

CHINA'S FOREIGN-RELATED LEGAL SERVICES MARKET (20 Years into the WTO: A History of China's Foreign-Related Legal Services Market)

Zhengmao Sheng

[From the Editor]

[Abstract]

TODDLING, CHINA'S FOREIGN-RELATED LEGAL SERVICES BEFORE WTO ASCENSION

Since the occupation of lawyers was restored and reinstated in 1979, the legal profession experienced a period of rapid development. The establishment of the Lawyers Qualification Exam in 1986 significantly improved the expertise of China's legal practitioners, while the simultaneous increase in the number of law students secured a steady flow of legal talents into the booming industry. In 2001 alone, 61474 students graduated law schools across China, while more than 140 thousand freshmen were welcomed into them, representing respectively a 39% and 28% increase compared to a year earlier. [1]

However, at the turn of the century, the internalization and proliferation of China's legal services were still at their inception. On the one hand, China's corporate legal services were lacking at the time, and thus unable to catch up with the trends of marketization and privatization. By 2001, only 4% of all Chinese companies had in-house legal counsels, and most of them were working exclusively for state-owned enterprises, and failed to cover the burgeoning private sector, not to mention the joint ventures. [2]

On the other hand, due to the inadequacy in foreign direct investment (FDI) and international trade, very few Chinese lawyers had the opportunity to engage in foreign-related business, and even fewer had received education, or worked, abroad. Therefore, in a world that was gradually becoming more and more inter-connected and globalized, these shortcomings greatly reduced the competitiveness of Chinese lawyers in the global arena, especially in the fields of trade, finances, international transportation and cross-border investment. Moreover, the lack of capable legal consultants also rendered Chinese companies vulnerable in their overseas transactions.

This inadequacy was aptly reflected in the history of Chinese companies' overseas mergers and acquisitions (M&As). Between 1992 and 2001, the average annual M&A bid of Chinese firms was only as high as \$516M, and when taken together accounted for less than 1% of the global total. [3] Moreover, the majority of these meager M&As were initiated and led by SOEs, and the impacts of private firms were almost non-existent. The reasons behind this phenomenon was twofold: First, before China's ascension to the WTO, its government had not yet realized the significance of out-bound investment, and failed to support or guide its firms with policies or instructions. In fact, not until 2004 did China pass its first such regulation, *Provisional Regulations on the Approval of Outbound Investment Projects*.

Second, most Chinese firms back then did not favor the very concept of cross-border mergers itself, and consider the reception of in-bound FDI, not the initiation of out-bound capital flow, the norm of a developing economy. [4] As the result, China's foreign-related legal services, which by nature is heavily focused on the outward march of capital, were of little use, and thus unable to foster the development of a capable and sizable corps of foreign-related lawyers.

Against a backdrop like this, the Ministry of Justice published in May 1992 *Provisional Regulations on the Setup of Foreign Law Firms' Representative Offices in China*, in an attempt to kick start the internationalization of the Chinese legal practice and, to some degree, complement its insufficiency in foreign-related business. These *Provisional Regulations* permitted the said offices to "advise" Chinese parties about international treaties, commerce and norms with certain restrictions. In less than three years, 32 foreign or Hong Kong law firms established their offices in major Chinese cities such as Beijing,

Shanghai and Guangzhou, bringing with them first-hand experience with foreign-related legal services. [5]

Along with these international law firms came their foreign corporate clients, as well as their investment programs. Between 1992 and 1993, China's FDI nearly doubled, 15% of which was in the form of inbound M&As. [6] Granted, most of these projects were not headed by the Chinese companies involved, but still they encompassed certain legal matters that not only were new, but also quite instructive, to the Chinese legal profession, offering them a rare opportunity to access cross-border transactions.

Other than that, since the *Provisional Regulations* placed some limits on the business and recruitment scopes of these representative offices, the foreign law firms were required to involve their native Chinese counterparts in such transnational legal services, further enhancing their skills. By 2001, a select number of Chinese law firms already commanded enough experience and expertise to independently conduct due diligence and issue foreign-related legal opinions. Toddling, the new generation of China's foreign-related lawyers was about to rise to prominence after a prolonged period of passivity.

EXPLORING, CHINESE LEGAL PROFESSION MEETS WTO

On December 11, 2001, China at long last joined the World Trade Organization, a landmark that not only had grand and long-lasting impacts on Chinese economy, but also produced brand new business sectors for the developing country's legal professions.

