

## Compliance by Parties with Statement of Labor Values

As part of the compliance audit conducted for the 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. The Statement of Labor Values sets forth standards addressing fourteen separate categories of issues related to working conditions and the rights of workers. Those fourteen issues and Paul Hastings' analysis of actual compliance with each are set out below.<sup>1</sup>

### 1. *Wages and Benefits*

#### a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that “[a]s a floor, employees providing services to NYU Shanghai or in connection with the construction, maintenance and operation of NYU Shanghai will be timely and adequately paid wages and benefits which conform to their essential needs and living standards pursuant to all applicable PRC laws and regulations (including without limitation, the minimum wage standards required by the government).”

#### b. Evidence of Compliance

Under PRC law, employers have an obligation to pay their employees' wages fully and in a timely manner. Wages must be paid at least once per month to full-time employees and once every two weeks to part-time employees. The wages may not be lower than the local minimum wage.

In Shanghai, the minimum wage is RMB 17 (\$2.70) per hour or RMB 1,820 (\$293) per month, based upon working hours of 8 hours per day, 40 hours per week, excluding overtime pay.<sup>2</sup> The minimum wage increases every year by approximately 10%. Therefore, the minimum wage in 2012 and 2013 was lower than the 2014 amount.<sup>3</sup> In 2013, the city average wage was RMB 5,036 (\$812) per month.<sup>4</sup>

Based on information obtained during interviews, it appears that all of the workers received their wages in full and on a timely basis. Their regular wage (*i.e.*, excluding overtime pay) exceeded the minimum wage, and the regular salary of many workers was more than the 2013 average wage in Shanghai. According to the representatives of LJZ and Construction #5, no workers had to pay a recruitment fee in order to have a job with Construction #5. Wages were allocated in full to the workers on time, and no complaints were filed for nonpayment of wages.<sup>5</sup> With

<sup>1</sup> As we did not have access to certain contemporaneous records related to the workers (including payroll records) maintained by Construction #5 and the subcontractors, we were not able to independently verify information provided by the workers during interviews.

<sup>2</sup> These rates were effective as of April 1, 2014.

<sup>3</sup> See the notice published on the website of the Shanghai Bureau of Human Resources and Social Security, [http://www.12333sh.gov.cn/200912333/2009xxgk/zhxx/gfxwj/shbx/201403/t20140328\\_1160243.shtml](http://www.12333sh.gov.cn/200912333/2009xxgk/zhxx/gfxwj/shbx/201403/t20140328_1160243.shtml).

<sup>4</sup> See the notice published on the website of the Shanghai Bureau of Human Resources and Social Security, [http://www.12333sh.gov.cn/201412333/xxgk/flfg/gfxwj/ldbc/bcfp/201407/t20140704\\_1186113.shtml](http://www.12333sh.gov.cn/201412333/xxgk/flfg/gfxwj/ldbc/bcfp/201407/t20140704_1186113.shtml).

<sup>5</sup> Complaints can be filed with the labor bureaus at the district or municipal level. Workers can also initiate labor arbitration with the labor arbitration commission at the district level.

regard to the payment of wages, NYU Shanghai's Director, Campus and Facilities, noted that Construction #5 typically held each worker's wages until the worker requested the funds be disbursed because the workers did not have bank accounts and did not want to be paid large amounts of cash if they lived in communal housing. According to this Director, workers typically requested and were given their wages prior to returning home on vacation or if they were transferring to another job site. Interviewees confirmed that they could have been paid on a monthly basis if they so requested; however, some of them chose to be paid only a certain percentage and to receive the remainder at the end of their work on the project or before returning home for Chinese New Year.

Multiple interviewees advised that there is a shortage of construction workers in Shanghai, especially skilled laborers. At least partially as a result of this shortage, the wages paid to construction workers have increased in recent years, and construction companies pay premium wages to attract workers to their jobs.

## 2. *Social Insurances*

### a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that for all employees, whether with or without permanent Shanghai residence registration and whether or not full-time employees, statutory social insurance must be paid "timely and adequately in accordance with all applicable PRC laws and regulations."

### b. Evidence of Compliance

Under PRC Social Insurance Law (2010), employers are required to enroll employees in social insurance programs, which include pension, medical, unemployment, work compensation and maternity insurance. Both employers and employees are required to make contributions to social insurance programs.

