


**The enactment of three  
new labour laws in China:  
Unintended consequences  
and the emergence of 'new'  
actors in employment  
relations**



***'Regulating for Decent Work'* conference  
International Labour Organisation**

**Fang Lee Cooke  
University of Manchester, UK**

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- 1. The Labour Contract Law of PRC (LCL)**
  - 2. The Employment Promotion Law of PRC (EPL)**
  - 3. The Labour Dispute Mediation and Arbitration Law of PRC (LDMAL)**

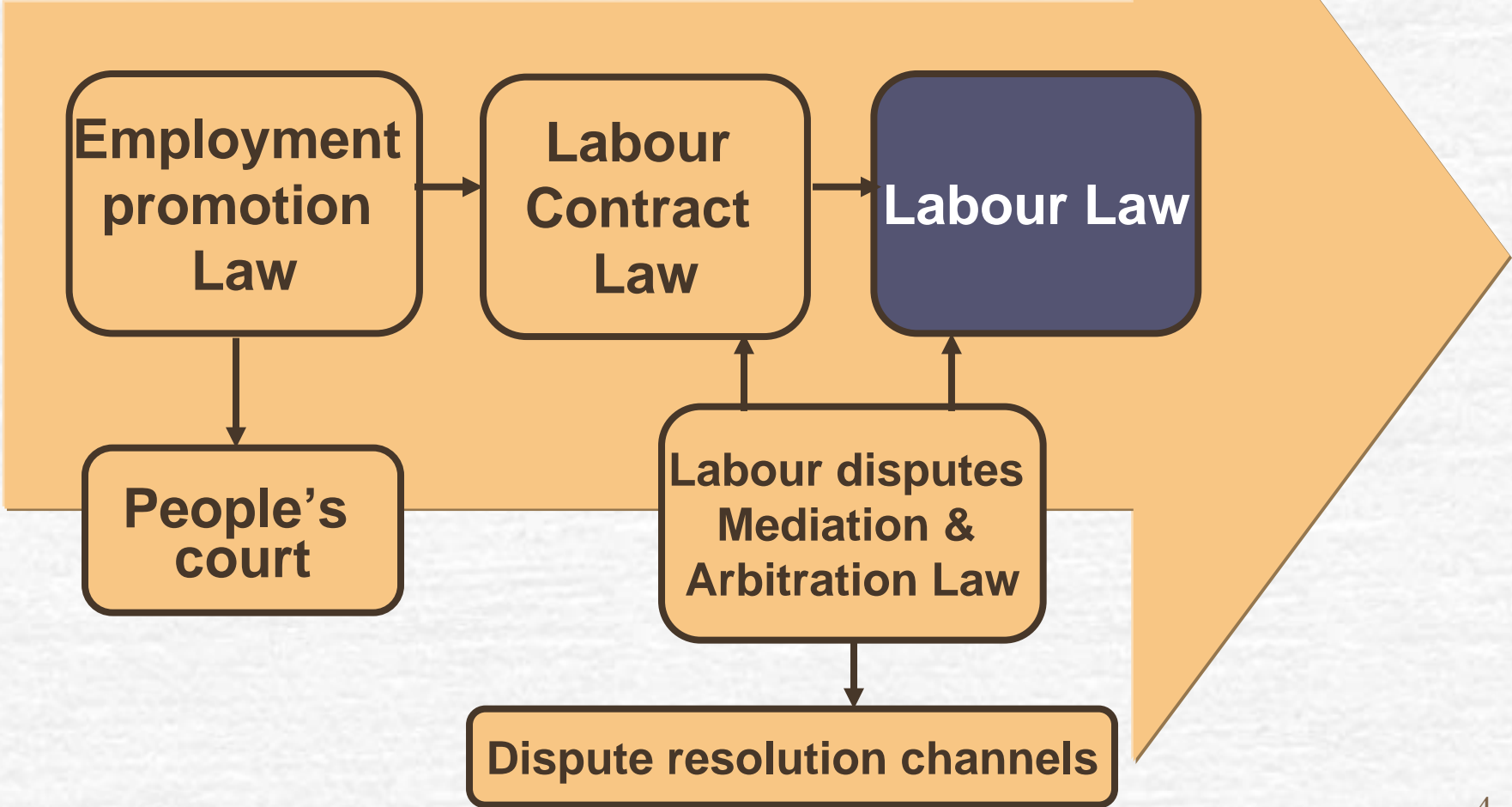
- Background**
- Key elements/focuses**
- Implementation challenges**
- Impact on (new) institutional actors and their responses and interactions**
- Conclusions and contributions**

