

CHINESE CORPORATE LAWYERS FACE CHALLENGES IN MAINTAINING CORPORATE SOCIAL RESPONSIBILITY IN THE AGE OF GLOBALIZATION

Ding Xiangshun*

A. INTRODUCTION

In China, the term “lawyer” is defined as “a practitioner who has acquired a lawyer’s practice certificate pursuant to law and provides legal services to the public.”¹ Since the reforms to the regulation of lawyers in the early 1980s, the Chinese legal services industry has developed dramatically, and the swift expansion of the legal profession is evident in both quantity and quality.² By the end of 2009 there were over 166,000 practicing lawyers, compared with just several hundreds in the early 1980s.³ Chinese lawyers have become better able to pursue the interests of their clients, and their income from legal practice has increased substantially.⁴ The process of professionalization has contributed to a trend towards specialization, and more lawyers have begun to specialize in commercial

* Associate Professor at Renmin University of China Law School and director of the Center for Asian Law Studies at Renmin University of China. I would like to thank Professor Frank Emmert, the John S. Grimes Professor of Law and Director of the Center for International and Comparative Law at Indiana University School of Law–Indianapolis for his invitation to the Spring 2010 Indiana International & Comparative Law Review Symposium. I would also like to thank the members of the Indiana International & Comparative Law Review for their warm reception.

1. Zhonghua Renmin Gongheguo Lüshi Fa (中华人民共和国律师法) [Law of the People’s Republic of China on Lawyers] (promulgated by the Standing Comm. Nat’l People’s Cong., May 15, 1996, effective Jan. 1, 1997, amended June 1, 2008), art. 2 (China) [hereinafter Lawyer’s Law].

2. The “Interim Regulations of the People’s Republic of China on Lawyers” was adopted in 1980 and provided the legal foundation for the rehabilitation of the lawyer system. This state-centered legislation was revised as the “Law of the People’s Republic of China on Lawyers” in 1997. This revision aimed to frame the legal profession in the context of a socialist market economy. The latter version was more profession centered, as it made the profession more independent of the state and granted it a higher degree of autonomy from the Ministry of Justice.

3. See Deng Zhihui (邓志慧), Sifabu Zhongguo Zhiye Lishi Renshui yi Da 16.6 Wan (司法部: 中国执业律师人数已达16.6万) [*Ministry of Justice: Number of Lawyers Working in the Legal Profession Reaches 166,000*], PEOPLE’S DAILY ONLINE (Feb. 16, 2010), <http://politics.people.com.cn/GB/1027/10979482.html>.

4. See *id.* For general information regarding Chinese news, see the official press agency of the government of the People’s Republic of China, Xinhua News Agency. XINHUA NEWS AGENCY, <http://www.xinhuanet.com/english2010/>.

transactions rather than practicing litigation (especially criminal litigation) for non-commercial clients.⁵

Simultaneous with this trend has been increasing demand, in terms of both hiring or recruiting, for specialized lawyers or exclusive legal employees from enterprises because of the development of the rule of law, a mixed market system, and a general opening to the outside world. More and more enterprises now seek advice from legal professionals, and some have even established internal legal affairs departments where legal employees play an important role in corporate governance and conducting domestic and international transactions.⁶

In this Article, the term “corporate lawyer” refers to those legal professionals enrolled either as attorneys-at-law dealing with transactions for corporate clients or internal legal employees with special legal qualifications. The policy of opening to the outside world began in the late 1970s, and globalization has significantly affected the nature and characteristics of Chinese legal professionals, including corporate lawyers. In particular, accession to the WTO in 2001 made China a full member of the world economy. At that time, China also began opening its market to the world more fully. Chinese companies now have more opportunities to enter the world market, which means that Chinese enterprises have to compete with international enterprises in multinational market environments. Throughout this process, Chinese corporate lawyers have faced new challenges emerging from the needs of their clients in a newly globalized China and from society for maintaining social responsibility. The goals of this paper are to explore the challenges that Chinese corporate lawyers face regarding competence and professional ethics and to suggest possible solutions that the Chinese legal community should consider.

