

BEIJING, SOCIAL INSURANCE, & UNIONS

Future Implications of the Yue Yuen Situation



美国戴维斯·莱特·特里梅因律师事务所



What Happened at Yue Yuen?



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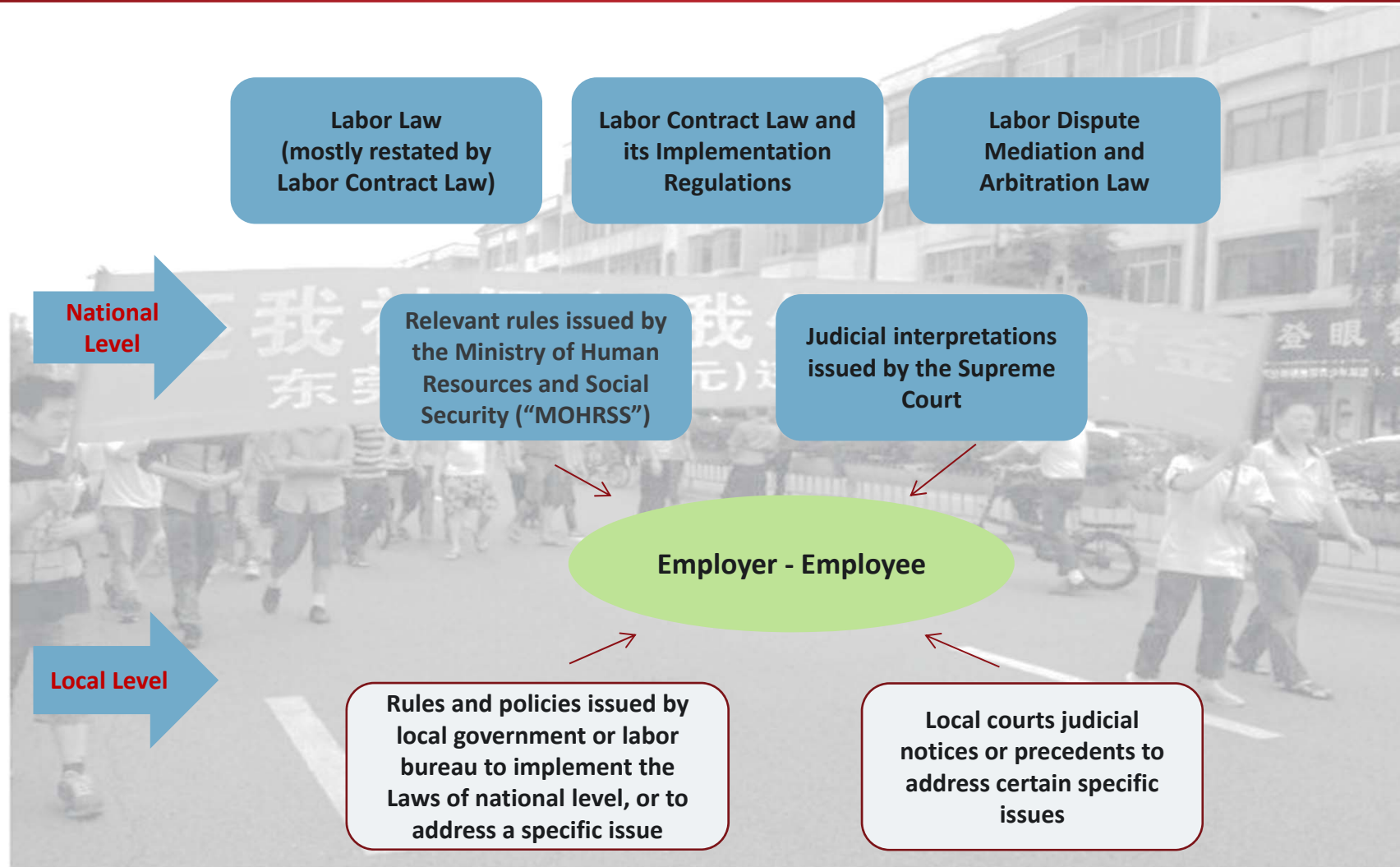
- Yue Yuen, Wholly Foreign Owned Enterprise by Taiwan Yue Yuen Group as Shareholder
- World Largest Shoe Manufacturer
- Contract Manufacturer/Supply Chain for Nike, Adidas
- April 4, 2014: a worker random check unearthed “0” social insurance contribution by Company
- Work stoppage, strike, demonstration followed
- Riot police called; right group involved and negative spotlight
- Main claims from workers: (i) no pay of social insurance; (ii) misclassification of worker as “seasonal”; and (iii) substandard EHS conditions

