

GLOBALIZATION OF THE LAWYER SYSTEM IN THE PEOPLE’S REPUBLIC OF CHINA

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TABLE OF CONTENTS

I. INTRODUCTION.....	2
II. HISTORIC BACKGROUND.....	4
A. The Lawyer System from the Late Imperial to the Republican Period.....	5
B. The Socialist Lawyer System in Early People’s Republic.....	6
III. THE LAWYER SYSTEM IN MODERN CHINA.....	7
A. The Modern Lawyer System and the Emergence of Foreign Law Firms.....	7
B. First Regulations on Foreign Law Firms.....	12
1. Licensing Issues.....	13
2. “One Firm, One Office” Rule.....	15
3. Local Hiring.....	16
4. Business Scope.....	16
5. Qualifications of Representatives.....	18
6. Confidential Client Information.....	19
IV. IMPACT OF CHINA’S WTO ACCESSION ON FOREIGN LAW FIRMS.....	19
A. China’s Reasons for Entering the WTO.....	20
B. Further Liberalization of the Legal Service Market in today’s China.....	22
V. CONCLUSION.....	25

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I. INTRODUCTION

From the founding of the People's Republic of China (the P.R.C.) in 1949 up until the late 1970's China's communist policy-makers eschewed foreign direct investment and limited economic interaction with non-socialist countries to commodity trade conducted through a highly regulated state trading system.¹ Throughout the range of economic activities, domestic and international, lawyers, and indeed law itself, played only a marginal role.² During the Cultural Revolution from 1966 to 1976, under the slogan of "smashing Gong-Jian-Fa (police, police, and courts),"³ the legal profession was virtually abolished; all judicial organs and legal organizations became paralyzed.⁴ Hence, the turmoil created a state of lawlessness and "renzhi" (rule by men).⁵

In 1978, under Deng Xioping's leadership, China opened its economy to the outside world.⁶ Moreover, Mr. Deng "made it clear that the construction of a legal system would be an indispensable element of the newly-proclaimed modernization policy."⁷ It is now widely accepted that, like the market economy, the rule of law

¹ Michael J. Moser, *Globalization and Legal Services in China: Current Status and Future Directions*, in *THE INTERNATIONALIZATION OF THE PRACTICE OF LAW* 127 (Jens Drolshammer & Michael Pfeifer eds., 2001).

² *Id.*

³ Shao-chuan Leng, *Chinese Criminal Code Symposium: Criminal Justice in Post-Mao China: Some Preliminary Observations*, 73 *J. CRIM. L. & CRIMINOLOGY* 204, 205 (1982).

⁴ Charles Chao Liu, *China's Lawyer System: Downing upon the World Through A Tortuous Process*, 23 *WHITTIER L. REV.* 1037, 1052 (2002); *See also* Cynthia Losure Baraban, *Inspiring Global Professionalism: Challenges and Opportunities for American Lawyers in China*, 73 *IND. L. J.* 1247, 1248, 1257 (1998).

⁵ *Id.*

⁶ Ji Chongwei & Sang Baichuan, *Commentary: Deng Xioping & China's Opening to the Outside World*, *CHINA'S FOREIGN TRADE*, July 23, 1977, available at 1997 WL 9917846. Mr. Deng pointed out "opening the door cannot harm us. Some comrades fear that it will bring in bad things and change our socialism into capitalism..... It will certainly bring some negative factors, and we must be aware of them, but they are not insoluble. If you close the door for another 50 years, it will be impossible for us to approach the level of the developed countries." *Id.* His opening idea won wide support among his people and was written into the constitution of the People's Republic of China as a fundamental state policy. *Id.*

⁷ Jerome A. Cohen & John E. Lange, *The Chinese Legal System: A Primer for Investors*, 17 *N.Y.L.*

(fazhi) is a product of the historical development of civilization and part of the common heritage of humankind.⁸

Concomitant with these changes, China has made significant efforts to revive and invigorate its legal institutions and legal profession.⁹ Today, there are nearly 150,000 Chinese lawyers practicing in thousands of firms nation-wide.¹⁰ As of January 2003, there are 163 representative offices of foreign law firms on the Chinese mainland.¹¹

The major reason the Chinese government allows foreign law firms to operate in China is that policy makers realize the capability of foreign law firms to attract foreign investments. Given China's relatively ambiguous and fragmentary investment regulations, foreign enterprises may feel more confident of large-scale investment projects in China with the assistance of well-trained foreign lawyers. Nevertheless, there is still a "Great Wall" between Chinese and foreign lawyers in terms of their qualifications, training, work styles and permitted scope of activities, which have inhibited the development of an international bar capable of meeting the needs of a globalized economy.¹² The authorities continue to impose strict restrictions on foreign law firms for some reasons. First, lawyers used to be considered as "state legal workers" and the practice of law is still considered as a public function.¹³ By the contrast, foreign lawyers can by no means possess the national loyalty, which is still a

SCH. J. INT'L. & COMP. L. 345, 346 (1997).

⁸ Albert H.Y. Chen, *Toward a Legal Enlightenment: Discussions in Contemporary China on the Rule of Law*, 17 UCLA PAC. BASIN L.J. 125,136 (2000); cf. Baraban, *supra* note 4, at 1257 (stating that communism ideals fueled Mao's distrust of the legal profession and the law. As argued by German theorist Karl Marx, communism views law as part of capitalist superstructure burdening the proletariat).

⁹ Moser, *supra* note 1, at 128.

¹⁰ *Id.*; See *Number of Lawyers rapidly Rising in China*, XINHUA, July 7, 2002, available at LEXIS, News Library, Xinhua File.

¹¹ *China Gives More Space to Overseas Law Firms*, XINHUA, January 9, 2003, available at LEXIS, News Library, Xinhua File. Law firms based in Hong Kong, Macao, and Taiwan are also considered as "foreign" law firms.

¹² *Id.*

¹³ See Richard Qiang Guo, *Piercing the Veil of China's Legal Market: Will GATS Make China More Accessible for U.S. Law Firms?*, 13 IND. L. J. 147, 148 (2002).

prerequisite, though not literally, of the socialist regime.¹⁴ Second, the politicians may be worried that foreign lawyers are likely to have higher political stances when they confront sensitive cases relating to national security or human rights. Finally, the legal profession in China is still an “infant industry.” Local lawyers, therefore, have imposed great pressure on the government, hoping to keep foreign law firms from “grabbing their rice bowls.”

This article addresses China’s “open door policy” on its legal profession. Following the introduction, this article is divided into five parts. Part II begins with a brief review of the emergence of the lawyer system in the early Republican period and the socialist system in the newly founded People’s Republic. Moreover, the legal institutions and lawyer system were brought to an abrupt halt by the Anti-Rightist Campaign and the Cultural Revolution.¹⁵ Part III explores the reestablishment of China’s lawyer system during the economic reform and the emergence of foreign law firms. This part also elaborates the first regulation on foreign law firms. Part IV casts light on China’s accession to the World Trade Organization (WTO) and illustrates current restrictions on foreign law firms and how some changes in China’s treatment of foreign law firms occurred as a direct result of entry into the WTO.¹⁶ Finally, part VI concludes that while China promised to lift such restrictions immediately, foreign lawyers can help by educating Chinese lawyers about the rule of law and professional consciousness.¹⁷

II. HISTORIC BACKGROUND

¹⁴ *Id.*

¹⁵ Liu, *supra* note 4, at 1038.