# Research methods

**Semi-structured interviews with 71 informants from Beijing, Wuhan, Shanghai and Guangdong Province:**

- 43 owner-CEOs or HR directors/managers (34 from private or foreign-owned firms)
- 7 HR consultants
- 3 Senior labour authority officers
- 2 full-time union officers at municipal branch
- 2 Leading IR/labour law scholars
- 14 Migrant workers who work in seven enterprises
- 5 Workers involved in labour dispute arbitration cases (from three firms)

# New employment regulations framework



# Background for EPL

- **The need to promote employment**
  - e.g. in 2009, 6 million university students will graduate, six times as many as in 2000. Only 70% graduated in 2008 found employment within a year
- **The absence of laws on employment rights, has led to a disorderly labour market management situation**

# Key elements of EPL

- **Emphasising the role of local governments in promoting employment, vocational education and skill training**
- **Regulating employment agencies to clean up the industry**
- **Anti-discrimination in recruitment**
- **Encouraging entrepreneurship (self-employment) through favourable conditions**

# Background for LCL

- **The legal system that governs employment relations is flimsy, relying largely on Labour Law (1995)**
- **Labour Law applies mainly to those in the formal employment sector with formal employment relationships and fails to cover those in informal employment (1/3 of those employed)**
- **Labour Law focusing on the termination but not the formation of contract**

## **Background for LCL (Cont...)**

- **Rising level of labour disputes, leading to social unrest**
- **Main forms of non-compliance include: not signing contract, under payment of wage, wage arrear, excessive overtime and non-contribution to social insurance premium**
- **International pressure to improve human rights**
- **The need to create a formal and stable employment relationship**