Changing Chinese Water: A Macro Perspective

- **Political Wind Shift**
- **Foreign Business “Scapegoat” for Problems**
- **Rising Labor Coat**
- **Stricter Labor Law and Enforcement**

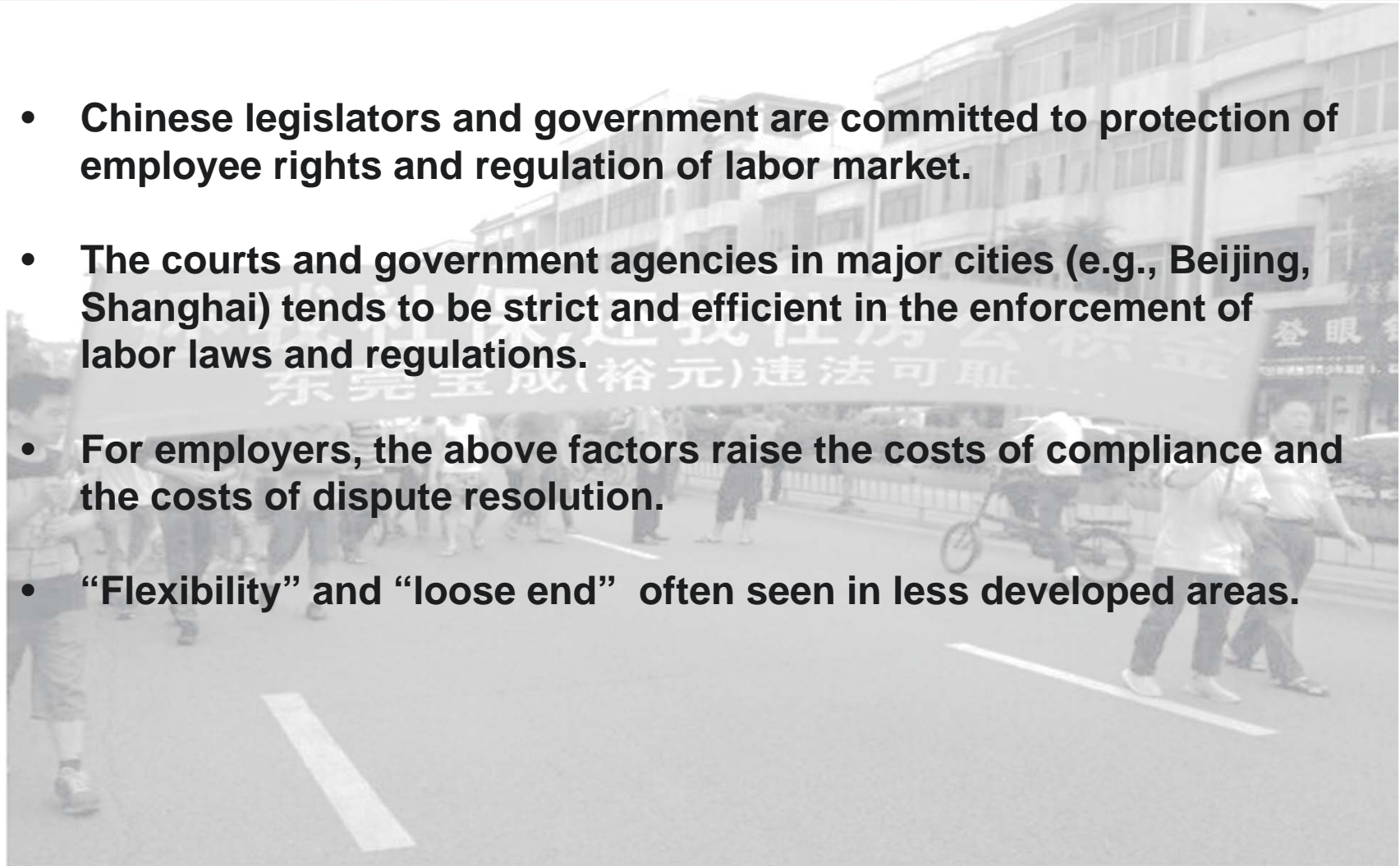


Employment Law Environment in China



Labor Law Environment in China

- Chinese legislators and government are committed to protection of employee rights and regulation of labor market.
- The courts and government agencies in major cities (e.g., Beijing, Shanghai) tends to be strict and efficient in the enforcement of labor laws and regulations.
- For employers, the above factors raise the costs of compliance and the costs of dispute resolution.
- “Flexibility” and “loose end” often seen in less developed areas.



Labor Law Environment in China

Mediation
(voluntary)

Arbitration
(mandatory)

Litigation
(Trial)

Litigation
(Appeal)

Cases
Finalized by:



- In 70% of the cases litigated, trial courts upheld the result of arbitration.
- 32% of the cases litigated were appealed to appellate courts.
- In 7% of the cases appealed, appellate courts reversed or remanded the trial court ruling.

Data based on Beijing (2010, 2012) and Shanghai (2012, 2013).

Controversial Labor Contract Law and Implementation Rules

Recent Tougher Update and Regulations – National Level and Guangdong Province Level

- Amendments to Labor Contract Law: focus is labor dispatch system
- Interim Provisions on Labor Dispatch
- Supreme Court Interpretation on Labor Contract Law: enforcement of non-competition provisions: focus is non-competition covenant
- The State Council: Special Regulation on Labor Protections for Female Employees
- Rules on Heatstroke Prevention
- Foreigners—Interim Measures for the Participation in Social Insurance of Foreigners Employed in China
- Judicial Interpretation on Law of the Peoples' Republic of China on Application of Laws to Foreign-Related Civil Relations
- Measures for Relevant Treatments Enjoyed by Foreigners with Permanent Residence Status in China
- Provisions on the Administration of Declaration and Payment of Social Insurance Fee
- Regulation of Labor Prevention and Supervision of Guangdong Province
- Meeting Summary of Handling Labor Disputes in Guangdong Province
- Regulation of Labor and Human Resource Dispute in Guangdong Province
- Opinion on Prevention and Solution of Labor Dispute during Transition and Upgrade of Enterprises
- Revised Regulation of Unemployment Insurance of Guangdong Province
- Notification on Social Insurance of Foreigners Working in Shenzhen

