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CHINA

FULL SPEED AHEAD – IS CHINA BACK TO NORMAL?

"OVERALL, THE LOCKDOWN WAS TOUGH"

Alexandre J. Gruß
Strategy Manager China, Eichenauer GmbH & Co. KG. The German family-run company specializes in the development, production and sale of electrical heating systems for the automotive, household appliances and industrial systems sectors. Eichenauer employs 60 people in China.

How is Eichenauer positioned in China? How important is China for your company?

The company first stretched out feelers to China in 2005. At that time, a joint venture with a dealer was established, then a plant for the production of convectors near Guangzhou was put into operation.
Ultimately, the question arose: should the existing location be expanded or a new plant be built elsewhere? I joined Eichenauer in 2014 to answer this question. To do this, I checked a number of alternative locations. After extensive research, and meetings with government and administrative bodies, we founded a WFOE (wholly foreign-owned enterprise), in Huai'an (Jiangsu Province), in 2015. The location offered excellent conditions and good logistical prerequisites. Today, we produce here for the local market, as well as for customers in America and Europe.

What corona measures by the Chinese government have you been confronted with, and how did you react to them? What were the biggest operational challenges?

The Corona issue hit us very quickly, and very hard. We had planned various production starts for 2019 and 2020, for which we wanted to bring numerous German experts to China.

A trip originally planned for February had to be cancelled due to the massive restrictions. For months, we were only able to work with the on-site employees; we had to handle all communication via Zoom and WeChat. The lack of experts on the ground knowledge really bothered us. To make matters worse, it was completely unclear when the travel restrictions would be lifted again.

As a result, the restart of our automotive production line had to be postponed, also due to logistical problems within China. The machines that were ordered could not be delivered because they were neither produced nor commissioned. Motorways and railways were closed anyway; goods sent from Germany got stuck in customs for months.

The arrival of our new Plant Manager, who previously worked in Mexico, was also an adventure. Due to international restrictions he had to travel directly from Mexico to China - a stay at the German company headquarters could not be arranged.

What effects did the corona situation have on your business in China?

We followed the Chinese guidelines, and stopped production for about six weeks. During this time, however, we benefited from state subsidies so that the slump was bearable. This applies to practically all domestic and foreign companies.

phone: +7 499 678 2111 **email:** office@ct-executive.com **web:** www.ct-executive.com

Overall, the lockdown was tough, more rigorous than in Germany, perhaps comparable to Italy. Schools, universities and kindergartens were closed, there were significant restrictions and curfews.

What further business development do you expect in China?

We are finally sending three employees to China in October to accompany the start of the automotive line. These experts will then be on the road for about six weeks because they have to serve a two-week quarantine. We have prepared our people well for this.

Unfortunately, we could not wait until the end of the quarantine obligation. The quarantine requirement is not expected to be lifted before the Chinese New Year celebrations. China is keeping a low profile on the subject, and there are no exceptions.

Travelers without resident status must spend the quarantine in a hotel that is assigned to them. The hotel can be more or less comfortable; in any case, you have to be prepared to be locked in a hotel room for two weeks. It is important to structure yourself well in order to avoid cabin fever.

According to official information, all corona cases still occurring are imported infections. It is therefore understandable that people entering the country are strictly monitored. Unfortunately, the bureaucratic effort involved in applying for a visa is now enormous.

INTERVIEW

CHINA: A LABOUR MARKET UPDATE

Christian Tegethoff
Managing Director
CT Executive Search

What is the situation like on the Chinese labour market?

According to government information, the unemployment rate was 5.7% in June 2020.Thus, higher than the figure recorded in 2019 -3.6%. However, this means that overall, the Chinese unemployment rate is still at a low level by international comparison this year, despite the corona turbulence.

At the same time the 2020 graduates have major problems on the job market - almost one in five of them had not yet found a job by mid of the year.

For China, nationwide unemployment statistics can only show rough trends. Companies have to take a closer look, considering the situation in their respective industry and at specific locations. In view of the size and diversity of China, from a practical point of view, there are many different labour markets in parallel - the situation in Shanghai, for example, is completely different from that in small towns in western China or second-tier cities.