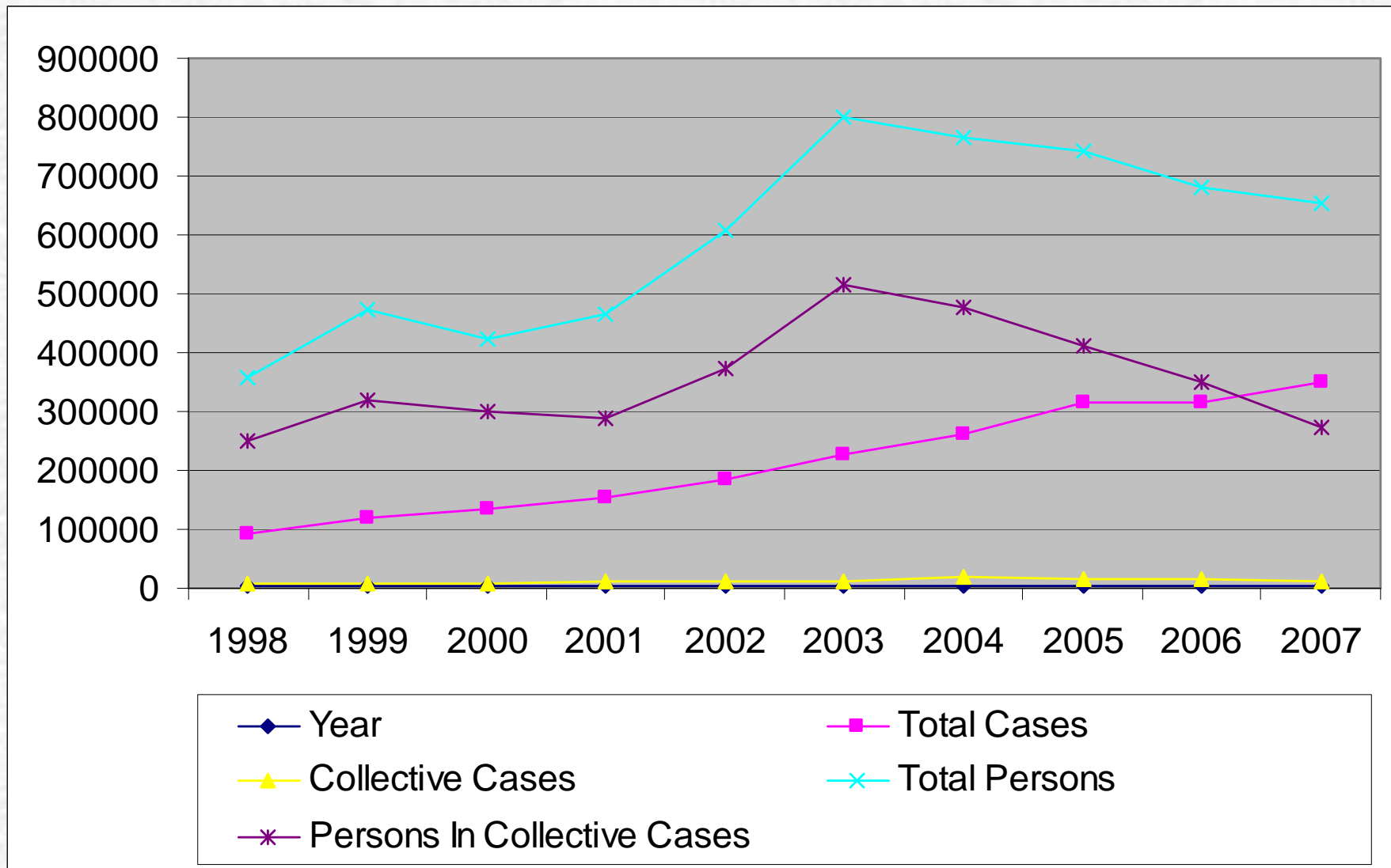


**Table 1. Labour dispute cases and persons involved between 1998 and 2007**

<b>Year</b>	<b>Total cases</b>	<b>Collective cases</b>	<b>Total persons involved</b>	<b>Persons involved in collective cases</b>
<b>1998</b>	<b>93,649</b>	<b>6,767</b>	<b>358,531</b>	<b>251,268</b>
<b>1999</b>	<b>120,191</b>	<b>9,043</b>	<b>473,957</b>	<b>319,445</b>
<b>2000</b>	<b>135,206</b>	<b>8,247</b>	<b>422,617</b>	<b>299,445</b>
<b>2001</b>	<b>154,621</b>	<b>9,847</b>	<b>467,150</b>	<b>286,680</b>
<b>2002</b>	<b>184,116</b>	<b>11,024</b>	<b>608,396</b>	<b>374,956</b>
<b>2003</b>	<b>226,391</b>	<b>10,823</b>	<b>801,042</b>	<b>514,573</b>
<b>2004</b>	<b>260,471</b>	<b>19,241</b>	<b>764,981</b>	<b>477,992</b>
<b>2005</b>	<b>313,773</b>	<b>16,217</b>	<b>744,195</b>	<b>409,819</b>
<b>2006</b>	<b>317,162</b>	<b>13,977</b>	<b>679,312</b>	<b>348,714</b>
<b>2007</b>	<b>350,182</b>	<b>12,784</b>	<b>653,472</b>	<b>271,777</b>

Source: compiled from the *China Labour Statistical Yearbook 2008*, pp.495-496.

