

LEGAL SERVICES¹ IN CHINA²: FACING THE WTO

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I. INTRODUCTION

On November 10, 2001, the ministerial conference of the World Trade Organization (WTO) held in Doha, Qatar passed Decision on the Accession of the People's Republic of China.³

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1. According to the system of rules of the WTO, "legal services" means professional services provided by lawyers and other similar professionals. General Agreement on Trade in Services (GATS) and its annexes are legal documents in the WTO governing trade in services, including legal services. A background note made by the Secretariat of the WTO in 1998 defines legal service as follows.

[A] broad definition of legal services would include advisory and representation services as well as all the activities relating to the administration of justice (judges, court clerks, public prosecutors, state advocates, etc.). This second aspect, however, is effectively excluded from the scope of the GATS as in most countries it is considered a 'service supplied in the exercise of governmental authority' according to Article I(3)(c) of the Agreement. The GATS covers all advisory and representation services in the various field of the law and in statutory procedures. Council for Trade in Services – Legal Services – Background Note by the Secretariat § 15 at http://www.wto.org/english/tratop_e/serv_e/w43.doc (last visited Feb. 25, 2004).

According to this definition, legal services in the system of rules of the WTO are professional services provided by lawyers, notaries, etc. However, in the United States "legal services" denotes legal aid, which are professional services rendered by lawyers for people who cannot afford to retain lawyers for legal assistance. In this article, the author adopts the usage of the WTO. Thus, "legal services" in this article means all the professional services provided by lawyers.

2. Although particular sections of the article involve legal services in Hong Kong, Macao, and Taiwan, these areas fall under a different jurisdiction. Thus, the scope of the article is limited to

3. According to the rules of admission for new members to the WTO, in order to become a new member of the WTO, one needs the consent of at least two-thirds of the current WTO members. Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, Art. 12, 33 I.L.M. 1125, 1150 (1994), available at http://www.wto.org/english/docs_e/legal_e/04-wto.pdf. In the Ministerial Conference held in Doha, all of the WTO members consented to China's admission into the WTO. Press Release, World Trade Organization, WTO Ministerial Conference Approves China's Ascension (Nov. 10, 2001) at http://www.wto.org/english/news_e/pres01_e/pr252_e.htm (last visited Feb. 25, 2004).

One month later, on December 11, 2001, the Protocol on the Accession of the People's Republic of China came into force.⁴ After 15 years of continuous application beginning in 1986 when China first applied to restore its membership in the General Agreement on Tariffs and Trade (GATT), China formally became a WTO member.⁵

The WTO came into being on January 1, 1995⁶ and is one of the youngest and most far-reaching international economic organizations. The WTO is the successor to the General Agreement on Tariffs and Trade (GATT) established after the end of the Second World War. The WTO has three main objectives: to help trade flow as freely as possible, to achieve further liberalization gradually through negotiation, and to set up an impartial means of settling disputes. The WTO has 145 member states, accounting for over 97% of world trade.⁷ The sphere of application of the WTO rules includes, but is not limited to, trade in goods,

4. The *Protocol on the Accession of the People's Republic of China* is an agreement between the WTO and China on the terms of China's accession to the WTO. In accordance with the third part of the protocol, "Final Provisions," the protocol would come into force one month after both parties signed it. On November 10, 2001, China signed the protocol immediately after the ministerial conference passed the decision on the accession of China. See SHI GUANGSHENG, *ZHONGGUO JIARU SHIJI MAOYI ZUZHI ZHISHI DUBEN* [Reading Book on China's Accession to the WTO] 3 (2002). As a result, the protocol came into force on December 11, 2001.

5. The WTO is the successor to the GATT. China signed the GATT in 1947, which made China an initial signatory party of the GATT. However, after the establishment of the People's Republic of China, China disconnected with the GATT. With the implementation of the open-door policy, China significantly enhanced its economic exchange and cooperation with foreign countries in the 1980s. In order to deepen its economic reformation and develop foreign trade and investment, in 1986 China applied to restore its membership to the GATT. In 1995, after the "Uruguay Round," the WTO was established and the free trade rules of GATT became one of the most important parts of the WTO rules. 1 SHI GUANGSHENG, *ZHONGGUO JIARU SHIJI MAOYI ZUZHI ZHISHI DUBEN* [Reading Book on China's Accession to the WTO] 1-16 (2002). However, as a non-GATT member when the WTO was established, China had to apply for WTO membership. On December 7, 1995, China submitted its application. For various reasons, China was not admitted as a member until the end of 2001. See Decision on the Accession of the People's Republic of China at <http://www.moftec.gov.cn/table/wto/law01.doc>.

6. On April 15, 1994, the GATT's "Uruguay Round" concluded its final legal documents, and 124 governments and the European Union signed the *Agreement on Establishing the World Trade Organization* in Marrakesh, Morocco. The ministers of those governments published the Marrakesh Declaration, which states that the WTO will come into being on January 1, 1995 or thereafter as early as possible. 2 SHI GUANGSHENG, *ZHONGGUO JIARU SHIJI MAOYI ZUZHI ZHISHI DUBEN* [Reading Book on China's Accession to the WTO] iv (2002). In effect, the *Agreement on Establishing the World Trade Organization* and other agreements came into force on January 1, 1995. The WTO was effectively created on this date. See, "What Is the World Trade Organization?," at http://www.wto.org/english/thewto_e/whatis_e/fact1_e.htm (last visited Feb. 25, 2004).

7. The WTO in Brief, at http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm (last visited Feb. 25, 2004).

trade in services, trade related intellectual property, and investment. Legal service, as a type of professional services, is within the scope of the WTO rules on trade in services, General Agreement on Trade in Services (GATS) and its relevant annexes. For a WTO member, to what extent to give market admission to foreign legal services is determined by the specific commitments the member referred to the WTO. By the end of 2002, 67 WTO members submitted specific commitments on the admission of foreign legal services to domestic legal service markets in the Schedules of Specific Commitments of GATS.⁸

China's accession to the WTO is a historic event for both China and the organization itself.⁹ With the membership of China, the WTO has become a real "world" trade organization, including a country with a population of nearly one quarter of the world population, a tremendous expanding market, and a prosperous growing economy. For China, entering the WTO greatly benefits its economic reform and the development of foreign trade and international economic cooperation at the cost of negatively impacting many domestic economic sectors.

As a WTO member, on the one hand, China has the right to enjoy the benefits and advantages the WTO rules grant; but on the other hand China has the obligation to abide by the WTO rules to reduce or eliminate tariffs, admit foreign services, and protect relevant intellectual property. Regarding legal services, China provided specific commitments to the admission of the legal services of other WTO members and the scope of giving national treatment to the lawyers from other WTO members,¹⁰ albeit the current legal service sector of China is immature because of its too young history.

What is the current status of Chinese legal service system? What new Chinese regulations govern the admission of foreign legal services and practice of foreign lawyers? How large is the Chinese legal service market? Facing the progressive liberalization of legal service market, what is the direction of the future development of Chinese legal service sector? Foreign legal professionals, especially those law firms and attorneys intent on

8. See *GATS Schedules of Specific Commitments*, available at <http://www.wto.org>. The European Union members are counted as 15 members.

9. After the WTO Ministerial Conference approved China's ascension, WTO Director-General, Mike Moore, commented, "[T]his is an historic moment for the WTO, for China and for international economic cooperation." Press Release, *supra* note 3.

10. Trades in Services: The People's Republic of China – Schedule of Specific Commitments, GATS SC/135, (Feb. 14, 2004), at <http://docsonline.wto.org/DDF-Documents/t/SCHD/GATS-SC/SC135.doc> (last visited Feb. 25, 2004).

seeking profits in China, are presumably interested in these questions, and this article addresses them.

This article includes five parts. In the first, the author introduces the background of the reconstruction of the legal service system of China, the history of Chinese lawyers, and the rehabilitation of Chinese legal service system. In the second, the current legal service system of China is briefly introduced, including the regulatory structure of lawyers, the qualifications and admission of lawyers, and the working institutes of lawyers. In the third, the admission of foreign lawyers to Chinese legal service market is followed. This part recalls the history of the opening of the Chinese legal service market, expounds the commitments made by China to the WTO relating to the legal service sector, and introduces newly promulgated regulations on the admission of foreign legal services to China enacted after the country became a WTO member. In the fourth part, this article discusses the challenges to Chinese lawyers because of China's accession to the WTO and proposes ways to meet those challenges for Chinese lawyers, lawyers' associations and governments. Finally, the author delivers a brief summary and predicts the developmental trend in the Chinese legal service sector.

II. ECONOMIC REFORM AND RECONSTRUCTION OF LEGAL SYSTEM

A. ECONOMIC REFORM IN CHINA

In 1976, the Chinese central government decisively ended the Cultural Revolution¹¹ which had brought about serious damages to the economic, political, and legal systems as well as to the culture of China. In November 1978, the Chinese Communist Party summoned a national meeting by which the economic reform and open-door policy of China were determined.¹² Since then, China began to engage in economic reforms and construct international economic relationship with countries all over the world.

11. The Chinese Cultural Revolution was launched in 1966 by former Chairman Mao Zedong, but was used by the Gang of Four, Jiang Qing, Zhang Chunqing, Wang Hongwen and Yao Wenyuan, to seize control of China. During the ten-year period, the economy of China declined dramatically, the legal system was almost totally destroyed, a great number of people, especially intellectuals, were persecuted to death, and the whole country fell into disarray. Today, this movement has been named "The Ten-Year Catastrophe" in China.

12. This meeting was called the Third Plenary Meeting of the Eleventh Central Committee of the Chinese Communist Party. This meeting was a turning point in the transformation of the core policy of China from "class struggle" during the Great Proletarian Cultural Revolution to the development of economy, through which economic reform and the open-door policy of China were adopted.

However, the Chinese government has been employing a progressive strategy to carry out these economic reforms. In the model of the former Soviet Union, from 1956 to 1978, production, distribution and consumption in the country were almost totally controlled by the government. All enterprises were established and owned by the state or by collectives. The task of the enterprises was to perform according to the directives or orders of the government not to satisfy the demands of the market. In foreign economic interchange, China confined itself only to other socialist countries and thus isolated itself from the developed capitalist world and their market economies. The focus of the reform, starting from 1978, was to change the policies in regards to both domestic and foreign affairs in economics. Since 1978, China has been carrying out structural reform of its economic system with a view to progressively integrating the market system into the economy of China. After more than twenty years of effort, the market economic system of China has already been largely established and the market is playing a dominant role in the economic life of the country. With respect to foreign policy, China began to open its door to the rest of the world, widely construct economic relationship with both socialist and capitalist countries, positively accept and absorb foreign direct investment, and try to develop foreign trade. To date, China has been deeply melted into the world economy and becomes one of the major players in the current trend toward economic globalization.

B. REHABILITATION OF LEGAL SYSTEM

During the Great Proletarian Cultural Revolution, China's legal system was devastated. Legal education ceased, law schools were dismantled, the justice system was virtually destroyed, and many professors of law and judges were forced to be "remolded and educated" on farms. To reform the economy, one of the most important tasks was to restore and reconstruct the legal system.¹³

The central government decided to carry on the rehabilitative work based upon the following four principles: 1) there must be laws regulating all respects of work and life; 2) every person, regardless of status, must comply with the laws; 3) governments shall enforce laws strictly; 4) anyone who violated the law must undertake equivalent responsibilities in accordance with the law. In order to guarantee the effective performance of economic and political reforms, the Chinese government exerted its best efforts to accelerate reform legislation. Since 1978, the various levels of

13. See RANDALL PEERENBOOM, CHINA'S LONG MARCH TOWARD RULE OF LAW 6.

government in China have promulgated thousand of laws and regulations regarding every aspect of economic activities, so as to define what governments and enterprises may or may not do and lay down the rules and procedures to resolve disputes.¹⁴ To date, in almost every economic sector, China has relevant laws or regulations.¹⁵ In order to enforce its laws and regulations, China has restored and enhanced judicial departments throughout the reform process. To supply legal professionals for the operation of the legal system, China rehabilitated its law schools. In addition to several universities specially built for legal professional education,¹⁶ almost every general university set up a law school or a department of law. In the intervening years, thousands of law students have graduated from universities annually and now serve in governments, law firms or enterprises. Furthermore, in order to plant the concept and consciousness of observing laws, China established the Offices of Publicizing the Law (OPLs) from the central government to the lowest level governments in 1985. The responsibility of the OPLs is to publicize law to the public and organize all the units and individuals in China to study law.¹⁷ In this way, through nearly twenty years of effort, the concept and consciousness of observing law has been gradually planted into the minds of the Chinese people.¹⁸

14. Between 1976 and 1998, the National People's Congress and its Standing Committee passed more than 337 laws and local people's congresses and governments issued more than 6,000 regulations.

15. For example, China has promulgated, among others, The Civil Law, Contract Law, Company Law, Securities Law, Banking Law, Insurance Law, Patent Law, Copyright Law, Trademark Law, Foreign Investment Law, Foreign Trade Law, Foreign Exchange Law, anti-dumping regulations, and Anti-unfair competition Law.

16. These legal universities include: the University of Political Science and Law of China, the Southwest University of Political Science and Law, the University of Political Science and Law of Eastern China, the Northwest University of Political Science and Law. The University of Political Science and Law of Central China was also one of the special universities, but it merged with another university several years ago.

17. OPL in each level of government is subordinate to the judicial administrative organ of the government. In the central government, the National Office of Publicizing Law is subordinate to the Ministry of Justice, and generally one of the vice ministers takes the leadership of the office. Starting in 1986, the National Office of Publicizing Law published a "Five-year Plan of Publicizing Law" once every five years, and the local OPLs followed its steps to publish the local plan according to the plan of the National Offices of Publicizing Law and the specific situation of local governments. So far, the National Offices of Publicizing Law and local OPLs have published and implemented four "Five-year Plan of Publicizing Law." In every five-year plan, the OPLs concentrate on publicizing new laws and other important old laws. Now the OPLs are implementing the "Fourth Five-year Plan of Publicizing Law."