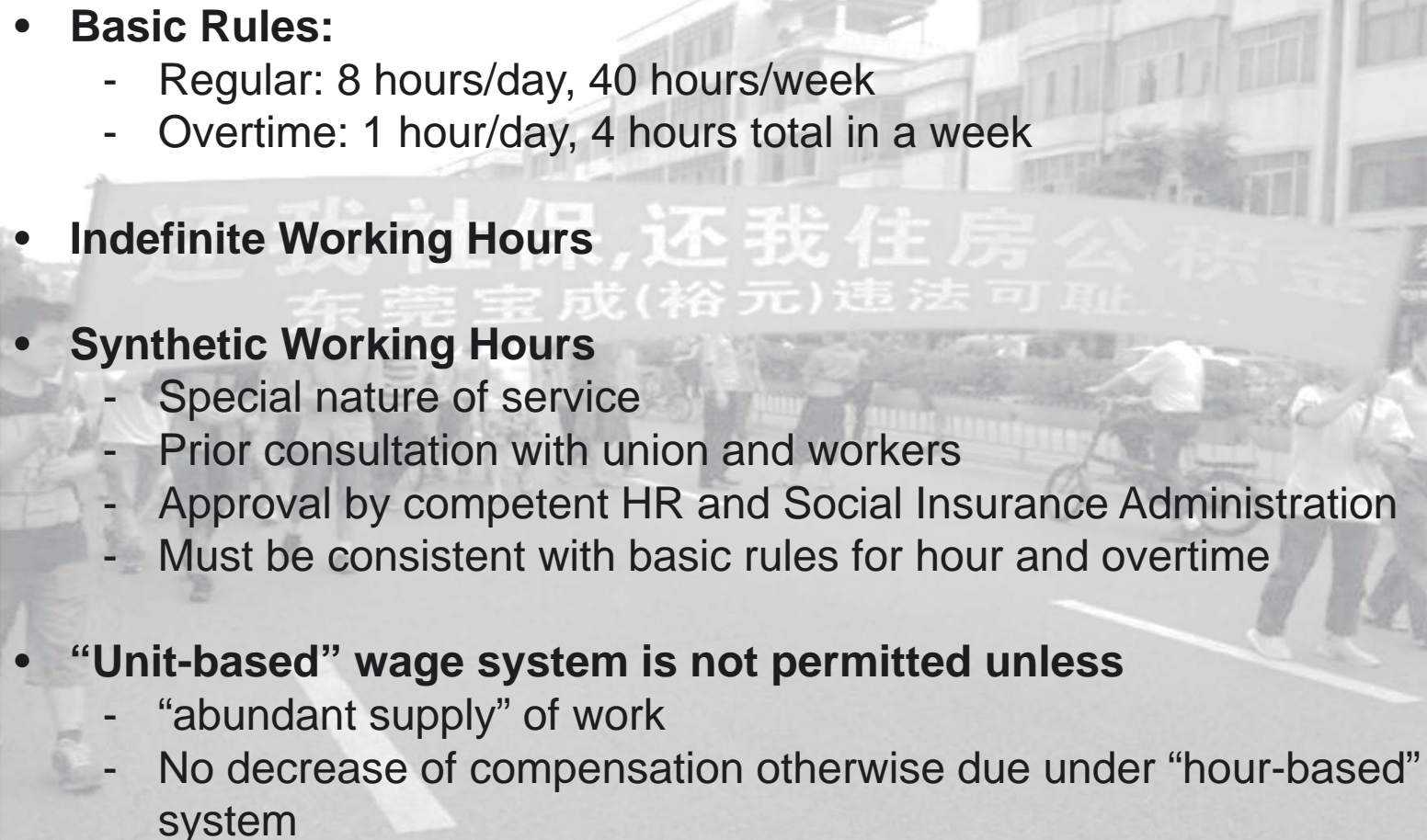
Time Bombs – One

Social Insurance

- Social insurance system composed of pension, medical insurance, work-injury insurance, unemployment insurance and maternity insurance
- In social insurance area, two accounts are required to maintain as “benefit pool” for employer to contribute and state subsidize while individual worker’s account through deduction of worker’s payroll
- Contribution from employer is the sum of (i) certain rate determined by the administration of each location times (ii) total wages paid to all of its employees
- Contribution by employee is the sum of (i) each particular worker’s wage times (ii) 8.0%
- Until few years ago, most of out-towner workers have no incentive to care of the pension benefit due to
 - lack of cross-provincial benefit collection network
 - first generation out-towner workers approaching retirement age

Time Bombs – Two

Wage, Hour and Overtime

- **Basic Rules:**
 - Regular: 8 hours/day, 40 hours/week
 - Overtime: 1 hour/day, 4 hours total in a week
 - **Indefinite Working Hours**
 - **Synthetic Working Hours**
 - Special nature of service
 - Prior consultation with union and workers
 - Approval by competent HR and Social Insurance Administration
 - Must be consistent with basic rules for hour and overtime
 - **“Unit-based” wage system is not permitted unless**
 - “abundant supply” of work
 - No decrease of compensation otherwise due under “hour-based” system
- 

Time Bombs – Three

Downsizing

Termination of 20 or more workers or 15% of entire workforce

- **Substantive compliance**

- Extreme production and operation difficulties
- Audited balance sheet and financial statements
- Inability vs. failure to pay wages for past months
- Mismanagement or breach of fiduciary duty another cause of action
- Paying up required compensation package

- **Procedural compliance**

- Explain to the trade union or all the employees with necessary proof
- Propose a labor reduction plan
- Solicit opinions from the trade union or all employees on reduction plan
- Submit plan to local labor administration and union or employees for comments
- Officially announce the reduction plan, terminate and pay compensations