Interviewees confirmed that companies pay the social insurance for their employees. Other interviewees confirmed that all of the workers were enrolled in social insurance programs in accordance with PRC law. Further, the representative of LJZ stated that the staffing agencies paid social insurance for the workers in accordance with PRC law. This LJZ representative noted, however, that since social insurance contributions are made on a monthly basis, the staffing agency could not make a contribution for those workers who worked only for several days. The workers we interviewed also understood that their employers enrolled them in social insurance programs when they did not otherwise have social insurance.<sup>6</sup> Some of these workers received benefits under the medical insurance program when ill.<sup>7</sup>

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<sup>6</sup> Some workers we interviewed stated that they do not need their employers to pay for their social insurance programs because their local government already pays for them.

<sup>7</sup> We did not independently verify whether Construction #5 and the subcontractors paid the correct amount of social insurance for each employee as such an undertaking would have required us to obtain each employee's contribution records and information regarding his/her salary.

### 3. *Working Hours*

#### a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that “employees shall not be required to work more than the limits on working hours allowed by” PRC labor laws and regulations. Further, “implementation of any non-standard working hours system” also must comply with PRC laws and regulations.

#### b. Evidence of Compliance

Under PRC law, there are three systems for calculation of working hours: (1) the standard working hours system, (2) the comprehensive working hours system, and (3) the flexible working hours system. Under the standard working hours system, which is similar to non-exempt employees in the United States, the working hours are restricted to 8 hours per day and 40 hours per week. Employers are required to ensure that employees take one day off every week. Based on business needs, an employer may extend work time after consulting with the union and the employee. The extension of work time generally should not exceed one hour per day; if a special circumstance warrants a further extension of work time, the extension may not exceed three hours per day and the total overtime hours may not exceed 36 per month. Under the comprehensive working hours system, the work hours can be calculated based on a given cycle (*e.g.*, on a weekly, monthly, quarterly or yearly basis) instead of a daily basis. The hour limits are 40 hours per week, 166.67 hours per month, 500 hours per quarter or 2000 hours per year. So long as the total hours worked during one cycle do not exceed the hour limit, the employees are not considered to work overtime. If employers require employees to work overtime during the calculation cycle, the overtime hours may not exceed 36 hours per month on average. Under the flexible working hours system, which is similar to exempt employees in the United States, there is no specific hour limit.

Local labor authorities’ approval is required to apply either the comprehensive working hours system or the flexible working hours system. In addition, only limited positions are eligible for the comprehensive or flexible working hours systems. Rank-and-file construction workers are not eligible for flexible working hours, so they would have been classified under either the standard or comprehensive working hours systems. As a result, their overtime hours should not have exceeded 36 hours per month on average.

Based on information obtained during interviews, we understand that many rank-and-file workers worked 8 hours per day and 6-7 days per week. Some workers also worked overtime frequently for 2-3 hours per day. These hours exceeded the limit set by PRC law. However, we understand that these workers were not required or forced to work overtime but chose to do so voluntarily, in order to earn additional wages.

The PRC Labor Law only prohibits employers from extending work hours exceeding the statutory limits. It is unclear under PRC Labor Law whether an employer has an obligation to stop employees from voluntarily working additional hours. However, the PRC Labor Law does require employers classified under the standard working hours system to ensure that employees take off one day every week. If workers employed at the NYU Shanghai Campus were classified

under the standard working hours system, working 7 days per week would not have been permissible.

4. *Overtime Compensation*

a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that overtime compensation be paid for employees' work for overtime hours as required by law.

b. Evidence of Compliance

Under PRC law, for employees working under the standard working hours system, employees working overtime must be compensated at a rate no less than 150% of their salary for overtime on regular work days, no less than 200% of their salary for overtime on rest days (or be provided with the same amount of time off) and no less than 300% of their salary for overtime on public holidays. For employees working under the comprehensive working hours system, the overtime rate is no less than 150% for overtime on regular work days and rest days and no less than 300% for overtime on public holidays.

Based on the interviews conducted, it appears that workers who earned monthly-based or daily-based salaries worked overtime when there was an emergency need or the extra hours were otherwise deemed necessary. Multiple workers who were interviewed stated that they were paid at a higher rate for overtime work. Some workers stated that the overtime rate was 200% of their regular salary; however, others stated that they were paid a rate greater than their normal rate but less than 150% of that rate. We note that none of the workers interviewed complained about their overtime pay, and it appears that all were satisfied with the overtime rate paid by their employers.

In addition, workers who were paid upon completion of a certain project generally were not paid overtime as their rates took overtime into account.<sup>8</sup> Project-based compensation was structured to incentivize the employees to work more. Specifically, those employees who chose to work longer hours or more days could complete more projects in the same time frame than workers who chose to work shorter hours or fewer days and thus, did earn more money for the additional hours worked.