18. This can be illustrated by the dramatic increase of the number of cases from 1979 to 1996. In 1979, litigation was virtually nonexistent. However, the total number of cases of first instance supra reached 3 million by 1992, and five million by 1996. See Randall Peerenboom, supra note 13, at 7.

C. RESTORATION AND DEVELOPMENT OF LEGAL SERVICE SYSTEM

As early as 2000 years ago, there were people called Song Shi who prepared legal documents for others.¹⁹ The Song Shi carried out certain functions associated with attorneys in modern society, but they had no legal status in judicial procedure, let alone the rights and privileges of modern lawyers.²⁰ From the later period of the Qing Dynasty, China began to learn from the western countries to establish the system of lawyers concomitant with its reformation of legal system.²¹ Into the 1930s, the nationalist government of the Kuomin Party led by Jiang Jieshi set up a comprehensive system of lawyers.²² However, this system was repealed with the rest of the legal system of the government of the Kuomin Party when the People's Republic of China was founded in 1949.²³

The history of the establishment of the legal service system of the People's Republic of China can be traced back to 1956 when the State Council approved the legal document *Request for Instructions and Report on Establishing the Work of Lawyers* presented by the Ministry of Justice.²⁴ The legal document specified the organization, nature, task, and qualification of lawyers, among other things. According to the document, 19 provinces and cities set up associations of lawyers and institutes of law advisors. Until 1957, more than 2500 full-time lawyers and 300 part-time lawyers were approved and registered.²⁵ But because many people in power were prejudiced or even antagonistic toward the work of lawyers, they strongly opposed their existence. As a result, the legal service system died young.²⁶

With the economic reform starting in 1978 carrying forward, the role of law and the market became more and more critical to businessmen and the urgent demand for lawyers was brought about. The businessmen and enterprises needed lawyers to be

19. One of the most outstanding Song Shi (讼师) in ancient China is Deng Xi, who lived from 545 B.C. to 501 B.C. at the end of Chunqiu Era (春秋末期). See YAN ZHIMING, *ZHONGWAI LÜSHI ZHIDU* [The System of Lawyers of China and Foreign Countries] 16.

20. *Id.* at 17.

21. *Id.* at 19-23.

22. *Id.* at 26-32.

23. *Id.* at 19-39.

24. See GUANYU JIANLI LÜSHI GONGZUO DE XINGSHI BAOGAO [Request for Instructions and Report on Establishing the Work of Lawyers] (1956). See also YAN, *supra* note 20, at 38.

25. Yan, *supra* note 20, at 38.

26. See TAO MAO ET AL., *ZHONGWAI LÜSHI ZHIDU BILIAO YANJIU* [Comparative Research on the System of Lawyers between China and Foreign Countries] 21 (1995).

their business advisors or representatives in resolving disputes. The newly reestablished justice system needed lawyers to participate in it. To reconstruct and invigorate legal services rapidly was a pressing matter of the moment.

In 1980, the Standing Committee of the National People's Council of China promulgated the *Provisional Regulations of the People's Republic of China on Lawyers* ("the Provisional Regulations").²⁷ The regulations came into effect in 1982. The Provisional Regulations, which specified lawyers' nature, tasks, principles, scope of business, responsibilities, rights, admission qualifications, and working institutes, laid a foundation for the legal service system of China. Although the Provisional Regulations were far from perfect in rebuilding the legal service system, as the first formal legal document promulgated by the highest legislature of China, it supplied a set of uniform rules to reconstruct the system of lawyers, accelerating the rapid development of the Chinese legal service sector. According to statistics, at the end of 1981, there were only 5,500 lawyers in China, however, in October 1989, the number reached 31,000. By the end of 1991, the number of practicing lawyers nationally amounted to 51,200.²⁸

With the deepening of reform and the implementation of open-door policy, the politics, economy, culture and social life in China have been changing daily. The quantity and quality of lawyers, and the forms of lawyers' working institutes could not adapt to the economic situation in China. In 1996, the Standing Committee of the National People's Council passed *Lawyers' Law of the People's Republic of China*²⁹ ("the Lawyers' Law") and abolished the Provisional Regulations. The Lawyers' Law redefined the nature of lawyers, defining lawyers as legal professionals who provide legal service for society instead of legal workers of the state as defined in the Provisional Regulations. This definition enhances the independence of Chinese lawyers and is significant for the development of the legal service sector of China. Additionally, the Lawyers' Law laid down the types of working institute for lawyers, and provided for a qualification examination of prospective lawyers. The implementation of the Lawyers' Law has significantly pushed forward the development of legal services in China. Until June of 2001, the number of Chi-

27. LÜSHI ZANXING TIAOLI [Provisional Regulations on Lawyers] (1980).

28. See ZHANG GENG, ZHONGGUO LÜSHI ZHIDU YANJIU [Research on the System of Lawyers in China] 41 (1998).

29. LÜSHA FA [Lawyers' Law] (2001).

nese lawyers was 114,892, 70,147 of whom practiced full time.³⁰ Currently, the number of lawyers in China approaches 120,000.³¹ Lawyers are playing a critical role in both political and economic fields in China.³²

III. LEGAL SERVICE SYSTEM OF CHINA

A. STRUCTURE OF REGULATING LAWYERS

In contrast to the regulatory system of many countries where lawyers' associations (bar associations) carry on the self-regulation of lawyers, China's current structure of regulating lawyers combines the administration of governmental agencies and the self-regulation of lawyers' associations.³³

1. *Regulation of the Ministry of Justice and Local Judicial Administrative Organs*

Article 4 of the lawyers' law specifies that the judicial administrative department of the State Council (the Ministry of Justice) takes charge of the supervision and instruction of lawyers, law firms and lawyers' associations.³⁴ In effect, this article defines the regulatory structure of lawyers in China. Lawyers, law firms and even lawyers' associations, all are supervised and

30. The Second Chinese Lawyers' Forum, Zhongguo Lüshi Mianhin de Shida Nanti [Ten Difficult Problems of Chinese Legal Service Sector], available at <http://www.acla.org.cn> [hereinafter *The Second Chinese Lawyer's Forum*].

31. *Id.*

32. Like lawyers in other countries, Chinese lawyers enjoy a broad scope of businesses. Section III discusses the scope in detail. By rendering legal services, lawyers are exerting a significant influence on the Chinese economy, politics, and society.

33. This regulatory mode is a direct corollary of the history of the Chinese legal service system. In the early period of the reestablishment of the Chinese legal service system, Chinese lawyers were defined as state workers affiliated with governmental agencies (e.g. the Ministry of Justice and the whole judicial administrative system). The government paid lawyers a salary and revenues earned by lawyers belonged to the government. In effect, lawyers were the public servants of the government, directly regulated by governmental agencies. This situation did not change until 1986, when the All China Lawyers' Association was established. From July 5 to July 7, 1986, China held the first national meeting of the representatives of lawyers in Beijing, during which the All China Lawyers' Association was formally established and the Charter of the organization was passed. The Charter of the All China Lawyers' Association specifies the nature, functions, responsibilities, financial resources, membership, the rights and obligations of the association, etc. . According to the Charter, the All China Lawyers' Association is a self-regulating organization, taking charge of the professional regulation of lawyers. Since its establishment, the All China Lawyers' Association has undertaken some of the responsibilities of regulating lawyers. But the important power of regulating lawyers is still held in the hands of the judicial administrative organs even today. The All China Lawyers' Association has not yet played a role akin to that of bars or lawyers' associations in many other countries.

34. LÜSHA FA [Lawyer's Law] art. 4 (2001).

instructed by the judicial administrative organs of the central and local governments. Furthermore, the lawyers' law specifically grants the Ministry of Justice and other judicial administrative organs the power to organize qualification examination of lawyers, examine and issue lawyers' licenses, examine, approve and issue licenses to law firms, take charge of the annual examination and registration of lawyers and law firms, and to discipline lawyers and law firms.³⁵ In a word, the judicial administrative organs hold almost all the major powers to regulate lawyers and law firms.

2. *Self-regulation of Lawyers' Associations*

The Lawyers' Law ordains the establishment, function and responsibilities of lawyers' Associations.³⁶ Under the relevant provisions, a national association was set up. Each province, autonomous region and municipality directly under the central government also established local lawyers' associations. In addition, cities subordinated within districts may found lawyers' associations if necessary.³⁷ Every lawyer shall join the local lawyers' association where he or she is registered as a lawyer and automatically becomes a member of the All China Lawyers' Association.³⁸ The function of lawyers' associations is to undertake the self-regulation of lawyers. The responsibilities of lawyers' association defined by the Lawyers' Law include: 1) ensuring lawyers render legal services in accordance with the law and protecting the legal rights of lawyers; 2) summing up and exchanging the experiences of lawyers; 3) organizing lawyers' training; 4) educating, examining, and supervising professional ethics; 5) organizing lawyers to exchange ideas with foreign lawyers; 6) mediating disputes in business between lawyers. In addition, lawyers associations may give awards to lawyers for excellent performance and discipline lawyers for violating ethic rules in

35. *Id.* arts. 6, 7, 11, 19, 20, 44, 45, 46, 47, 52.

36. *See id.* arts. 37, 38, 39, 40.

37. *Id.* art. 37.

38. As mentioned previously, the All China Lawyers' Association was established in 1986, long before the promulgation of the Lawyers' Law. As a matter of fact, the Lawyers' Law confirmed the legality of lawyers' associations in the form of law that is legislated by the Standing Council of the National People's Council. Like many other countries, in China, before the national legislature promulgates a law, the related governmental agencies usually lay down regulations, ordinances or other legal documents that have weaker validity than laws legislated by national legislature to regulate the relevant activities. After a certain period of implementation, the legislature drafts laws in accordance with the implementing conditions of the relevant regulations, ordinances or other legal documents. The advantage of this is to make the legislation more satisfactory to the need of the reality. The Lawyers' Law was legislated in this way.

line with the Charter of Lawyers' Associations³⁹ and other relevant rules.⁴⁰

Aside from the Lawyers' Law, the Charter of Lawyers' Associations stipulates the following aspects of the All China Lawyers' Association and local lawyers' associations: membership, rights and obligations of members, specific responsibilities of lawyers' associations to perform their duties as specified by the Lawyers' Law, national and regional meeting of the representatives of lawyers, institutional structure of lawyers' associations, awards to or punishment of members, and financial resources.⁴¹

3. *Criticism to the Current Regulatory Structure*

Many Chinese jurists, lawyers, governmental officials and even some foreign legal professionals believe the current regulatory structure of China fails to regulate lawyers and law firms effectively and needs to be reformed in line with the international regulatory practice.⁴² In most countries that have developed a legal service sector, the lawyers' Associations play a major role in regulating lawyers. In this way, lawyers' Associations may regulate lawyers according to the specific need of lawyers and the public interests effectively and efficiently, and maintain the independence of lawyers.⁴³ Under the current system, Chinese judicial administrative organs virtually maintain all real power in regulating lawyers and the Lawyers' Associations self-regulates in name only.

In response to this criticism, the Ministry of Justice and many local judicial administrative organs are discussing and preparing for reform of the current regulatory structure. The planned reform aims to reduce the power of governmental agencies and vest lawyers' Associations with more power to regulate lawyers and law firms, so as to make the name of self-regulation match the reality. For instance, in Shenzhen, the first economic

39. See LÜSHI XIEHUI ZHANGCHENG [The Charter of Lawyers' Associations] (1999) [hereinafter "Charter of Lawyers' Associations"].

40. LÜSHI FA [Lawyers' Law] art. 40 (2001).

41. See Charter of Lawyers' Associations, *supra* note 40.

42. For instance, Randall Peerenboom believes that China's current regulatory system for lawyers ties lawyers inextricably to the government undermining their independence. See *supra* note 13, at 354. An official of the Judicial Administrative Department of Sichuan Province holds that judicial administrative organs must transform their functions in regulating lawyers and enhance self-regulation of lawyers. See ZHONGGUO LÜSHI [Chinese Lawyers] Issue 12, 2001, at 39.

43. In common law countries, such as the United States, England, Canada, and Austria, and civil law countries, such as Germany, France, Japan, Belgian, and Italy, lawyers associations play a major role in regulating lawyers. See John J. Barcelo acut_o; & Roger C. Cranton (editors), *LAWYERS' PRACTICE & IDEALS: A COMPARATIVE VIEW*, 128-37 (John J. Barcelo III & Roger C. Cranton eds.).

special zone and one of the most developed cities in China, the Bureau of Justice has begun to transfer some of the powers to the city's lawyers' association.⁴⁴

B. BECOMING A CHINESE LAWYER

To become a Chinese lawyer, three requirements must be satisfied: pass a legal qualification examination, complete an internship at a law firm, and attain the Lawyer's License from the judicial administrative organs in provincial or other governments on the provincial level.⁴⁵

1. *Sit for National Judicial Examination*

a. Development of National Judicial Examination

The National Judicial Examination is the qualification examination for lawyers, judges, and prosecutors in China. This examination can be traced back to 1986 when China held its first lawyers' qualification examination. Before 1986, China had never held legal profession qualification examination for various reasons.⁴⁶ With more and more people graduated from law schools and universities with law department, or receiving knowledge of law by self-study, in 1986, the Ministry of Justice held the first lawyer's qualification examination to select lawyers with a view to improving the quality of lawyers. From 1986 to 1992, the Ministry of Justice held a qualification examination biennially. In 1993, the Ministry of Justice changed to annual exams, aiming at choosing more legal professionals to satisfy the needs of economic and legal reform. Several years later, the Lawyers' Law confirmed the qualification examination and laid down the specific requirements for sitting for it.

