

**AUDIT OF COMPLIANCE WITH  
LABOR STANDARDS RELATED TO  
CONSTRUCTION OF THE NYU  
SHANGHAI CAMPUS**

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## **I. INTRODUCTION AND SCOPE OF REVIEW**

This report, “Audit of Compliance with Labor Standards Related to Construction of the NYU Shanghai Campus” (the “Report”), describes the compliance audit undertaken by and resulting findings of Paul Hastings LLP (“Paul Hastings”) related to compliance with certain specified labor standards in connection with construction of the New York University (“NYU” or “the University”) campus in Shanghai, People’s Republic of China (“PRC”). These labor standards pertain to the protection of the rights of workers and were specified in the contractual documents related to the construction of the NYU campus in Shanghai and executed by the Shanghai Municipal Education Commission (“SMEC”), with its partners Pudong New Area, Shanghai, PRC (“Pudong”) and East China Normal University (“ECNU”), and NYU (collectively, the “Parties”). Paul Hastings has been engaged to assess whether these labor standards were properly implemented during the construction of the NYU Shanghai Campus and to make recommendations to ensure future compliance.

Section II of this Report provides background information regarding NYU’s global objectives in education, the NYU Shanghai Campus and the contractual agreements related to and key building contractors involved in construction of the NYU Shanghai Campus. Section III describes Paul Hastings’ methodology for the compliance audit, which forms the basis for the conclusions set forth in this Report. Section IV presents Paul Hastings’ observations and conclusions related to the implementation of the pre-agreed labor standards. Section V sets forth Paul Hastings’ recommendations related to best practices to ensure future compliance with labor standards as well as other potential risk areas for the NYU Shanghai Campus and other campuses and sites that form the NYU global network. Attachment 1 to this Report sets out the fourteen principles covered by the Statement of Labor Values and Paul Hastings’ analysis of compliance with each.

## **II. BACKGROUND**

### **A. NYU Global Objectives in Education and the NYU Shanghai Campus**

NYU’s global initiatives began several decades ago when NYU first established study abroad programs in Europe. Today, the University has more than ten study abroad sites.<sup>1</sup> With over 40% of its undergraduates studying abroad, as the next step in its global approach to education, NYU established comprehensive, liberal arts, degree-granting university campuses outside of New York City. In 2010, NYU -- at the invitation of Abu Dhabi -- established a campus there that offers a four-year program of study culminating in an NYU degree. NYU now has established another degree-granting campus in Shanghai. Together, these locations -- along with 12 other Study Away sites -- constitute NYU’s global network.

NYU Shanghai was jointly established by NYU and ECNU. Its first class of students matriculated in 2013 and initially shared ECNU’s campus. Construction of NYU Shanghai’s campus started in July 2011 and was largely completed by the summer of 2014. NYU Shanghai’s students began using the new campus in the fall of 2014.

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<sup>1</sup> These sites include Accra, Berlin, Buenos Aires, Florence, London, Madrid, Paris, Prague, Sydney, and Tel Aviv, as well as Washington, D.C., Abu Dhabi and Shanghai, which are both study abroad sites and degree-granting campuses.

## **B. Contractual Agreements Related to Construction of NYU Shanghai Campus**

On April 29, 2010, the Parties signed a Memorandum of Agreement in which the Parties agreed to explore the possibility of establishing a new Chinese university that would be a degree-granting unit of NYU in Shanghai. In addition, NYU and ECNU executed an agreement establishing NYU Shanghai (the “Cooperation Agreement”), dated April 29, 2010 and amended on September 15, 2010. This agreement was approved by the Chinese Ministry of Education on January 17, 2011.

