perceive that doing so will be ineffective.<sup>67</sup>

There is a link between certain motivating factors, such as a concern for the company and fellow workers and a desire to improve the business, and worker voice.<sup>68</sup> Employee voice mechanisms and voice behaviors have been connected to numerous positive psychological, relational, and health-related outcomes. Job satisfaction, outcome satisfaction, and organizational

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(1986).

<sup>59</sup> See RICHARD DECHARMS, PERSONAL CAUSATION: THE INTERNAL AFFECTIVE DETERMINANTS OF BEHAVIOR 274 (1968); Greenberger & Strasser, *supra* note 58, at 164.

<sup>60</sup> See Greenberger & Strasser, *supra* note 58, at 164.

<sup>61</sup> See E. ALLAN LIND & TOM R. TYLER, THE SOCIAL PSYCHOLOGY OF PROCEDURAL JUSTICE 236–37 (1988).

<sup>62</sup> See Bashshur & Oc, *supra* note 1, at 1532–33.

<sup>63</sup> See *id.* at 1537.

<sup>64</sup> See Folger et al., *supra* note 35, at 2260.

<sup>65</sup> See James E. Hunton et al., *A Field Experiment Examining the Effects of Membership in Voting Majority and Minority Subgroups and the Ameliorating Effects of Postdecisional Voice*, 81 J. APPLIED PSYCHOL. 806, 806 (1996).

<sup>66</sup> Chad T. Brinsfield, *Employee Silence Motives: Investigation of Dimensionality and Development of Measures*, 34 J. ORGANIZATIONAL BEHAV. 671, 676 (2013).

<sup>67</sup> Studies in the organizational justice realm demonstrate that while voice opportunity has a positive impact on employee attitudes and behaviors, voice that is heard but ignored has detrimental effects on employee attitudes and behaviors. See Bashshur & Oc, *supra* note 1, at 1533.

<sup>68</sup> See *Employee Voice and Silence*, *supra* note 12, at 180.

commitment are among well-established psychological benefits.<sup>69</sup> Feelings of work-related unfairness, work-related dissatisfaction, lack of trust in the organization,<sup>70</sup> and the suppression of work-related emotions<sup>71</sup> have all been shown to adversely affect one's health, increase the likelihood of accidents, and cause burnout.<sup>72</sup> Furthermore, employee satisfaction has been shown to increase when a greater number of voice mechanisms are available.<sup>73</sup> Additional benefits of improved employee voice from SWRCs could include a reduced risk of potential health complications associated with workplace stress.<sup>74</sup> Giving workers more of a voice has been correlated with much greater employee satisfaction;<sup>75</sup> employees want to see themselves as active members of an organization.<sup>76</sup> When employees feel like they have no personal control, stress, dissatisfaction, self-sabotage, and withdrawal may result along with other negative behaviors.<sup>77</sup> In turn, high stress may cause burnout and dysfunction<sup>78</sup> and worsen current health problems,<sup>79</sup> as well as cause new health issues including problems related to blood pressure, muscle tension, headaches, substance abuse, depression, difficulty concentrating and difficulty retaining information.<sup>80</sup> The exercise of employee voice may help alleviate these negative symptoms.<sup>81</sup>

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<sup>69</sup> See Colquitt et al., *supra* note 57 at 436; Thomas W.H. Ng & David C. Feldman, *Employee Voice Behavior: A Meta-Analytic Test of the Conservation of Resources Framework*, 33 J. ORGANIZATIONAL BEHAV. 216, 221 (2012); Jeffrey P. Thomas et al., *Employee Proactivity in Organizations: A Comparative Meta-Analysis of Emergent Proactive Constructs*, 83 J. OCCUPATIONAL & ORGANIZATIONAL PSYCHOL. 275, 275 (2010).

<sup>70</sup> See Ng & Feldman, *supra* note 69, at 221.

<sup>71</sup> See, e.g., JAMES W. PENNEBAKER, *OPENING UP: THE HEALING POWER OF EXPRESSING EMOTIONS* 9 (1997).

<sup>72</sup> See James B. Avey et al., *Psychological Capital: A Positive Resource for Combating Employee Stress & Turnover*, 48 HUM. RESOURCE MGMT. 677, 679 (2008).

<sup>73</sup> But see, e.g., Bashshur & Oc, *supra* note 1, at 1536.

<sup>74</sup> See Beverly E. Thom et al., *A Randomized Clinical Trial of Targeted Cognitive Behavioral Treatment to Reduce Catastrophizing in Chronic Headache Sufferers*, 8 J. PAIN 938, 938 (2007).

<sup>75</sup> See Bashshur & Oc, *supra* note 1, at 1535.

<sup>76</sup> See DECHARMS, *supra* note 59.

<sup>77</sup> See Blake E. Ashforth & Alan M. Saks, *Personal Control in Organizations: A Longitudinal Investigation with Newcomers*, 53 HUM. REL. 311, 311 (2000).