44. The author of this article participated in discussions concerning the transferring of some of the powers from the Bureau of Justice of Shenzhen to the Lawyers' Association of Shenzhen. Currently, part of the power to discipline lawyers has been transferred to the lawyers' association.

45. The governments of the five autonomous regions and four municipalities directly under the central government are of the same level as those of provinces. The autonomous regions of China are Guangxi, Gansu, Ningxia, Xinjiang and Tibet. The municipalities directly under the central government are Beijing, Chongqing, Tianjin and Shanghai.

46. The most crucial reason for the lack of qualification examinations is that, as stated earlier, during the Great Proletarian Cultural Revolution, the legal education was devastated and the restoration of legal education only began at the end of the 1970s. Therefore, in the early 1980s, there were not enough graduates from law schools to embark on legal work. Even if there were a qualification examination in those years, there would not have been enough candidates to take it. As a result, a great number of lawyers and judges did not have a degree of law, and many legal advisory institutes and courts of law were filled with former military people who did not receive much professional legal training before they occupied the post.

In December 2001, the Standing Committee of the National People's Council of China revised the Lawyers' Law, the Judges' Law and the Prosecutors' Law, stipulating that lawyers, judges, prosecutors must pass the same legal profession qualification examination. As a result, the three formerly separate legal profession examinations are unified and named the "National Judicial Examination."⁴⁷ The Ministry of Justice and the judicial administrative organs in local governments take charge of organizing the national examination.⁴⁸ After the revised parts of the three laws came into effect, the Ministry of Justice organized the first National Judicial Examination in March of 2002.⁴⁹

b. Requirements for Sitting National Judicial Examination

The Lawyers' Law, Judges' Law and Prosecutors' Law specify the educational requirements for sitting National Judicial Examination. A candidate must obtain a bachelor degree or above with a major in law, or a bachelor degree or above without a major in law but have knowledge of the law before he or she applies to sit for the examination.⁵⁰ In 2002, the Ministry of Justice promulgated the Ordinance on Application for sitting National Judicial Examination of 2002,⁵¹ stipulating four requirements apart from the aforementioned educational requirements. They include: 1) being a citizen of People's Republic of China; 2) supporting the Constitution of the People's Republic of China and having elective rights and rights to be elected; 3)

47. Before the establishment of the National Judicial Examination, the qualification examinations of judges, prosecutors and lawyers were separately organized with different requirements and standards. The unified National Judicial Examination has a similar structure with many civil law countries, such as Germany and Japan. It is different from the bar exams in the United States, where bar examinations are administered by the various states and passing the bar examination does not mean the candidate is qualified to be a judge or prosecutor automatically.

48. See *Zhonghua Renmin Gongheguo Lushifa* [Lawyers' law of the People's Republic of China] art. 6 (P.R.C.); *Zhonghua Renmin Gongheguo Faguanfa* [Judges' Law of the People's Republic of China] arts. 12, 51 (P.R.C.); *Zhonghua Renmin Gongheguo Jianchaguanfa* [Prosecutors' law of the People's Republic of China] arts. 13, 54 (P.R.C.).

49. *Guojia Sifa Kaoshi* [National Judicial Examination]. 310,000 candidates took the first National Judicial Examination. See *Lawyers' Association of Guangdong Province, Information of Qualification Examination of Lawyers*, at <http://www.lawyer.gd.cn>.

50. "Have knowledge of law" is not a clear requirement and is hard to determine whether the candidate meets the standard. In practice, in 2002, any applicant who has a bachelor degree or above was permitted to sit for the judicial examination. Presumably, the Ministry of Justice will interpret the provision in the next few years. According to a vice minister of the Ministry of Justice, applicants who are not law majors will probably be required to receive legal training for a period of time.

51. 2002 *Guojia Sifa Kaoshi Baoming Guanli Banfa* [Ordinance on Application for Sitting National Judicial Examination of 2002].

being competent to act on his or her civil rights; 4) meeting the requirements of the Lawyers' Law, the Judges' Law, and the Prosecutors' Law on education; and 5) having good moral character and conduct.⁵² Additionally, the Ordinance also stipulates that any person who has one of the following two experiences may not sit for the examination: 1) having ever been criminally convicted for an intentional crime, 2) having been discharged from public employment, or having his or her lawyer's certificate withdrawn by the government.⁵³ Thus, the revised Lawyers' Law raised the prerequisite for the admission of lawyers.⁵⁴

c. The Certificate of Legal Profession Qualification

After sitting National Justice Examination, candidates who attain scores above a point decided by the Ministry of Justice will be issued a certificate of legal profession qualification.⁵⁵ In August 2002, the Ministry of Justice promulgated the Ordinance on Regulating the Certificate of Legal Profession Qualification,⁵⁶ ordaining the procedure to apply for and be issued this certificate. The candidates who are awarded the certificate are qualified for employment in the legal profession provided they meet the other requirements provided by the law as discussed below.⁵⁷

2. Obtain Lawyer's License: Becoming a Chinese Lawyer

In China, passing National Justice Examination and obtaining the Certificate of Legal Profession Qualification do not mean a candidate may practice law. To become a Chinese lawyer, the candidate must earn the Lawyer's License from the judicial administrative organ of the provincial government or the same level government where the candidate intends to practice.

52. *Id.* art. 4.

53. *Id.* art. 5.

54. Before the Lawyers' Law was revised, a candidate without a bachelor degree could sit for the legal professional examination. See LÜSHI FA [Lawyers' Law] art. 6 (1996).

55. The National Judicial Examination lasts two days. The examination includes four parts, covering all the major substantive and procedural laws and relevant regulations, and each part takes three hours. After the examination ends, the Ministry of Justice will organize legal specialists and professionals to assess the score of each exam. After finishing the assessments, the Ministry of Justice will fix a score to determine who will pass the examination at a certain rate. The passing rate of the 2002 examination was about 7% (24,000 people passed). See *supra* note 50.

56. See Falü Zhiye Zige Zhengshu Gunagli Banfa [Ordinance on Regulating Certificate of Legal Profession Qualification].

57. Having the certificate does not mean that a candidate can be a lawyer, judge or prosecutor. He or she must satisfy the requirements set by the Lawyers' Law, the Judges' Law, and the Prosecutors' Law, such as the internship and moral character requirements.

The Lawyers' Law stipulates four requirements to obtain this license, some of which were also required to take the examination: 1) support the Constitution of China, 2) obtain the Certificate of Legal Profession Qualification, 3) complete at least a one year internship in a law firm, and 4) have good character and conduct.⁵⁸ Furthermore, the Lawyers' Law defines that, if the candidate has one of the following three circumstances, he or she may not be awarded a Lawyers' License: 1) not being competent or only partly competent to act on his or her civil rights, 2) having ever received criminal penalty except where the crime was not intentional, or 3) having been discharged from public employment or having his or her Lawyer's License previously withdrawn.⁵⁹

Therefore, after received the Certificate of Legal Profession Qualification, a candidate must complete a one-year legal internship, and meet other requirements mentioned above, then he or she will be issued the Lawyer's License by the relevant provincial level judicial administrative organ. After obtaining the Lawyer's License, the candidate formally become a lawyer and has the right to practice law anywhere in China.⁶⁰

C. WORKING INSTITUTES OF CHINESE LAWYERS

In China, a lawyer must be registered in a law firm to render legal services.⁶¹ A law firm acts as a lawyers' institute to practice law. The Lawyers' Law stipulates three forms of law firms in China: state-funded firms, cooperative firms and partnership firms.⁶² The fifteenth article of the Lawyers' Law specifies the requirements to establish a law firm, including 1) having a name, working offices and a charter; 2) having registering capital more than one hundred thousand Yuan; and 3) having enough lawyers to work for the firm.⁶³ In addition, the relevant ordinances promulgated by the Ministry of Justice define other specific requirements for each type of law firm as described below.⁶⁴

58. LÜSHI FA [Lawyers' Law] art. 8 (2001).

59. *Id.* art. 9.

60. The Lawyer's License is different from the system in the United States where generally a lawyer can only practice in the state or jurisdiction to which he has been admitted. Lawyers in China cannot be geographically restricted. LÜSHI FA [Lawyers' Law] art. 30 (2001).

61. *Id.* art. 12.

62. *Id.* arts. 16-18.

63. *Id.* art. 15.

64. *See infra* Part III.C.1

1. State-Funded Firms

The original working institutes for lawyers of China are legal advisory institutes subordinated to judicial administrative organs. In order to enhance the independence of lawyers and accelerate the improvement of the level of legal services, the Ministry of Justice decided to separate legal advisory institutes from the judicial administrative organs and make lawyers' working institute more independent. As a result, all the legal advisory institutes were transferred to state-funded law firms in the 1980s.

State-funded law firms are funded and established by the state. The Ordinance on the Administration of State-funded Law Firms⁶⁵ stipulates that, "state-funded law firms are established by judicial administrative organs of governments according to the needs of the state, and state-funded law firms undertake limited liabilities for the debts of state-funded law firms with all of its property."⁶⁶ To build a state-funded law firm, the requirements to be satisfied include: 1) having a name, working offices and a charter, 2) having registering capital more than one hundred thousand Yuan, and 3) having at least three lawyers (the Lawyers' Law does not specify number of lawyers working for a firm).⁶⁷ Lawyers in state-funded law firms generally enjoyed a status similar to that of public servants and received a fixed salary from the state, or their remuneration is based on the income they generate, experience, and quality of their work.⁶⁸ The capital and property of state-funded law firms belong to the state, so any governmental agency, organization, or individual may not appropriate them without the state's permission. State-funded law firms may render services independently but must receive supervision and instruction from judicial administrative organs.⁶⁹

Although the Lawyers' Law has not removed state-funded firms as a type of law firm, the remuneration scheme lacks incentive since it provides for lower income than earned in other institutes. As a result, when the government began to permit the establishment of cooperative law firms and partnership, most of the elite attorneys in state-funded law firms left and set up cooperative law firms or partnerships. In 2000, the State Council of China promulgated a legal document⁷⁰ requiring that all interme-

65. Guojia chuzi de Lüshi Shiwusuo Guanli Banfa *Ordinance on the Administration of State-funded Law Firms*].

66. *Id.* art. 3.

67. *Id.* art. 8.

68. *Id.* art. 16.

69. *Id.* art. 6.

70. See Guanyu Jingji Jiandinglei Shehui Zhongjie Jigou Yu Zhengfu Bumen Shixing Tuogou Zhigai Yijian De Tongzhi [Notice to Separate the Economic and

diate organizations (including law firms) must sever from the state. Since then, most of the state-funded law firms have been transformed into cooperative firms or partnerships. State-funded law firms are thus being eliminated from the Chinese legal service sector.⁷¹

2. *Cooperative Law Firms*

On July 3, 1988, the Ministry of Justice promulgated the Tentative Scheme for Cooperative Law Firms⁷² aiming at diversifying the types of working institutes for lawyers and aiding in the establishment of cooperative law firms. From that point on cooperative law firms began to emerge in the Chinese legal service sector. In 1996, with the legislation of the Lawyers' Law, the Ministry of Justice promulgated the Ordinance on the Administration of Cooperative Law Firms, which came into force on the same day as the Lawyers' Law⁷³, and repealed the 1988 tentative scheme.

The Ordinance on the Administration of Cooperative Law Firms⁷⁴ stipulates the property requirements for establishment, remuneration of lawyers, rights and obligations of lawyers and many other specific aspects of cooperative law firms. According to the ordinance, lawyers may voluntarily ally to set up a cooperative law firm and all of the cooperators own the firm in equal share.⁷⁵ The minimum amount of lawyers to start to set up a law firm is three, and excepting part-time lawyers, every lawyer in cooperative law firm is a cooperator, enjoying the full rights to participate in the management of the firm.⁷⁶ Cooperative law firms are financially independent and receive no governmental assistance⁷⁷ and their liability is limited to the assets of the firm.⁷⁸

Certifying Intermediary Organizations from the Governmental Agencies], (issued in 2000 by the State Council of China to convey the opinions of the Leading Group of Rectifying the Economic and Certifying Intermediary Organizations of China).

71. Before the implementation of the aforementioned legal document, China had more than 7,000 state-funded law firms. However, currently there are only about 2,000 state-funded law firms, mostly located in under-developed rural areas or regions in China.

72. Hezuo Lüshi Shiwusuo shixing fangan [*Tentative Scheme for Cooperative Law Firms*] (P.R.C.)

73. In order to implement the Lawyers' Law, the Ministry of Justice promulgated several relevant ordinances to specify many specific issues in relation to the regulation of lawyers, including the *Ordinance on the Administration of Cooperative Law Firms*. These ordinances came into force on Jan. 1, 1997, together with the Lawyers' Law.

74. Hezuo Lüshi Shiwusuo Guenli Banfa [*Ordinance on the Administration of Cooperative Law Firms*] (P.R.C.)

75. *Id.* art. 2.

76. *Id.* art. 7-9.

77. *Id.* art. 2.

78. *Id.* art. 2.