All of the workers interviewed confirmed that they received the full amount of overtime compensation owed to them and were paid in a timely manner.

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<sup>8</sup> For example, a worker may be paid a set amount to paint a room. The worker may decide how many hours to work each day to complete the project. The worker's salary is not based on the number of the hours he works, so there is no overtime pay.

5. *Protecting Women's Right[s]*

a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that female employees “receive equal treatment, including equal salary and relevant benefits; equal evaluation; and equal opportunity to fill all positions open to male employees.” Further, “[w]omen’s right during the pregnancy, child birth and nursing period as provided by the PRC law shall be protected.”

b. Evidence of Compliance

The PRC Law on Protection of Women’s Interests and Regulations on Occupational Protections of Female Employees grants multiple protections to female employees, which include, without limitation, equal employment opportunities and maternity benefits (*e.g.*, maternity leave and protection from termination during pregnancy and maternity leave).

According to the interviews conducted, there were some women on the work site assisting with a variety of jobs. It appears that most female employees were hired for the kitchen, cleaning and other supporting work with a light workload. According to representatives of LJZ and Construction #5, female employees typically were in their 40s to 50s, and women were paid in the same manner as male workers and were not discriminated against in pay or otherwise.

6. *No Employment of Child Labor*

a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that no persons are employed who are younger than sixteen years old unless otherwise permitted by applicable PRC law.

b. Evidence of Compliance

PRC law prohibits the use of child labor, which is defined to encompass persons younger than 16 years old, with limited exceptions (*e.g.*, actors/actresses).

All interviewees stated that no children were observed working on-site, and representatives of LJZ and Construction #5 confirmed that no children were employed. Further, representatives of Construction #5 observed that Construction #5 paid specific attention to the issue of child labor.<sup>9</sup>

7. *No Harassment or Abuse*

a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that employees are treated with dignity and that no employees are subjected to any physical, sexual, psychological or verbal harassment or abuse. Further, no form of corporal punishment may be used or tolerated.

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<sup>9</sup> One interviewee stated that he saw a worker who appeared to be around 16 or 17 years old on the construction site. No other interviewees made similar statements.

b. Evidence of Compliance

No interviewees stated that they were aware of or had observed any conduct that appeared to be harassing or abusive.

8. *No Forced Labor*

a. Requirements in Statement of Labor Values

The Statement of Labor Values prohibits the use of forced prison labor, indentured labor, bonded labor or other forced labor.

b. Evidence of Compliance

No interviewees indicated that there was any forced labor at the construction site. Interviewees also advised that it is a worker's market, and workers will leave immediately if they do not like the work or are not paid well. Workers could enter and leave their dormitory at the construction site freely.

9. *Securing Health and Safety*

a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that a "safe and healthy working environment" be provided to employees to prevent accidents and injury to health. Further, "[t]he direct operations of NYU Shanghai and the vendors, service providers, contractors and subcontractors in connection with NYU Shanghai shall comply with all workplace safety and health regulations established by the PRC government, including, without limitation, the requirement on construction and operation of labor safety and sanitation facilities as well as the standards applicable to construction work."

b. Evidence of Compliance

Interviewees reported that the worksite was safe and that the workers' living conditions were clean. Representatives from JLL observed that the Pudong inspection office conducted regular inspections every month. In addition to inspecting construction quality, they also inspected the dormitories. If problems were found, they would send a report of rectification to the contractor; however, no criticism was made regarding the conditions of the dormitories. JLL also reported that it observed no health or safety violations.

Representatives of LJZ and Construction #5 stated that Construction #5 strictly complied with all PRC laws and regulations regarding health and safety. In fact, Construction #5 advised that the NYU Shanghai Campus construction site was selected as a Model Construction Site by the Shanghai Urban Construction and Administration Commission. The Shanghai Urban Construction and Administration Commission is a government agency overseeing strategic planning of rural and urban construction and city management. The Commission regulates the construction and construction materials industries, monitors the quality and safety of construction projects, and coordinates major construction projects. Each year, the Commission

awards the title of Model Construction Site to 30 to 40 construction sites selected from more than around 200 sites nominated by district commissions. To receive the title, sites must meet certain standards relating to issues such as basic management, construction quality, living conditions, and work environment.