On March 28, 2011, the Parties executed the underlying agreement for the establishment of the NYU Shanghai Campus (the “Operating Agreement”). Appended as Exhibit D to the Operating Agreement is the Statement of Labor Values of NYU Shanghai. The stated purpose of the Statement of Labor Values of NYU Shanghai is “[t]o ensure the smooth progress of [NYU Shanghai’s] construction, maintenance and operation based on the shared values of the Parties and the relevant provisions of the existing laws of the People’s Republic of China.”<sup>2</sup> To that end, the Statement of Labor Values sets forth standards related to fourteen issues, as follows: (1) wages and benefits; (2) social insurances; (3) working hours; (4) overtime compensation; (5) protecting women’s right[s]; (6) no employment of child labor; (7) no harassment or abuse; (8) no forced labor; (9) securing health and safety; (10) principle of nondiscrimination; (11) termination of employment; (12) resolution of work disputes; (13) compliance with laws; and (14) enforcement.

## **C. Key Building Contractors**

Pursuant to its undertakings as set out in the Operating Agreement, Pudong appointed Shanghai Lujiazui (Group) Co., Ltd. (“LJZ”) to be the developer of the NYU Shanghai Campus. LJZ is wholly owned by Pudong, although we understand that LJZ has a publicly traded subsidiary listed on the Shanghai Stock Exchange.

Shanghai Construction No. 5 (Group) Co. Ltd. (“Construction #5”) was appointed to be the general contractor by LJZ. Construction #5 is a wholly-owned subsidiary of Shanghai Construction (Group) Co., Ltd. Construction #5 is an experienced contractor and has received a number of awards for its building projects. These awards include the Magnolia Award, which is the highest honor bestowed on Shanghai’s construction industry by the Shanghai Construction Trade Association. Recipients of this award must satisfy such requirements as confirmation that no significant safety violations occurred during construction of the award project. We understand that Construction #5 has been awarded the Magnolia Award for the NYU Shanghai Campus. Since 1989, Construction #5 has received this award over 70 times. On multiple occasions, Construction #5 also has received the Luban Award, the National Quality Award, the High Quality Structure Award, and the Municipal Gold Award.

## **III. METHODOLOGY**

Paul Hastings conducted interviews of individuals representing 5 distinct categories of stakeholders: (1) NYU, including senior management, based both in New York and Shanghai, (2) project management, including representatives of LJZ and Construction #5, (3) AECOM, an

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<sup>2</sup>Exhibit D, Statement of Labor Values of NYU Shanghai, Operating Agreement.

infrastructure and support services firm that was hired by LJZ to provide technical and management support and periodic reports regarding the worksite safety, quality and progress of the construction, (4) construction workers who were employed to work on the NYU Shanghai Campus, including workers who were employed by a subcontractor to Construction #5 and (5) independent entities retained to provide services to NYU in connection with the construction project, including Jones Lang LaSalle Inc. (“JLL”) and Fangda Partners, counsel to NYU in Shanghai.<sup>3</sup>

In addition, Paul Hastings reviewed documents related to the relationship between the Parties and construction of the campus, including formation agreements; documents related to compliance with the Statement of Labor Values in connection with the construction of the NYU Abu Dhabi facility; NYU correspondence regarding its global network; certain reports prepared by JLL and AECOM related to construction; photographs attached to monthly reports regarding the construction and of the living quarters for those workers who lived in employer-provided housing while working on the NYU Shanghai Campus construction site; and publicly available information regarding the Parties, including information relating to awards given to Construction #5 and media reports regarding construction of the NYU Abu Dhabi facility.<sup>4</sup>

As Paul Hastings cannot provide advice regarding Chinese law, all summaries of and analysis regarding PRC law have been reviewed and confirmed to be accurate by Mr. Jay Chen, a partner with Shanghai Baohua Law Firm and specialist in PRC employment law.

#### **IV. PRELIMINARY OBSERVATIONS AND CONCLUSIONS**

As described more fully below, our review indicates that the NYU Shanghai Campus was constructed largely in compliance with the Statement of Labor Values. While we found some departures from best practices, which are discussed below, these were relatively minor issues. Overall, the standards outlined in the Statement of Labor Values appear to have been implemented, and more fundamentally, the spirit of the Statement of Labor Values appears to have been upheld. We conclude this Report with some suggestions for how NYU Shanghai can align its activities with best practices in the future.