The remuneration of each attorney is based on such factors as age, length of service, and the quality and quantity of legal services rendered.⁷⁹ If a cooperator withdraws from a firm, the firm should remand to the lawyer a specified compensation. However, if the lawyer brought about serious damage to the firm, or the lawyer is discharged by the law firm, or the lawyer's license is withdrawn, the firm does not need to pay any compensation.⁸⁰ In addition, the ordinance lays down that a cooperative law firm will be dismissed in one of the following circumstances: 1) the number of lawyers in the firm drops to below three for a period of at least three months, 2) the assets of the firm fall below one hundred thousand Yuan for more than three months, 3) a meeting of the shareholders of the firm decide to dissolve the firm⁸¹. If a cooperative law firm is dismissed, the assets of the firm are allocated to the member attorneys in line with the charter of the firm.⁸²

3. Partnership Law Firms

Partnership is the youngest form of law firm with a history of less than ten years in China. However, this type of firms has become the most popular form and a majority of the law firms in China are now partnerships.⁸³

Before China decided to build a market economy, China usually divided the nature of enterprises according to their ownership. State-funded law firms were owned by the state and cooperative law firms were owned by collectives.⁸⁴ The ownership of these two types is public instead of private. In the early 1990s, when the central government set up the goal of economic reform to create a market economy, the Ministry of Justice began to learn from western countries to permit the establishment of partnership law firms. In 1993, partnership law firms as private owned firms were permitted on a trial basis. Three years later, partnership law firms were specified in the Lawyers' Law as one of the three mandated types of law firms. At the same time, the Ministry of Justice promulgated the Ordinance on the Administration of Partnership Law Firms,⁸⁵ stipulating the requirements

79. *Id.* art. 17.

80. *Id.* art. 14.

81. *Id.* art. 24.

82. *Id.* art. 25.

83. According to the statistics of the Ministry of Justice for the first half of 2002, there are about 6,300 partnership law firms, accounting for more than 60% of the law firms in China.

84. In a cooperative law firm, all the cooperators of a firm are the members of the collective and they, jointly own the firm.

85. See Hehuo Lushi Shiwusuo Guanli Banfa [Ordinance on the Administration of Partnership Law Firms].

for setting up such a firm, management of the firm, rights and obligations of partners, among other things. Under the ordinance, three or more full-time lawyers with no less than three year's experience in practice may apply to establish a partnership firm.⁸⁶ Partners must sign a partnership agreement formalize their relationship and meet a requirement of at least 100,000 Yuan capital.⁸⁷ The assets of a partnership law firm are owned by all of its partners, and all of its partners undertake unlimited, joint and several liabilities.⁸⁸

4. *Grass-Roots Institutes Rendering Legal Services*

Apart from the three types of law firms mandated by the Lawyers' Law, lawyers may work in gross-roots institutes rendering legal services subordinated to basic level governments of China.⁸⁹ Two types of people are working for the institutes: lawyers and legal workers. Lawyers working in these institutes must satisfy the requirements of lawyers defined by the Lawyers' Law, and their scope of practice is no different than that of lawyers working in law firms. Legal workers are those not qualified to be lawyers but able to render certain sorts of legal services. They strictly limited in scope as specified by the relevant regulations promulgated by the Ministry of Justice. The clients of gross-roots institutes are mainly basic level governmental agencies and the residents in the area where the institutes are located. The fees charged by gross-roots institutes are restricted to a very low level by the government, much less than the fees charged by law firms. Lawyers and legal workers in gross-roots institutes receive a fixed salary like public servants although they may get a bonus depending on fees they generate.⁹⁰

D. SCOPE OF PRACTICE

The Lawyers' Law stipulates the scope of business of Chinese lawyers. Article 25 states that lawyers may render the fol-

86. *Id.* arts. 7 & 10.

87. *Id.* art. 7.

88. *Id.* art. 2. The major difference between cooperative and partnership law firms lies in that the liabilities of the cooperators are limited to the assets of the firm whereas partners have to undertake unlimited, joint and several liabilities.

89. The basic level governments include the governments of towns and townships, and offices of streets subordinated to a city.

90. The purpose of local institutes rendering legal services is to provide cheaper legal services for villagers and residents around the institutes, mediate the disputes between villagers, residents and organizations, and help grass-roots governments deal legal affairs. In addition, local institutes rendering legal services also need to provide legal aid for indigent people who satisfy the requirements of obtaining legal aid. Anyway, local institutes rendering legal services play an important role in facilitating local villagers and residents' access to justice.

lowing legal services: 1) act as legal consultants to individuals, entities and other organizations; 2) act as representatives of litigants in civil and administrative cases; 3) provide legal advice to criminal suspects, be representatives of criminal suspects for complaining and impeaching, apply for release of criminal suspects on bail, act as defenders of criminal suspects, and to represent self-convicted litigants, victims or their close relatives at trial; 4) complain for litigants in civil, administrative and criminal cases as representatives; 5) participate in mediation and arbitration as representatives of clients; 6) render legal services for interested parties in non-litigant affairs; 7) provide legal consultation and prepare legal documents.⁹¹

Article 26 of the Lawyers' Law further defines the task of lawyers acting as legal consultants. Under its provision, as legal consultants, lawyers may provide legal opinions in regards to the issues posed by employers, draft and examine legal documents, participate in litigation, mediation, and arbitration as representatives, and handle other legal affairs entrusted them by employers, so as to maintain the legal rights of the employers.⁹²

E. LAWYERS' RIGHTS AND OBLIGATIONS

1. *Lawyers' Rights*

Under the Lawyers' Law, Chinese lawyers enjoy full rights to engage in business. Article 30 lays down that, lawyers, while participating in litigation, may collect and look up records in relation to the case, meet with and exchange mail with clients who are detained according to litigant laws; have the rights of debate and defense when acting as representatives or defenders of clients.⁹³ Article 31 stipulates that lawyers handling legal affairs may meet the relevant organizations or individuals and with their approval investigate details of the affairs.⁹⁴ Furthermore, Article 32 states that the personal rights of lawyers may not be infringed upon when they are undertaking legal practice.⁹⁵ Lawyers are also granted the right to refuse to defend or represent clients who takes advantage of their services to carry out illegal activities or hide relevant facts from the lawyer.⁹⁶

91. LUSHI FA [Lawyers' Law] art. 25 (2001).

92. *Id.* art. 26.

93. *Id.* art. 30.

94. *Id.* art. 31.

95. *Id.* art. 32.

96. *Id.* art. 29.

2. *Lawyers' Obligations*

In practicing law, Chinese lawyers must undertake obligations specified by the Lawyers' Law and the litigation laws. When acting as litigant or non-litigant representatives, lawyers shall maintain the legal rights of clients within the scope of business entrusted them by those clients.⁹⁷ When acting as criminal defenders, lawyers shall put forward evidences vindicating their clients, and bring forth evidence that may relieve defendants of criminal penalty or immunize defendants or criminal suspects from criminal penalty⁹⁸. After accepting commissions, lawyers may not refuse to defend or represent without reasonable grounds.⁹⁹ Lawyers shall keep the state's secrets, commercial secrets of clients, and clients' personal private information they obtained in legal practice.¹⁰⁰ Lawyers may not act as the representatives of both parties in the same case.¹⁰¹ In addition, in rendering legal services, lawyers may not accept commissions privately, charge clients privately or receive the property of clients; may not seek the disputed rights and property, or receive the property of counter-party; may not violate the relevant regulations by visiting judges, prosecutors and arbitrators; may not bribe judges, prosecutors and arbitrators, or instruct or induce clients to bribe them; may not present untruthful evidence or hide facts, or induce or coerce other people to present untruthful evidence or hide facts, or hinder the opposite party from obtaining evidence legally; may not disrupt the order of tribunals or obstruct the proceedings of litigation or arbitration.¹⁰²

F. HOW CHINESE LAWYERS CHARGE

Article 52 of the Lawyers' Law instructs the Ministry of Justice to lay down specific methods and standards concerning how lawyers charge for their service subject to the approval of the State Council.

Before the promulgation of the Lawyers' Law, the Ministry of Justice, the Ministry of Finance and the State Bureau on Prices jointly issued the Methods and Standards on the Collection of Layers' Fees in 1990, stipulating the prices for civil cases, criminal cases and non-litigant affairs.¹⁰³ This methods and standards played a major role in regulating the collection of lawyers' fees in

97. *Id.* art. 27.

98. *Id.* art. 28.

99. *Id.* art. 29.

100. *Id.* art. 33.

101. *Id.* art. 34.

102. *Id.* art. 35.

103. JENS DROLSHAMMER & MICHAEL PFEIFER, *THE INTERNATIONALIZATION OF THE PRACTICE OF LAW* 132 (2001).

early 1990s when most of the Chinese law firms were state-funded firms. However, because the prices laid down by the legal document were so low, for example 30 to 150 Yuan (less than \$20 under the current exchange rate) for handling a criminal case, most of the law firms did not collect fees in line with the state document in the years that followed.¹⁰⁴ In practice, lawyers and clients may negotiate charges for legal services before they sign the retaining agreement. In order to giving a guide to lawyers and clients to negotiate, many local governments or associations of lawyers promulgate documents with suggested prices for legal services.¹⁰⁵

In practice, three forms of collecting fees are used in China, including: 1) fixed price for each type of services negotiated by lawyers and clients, 2) contingency, 3) hourly. Among them the first one is the frequently adopted form.

G. DISCIPLINE

1. *The Procedure for Discipline Lawyers*

The power to discipline lawyers is vested on judicial administrative organs by the Lawyers' Law.¹⁰⁶ After judicial administrative organs receive a complaint from a client, or find lawyers or law firms violating laws or regulations, they will investigate the details of the alleged violation and then decide on whether and how to apply punishments. If the lawyers or law firms challenge the decisions, they may apply for administrative review by higher-level governmental agencies, either judicial administrative agencies or special administrative review agencies in governments.¹⁰⁷ If lawyers or law firms still remain unconvinced by the decisions of the administrative review, they may bring a suit against the judicial administrative organs or administrative review agencies. The lawyers or law firms may also bring actions against judicial administrative organs that made the decisions directly without resorting to administrative review.¹⁰⁸

Where the punishments are sufficiently serious, such as a large fine, suspension or revocation of licenses, the lawyer or law

104. *Id.*

105. For instance, the Lawyers' Association of Shenzhen, the earliest and most dynamic economic special zone, issued *The Guide for Collecting Lawyers' Service Fees of Shenzhen City*.

106. As mentioned above, some local judicial administrative organs, such as those in Shenzhen, have transferred part of the powers of disciplining lawyers to lawyers' associations, but judicial administrative organs still have the power to make the final decision.

107. LÜSHI FA [Lawyers' Law] art. 48 (2001).

108. *Id.* art. 48.

firm has the right to apply for an administrative hearing.¹⁰⁹ After receiving the application for a hearing, the judicial administrative organ will form a temporary panel and hold hearing within a fixed period. Persons who participated in the investigation are ineligible for membership in the panel. During the hearing, the officials in charge of investigating the case will act in a prosecutorial role while the firm or attorneys act as defense. After the hearing, the panel will provide a comprehensive report including a recommended disposition. Generally, the judicial administrative organ will make a final decision in accordance with the recommendation.¹¹⁰

2. *Types of Punishments*

Under the Lawyers' Law, five types of punishments may be imposed on lawyers or law firms who violated relevant laws and regulations, including: warning, fine, confiscation of illegal gains, suspension of license, suspending licenses to rectify, and revocation of licenses.¹¹¹

Where a lawyer has committed one of the following offences, they may be disciplined by warning, suspension of license for a period of 3 months to one year, and if the circumstances are serious, confiscation of illegal gains: 1) working for more than one law firm; 2) representing more than one party in the same case; 3) obtaining business by unfair methods, such as disparaging other lawyers or paying intermediary fees; 4) refusing, without reasonable grounds, to represent or defend after being retained; 5) tardiness to litigation or arbitration without reasonable ground; 6) revealing clients' secrets; 7) privately accepting commission, privately charging clients, accepting belongings of clients, seeking disputed rights and assets by making use of the status of representative, or accepting the belongings of the opposing clients; 8) meeting judges, prosecutors, arbitrators illegally, or giving gifts to judges, prosecutors, arbitrators or giving other benefits to them; 9) hindering opposing parties from obtaining evidences; 10) disturbing the order of litigant procedures, so as to obstruct the proceeding of litigant procedures; 11) other conducts that should be punished.¹¹²

A lawyer will have his or her license revoked if he or she has conducted one of the following three things: 1) divulging state secrets; 2) bribing judges, prosecutors, arbitrators and other rele-

109. See *Zhonghua Renmin Gongheguo Xingzheng Chufafa* [Law of the People's Republic of China on Administrative Penalty] art. 42.

110. See *SIFA XINGZHENG JIGUAN XINGZHENG TINGZHENG CHENGXU GUIZE* [*Rules on Administrative Hearing Procedure of Judicial Administrative Organs*].

111. *LUSHI FA* [Lawyers' Law] arts. 44-47 (2001).

112. *Id.* art. 44.

vant staff, or instructing, inducing clients to bribe them; 3) presenting untruthful evidences, hiding critical facts, or inducing or coercing other people to present untruthful evidence or hide critical facts.¹¹³ In addition, where a lawyer is convicted of a willful crime, his or her license will be withdrawn as well.¹¹⁴

Where a law firm violates the provisions of the Lawyers' Law, the relevant judicial administrative organ shall instruct it to correct the violation, confiscate its illegal gains, and may fine it as much as five times those gains; if the circumstances are serious, the judicial administrative organ may order it to cease operation to correct the violation or may revoke its license.¹¹⁵

In order to guarantee the quality of legal services and protect the interests of legal service consumers, the Lawyers' Law prohibits non-lawyers from acting as representatives in civil litigation or as defenders in criminal procedures for profit. Where non-lawyers render these two types of legal services for profits, the relevant judicial administrative organs may order them to stop their illegal conduct, confiscate their illegal gains, and fine them as much as five times those gains.¹¹⁶

Furthermore, the Lawyers' Law stipulates the civil liability of lawyers and law firms for malpractice. Where a lawyer renders legal services illegally, or brings damage to clients by negligence, the law firm to which the lawyer belongs must provide compensation for the damage.¹¹⁷ After paying compensation, the law firm may seek to recover the compensation from the lawyer who committed the damaging violation willfully or through negligence.¹¹⁸ Lawyers and law firms may not dispense or limit their civil liability for the damage brought about by their illegal services, negligence, or erroneousness.¹¹⁹

H. LEGAL AID

Articles 41 and 42 of the Lawyers' Law discuss providing of legal services to those who cannot afford them. Under this provisions, citizens who cannot afford lawyers' fees may gain legal aid when they are involved in criminal litigation, seek alimony, compensation for injury suffered on the job, compensation from the state, or they seek a pension for the disabled or for the family of the deceased.¹²⁰ Every lawyer shall provide legal aid for people

113. *Id.* art. 45.