<sup>78</sup> See Avey et al., *supra* note 72, at 679.

<sup>79</sup> See Thom et al., *supra* note 74.

<sup>80</sup> See Thomas W. Colligan & Eileen M. Higgins, *Workplace Stress: Etiology & Consequences*, 21 J. WORKPLACE BEHAV. HEALTH 89, 93 (2006).

<sup>81</sup> See Colquitt et al., *supra* note 57, at 428.

### C. *Efforts to Bolster SWRCs*

To empower the SWRCs to activate the employees' collective bargaining position and to cultivate harmonious labor relationships, the Labor Contract Law ("LCL") was passed in 2007 and further amended in 2012 to provide greater power and flexibility to SWRCs. Before the LCL, employees were routinely dismissed or disciplined based upon regulations they knew nothing about.<sup>82</sup> The 1994 Labor Law did not mention SWRCs in the development of regulations.<sup>83</sup> But the LCL put the focus on organizations enacting regulations and raised the bar on required employee participation.<sup>84</sup> Thus, not only did this bolster the power of SWRCs in this process, but effectively required more participation from employees and thus strengthened the opportunities for employee voice. Article 4 states:

Where an employer formulates, amends or decides rules or important events concerning the remuneration, working time, break, vacation, work safety and sanitation, insurance and welfare, training of employees, labor discipline, or management of production quota, which are directly related to the interests of the employees, such rules or important events shall, in their promulgation, have the participation of the SWRC or all employees, and the employer shall also put forward proposals and opinions to the employees and negotiate with the labor union or the employees' representatives on an equal basis to reach agreements on these rules or events.<sup>85</sup>

Although the LCL required an enterprise to follow democratic procedures in the above circumstances, it did not provide details about the organization which can represent all employees to execute their legal rights in an enterprise.<sup>86</sup> In response to this gap, in 2012, the Provisions on the Democratic Management of Enterprises (the "Provisions") were adopted regarding the basic form of the employees' congress.<sup>87</sup> The Provisions, which named

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<sup>82</sup> See Haiming, *supra* note 6, at 154.

<sup>83</sup> *Id.* at 155.

<sup>84</sup> *Id.* at 161.

<sup>85</sup> Labor Contract Law of the People's Republic of China (promulgated by the Standing Comm. Nat'l People's Cong., June 29, 2007, effective Jan. 1, 2008), art. 4, CLI. 1.94833(EN) (LawinfoChina), <http://www.lawinfochina.com/display.aspx?id=6133&lib=law>.

<sup>86</sup> See Jeanette Yu, *New Rules on Democratic Organization in Chinese Enterprises*, LEXOLOGY (July 31, 2012), <https://www.lexology.com/library/detail.aspx?g=ce03c06e-b8f1-4396-9040-b47335ae3e82>.

<sup>87</sup> See Provisions on Management of Enterprises, *supra* note 38.

SWRCs as the democratic organization for employee participation, apply to all types of enterprises, including state-owned and privately-owned companies.<sup>88</sup> An English translation of this document is included in the Appendix. The Provisions enumerate powers of SWRCs, including the power to review rules or other important enterprise decisions that directly relate to employees' interests, make proposals or provide opinions, approve execution of collective agreements, and elect employee directors or employee supervisors (if any).<sup>89</sup> In addition, the Provisions establish a system of managerial disclosure regarding certain business matters, such as details on rewards or punishments for employees, unilateral termination of employees, or plans and results of mass lay-offs.<sup>90</sup>

Whether SWRCs should be oriented toward approving a decision (by vote), or deliberating on it (at a meeting), remains an open question.<sup>91</sup> Deliberation alone may be sufficient if the goal is democratic management. Yet employees' opinions are likely to be ignored, given little weight, or completely disregarded as coming from a self-interested party. Thus, from a worker voice viewpoint, deliberation will not suffice, and SWRCs should be oriented towards actual decision-making power. Deliberating rights, such as hearing reports, deliberating on plans, and putting forward opinions and suggestions, do not establish substantive rights to reject the enterprise's unilateral decisions.<sup>92</sup> In SOEs, the SWRCs are vested with a right to approve "downsizing, division and reintegration plans in the course of implementing enterprise mergers, divisions, restructuring, dissolution, and bankruptcy."<sup>93</sup> SWRCs in enterprises other than SOEs do not have these approval rights.

As noted above, one of the main reasons for employees' silence is the lack of feedback from the management and feelings of irrelevance. Employee participation through SWRCs could help alleviate this issue but would not necessarily provide a cure-all. An enterprise trade union, for example, functioning as a workplace union, theoretically is subordinate to the SWRC.<sup>94</sup> In reality, an enterprise trade union treats the SWRC as subordinate "ensur[ing] that [the] SWRC functions properly" and as a "power base."<sup>95</sup> In many enterprises, management *de facto* controls workforce

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<sup>88</sup> See Yu, *supra* note 86.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

<sup>91</sup> Haiming, *supra* note 6, at 157.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 157–58.