One such sector is maritime law, which has been on the fast track ever since China's WTO ascension. This legal sub-field encompasses issues like vessel accidents, pollution, commercial insurance and transportation, and is highly professional and technical in nature.

As early as the 1980s and 1990s, the Chinese legal community seemed to have recognized the importance of drafting and applying its own maritime law, and by 1992 the Standing Committee of China's National People's Congress had reviewed and passed a preliminary text of *Maritime Law of the People's Republic of China*. With the gradual increase in the scale of China's international trade, in 2002 China saw its ports' freight volume rise by more than 15%, a pleasant figure that kept growing in the years to follow. [7] As the result, the maritime law, a bulwark of commerce, also grew in significance.

Based on this realization, Chinese maritime law practitioners began to utilize every opportunity they could find upon China's WTO ascension, to apply the relevant norms, treaties and agreements to China's economic and legal realities. Many of their attempts gave birth to a series of China's first maritime law precedents, such as the *Tasman Sea* case represented by Haitong Law Firm in 2002. This affair first introduced the concept of maritime environmental pollution into Chinese legal jargon, and offered great reference to the Supreme People's Court's *Rules on the Ruling of Several Issues Concerning Disputes and Compensation about Petroleum Pollution by Vessels* in 2011. [8]

But this very process of learning and progress also came with more intense competition from the foreign law firms. One of the conditions on which China was let into the WTO was an opening up to a variety of cross-border professional services, including those of lawyers and legal consultants. Therefore, since 2000, the Ministry of Justice steadily cancelled the quota on the number of foreign law firms that are permitted to set up offices in China, and gradually lifted the ban on each firm having more than one such office.

Also under the conditions of WTO's General Agreement on Trade in Services (GATS), China first approved foreign law firms to maintain long-term contractual relationship with their domestic counterparts in its 2001 *Regulations on the Management of Foreign Law Firms' Representative Offices*, which green-lighted the said offices to also provide to their clients information regarding "China's legal environment".

Soon, the more experienced and internationally savvy foreign law firms posed a major threat to China's native legal profession, and came to see their rapidly modernizing local equals as new but potential competitors. Around 2001, several foreign firms stopped outsourcing to major Chinese counterparts to avoid clients' "defection", and attempted to expand their Chinese presence by recruiting associates or counsel directly from Chinese firms, to some degree taking over their niches and space for growth.

Thus, in order to give them some time to accumulate talents, expertise and fame, and to defend the autonomy and independence of this foreign-related legal services industry, the Ministry of Justice further published in 2002 the *Rules on Carrying Out the Regulations on the Management of Foreign Law Firms' Representative Offices*, in an attempt to clarify and supplement the 2001 Regulations.

First of all, the *Rules* squarely prohibited the formation of "unions" between Chinese and foreign law firms, which essentially destroyed the prospects of joint legal ventures. To tie up the loose ends, the *Rules* also banned the foreign law firms from investing in their Chinese counterparts, or to hire lawyers who hold qualifications to practice in China. Second, the representative offices and their staff were also barred from offering "specific advice" on the "application of Chinese laws", prompting them to leave a significant portion of legal business to their local competitors.

BURGEONING, THE RISE OF CHINA'S FOREIGN-RELATED LEGAL PROFESSION

Under auspices of the *Rules*, the Chinese legal profession began its steady ascent since 2001, and its expertise, as well as the influence, became much more pronounced in the many legal sectors. Thanks to a deeper understanding of China's business environment and a wider scope of services (compared to the representative offices), the native law firms successfully grasped the chances brought about by a globalized economy, and stepped into a number of foreign-related legal fields.

Overseas M&As

Riding the tide of foreign trade and investment initiated by WTO ascension, Chinese companies actively pursued overseas expansion in the years following 2001, and are said to have led the "6th Wave of Cross-border M&As" after the 2008 Depression. [10] In 2009 alone, Chinese firms's overall international M&A bid increased by 90% to reach \$16.1B, [11] which stood at 19% of all international M&A bids, the highest amongst developing countries. [12]

But even so, China's overseas M&As has been quite conservative in their geographical and industrial reach before 2010. Geographically, between 2004 and 2009, 35% of such projects were targeted at bids in Asia, 18% in Australia, and only 13% in North America and Europe each. Industrially, more than half of their acquisitions were in the exploitation and utilization of natural resources, mainly mining and energy, while few attempts were made to acquire assets in finances, technology or services. [13]