5. The rate of representation of criminal cases is very low. Some professors estimate that the representation rate in criminal cases is lower than twenty percent. See Yufan (羽帆), Quanguo 210 Gexian Meiyou Lüshi Xingshi Anjian Daililü Budao 20% (全国210个县没有律师 刑事案件代理率不到20%) [*Two-Hundred and Ten Counties Are Without Any Lawyers and the Representation Rate in Criminal Cases is Lower than 20% of Agents*], QIANLONG.COM (Aug. 27, 2010), <http://news.qianlong.com/28874/2010/08/27/118@6040734.htm> [hereinafter *Two-Hundred and Ten Counties*].

6. See generally Yin Nianzhang & Wen Yungang (尹年长 & 闻运钢), Qianyi Woguo Qiye Falü Guwen Zhidu Cunzai de Wenti ji qi Wanshan (浅议我国企业法律顾问制度存在的问题及其完善) [*A Brief Discussion on the Problem of the Enterprise Legal Consultant System and Its Improvement in China*], 27 J. GUANGDONG OCEAN UNIV. No. 2 (2007) (China) (discussing the need to develop the role and function of the enterprise legal consultant). For instance, China Orient Asset Management Corporation (COAMC), a wholly state-owned financial enterprise, established its department of legal affairs at its founding. The main job of its legal department is to be in charge of management of the enterprise's legal affairs. See generally CHINA ORIENT ASSET MANAGEMENT CORPORATION, <http://www.coamc.com.cn/en/> (last visited Apr. 8, 2011).

B. THE SPLIT BAR QUALIFICATION OF CORPORATE LAWYERS

Generally, corporate lawyers are those legal professionals who work for or represent corporate clients in transactional law. The role of the corporate lawyer is to ensure the legality of commercial transactions and give advice regarding legal rights and duties, including the duties and responsibilities of corporate officers. However, in China, legal professionals who work for corporations include not only practicing lawyers employed in law firms but also in-house legal employees. These legal professionals providing legal advice to corporations are divided into two categories: internal and external.

External legal counselors are those who are authorized by corporate clients to deal with clients' business affairs. Internal legal counselors are those in-house lawyers with legal qualifications that allow them to work for and within corporate entities. After being recruited by an enterprise, those lawyers who have worked at law firms can adjust their statuses from practicing lawyer to internal lawyer. Additionally, internal counsel who have not practiced externally are divided into two categories: enterprise legal advisor (*Qiye Falü Guwen*) and corporate lawyer (*Gongsi Lüshi*).

1. *The Qualification of "Enterprise Legal Advisor"*

The enterprise legal advisor system emerged from the Operational Regulation for the Head of State-Owned Enterprises, issued by the State Council in 1986,⁷ which provided that state-owned enterprises could create the position of legal advisor as internal legal employees. However, the qualifications to be an enterprise legal advisor were not fully established until 1997 when the following three important central administrative bodies became involved: the Ministry of Personnel, the Commission of Economy and Trade, and the Ministry of Justice.⁸ Unlike other legal professionals, an enterprise legal advisor is regarded as the internal legal employee of the enterprise that employs him or her and is not allowed to practice for general clients. As of 2005 there were over 90,000 legal advisors, more than 30,000 of whom had passed the qualification exam to be a legal advisor.⁹

7. Quanmin Suoyouzhi Gongyeqiye Changzhang Gongzuo Tiaoli (全民所有制工业企业厂长工作条例) [Operational Regulations for the Head of State-owned Enterprises] (promulgated by the State Econ. & Trade Comm'n., Sept. 15, 1986, effective Oct. 1, 1986) (China).

8. See Qiye Falü Guwen Zhiye Zige Zhidu Zanzing Guiding (企业法律顾问执业资格制度暂行规定) [Provisional Regulations on the Qualification of Enterprise Legal Advisors] (promulgated by the Ministry of Justice, Mar. 12, 1997, effective Aug. 14, 2004) (China) [hereinafter Qualification for Enterprise Legal Advisors].