114. *Id.*

115. *Id.* art. 47.

116. *Id.* art. 46.

117. *Id.* art. 49.

118. *Id.*

119. *Id.*

120. *Id.* art. 41.

who meet the requirements according to the relevant regulations.¹²¹ The Lawyers' Law also tasks the Ministry of Justice to provide the specific methods regarding legal aid, subject to the approval of the State Council.¹²²

IV. FOREIGN LAWYERS' ADMISSION TO THE MARKET OF CHINA

A. SITUATION BEFORE CHINA ADMITTED TO THE WTO

Since China began to implement an open-door policy, billions of dollars of foreign investment have rushed into China annually and foreign trade has increased dramatically. Intellectual property transfer happens from time to time.¹²³ These international economic activities spurred a huge demand for international legal services, but before 1992, China had not permitted any foreign law firm or lawyer to render legal services within its territory. The urgent need for legal services for international economic interchange could only be partly satisfied by Chinese domestic lawyers. Initially an overwhelming majority of Chinese lawyers were not familiar with international laws and practices, and could not use English skillfully, and thus few Chinese domestic lawyers had the ability to handle transnational legal affairs. Although the Chinese government did not permit foreign lawyers to practice, a large number of foreign lawyers went to China to surreptitiously help their customers resolve legal problems. Some foreign law firms established offices in China that officially functioned as consulting companies, or liaison office of a particular client but in actuality rendered legal services for foreign clients; some simply rented a suite in a hotel to practice over a long period.¹²⁴ The objective situation required the Chinese government open its legal service market to a certain degree to satisfy the needs of international economic activity.

In 1992, the Ministry of Justice and the State Administration for Industry and Commerce jointly issued the Provisional Rules Concerning the Establishment of Representative Offices by For-

121. *Id.* art. 42.

122. *Id.* art. 43.

123. In 2001, China received foreign direct investment of \$46.8 billion, becoming the second largest country to receive foreign investment, following the United States. China approved 26,136 foreign investment enterprise projects. The total amount of export and import reached \$509.8 billion, ranking 6th in the world. See 2001 Guomin Jingji He Shehui Fazhan Tongji Gongbao [Statistics Report of Chinese National Economic and Social Development in 2001] [hereinafter Statistics Report]. The relevant figures of Hong Kong, Taiwan and Macao are not included in the report.

124. SYDNEY M. CONE, INTERNATIONAL TRADE IN LEGAL SERVICES, REGULATION OF LAWYERS AND FIRMS IN GLOBAL PRACTICE § 15.1 (1996).

ign Law Firms in the People's Republic of China (Hereafter referred to the Provisional Rules).¹²⁵ The Provisional Rules stipulate the requirements and procedures for establishing law offices in China, scope of business, and lawyer requirements. In addition, the Provisional Rules specify that every foreign law firm can set up only one office in one of a limited list of cities or regions originally confined to Beijing, Shanghai, Shenzhen, Guangzhou or Hainan province.¹²⁶ Up to 2001, the number of cities or regions had increased to 19, and 104 foreign law firms, and 28 Hong Kong law firms had established offices in China.¹²⁷ Because of the "one law firm, one office" restriction, most of the offices were set up in Shanghai or Beijing.¹²⁸

Under the Provisional Rules, the scope of business of foreign lawyers was strictly limited to the following issues: 1) consulting regarding international treaties, international commercial laws, international practices and laws of the countries in which the lawyer was admitted to practice; 2) handling legal affairs for Chinese clients or law firms in countries in which the foreign lawyer was admitted to practice; 3) representing foreign clients and delegating to Chinese lawyers the handling of legal affairs in China on behalf of the foreign clients.¹²⁹ Furthermore, the Provisional Rules defined the businesses that may not be engaged in by foreign lawyers: 1) dealing with legal affairs related to domestic law of China; 2) interpreting Chinese law to clients; and 3) other businesses that may not be engaged in by foreigners in accordance with Chinese law.¹³⁰

Before China gained membership in the WTO, application for establishing offices in China were subject to a reciprocity requirement where the applicant must verify that the law of its home country permits Chinese law firms to establish offices in its territory.¹³¹

125. Guanyu Waiguo Lüshi Shiwusuo Zai Zhongguo Jingnei Sheli Banshichu De Zanxing Guiding [Provisional Rules Concerning the Establishment of Representative Offices by Foreign Law Firms in the People's Republic of China] (issued by the Ministry of Justice on May 26, 1992.).

126. See *supra* note 104, at 134.

127. See Zhang Fusheng, Minister of the Ministry of Justice, Wanshan Liangjiehe De Guangli Tizhi, Jingjiang Lüshi Duiwu Jianshe ["Perfect 'Dual' Regulatory System, Enhance the Construction of Lawyers"], Address in the Tenth Meeting of the Forth Standing Council of All China Lawyers' Association in 2001.

128. Susan E. Vitale, *Doors 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, 228-29 (2001).

129. See *supra* note 126 art. 15.

130. *Id.* art. 16.

131. CONE, *supra* note 125, at § 15.2.1.

B. CHINA'S COMMITMENTS ON TRADE IN LEGAL SERVICES TO THE WTO

As one of the conditions of China's accession to the WTO, China provided the schedules of horizontal and specific commitments on trade in services according to the rules of GATS, in which legal service is included.¹³²

Like other sub-sectors of trade in services, legal services encompass four modes of supply: cross-border supply, consumption abroad, commercial presence, and presence of natural persons.¹³³ In regards to cross-border supply and abroad consumption, China has no restriction on market admission under its schedules of specific commitments.¹³⁴ As for presence of natural persons, foreign lawyers must comply with China's Schedule of Horizontal Commitments.¹³⁵ However, China puts some restrictions on the mode of commercial presence.¹³⁶

1. *Form of Commercial Presence*

China's Schedules of Specific Commitments specifies that foreign law firms can provide legal services only in the form of representative offices. Any other forms, such as joint ventures or co-operative firms are excluded from the form of commercial presence.¹³⁷

2. *Quantitative and Geographic Limitations on Representative Offices*

In the first year after China's accession to the WTO, foreign law firms were only permitted to establish representative offices in 19 cities, including Beijing, Shanghai, Guangzhou, Shenzhen, Haikou, Dalian, Qingdao, Ningbo, Yantai, Tianjin, Suzhou, Xiamen, Zhuhai, Hangzhou, Fuzhou, Wuhan, Chengdu, Shenyang and Kunming.¹³⁸ A foreign law firm may only establish one representative office in China.¹³⁹ Representative offices in China shall be no less than the number established upon the date of accession.¹⁴⁰

132. Services covered by GATS are divided into various sectors. Legal service belongs to professional service, which is a sub-sector of the business service sector.

133. Trade, *supra* note 10.

134. *Id.*

135. See GATS Schedules of Horizontal Commitments.

136. See *infra* Part IV. B.1.

137. Trade, *supra* note 10.

138. *Id.*

139. *Id.*

140. *Id.*

However, the above-mentioned geographic and quantitative limitations were eliminated within one year.¹⁴¹ Thus, since December 11, 2002, foreign law firms may set up representative offices in any place in China, and are not limited in the number of such offices they establish.¹⁴²

3. *Business Scope of Representative Offices*

Representative offices of foreign law firms may engage in five types of business, including:

- a. providing clients with consultancy on the legislation of the country/region where the lawyers of the law firm are licensed, and on international conventions and practices;
- b. handling, when entrusted by clients or Chinese law firms, legal affairs in the country/region where the lawyers of the law firm are licensed;
- c. entrusting, on behalf of foreign clients, Chinese law firms to deal with Chinese legal affairs;
- d. entering into contracts to maintain long-term relations with Chinese law firms for delegation of Chinese legal affairs;
- e. providing information on the impact of the Chinese legal environment.¹⁴³

In addition, the specific commitments states that, where foreign representative offices entrust Chinese law firms to deal with legal affairs in China, the foreign offices may directly instruct lawyers in the entrusted Chinese law firms as agreed between both parties.¹⁴⁴

4. *Other Limitations on Representative Offices*

The schedule of specific commitments stipulates the requirements for foreign lawyers practicing in representative offices. Under the commitments, foreign lawyers shall be members of the bar or law society in a WTO member state and have practiced for no less than two years outside of China.¹⁴⁵ The chief representative of a foreign representative office shall be a partner of the law firm establishing the representative office, or has an equivalent status to a partner where the law firm is not partnership, but in other forms, such as a limited liability corporation.¹⁴⁶ In addition, the chief representative shall have practiced outside China

141. *Id.*

142. Foreign law firms applying for a new representative office are subject to the relevant requirements that are addressed later in this article. Such requirements include that the firm's former representative office must have existed for more than three years in China.

143. Trade, *supra* note 10.

144. *Id.*

145. *Id.*

146. *Id.*

no less than three years.¹⁴⁷ Lawyers working in representative offices shall reside in China at least six months each year.¹⁴⁸ Like the commitments of many WTO members, the representative office may not employ domestic lawyers.¹⁴⁹

5. *Presence of Natural Persons*

For legal services, presence of natural person means foreign lawyers render legal services individually and not as lawyers working in representative offices in China.

Under its specific commitments, China did not commit to permitting foreign lawyers who are not lawyers in representative offices to engage in legal services individually in China.¹⁵⁰ Nevertheless, if foreign lawyers can satisfy the requirements of the horizontal commitments of China, they may occasionally be allowed to deal with certain legal affairs as direct representatives of their principals. The horizontal commitments apply to the entire service sector and include but are not limited to the legal service sector.¹⁵¹ According to the commitments Of China, a lawyer who is not admitted as a legal practitioner by China may engage in activities related to representing a service supplier for the purpose of negotiating the sale of services of that supplier,¹⁵² but the lawyer may not render legal services to the general public of China, and may not be remunerated from a source located within China. In this occasion, the lawyer may not remain in China for a period longer than 90 days.¹⁵³

C. ADMINISTRATION OF FOREIGN REPRESENTATIVE OFFICES AND FOREIGN LAWYERS

In order to carry into effect China's commitments on trade in legal services to the WTO, on December 19, 2001, the 51st executive meeting of the State Council of China adopted Regulations on Administration of Foreign Law Firms' Representative Offices in China ("RAFRO")¹⁵⁴ and promulgated it three days later. On January 1, 2002, RAFRO came into effect.¹⁵⁵ On July 25, 2002, the Ministry of Justice of China adopted Rules on Im-

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. *See supra* note 136.

152. *Id.*

153. *Id.*

154. WAIGUO LÜSHI SHIWUSUO ZHUYUA DAIBIAO JIGOU GUANGLI TIAOLI [Regulations on Administration of Foreign Law Firms' Representative Offices in China] (Translation of the author).

155. *See* RAFRO, Art. 35.

plementing 'Regulations on Administration of Foreign Law Firms' Representative Offices in China' ("the Implementing Rules"),¹⁵⁶ which came into force on September 1, 2002,¹⁵⁷ providing specific rules needed in regulating representative offices and their representatives.

1. *Foreign Law Firms Qualified to Establish Representative Offices*

RAFRO does not define "foreign law firm". Nevertheless, the Implementing Rules stipulate that "foreign law firm" refers to a lawyers' working institute which is legally established outside China by foreign lawyers, engages in legal service activities and independently undertakes civil liabilities by all or part of its lawyers.¹⁵⁸ The following organizations are explicitly excluded: 1) legal service departments of foreign governments, commercial organizations and other institutes; 2) associations of foreign lawyers or law firms in which the lawyers or law firms do not share profits and undertake risks jointly.¹⁵⁹

Under the Implementing Rules, only law firms that satisfy the above-mentioned prerequisites may apply for establishing representative offices in China.¹⁶⁰ As a matter of fact, all the partnership law firms and corporate law firms incorporated in WTO member states may set up representative offices so long as they meet other requirements specified by RAFRO and the Implementing Rules. For a law firm incorporated in non-WTO member states, whether the firm may establish representative office in China is presumably subject to the same requirements as the WTO members.¹⁶¹

Article 7 of RAFRO specifies that a foreign law firm applying to establish a representative office in China and post representatives to that office shall meet the following requirements: 1) it has been in practice lawfully in its home country and has never been punished for a violation of professional ethics or practice discipline; 2) it has a sufficient number of lawyers meeting the requirements for general and chief representatives to staff the

156. GUANYU ZHIXING WAIGUO LUSHI SHIWUSUO ZHUHUA DAIBIAO JIGOU GUANGLI TIAOLI DE GUIDING REGULATIONS ON REPRESENTATIVE OF OFFICES OF FOREIGN LAW FIRMS IN CHINA, available at <http://www.tdctrade.com/report/reg/reg.020602.htm>

157. See The Implementing Rules, Art. 47.

158. *Id.* art. 2.