¹⁶ Susan E. Vitale, *Door Widen to the West: China’s Entry in the World Trade Organization Will Ease Some Restrictions on Foreign Law Firms*, 7 WASH. U. J.L. & POL’Y 223, 224 (2001)

¹⁷ Baraban, *supra* note 4, at 1249.

A. The Lawyer System from the Late Imperial to the Republican Period

The traditional Chinese legal system – the basis for the modern lawyer system – emerged over two thousand years ago during the Autumn and Warring States periods of the Eastern Zhou dynasty (770-221 B.C.), which was the transition from slavery to feudal society.¹⁸ However, the centerpiece of Imperial China’s legal system was the code “promulgated by a bureaucracy that was primarily interested in regulating the affairs of its own officials....[In fact, t]here were no facilities for training jurists and no lawyers to represent parties.”¹⁹ The men (lawyers in the modern sense) who worked within the informal legal system and gave advice to parties to private disputes were often designated as “litigation tricksters.”²⁰

In the late nineteenth century, Westerners launched wars of aggression against China and the Qing government was forced to sign treaties to open its ports and to extend extraterritorial legal protection to foreigners living in China.²¹ Suffering from this humiliation, some Chinese intellectuals saw Western law as superior to Chinese law and sought to establish a Chinese legal system modeled after the West’s.²² In 1906, the Qing government drafted the law of Criminal and Civil Procedure. The drafted code and its revision, adopting a jury and lawyer system, were not yet promulgated when the Qing dynasty collapsed in 1911.²³

After the Nationalist Revolution, the Nanjing Interim Government of the newly founded Republic of China drafted the Law on Lawyer, which, too, was not

¹⁸ Liu, *supra* note 4, at 1039.

¹⁹ INTRODUCTION TO THE LAW OF THE PEOPLE’S REPUBLIC OF CHINA 15 (Donald C. Clarke et al. eds., 1996) (unpublished manuscript), *quoted in* Baraban, *supra* note 4, at 1254.

²⁰ *See id.* at 24, n.22.

²¹ *See* Baraban, *supra* note 4, at 1255.

²² *Id.*

²³ Liu, *supra* note 4, at 1043-1044.

promulgated due to the dissolution of the Interim Government.²⁴ Later in 1912, the Northern Government enacted the Interim Rules on Lawyers, the first law creating a lawyer system in Chinese history, which was also adopted by the subsequent Nationalist Government in Nanjing until the promulgation of the Law on Lawyers in 1941.²⁵ Furthermore, the government ultimately solidified a legal system called the “*Liu Fa*” (Six Codes), implemented with Nationalist ideologies.²⁶

B. The Socialist Lawyer System in the Early People’s Republic

The People’s Republic of China formed in 1949 with the victorious Mao Zedong as its leader.²⁷ The new communist government abolished the Nationalist Six Codes and related laws, thus dismantling the Nationalist legal machinery in the mainland.²⁸ In 1954, the Constitution stated that defendants had the right to present a defense.²⁹ In addition, the 1954 People’s Courts Organic Law stated that defendants possessed the right to hire a lawyer to defend them³⁰ Nevertheless, in such a social atmosphere, the lawyer’s role in legal practice was very limited.³¹

The open political atmosphere, however, did not last very long.³² China’s progress toward a stable legal order was brought to an abrupt halt by the Anti-Rightist

²⁴ *Id.* at 1044.

²⁵ *Id.* at 1944-1945. The 1941 Law on Lawyers was adopted in Taiwan later in 1949 when the Nationalists retreated to that island. *Id.*

²⁶ *Id.* at 1045. Six codes include 1) the Organic Law, 2) the Commercial Law, 3) the Civil Code, 4) the Criminal Code, 5) the Civil Code of Procedure, and 6) the Code of Criminal Procedure. David F. Forte, *Western Law and Communist Dictatorship*, 32 EMORY L.J. 135, 162 (1983).

²⁷ Baraban, *supra* note 4, at 1256.

²⁸ Liu, *supra* note 4, at 1046.

²⁹ Benjamin L. Liebman, *Legal Aid and Public Interest Law in China*, 34 TEX. INT’L L.J. 211, 216 (1999).

³⁰ *Id.*

³¹ Liu, *supra* note 4, at 1050. In criminal cases, the lawyer’s role was limited to “arguing for leniency toward their client.” *Id.* In the civil context, only a few civil disputes were directed to the formal legal system due to the acute shortage of lawyers, the government’s policy of avoiding litigation, and the people’s general ignorance in seeking legal assistance in civil proceedings. *Id.*

³² Timothy A. Gelatt, *Chinese Criminal Code Symposium: The People’s Republic of China and The Presumption of Innocence*, 73 J. CRIM. L. & CRIMINOLOGY 259, 274 (1982).

Campaign (1957-1958).³³ The leadership began to prepare for a renewed attack on "old," "bourgeois," "rightist" ideas.³⁴ Many lawyers, among other intellectuals, were wrongfully condemned or politically discriminated against.³⁵ Finally, in the Cultural Revolution (1966-1976), Mao closed all law schools and declared lawyers to be counterrevolutionaries and criminals.³⁶ Many lawyers were executed or sent to labor camps to work in primitive conditions.³⁷ More than twenty years from the beginning of the Anti-Rightist Campaign (1957) to the end of the Cultural Revolution (1976), there were almost no lawyers educated in law schools, and the lawyer system became virtually non-existent.³⁸

III. THE LAWYER SYSTEM IN MODERN CHINA

A. *The Modern Lawyer System and Emergence of Foreign Law Firms*

In late 1978, under Deng Xiaoping's leadership, China initiated economic reform and the "open-up policy."³⁹ He also reestablished the legal system to give foreign investors a degree of security in the P.R.C. and to provide for rapid domestic development.⁴⁰ Moreover, he stated that a lawyer system is indispensable in the Chinese legal system, and stressed that China needed more than 500,000 lawyers in the near future.⁴¹ In 1980, the Standing Committee of the National People's Congress

³³ Liu, *supra* note 4, at 1051.

³⁴ Gelatt, *supra* note 32, at 275.

³⁵ Liu, *supra* note 4, at 1051-1052; *See also* Baraban, *supra* note 4, at 1256-1257.

³⁶ Baraban, *supra* note 4, at 1257.

³⁷ *Id.*

³⁸ Liu, *supra* note 4, at 1035.

³⁹ *China Hailed as Good Example of Globalization*, XINHUA, June 14, 2000, available at LEXIS, News Library, Xinhua File.