9. Wu Shaoying (吴少鹰), Qianlun Woguo Qiye Falü Zhiye Zhidu de Wanshan yu Chonggou (浅论我国企业法律职业制度的完善与重构) [Simple Discussion on the Perfection and Restructure of the Legal Profession System in China's Enterprises],

Legal advisors are concentrated in large or medium-sized enterprises, particularly in state-owned enterprises affiliated with the central government. As of 2007, 121 of the 159 central-level state-owned enterprises had independent legal affairs departments.¹⁰

An enterprise legal advisor's duties include but are not limited to the following: legal consultation for the enterprise's business operations, including internal management and business with third parties; reviewing and verifying the legality of labor contracts, labor management rules, and salary structures; drafting contracts; and reviewing various legal documents.¹¹ To obtain qualification as an enterprise legal advisor, applicants are required to pass an examination that includes four parts: comprehensive legal knowledge; economy and civil and commercial legal knowledge; knowledge of enterprise management; and knowledge of the practice of enterprise legal advisors.¹²

2. *The Qualification of "Corporate Lawyers"*

In 2002, the Ministry of Justice established the qualifications to be a corporate lawyer. To become a corporate lawyer, one must pass the unified bar examination, also established in 2002, or obtain practical licenses to be a lawyer.¹³ Corporate lawyers are also employees of the enterprise for which they work. Once they are hired by the enterprise, they serve as in-house counsel and are not permitted to practice in a law firm or represent other clients.¹⁴

According to the documents issued by the Ministry of Justice that created the category of corporate lawyer, the main purpose for creating this special category was the need to better meet the demand for legal services among large enterprises, especially large state-owned enterprises, particularly after China acceded to the WTO.¹⁵ Since then, a small number of corporate lawyers have been located in enterprises and banks that operate nationwide, such as China CITIC Bank and HuaXia Bank Lenovo Group Limited. Different than enterprise legal counsel, corporation lawyers have

Zhongguo Sifa (中国司法) [Justice of China] Vol. 11 (2007).

10. See generally Fazhi Ribao (法制日报), LEGAL DAILY, www.legaldaily.com.cn (last visited Apr. 8, 2011).

11. See Guoyou Qiye Falü Guwen Guanli Banfa (国有企业法律顾问管理办法) [Measures for the Administration of In-house Legal Counsels of State-owned Enterprises], (promulgated by the State Asset Supervision & Admin. Comm., May 11, 2004, effective June 1, 2004), art. 24 (China).

12. See Qualification for Enterprise Legal Advisors, *supra* note 8.

13. See Sifabu Guanyu Kaizhan Gongsì Lüshi Shidian Gongzuo de Yijian (司法部关于开展公司律师试点工作的意见) [Advice of the Ministry of Justice on Carrying out the Pilot Work on In-house Lawyers] (promulgated by the Ministry of Justice, Oct. 12, 2002) (China).

14. See *id.*

15. See *id.*

additional legal qualifications and are governed by the lawyers' law and regulations of lawyers' ethics.¹⁶ All corporate lawyers are members of local lawyers' associations. Since corporate lawyers hold unified bar qualifications, they may practice at a law firm. As of 2009, over 250 central and local large enterprises employed corporate lawyers, and the number of corporate lawyers was 1,217.¹⁷

There is little demand for in-house legal departments among domestic-oriented enterprises. For medium and small-sized enterprises, it is not necessary or possible to recruit a legal professional. They usually hire external counsel to handle legal affairs as needed. But, for some national or international enterprises, departments of legal affairs composed of legal advisors or corporate lawyers play a very important role in dealing with regular operations and legal affairs.¹⁸ The creation of the category of corporate lawyer exemplifies this trend.

Although their routes to obtaining qualification and supervision differ, often there are no substantial differences in the scope or type of work corporate lawyers and legal advisors actually do. They may work together in the same department for large enterprises. For example, the in-house legal department at China Eastern Airlines Corporation Limited, one of the country's top-three carriers listed on the Shanghai, Hong Kong, and New York Stock Exchanges, was chosen as the "Chinese Company In-house Team of the Year" in 2010. According to Guo Lijun, general manager of the department,

[i]n-house departments are now seen as an indispensable, cost-effective and expert resource They have expertise in law and the legal industry, combined with [an] intimate understanding of their companies' businesses and strategic goals [T]he in-house legal function is

16. Lūshi he Lūshi Shiwusuo Zhiye Zhengshu Guanli Banfa (律师和律师事务所执业证书管理办法) [Measures for the Administration of the Practicing Licenses of Lawyers and Law Firms] (promulgated by the Ministry of Justice, Sept. 21, 2009) (China).