159. *Id.*

160. *Id.*

161. Since RAFRO and the Implementing Rules do not distinguish law firms from WTO members to those from non-WTO members, the latter should be treated equally with those from WTO members.

office; 3) there is an actual need to establish a representative office in China to render legal services.¹⁶²

Article 4 of the Implementing Rules provides that the third requirement shall be verified based upon four factors: 1) the social and economic development situation in the place where the representative office is to be established; 2) The need for development of legal services in the place where the representative office is to be established; 3) the size, age, and specialization of the firm, and an analysis of the business prospects of the representative office; 4) the restrictions in Chinese laws and regulations that might restrict the firms ability to engage in some particular legal services or legal activity.¹⁶³

Under Article 14 of RAFRO, in the following circumstances the Ministry of Justice shall revoke the license to practice of a representative office: 1) the foreign law firm it affiliates with has been dissolved or the firm's registration has been canceled; 2) the foreign law firm it affiliates with applies to cancel its registration; 3) it no longer meets the requirements set forth in Article 7 of these Regulations; and 4) its license to practice is revoked according to the law.¹⁶⁴

2. *Foreign Lawyers in Representative Offices*

A foreign lawyer who acts as a representative in a representative office must meet the basic requirements defined by FAFRO.¹⁶⁵ They must be members of the bar, law society, or lawyers' association of the country where they were admitted as practicing lawyers,¹⁶⁶ have practiced for not less than two years outside of China,¹⁶⁷ have never been punished for a criminal offense or a violation of the lawyers' professional ethics or practicing discipline.¹⁶⁸ In addition, the lawyer who acts as chief representative in a foreign representative office is required to have three years of practice experience, and must be a partner or equivalent of the foreign firm which is applying for the representative office.¹⁶⁹ "Equivalent" in this context means lawyers who share the same benefits and obligations as partners in terms of law firm management, profit-sharing and risk-sharing.¹⁷⁰

162. *See supra* note 156, art. 7.

163. *See supra* note 158, art. 4.

164. *See supra* note 156, art. 14.

165. *Id.* art. 8.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

170. *See supra* note 158, art. 27.

Under three circumstances the Ministry of Justice of China shall withdraw the certificate granted to a representative to practice law in China: 1) when the representative loses his or her foreign license to practice that was the basis for his or her licensure in China; 2) he or she has been disqualified as a representative by the foreign law firm he or she belongs to, or 3) the license of the law firm he or she belongs to has been revoked.¹⁷¹

3. *Establishment of A Representative Office*

The procedure to establish a representative office in China includes the application of the foreign law firm, the examination by the judicial administrative organs of the provincial level governments where the representative office will be located, the determination by the Ministry of Justice, and the registration of the proposed representatives and their representatives. Therefore, the first step for a qualified foreign law firm to establish such an office is to prepare and submit the necessary materials to initiate the procedure.¹⁷²

Under Article 8 of FAFRO, A foreign law firm shall submit the following documents to the judicial administrative organ of the government of a province, autonomous region or municipality directly under the Central Government where the representative office is to be located: 1) an application signed by the principal responsible person of the foreign law firm charged with establishing the proposed representative office and posting representatives; 2) documents certifying that the law firm has been lawfully established in its home country; 3) the partnership agreement or the articles of association of the law firm, and a list of its responsible persons and partners; 4) the rights granted by the law firm to the representatives of the proposed representative office, and a written statement confirming that the chief representative is a partner of the law firm or equivalent; 5) certificates of the qualifications to practice of each representative of the proposed office, and documents certifying that the chief representative has practiced law for at least three years outside China and the other representatives for at least two years; 6) documents from the bar, or law society of the law firm's home country certifying that the representatives are members; 7) documents from the department administrating lawyers of the law firm's home country certifying that the law firm and the representatives of the proposed representative office have never been punished

171. See *supra* note 57, art. 13.

172. *Id.* art. 8.

for a criminal offense or for a violation of lawyers' professional ethics or practicing disciplines.¹⁷³

In addition, FAFRO requires that the documents presented by the foreign law firm be notarized in its home country, authenticated by a competent foreign affairs organ of its home country or an organ authorized by it, and authenticated by the Chinese Embassy or Consulate in such country.¹⁷⁴ Three copies of the documents shall be submitted with corresponding Chinese translations accompanying any documents not in Chinese.¹⁷⁵

After received the materials submitted by a foreign law firm, the relevant judicial administrative organ of the provincial level government examines the qualifications of the foreign law firm and other issues in relation to the proposed representative.¹⁷⁶ The judicial administrative organ makes a preliminary decision within three months of the day it received the application materials. It then transfers the materials and its preliminary decision to the Ministry of Justice where the final decision will be made.¹⁷⁷

The Ministry of Justice then makes the final decision within six months.¹⁷⁸ If the Ministry of Justice approves the establishment, it will issue a license to the proposed representative office and certificates to the representatives.¹⁷⁹ If the Ministry of Justice does not approve, the applicant will be informed of the reasons in writing, and the applicant may resort to judicial review according to Chinese administrative procedural law.¹⁸⁰

Finally, the newly approved representative office and its representatives shall register with the judicial administrative organ of the government of the province, autonomous region or municipality directly under the Central Government where the new office is located.¹⁸¹ At the same time, the newly established representative office needs to go through formalities of taxation, banking and foreign exchange, etc., in accordance with the relevant laws and administrative regulations of China.¹⁸²

4. *Additional Establishment of Representative Offices*

After China entered the WTO for one year, China removed the limitation on the number and location of representative of-

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.* art. 9.

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.* art. 10.

182. *Id.* art. 11.

fices. Thus a foreign law firm may now apply to establish additional representative offices anywhere in China subject to the requirements stipulated by the Implementing Rules¹⁸³. Under Article 10 of the Implementing Rules, a foreign law firm must meet the following requirements for applying for additional offices: 1) its latest established representative office has practiced in China for at least three years without interruption since that office registered for practice; 2) all the representative offices established by it and the representatives working in its offices abide by Chinese laws, regulations and professional ethics and disciplines of lawyers, and have not been punished for a violation of the regulations of FAFRO and relevant rules.¹⁸⁴ In addition, the foreign law firm is required to present relevant documents provided in Article 11 of the Implementing Rules.¹⁸⁵

5. *Modification of Representative Offices*

If a foreign law firm needs to change the name of its representative office, or reduce its representation, the firm must in advance submit an application signed by its principle responsible person and other relevant documents to the judicial administrative organ of the government of the province, autonomous region or municipality directly under the Central Government where the said office is located.¹⁸⁶ The change is subject to the examination and approval of the Ministry of Justice.¹⁸⁷

6. *Rights of Representative Offices and Their Representatives*

Representative offices and their representatives have the rights to engage in business in line with Chinese laws, regulations and the relevant rules and to collect fees for the services they rendered according to service contracts. They are free to transfer the profit made in China to their home countries subject to the procedure provided by relevant Chinese regulations.¹⁸⁸ Their legal rights and interests in China are respected and protected by Chinese law. Where their rights and interests are infringed upon, they have the rights to seek restoration and compensation for the

183. See *supra* note 8.

184. See *supra* note 158, art. 10.

185. These documents include: 1) statements of the status of all the representative offices established by the foreign law firm in China; 2) copies of practicing licenses of each representative office established by the foreign law firm in China; 3) certifications issued by the judicial administrative organs in the governments of the provinces, autonomous regions, or the municipalities directly under the Central Government where the representative offices of the foreign law firm resided, certifying that the foreign law firm meets the requirements under Article 10.

186. See *supra* note 158, art. 19.

187. *Id.* art. 20.

188. See, e.g., *Regulation of Foreign Exchange of the People's Republic of China*.

impingement through the administrative or judicial procedures provided by Chinese laws and regulations.

7. *Obligations of Representative Offices and Their Representatives*

Representative offices and their representatives shall comply with Chinese laws, regulations and professional ethics and disciplines, and may not impair the national security and social policy interests of China.¹⁸⁹ In providing legal services, a representative office and its representatives may not provide false evidence, hide facts, intimidate or induce other people or organizations to provide false evidence, hide facts, or obstruct the opposing party's lawful obtaining of evidence; may not accept money or other things of value from parties using the advantage of providing legal services; and may not divulge commercial secrets or private client information.¹⁹⁰

Representative offices and their representatives shall render services within the scope of business permitted by FAFRO and the Implementing Rules. FAFRO defines a scope of business for representative offices and their representatives as the same as the scope that is listed in the schedules of specific commitments of GATS committed to by China to the WTO.¹⁹¹ For clarification, the Implementing Rules further defines "Chinese legal affairs" that may not be engaged in by representative offices and their representatives listed in the schedules of specific commitments of GATS and laid down by FAFRO.¹⁹² The following services are classified as "Chinese legal affairs": 1) participating in litigation as a lawyer in the territory of China; 2) expressing legal opinions or providing certification on specific issues of contracts, agreements, charters and other written documents to which Chinese law applies; 3) expressing opinions or providing certification on conduct or events governed by Chinese law; 4) expressing opinions or commenting on the application of Chinese law and the facts in relation to Chinese law when representing in arbitration; and 5) representing clients to conduct registration, modification, application, putting on records and any other procedure before Chinese governmental agencies or other organizations which have administrative functions vested by Chinese laws or regulations.¹⁹³

189. *See supra* note 156, art. 3.

190. *Id.* arts. 3 and 17.

191. *See supra* notes 8, 155, and art. 15.

192. *See supra* note 158, art. 32.

193. *Id.*

A representative of one representative office may not practice in more than one representative office simultaneously.¹⁹⁴ Representatives who reside in China for less than 6 months in a year will be deregistered and not permitted to practice in China the following year.¹⁹⁵

8. *Relationship between Representative Offices and Chinese Lawyers and Law Firms*

Article 16 of FAFRO states definitely that representative offices may not employ Chinese lawyers,¹⁹⁶ although they may employ Chinese nationals as office assistants provided that they do not render legal services in relation to Chinese law to clients in the name of "Chinese legal consultant."¹⁹⁷ Article 40 of the Implementing Rules further defines specific circumstances that are classified as "employing Chinese lawyers," including 1) signing an employment agreement or work contract with a Chinese lawyer; 2) forming a factual employment or work relationship with a Chinese lawyer; 3) reaching an agreement with a Chinese lawyer on sharing profits, joint-undertaking risks, or participation in management; 4) providing remuneration, or paying fees or profits to a Chinese lawyer; or 5) retaining a Chinese lawyer to provide services for the public in the name of a representative office or the foreign law firm the office belongs to.¹⁹⁸

Apart from employing Chinese lawyers, representative offices are prohibited from building certain relationship with Chinese lawyers or law firms. Under Article 39 of the Implementing Rules, representative offices and the foreign law firms they belongs to may not invest in Chinese law firms directly or indirectly; may not form joint enterprises with Chinese law firms or lawyers so as to share profits or undertake risks jointly; may not establish joint offices with Chinese law firms or send lawyers to stay in Chinese law firms for the purpose of rendering legal services; may not regulate, manage, control or enjoy the rights of shares in Chinese law firms.¹⁹⁹ Nevertheless, representative offices may set up a loose relationship with Chinese law firms for providing business information or exchanging practice experi-

194. *See supra* note 156, art. 18.

195. *Id.* art. 19.

196. *Id.* art. 16.

197. *See supra* note 158, art. 38. In practice, if a Chinese domestic lawyer wants to work in a foreign representative office, the lawyer has to give up his or her status as a Chinese lawyer. Otherwise, the foreign representative office will be disciplined according to relevant rules.

198. *Id.* art. 40.

199. *Id.* art. 39.

ence (among other things) so long as they do not violate the above-mentioned provisions.²⁰⁰

9. *Supervision and Administration of Representative Offices and Their Representatives*

The Ministry of Justice and judicial administrative organs in the governments of provinces, autonomous regions, and municipalities directly under central government are responsible for the supervision and administration of representative offices and their representatives.²⁰¹

The judicial administrative organs examine the license of a representative office and certificates of its representatives annually.²⁰² Representative offices must submit the required materials to the judicial administrative organ of the government of the province, autonomous region or municipality directly under the Central Government where it is located for annual examination before March 31 of each year.²⁰³ The materials a representative office needed to submit include information on legal services rendered by it and the legal affairs entrusted to Chinese law firms; its annual financial statement audited by an accounting firm, and documents certifying that its accounts have been settled within the territory of China and taxes have been paid according to law; information on the change of its representatives and the employment of Chinese staff; information on the residence of its representatives in the territory of China; information on the registration of itself and its representatives; and other information on the performance of duties provided by FAFRO.²⁰⁴ Representative offices must pay fees for this annual examination. The amount of these fees is set centrally by the price administration department of the State Council of China.²⁰⁵

10. *Discipline*

Representative offices and representatives will be disciplined if they violated the provisions of FAFRO, the Implementing Rules and other Chinese laws and regulations. Where a representative office or representative is convicted of violating Chinese criminal law, the Ministry of Justice shall revoke the license of the representative office or the certificate of the representative in addition to the criminal punishments imposed by the

200. See *supra* note 156, art. 15.

201. *Id.* art. 21.

202. *Id.* art. 22.

203. *Id.*

204. *Id.*

205. See *supra* note 156, arts. 21-23.

judicial department.²⁰⁶ Where a representative office or representative rendered legal services beyond the scope of business defined by FAFRO and the Implementing Rules, or employed Chinese lawyers, or conducted any other acts not in conformity with the provisions of FAFRO and the Implementing Rules, the Ministry of Justice or the relevant judicial administrative organ will impose a punishment on the violator according to the specific circumstances.²⁰⁷ The types of punishment include warning and order to make corrections, fines, confiscation of illegal gains, suspension or revoking the license or certificate.²⁰⁸

If the license of a representative office is revoked, the foreign law firm that established the office will not be permitted to establish a representative office for five years.²⁰⁹ Where a representative's certificate is revoked, he or she will not be permitted to practice in China as a representative in any representative office for five years.²¹⁰ If a representative of a representative office is imposed a criminal punishment for endangering the state security, public security or public order in China, the foreign law firm and the representative both be permanently barred from acting as attorneys or as a foreign firm respectively within China.²¹¹

D. RE-REGISTRATION OF FOREIGN REPRESENTATIVE OFFICES

Article 35 of RAFRO requires that all the foreign representative offices established before RAFRO came into force must reregister within 90 days from January 1, 2002.²¹² On October 23 of 2002, the Ministry of Justice published the names of these representative offices. The current count is that 96 foreign representative offices have been reregistered or established as new offices.²¹³ The following table lists the home countries of the foreign law firms that established these representative offices and the number of foreign representative offices from each country in China:

206. *Id.* art. 24.