# Labour dispute cases and persons involved (1998-2007)



# Key elements of Labour Contract Law

- **Formation of contracts**
- **Circumstances for the termination of contract and compensation**
- **Emphasis on non-fixed term contract**
- **Social insurance contribution**

# Labor Law



# Labor Contract Law



# Background for LDMAL

- To support the enactment of Labour Contract Law
- To resolve labour disputes in a fair and timely manner
- To promote a harmonious and stable employment relationship
- To make justice more accessible to the workers

## Key elements of LDMAL

- **Single arbitration as final ruling for certain labour disputes to speed up settlement**
- **Extension of the period in which one can apply for arbitration (from 60 days to 12 months)**
- **Shortening the time for conclusion of arbitration (within 45-60 days)**

## Key elements of LDMAL (Cont...)

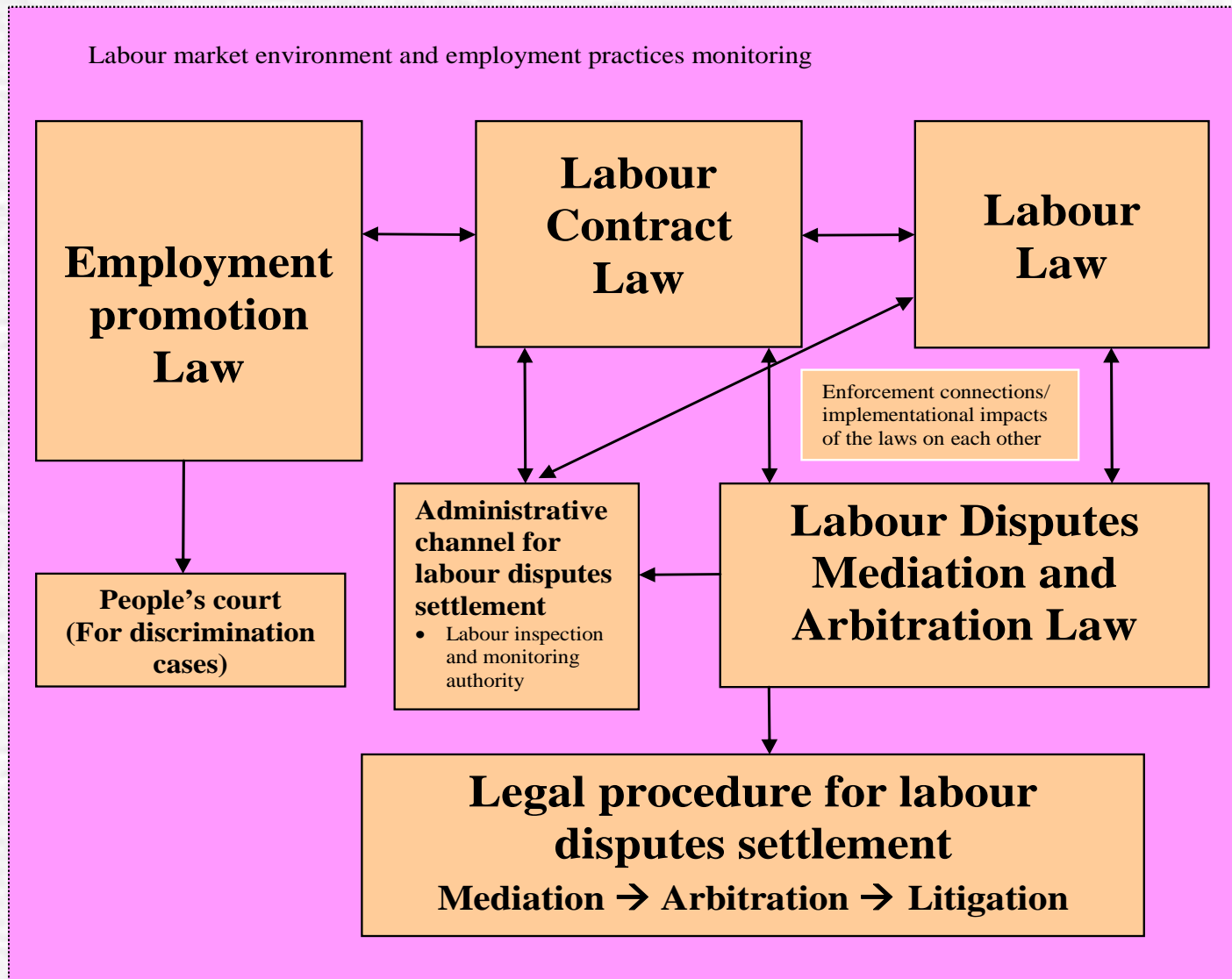
- No fees charges for arbitration
- Burden of proof shifting towards employers
- Emphasising mediation in disputes resolution process:  
**Mediation** – arbitration – litigation (2 trials)