⁴⁰ Baraban, *supra* note 4, at 1258.

⁴¹ Liu, *supra* note 4, at 1057.

(NPC) adopted the Provisional Regulations of the People's Republic of China on Lawyers (the 1980 Provisional Regulations),⁴² which went into effect on January 1, 1982, signaling the official restoration of a lawyer system.⁴³

Under the 1980 Provisional Regulations, lawyers were characterized as “legal workers of the state.”⁴⁴ The Provisional Regulations articulated that lawyers would be engaged in relatively limited activities such as acting for state-owned enterprises or administrative units⁴⁵ and thus did not permit lawyers to open private practices.⁴⁶ Lawyers were required to work collectively in state-funded “legal advisory offices,” which were defined as “public institutions under the organizational leadership and professional supervision of the judicial administration organs of the state”⁴⁷ Given the enormous demand for lawyers expected to be generated by a greater decentralization of economic policy, the Provisional Regulations imposed only minimal qualification requirements on prospective lawyers.⁴⁸ Lawyers were not required to pass a bar examination to be qualified to practice.⁴⁹ Applicants who had a certain amount of formal education, legal practice experience, or both were qualified upon the approval of the Ministry of Justice.⁵⁰ The Provisional Regulations quickly fell out of step with the needs of China's changing business.⁵¹

By the mid 1990s, the character of legal services had already begun to change.⁵² Chinese lawyers were being confronted with commercial contract disputes and

⁴² See Moser, *supra* note 1, at 128; See “People's Daily” at the Back of Lawyers, XINHUA, January 4, 1985, available at LEXIS, News Library, Xinhua File.

⁴³ *Lawyers with New Acceptance in China*, XINHUA, July 10, 1988, available at LEXIS, News Library, Xinhua File.

⁴⁴ Liu, *supra* note 4, at 1058.

⁴⁵ Moser, *supra* note 1, at 128.

⁴⁶ Liu, *supra* note 4, at 1059.

⁴⁷ *Id.* at 1058-1059. Interim Regulations of the People's Republic of China on Lawyers, available at <http://www.qis.net/chinalaw/prclaw59.htm> (last visited Mar. 13, 2003) [hereinafter the 1980 Provisional Regulations], at art. 13.

⁴⁸ Moser, *supra* note 1, at 128.

⁴⁹ *Id.*

⁵⁰ Liu, *supra* note 4, at 1060.

⁵¹ Moser, *supra* note 1, at 128.

⁵² *Id.* at 128-129.

intellectual property issues relating to large, big-ticket foreign investment projects and securities offerings.⁵³ At the same time, to assist clients in investment in China on the one hand and to circumvent the government's strict bans on setting up branch offices on the other hand, many foreign law firms managed to make inroads into China in various forms, including consulting firms or business vehicles as permitted by the Ministry of Foreign Economic Relations and Trade (MOFER).⁵⁴ In August 1979, as counsel to its then client Amoco, Coudert Brothers opened its permanent presence in Beijing where it also carried out business under its own name.⁵⁵ It is believed to be the first-ever foreign law firm to provide legal service in Mainland China since the Communist takeover.⁵⁶

Competition from foreign lawyers helped to spark an awareness within the Ministry of Justice that improvements were urgently needed in the regulation, training and organization of the local legal profession.⁵⁷ In 1996, the Standing Committee of the National People's Congress (NPC) passed the Lawyers' Law of the People's Republic of China (the Lawyers' Law)⁵⁸, which came into effect on January 1, 1997 and repealed the earlier 1980 Provisional Regulations.⁵⁹ It is the most significant legislation governing the lawyer system in today's China.⁶⁰ The law both stipulates rules regarding qualifications for practicing licenses and the organization of law firms,

⁵³ *Id.* at 129.

⁵⁴ Guo, *supra* note 13, at 166. The MOFER is the predecessor of today's Ministry of Foreign Trade and Economic Cooperation (MOTEC). *Id.*

⁵⁵ *Id.* at 165-166. Coudert Brothers has been active in legal matters involving the People's Republic of China since the establishment of its Hong Kong office in 1972. Beijing Office, Coudert Brothers LLP, available at <http://www.coudert.com/offices/default.asp?action=officedetails&id=4> (last visited Mar. 13, 2003). The Firm was the first foreign law firm to be invited to attend the Canton Trade Fair in 1974, the first to establish a permanent presence in Beijing in 1979 and the first to be approved by the Ministry of Justice to establish a law office in Beijing in 1992. *Id.*

⁵⁶ *Id.* at 148, 166.

⁵⁷ Moser, *supra* note 1, at 129.

⁵⁸ *Id.*

⁵⁹ Patrick Sherrington & Virginia Chan, *New Lawyers Law Needs Further Legislative Clarification*, 10 ASIA LAW & PRACTICE, July.-Aug. 1996, at 28, 28.

⁶⁰ See Coleen Lau, *Foreign and Local Professionals Face a New round of Regulation*, 10 ASIA L. & PRAC., July.-Aug. 1996, at 25, 25.

as well as introduces new concepts such as legal aid and formally establishes the All-China Lawyers' Association (Lawyers' Association) of the P.R.C.⁶¹

This is the first law to recognize the concept of an independent legal profession and emphasize the need for lawyers to represent clients rather than the state.⁶² Under the Lawyers' Law, lawyers are not defined as "state legal workers," but as "personnel who have obtained a business license for setting up a lawyer's practice in accordance with the law and who are providing legal services for the public."⁶³ Moreover, Chinese lawyers achieved considerable independence and autonomy as a result of changes in the organization of law firms.⁶⁴

The Lawyers' Law ratified the structural reforms of the previous ten years by permitting three forms of law firms: state-funded, partnership and cooperative.⁶⁵ Unlike legal advisory offices defined in the 1980 Provisional Regulations, the state-funded law firms under the new law are no longer "public institutions," but are just "financed by the state," "independently pursue the practice," and "shall be responsible for their liabilities with all the assets owned by such law firms."⁶⁶ As of year-end 1997, there were 8,946 firms, of which 57% were state-funded, 27% were partnerships, 11% were cooperatives.⁶⁷ More importantly, while 76% of China's firms were originally established with state funds, at least 48.6% of those no longer rely on the state for financial support.⁶⁸ Further, the long-term trend is clearly toward

⁶¹ Sherrington & Chan, *supra* note 59, at 28.

⁶² Liu, *supra* note 4, at 1074.

⁶³ Law on Lawyers and Legal Representation, available at <http://www.qis.net/chinalaw/prclaw58.htm> (last visited Mar. 14, 2003) [hereinafter the Lawyers' Law], at art. 2.

⁶⁴ Randall Peerenboom, *Law Enforcement and the Legal Profession in China, in* IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA 132 (Jianfu Chen, et al. eds., 2002).

⁶⁵ *Id.*

⁶⁶ Liu, *supra* note 4, at 1075. See the Lawyers' Law, *supra* note 66, at art. 16.