<sup>94</sup> Anita Chan, *The Evolution of China's Industrial System, the Japanese-German Model, and China's Workers' Congress*, LABOUR REL. J. 52, 60 (Jan. 2008).

<sup>95</sup> *Id.* at 59–60.

unions, making them poor conduits for worker voice.<sup>96</sup> Workers respond accordingly, often characterizing SWRCs as “a display of formalism,”<sup>97</sup> and workers see them as irrelevant because of their subordination to upper level management.<sup>98</sup>

SWRCs, in fact, may be a compromise between a traditional enterprise governance structure in China and modern corporate governance systems employed in Western countries. Under the Company Law, the functions of the SWRC have theoretically been assumed by shareholders, boards of directors, and supervisory boards.<sup>99</sup> Perfecting a democratic management system with the SWRC as its basic form can be a vehicle for navigating the issue of corporate governance.<sup>100</sup>

Efforts to bolster democratic management and worker voice may be impaired, however, by factory directors’ influence. SWRCs are legally required to support factory directors exercising their functions and powers, including the decision-making of business management and the unified leadership of productive activity.<sup>101</sup> In addition, factory directors significantly influence SWRCs because managers initiate and submit proposals for deliberations, head interim meetings, and in some circumstances, requiring directors’ consent.<sup>102</sup> Excessive interference of directors in worker representation limits workers’ ability to speak up.

The election system is under-regulated as well, allowing interested parties to manipulate it—the current system says nothing about the method of voting, and the law does not prescribe punishment for violations during elections.<sup>103</sup> This directly harms the core of the democratic management system, especially with the absence of punishment. As a matter of worker voice, this gap may signal to the workforce that their powers are still subject to control by enterprise management, discouraging the voice. A more definitive step is needed to bolster SWRCs.

## II. AN ALTERNATIVE: EMPLOYEE COMMITTEES IN MNCs

Some multinational corporations (“MNCs”) use an alternative to SWRCs that are known as “Employee Committees.” Although Employee Committees lack the formal connection to state powers of SWRCs, these

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<sup>96</sup> *Id.* at 58.

<sup>97</sup> *Id.* at 60.

<sup>98</sup> *Id.*

<sup>99</sup> Haiming, *supra* note 6, at 156–57.

<sup>100</sup> *Id.* at 157.

<sup>101</sup> Li, *supra* note 13, at 221.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 228.

committees have a more democratic election system.<sup>104</sup> Because of the assumption that workers are going to be in opposition of management at times,<sup>105</sup> the unofficial Employee Committees may in fact serve as a more effective venue than SWRCs for workers to use their voice. Potential negative ramifications associated with providing feedback to upper management can be reduced when there is a norm for speaking up,<sup>106</sup> which these unofficial Employee Committees provide. Additionally, the implicit support from upper management may increase the likelihood that this type of forum will be used as a vehicle for worker voice.<sup>107</sup>

Despite their promising nature, the future of Employee Committees is uncertain. On a positive note for these committees, at least in the short-term, the state does not seem to be taking steps to limit or dismantle them.<sup>108</sup> This may change. Key officials or organizations may see Employee Committees as unneeded in light of the existence of SWRCs<sup>109</sup> even though introducing more forums through which employees may express their voice increases the potential positives that may be obtained by the exercise of employee voice.<sup>110</sup>

### III. SUGGESTIONS FOR LEGAL REFORMS

In light of the foregoing discussion, we suggest two modest amendments to Chinese law to improve the ability of workers to speak up in the workplace. First, we recommend revisions to Article 21 of Chapter 2 of the Employees' Congress System of Provisions on the Democratic Management of Enterprises. This provision currently states that:

Resolutions and matters deliberated and adopted by the employees' congress within the scope of its functions and powers pursuant to the law shall have binding force, and shall not be amended or revoked without the approval of the employees' congress. Matters which the employees' congress shall be requested by the enterprise to deliberate, adopt or decide on shall be invalid unless it is deliberated, adopted or decided upon in accordance with statutory procedures.<sup>111</sup>

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<sup>104</sup> Estlund, *supra* note 4, at 84.

<sup>105</sup> *Id.*

<sup>106</sup> See Whiting et al., *supra* note 39.

<sup>107</sup> See Marcia Miceli et al., *A Word to the Wise: How Managers and Policy-Makers can Encourage Employees to Report Wrongdoing*, 86 J. BUS. ETHICS 379, 383–85 (2008).

<sup>108</sup> Estlund, *supra* note 4, at 84–85.

<sup>109</sup> *Id.*

<sup>110</sup> Miceli, *supra* note 107, at 387.

<sup>111</sup> See Provisions on Management of Enterprises, *supra* note 38, art. 21.