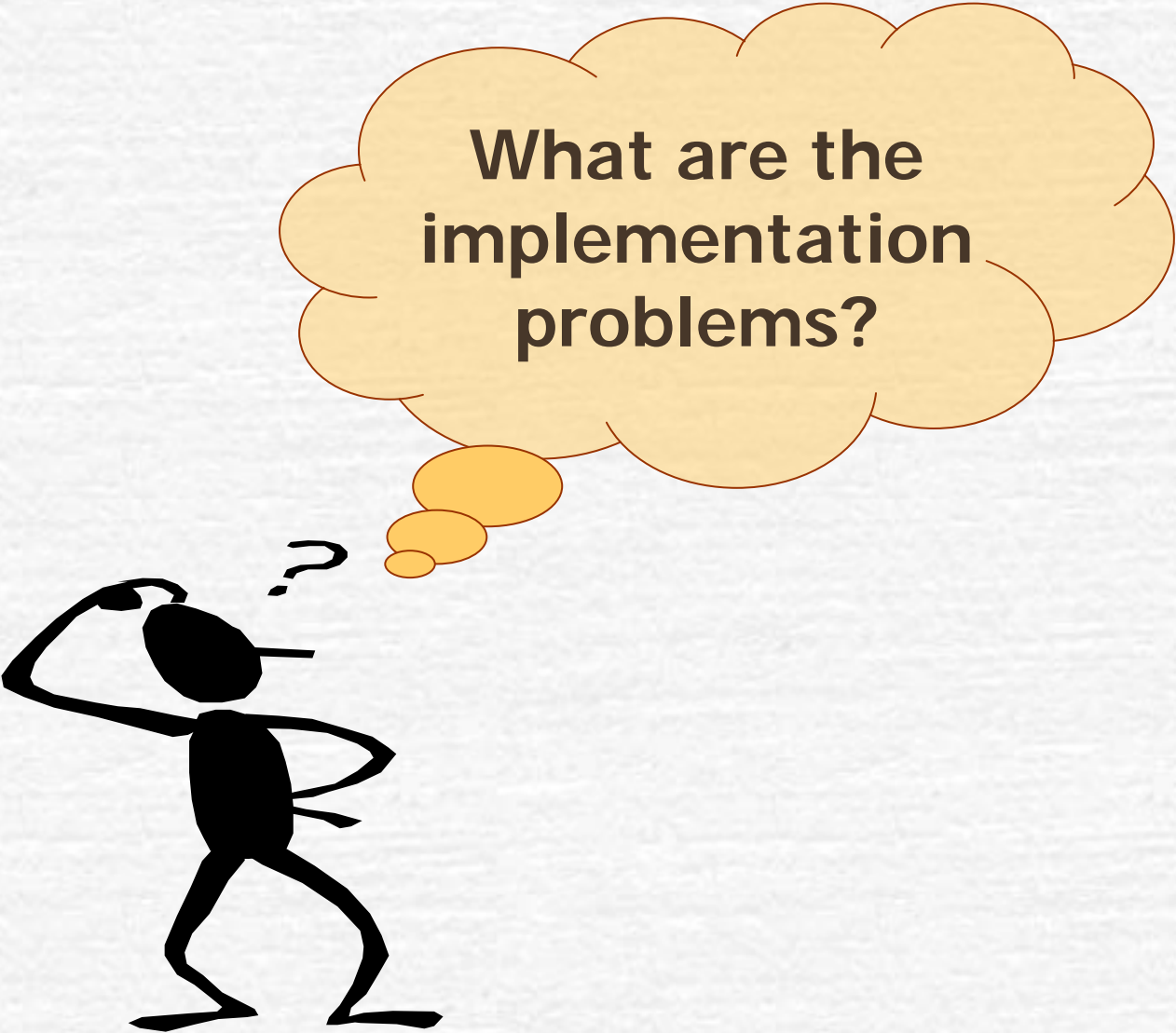
## Legal procedure for labour disputes settlement