⁶⁷ 1999 China Year Book (*Zhongguo Falu Nianjian*) (Beijing: China Law Yearbook Publishers), at 1039, quoted in Peerenboom, *supra* note 64, at 132.

⁶⁸ COMPENDIUM OF THE PRC LAWYERS LAW 95, (Zhang Geng & Kangsheng Hu eds., 1996), quoted in Peerenboom, *supra* note 64, at 132.

more partnerships.⁶⁹

The Lawyers' Law provides for the formal legislative establishment of the All-China Lawyers' Association at the state level, together with branches at the local provincial (and equivalent) level.⁷⁰ A lawyer must join a local lawyers association, and the individual will automatically become a member of the All-China Lawyers' Association.⁷¹ The Lawyers' Associations is defined as a legal entity "for lawyers to exercise self-discipline."⁷² It is clear that the law intends for the Lawyer's Association to be the body having the governing functions very similar to a bar association in the West.⁷³ Thus, China's lawyers' administration shifted from a system of mere judicial administration to a system with both judicial supervision and professional administration.⁷⁴ In 1987, the All-China Lawyers' Association officially joined the International Bar Association as a group member.⁷⁵ These were indications that China's legal system had begun to approach international norms, and that Chinese lawyers, as a profession, had begun to avail themselves to the emerging market.⁷⁶

For foreign law firms, the impact of the Lawyers' Law is minimal.⁷⁷ It is unclear whether the ethical considerations contained in the law will apply to foreign law firms and the only relevant reference is Article 51, which provides that foreign law firms with established organizations in the P.R.C. must apply with the relevant guidelines issued by the State Council.⁷⁸ The law does not address important issues of interest to foreign law firms such as cooperation between Chinese law firms and foreign law

⁶⁹ *Id.* at 132.

⁷⁰ Sherrington & Chan, *supra* note 59, at 29.

⁷¹ Liu, *supra* note 4, at 1076. *See* the Lawyers' Law, *supra* note 66, at art. 37.

⁷² *Id.*

⁷³ Sherrington & Chan, *supra* note 59, at 30.

⁷⁴ Liu, *supra* note 4, at 1076.

⁷⁵ *China Joins International Bar Association*, XINHUA, May 28, 1987, available at LEXIS, News Library, Xinhua File.

⁷⁶ Liu, *supra* note 4, at 1066.

⁷⁷ Sherrington & Chan, *supra* note 59, at 30.

⁷⁸ *Id.*

firms, or the hiring of local lawyers by foreign law firms.⁷⁹

B. First Regulations on Foreign Law Firms

Where business goes, lawyers follow.⁸⁰ With the intention of reform and open-door policies, foreign investment in China blossomed and created great demand for legal services.⁸¹ The Chinese government realized the importance of foreign law firms for nation's economic development.⁸² By early 1989 there were over twenty consulting companies in China that were actually established by foreign law firms.⁸³ The Ministry of Justice started to pay attention to this influx of foreign "consulting firms"⁸⁴ and thus to research the possibilities of licensing foreign law firms.⁸⁵ Delegations were sent to Singapore, Hong Kong, and European Countries in 1986.⁸⁶ In 1989, the Ministry was authorized to permit, on an experimental basis, the establishment of Chinese offices by foreign law firms, but the experiment was disrupted by the 1989 Tiananmen Square Incident.⁸⁷ Foreign investment shrank and the law firm with already established consulting firms in China started to withdraw from the China market.⁸⁸

Nevertheless, only three years later, on May 26, 1992, the Ministry of Justice and

⁷⁹ *Id.*

⁸⁰ Guo, *supra* note 13, at 165.

⁸¹ *Id.*

⁸² Liu, *supra* note 4, at 1069-1070. For example, in 1994, the Coudert Brothers' Beijing office helped the country to gain more than two billion us dollars in foreign investment, while Gide Loyrette Mouel helped a Chinese company to win a lawsuit against the European union's anti-dumping sanctions. *China has 57 Foreign Law Firms*, XINHUA, May 22, 1996, available at LEXIS, News Library, Xinhua File.

⁸³ Hongming Xiao, *the Internationalization of China Legal Services Market*, 1 Perspectives 6, available at http://www.oycf.org/Perspectives/6_063000/internationalization_of_china.htm (last visited Mar. 13, 2003).

⁸⁴ *Id.*

⁸⁵ Guo, *supra* note 13, at 166.

⁸⁶ *Id.*

⁸⁷ Xiao, *supra* note 87.

⁸⁸ Guo, *supra* note 13, at 166.

the State Administration for Industry and Commerce co-issued the Provisional Regulations on the Setting up of Offices by Foreign Law Firm within the Territory of China (the 1992 Provisional Regulations),⁸⁹ which granted the foreign law firms formal rights to open branch offices in Mainland China.⁹⁰ Legal services were opened to foreign law firms as a sign of aligning China's legal system with modern international legal practices.⁹¹ By the end of 1993, there were forty-one foreign or Hong Kong law firms that had set up branch offices in Beijing, Shanghai, Guangzhou, Haikou, and Shenzhen.⁹² Beginning in 1993, a few Chinese law firms also set up branches overseas.⁹³

The Ministry of Justice is the supervisory government department of foreign law firms.⁹⁴ It also authorizes its bureaus of the provinces, autonomous zones and municipalities to manage, supervise, and examine the business activities of local offices of foreign law firms.⁹⁵ In order to protect Chinese lawyers from a massive influx of foreign lawyers⁹⁶ and prevent foreign firms hiring away all the best Chinese lawyers from local firms⁹⁷, the Ministry of Justice had levied certain restrictions on foreign law firms.⁹⁸

1. Licensing Issues

⁸⁹ Moser, *supra* note 1, at 134; Liu, *supra* note 4, at 1070-1071; Guo, *supra* note 14, at 166; Vitale, *supra* note 18, at 226.

⁹⁰ Liu, *supra* note 4, at 1070.

⁹¹ *Id.*

⁹² *Id.*

⁹³ *China's 1st Overseas Law Firm to Open in New York*, XINHUA, June 26, 1993, available at LEXIS, News Library, Xinhua File. China's first law firm set up abroad with the approval of the Ministry of Justice started business in New York in July 1993. *Id.* The firm was established by the Junhe Law Office, one of the country's first cooperative law firms based in Beijing. *Id.*

⁹⁴ Provision Regulations on the Setting up of Offices by Foreign Law Firms within the Territory of China, available at http://www.info.gov.hk/justice/new/depart/doc/setup_law_firm_e.pdf (last visited Mar. 26, 2003) [hereinafter the 1992 Provision Regulations], at art. XIX.

⁹⁵ *Id.*

⁹⁶ Xiao, *supra* note 83.

⁹⁷ Yujie Gu, *Entering the Chinese Legal Market: A Guide for American Lawyers Interested in Practicing Law in China*, 48 *DRAKE L. REV.* 173, 202 (1999).

⁹⁸ Guo, *supra* note 13, at 168.