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Are European companies still attractive as employers for Chinese executives?

Companies from countries like Germany, France or the UK stand for high-quality products in China and are generally regarded as well-organized and fair employers.

Many Chinese feel connected to the United States as well, despite the current political and economic tensions, and are interested in working for an American company. However, the trade dispute has weakened the position of American companies; Chinese executives in particular, will take a close look at the prospects of a possible American employer before considering a change. The economic escalation of the past few months has intensified this phenomenon.

Overall, international companies have a clear advantage over domestic employers.

Will the trend towards local management teams continue in the Chinese labour market? Do expats still have opportunities?

Yes, the trend continues - the importance of European and American expatriates in China has been declining for a long time. There are more and more local managers in China who are highly qualified, and can take on management roles in international companies.

Even if the salaries of Chinese executives have risen rapidly in recent years, they are still well below those of their foreign colleagues. Classic expat compensation packages include a basic salary and a bonus, as well as a number of other allowances such as housing benefits, a company car, school fees, insurance, and paid flights home. By replacing expatriates with Chinese employees, companies are able to significantly reduce their personnel costs.

The trend towards a local management team is also supported by the orientation of the companies. Whereas China used to be of particular interest as a production location for supplying the world market, the companies working here now often focus on the Chinese domestic market. Thus, the sales and company strategies are focused on the Chinese consumers. Therefore, recruiting local management staff makes more sense in this respect.

The "local expats" should also be mentioned. These are foreigners who live permanently in China and work there on the basis of local employment contracts. Even if their remuneration is usually higher than that of their Chinese colleagues, they usually do not receive any allowances, as is customary in the classic expat model. For many companies, such candidates are particularly interesting as CEOs or Plant Managers.

What opportunities do medium-sized companies have to find and retain well-trained staff?

Companies operating in China are equipped with all the internationally recognised, and used tools to source for, recruit and retain talent. These include: online platforms such as recruitment portals, social media channels and online advertising channels, as well as recruitment agencies and executive search companies that specialize in filling management positions.

However, the platforms popular in Europe are either not known in China or cannot be used at all due to restrictions. Instead of XING and LinkedIn, Dajie is widespread in China, and 51job is a leading online job portal.

Companies based in Shanghai, Beijing or Hong Kong, literally have thousands of recruitment agencies that specialize in every imaginable niche, which they can use to find the right candidate. However, issues regarding the professionalism of some of these recruitment agencies may arise, and are not uncommon. Most international executive search firms run their Chinese operations from Shanghai. Together with our Chinese partner, we work predominantly on confidential C-level assignments, and specialize in "difficult cases" – e.g. recruitments for remote locations.

Companies with long-term China plans should always maintain a forward-looking personnel policy, and systematically develop managers in-house.

Longer training stays abroad can not only impart technical and linguistic skills – they are just as important to build up a pool of specialists and managers who are familiar with the corporate culture, and ideally feel committed to the employer in the long term.

In highly competitive industries in particular, it is important to show employees development prospects in their own company so that there is no temptation to consider options elsewhere.

STRATEGIES FOR MANAGING ENTERPRISE DOWNSIZING AND SALARY REDUCTION

Allan Xu
Manager

Chenchen Liu
Senior Associate

Business Advisory Service Team, Dezan Shira & Associates, Shanghai

This article discusses the legal options and risks involved for HR managers when strategizing their company's enterprise downsizing and salary reduction plans in China in the wake of COVID-19.

As the COVID-19 pandemic sweeps the world, many enterprises are facing financial and operational hiccups due to the economic fallout. Many companies have been forced to rethink their human resource management, to ensure the survival and long-term sustainable development of the enterprise.

Adjusting the internal organization structure and compensation system may effectively optimize human resource (HR) allocation, conserve cash flow, and demonstrate a sound stewardship of a corporate entity.

However, tasks involved in these adjustments, such as downsizing and salary reduction, are not routine for HR teams. Inexperienced HR managers may mishandle the pay cuts or layoffs and expose the firm to legal risks.