Mediation	Arbitration	Litigation
<ul style="list-style-type: none"><li>• Labour disputes mediation committee at the enterprise level;</li><li>• People's (civil) mediation body legally set up at the grassroots level;</li><li>• Labour disputes mediation body at community and district level</li></ul>	<ul style="list-style-type: none"><li>• Labour disputes arbitration commission at district, county and municipal level</li></ul>	<ul style="list-style-type: none"><li>• People's court</li></ul>



**Figure 1. Major labour market and employment related laws in China and key elements**





**What are the  
implementation  
problems?**

# Problems in implementing EPL

- Criticized for being ambiguous in its wording and sounding more like a government policy statement than a serious piece of legislation
- Little clarification of what legal responsibility should apply to unlawful behaviour (e.g. discrimination), making it impossible to enforce
- Employment promotion task of the local government undermined by reaction from employers to LCL

# Impacts of LCL and LDMAL on institutional actors and their responses

Key tensions in LCL:

Open-ended contract & social insurance premium

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>Employers</b>	<ul style="list-style-type: none"><li>• <b>Increased labour costs</b></li><li>• <b>Inflexibility in labour deployment</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Strong opposition to LCL and request for amendments</b></li><li>• <b>Dismissing workers, hire freeze or (re)hiring workers through agency firms</b></li></ul>

# Impacts of LCL and LDMAL on institutional actors and their responses (cont...)

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>Workers</b>	<ul style="list-style-type: none"> <li>• <b>Job losses</b></li> <li>• <b>Wage losses due to contribution to social insurance fund</b></li> <li>• <b>Easier to file labour dispute cases against employers</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Accepting unlawful employment terms and conditions</b></li> <li>• <b>Refusing to sign contract</b></li> <li>• <b>More ready to file labour dispute applications</b></li> <li>• <b>Pursuing innovative ways to access justice (e.g. administrative litigation)</b></li> </ul>

## Impacts of LCL and LDMAL on institutional actors and their responses (cont...)

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>Trade unions</b>	<ul style="list-style-type: none"><li>• <b>Expanded power through joint decision making</b></li></ul>	<ul style="list-style-type: none"><li>• <b>Welcoming the new laws</b></li><li>• <b>Involvement in setting up mediation committee at enterprise level</b></li></ul>

**Key problem: lack of legal competence, low unionisation in private firms & lack of legitimacy in representing the workforce**

# Impacts of LCL and LDMAL on institutional actors and their responses (cont...)

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>Local governments</b>	<ul style="list-style-type: none"> <li>• <b>Tension between attracting investment and supporting business on the one hand and protecting labour rights on the other</b></li> <li>• <b>Increased financial burden for labour dispute arbitration and litigation</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Developing innovative local policy regulations to dilute the central laws</b></li> <li>• <b>Encouraging internal resolution to conform to the state ideology of ‘building a harmonious society’</b></li> </ul>

# Impacts of LCL and LDMAL on institutional actors and their responses (cont...)

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>Labour inspection authorities (under local governments)</b>	<ul style="list-style-type: none"> <li>• <b>Greater power /responsibility</b></li> <li>• <b>Dramatic increase of workload</b></li> <li>• <b>Lack of resources to deal with caseloads</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Forcing enterprises to resolve labour disputes internally</b></li> </ul>