According to the 1992 Provisional Regulations, foreign law firms may establish offices in China with the approval of the Ministry of Justice and the registration of the State Administration for Industry and Commerce.⁹⁹ Nevertheless, the Ministry of Justice does not provide evaluative criteria for obtaining a license.¹⁰⁰ This ambiguity occurs probably because the regulations are not regarded as “hard-line” rules, but rather “as a source of authority for the government to expel foreign firms should they choose to.”¹⁰¹ Article 26 supports this explanation, providing that “the Ministry of Justice shall be responsible for the interpretation of these provisions.”¹⁰²

Successful law firms hint that developing “*quanxi*” (personal relationships) with Chinese government officials helped them obtain a license.¹⁰³ For example, Alheimer & Gray, merely a medium-sized American firm, obtained the license in 1996.¹⁰⁴ Its success is largely attributable to its effort in building a close relationship with the Chinese government.¹⁰⁵ In fact, Alheimer & Gray regularly held training sessions for Ministry of Justice officials in its unofficial office in Beijing, teaching them how business transactions are structured, and hosted visiting dignitaries in Chicago.¹⁰⁶ When the Ministry said it was interested in lawyer malpractice issues, the firm translated a typical U.S. malpractice policy into Chinese.¹⁰⁷ Its efforts were not limited to Ministry of Justice.¹⁰⁸ When the vice mayor of Shanghai, who runs that

⁹⁹ The 1992 Provisional Regulations, *supra* note 94, at art. 2. It is noticeable that Chinese licensing is firm-based, which means that individuals who pass the national bar exam are qualified, but must acquire sponsorship from a firm to retrieve their licenses. Guo, *supra* note 14, at 172. As to foreign lawyers, there is no “Foreign Legal Consultant” (FLC) system present. *Id.* Therefore, an individual foreign lawyer is simply not eligible to practice in China. *Id.*

¹⁰⁰ Vitale, *supra* note 16, at 226.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 229.

¹⁰⁴ Gu, *supra* note 97, at 207.

¹⁰⁵ *Id.* at 208.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

city's booming financial district, visited Chicago, the firm arranged for him to meet the city's business elite.¹⁰⁹

2. “One Firm, One Office” Rule

Known as “One Firm, One Office” rule, a foreign law firm, even if granted a license, was allowed to only have one representative office in China.¹¹⁰ Moreover, the foreign law firm must choose from a restricted list of fifteen cities.¹¹¹ Foreign Law firms typically prefer to locate a satellite office in either Beijing or Shanghai,¹¹² because Shanghai is often regarded as China's most important financial and commercial center while Beijing, as the capital of the nation, used to control the economy by administrative fiat¹¹³ and has always been the best place of “building connections” with bureaucrats in the central government.

This one-office rule restricts law firms from serving their existing clients.¹¹⁴ These clients may be multinational corporations which have business activities in various major cities in China and thus wish to be conveniently served by law firms easily accessible in each city.¹¹⁵ Consequently, foreign law firms circumvented the geographical ban by operating consulting firm in cities where their law firms are not licensed.¹¹⁶ However, one-city rule eventually forced some firms to close their

¹⁰⁹ *Id.*

¹¹⁰ Liu, *supra* note 4, at 1071.

¹¹¹ Vitale, *supra* note 16, at 229. At the beginning of the reform experiment, China opened five cities to foreign law firms: Beijing, Shanghai, Guangzhou, Shenzhen and Haikou. Xiao, *supra* note 87. In 1995, ten additional cities were added to the list: Dalian, Tianjin, Qingdao, Yantai, Suzhou, Hangzhou, Ningbo, Fuzhou, Xiamen and Zhuhai. *Id.*

¹¹² *Id.* at 229-230.

¹¹³ Gu, *supra* note 97, at 200.

¹¹⁴ Stephen Kai-yi Wong, *The Impact, Opportunities and Challenges for the Hong Kong Legal Profession upon China's Accession to the WTO*, in *CHINA AND THE WTO: GOING WEST 50* (David Smith & Zhu Guobin ed., 2002).

¹¹⁵ *Id.*

¹¹⁶ Vitale, *supra* note 16, at 229.

unauthorized operations.¹¹⁷ Although Coudert Brothers was licensed to operate in Beijing, it received a violation notice from the Ministry of Justice in early 1995 and was forced to close its Shanghai office, which had been operating since 1984.¹¹⁸ Clifford Chance, licensed in Shanghai, also technically violated the one-office rule when it merged with Germany's Punder Volhard Weber & Axster, which has an office in Beijing.¹¹⁹

3. Local Hiring

Article 17 of the 1992 Provisional Regulations provides that “foreign law firms shall not employ Chinese lawyers.”¹²⁰ A Chinese lawyer has to suspend her lawyer's license if he or she wants to join a foreign law firm.¹²¹ Additionally, the government prevents foreign lawyers from taking China's lawyers' Qualification Exam to preclude foreign lawyers from involvement in Chinese litigation, which may encompass sensitive political issues.¹²²

In practice, foreign law firms commonly recruit law graduate, many of who have passed the national bar and thus are qualified under Chinese law, as legal assistants or legal secretaries.¹²³ Even licensed Chinese lawyers often show up on the payrolls, but theoretically they have to forfeit their right to practice Chinese law.¹²⁴

4. Business Scope

¹¹⁷ Gu, *supra* note 97, at 200.

¹¹⁸ *Id.*

¹¹⁹ Guo, *supra* note 13, at note 201.

¹²⁰ The 1992 Provisional Regulations, *supra* note 94, at art. 17.

¹²¹ Xiao, *supra* note 83.

¹²² Vitale, *supra* note 16, at 231.

¹²³ Guo, *supra* note 13, at 169.

¹²⁴ *Id.*

Foreign law firms are forbidden to handle Chinese legal affairs, interpret Chinese law, or engage in other business activities prohibitory to foreigners by Chinese.¹²⁵ Furthermore, pursuant to new practice rules published on September 1, 2002 by the Ministry of Justice, firms are compelled to tell clients that they cannot advise on Chinese law, a warning that must be carried on business cards and office stationary.¹²⁶

Foreign law firms are allowed to provide to clients consultative services on either the laws of the home country or on international law.¹²⁷ They may also process legal matters relating to the law of the home country on behalf of its clients or Chinese law firms.¹²⁸ Moreover, they can act as agents for foreign clients and in turn hire Chinese law firm to handle legal matters in China.¹²⁹ Of course, as in the past, foreign lawyers may appear in arbitration proceedings conducted by the China International Economic and Trade Arbitration Commission and the China International Maritime Arbitration Commission.¹³⁰

As such, a foreign law firm and its lawyers can neither represent its clients in a Chinese court nor provide an opinion letter based on Chinese law.¹³¹ While foreign law firms receive instructions from foreign clients on legal issues in China, they must rely on local lawyers to issue legal opinions and handle litigation matters.¹³² Consequently, these restrictions protect China's legal profession and allow Chinese law firms to capitalize on the domestic legal market.¹³³ Nevertheless, in practice, foreign law firms still provide "legal advices," different from "legal opinions" with

¹²⁵ The 1992 Provisional Regulations, *supra* note 94, at art. 16.