However, this imbalance began to change at the end of 2009 and the beginning of 2010. As the European Debt Crisis continued to brew, investors began to lose confidence in its market, and the subsequent withdrawal of funds plunged many European companies into managerial and financial difficulties. This posed a rare opportunity for Chinese investors to enter this more advanced market and its corporate actors. That year, for the first time China's outbound M&As exceeded \$2B in Europe, and the average bid also set record high. [14]

Since many European enterprises were leading in telecommunications, advanced manufacturing and services, it is natural that Chinese investment also went into these sectors with increasing volume. For example, AVIC Xi'an Aircraft Industry's acquisition of Austria's FACC, the first of its kind in October 2009, allowed Chinese access to some highly advanced technologies in aviation-related composite materials. [15] Two years later in 2011, Lenovo acquired the majority of shares in Germany's Medion Electronics, greatly expanding its sales and services network in Europe. [16]

Along with these Chinese companies, more and more Chinese lawyers were also going beyond the borders into foreign markets, and to assist in international transactions. As companies with different national backgrounds usually hail from various cultural norms and management styles, cross-border M&As are tests not only of law firms' professional capabilities, but also of their more subtle abilities to foster trust between the parties involved, and to help the integration of their business structures.

Such a role was aptly played by Haiwen Law Firm during the 2010 Geely Auto's acquisition of Volvo, in partnership with Freshfields Bruckhaus Deringer. It was by then the greatest acquisition case to involve a Chinese auto producer in terms of scale. [17] Three years later, Fangda Partners also played an auxiliary role in Shuanghui's merger with Smithfield's, paving the way for future Chinese law firms to handle such affairs on their own.

In 2016, Fangda further participated in ChemChina's \$43B acquisition of Syngenta, representing the former alongside top international firms like Simpson Thacher. It was a highly publicized and complex affair, involving shares issued in both Switzerland and the United States, and thus proved to be a great challenge to the Chinese professionals.

Foreign Direct Investment

In the field of foreign direct investment, or FDI, the available business opportunities were more abundant for Chinese law firms, and many were able to independently handle major projects early on. This to a large degree can be attributed to the promise of liberalizing cross-border capital flows, as well as the improvement in China's business environment. For instance, in 2013, King & Wood represented Hai'er Qingdao in a significant investment scheme. Under the conditions of its agreement with the KKR Group, Hai'er will sell 10% of its shares to the investor at \$560M, and in exchange gain access to KKR's international network, which would raise the global influence of China's native electronics brands. [18]

It is further noteworthy that the other party in this transaction (KKR) also sought Chinese assistance by hiring Haiwen Law Firm along with the more established Paul Weiss. [19] Also in 2013, China's Ministry of Commerce issued the *Preliminary Regulations on Foreign Investors' Strategic Investment in China's Listed Companies*, an apt reflection of the rising importance of China's foreign-related legal services market, as well as the market's growing demand for policy guidance.

FDI also was the field in which the ingenuity and creativity of Chinese lawyers were best exemplified. In Carlsberg's 2014 strategic investment in Chongqing Brewery, JunHe assisted the former by making use of what is called a partial tender offer, which made it easier to acquire assets when they are scattered among a large number of stakeholders. The first of its kind to be utilized in China's legal arena, the Chongqing Brewery deal was a bold venture into an uncharted territory, and the relevant legal documents provided for later cases of the sort a good roadmap. [20]

Other than creativity, these FDI projects also showcased how much the Chinese legal corps has grown professionally, especially in a world where corporate structure has become more complex, and IPOs more frequent. Also in 2014, GLP (an investment company in Singapore) commissioned AllBright (Shanghai) to represent it in its acquisition of a Shanghai-based pharmaceutical venture. It was a highly technical matter which involved, for example, reorganization of the acquired bid, governmental review and the outward transfer of intellectual property, and the successful completion of this transaction was a clear sign of Chinese lawyers' sophistication. [21]

With the continuous growth in the scale of FDI, and the diversification in FDI's reach, it was inevitable that the Chinese authorities should issue new laws and streamline the old. One of the major new regulations was *A List of Regulations for Entry of Foreign Investment into Shanghai Free Trade Zone*, published by the Municipal Government of Shanghai in 2013, which was the first time such a list of exclusions was used in China, greatly lowering the barrier of entry for foreign investors.