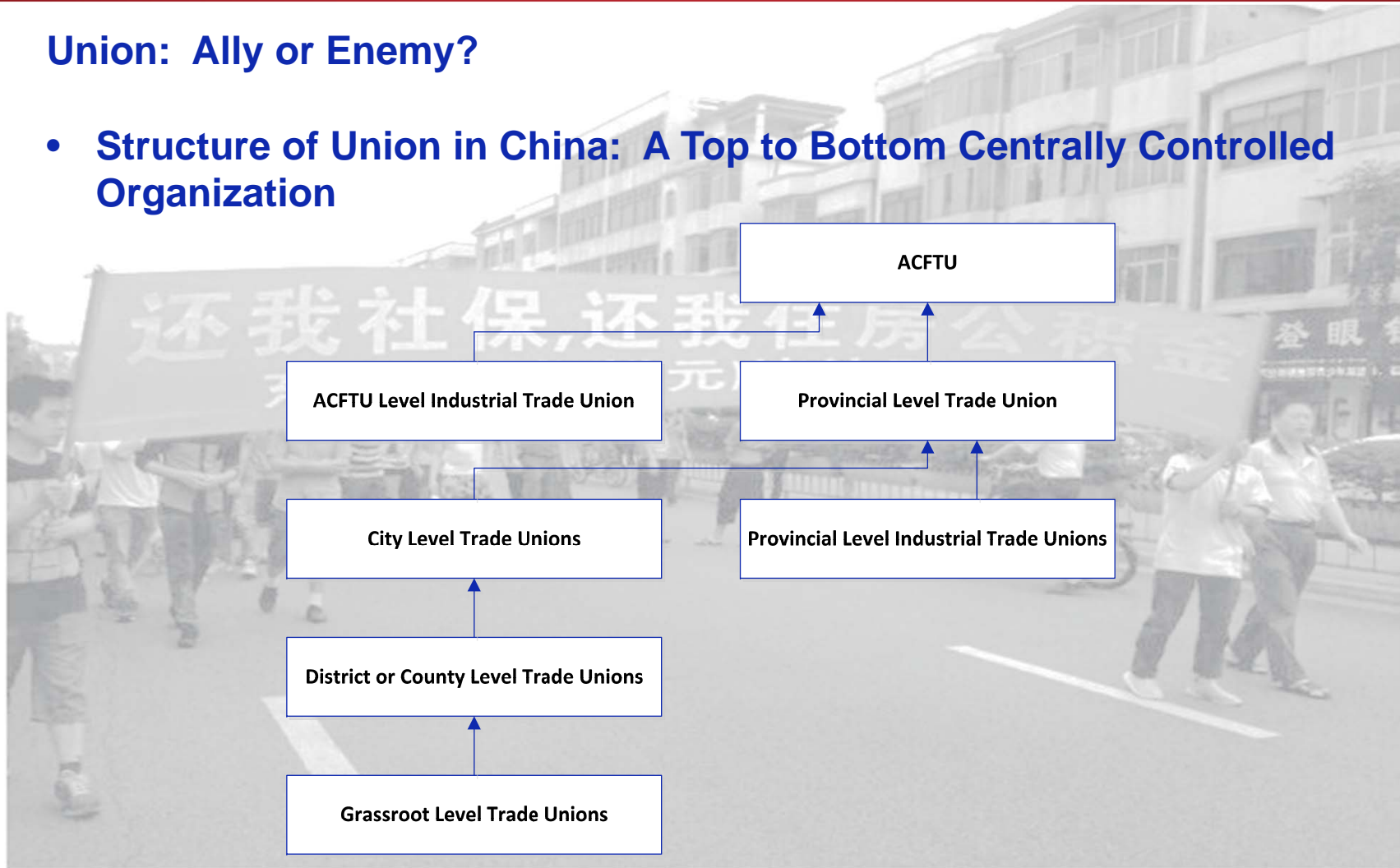
Time Bombs – Four



Time Bombs – Five

Union: Ally or Enemy?

- **Structure of Union in China: A Top to Bottom Centrally Controlled Organization**



Time Bombs – Five

Union: Ally or Enemy?