But this section is not clear regarding who will be the authority to declare the solutions invalid. We recommend that any eligible employee should be entitled to take a matter to the court of justice for judicial review of resolutions or decisions. Furthermore, if substantive legal rules are breached, the resolutions or decision of the SWRCs should be declared null and void. If procedural legal rules are breached, the resolutions or decision of the SWRCs should be voidable, and the employees should be able to request the court of justice to invalidate them only within a short period, such as 60 days. Our proposal is similar to the mechanism applicable to defective resolutions of the general meeting of shareholders or the board of directors in the Company Law. Article 22 of the Company Law of China states:

A resolution of the shareholders' meeting, shareholders' assembly or board of directors of the company that is in violation of any law or administrative regulation shall be null and void.

If the procedures for calling a shareholders' meeting or shareholders' assembly, or meeting of the board of directors, or the voting form, is in violation of any law, administrative regulation or the bylaw, or if a resolution is in violation of the bylaws of the company, the shareholders may, within 60 days from when the resolution is made request the people's court to revoke it.

If the shareholders initiate a lawsuit under the preceding paragraph, the people's court shall, at the request of the company, demand the shareholders to provide corresponding guaranty.

Where a company has, according to the resolution of the shareholders' meeting, shareholders' assembly or meeting of the board of directors, completed the modification registration, if the people's court declares the resolution null and void or revoke the resolution, the company shall file an application with the company registration authority for revoking the modification registration.<sup>112</sup>

Second, protection of the employee representative could be further improved by securing their jobs from unilateral termination on the part of angry

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<sup>112</sup> Mergers and Acquisitions in China Appendix E [Company Law of China] (promulgated by the Standing Comm. Nat'l People's Cong., Dec. 28, 2013, effective Mar. 1, 2014), art. 22, ch. 2.

employers. We recommend that if the dismissed employee representative has good evidence on the causation between her dismissal decision and her active participation in the SWRC activities, then she should win the case.

Article 30 of the Provisions on the Democratic Management of Enterprises of 2012 provides:

The performance of functions by the employee's representatives shall be protected by law, and no organization or individual shall obstruct or retaliate against the employees' representatives. Employees' representatives shall, pursuant to the law, participate in the employees' congress and all activities organized by the congress within the statutory work hours, and the enterprise shall pay regular labor remuneration to the representatives, and shall not reduce their wages or any other welfare benefits.<sup>113</sup>

Although Article 30 already recognizes the importance of the protection of employee representatives, these protections could be expanded to provide appropriate incentives and restraints on the individual representatives.

#### CONCLUSION

SWRCs and similar voice structures are critical to voicing grievances and otherwise critical ideas within Chinese business organizations. The expression of critical voice serves important diagnostic and preventative functions for organizational health by drawing attention to previously undetected problems in organizational initiatives.<sup>114</sup> The weakening of SWRCs, and therefore the weakening of critical voice, is of significant concern. Critical voice especially may be most useful for organizations than positive.<sup>115</sup> Thus, steps must continue to be taken that allow employees in China to exercise positive or negative voice through existing or new institutions. The risks of engaging in employee voice should be minimized through both internal and governmental regulations providing protections from employee discharge and demotion.<sup>116</sup> These protections should be applied uniformly, constantly,

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<sup>113</sup> See Provisions on Management of Enterprises, *supra* note 38, art. 30.

<sup>114</sup> Jian Liang et al., *Psychological Antecedents of Promotive and Prohibitive Voice: A Two-Wave Examination*, 55 ACAD. MGMT. J. 71, 75 (2012).

<sup>115</sup> *Id.*

<sup>116</sup> Cindy A. Schipani, Terry Morehead Dworkin, & Junhai Liu, *The Role of Employee Voice in Promoting Corporate Social Responsibility in China*, in GLOBALIZATION OF CORPORATE SOCIAL RESPONSIBILITY AND ITS IMPACT ON CORPORATE GOVERNANCE 51, 67–68 (2018).

and liberally.<sup>117</sup>

Finally, as Chinese society traditionally focuses on harmonious personal relationships, the effective operation of SWRCs based on the rule of law will be very helpful for corporate governance. SWRCs offer a great window for the international academic community to observe how pro-employee and pro-shareholder elements are integrated in China.

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<sup>117</sup> *Id.*

## APPENDIX

**Provisions on the Democratic Management of Enterprises (No. 12 [2012] of the All-China Federation of Trade Unions, issued by the Central Commission for Discipline Inspection of the CPC, the Organization Department of the CPC Central Committee, the State-owned Assets Supervision and Administration Commission of the State Council, the Ministry of Supervision, the All-China Federation of Trade Unions and the All-China Federation of Industry and Commerce on February 13, 2012).**

**Article 1** These Provisions are formulated in accordance with the Constitution and the relevant laws in order to improve the system for the democratic management of enterprises with the employees' congress as the basic form, promote the opening of enterprise affairs, support employees' participation in enterprise management, protect employees' legitimate rights and interests, build harmonious labor relations, promote sustainable and healthy development of enterprises, and strengthen the building of grassroots democracy.