##### **A. Standards Established by Statement of Labor Values of NYU Shanghai**

The Statement of Labor Values of NYU Shanghai was initiated by NYU. The standards were based on the Statement of Labor Values adopted in connection with the construction of NYU

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<sup>3</sup> Paul Hastings did not interview all individuals with knowledge of the Statement of Labor Values and the construction of the NYU Shanghai Campus. In addition, while we conducted interviews of more than 15 construction workers, including low-level managers, almost all of the workers we interviewed worked on the latter stages of the construction project. A more varied sample of workers was not available because construction is largely complete, and most workers have left the NYU Shanghai construction site. While additional interviews of workers from earlier stages of the construction project might have been helpful, given the consistency of the responses received from the workers who were interviewed, we have no reason to believe that additional interviews would have yielded different or contradictory information.

<sup>4</sup> Paul Hastings was not able to obtain or review certain documentation, including copies of tender documentation or contracts with Construction #5 or any of the subcontractors because NYU was not a party to any of the contracts and did not conduct any of the tenders as well as records related to workers (including payroll records) maintained by Construction #5 and the subcontractors.

Abu Dhabi,<sup>5</sup> but Fangda Partners made some minor changes to conform them to PRC labor law. The Parties negotiated the final language of the Statement of Labor Values based on comments to NYU's draft made by Pudong and/or ECNU.

The Statement of Labor Values is available for review at <http://shanghai.nyu.edu/about/labor>, and is appended to this report as Attachment 2.

## **B. Conformity to PRC Labor Law Requirements**

As a general matter, the standards set forth in the Statement of Labor Values are closely aligned with requirements of PRC labor law. In recent years, the National People's Congress, the national legislature of the PRC, promulgated multiple laws to improve employee benefits and protect employee interests (*e.g.*, the Labor Law (1995), the Employment Contract Law (2008) (the "ECL"), the Law on Mediation and Arbitration of Employment Disputes (2008), and the Social Insurance Law (2010)). The ECL strengthened protections for workers in a number of respects, including protection from furloughs and protections related to collective bargaining for wages and benefits. The surge of labor law-related arbitration and court cases in China after the enactment of the ECL indicates the growing consciousness of Chinese workers regarding their legal rights.

None of the standards in the Statement of Labor Values provides less protection to workers than applicable PRC labor law. One requirement in the Statement of Labor Values -- the requirement related to non-discrimination -- provides more protection to workers than applicable PRC law in that it covers more types of employment discrimination than the types prohibited under law. While PRC law prohibits discrimination for reasons of gender, ethnicity, race, religion, disability, infectious pathogen (*e.g.*, AIDS) and residence status (*i.e.*, workers from rural areas), the Statement of Labor Values prohibits any discrimination in employment.

## **C. Compliance with the Statement of Labor Values**

As part of the compliance audit conducted for this Report, Paul Hastings examined whether the Parties complied with the standards set forth in the Statement of Labor Values in connection with the construction of the NYU Shanghai Campus. As described above, the Statement of Labor Values sets forth standards related to fourteen separate categories of issues addressing working conditions and the rights of workers. Those fourteen issues and Paul Hastings' analysis of actual compliance with each is set out in Attachment 1 to this Report.

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<sup>5</sup> NYU and the Emirate of Abu Dhabi agreed to create NYU Abu Dhabi, which is the first liberal arts and science campus in Abu Dhabi. Construction on the NYU Abu Dhabi campus began in June 2010. NYU ABU DHABI, Statement of Labor Values, [www.nyuad.nyu.edu, http://nyuad.nyu.edu/en/about/statement-of-labor-values.html](http://nyuad.nyu.edu/en/about/statement-of-labor-values.html). In addition to changes in terminology (such as "worker" to "employee") and references to applicable law (such as UAE law to PRC law), NYU Shanghai's Statement of Labor Values includes three additional values: two require the provision of Social Insurance and statutory grounds for termination of employment other than by mutual consent, and the third addresses application and enforcement of the Statement of Labor Values. In addition, the NYU Shanghai Statement of Labor Values adds specificity to the values for Wages and Benefits and Securing Health and Safety. The NYU Shanghai Statement of Labor Values provides less specificity than the Abu Dhabi version for Working Hours and Protecting Women's Rights; however, both provisions specifically require compliance with PRC law on these topics.