17. Chen Jumei (陈菊梅), Woguo Saqian Yuming Lūshi Dangxuan Geji Renda Daibiao he Zhengxie Weiyuan (我国三千余名律师当选各级人大代表和政协委员) [*Three Thousand Lawyers Elected to All Levels of NPC Deputies and CPPCC Members*], MINISTRY OF JUSTICE, http://www.moj.gov.cn/moj/2008-04/15/content_833721.htm (last visited Apr. 8, 2011).

18. See *Two-Hundred and Ten Counties*, *supra* note 5. The state-owned Assets Supervision and Administration Commission (SASAC) even issued legal documents to demand the central state-owned enterprises to set up such internal departments. See Lian Yingting (廉颖婷), Yangqi Zong Falü Guwen Zhidu Daxiang Gongjianzhan (央企总法律顾问制度打响攻坚战) [State-owned Enterprises Are in a Critical Stage for Establishing the System of General Legal Advisors], LEGAL DAILY, (May 13, 2007), http://www.legaldaily.com.cn/index_article/content/2007-05/13/content_615312.htm(China).

regarded as important as finance and audit departments. Its influence is on the rise in every stage and aspect of the company's operations.¹⁹

Even those enterprises with internal legal staff must sometimes depend on external lawyers on some important issues or projects such as initial public offerings (IPOs) or major litigation. The area of enterprise affairs has become one of the most rapidly developing areas for Chinese lawyers. Thus, when discussing corporate lawyers in China, we must consider commercial lawyers in law firms who provide legal services for enterprises.

C. WHAT DOES GLOBALIZATION MEAN FOR CHINESE CORPORATE LAWYERS?

Globalization means that businesses of all types operate abroad and regularly partner with foreign firms. As with the development of many service-oriented industries, "the international movement of American law firms has been largely motivated by a desire to follow and retain existing clients, as well as to expand the client base to include lucrative foreign interests."²⁰ "Because the law is fundamental to doing business in the modern world and additional complexities are created by doing business across national borders, attorneys hold a unique position in global commerce."²¹ "By educating themselves about their clients, the transactions, and the places the transactions affect, lawyers ideally help ensure a productive and smooth-operating global market."²² This is also true for Chinese lawyers, particularly Chinese corporate lawyers.

The policy of openness to the outside world and accession to the WTO has enticed more foreign enterprises to enter China, and Chinese enterprises are entering foreign markets.²³ Both Chinese and foreign enterprises compete and collaborate in Chinese and international markets, thereby extending the scope and space of legal practice for Chinese corporate lawyers. Their main role is to ensure the legality of commercial

19. Yun Zhang, *ALB China In-House Survey: In Search of Best Practices*, ALB Legal News (May 31, 2010), <http://china.legalbusinessonline.com/surveys-and-ranking/alb-china-in-house-survey-2010-in-search-of-best-practice/46314>.

20. Justin W. Evans, *The Magic Confluence: American Attorneys, China's Rise, and the Global Value Chain*, 18 *IND. INT'L & COMP. L. REV.* 277, 278 (2008).

21. *Id.*

22. *Id.* (quoting Cynthia Losure Baraban, Note, *Inspiring Global Professionalism: Challenges and Opportunities for American Lawyers in China*, 73 *IND. L.J.* 1247, 1271 (1998)).

23. Li Renzhen (李仁真), *WTO yu Zhongguo Falü Fuwu Shichang de Duiwai Kaifang* (WTO 与中国法律服务市场的对外开放) [*WTO and Opening up of China's Legal Service Market*], *Zhongguo Sifa* (中国司法) [Justice of China] Vol. 11 (2004).

transactions and advise corporations of their legal rights and duties, including the duties and responsibilities of corporate officers. In order to do so, they must have knowledge of contract law, tax law, accounting, securities law, bankruptcy, intellectual property rights, licensing, zoning laws, and other laws specific to the business of the corporation in different countries. Multinational business brings new opportunities for Chinese corporate lawyers, but such opportunities also bring elevated requirements in terms of competence. They need to know not only Chinese law but also foreign and international law; they need to collaborate not only with their Chinese colleagues in Chinese but also with their multinational colleagues in foreign languages, particularly in English.²⁴

Globalization affects the practice of Chinese corporate lawyers in many ways. First of all, foreign enterprises become Chinese lawyers' clients. With more openness in the Chinese market, international enterprises and some small enterprises and non-profit organizations set up entities or representative offices in China. Because of the limitations on the practice of foreign lawyers in China and the demand for local personnel with expertise in Chinese law, foreign entities have to work with Chinese lawyers either directly or through their foreign lawyers.²⁵ Serving foreign clients and collaborating with foreign lawyers has become a new challenge for many Chinese lawyers, especially for corporate lawyers.