¹²⁶ *Government Clampdown Dashes Foreign Lawyers' Chinese Ambitions*, LEGAL WEEK GLOBAL, Sept. 26, 2002, available at LEXIS, News Library, Individual Publication File.

¹²⁷ The 1992 Provisional Regulations, *supra* note 94, at art. 15(1).

¹²⁸ The 1992 Provisional Regulations, *supra* note 94, at art. 15(2).

¹²⁹ Guo, *supra* note 14, at 169. The 1992 Provisional Regulations, *supra* note 94, at art. 15(3).

¹³⁰ Jianfu Chen, Legal Institutions in the People's Republic of China, in IMPLEMENTATION OF LAW IN THE PEOPLE'S REPUBLIC OF CHINA 319 (Jiafu Chen, et al. eds., 2002).

¹³¹ Xiao, *supra* note 83.

¹³² Wong, *supra* note 114, at 51.

¹³³ Vitale, *supra* note 16, at 230.

legal effects, to foreign clients.¹³⁴ In order to provide “legal opinions” on Chinese law, foreign law firms either entrust Chinese law firms to do so or simply ask Chinese law firms to issue the opinion letter drafted by foreign law firms.¹³⁵

5. Qualifications of Representatives

As a practical matter, although there is no written provision, the approval authority has applied certain “seasoning requirements” in licensing foreign law firms.¹³⁶ For example, the chief representatives of foreign firms must be foreign lawyers with more than three years of experience and no discipline record.¹³⁷ Additionally, the chief representative at a foreign law firm must have passports from the law firm’s country of origin¹³⁸ and must be admitted in the country where the law firm is headquartered.¹³⁹

Such restrictions are to ensure the caliber of foreign lawyers, to limit the number of foreign lawyers, and in particular, to exclude foreign lawyers who receive their licenses right away.¹⁴⁰ In fact, these rules forced a European law firm to replace an American lawyer as its chief representative.¹⁴¹ It also caused Seattle-based Williams, Kastner & Gibbs to refrain from applying for a representative office in Shanghai, subsequently forcing it into a long-term alliance with a privately-owned Chinese law firm instead.¹⁴²

¹³⁴ Interview with Deng Yinxia, former associate of the Coudert Brother Beijing Office, in Philadelphia, U.S.A. (Mar. 28, 2003).

¹³⁵ *Id.*

¹³⁶ Guo, *supra* note 13, at 170.

¹³⁷ Xiao, *supra* note 83.

¹³⁸ Vitale, *supra* note 16, at 232.

¹³⁹ Guo, *supra* note 13, at 170.

¹⁴⁰ Xiao, *supra* note 83.

¹⁴¹ Gu, *supra* note 97, at 202.

¹⁴² *Id.*

6. Confidential Client Information

The Chinese government places restrictions on foreign law firms in their international business practice.¹⁴³ It sent orders to foreign law offices in Beijing, demanding “quarterly reports on information usually considered confidential.”¹⁴⁴ The information required included “client lists, locations of projects under consideration, affiliations with Chinese law firms, business reference lists, and the value of deals in negotiation.”¹⁴⁵ Foreign attorneys, accustomed to greater autonomy from the government and stricter client-confidentiality rules, believe the rule complicates their relationship with foreign business clients.¹⁴⁶

IV. IMPACT OF CHINA’S WTO ACCESSION ON FOREIGN LAW FIRMS

At the end of 2001, after fifteen years of diplomatic dancing and seesaw negotiations, China joined the World Trade Organization (WTO).¹⁴⁷ It comes in the midst of the broad transformation of post-World War II command economies.¹⁴⁸ It also represents the potential integration of over one-fifth of the world’s population into the primary system established for the purpose of enhancing worldwide economic

¹⁴³ Vitale, *supra* note 16, at 232.

¹⁴⁴ Gu, *supra* note 97, at 186. See also *Lawyer-client Privilege under Challenge*, S. CHINA MORNING POST, Nov. 15, 1996, available at 1996 WL 14296822. The Beijing Justice Bureau asked each foreign law firm to provide detailed information about their clients and the work they do for them. *Id.* The lawyers received neat little forms with blank spaces in which they are asked to report their clients' names, the location and nature of their projects and the level of investment behind them. *Id.* In an accompanying cover letter, the Justice Bureau asked that this information be updated quarterly. *Id.*

¹⁴⁵ Gu, *supra* note 97, at 186-187.

¹⁴⁶ Baraban, *supra* note 4, at 1247.

¹⁴⁷ Liu, *supra* note 4, at 1085.

¹⁴⁸ Frederick M. Abbott, *Reflection Paper on China in the World Trading System: Defining the Principles of Engagement*, in CHINA IN THE WORLD TRADING SYSTEM DEFINING THE PRINCIPLES OF ENGAGEMENT 1 (Frederick M. Abbott 1998).

growth and employment.¹⁴⁹

Most lawyers and others who monitor foreign investment in China agreed that China's WTO membership would result in a wave of corporate activity, spurred by the liberalization of the Chinese economy.¹⁵⁰ More business activity means more work for foreign lawyers, especially because much of the promised-for will arise from legal changes.¹⁵¹ Consequently, lawyers held out hope that, eventually, China will further liberalize the rules governing foreign law firms.¹⁵²

A. China's Reasons for Entering the WTO

China was one of the 23 contracting parties to the General Agreement (GATT), which was negotiated at the end of World War II and provisionally entered into force in January 1948.¹⁵³ After China's revolution in 1949 and the split between Mao Zedong and Chiang Kai-Shek, the government of the Republic of China (Taiwan) announced in 1950 that China would leave the GATT.¹⁵⁴ Although the government in Beijing never recognized this withdrawal decision, nearly 40 years later in 1986, the People's Republic of China notified the GATT of its wish to resume its status as a GATT contracting party and its willingness to renegotiate the terms of its membership.¹⁵⁵ A GATT working Party was set up in 1987 to examine China's request for the resumption of its GATT contracting party status.¹⁵⁶ In 1995, after the

¹⁴⁹ *Id.*

¹⁵⁰ *China Enters WTO; but U.S. Firms See Reasons for Caution*, N.Y. L.J., Nov. 29, 2001, available at LEXIS, News Library, Individual Publication File.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ Jeffrey L. Gertler, *The Process of China's Accession to the World Trade Organization*, in CHINA IN THE WORLD TRADING SYSTEM DEFINING THE PRINCIPLES OF ENGAGEMENT 66 (Frederick M. Abbott 1998).