**Article 2** Enterprises shall adhere to the leadership of the Party, follow the guidance of the Deng Xiaoping Theory and the important thought of the "Three Represents," thoroughly carry out the Scientific Outlook on Development, and unswervingly implement the Party's basic guideline of relying on the working class whole-heartedly in their democratic management. The enterprises' party organizations shall strengthen their leadership and support for democratic management.

**Article 3** Employees' congress (or employees' assembly, same below) shall be the body through which employees exercise their rights to democratic management and the basic form of enterprises' democratic management.

Enterprises shall, under the principles of legality, orderliness, openness and impartiality, establish a democratic management system with the employees' congress as the basic form, open enterprise affairs and promote democratic management. Corporate enterprises (hereinafter referred to as "companies") shall establish a system of employees' directors and employees' supervisors pursuant to law.

Enterprises shall guarantee and respect employees' rights to information, participation, expression and supervision and other democratic rights in accordance with the law, and support employees' participation in enterprise

management.

**Article 4** Employees of an enterprise shall respect and support the enterprise's exercise of management authority in accordance with the law, and shall actively participate in the enterprise's management.

**Article 5** The trade union of an enterprise shall organize employees to conduct democratic management in accordance with the law, and protect the employees' legitimate rights and interests.

The trade union at a higher level shall direct and help the enterprises' trade unions and employees in conducting democratic management in accordance with the law, and supervise the enterprises' democratic management.

**Article 6** The organizations of enterprises' representatives shall promote the democratic management of enterprises, and promote the healthy development of enterprises.

**Article 7** The disciplinary inspection departments and organization departments of Party committees at all levels and the state-owned assets supervision and administration institutions, supervision authorities and other relevant departments of people's governments at all levels shall, in accordance with their respective functions and duties, guide, inspect and supervise the democratic management of enterprises.

## **Chapter II Employees' Congress System**

### **Section 1: Organization System and Powers of Employees' Congresses**

**Article 8** Enterprises may determine to convene the employees' congress or the employees' assembly based on the number of employees.

Where an enterprise convenes the employees' congress, the number of employees' representatives shall be determined on the basis of not less than 5% of the number of all employees and shall not be less than 30. Where the number of employees' representatives is more than 100, the excess may be determined by the enterprise through consultation with the trade union.

**Article 9** Representatives of the employees' congress shall consist of workers, technicians, managers, and leaders of the enterprise and other

employees. The number of managers at or above the middle level and leaders of an enterprise shall generally not exceed 20% of the total number of employees' representatives. Enterprises with female employees and employees dispatched for labor shall have an appropriate proportion of representatives of the female employees and employees dispatched for labor.

**Article 10** The employees' congress is elected for a term of three to five years. The specific term of office shall be determined by the employees' congress in accordance with the actual circumstances of the enterprise.

Where the employees' congressional election for the next term is held in advance or is postponed for any particular reason, the relevant decision shall be made by the employees' congress or the institution authorized by the employees' congress.

**Article 11** The employees' congress may, as required, establish several special committees (teams) to be responsible for handling matters assigned by the employees' congress. The members of the special committees (teams) must be deliberated and adopted at the employees' congress.

**Article 12** Employees' representatives shall form representative groups (teams) based on the basic electoral units, and elect the group leader (team leader) thereof. The joint meeting of the group leaders (team leaders) of the employees' congress and the persons in charge of special committees (teams) may be set up to be responsible for handling the important matters to be resolved temporarily during the period when the employees' congress is not in session upon the authorization of the employees' congress. The joint meeting shall request the next employees' congress for confirmation of the resolutions made during this period.

The enterprise's trade union shall be responsible for convening the joint meeting, and the enterprise's leaders or other relevant persons may be invited to observe the joint meeting in light of the meeting content.

**Article 13** The employees' congress shall perform the following functions:

1. listen to reports made by the main person in charge of the enterprise regarding the enterprise's development plans, annual production and business operation and management, enterprise reform and the formulation of important bylaws, the conclusion and fulfillment of the enterprise's labor use contracts, labor contracts and collective contracts, the enterprise's work safety conditions, as well as the enterprise's payment of social insurance

premiums and housing provident fund, and put forward opinions and suggestions; deliberate the bylaws or plans on important matters formulated, amended or decided by the enterprise regarding labor remuneration, work hours, rest and vacation, labor safety and health, insurance welfare, training for employees, labor discipline, labor quota management and those directly involving the vital interests of laborers, and put forward opinions and suggestions;

2. deliberate and adopt collective contract drafts, plans for the use of employee welfare funds collected in accordance with the relevant provisions of the state, plans for adjusting the payment proportion and time for the housing provident fund and social insurance premiums, recommend model workers and other major matters;

3. elect or recall the employees' directors or employees' supervisors, elect the employees' representatives for creditors' meetings and creditors' committees of enterprises entering bankruptcy proceedings pursuant to law, and recommend or elect the enterprise's business managers upon authorization;

4. examine and supervise the enterprise's implementation of labor laws and regulations and labor bylaws, deliberate the enterprise's leaders in a democratic manner, and propose suggestions for awards and punishments; and

5. other functions as prescribed by laws and regulations.

