

## China's Legal Boom

By Amy E. Wong

China's economy is booming. In 2005, the country had the world's sixth-largest economy, with a gross domestic product of \$1.79 trillion. It is speculated that China's GDP will exceed the economic vigor of United Kingdom and France in 2006.

As a result, China's less developed legal system is undergoing major changes. As the government creates more laws and regulations to keep business activity in check, Chinese corporations are protecting their personal interests by hiring in-house lawyers.

For a country that had almost no in-house lawyers a decade ago, these changes mark a hectic and exciting time of legal growth. No longer are Chinese corporations relying on expensive outsourced legal help whenever legal issues arise.

Beijing-based wireless Internet provider Tom Online, Inc., now has 10 in-house lawyers; but Peter Schloss, the Internet provider's General Counsel, told *Corporate Counsel*, "We could double our legal department. We're that busy."

Andrew Pringle, a Hong Kong-based recruiter with Major, Lindsey & Africa, propounded this trend in a article, saying, "We see a huge increase in in-house jobs. The market is red-hot." With demands for Mandarin-speaking in-house counsel from manufacturing, financial, banking, private equity, hedge funds, and distressed debt, Pringle said that, "It's a headhunter's nightmare."

What has been increasingly apparent is the fact that there are two very different groups vying for these in-house positions. One group is comprised of ambitious bilingual attorneys from top law firms, who migrated eastward about a decade ago. The other group is comprised of a group of China-educated lawyers whose most experienced attorneys have less than 20 years of legal experience.

In most cases, an American corporation will transfer a trusted bilingual attorney, who will act as GC of its China-based subdivision. U.S. lawyers typically possess two really important assets: independent judgment and more international legal expertise. China-educated attorneys, on the other hand, tend to have more localized legal expertise and an overly respectful attitude towards Chinese authority.

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In a cutthroat capitalist environment, in-house attorneys cannot merely comply with what authority decrees, though. They have to know, interpret, and apply the law in ways that protect the interest of their business.

General Counsel of major China-based Internet company, Joseph Tsai, told *Corporate Counsel*, “A U.S. lawyer would think about the source of a law and the logic behind a legal position, whereas a Chinese [-educated] lawyer might just call up a government official to see what the law is.”

Nonetheless, the majority of lawyers in American and Chinese corporations are Chinese lawyers. This is due, in part, to the fact that Chinese lawyers are familiar with their culture. They know how to network with Chinese business associates, regulators, and government officials. Because of this familiarity, they can easily obtain licensing agreements and other necessary documentation.

*Asia Business Law*, an online blog, explained this cultural clash, saying, “In the States, we tend to take our problems straight to the top.... In Chinese government, such a strategy may yield less certain results. The Chinese government is really nothing more than a structure imposed upon this society to legitimize rule by the Party.”

There are a few characteristics of the Chinese legal system that many Americans don’t comprehend. For instance, the Party—not the Chinese government—creates the Codes that constitute Chinese law. Also, if someone is a more influential Party member, then he/she wields more political power. For example, a subordinate may hold more power than his boss because he is higher positioned in the Party. These obscured lines of authority may cause great frustration to foreign lawyers who confront business setbacks.

For about a thousand years up to 1979, China followed a traditional socialist path in which emperors and dictators created laws. China has spent the last few decades trying to promote its economic development by emulating the laws of more developed countries.

Laws that protect people from each other *and* from unjustified government interference are, for the most part, foreign to Chinese legal tradition.

As a result of its haphazard development, China is over-regulated with a host of contradictory local and central regulations. This conflict of power between two separate entities often forces investors to confront the odd predicament of choosing between local and central laws.

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As *Asia Business Law* aptly stated, “It is China’s legal tradition that explains the central obstacle to doing business in China.”

Because of local officials’ strong grip on business, companies find themselves responding to authorities as local as the police department. Most corporations know that it’s essential to employ Chinese lawyers to deal with daily contact with local bureaucrats and to interpret the numerous laws and regulations from local and central authorities.

*China Law Blog* asserted, “When dealing with the Chinese government or with a Chinese state-owned enterprise, it is important you understand with whom you are really dealing and who really wields the authority.”

The blog continued, “Having someone on your business team who is fluent in Chinese and understands both your business and Chinese business laws will go a long way towards determining where the real power lies and towards helping you negotiate with it or around it.”

As with anything that is new, there is a period when one has to figure things out. China’s economic boom has created a huge need for in-house attorneys. As a result of an extreme culture clash, American and Chinese lawyers are working side by side in order to protect their companies’ best interests and their countries’ continued economic growth.