What was at first but a novel experiment in Shanghai soon became a national norm, when on January 1, 2021 the important *Foreign Investment Law of the People's Republic of China* went into effect. Not only so, the *Foreign Investment Law* also replaced the *Joint Venture Law*, the *Foreign-Funded Enterprise Law* and the *Cooperative Enterprise Law* in one major overhaul of China's business law system. The new landmark law unified the once scattered legal clauses and simplified the process of review, markedly aiding the further development of China's foreign trade industry.

Trade Disputes

Other than FDI, the growth in international trade also fostered the emergence of trade disputes. And thus, in order to uphold the interests of Chinese companies abroad, especially those that deal in imports and exports, more and more Chinese lawyers began to improve their proficiency in foreign-related dispute resolution after 2001. At the same time, now a member of the WTO community, China was given the power to challenge the unfair trade practices of other countries through its dispute resolution mechanism, the use of which demands specific, highly trained legal experts.

For example, Chinese lawyers played major roles in China's first lawsuit of enforcement at WTO. At the beginning of 2009, the European Union began to impose anti-dumping tariffs as high as 85% on steel fasteners imported from China. Merely six months later, Gaopeng Law Firm acted on behalf of the Chinese government and filed a complaint to the WTO, citing irregularities in the EU choosing India as a "substitute" of China in the calculation of export prices, given that producers in the two countries faced very different costs and taxation levels.

After six and a half years of litigation and appeals, WTO eventually ruled in favor of China on January 18, 2016, and demanded that the EU cancel its excessive tariffs on Chinese-imported fastener in full. [23] China's first victory against the EU at the WTO mechanism, this case not only strengthened Chinese businesses' faith in the WTO and the free-market competition it entails, but also served as a helpful referential precedent — In 2015, Zhonglun Law Firm again made use of the "substitute clause" to challenge a similar anti-dumping tariff in Taiyuan Steel's appeal to the European Court of Justice. [24]

Other than the WTO, Chinese lawyers have been quite active along other relevant lines as well, such as US Trade Representative's investigations under Section 301 of the *Trade Act of 1974*. In 2017, USTR found that the China's unfair and inappropriate policies and practices had placed burdens on American enterprises, and proceeded to impose onto \$370B worth of Chinese imports high tariffs ranging from 7.5% to 25%. [25]

At the USTR hearing, there were several lawyer representatives from DHH Law Firm's DC office. [26] They submitted to the panel multiple materials outlining how China had made major progress in out holding patent and intellectual property rights in the past few years, including the establishment of several special "intellectual property courts", and the re-editing of its *Patent Law* and *Trademark Law* in 2000 and 2001, just so that they would conform to international standards more closely. [27]

Another Chinese law firm, Global, also had its lawyers present at the hearing as representatives of China's Chamber of International Commerce. [28] They told the panel that the Chinese government pronouncedly forbids forced transfer of technologies, and extend native treatments to foreign companies in many respects. Therefore, they said, the exchange of technological and scientific knowledge between U.S. and Chinese business partners was on voluntary and market-based conditions, and thus should not be deemed problematic. [29] These confrontations beyond a regular courtroom proved quite beneficial to the foreign-related legal services providers, and indirectly raised Chinese firms' stature and competitiveness abroad.

Belt and Road Initiative, Free Trade Port and Dispute Resolution

Since 2017, new challenges arose to disrupt the international trade and investment landscapes, and pose to the business circles great uncertainty. Other than the global fall in investment returns, the rise of

protectionism and nationalism also joined forces in slowing down Chinese firms' overseas expansion. For instance, the EU, in its new 2020 screening mechanism for FDI, tightened the requirements for the entry of foreign capital, and imposed a stricter review process for those foreign companies that were seeking to tap into key industries. [30] These policy adjustments, combined with economic stagnation that naturally followed the Covid-19 pandemic, caused considerable inconvenience to China's foreign-related legal services market.