**Article 14** The employees' congress of a state-owned enterprise or a state-owned holding enterprise shall perform the following functions in addition to performing the functions as prescribed in Article 13:

1. listen to and deliberate reports made by the main person in charge of the business operation and management on the enterprise investment, major technical reconstruction, financial budgets and final accounts and the use of the enterprise's business entertainment expenses, as well as the plans for the evaluation of professional technical titles, the enterprise's use of accumulation fund and restructuring, and put forward opinions and suggestions;

2. deliberate and adopt plans for the layoff and resettlement of employees in the plans for the implementation of the enterprise's merger, split, restructuring, dissolution or bankruptcy; and

3. other functions as prescribed by laws, administrative regulations and administrative bylaws.

**Article 15** Several small and medium-sized enterprises within a certain area at or below the county level or within industries of a similar nature, which do not satisfy the conditions for the establishment of employees'

congress system, may jointly establish a regional (industry) employees' congress system through the election of representatives to conduct the democratic management of enterprises.

The trade union shall be responsible for establishing the regional (industry) employees' congress system. The regional (industry) trade union shall undertake the routine work as the working body of the regional (industry) employees' congress.

**Article 16** The headquarters and all branch companies, factories, workshops and other branches of an enterprise group may elect the employees' representatives based on a certain proportion, and convene the employees' congress of the enterprise group to conduct the democratic management of the enterprise group.

The headquarters and all branch companies, factories, workshops and other branches of a group enterprise may establish the employees' congress system in accordance with these Provisions, and separately conduct democratic management within the scope of their respective functions and powers.

## **Section 2: Work System for Employees' Congresses**

**Article 17** The employees' congress shall be held at least once each year. The plenary session of the employees' congress must be attended by two-thirds or more of the employees' representatives.

**Article 18** The topics and proposals of the employees' congress shall be determined by the enterprise's trade union through consultation with the enterprise after soliciting employees' opinions, and be served upon the employees' representatives in writing seven days before the convening of the meeting.

**Article 19** The employees' congress may set up a presidium to preside over the meeting. The list of candidates for the members of the presidium shall be proposed by the enterprise's trade union through consultation with all groups (teams) of the employees' congress, and shall be passed through voting at the preparatory meeting of the employees' congress. Workers, technicians and managers shall not be less than 50%.

**Article 20** Relevant matters on the election and voting at the employees' congress shall be passed by a majority of all employees' representatives in accordance with the majority principle. Important matters shall be voted

under separate items in the form of a secret ballot.

**Article 21** Resolutions and matters deliberated and adopted by the employees' congress within the scope of its functions and powers pursuant to the law shall have binding force, and shall not be amended or revoked without the approval of the employees' congress.

Matters which the employees' congress shall be requested by the enterprise to deliberate, adopt or decide on shall be invalid unless it is deliberated, adopted or decided upon in accordance with statutory procedures.

**Article 22** The enterprise's trade union committee shall be the working body of the employees' congress, shall be responsible for the routine work of the employees' congress, and shall perform the following functions:

1. propose plans for the election of representatives of the employees' congress, and organize employees to elect the employees' representatives and leaders of representative groups (teams);

2. collect the proposals of employees' representatives and put forward suggestions on the topics of the employees' congress;

3. be responsible for the preparation and organization of the meetings of the employees' congress, and put forward suggestions regarding the agenda of the employees' congress;

4. propose plans for the composition of the presidium of the employees' congress and the suggested list of members; and propose plans for the establishment of special committees (teams) and suggested list of members;

5. report to the employees' congress on the implementation of resolutions of the employees' congress, the handling of proposals of the employees' congress, and the opening of enterprise affairs;

6. be responsible for the organization of special committees (teams) and employees' representatives to conduct patrol inspection, examination, inquiries and other supervision activities on the implementation of resolutions of the employees' congress of the enterprise and the handling of proposals of the employees' congress as well as the opening of enterprise affairs when the employees' congress is not in session;

7. accept appeals and suggestions from the employees' representatives and protect the legitimate rights and interests of the employees' representatives;

8. provide the employees with publicity and education programs on democratic management, organize employees to participate in study and training programs, and enhance the qualities of employees' representatives; and

9. establish and manage work files for the employees' congress.

### **Section 3: Election of Employees' Representatives and Their Rights and Obligations**

**Article 23** Employees who have signed labor contracts, established labor relations and have actual labor relationships with an enterprise shall have the right to elect and be elected as the representatives of the enterprises' congress.

Employees' representatives whose labor relations have been terminated or revoked pursuant to law shall be automatically disqualified as the employees' representative.