*“Sometimes even when we are on the right side, the labour authority will still force us to pay compensation to end the dispute, in their words: ‘just swallow it’. We are given pressure to resolve dispute claims internally ‘for the sake of building a harmonious society’. The authority does not like to see more cases being submitted and has no capacity or willingness to deal with them.” (Owner CEO)*

# Impacts of LCL and LDMAL on institutional actors and their responses (cont...)

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>Employment agencies (enjoy special ties with local gov't)</b>	<ul style="list-style-type: none"> <li>• <b>More restrictions on business operation</b></li> <li>• <b>Increased demand for agency workers</b></li> <li>• <b>Conflict of dual role of labour market monitoring (gate keeper) and business operator (player)</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Profiting from the new laws as a result of employers' reaction</b></li> <li>• <b>Innovative ways to maximize business opportunities through intricate relationships with local governments</b></li> </ul>

## Impacts of LCL and LDMAL on institutional actors and their responses (cont...)

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>Foreign client firms and NGOs</b>	<ul style="list-style-type: none"> <li>• <b>More scope for monitoring labour standards</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Higher level of monitoring activities through site visits</b></li> <li>• <b>More support functions to workers</b></li> </ul>

**Tensions: transient forces/actors due to resource constraints and challenges in gaining a wider political recognition from the state and operational legitimacy from local governments**

**Foreign MNCs at upper end of product market are playing an indispensable role in ensuring compliance of LCL. But the cost of compliance is borne by the Chinese firms, e.g.:**

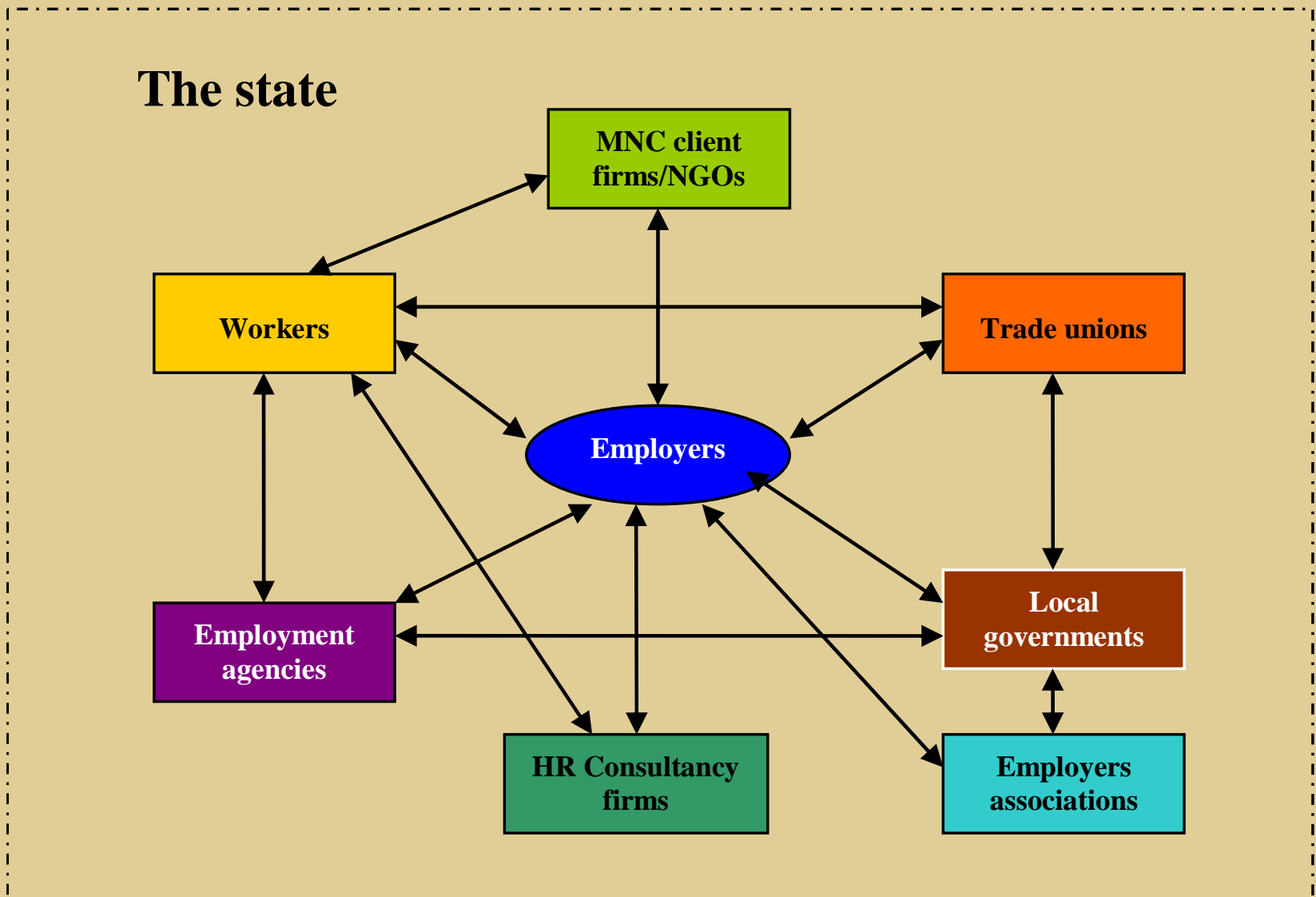
***“The foreign client firms all come to inspect the factory when they negotiate new contracts. They demand top quality products and world-class labour standards from us but are only prepared to pay pedlars’ price for it.”*** (Owner CEO of Speaker manufacturing firm)