Various governmental authorities inspected the construction site from time to time to verify that the health and safety requirements were met. Sometimes, they visited 3-4 times in 1 week. In addition, according to LJZ and Construction #5, there were on-site medical facilities, and the workers had medical insurance as part of the social insurance. Further, LJZ hired AECOM and another company to supervise the entire project. Those two supervising companies submitted monthly reports to LJZ, which covered, among other topics, worker health and safety.<sup>10</sup>

Regarding the dormitories, we understand that they were built in accordance with legal requirements. Generally, 6 to 8 workers shared a dorm room of 20-30 square meters (approximately 215 to 323 square feet). Each worker had his own bed. Bathroom and shower facilities were shared. AECOM's project manager considered the living conditions to be good. NYU Shanghai's Director, Campus and Facilities, visited the dormitories and took pictures of them.<sup>11</sup> According to this Director, bathrooms were very clean, the dormitory rooms were air conditioned and also had television. In addition, the canteen provided three meals a day at minimal cost to the workers.

Finally, interviewees reported that no significant accidents or serious work-related injuries occurred during construction.<sup>12</sup> AECOM's project manager noted that there were normal, small problems typical of any construction project, which were immediately resolved by Construction #5 and any applicable subcontractors. Overall, the AECOM project manager considered the NYU Shanghai Campus project to be above the industry standard. This is consistent with the information reported in AECOM's monthly reports, which did not reflect any significant accidents or work-related injuries but noted other potential safety issues, such as an out-of-date inspection for a cargo elevator and some employees found drinking, smoking, or not wearing proper safety equipment. The reports also indicate that the AECOM project manager asked the contractors or relevant subcontractors to take specific actions to address the particular safety issues found, including safety education for workers and disciplinary action if necessary.

## 10. *Principle of Nondiscrimination*

### a. Requirements in Statement of Labor Values

The Statement of Labor Values provides that “[n]o person shall be subject to any discrimination in employment including hiring, salary, benefits, advancement, discipline, termination or retirement.”

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<sup>10</sup> Paul Hastings reviewed certain of the AECOM reports for the period from December 31, 2012 to June 29, 2014. Photographs of the construction site at the various stages of construction are attached to each report.

<sup>11</sup> See Attachment 3. NYU Shanghai's Director, Campus and Facilities visited the dormitories twice and provided pictures of the living quarters and canteen.

<sup>12</sup> One worker died from sudden cardiac arrest during his second day of employment, which was not related to his work. Construction #5 paid RMB 1,000,000 to the deceased worker's family, even though it was not legally obligated to do so.

b. Evidence of Compliance

No interviewee was aware of any discriminatory treatment. However, Construction #5 does not hire workers who are age 55 or older. PRC law does not prohibit or address age discrimination. As a result, it is not illegal to impose age restrictions during the recruitment of employees. We understand that the imposition of age restrictions during recruitment is common in China.

11. *Termination of Employment*

a. Requirements in Statement of Labor Values

The Statement of Labor Values states that termination of employment, except for termination through mutual consent, must be based on statutory grounds as provided by PRC law. Further, terminated employees have the right to claim severance payment.

b. Evidence of Compliance

Interviewees either reported that no or very few workers were terminated during construction, and no one was aware of any wrongful termination claims filed with the labor bureau or the courts. None of the workers we interviewed were terminated; rather, those workers who no longer are employed at the NYU Shanghai Campus left that project when their work was completed.<sup>13</sup> In general, it appears that there has been a shortage of construction workers in Shanghai, so all workers were needed.

12. *Resolution of Work Disputes*

a. Requirements in Statement of Labor Values

The Statement of Labor Values provides that employees' rights to resolve labor disputes must be respected and recognized and that no employee shall be subject to harassment, intimidation or retaliation for efforts to resolve work disputes.

b. Evidence of Compliance

The interviewees indicated that they were not aware of any labor disputes.<sup>14</sup> The representative of LJZ advised that Construction #5 posted hotline numbers for Construction #5, LJZ and the Shanghai Municipal Labor and Social Security Bureau at the construction site. Workers were free to file complaints using any of these hotline numbers.

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<sup>13</sup> Some of the workers we interviewed are still working at the NYU Shanghai Campus.

<sup>14</sup> One interviewee, the representative of LJZ, indicated that all labor problems were resolved at the project level and that no lawsuits or requests for arbitration were initiated.

### 13. *Compliance with Laws*

#### a. Requirements in Statement of Labor Values

The Statement of Labor Values states that the labor inspection requirements of PRC labor laws and regulations shall be “implemented and comprehensively enforced in the construction, operation and maintenance of the NYU Shanghai campus.”<sup>15</sup>

#### b. Evidence of Compliance

Pursuant to the Regulations on Labor Security Inspection (2004), PRC labor authorities have the right to conduct inspections of employers to ensure compliance with PRC labor law.