**Article 24** Employees' representatives shall be directly elected based on the basic electoral unit such as team, workshop section, workshop and division. The employees' representatives of a large-scale enterprise with many management levels may be elected from the representatives of the people's congress at the next lower level.

**Article 25** In order to elect or recall an employees' representative, a staff meeting of the relevant electoral unit shall be convened and attended by two-thirds or more of the employees. A decision on the election or recall of an employees' representative shall be invalid unless it is passed by a majority of all employees.

**Article 26** Employees' representatives shall be permanent, and their term of office shall be the same as the employees' congress session, and they may be reelected to serve for another term. Where there is any vacancy in the employees' representatives, the original electoral unit shall conduct a by-election in accordance with the prescribed conditions and procedures.

**Article 27** Employees' representatives shall be responsible to the employees of the electoral unit and for reporting their work, and accept the supervision of the employees of the electoral unit.

**Article 28** Employees' representatives shall enjoy the following rights:

1. the right to elect, the right to be elected and voting rights;
2. to participate in the democratic management organized by the employees' congress and its work bodies;
3. to appraise and raise inquiries to the enterprise's leaders; and

4. to supervise and inspect the enterprise's implementation of resolutions of the employees' congress when the employees' congress is not in session.

**Article 29** Employees' representatives shall fulfill the following obligations:

1. abide by the laws, regulations and the enterprise's bylaws, enhance their qualities, and actively participate in the enterprise's democratic management;

2. fulfill the responsibilities of employees' representatives pursuant to the law, listen to the employees' opinions and suggestions regarding the enterprise's production and business operation and management as well as opinions and requirements involving the employees' vital interests, and report such opinions and requirements to the enterprise in an objective and truthful manner;

3. participate in all activities organized by the employees' congress of the enterprise, implement resolutions adopted by the employees' congress, and complete the work assigned by the employees' congress;

4. report to the electoral unit's employees their participation in the employees' congress activities and performance of functions, and accept the evaluation and supervision by employees; and

5. keep the enterprise's trade secrets and confidential matters regarding intellectual property rights.

**Article 30** The performance of functions by the employees' representatives shall be protected by law, and no organization or individual shall obstruct or retaliate against the employees' representatives.

Employees' representatives shall, pursuant to the law, participate in the employees' congress and all activities organized by the congress within the statutory work hours, and the enterprise shall pay regular labor remuneration to the representatives, and shall not reduce their wages or any other welfare benefits.

### **Chapter III System of Opening Enterprise Affairs**

**Article 31** An enterprise shall establish and implement the system of opening of enterprise affairs, and through the employees' congress and other forms, open to the employees the significant matters regarding the enterprise's production, business operation and management, the bylaws involving the employees' vital interests, the professional integrity of business managers and other relevant information under certain procedures;, solicit the

employees' opinions; and accept the employees' supervision.

**Article 32** The main person in charge of an enterprise shall be responsible for the opening of enterprise affairs. An enterprise shall establish a corresponding institution or designate special persons to be responsible for the opening of enterprise affairs.

**Article 33** An enterprise shall open enterprise affairs under the principles of legality, timeliness, truthfulness and promoting the protection of employees' rights and interests and the development of enterprises.

An enterprise shall, when opening enterprise affairs, keep its trade secrets and confidential matters regarding intellectual property rights.

**Article 34** An enterprise shall open the following matters to employees:

1. basic information on business operation and management;
2. the recruitment of employees and the conclusion of labor contracts;
3. the content of collective contracts and labor bylaws;
4. awards and punishments for employees, unilateral rescission of labor contracts, layoff plans and results, the conditions, quota and results of appraising model workers and excellent employees;
5. labor safety and health standards, occurrence of safety accidents and handling results;
6. the purchase of social insurance and the payment of enterprise annuity;
7. the drawing and use of employee education funds, the employee training plan and the implementation thereof;
8. labor disputes and handling results; and
9. other matters prescribed by laws and regulations.

**Article 35** A state-owned enterprise, collective enterprise or its holding enterprise shall open the following matters in addition to the relevant matters as prescribed in Articles 13, 14 and 34:

1. significant matters such as major decision-making plans for investment, production and business operation and management, and the enterprise's middle and long-term development planning;
2. the annual production and business objectives and the completion thereof, enterprise guarantee, use of large-sum funds, disposal of large-sum assets, bidding and tendering for project construction projects, the purchase and supply of bulk commodities, product sales, profits and losses and the fulfillment of contracting and leasing contracts, the implementation of the

internal economic responsibility system, the formulation of important by-laws and other significant matters;

3. the promotion and salary increase of employees, distribution of wages and allowances, and the evaluation of professional technical titles;

4. the selection and appointment of leaders at the middle level, persons for important posts, the remuneration, duty consumption and part-time jobs of the enterprise's leaders, expenses for going abroad and implementation of other provisions on integrity and self-discipline, and the democratic evaluation results of the enterprise's leaders at the employees' congress; and

5. other matters that shall be made public in accordance with the relevant provisions of the state.