# Impacts of LCL and LDMAL on institutional actors and their responses (cont...)

<b>Institutional actors</b>	<b>Impacts</b>	<b>Responses</b>
<b>HR consultancy firms</b>	<ul style="list-style-type: none"> <li>• <b>New markets for employee benefits /social insurance administration</b></li> <li>• <b>New markets for legal training and advice</b></li> <li>• <b>New markets for outsourcing business on various aspects of HRM /employment practices</b></li> </ul>	<ul style="list-style-type: none"> <li>• <b>Developing new businesses to create and meet market demands (from employers)</b></li> <li>• <b>Alliance with employers to bypass legal constraints</b></li> <li>• <b>Facilitating firms on legal compliance</b></li> </ul>

**Figure 2. Inter-relations between institutional actors**



# Conclusions and contributions

- **The new laws signal a significant advancement in China's employment legislative domain**
- **But the legislative power of the state has been undermined by institutional actors at the local level who:**
- **Interact and permeate each other's sites and spatial boundaries in acknowledgement of and to complement each other's resource/capacity constraints**



## Conclusions and contributions (cont...)

- The new laws have led to the development of new actors and new roles of traditional actors who often interact with each other in rather subtle and complex ways that can neither be seen nor officially endorsed.
- Existing studies on IR in China have largely focused on the traditional actors: state, employers, trade unions, workers and more recently NGOs and at macro level.
- This study broadens the analytical framework by including new actors operating outside and beyond workplace level at operational/grassroots level.

# Workers have a role to play in raising their labour standards



# Making a living through environmental protection: --

## Recycling industry on the wheel



**Having no bed does not mean they cannot sleep...**



**Having no kitchen does not mean they cannot eat hot food.....**



# Having no social benefit does not prevent her from surviving.....



当你放弃时，  
你想一想  
她的执着

When you want to give up, think about her



**Having no legs to stand on does not stop him from helping others to run!**



**Having no bridge does not stop them  
from travelling...**

如果你的交通不够好,那他呢?





**And there are new bridges leading to a better life.... at least for some**



# Thank you!