Based on the discussions with LJZ and Construction #5, as well as other interviews conducted during Paul Hastings’ review, no evidence of non-compliance with labor security inspection requirements was found.

### 14. *Enforcement*

#### a. Requirements in Statement of Labor Values

The Statement of Labor Values requires that:

- the Statement of Labor Values be annexed to any tendering documents with respect to the selection and appointment of contractors and service providers who will be on-site and provide significant services;
- the contractors be contractually obligated to comply with the Statement of Labor Values during the terms of their contracts;
- remediation and enforcement measures with respect to the Statement of Labor Values be incorporated in the contractors’ contracts; and

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<sup>15</sup> Article 14 of *Regulation on Labor Protection and Supervision*, adopted at the 68th executive meeting of the State Council on October 26, 2004, which was promulgated and came into force as of December 1, 2004, provided that the labor inspection authorities shall conduct labor inspections in the forms of making daily inspection tours, of examining the written documents submitted by the employing entities as required, and of accepting reports and complaints, etc. over the particulars as stipulated in Article 11: (1) the employing entities’ formulation of internal labor protection rules and systems; (2) the employing entities’ conclusion of labor contracts with laborers; (3) the employing entities’ compliance with provisions on prohibiting employment of child laborers; (4) the employing entities’ compliance with provisions on special labor protection of female employees and underage laborers; (5) the employing entities’ compliance with provisions on working hours, rests and holidays; (6) the employing entities’ payment of wages to the laborers and implementation of the lowest rate of wages; (7) the employing entities’ buying of various social insurances and payment of social insurance premiums; (8) the compliance with relevant provisions of the state on job intermediation, occupational skills training, and occupational skills assessment and authentication by the job intermediary institutions, occupational skills training institutions, and occupational skills assessment and authentication institutions; and (9) other particulars prescribed in laws and regulations on labor safety supervision to perform its duties, which include publicizing labor safety laws, regulations and rules, and urging employing entities to implement them, lawfully correcting and investigating and punishing the acts of violating labor security laws, regulations or rules.

- commercially reasonable endeavors be used to ensure compliance with the Statement of Labor Values by the contractors, including implementation of enforcement measures, and any Party may ask the contractors to submit reports regarding compliance with the Statement of Labor Values.

b. Evidence of Compliance

(i) Inclusion of Statement of Labor Values in Tendering Documents and Written Agreements

As described in the Report, LJZ advised that Pudong did not enter into any actual written agreements with LJZ for the construction of the NYU Shanghai Campus because LJZ is owned by Pudong. LJZ and Construction #5 did enter into a written agreement for the construction project. (Paul Hastings did not obtain a copy of this contract). Based on interviews conducted, however, it appears unlikely that the Statement of Labor Values was included in the contract between LJZ and Construction #5 or in any of the contracts with subcontractors.

(ii) Efforts to Ensure Compliance with Statement of Labor Values

Although the Statement of Labor Values apparently was not included in the written agreements related to the construction of the NYU Shanghai Campus, Paul Hastings' review indicates that NYU Shanghai made efforts to ensure compliance with the Statement of Labor Values. First, we understand that NYU Shanghai personnel actively monitored the construction site, including the treatment of the workers. In addition, other NYU personnel visited the construction site at various times and observed the overall health and safety conditions.

Some limited review was conducted by JLL. 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>16</sup> During portions of the construction phase, JLL personnel were at the construction site on a regular basis and monitored safety issues. Certain safety issues were addressed in project weekly reports prepared by JLL personnel and issued between March 2, 2012 and December 17, 2013. Beginning in the summer of 2013, JLL also conducted labor compliance monitoring at NYU Shanghai's request. In April 2014, the Regional Director, Greater China, for JLL reported that within JLL's "reachable means of observation, there has been no breach nor violation in relation to the construction workers' labor hours, workplace safety, and sanitation facilities." The Regional Director further noted that there were "no incidents of child, forced, or abused labor." Finally, he noted that based on available information, JLL had not "read or heard any reports that would be contradictory to our belief that LJZ company has been in compliance with the agreed Labor Values as published on the website of NYU Shanghai."<sup>17</sup>

<sup>16</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.

<sup>17</sup> Letter from J. Mortensen to H. Liu dated April 8, 2014.

Finally, while NYU Shanghai did not request reports from the contractors regarding compliance, both JLL and NYU Shanghai personnel did participate at various times in weekly meetings with Construction #5 and the subcontractors. The purpose of those meetings was to discuss any issues with the construction project, including any complaints from the subcontractors.