Second, Chinese corporate lawyers have to collaborate and compete with foreign lawyers in China. China started to approve the entry of foreign lawyers in 1992 when the Ministry of Justice issued the interim Regulation on the Establishment of Foreign Law Office in China, providing that foreign law firms are allowed to establish representative offices.²⁶ As of 2010, there were 224 representative offices in mainland China representing 21 countries and 65 representative offices in Hong Kong.²⁷ Thus, with the openness of the economy, the globalization of the Chinese corporate law market is also emerging and is the source of most of the opportunities

24. Evans, *supra* note 20, at 287–88.

25. According to the Measures for the Implementation of the National Judicial Examination, only nationals of the People's Republic of China may become members of the Chinese bar, and foreign lawyers lack authority to represent clients in Chinese courts. See Guojia Sifa Kaoshi Shishi Banfa (国家司法考试实施办法) [Measures for the Implementation of the National Judicial Examination], (promulgated by the Ministry of Justice, Aug. 14, 2004, effective Aug. 14, 2004), art. 13 (China).

26. The Interim Regulation on the Establishment of Foreign Law Office in China was jointly promulgated by the Ministry of Justice and State General Administration of Commerce and Industry and replaced by Regulations for Administration of Representative Offices of Foreign Law Firms in China in 2001.

27. See *China's Law Profession Advances as Nation Builds Rule-of-Law System*, EMBASSY OF THE PEOPLE'S REPUBLIC OF CHINA IN AUSTRALIA (Feb. 17, 2010), <http://au.china-embassy.org/eng/xw/t658820.htm>.

awaiting foreign lawyers in China.²⁸ However, legal practice is an exception to this openness since foreign lawyers lack authority to represent clients in Chinese courts and may not interpret the applicability of Chinese laws.²⁹ Chinese lawyers have advantages and privileges over foreign lawyers in interpreting Chinese law and representing clients in court. Partially due to the ambiguousness of the regulations, while foreign lawyers are only allowed to interpret foreign laws and their practice is limited, many foreign lawyers do provide legal services through their local representative offices or headquarters overseas.³⁰

For example, a foreign company interested in entering China usually will want to employ the insight and network of a local Chinese law firm. "At the same time, however, the business may also want to retain their own lawyers, to give objective advice already known to be trustworthy and competent, and to manage the legal relationship between the company and its Chinese attorneys."³¹ Therefore, with the formation of a platform for Chinese lawyers and foreign lawyers to work together, Chinese lawyers have to compete and work with their international colleagues. International corporate legal services is the most important area for foreign law firms in China. The total income for foreign lawyers in China in this area reached US\$4 billion in 2009.

Third, Chinese lawyers have to work and compete with foreign lawyers in overseas markets for their Chinese clients. With the development of the Chinese economy, more Chinese enterprises have started to enter foreign markets. In this situation, Chinese corporate lawyers have to work on issues relating to foreign laws in foreign legal environments and must collaborate with foreign lawyers in foreign countries.

In contrast to the adversarial nature of trial law, corporate law is team oriented. When Chinese corporations enter international business, the corporate counsels for both sides of a transaction are not strict competitors; they seek a common ground for their clients.³² In some important projects, such as IPOs, the collaboration between Chinese lawyers and foreign lawyers is critical because foreign corporate lawyers have expertise in

28. See Sida Liu, *Globalization as Boundary-Blurring: International and Local Law Firms in China's Corporate Law Market*, 42 L. AND SOC'Y REV. 771, 779 (2008).

29. Evans, *supra* note 20, at 306.

30. For example, the Shanghai Bar Association tried to crack down on foreign law firms for conducting unauthorized activity in 2007. See *China May Crack Down on Foreign Law Firms*, CHINA DAILY (May 16, 2006), http://www.chinadaily.com.cn/china/2006-05/16/content_590787.htm.