But the Belt and Road Initiative (BRI) presented itself as a viable alternative, and Chinese companies gladly took the hint and began to explore the less developed markets of Southeastern Asia, Central Asia, Middle East and Eastern Europe. In 2018, despite a nearly 14% decrease in the overall values of China's cross-border transactions, the total M&A bids along the BRI witnessed a 13.64% increase. [31]

In Southeastern Europe, for example, Hebei Steel acquired the famous Smederevo Steel Plant in Serbia early in 2016. As one of the country's biggest national steel producers, Smederevo soon became China's first overseas steel plant to have a full production chain, and this acquisition laid the foundation on which further M&As in the region were to be carried out. [32] Jincheng Tongda (JT&N) Law Firm acted as Hebei Steel's consultant throughout the deal, and also helped Zijin Mining in its acquisition of Serbia's National Copper in 2018, furthering Chinese presence in the Balkan economy. [33]

Other than these outbound investments, the BRI also manifested itself in the construction of a Free Trade Port (FTP) on the island of Hainan. By lowering the entry barriers for foreign capital and lifting the restrictions on establishing Qualified Foreign Limited Partner (QFLP) funds, the island province has been gradually turning into a commercial hub where inbound and outbound investments are conducted freely. Between 2019 and 2020, some 1000 foreign enterprises opened on the tropical island, nearly doubling the count. As a result, Hainan is becoming one of China's most prospective hotbeds for foreign-related legal services, and is likely to attract the new generation of young, ambitious lawyers. [34]

One of the most eye-catching cases of foreign investment in Hainan concerns QFLP funds themselves. On March 9, 2021, the first such funds were proposed, reviewed, and eventually set up in Sanya, one of the island's economic hubs. Jingtian & Gongcheng Law Firm was selected to be their legal consultant, and helped with devising the funds' structures and applying for qualifications, again treading into a land yet to be fully explored. [35]

Simultaneously, BRI also led to renewed demands for cross-border dispute resolution, especially those that are called "alternative dispute resolution" (ADR) mechanisms, which mostly encompass arbitration and mediation. Ever since China's *Arbitration Law* went into effect in 1995, its ADR system has been rapidly evolving to imitate the internationally recognized norms. For instance, Beijing Arbitration Commission (BAC) added several clauses on International commercial arbitration to its handbook in 2015, clearly demonstrating its cross-border arbitration capacities. It also approved the appointment of emergency arbitrators as a temporary measure, further modernizing its practices.

Several other arbitration commissions in China were equally internationalizing their services. Between 2008 and 2012, Shanghai International Economic and Trade Arbitration Commission accepted 693 cases that involved at least one foreign party, a third of its overall caseload. [36] Shenzhen Court of International Arbitration further utilized its geographical position by recruiting from the nearby metropolis of Hong Kong, and built a highly capable corps of arbitrators well-versed in trade dispute resolution. It also started a North American Arbitration Center in 2017, the first of its kind amongst Chinese arbitration organizations, which continues to train overseas arbitrators and help expose Chinese legal practitioners to the global stage.

Also there is China International Economic and Trade Arbitration Commission, the earliest, and one of the most prestigious, commercial arbitration bodies in the country. In 2012, it first explored the idea of creating a Hong Kong Arbitration Center, and went on to establish its North American and European Arbitration Centers in Vancouver and Vienna in 2017. These offshoots served as bridges between Chinese

arbitrators and their international counterparts, and to some degree raised the global awareness of China's growing ADR industry.

In 2016, to foster in its Free Trade Zones greater convenience, and to encourage the enterprises to explore new ways of conducting business, the Supreme People's Court (SPC) timely issued *SPC's Opinions on the Provision of Legal Safeguards to Construction of Free Trade Zones*, which unequivocally approved the legality of *ad hoc* arbitrations. Under its aegis, foreign enterprises registered in FTZs are permitted to conduct their arbitrations under specific conditions, at specific locations and by specific individuals that were previously agreed upon amongst the parties involved. It further allowed for them to submit such demands to arbitration bodies beyond Chinese national borders, which was a rare concession. These clauses not only raised the confidence of investors, but also provided for new avenues through which global legal talents and precedents could be introduced to support the modernizing Chinese FTZ legal system.

After 2016, with the more rapid rollout of BRI projects, the complexity of cross-border arbitrations and mediations has further increased. Some 40 countries that take part in this venture have civil law systems, while 11 make use of common law conventions, 4 of Islamic laws and 9 of mixed legal canons. [37] Therefore, their businesses and entrepreneurs follow very different laws and customs, and when disputes arise amongst them, there usually come conflicts over jurisdictions and applicable regulations, undermining the consistency in rulings or other outcomes.

