

THE ALLURE OF CHINA FOR LAWYERS

By Reena SenGupta
Published: Jun 30, 2005

When Liu Chuanzhi started a personal computer business in 1984 off “Swindler’s Alley”, Beijing’s electronics black market, he could never have imagined it would one day buy IBM’s PC business.

Clifford Chance, the lawyers on the Lenovo-IBM deal, would similarly have had little idea that within 20 years of becoming the first European legal firm to set up shop on the mainland it would be acting in 65 jurisdictions on such a significant transaction for a company based in the People’s Republic of China.

The IBM/Lenovo deal is a powerful symbol of the opportunity that is developing for international law firms in China. Although much of the work handled by foreign firms still relates to inward investment, or Chinese companies listing on the Hong Kong stock exchange, the development of Chinese companies into dynamic global entities is exciting the lawyers.

Often young, entrepreneurial and with global ambition, such companies are a refreshing alternative to former state-owned organisations. More importantly, they are willing and able to behave like conventional multinational law firm clients. For example, Chinese companies tend to be aggressive on pricing in their home markets. But this was not an issue for Clifford Chance acting for Lenovo. “Happily, we were able to persuade it about our value proposition,” says John Healy, one of the US partners on the deal.

The Chinese legal market is reflecting the rapid changes taking place in the economy and society as a whole. Most Chinese firms focus on the domestic market although they are increasingly sophisticated and developing fast. Many lawyers at these firms have foreign training and experience. Chinese firms also tend to have better networks than foreign firms as well as better government connections.

However, the Chinese legal profession, which has been allowed to exist properly only since 1979, and to form non-state owned partnerships since 1996, is still young. “We are like teenagers compared to the international law firms,” says Mr Jungfen Wang, managing partner of China’s largest law firm, King & Wood.

All the same, multinational companies are becoming more comfortable about instructing Chinese firms directly instead of going through their international advisers. According to Lucille Barale, a partner at Freshfields Bruckhaus Deringer, another firm with a long history in China, companies are increasingly knowledgeable about doing business in China. They know the need for careful due diligence and government approval, as well as problems that a lack of transparency can pose. More crucially, they are aware of a key cultural issue that affects foreign ventures: “Tong Chuang Yi Meng [Same bed, different dreams].”

Just as barriers have come down for business, the rules have relaxed for professional advisers. Compared

with other Asian legal markets, such as India, the Chinese regime is very liberal. The only onerous restriction faced by foreign law firms is that they are effectively unable to hire Chinese lawyers to practise Chinese law and cannot enter into a joint venture

with a Chinese law firm. However, these restrictions have been relaxed for Hong Kong lawyers, many of whom work for international law firms.

Foreign law firms number nearly 200 in mainland China. Latham & Watkins is one of six US firms that have opened offices in China in the past year. Rowland Cheng, managing partner of its Shanghai office, says: "The authorities deserve a lot of credit for creating a hospitable environment to do business." The most serious difficulty Latham experienced was the lack of suitable office space in Shanghai.

The Chinese government is trying to tackle the country's lack of lawyers with international scope. It has announced plans to have a million lawyers active by 2020 and has ambitions to make China a leading legal centre. The Law Society of England and Wales observes that the Chinese understand the potential of exporting legal services. Indeed, a Sino-British College for lawyers, which the Chinese government hopes will raise levels of competence, training and numbers in the Chinese legal profession, is scheduled to open in London next year. Significant social, political and educational change will need to take place before this happens, however.

Xiaoming Li, a dual-qualified US/People's Republic of China lawyer who has worked for both foreign and local firms and is now a partner at White & Case in Beijing, says that giving legal advice in China can be difficult. Lawyers are often not treated with respect or even heard in business meetings. "The political system still does not give a lot of importance to the practice of law and, to that extent, the rule of law. And, therefore, sometimes when you visit clients in China, particularly state-owned companies, the legal advice is secondary," says Mr Li.

Andrew Halper, a China specialist at UK law firm Eversheds, adds: "The real independence of the [Chinese legal profession] is partial. But isn't that like being partially pregnant?"

Many international lawyers complain that doing business in China is made harder by poor legal representation on the Chinese side despite the existence of credible domestic law firms. "Sometimes there is no representation at all and you get amateurs on the other side who are slavishly following some guidebook issued by the ministry of commerce. You are not getting able professionals who can help create a viable structure for the deal," says Mr Halper.

Mr Healy says the McKinsey partners involved in the Lenovo/IBM deal said they were more used to observing Chinese executives using their external legal advisers as scribes. They were surprised at Clifford Chance's ability to influence the deal as they would in a western context.

"The fact that even an outfit as sophisticated as McKinsey hadn't seen that before in China is a telling reflection of where the Chinese legal market still is," says Mr Healy.

LEADING PEOPLE'S REPUBLIC OF CHINA LAW FIRMS:

Band 1*

Commerce Finance Law Offices; Haiwen & Partners; King & Wood

Band 2

Jingtian & Gongcheng; Jun He Law Offices

Band 3

AllBright Law Offices; Fangda Partners; Global Law Office; Llinks Law Office; ShanghaiPu Dong Law Office

LEADING FOREIGN LAW FIRMS IN CHINA:

Band 1

Freshfields Bruckhaus Deringer

Band 2

Allen & Overy; Baker & McKenzie; Clifford Chance; Linklaters; Shearman & Sterling

Band 3

Herbert Smith; Jones Day; Lovells; O'Melveny & Myers

Band 4

Allens Arthur Robinson; Coudert Brothers; Gide Loyrette Nouel; Morrison & Foerster; Paul, Weiss, Rifkind, Wharton & Garrison; Skadden, Arps, Slate, Meagher & Flom & Affiliates; Sullivan & Cromwell; White & Case

*Firms are ranked in bands Source: Chambers Global 2004