Our review indicates the Parties generally complied with the standards regarding workers' rights set forth in the Statement of Labor Values during the construction of the NYU Shanghai Campus. We paid special attention to potential noncompliance related to the following standards: (1) Standard 3 (Working Hours), (2) Standard 4 (Overtime Compensation) and (3) Standard 14 (Enforcement), and we identified certain shortcomings, as follows.

First, based on information provided by the workers we interviewed, some workers did work long hours and 7 days per week; however, those workers say they did so on a voluntary basis. Second, according to the information provided by some of the workers, while they did receive overtime compensation (if compensated on an hourly or daily basis), the overtime rate may have been lower than the rate required under applicable PRC law. Our conclusions regarding working hours and overtime compensation could have been more definitive if contemporaneous records were available for review and if we had been given access to compensation information from Construction #5 and the subcontractors.

Third, with regard to Standard 14 (Enforcement), the Statement of Labor Values should have been but does not appear to have been included in the construction contracts with Construction #5 and the subcontractors. Although we have not reviewed the contracts between Pudong and LJZ, LJZ and Construction #5 and Construction #5 and the subcontractors, information we have collected to date indicates that the Statement of Labor Values was not included in these contracts. This omission does not appear to have had any substantive impact, but inclusion of the Statement of Labor Values would have facilitated both this review and other enforcement efforts.

While the Statement of Labor Values was not included in the contracts, NYU Shanghai made efforts to enforce the final clause of Standard 14 (Enforcement) which states in part that commercially reasonable endeavors shall be used to ensure compliance with the Statement of Labor Values by the contractors. While NYU Shanghai did not implement a formal monitoring program, NYU Shanghai's own personnel did conduct their own monitoring. Further, some limited review was conducted by JLL, a global financial and professional services firm that specializes in commercial real estate services and investment management, including providing commercial construction management services. JLL was retained to provide project consultancy services throughout the different stages of the planning, building, and commissioning of the NYU Shanghai Campus. As part of the construction phase, JLL's scope of work included monitoring Construction #5's safety program, attending safety sessions, attending meetings, and overseeing Construction #5's performance.<sup>6</sup> In addition, beginning in the summer of 2013, JLL conducted labor compliance monitoring at NYU Shanghai's request.

#### **D. Paul Hastings' Conclusions**

Inclusion of the Statement of Labor Values in the Operating Agreement was proposed by and insisted upon by NYU. NYU could have relied upon a basic representation in the Operating Agreement that construction of the NYU Shanghai Campus would be completed in accordance with applicable PRC law. The Statement of Labor Values, which specifies the particular

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<sup>6</sup> Project Management and Associated Services Agreement between Jones Lang LaSalle and Center for Formation of New York University Shanghai for the NYU Shanghai Project, dated March 1, 2012.

standards that must be satisfied, provides additional clarity regarding the Parties' expectations. Adding the Statement of Labor Values was not an uncomplicated matter. The NYU Shanghai Campus building was built and is owned by an affiliate of LJZ. As a result, NYU Shanghai did not have the power to insist on inclusion of the Statement of Labor Values.

As a general matter, the Statement of Labor Values conforms to local culture and practice and is consistent with applicable PRC laws and regulations. As PRC law is protective of the rights of workers, this conformity is a positive factor. The apparent level of risk that the Statement of Labor Values would be violated appears to have been limited. Our assessment of the apparent level of risk is based on the following factors:

- a) the developer and general contractor -- LJZ and Construction #5 -- are large, well-respected companies in China;
- b) construction workers, in particular, generally are in high demand in the area, and therefore, presumably could have found alternative employment if they were not satisfied with working conditions;
- c) the workers were free to leave the job site as they pleased and had clean and reasonable living conditions;
- d) the workers appear to have earned well above the minimum wage and their regular wages appear to have been in accordance with local industry standards;
- e) the workers appear to have been enrolled in social insurance programs, which included pension, medical insurance, unemployment insurance, workers compensation insurance, and maternity insurance;
- f) no significant health and safety problems were reported throughout the construction process;
- g) the NYU Shanghai Campus construction project is in a highly-visible urban location that is easily accessible to government authorities/inspectors and NYU representatives; and
- h) the NYU Shanghai project was a prominent venture for the Pudong government.