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ Tang Xiaobing, *China's Economic System and its New Role in the World Economy*, in CHINA IN THE WORLD TRADING SYSTEM DEFINING THE PRINCIPLES OF ENGAGEMENT 55 (Frederick M. Abbott 1998).

entry into force of the WTO Agreement, the GATT Working Party on China was converted into the WTO Accession Working Party on China.¹⁵⁷

WTO membership has very concrete and substantial benefits for China.¹⁵⁸ First, entry would mean lower tariffs for Chinese goods by virtue of the Most Favored Nation (MFN) status and tariff binding principles of Articles I and II of GATT.¹⁵⁹ Overall, in 1994 the World Bank estimated that China's greater access to foreign markets as a result of accession to GATT and membership in the WTO would lead to a thirty-eight percent increase in PRC exports.¹⁶⁰

Second, China's entry into the WTO assures permanent normal trade relations with the United States, which in turn will lead to greater American investment.¹⁶¹ It will also prevent China from the embarrassing annual reviews of such treatment under the Jackson-Vanik Amendment.¹⁶² Third, China will have access to the formal dispute settlement procedures of the WTO, if its rights are impaired by other WTO members.¹⁶³ Of course, China will also be subject to these same procedures in the event of complaints brought by other WTO members.¹⁶⁴ Finally, China's accession to the WTO serves international "equality" purposes: China relishes the notion of being considered an equal of the global economic superpowers.¹⁶⁵ Therefore, welcoming

¹⁵⁷ *Id.* at 56.

¹⁵⁸ Gertler, *supra* note 153, at 67.

¹⁵⁹ Rai Bahala, *Enter the Dragon: An Essay on China's WTO Accession Saga*, 15 AM. U. INT'L L. REV. 1469, 1479 (2000).

¹⁶⁰ *Id.* at 1480.

¹⁶¹ Vitale, *supra* note 18, at 240.

¹⁶²¹⁶² Bahala, *supra* note 159, at 1480. Title IV Section 402 of the Trade Act of 1874, known as the "Jackson-Vanik Amendment," permits a one-year exception when the President determines that a nation substantially complies with certain freedom of emigration objectives. Guo, *supra* note 14, at 161. It was originally set up in connection with Russian relationship on trade with the U.S. John Jackson, *The Institutional Ramifications of China's Accession to the WTO*, in CHINA IN THE WORLD TRADING SYSTEM: DEFINING THE PRINCIPLES OF ENGAGEMENT 79 (Frederick M. Abbott 1998). Far from its original intent in 1974, Jackson-Vanik has changed into an annual Congressional review of China on issues such as human rights, national security, Tibet, Taiwan, environmental concerns, and labor practices - to name a few. Guo, *supra* note 14, at 161-162.

¹⁶³ Gertler, *supra* note 153, at 67.

¹⁶⁴ *Id.*

¹⁶⁵ Brad L. Bacon, *The People's Republic of China and the World Trade Organization: Anticipating a United States Congressional Dilemma*, 9 MINN. J. GLOBAL TRADE 369, 388 (2000).

China into “the family of nations” should relieve international tensions that may simply result from its hard feelings.¹⁶⁶

B. Further Liberalization of the Legal Service Market in Today’s China

Ongoing multilateral trade negotiations in recent years have raised some limited prospects for a gradual liberalization of China’s restrictive policies on foreign participation in the legal sector.¹⁶⁷ In 1997, as parts of the “request and offer” negotiation process under the General Agreement on Trade in Services (GATS), China submitted a revised schedule setting out its commitments in various sectors.¹⁶⁸ However, as China reserved certain market access and national treatment,¹⁶⁹ most provisions of the schedule commitments only reiterate current restrictions.

After thirteen years of marathon negotiations on China’s WTO membership, on November 15, 1999, U.S. Trade Representative, Charlene Barshefsky, and Chinese Minister of Foreign Trade and Economic Cooperation (MOFTEC), Shi Guangsheng, signed the Market Access Agreement. (the China-U.S. Agreement)¹⁷⁰ China agreed to open nine of its twelve service sectors – including legal service – to foreign service providers, though with some specified limitations.¹⁷¹ The agreement, along with the Market Access Agreement with European Union (the China-E.U. Agreement) on May 19, 2000, removed the last remaining barrier for China to join the WTO.¹⁷² The Doha

¹⁶⁶ *Id.*

¹⁶⁷ Moser, *supra* note 1, at 135.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ See Guo, *supra* note 13, at 173. See also Entry into WTO: Opportunity or Challenge?, XINHUA, Nov. 16, 1999, available at LEXIS, News Library, Xinhua File. Shi Guansheng put it, “[the agreement] will help China join the WTO at a sooner rate.” *Id.* The Market Access Agreement between China and the U.S.A., available at <http://www.uschina.org/public/wto/factsheets/professional.html> (last visited Mar. 28, 2003) [hereinafter the China-U.S. Agreement]

¹⁷¹ *Id.* at 173.

¹⁷² *China-EU Reach WTO Deal*, CHINAONLINE, May 19, 2000, available at LEXIS, News Library, Asia/Pacific News, Business Analysis, Country Information File. The agreement came after five days

Ministerial Conference adopted the text of China's Accession Agreement in November 2001.¹⁷³ The Final Schedule of Specific Commitments on Services, including legal services, is annexed to the Protocol of Accession of China.¹⁷⁴

According to the Final Schedule, a foreign law firm is only allowed to set up one representative office in one of the following nineteen cities: Beijing, Shanghai, Guangzhou, Shenzhen, Haikou, Dalian, Qingdao, Ningbo, Yantai, Tianjin, Suzhou, Xiamen, Zhuhai, Hangzhou, Fuzhou, Wuhan, Chengdu, Shenyang and Kunming.¹⁷⁵ Nevertheless, the Chinese government promised the geographic and quantitative limitations will be eliminated within one year after China's accession to the WTO,¹⁷⁶ i.e., before December 2002.¹⁷⁷ China indeed kept her promise. In January 2003, the Ministry of Justice approved eleven foreign law firms to open their second offices in China.¹⁷⁸ According to Duan Zhengkun, vice minister of the Ministry of Justice, a foreign law firm can open their offices in over 2 Chinese cities.¹⁷⁹ Moreover, they can establish their offices in whatever Chinese cities they like.¹⁸⁰

There remains some restrictions on representatives of foreign law firms. The Final Schedule articulates that the chief representative of a law firm must be a partner or equivalent in a law firm from a WTO-member country and have practiced for no less than three years (five years in the 1977 Schedule).¹⁸¹ Other representative must be lawyers who are members of the bar or law society in a WTO-member country and

of often tough negotiations between European Trade Commissioner Pascal Lamy and Chinese Foreign Trade Minister Shi Guangsheng. *Id.*

¹⁷³ Guo, *supra* note 13, at 174.

¹⁷⁴ *Id.*

¹⁷⁵ See World Trade Organisation, Protocol on the Accession of the People's Republic of China, Annex IX, Schedule of Specific Commitments, WT/ACC/CHN/49/Add.2, Oct. 1, 2001. [hereinafter Final Schedule]

¹⁷⁶ *Id.*

¹⁷⁷ Guo, *supra* note 13, at 174.