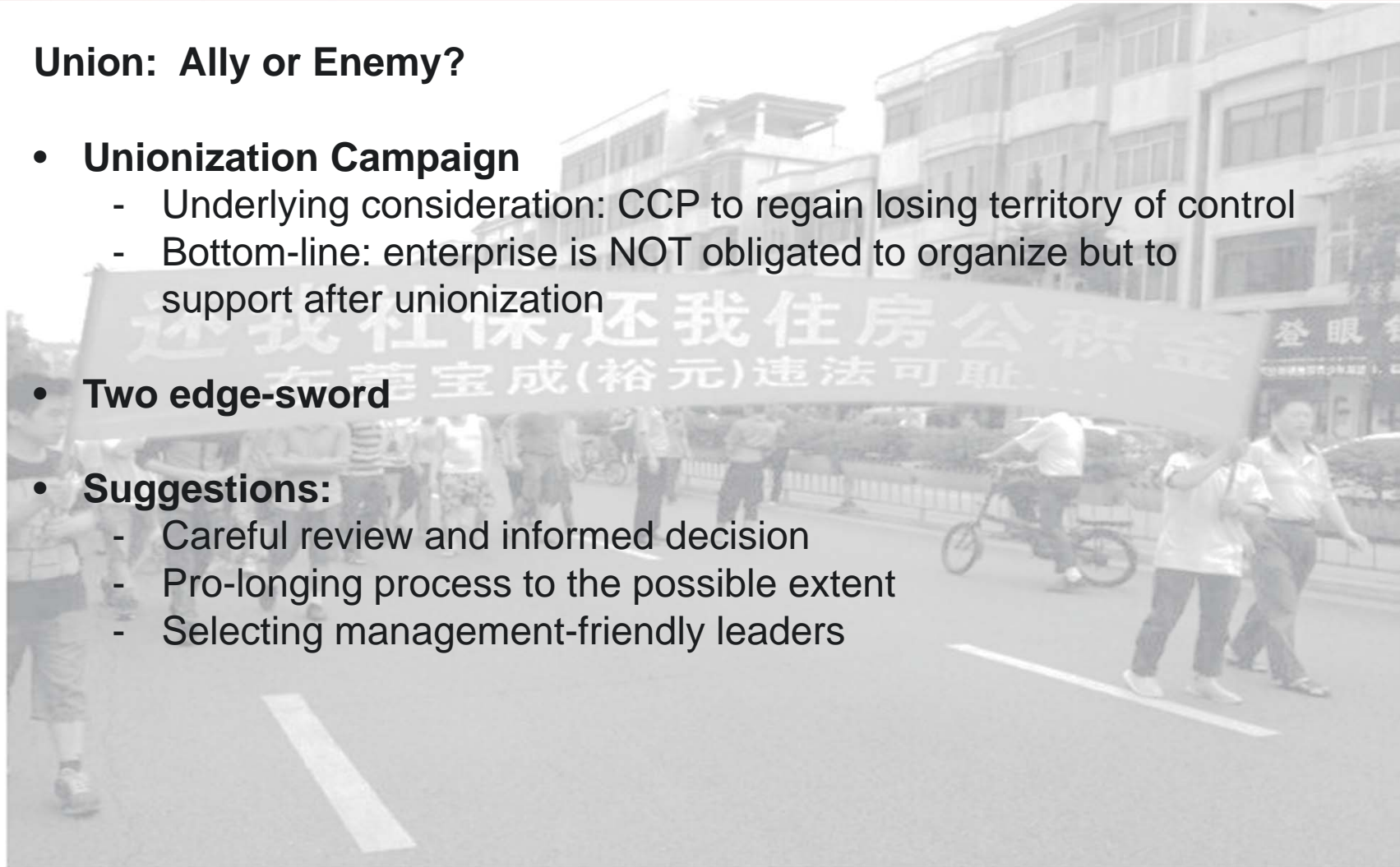
- **Unionization Campaign**

- Underlying consideration: CCP to regain losing territory of control
- Bottom-line: enterprise is NOT obligated to organize but to support after unionization

- **Two edge-sword**

- **Suggestions:**

- Careful review and informed decision
- Pro-longing process to the possible extent
- Selecting management-friendly leaders



Thank you!

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