31. Evans, *supra* note 20, at 290.

32. See Liu, *supra* note 28, at 780-83 (explaining the competitive nature of Chinese and foreign law firms for local work and noting the difference in working with corporate clients rather than Chinese firms).

providing services concerning Hong Kong law or U.S. law, while Chinese lawyers have expertise in the reorganization part of the deal.

D. CHALLENGES IN TERMS OF THE COMPETENCE AND LEGAL ETHICS OF CHINESE CORPORATE LAWYERS

In contrast with “Western democratic countries, the landscapes of legal professionalism in non-democratic countries [such as China] have exhibited a completely different picture.”³³ But, one result of globalization and the opening to the outside world has been to force Chinese legal professionals to compete with their Western counterparts that have developed their legal ethics over several hundred years in a relatively static environment. It is obvious that these new challenges “place Chinese lawyers in a less competitive position vis-à-vis their Western [rivals], who tend to have higher professional and academic standards.”³⁴

One American remarked that “[w]hile some local lawyers [in China] are often cheaper [than international ones], if they have not spent extensive time in the West, they may not have the professional insight into or understanding of the foreign side to really act as an effective ‘bridge.’”³⁵ Facilitating a business requires insight into the client’s needs, expertise, flexibility, and most of all, a service mentality. With the rapid development of the Chinese economy and globalization, the new complexity of legal issues deeply affects the legal practice of Chinese corporate lawyers. Chinese corporate lawyers are often not competent to meet these new challenges for several reasons, including the language barrier, an inadequate understanding of foreign laws and foreign legal cultures, and the difficulty of governing corporate lawyers’ behavior and ethics.

1. *The Language Barrier*

The first and most obvious challenge is the language barrier. Because so many international transactions are conducted and completed primarily in English, it is crucial for Chinese corporate lawyers to have excellent communication skills in both Chinese and English. Throughout the negotiation process, lawyers constantly write and revise the legal documents which will bind the parties. In international legal practice, English is used widely. Most Chinese law students and lawyers study English in college, but few can competently combine their English skills

33. Carlos Wing-Hung Lo & Ed Snape, *Lawyers in the People’s Republic of China: A Study of Commitment and Professionalization*, 53 AM. J. COMP. L. 433, 437 (2005).

34. *Id.* at 451.

35. Evans, *supra* note 20, at 289–90 (quoting JOHN L. CHAN, CHINA STREETSMART: WHAT YOU MUST KNOW TO BE EFFECTIVE AND PROFITABLE IN CHINA 95 (2003)) (alterations in original).

with their legal practice. Although some translated laws are provided by the Standing Committee of the National People's Congress, with the Working Institute of the Chinese Legislature and the Legal Affairs Office under the State Council as a reference, neither the legislature nor any other government authority provides official translations of all Chinese laws. Translation has become a regular job for most Chinese corporate lawyers. When the applicable laws in an international transaction are Chinese, Chinese lawyers frequently have to translate them, which is costly and time-consuming.

2. Inadequate Understanding of Foreign Laws and Foreign Legal Cultures

A second barrier for Chinese corporate lawyers is an inadequate understanding of foreign laws and foreign legal cultures. Chinese law schools usually provide some basic courses on foreign legal systems, but students have few opportunities to access more detailed and practical content relating to foreign and international legal practice. When trying to understand foreign laws, Chinese lawyers, especially those trained in mainland China, often cannot avoid falling back on their knowledge of Chinese law. This makes it more difficult for Chinese businesses and corporate lawyers to enter foreign countries and can even cause a disaster when Chinese corporations enter an overseas market.

For example, the first attempt at purchasing a foreign enterprise by a Chinese company failed partially because of poor understanding of foreign law. In 2004, Shanghai Automotive Industry Corporation (SAIC), one of China's largest auto manufacturers and the main joint venture partner of General Motors and Volkswagen, spent some US\$500 million to acquire a controlling 48.9 percent stake in the debt-laden Ssangyong Motor of South Korea.³⁶ The deal made SAIC the first Chinese automaker to have a controlling interest in a foreign car maker. However, in November 2009, after being accused of stealing technology from the company and being charged by the South Korean prosecutor's office with violating South Korean law when it ordered and carried out the transfer of Ssangyong's proprietary technology developed with South Korean government funding, SAIC had to withdraw from the South Korean market at a loss of about US\$3 billion.³⁷ This failure had many causes, but one of them was that SAIC suffered a labor strike in South Korea which would have been illegal in China. An inadequate understanding of South Korean law, especially the law of labor unions, may have contributed to the failure of the acquisition.³⁸

36. See Xia Jun, *Chinese Cars Make Inroads Abroad*, CHINA DAILY (Sept. 2, 2004), http://www.chinadaily.com.cn/english/doc/2004-09/02/content_371086.htm.