¹⁷⁸ *China Gives More Space to Overseas Law Firms*, *supra* note 11.

¹⁷⁹ *Terms for Foreign Law Firms to Enter China Eased*, SINOCAST CHINA BUSINESS DAILY NEWS, Jan. 14, 2003, available at LEXIS, News Library, Individual Publication File.

¹⁸⁰ *Id.*

¹⁸¹ Final Schedule, *supra* note 177; Guo, *supra* note 13, at 176.

have practiced for no less than two years (three years in the 1977 schedule) outside of China.¹⁸² In order to counter the under-staffing phenomena in which everyday operations are maintained by a secretary with called-on assistance from “fly by night” lawyers,¹⁸³ all representatives must reside in China for no less than six months each year.¹⁸⁴ The residence requirement may qualify the resident attorneys for income tax purposes.¹⁸⁵

Foreign law firms can provide with consultancy on the legislation and handle legal matters of the country where the lawyers are licensed.¹⁸⁶ They can also provide legal services on international law and information on the impact of the Chinese legal environment.¹⁸⁷ However, Final Schedule still prohibit foreign law firm from practicing Chinese law. Foreign law firms are allowed to entrust, on behalf of foreign clients, Chinese law firms or enter into contracts to maintain long-term entrustment relations with Chinese law firm for Chinese legal affairs.¹⁸⁸

Immediately after China joined the WTO, the State Council promulgated the Regulations for Administration of Representative Offices in China of Foreign Law Firms on December 22, 2001 and came into force on January 1, 2002.¹⁸⁹ The Regulations implemented China’s commitments in Final Schedule on opening up its legal service market. Many foreign law firms may not be satisfied with the speed of liberalization. Nevertheless, as He Min, head of the Administration for China Offices of Foreign Law Firms under the Ministry of Justice, pointed out, “[these restrictions

¹⁸² *Id.*

¹⁸³ Guo, *supra* note 13, at 178.

¹⁸⁴ Final Schedule, *supra* note 177.

¹⁸⁵ Interview with Hongming Xiao, former division chief at the Lawyers Department in the Ministry of China, in New York, U.S.A. (Oct. 1, 2000), *quoted in* Guo, *supra* note 13, at 177.

¹⁸⁶ Final Schedule, *supra* note 177.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ Liu, *supra* note 4, at 1087; Rep Offices of Foreign Law Firms, CHINA LEGAL CHANGE, 2001 Issue 24, *available at* <http://www.chinalegalchange.com/Archiv01/C0124032.html> (last visited Mar. 28, 2003).

do] not mean China refuses to open up its legal service market,” we must realize that “[t]he opening-up is a step-by-step process that must be constantly adjusted according to the development of [China’s] domestic legal service market”¹⁹⁰ - which is by and large still an “infant industry” by all standards.¹⁹¹

V. CONCLUSION

In the past two decades, Chinese lawyers reemerged and became more important in shaping the nation’s legal infrastructure, and made significant contributions to the establishment of the nation’s socio-economic system.¹⁹² After China’s accession to the WTO, Chinese lawyers are under additional pressures to raise their standards, in part to take advantage of the additional business opportunities that are arising, and in part to respond to increased competition from foreign lawyers.¹⁹³ On the one hand, due to the relatively poor quality of Chinese lawyers and small scale of Chinese law firms, some are worried that Chinese lawyers might be marginalized to the less-profitable part of the legal services market.¹⁹⁴ On the other hand, some suggest that Chinese lawyers should learn from the foreign lawyers’ system.¹⁹⁵ Foreign lawyers can share their expertise, not only in management of law firms, but also professional ethics.¹⁹⁶ Thus Chinese lawyers can enhance their standards to international norms.

¹⁹⁰ *Rule Change Gives New Brief to Legal Eagles*, CHINA DAILY, Dec. 28, 2001, available at LEXIS, News Library, Individual Publication File.

¹⁹¹ Guo, *supra* note 13, at 184.

¹⁹² Liu, *supra* note 4, at 1092.

¹⁹³ Peerenboom, *supra* note 64, at 145.

¹⁹⁴ *News Analysis: Who's Going to Get Bigger Piece of Law Service " Cheese Cake,"* XINHUA, Jan. 20, 2002, available at LEXIS, News Library, Xinhua File.

¹⁹⁵ *Law Firms Urged to Be More Competitive*, CHINA DAILY, Jan. 19, 2002, available at LEXIS, News Library, Individual Publication File.

¹⁹⁶ See Baraban, *supra* note 4, at 1269.

From the Chinese government's standpoint, foreign law firms can help China achieve its pragmatic goals. For instance, as China now focuses on developing its western regions, the government encourages foreign law firms to continue their role of helping China's western regions land attract more foreign investment.¹⁹⁷ Moreover, foreign law firms can crystallize and expedite the notion of rule of law. To name a few, in 1998, British barristers presented the first foreign mock trial in China, demonstrating differences in the German and U.S. legal systems.¹⁹⁸ In 2000, legal experts from China and Germany attended a symposium, sponsored by the German Embassy in China, on restricting administrative power and protecting individual rights.¹⁹⁹ In 2002, advocated by its chief lawyer, Timothy P. Stratford, General Motors (China) Investment Company Limited pledged to help China to overhaul existing laws that are incompatible with WTO rules, and may also put forward effective suggestions and aid, and introduce the successful experience of other countries into China for reference.²⁰⁰

China's legal services market is like a huge "cheese cake."²⁰¹ With the sustained rapid development of the Chinese economy, the "cheese cake" will become bigger and bigger.²⁰² Today, neither Chinese nor foreign law firms alone are able to satisfy fully the demand for legal services created by the globalized economy.²⁰³ Hence, they should work hand-in-hand to enjoy the "cheese cake" of the legal service market. Moreover, in order to promote the market economy and the rule of law, Chinese

¹⁹⁷ *China: Foreign Law Companies Open Branches*, Business Daily Update, July. 4, 2001, available at LEXIS, News Library, Individual Publication File.

¹⁹⁸ *U.S.-German Mock Trial Open in Beijing*, XINHUA, Oct. 26, 1998, available at LEXIS, News Library, Xinhua File.

¹⁹⁹ *Sino-German Symposium On Protection of Individual Rights*, XINHUA, June 13, 2000, available at LEXIS, News Library, Xinhua File.

²⁰⁰ *GM to Help China with WTO Rules*, XINHUA, Mar. 30, 2001, available at LEXIS, News Library, Xinhua File.

²⁰¹ *News Analysis: Who's Going to Get Bigger Piece of Law Service "Cheese Cake," supra note 195.* (quoting Zhang Guanbin, editor-in-chief of the Legal Service Times).

²⁰² *Id.*

²⁰³ Moser, *supra* note 1, at 136.

policy-makers should further liberalize restrictions on foreign law firms and integrate the lawyers system in China into part of the globalization process as well.²⁰⁴

²⁰⁴ *See id.*