#### **Chapter IV System of Employees' Directors and Employees' Supervisors**

**Article 36** A company shall establish a system of employees' directors and employees' supervisors pursuant to the law, and support participation in the company's decision-making, management and supervision by the employees' representatives who are elected by voting at the employees' congress as the members of the board of directors or board of supervisors. They shall represent and maintain the employees' legitimate rights and interests so as to promote the healthy development of enterprises.

**Article 37** A company shall, pursuant to the law, specify the proportion and number of employees' directors and employees' supervisors in the company's bylaws.

**Article 38** The candidates for the employees' directors or employees' supervisors shall be nominated by the company's trade union in light of self-recommendation and recommendation and on the basis of fully soliciting the opinions of the employees, be passed through voting by a majority of all representatives of the employees' congress, and be reported to the trade union at the next higher level for filing.

The chairman and vice-chairman of the trade union shall be the candidates for the employees' directors or employees' supervisors.

**Article 39** No senior manager or supervisor of a company shall concurrently hold the post of employees' director; and no senior manager or director of a company shall concurrently hold the post of employees' supervisor.

**Article 40** The term of office for employees' directors or employees' supervisors shall be the same as that of other directors or supervisors, and they may be reelected upon the expiration of said term of office.

**Article 41** Where an employees' director or employees' supervisor fails to perform functions or has any serious fault, with the joint proposition of one-third or more of the employees' representatives, the said director or supervisor may be recalled if the proposition is passed through voting by a majority of all representatives of the employees' congress.

Where there is any vacancy in the employees' directors or employees' supervisors, the company's trade union shall nominate the alternative person in accordance with Article 37 of these Provisions, and request the employees' congress to elect the director or supervisor in a democratic manner.

**Article 42** Employees' directors shall exercise the following rights pursuant to the law:

1. attend the meetings of the board of directors, and exercise the right to speak and the right to vote as directors;
2. propose the convening of meetings of the board of directors concerning the bylaws or major matters involving the employees' vital interests, report the employees' reasonable requirements, and protect the employees' legitimate rights and interests;
3. observe the administrative and executive meetings of the company relating to their functions and important meetings relating to production and business operation;
4. require the trade union or relevant departments and institutions of the company to make notifications regarding relevant information and provide relevant materials; and
5. other rights as prescribed by laws, regulations and the company's by-laws.

**Article 43** Employees' supervisors shall exercise the following rights pursuant to the law:

1. attend the meetings of the board of supervisors, and exercise the right to speak and the right to vote as supervisors;
2. propose the convening of meetings of the board of supervisors concerning the bylaws or major matters involving the employees' vital interests;
3. supervise the company's financial conditions and the performance of functions by the company's directors and senior managers; supervise and

inspect the company's implementation of laws and regulations involving the employees' vital interests and the company's bylaws; as well as the fulfillment of labor contracts and collective contracts;

4. observe the meetings of the board of directors, raise inquiries or provide suggestions regarding matters under deliberation by the board of directors; and observe the relevant administrative and executive meetings of the company relating to their functions and important meetings relating to production and business operation;

5. require the trade union or relevant departments and institutions of the company to make notifications regarding relevant information and provide relevant materials; and

6. other rights as prescribed by laws, regulations and the company's by-laws.

**Article 44** Employees' directors and employees' supervisors shall fulfill the following obligations pursuant to law:

1. abide by laws and regulations, abide by the company's bylaws and all rules and regulations, keep the company's secrets, and conscientiously perform functions;

2. solicit the employees' opinions and suggestions on a regular basis, and report the employees' opinions and suggestions at the meetings of the board of directors and the board of supervisors in a truthful, accurate and comprehensive manner;

3. report their work and performance to the employees' congress on a regular basis, implement the relevant resolutions of the employees' congress, provide opinions regarding matters deliberated at the employees' congress, and exercise voting rights in accordance with the relevant resolutions of the employees' congress at the meetings of the board of directors or the board of supervisors; and

4. other obligations as prescribed by laws, regulations and the company's bylaws.

**Article 45** A company shall guarantee that the employees' directors and employees' supervisors carry out work in accordance with laws, regulations and the company's bylaws and provide the necessary work conditions for the employees' directors and employees' supervisors to perform their functions.

**Article 46** A company shall not rescind the labor contract with any employees' director or employees' supervisor during his or her term of office, unless it is otherwise prescribed by law.

**Article 47** Employees' directors and employees' supervisors shall have equal rights as the company's other directors and supervisors, and assume the corresponding obligations.

#### **Chapter V Supplementary Provisions**

**Article 48** All regions, all relevant departments and all enterprises shall formulate implementation measures in accordance with these Provisions to promote the democratic management of enterprises.

**Article 49** Collective enterprises shall conduct democratic management in accordance with the Regulation on Urban Collective Enterprises and other relevant laws and regulations.

**Article 50** These Provisions shall come into force on the date of issuance.