207. *Id.* arts. 15, 25, & 26.

208. *Id.* arts. 24-30.

209. *Id.* art. 31.

210. *Id.*

211. *Id.*

212. *Id.* art. 35.

213. *See* the Eleventh Proclamation of the Ministry of Justice in 2002.

Home Country	Number of Offices
Australia	6
Brazil	1
Canada	3
England	19
France	6
Germany	9
Italy	1
Japan	9
Jordan	1
Singapore	5
Sweden	1
Switzerland	1
United Arab Emirates	1
The United States	33
Total	96

Source: the Ministry of Justice

94 foreign law firms from 14 countries set up the 96 law offices, among them one American law firm and one England law firm have established two offices each. 3 of the 96 offices are newly established after RAFRO came into force. Most of the representative offices are set up in Beijing (47) and Shanghai (43), and the others are located in Guangzhou (3), Chengdu (1), Qingdao (1) and Dalian (1).²¹⁴ Apart from 96 foreign representative offices, 37 representative offices have been established by Hong Kong law firms.²¹⁵

V. ACCESSION TO THE WTO: CHALLENGES AND REFORMS

In the past several decades, one of the most dramatic changes in the legal service sector throughout the world is the

214. *Id.*

215. Hong Kong and Macao are special administrative regions of China, with highly autonomous powers and independent jurisdiction. Before FAFRO came into force, the law firms and lawyers of Hong Kong, Macao and Taiwan were considered foreign law firms and lawyers because of their special status in China. However, after China's accession to the WTO, law firms and lawyers of Hong Kong, Macao and presumably Taiwan are no longer treated as foreign law firms and lawyers, and FAFRO does not directly apply to these three regions. However, Article 34 of FAFRO grants the Ministry of Justice the power to lay down rules on regulating the representative offices established in Hong Kong, Macao and Taiwan. On March 13, 2002, the Ministry of Justice promulgated the rules on regulating the representative offices established by law firms in Hong Kong and Macao. Under the rules, such representative offices must be reregistered within 90 days starting from April 1, 2002. In addition, the scope of business of these representative offices is the same as those established by foreign law firms. Currently, the Ministry of Justice has not yet promulgated rules to regulate the representative offices established or will be established by law firms from Taiwan.

internationalization of the practice of law. With the rise of multinational corporations, the rapid development of transportation, the spread of new information technology, and an increase in international economic transactions and flow of people, law firms and lawyers in one country cannot concentrate solely on the business of their home counties. Following the footsteps of their clients and the change of the international market, they pursue profits worldwide. Following the money has pushed an ever-growing number of large law firms and other legal service providers to "go global."²¹⁶

Since China began to reform its economic system and open its door to foreign countries, a large number of transnational corporations from western countries have established joint-venture, cooperative or sole foreign-owned enterprises in China, investing a huge amount of capital in the process. In 2001, China received foreign direct investment of \$46.8 billion, with an annual increase of 14.9%. In 2001, China approved the establishment of 26,136 foreign investments, a 16.0% rise compared to 2000. The amount of foreign trade in China has increased dramatically. In 2001, the total value of export and import reached \$509.8 billion, ranking 6 in the world, with an annual growth rate of 7.5%. The exports from China to the United States, the European Union, Japan, and Hong Kong amounted to \$186.7 billion in 2001. Chinese firms contracted overseas projects worth \$12.1 billion in 2001, with an annual growth rate of 7.2%.²¹⁷ In 2002, a management advisory company in the United States forecast that China will surpass the United States as the most attractive country for foreign direct investment. These figures and forecast indicate that a huge and expanding legal service market has emerged in China. No transnational law firm can afford to overlook this huge and expanding market.²¹⁸

Before China became a member of the WTO, China had already begun to open its legal service market to foreign law firms on the basis of reciprocity. But China only permitted foreign law firms to establish offices with a "one firm one office" policy in a limited number of cities, and the scope of business of foreign offices was narrowly restricted. The newly emerging domestic legal service sector of China had been protected to the extent that the admission of foreign legal services was prohibited. However, the situation has changed drastically since China entered the WTO. Under the specific commitments of China, starting on December

216. DROLSHAMMER, *supra* note 104, at 43.

217. *See supra* note 124.

218. George Haley, a San Francisco lawyer with Pillsbury Madison & Sutro LLP who renders legal services in China, stated that "[t]here's money to be made for lawyers" in China. Vitale, *supra* note 129 at 242.

11, 2002, foreign law firms may establish representative offices in any city or any place in the territory of China. The number of representative offices and foreign lawyers is no longer limited, and the business scope of representative offices is broadened wider than ever before. All these factors indicate that the barriers to admission to the Chinese legal service market have been dismantled greatly and foreign legal services will increase dramatically in China in the next few years. Doubtlessly, Chinese lawyers will encounter stiff competition from foreign lawyers in certain business areas.²¹⁹ Chinese lawyers have little choice but to improve their own competence provided that opening the domestic legal service market to foreign lawyers cannot be stopped in the long run.²²⁰

Unlike the United States and many European Countries where the legal service sector has developed over a long period, China began to reconstruct its legal service system from the end of the 1970s. After twenty years of development, despite great progress made in regulatory system and the quality and quality of lawyers, the Chinese legal service sector is still a fledgling compared to that of the developed nations. Facing the admission of foreign legal services and the imminent competition of foreign lawyers, both Chinese government and legal profession have to take necessary actions. Determining the problems of the current legal service sector so as to resolve them as a means of improving the competence of Chinese lawyers is a pressing matter of the moment in the eyes of Chinese legal professionals and governments. Specifically, China needs to reform its legal service sector systematically in the following aspects:

219. Since the scope of business of foreign lawyers in China is currently restricted to businesses with offshore elements or governed by foreign law, international law and precedents, the competition of foreign lawyers mainly concentrates on these areas. Chinese domestic lawyers will have to face serious challenges provided that foreign lawyers have a competitive advantage in these areas. See PEERENBOOM, *supra* note 13, at 370.

220. Once China opens its legal service market further to foreign lawyers, such as permitting foreign lawyers to consult on Chinese law, or approving foreign representative offices to employ Chinese lawyers or form partnerships with Chinese domestic law firms, Chinese lawyers will have no way to escape the competition from foreign lawyers. From the experience of the European Union's liberalization of legal service markets in the past several years, it is reasonable to predict that opening legal service markets in a wider scope will be put forward by the WTO system. In the European Union, after the directive of permanent establishment issued in 1998, lawyers in one member state can almost freely provide legal services in the territory of another country. See Council Directive 98/5/EU of 16 February 1998 to Facilitate Practice of the Profession of Lawyer on a Permanent Basis in a Member State Other Than That in Which the Qualification was Obtained, 1998 O.J. (L77) 36.

A. REDEFINE THE NATURE OF CHINESE LAWYERS

The nature of lawyers is directly related to the status of lawyers in society, the judicial system and the whole legal system and what varieties of legal rights and obligations lawyers may enjoy and undertake. In the United States, "a lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibilities."²²¹ Therefore, lawyers in the United States are not simply free practitioners but play three different characters toward different goals. The Lawyers' Law of Germany specifies that lawyers are independent judiciaries. The difference between lawyers and judges, prosecutors and other public lawyers lies in that lawyers are not public officials receiving salaries from the government.²²² In France, lawyers representing before courts must be admitted by lawyers' associations that are subordinated to courts. These lawyers are part of the French judicial system.²²³ Lawyers in both civil law systems and common law systems are officers in judicial system or part of judicial system independent from the government, and have the responsibilities for the judicial system, for clients and for society.²²⁴ In order to carry out their professional functions, lawyers in these countries are endowed with necessary privileges or special rights, such as self-regulation by lawyers' associations, client-attorney privileges, and rights to obtain evidence.

In China, the Lawyers' Law promulgated in 1996 provides that lawyers are legal service practitioners instead of state legal workers.²²⁵ In 2000, the State Council of China further defined lawyers as "social intermediaries" in a legal document in relation to the reforms in intermediary organizations.²²⁶ Without any doubt, separating lawyers from public servants is helpful for promoting the independence of Chinese lawyers. The question then becomes how to define the responsibilities of lawyers and whose interests should lawyers serve? If lawyers are simply defined as intermediaries and legal service practitioners, to what extent should Chinese lawyers serve the judicial system, clients, or public interests respectively? The current Chinese legal service system has no answer for these questions. In practice, many Chinese lawyers consider making a good living as the major value of their practices and undertake little responsibilities for

221. MODEL RULES OF PROF'L CONDUCT, Preamble (2002).

222. See JOHN J. BARCELLO & ROGER C. CRAMTON, *LAWYERS' PRACTICE AND IDEALS: A COMPARATIVE VIEW* 201 (1999).

223. See Richard Christon and Jeffrey Gordon, *Finding and Managing Foreign Counsel*, at 50.

224. BARCELLO, *supra* note 223, at 45-49.

225. LÜSHI FA [Lawyers' Law] art. 2 (2001).

226. See *supra* note 71.

the good of the judicial system and the public interest.²²⁷ In addition, as intermediaries, what kind of rights or privileges lawyers should enjoy is also a problem. Especially, the relationship between lawyers and clients is hard to define. This problem even endangers the personal safety of lawyers.²²⁸ The protection of the rights of lawyers from impingement of judges, prosecutors, and even clients is an urgent need for the development of the Chinese legal service system.

It is thus time for China to redefine the nature of its lawyers again. First, China needs to incorporate lawyers more into a legal profession that encompasses judges, prosecutors, lawyers and other legal professionals, and vest lawyers with stronger privileges and rights necessary to perform their activities in representation, defense, consultation, explanation of laws, legislation, among other things. Secondly, China should further enhance the independence of lawyers, so as to make lawyers into real independent legal service practitioners.

B. REFORM THE REGULATORY STRUCTURE OF LAWYERS

Throughout the world, three types of regulatory systems of lawyers are adopted. The first is the administrative regulatory system, in which judicial administrative organs or other agencies in governments take charge of the regulation of lawyers. However, few countries solely use this system to regulate lawyers for the reason that the system is ill adapted to the autonomous and independent nature of lawyers. The second is the self-regulation system taken by a great deal of developed and developing countries, such as the United States, the United Kingdom, Japan, and France. In this system, lawyers' associations or bars play a major role in regulating lawyers, and courts, judicial administrative organs or other governmental agencies usually do not interfere with the affairs of regulation of lawyers. However, in some countries, for instance, in the United States, state supreme courts have the power to make final decisions on admitting lawyers or serious punishment on lawyers, such as suspension of license or disbarment. The third type is to combine these two systems, in which certain governmental agencies and lawyers' associations share the powers of regulating lawyers according to laws and regulations. The regulatory system of China falls into the third type typically.

Some of the local governments in China have already began to reform the regulatory system of lawyers with an intention to transfer the regular powers of regulating lawyers to lawyers' as-

227. See PEERENBOOM, *supra* note 13, at 371.

228. *Id.* at 360-61.

sociations, so as to make lawyers' associations become real self-regulating organizations. Nevertheless, the central government seems to be hesitating to make a definite decision to spread the reformation through the entire country. The leaders of the Ministry of Justice have been vocal in their desire to reform the system of regulation of lawyers. One concern of the central government is that, in many provinces, lawyers' associations are still affiliated with the judicial administrative organs in local governments and they can hardly undertake the task of regulating lawyers because of the poor human resources in these associations and other unfavorable factors. Another concern is that before spreading these reforms throughout the country, the central government needs to use the experience of the ongoing reformation in local governments as a pilot study. This is time consuming, however, and it is reasonable to predict that the central government will not wait too long to take action, since the requirement to improve the competence of Chinese lawyers is becoming more and more imminent with China's accession to the WTO. The reformation of regulatory structure of lawyers is one of the most important ways to develop a competent legal profession.

In addition to the macro regulatory system of lawyers, China needs to concentrate on the reformation to the management system in law firms and the supervision system between lawyers as well. In the United States, under relevant rules, lawyers, especially partners in a law firm, have the responsibility to supervise the practices of other lawyers in the firm, so as to ensure quality of services and facilitate compliance with laws, regulations and professional rules.²²⁹ Up to the present time, China has no efficient and effective legal system to deal with the self-regulation in law firms and between lawyers. Lack of the system is one of the major reasons that some of the provisions of the Lawyers' Law and ethics rules cannot be well implemented. As a result, the competence of lawyers as a whole is negatively affected.