37. See Kim Hyun-cheol, *Ssangyong Motor to Test Korea-China Ties*, KOREA TIMES, Jan. 9, 2009, http://www.koreatimes.co.kr/www/news/biz/2009/05/123_37591.html.

38. See *id.*

3. *The Difficulty of Governing Corporate Lawyers' Behavior and Ethics*

Compared to litigation lawyers' ethics, which are supervised and governed by judges and courts, corporate lawyers usually only interact with their clients in an outsider-client relationship. In China, every practicing lawyer is registered with and supervised by a local lawyers' association and local justice administrative authority. Chinese law creates a dual management structure in which both the local judicial administration department and the local mandatory bar association have regulatory power over annual registration, practical performance, and legal ethics.³⁹ In this dual management structure, compared to the strong control of lawyers by administrative authorities, lawyers' associations (which are mandatory)⁴⁰ have limited ability to regulate legal ethics.⁴¹ As an American scholar observed, "[w]ith the Chinese legal system still maintaining strong central control, and the role of lawyers so highly uncertain, particularly outside private contract disputes, the lawyer's role is still evolving."⁴² Although the All-China Lawyers Association has developed codes of ethics, "it is difficult to find any indication . . . that the codes of ethics have had much influence."⁴³ Lawyers have to "strive to identify themes of ethics and professional responsibility in the midst of a rapidly changing and often contradictory system."⁴⁴ Instances of corporate lawyers being convicted of malfeasance support this conclusion.

Guo Jingyi was an official with the Ministry of Commerce. He was charged with taking money equivalent to US\$1.3 million from several lawyers and admitted all charges before the trial court.⁴⁵ The chain between officials and lawyers runs as follows: the officials and lawyers are classmates or long time friends; a foreign company, through its lawyer, locates officials who are in charge of approving its investment; the officials, together with the lawyer, formulate the corresponding regulation and put the company's needs into the law or leave loopholes in it; the company submits its application to the relevant department; officials suggest the company "hire" the designated lawyer; the company pays a bribe through the lawyer; and finally, with the help of the lawyer and officials, the company's investment application is approved.⁴⁶

39. Lawyer's Law, *supra* note 1, arts. 4, 45.

40. The lawyers' association is "a public organization with the status of a legal person and shall be the lawyers' self-disciplinary organization." *Id.* art. 45.

41. Judith A. McMorrow, *Professional Responsibility in an Uncertain Profession: Legal Ethics in China*, 43 AKRON L. REV. 1081, 1100 (2010).

42. *Id.* at 1098.

43. *Id.* at 1101.

44. *Id.* at 1098–99.

45. Jia Xu, *Former Commerce Inspector Gets Suspended Death*, CHINA DAILY (May 20, 2010), http://www.chinadaily.com.cn/china/2010-05/20/content_9874446.htm.

46. *Beijing Court Rejects Death-Row Commerce Official's Appeal*, XINHUA NEWS

Justice authorities are remote from actual legal practice, and lawyers' associations are often very passive regarding ethics. In Guo's case, two famous law firms were investigated and punished with temporary suspensions of business activities, and partners at the two law firms were arrested and charged with bribery.⁴⁷ The bribery lasted several years, and justice authorities and lawyers' associations found it very difficult to uncover.⁴⁸

E. NEW EFFORTS TO CULTIVATE INTERNATIONAL LEGAL TALENT

Globalization raises significant challenges for Chinese corporate lawyers but also provides opportunities to serve international investors and collaborate with international lawyers. Even though the legal profession is still in its formative stages, a small number of corporate law firms have developed rapidly and already control much of the most profitable and prestigious legal work. For example, the law firm of King and Wood, established in 1993, has been a top Chinese comprehensive law firm for the past seventeen years.⁴⁹ With the development of the Chinese commercial legal market in a period of globalization, most elite commercial lawyers have been trained in the United Kingdom, the United States, Germany, and Japan; many with experience in world-renowned firms play more and more important roles representing international clients in international transactions.⁵⁰