To help HR managers, this article offers a snapshot of strategies for effectively managing enterprise downsizing and salary reduction in the wake of COVID-19, keeping in mind the relevant labour laws and latest regulations, employee severance and compensation issues, and legal risks.

Strategies for managing salary adjustment

Position transfer and salary adjustment

Based on certain grounds, employers may consider adjusting the position and, accordingly, the salary and wages of an employee.

Article 40 in the Labour Contract Law of the People's Republic of China (PRC) implies that the employer may be able to transfer an employee's position with corresponding adjustments to the person's salary and wages, if the employee is found incapable of performing the job duties, or if the employee suffers from an illness or a non-work-related injury and is unable to undertake the original job duties following the completion of the stipulated medical treatment period.

However, it is important to note that this operation needs to be exercised with particular caution, to avoid possible labour litigation, which may put the employer at a disadvantage.

The employer is well advised to strictly follow legal procedures and make sure the operation complies with the local regulations. For example, the employer should carry out rounds of assessment for the employee's performance in different positions and retain sufficient evidence of the rationality of job transfers and salary adjustments. To reduce the legal risks, it is advised to consult with a local legal professional.

Salary adjustment amid the COVID-19 pandemic

During the COVID-19 pandemic, when a company has ceased operations for reasons not related to its employees – generally speaking, the employer must still pay the wages to the employee as normal during the first wage payment period (normally one month), regardless of whether the employee works or not. However, where such a suspension of operation continues for more than one wage payment period, the employer has a right to adjust employees' wages in line with the relevant local wage payment provisions depending on whether the employee provides normal labour or not (Article 12 of the Interim Provisions on Wage Payments).

During this special period, the employer is entitled to negotiate with the employees to change the contents of their labour contracts, such as reducing the salary and working hours. Of course, changes to a labour contract should be made in writing. Besides, the employer can also contemplate adjusting the staff compensation system upon equal negotiation with labour unions and employee representatives.

Legally reducing labour costs

In addition to the above strategies, there are other legal ways to help reduce labor costs during a pandemic.

1. Making use of annual leave, welfare leave, and compensatory leave – during the COVID-19 pandemic, enterprises that do not meet the remote working conditions are allowed to negotiate with their employees on the priority to take various kinds of paid annual leave or welfare leave.

2. Adjusting working hours or adopting work shifts – companies can also contemplate reducing the working hours, or arranging shifting for employees, so that employees' wage can be adjusted accordingly through negotiation. If the standard working hour system is not applicable to the enterprise, it can apply to the local human resources and social security bureau for adopting other working hour systems, such as comprehensive working hour system and non-fixed working hour system.

3. Taking advantage of the employee's salary structure – companies might as well adjust employees' salary structure. For instance, the employer may adjust the variable performance salary, bonus, commission, or allowance – according to the actual working conditions of the employee through mutual negotiation.

4. Negotiating employees' working hours in a remote working environment – the enterprise may establish a telecommuting system during an epidemic. Under the system, the employer can negotiate with the employees on the standard of working hours and pay the employee by the effective hours the employees put in their work.

5. Deferring salary payment – due to the force majeure, difficulties in production and operation, or other reasons, the employer may defer the salary payment during a stipulated grace period based on local wage payment regulations.

Strategies for managing enterprise downsizing

During a pandemic, layoffs are likely to occur under different scenarios due to the downward economic pressure and major environmental changes.

For example, a company may encounter difficulties in business operations, such as cash flow difficulty and insolvency. It may also start internal reorganization when its operation and production in some specific areas has been affected by the pandemic.

Besides, the pandemic may possibly bring a reshuffle to a company's online and offline business chains, forcing the company to adjust its business model or even lead to a company closure.

However, it is important to note that the rescission of a labour contract should comply with the provisions of the Labor Contract Law of PRC. The reasons and procedures for rescission must follow the law and should not be determined by the employer itself or agreed upon by both parties.

Major changes in objective conditions

Companies might be able to conduct mass layoffs where there are 'major changes in objective conditions' (Article 40 of Labour Contract Law).