C. INCREASE QUANTITY OF CHINESE LAWYERS

As of June 2001, the number of Chinese lawyers was 114,892, among them 70,147 full time with the proportion of lawyers to the entire population at 0.8/10,000.²³⁰ The ratios of lawyers to the population in several developed and developing countries or regions are tabulated below:

229. MODEL RULES OF PROF'L CONDUCT, *supra* note 222, art. 5.

230. See The Second Chinese Lawyers' Forum, *supra* note 31.

Country	Lawyers : Whole Population
The United States of America	32 : 10,000
The United Kingdom	20 : 10,000
New Zealand	15 : 10,000
Brazil	20 : 10,000
Argentina	12 : 10,000
Hong Kong	8.5 : 10,000
Taiwan	2 : 10,000
Macao	1.5 : 10,000

Source: All China Lawyers' Association²³¹

From this table we can see, the proportion of lawyers to the whole population in the United States, the United Kingdom, New Zealand, Brazil, Argentina and Hong Kong are respectively about 40, 25, 19, 25, 15 and 11 times of that of China. Although China has a great number of lawyers (114,892) in comparison with most countries, because of China's large population (about 1.3 billion), the proportion of lawyers is quite small. In addition, in terms of number of lawyers, China falls behind the United States where 900,000 lawyers are practicing law.²³² Therefore, China needs to increase the population of lawyers by a large scale in the near future so as to satisfy the need of legal services of individuals, enterprises and other organizations.²³³ Additionally, the Chinese legal service market is now a free market, where lawyers compete with each other for business through quality. If the quantity of lawyers is too small in contrast to the whole population, the competition in many regions will be insufficient to facilitate the growth of competent lawyers. Although in the big cities of the eastern and southern coastal regions of China, the proportion of lawyers to the population is much larger than the average ratio of 0.8/10,000, it is still much lower than that of most of the countries or districts listed above.²³⁴

231. *Id.*

232. In the United States, people who passed bar examinations and obtained certificates of qualification from a state bar are counted as lawyers, whether or not they work in law firms, governments, companies, or practice as solo practitioners. However, in China, only people who get a lawyer's license and register in law firms are considered as lawyers, judges, prosecutors, and people who work in governmental agencies as public servants or in companies as employees are not lawyers, even though they passed the qualification examination of lawyers. If lawyers are counted in the same way as in the United States, the number of Chinese lawyers will be much higher than the number mentioned above.

233. See PEERENBOOM, *supra* note 13, at 362. "Representation rates in civil, economic, criminal, and administrative cases give some sense of the pressing need for more lawyers." *Id.* For instance, from 1992 to 1998, the representation rates in civil litigation cases ranged from 10 - 15% and about 26% in economic cases.

234. For instance, in Shenzhen, a city with the highest per capital income in China, the ratio is only about 3 out of 10,000.

However, it seems the problem of small quantity is not a hard nut to crack since lawyers are becoming more and more attractive in China due to above average income potential. In 2002, 310,000 people sat for the National Judicial Examination and about 7% of these candidates earned the qualification certificates of the legal profession.²³⁵ Most of the candidates who passed the examination will probably become practicing lawyers, prosecutors or judges. Nevertheless, even at this speed, there is still a long way to go for China to establish a quantity of lawyers appropriate for its population.

D. IMPROVE THE QUALITY OF CHINESE LAWYERS

The quality of Chinese lawyers can be assessed by the education they receive before being admitted as lawyers, the lawyers' ability to deal with domestic legal service business, and the lawyers' competence to provide international legal services.

In the early period of the reconstruction of the legal service system, legal education was also just restored, and there were not enough candidates graduated from universities. This led to many lawyers without proper legal educations being admitted to practice. However, after twenty years development, the situation has changed dramatically. The following table lists the types and number of diplomas lawyers obtained before being admitted before 2001:

Diploma	Number of Lawyers	Percentage
Doctoral Degree	463	0.4%
Master Degree	6329	5.5%
Bachelor Degree	43691	37.8%
Junior College		
Diploma	55693	48.1%
Other Diploma	9402	8.2%

Source: All China Lawyers' Association²³⁶

In the above table, junior college diploma indicates a certificate issued to a student who accomplished two years or three years legal education in a college or university. "Other diploma" indicates those lawyers who did not get a college diploma, but received three years of legal education in a Judicial Professional School or studied law by themselves and worked in a law firm or legal service institute for a certain period of time.²³⁷ Most of the

235. See *supra* note 50.

236. See The Second Chinese Lawyers' Forum, *supra* note 31.

237. Judicial Professional School is a kind of technical secondary school that admits high school graduates and sometimes secondary school graduates and is gener-

lawyers who did not get a junior college diploma or above were admitted when China began to reestablish the legal service system. From the table we can see, although all of the lawyers obtained professional training and most of the lawyers in China attended a college before admission, lawyers who received a bachelor degree (four years college study) or higher only account for 43.7%.²³⁸ Now that the prerequisite for sitting for the National Judicial Examination is that a candidate must have at least a bachelor degree,²³⁹ the education level of lawyers will improve greatly in the next decade.

The overwhelming majority of Chinese lawyers deal with traditional legal service businesses, such as representation or defense in litigation, consultation on Chinese law, preparing contracts or other legal documents governed by Chinese law. With the deepening of economic reforms and the rapid development of technology, many new domestic legal service businesses emerged in the last decade, including those services relating to banking, mobile and housing mortgage, insurance, acquisition and merger, securities, electronic commerce, internet and information, intellectual property, and so forth. However, only a small proportion of Chinese lawyers are able to render these services because most Chinese lawyers are not familiar with them. For traditional and other legal services only involving Chinese law, to date, foreign lawyers have not been permitted to provide services and Chinese lawyers thus have exclusive rights to engage in them. Therefore, there will be no direct competition from foreign lawyers engaging in these businesses before China conducts more commitments to the WTO to widen foreign lawyers' scope of practice in China. However, Chinese lawyers cannot rest easy. The pressure from some important trade partners, such as the United States and the European Union countries, may make the Chinese central government consider permitting foreign lawyers to render certain types of legal services involving Chinese law in the near future. Once foreign lawyers are permitted to provide services in relation to Chinese law, a great deal of businesses will be grabbed by foreign lawyers. Because some of the "newly emerging" businesses for Chinese lawyers have already been

ally subordinate to local judicial administrative organs. In school, students acquire a basic knowledge of the law and practicing skills needed to work in the grass-roots legal service institutes.

238. In most states in the United States, candidates who apply to take the bar exam are required to obtain a Juris Doctor (J.D.) degree. Before being admitted into a J.D. program, candidates must have a bachelor degree. Presumably, the overwhelming majority of lawyers in the United States have at least a bachelor degree. This comparison indicates that China will have a very long way to go to catch up with the United States in terms of the quality of lawyers.

239. LÜSHI FA [Lawyers' Law] art. 6 (2001).

practiced in many countries for several decades or longer, it is reasonable to conclude that foreign lawyers are much more competent in handling these businesses than Chinese lawyers. Nevertheless, China has already begun to repair the house before it rains. The judicial administrative organs in governments and lawyers' associations are carrying out the reformation of the continuing legal education system of lawyers, through which lawyers' competence in rendering these services will be enhanced.²⁴⁰

In respect of transnational legal services, the factors affecting the competence of lawyers include knowledge of international law and the international practices of lawyers, foreign language skills, and the experience and skills of dealing with transnational businesses. At present only about 2,000 Chinese lawyers are capable of negotiating with foreign clients and preparing contracts or other legal documents in a foreign language.²⁴¹ Many foreigners or foreign invested enterprises in China are inclined to retain foreign lawyers although they collect service fees higher than Chinese lawyers for various reasons. One of the reasons is that some of the clients do not trust the ability of Chinese lawyers to handle transnational business.²⁴² Since transnational businesses, such as international trade, investment, anti-dumping, countervailing, acquisition and merger, banking, securities, intellectual property, may be or will be governed by Chinese law, foreign law, international law, or international practices, most of the legal services involved in these transnational economic activities fall into the scope of business of foreign lawyers permitted by China. Chinese lawyers have to confront direct competition from foreign lawyers for transnational legal services. Since the number of Chinese lawyers competent for transnational legal services is so small and the experiences of Chinese lawyers handling international business cannot match that of foreign lawyers in general, foreign lawyers will probably occupy a majority of the transnational legal service market in China with the number of foreign lawyers increasing after China entered the WTO. However, in order to improve Chinese lawyers' ability to render international legal services, China has already dispatched many lawyers to be trained in the United States and some European countries where lawyers have strong competitive abilities in handling the international legal service business. With more and more Chinese domestic lawyers

240. For instance, the central government and some local governments are planning to establish an Academy of Lawyers with the intention to train high quality lawyers.

241. See *The Second Chinese Lawyers' Fourm supra* note 31.

242. See *supra* note 129 at 247.

being trained in these countries, the international competitive ability of Chinese lawyers will be improved greatly.

E. REFORM CHINESE LAW FIRMS

A prevalent point of view in the legal profession in China stands that the size of Chinese law firms is so small that it is hard for them to compete with the large transnational law firms in some developed countries. Up to the first half of 2002, China had about 10,000 law firms, including 6,300 partnerships, 1,500 cooperative firms, and 2,200 state-funded firms.²⁴³ Most of the law firms in China have less than 50 partners and associates, and only a few law firms have more than 100 partners, associates and staff. None of them reaches 200.²⁴⁴ However, the average number of lawyers of the top 50 law firms throughout the world amounts to 800, each of the top 10 law firms has more than 1,300 lawyers on the average, and there are more than 3,000 lawyers practicing in the largest transnational law firm in the world.²⁴⁵ In terms of international competition, small law firms cannot compete with these huge law firms. China needs to enlarge the size of law firms, especially those law firms that focus on international business. In the last decade, there have been several mergers of law firms in China, of which the most famous is the establishment of Guohao (Group) Law Firm by several minor law firms. Through a series of mergers it became one of the largest firms in China.²⁴⁶ These mergers represent a trend of the formation of many Chinese law firms in the future. A problem directly related to the size of a law firm is the issue of specialization. To forge huge law firms with international competence, China also needs to accelerate the specialization of its law firms

In addition, the operation and management of Chinese law firms also need to be reformed. For instance, currently, clients of a law firm in China are mainly attracted by the reputation of an individual lawyer instead of the law firm itself, and a lawyer is generally remunerated at a rate for the service fees he or she earned annually. One of the most apparent negative aspects of this operational mode is that, a majority of lawyers solicit clients and render services individually and it is hard for them to cooperate with and support each other. Lawyers usually exert themselves to forge their individual reputation or fame instead of the name of their firms. This makes it hard to generate the collective

243. See The Second Chinese Lawyers Forum, *supra* note 31.

244. *Id.*

245. *Id.*

246. After the merger, Guo hao (Group) Law Firm reached 150 lawyers.

competitive energy of a law firm or facilitate the emergence of large law firms in China.

With the dying away of State-funded law firms, cooperative and partnership law firms became two major forms of firms in the Chinese legal service sector. Many legal professionals advocate permitting the establishment of corporate law firms and the existence of sole practitioners so as to meet the various needs of legal service market. Additionally, the ability to form corporate firms should be helpful for the formation of huge law firm.

VI. SUMMARY AND LOOKING AHEAD

Since China began to reconstruct the system of lawyers at the end of 1970s, the Chinese legal service system has been reforming in order to keep pace with the reform of the economy and the legal system. After twenty years of continuous reformation and development, the Chinese legal service system has already been set up, and lawyers are playing an indispensable role in the economy, the judicial system and in the ordinary life of Chinese people. In historical perspective, the Chinese legal service system has experienced a surprisingly high speed of development in parallel with the similar meteoric rise of the Chinese economy in the past two decades. Within a little more than twenty years, the number of Chinese lawyers has increased from almost zero in the end of 1970s to nearly 120,000 in 2002. The working institutes of lawyers have been diversified from the original legal advisory offices to the coexistence of state-funded law firms, cooperative law firms, and partnership law firms. The regulatory structure of lawyers was modified from the unique administrative regulation of the judicial administrative organs in governments to the dual system of administrative regulation and self-regulation of lawyers' associations. However, China has to continue to carry out the reform of its legal service system. Especially, with China's accession to the WTO, reforming the current system so as to improve the competence of Chinese lawyers and face the challenges from foreign lawyers is one of the most urgent affairs for the Chinese legal profession.

The legal service market of China is huge, and it will become more and more immense with the continual development of the Chinese economy. The legal service market has already opened wider than ever before after China entered the WTO. Currently, foreign law firms may establish representative offices in China without restriction of place and number; foreign lawyers are permitted to render consultative services on international conventions and practices, build entrustment relationship with Chinese lawyers for legal services, provide information on the impact of

the Chinese legal environment, and represent clients in international arbitration. It is predictable that more and more foreign lawyers and law firms will enter the Chinese market in the near future.

Like many developed or developing countries, the attitude of the Chinese legal profession toward the opening of legal service market and the admission of foreign lawyers is somewhat ambivalent. On the one hand, the free admission of foreign lawyers will be bound to bring about furious competition and Chinese lawyers will lose a great deal of the legal service businesses. Since Chinese lawyers are not as competent as lawyers in some major developed countries in many aspects, a great number of lawyers will find it difficult to survive against the competition from foreign lawyers. Therefore, it is reasonable for China to restrict the scope of business of foreign lawyers and the form of establishment of foreign law firms in China with a view to protecting the immature domestic legal service sector as much as necessary. On the other hand, liberalizing its legal service market is necessary and helpful for the development of international economic exchange. Predictably, the existence of a great number of foreign lawyers practicing in China will facilitate the increase of foreign trade and direct investment. In addition, foreign law firms and lawyers may bring with them advanced management ideas and practice skills that are helpful to the development of the Chinese legal service sector. China has to strike a balance between protection of the interests of domestic lawyers and the admission of foreign lawyers when deciding to what degree to open its legal service market. Since the present Chinese legal service sector is so immature, it is difficult or impossible for China to admit foreign lawyers and law firms without any limitation at present. Nevertheless, with the further development of the Chinese legal service sector, the Chinese legal service market will be definitely opened wider and wider.²⁴⁷ As internationalization has become the trend of world legal services, progressively liberalizing legal service market is the only choice for China as well as other WTO members.

247. "The likelihood of China's easing these restrictions on foreign law firms gradually, however, is high, particularly as Chinese lawyers advance their legal competence. As Japan demonstrated, the liberalization process merely chips away at the restrictions imposed on foreign lawyers rather than eliminates them as a condition of entry into the WTO. Moreover, the liberalization process occurs more as a result of economic factors than accession to the WTO. Thus, the international marketplace will reduce many of China's service restrictions on foreign law firms." Vitale, *supra* note 129 at 248.