As described above and in Attachment 1 to this Report, our review indicates general compliance with the Statement of Labor Values. Of the issues we observed, perhaps the most significant relates to the fact that JLL was initially tasked only with project consultancy services (including safety and health monitoring) and its mandate was not expanded to include labor compliance monitoring until 2013. Clearly, retaining an independent expert at the start of the construction project to conduct labor monitoring would have provided stronger assurances regarding compliance with the Statement of Labor Values and would have resulted in the creation of a contemporaneous written record of such compliance. Further, even without retaining an independent third party, adoption of a formal monitoring protocol would have yielded more reliable information than the information currently available for review, including a formal record of compliance established at the time of construction. We note however, that since NYU Shanghai personnel did not observe any "red flags" to give them concern about the status of compliance with the Statement of Labor Values, there was no apparent need for NYU Shanghai to increase the level or type of monitoring already being conducted.

## V. RECOMMENDATIONS TO ENSURE “BEST PRACTICES” COMPLIANCE

Going forward, Paul Hastings recommends that NYU Shanghai implement certain mechanisms to ensure continued compliance with the Statement of Labor Values. Further, if NYU continues to expand its global network and initiate other projects and campuses around the world, Paul Hastings recommends that the University adopt certain standard operating procedures. Below is an overview of the type of enhancements that we recommend. We will continue discussions regarding these recommendations separately with NYU.

First, with regard to the NYU Shanghai Campus, it is incumbent upon NYU Shanghai to continue to enforce compliance with the Statement of Labor Values. To that end, we recommend that the Statement of Labor Values be incorporated into any agreements related to the lease, property management, maintenance or operation of the campus; NYU Shanghai should also consider implementing the Statement of Labor Values in all other NYU Shanghai activities and terms of employment. NYU Shanghai has included the Statement of Labor Values in contracts with companies working on the Jinqiao Dormitory construction project.

Second, we recommend that from the Statement of Labor Values, NYU develop more detailed guidelines that can be used as a basis for monitoring and auditing compliance. The fourteen principles set forth in the Statement of Labor Values are very general in nature. Development of more detailed standards with specific, auditable expectations would be preferable.

Third, we recommend that NYU Shanghai implement a regular review of compliance with the Statement of Labor Values. This review could be conducted periodically, as appropriate. The review should be undertaken by an independent third party, and the results of the review should be documented in a written report.

Fourth, to supplement that independent review, we recommend that NYU Shanghai establish a hotline that employees and third parties (such as construction workers) can contact to raise issues of concern.

Fifth, we understand that a Compliance Officer has been hired for NYU Shanghai and that the Compliance Officer’s responsibilities include some regular monitoring of compliance with the Statement of Labor Values. We strongly support this appointment and recommend that the Compliance Officer continue this work.

Sixth, we understand that while all courses will be taught at the NYU Shanghai Campus, research or other activities may be conducted at sites owned by ECNU. We recommend that NYU Shanghai consider whether the Statement of Labor Values has been applied to work being performed on the University’s behalf at such sites, and if not, what steps should be taken. We understand that with regard to a new construction project involving certain laboratories on the ECNU campus, the Statement of Labor Values has been or will be included in the relevant construction documents.

Seventh, for both NYU Shanghai as well as future projects undertaken by NYU, Paul Hastings recommends that NYU create one or more checklists that highlight potentially applicable international regulatory compliance issues. Such checklists could be used as a screening mechanism for a variety of initiatives outside the United States, such as new campuses, study



abroad programs, research initiatives and other programs. The checklists should identify the types of regulatory issues that should be considered and addressed by the University prior to any new applicable international initiative and throughout any such programs. These regulatory issues include not only labor issues and the rights of workers, but also anti-corruption, export controls, economic sanctions, privacy, money laundering, academic freedom/government censorship and other similar compliance risks. For current programs such as NYU Shanghai, the University should use the checklists to identify the types of operational compliance risks that may exist and how to address them.