However, the law does not give a clear definition of 'major changes in objective'. Typically, the objective circumstances must undergo significant changes, and as a result the labour contract can no longer be performed. For example, the post was eliminated due to a merger and acquisition (M&A) or company reorganization.

Employers would be wise to consult a legal professional to determine if this is an option for their situation.

Economic dismissal

Economic dismissal is another way, but the applicability of this strategy is quite restrictive.

Economic dismissal can only be conducted under four circumstances – the employer undergoes enterprise restructuring under the Enterprise Bankruptcy Law; the employer meets serious difficulties in business production and operation; the employer undergoes a change of production, significant technological reform, or change of operation mode, and upon variation of labour contracts, there is still a need for layoffs; or the objective circumstances have undergone significant changes and as a result the labour contract can no longer be performed. (Article 41 of Labour Contract Law)

Besides, the Chinese Labour Contract Law has strict requirements on the number of redundancies and procedural requirements for economic dismissal. Companies must carefully interpret the key points of the law or consult lawyers before using this method.

Furthermore, certain types of employees cannot be laid off during an economic dismissal by law, including employees with work injury or occupational illness, employees in a medical treatment, female employees in the pregnancy, maternity, or breastfeeding period, or employees who have worked for more than 15 consecutive years and will attain the statutory retirement age in less than five years.

Company dissolution

There can be mass layoffs, wherever the company's business license is revoked, the company is ordered to close down, or the employer has decided to dissolve the enterprise prematurely.

But at this point, the employer should pay special attention to arrange certain special employees and make sure the relevant rights and interests of laid-off employees are properly handled, to avoid labour disputes. For example, some employees with a work-related injury may not be able to enjoy the insurance benefits after the closure of the company.

Severance and compensation payment

As long as the employee has not violated the company organizational policy or made a serious mistake, employers are required to pay severance and compensation to employees based on their years of service. This means, employers should pay one month's average compensation (including gross salary, annual bonus, other subsidies) multiplied by the number of years the employee worked for the enterprise. An additional one month's compensation can be paid in lieu of 30 days' notice to the employee.

The 'one-month average compensation' is calculated based on the average of the past 12 months before termination.

If the employee has worked six months or more within a year, the employee will be entitled average month compensation; if the employee has worked less than six months, the employee will be entitled to half of the average month compensation. However, the compensation's calculation base is capped at three times of the average local monthly compensation.

To be noted, where an employer violates the provisions of labour laws to terminate an employee, if the employee decides to leave the company, the employer may need to pay two months' average compensation as severance fee; if the employee wants to resume labour relations, the company must continue to honour the original contract.

Legal risks and reminders

Whenever an enterprise contemplates a layoff, it must consider the risks of running afoul of the labour laws, which could trigger labour disputes and lawsuits filed by employees. At sensitive times, mass layoffs can also leave the enterprise subject to increased supervision by relevant local government departments. So, in special cases, the enterprise is advised to obtain the approval of government departments in advance.

In addition, companies should pay attention to employees in key positions. Some employees may hold evidence of wrongdoing of the company and report the in-compliance to relevant government departments; this could trigger a government investigation process that will drag the enterprise's progress in downsizing.

Some local business executives may keep important enterprise documents, company chops, the U key of the bank, or financial information, and refuse to return them back. This dilemma often occurs in joint ventures (JV) and wholly owned foreign enterprises (WOFE), when their Chinese partner or subsidiary's executive refuses to cooperate. However, reapplying for licenses and company chops takes far more time. Thus, it is suggested that the parent company entrust a third party to supervise and manage the risk of the local company, and keep the important business license, seal, financial data and other important information of the departed manager.

Employers should maintain an open and transparent approach to the implementation of the layoff plan and go through all legal procedures with professional guidance.

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MOSCOW

CT Executive Search LLC
Central Office
Shlyuzovaya nab. 8,1
115114 Moscow, Russia
Telephone: +7 499 678 2111
E-Mail: office@ct-executive.com

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● CT Executive Search Liaison Locations
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