Despite the rapid pace of globalization, China still suffers from a shortage of high-level, international corporate lawyers in the domestic and international legal markets. In recent years, the Chinese government has started several projects to cultivate international corporate lawyers. An ambitious instance is the 2008 approval of the Peking University School of Transnational Law ("STL"), an American-style law school in Shenzhen. STL is operated completely by a team of prominent American law professors.⁵¹ Its goal is to educate talented lawyers proficient in Chinese

AGENCY (Aug. 13, 2010), http://news.xinhuanet.com/english2010/china/2010-08/13/c_13444236.htm.

47. Zhu Yan (朱燕), "Guo Jingyi An" Zhuizong: Xinghui Guo Jingyi 10 Wan Lushi Huoxing 5 Nian ("郭京毅案"追踪: 行贿郭京毅10万 律师获刑5年) ["Guo Jingyi Case" Update: *Bribing Guo Jingyi 100,000 Gets Lawyer Sentenced to 5 Years*], BEIJING NEWS, Sept. 25, 2010, at A07 (China).

48. *Ministry of Commerce and Other Former Officials Named by Deng Zhan Guo Jingyi Corruption Alliance Was Formed*, CHINA DAILY (Dec. 14, 2010), <http://www.china-daily.org/China-News/Ministry-of-Commerce-and-other-former-officials-named-by-Deng-Zhan-Guo-Jingyi-corruption-alliance-was-formed/>.

49. *See The Firm*, KINGANDWOOD.COM, http://www.kingandwood.com/the_firm.aspx?language=en (last visited Apr. 8, 2011).

50. Sida Liu, *Client Influence and the Contingency of Professionalism: The Work of Elite Corporate Lawyers in China*, 40 L. & SOC'Y REV. 751, 752 (2006).

51. Jeffrey Lehman, the former president of Cornell University and former president of

and English, sophisticated about Chinese and foreign cultures, and fully qualified for membership in the Chinese and transnational legal professions.⁵² STL students enroll in a four-year program that leads to both a Juris Doctor (“J.D.”) degree—the basic degree at American law schools—and a Juris Master (“J.M.”) degree—the basic graduate degree at Chinese law schools. The students learn substantive legal rules, critical thinking, and legal reasoning. STL also places a focus on teaching its students that lawyers around the world are considered members of a public profession with special duties to ensure that law is a force for good in society and to help promote the cause of social justice.⁵³

Although the STL experiment is unfinished, more and more Chinese law schools, such as Renmin University Law School, have initiated international legal talent education programs.⁵⁴ The Ministry of Education even has plans to launch a new national education project to educate legal talent with international views and abilities. Under the plan, approximately ten of the top law schools among the 620 law schools in China will be selected on a trial basis. The government will invest money in those schools to invite foreign law professors to teach using critical teaching methods. Students will have more opportunities to study abroad and intern under the supervision of international lawyers.⁵⁵

Nevertheless, such determination in meeting the needs of corporate lawyers by the Chinese legal community is not institutional. The Chinese legal system still maintains strong central control; the role of lawyers is highly uncertain; and legal ethics education is still a fringe subject in Chinese law schools. Without institutional evolution, Chinese corporate lawyers may struggle to survive in the highly competitive international legal market.

the American Law Deans’ Association, serves as the dean. Stephen Yandle, who served as the associate dean of the Yale Law School for seventeen years, serves as associate dean. See *An Overview of The Peking University of Transnational Law*, PEKING UNIVERSITY SCHOOL OF TRANSNATIONAL LAW, <http://stl.szpku.edu.cn/en/about/index.aspx?MenuID=02010102> (last visited Apr. 8, 2011).

52. *Id.*

53. *Id.*

54. Renmin University Law School selects about thirty students annually who have strong English abilities. In addition to Chinese law courses, the law school provides a curriculum of foreign and international laws taught by foreign instructors.

55. The China Scholarship Council, a national institute affiliated with the Ministry of Education initiated more programs in support of Chinese students to study in foreign countries. See *Location – About Us*, CHINA SCHOLARSHIP COUNCIL, <http://en.csc.edu.cn/About/c309df7fb3fa40b3a179a7ad93f11988.shtml> (last visited Apr. 8, 2011).