To ensure the fairness, timeliness and legality of resolutions of such disputes, China established in 2018 an International Commercial Court (CICC) under the SPC, which is specifically charged with resolving commercial disputes that involve international actors. Other than its highly specialized scope, another noteworthy feature of CICC is the establishment of an Expert Panel. This panel is mostly composed of foreign professional and jurists with a background in international trade or other relevant sectors. They offered Chinese lawyers and arbitrators rare insights into the legal structures, theories and cases of other jurisdictions, and convinced more BRI companies to choose China as their location for ADR execution.

IMPROVING, INTERNAL REFORMS OF CHINESE LAW FIRMS AFTER WTO ASCENSION

Foreign-related legal services is not the only component of Chinese legal community that has undergone significant changes since China's WTO ascension — Chinese law firms are another: The increase in business volume led to rapid expansion in size and scale, contact with their international counterparts and the global legal environment brought about modern management and organizational skills, while the development of foreign-related legal services also prompted the internationalization of their legal talents.

Management and Organization of Law Firms

Starting in 2001, more and more native law firms began to set up management committees as the highest decision-making and executive body. At the same time, many of them also started to differentiate among their several classes of partners, and established different professional departments based on practice areas to further improve their efficiency. In some way, the practice of law was being commoditized, and the provision of legal services standardized with the introduction of more scientific management methods.

Some other changes were reflected in the 2007 edition of *Lawyers Law of the People's Republic of China*. For one thing, it stated the specific role of lawyers in litigation, and guaranteed that they should not be spied upon while meeting with their clients, disturbed while checking relevant materials, or hindered during their investigations. It also extended conditional immunity to a defense lawyer's statements made in court, so that their arguments, even if unorthodox, would be protected. These measures overall raised the autonomy of the legal profession, and was deemed another step towards the ideal rule of law. [38]

The new *Lawyers Law* also dealt with the organizational models of law firms, legalizing "individual practitioner firms" and "special common partnerships". The former are essentially solo practitioners in the

United States, where one lawyer acts as the sole proprietor of his profits and debts. By permitting these practitioners to conduct business on their own, the legal career became a more flexible one, and the proliferation of independent law firms produced greater competition within the industry, propping up the overall quality of their services rendered.

As for “special common partnerships”, they are in fact nothing but limited liability partnerships (LLP), where every partner does not have to be held unlimitedly accountable for the debts induced by any other partner’s negligence or oversight. In other words, should such a situation arise, those “innocent” partners would at most lose the capital they put into the failed business, but their personal property beyond such investments would remain secure.

This reform markedly lessened the risks faced by law firm partners, and naturally made LLP firms the more appealing work places. Since Dacheng (now Dentons) turned itself into an LLP in November 2009, up to this day most of China’s major law firms have become the so-called “special common partnerships”, not only in conformation with the global norm, but also in an attempt to increase their international competitiveness while challenging their Anglo-American colleagues.

Overseas Expansion of Chinese Law Firms

It was a further coincidence that the new *Lawyers Law* went into effect on June 1, 2008, only a few months before the 2008 Depression reached its peak. The former liberalized the profession while the latter created a favorable international environment for the Chinese corporate giants, whose performance was not as severely impacted. Those two forces altogether thrust Chinese law firms onto the global stage, and incentivized their overseas expansion. Before 2001, only 2 Chinese law firm had representative offices on foreign soil, [40] but by 2011 Dacheng (Dentons) alone could boast of 7 such offices. [41] By the end of 2020, the number of Chinese law firms’ overseas branches had jumped to more than 150, scattered across Europe, North America, Australia, etc. [42]

Other than the opening of overseas offices, three other methods of international expansion are most favored by Chinese law firms, namely unions, joint operations (*lianying*) and network membership. Unions are the most common: the unison between King & Wood and Mallesons Stephen Jacques, and later with SJ Berwin, as well as that between Dacheng and Dentons, both made use of what is known as a “Swiss Verein” structure. [43]

The main advantage of this model is that under it, several legal entities can share the same brandname and title without pooling their profits, liabilities or regulatory regimes, which made it the perfect candidate to Chinese law firms that were eager to boost their prestige by painting an image of international connections while less willing to explore the tangled administrative landscape abroad by actually integrating their international partners.

Compared to such unions, the still more liberal and experimental method of joint operations was first introduced by *Regulations on Joint Operations between Chinese and Foreign Law Firms in the Shanghai Free Trade Zone*, but cooperation between the parties involved under a joint operation proved to be more frequent and lasting than that within a more conventional Swiss Verein.

On one hand, although the two parties in a joint operation must set up a joint office where their personnel would work side by side, they still retain their autonomous legal and financial statuses, and remain immune from each other’s liabilities and obligations. Moreover, under a joint operation there is no need for the parties to combine their brandnames, and the risk of repetitional stains is thus avoided. On the other hand, a joint operation ensures that the cooperative parties would constantly share resources and information with each other, and that they would form bilateral teams to work with International clients, depending their mutual understanding and connections.

After the *Regulations on Joint Operations* was issued in 2014, the first joint operation law firm, Fenxun-Baker McKenzie, was soon established in the Shanghai FTZ the following April, [44] only to be followed by Wintell-Holman Fenwick Willan and Hogan Lovells Fidelity in 2016. [45] By this day, 7 such joint operation offices have been set up in the FTZ, a number that would certainly continue to rise.

Nationally, there are now 15 such joint operation offices between Chinese and Hong Kong/Macau law firms. [46] And the Chinese lawyers that work for them are permitted to keep their qualifications and certificates to practice in China, which lowered the transfer costs for them to switch back to joining a Chinese firm after accumulating experience and expertise in a foreign-related legal career.

Furthermore, several Chinese law firms also joined what are known as “referral networks”, or some other international law firm associations to foster trust and understanding with their overseas counterparts. This trend accelerated considerably into the early 21st century: before 2000, only JunHe was bold enough to venture in these networks, being a member to Lex Mundi. But by 2015, six more firms had followed suit, and their presence was felt in more networks such as TerraLex, World Law Group and Multilaw. [47]

Another noteworthy trend is the localization and “nativization” of such referral networks. As early as in September 2007, Sino-Global Legal Alliance (SGLA) declared itself the first native law firm association, and the later entry of Hogan Lovell further enhanced its capability to deal in foreign-related legal affairs. The establishment of Elite Global Legal Alliance (EGLA) in 2018, initiated by DHH Law Firm, also carried a hint of international ambitions. But unlike the inward-oriented SGLA, EGLA openly embraced the overseas market, focusing on Southeast Asia, Central Asia and Southeastern Europe in particular. Finally, there is the Belt and Road International Lawyers Association (BRILA) spearheaded by All China Lawyers Association in 2019, a recent showcase of Chinese legal community’s active pursuit for international recognition and influence.

Internationalization of Legal Talents

When it comes to internal management, Chinese law firms have become increasingly popular amongst those legal professionals with educational backgrounds or work experiences overseas. By 2017, among the top 9 Chinese corporate and capital market law firms, already more than 30% of their partners had studied abroad. Even the number of those who had worked in International firms has been growing as well, and among the “millennial generation” of partners who joined the legal community after 2000, more than 20% of all partners in these leading firms had previously served at some major foreign law firm. Taken together, three factors could account for this impressive internationalization.

The first is the rising demand for foreign-related legal talents in China. As more and more Chinese firms and individuals are investing, living and working abroad, their need for lawyers familiar with foreign languages, legal systems, and qualified to practice in other jurisdictions also are rising. In other words, the professional opportunities offered by Chinese law firms are now non par with their foreign competitors, naturally making themselves more appealing in the eyes of ambitious young practitioners.

The second is the intrinsic growth and sophistication of China’s legal profession. Compared to more than a decade ago, the contemporary foreign-related Chinese law firms now possess more mature management styles and promotion tracks, alongside specializing professional departments. These allowed lawyers with foreign backgrounds to more quickly integrate themselves into the firm structures, to hone their skills and to further contribute to the overall success of China’s foreign-related legal services market.

The third is the domestic development of China’s emergent legal markets and services, such as legal technologies, online legal platforms and internet law firms. These new concepts first emerged in Europe and the United States, but have been gradually working their way into the Chinese market in recent years. These fields, with their highly modern outlook and new career prospects, became ideal niches for those that are keen on exploring new legal opportunities and internationally savvy. For example, Inter Lawyers,

the first platform-sharing “internet legal office” in China which landed in Beijing earlier this year, was founded with significant guidance and input from lawyers and jurists with international backgrounds. [49]

TWENTY YEARS BUT A PRELUDE

[Endnotes]