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*To Anna Di Nicola,
The woman who showed me
That nothing is impossible in life,
As long as you are ready to fight for it.*

引言

这篇论文主要研究了外国律师界在中国的律师市场环境下生存现况。

如今在中国律师和外国律师所之间，人才的双向流动变得频繁，即使中国的法律还不是很成熟，特别在对外的律师事务所上甚至还有很多法律的限制，即使情况是这样，还是有很多的外国律师愿意到中国去工作，在他们看来，中国是一个正在发展向上的国家，中国的市场正在以其无可抵挡的魅力吸引着世界资本蜂拥而入。中国法律市场的大门也已经向外国律师打开。90年代初，司法部，国家工商行政管理总局联合发布了《关于外国律师事务所在中国境内设立办事处的暂行规定》，第一次允许外国律师在中国设立外国律师事务所。

外国律师所给中国律师界带来的直接影响就是提升和带动了法律服务行业的发展一切的发展都证实中外律所之间存在相互合作的巨大空间中外律所的合作自始就是必然的。2003年1月8日，中国司法部举行了专门的仪式，向增设第二家驻华代表处的11家外国律所颁发了批准证书，中国由此兑现了入世一年后取消外国律所设立代表处的地域和数量限制承诺，中国的法律市场大门进一步向外国律师打开。

然而外国律师所在中国的发展也并非一帆风顺，我们不得不注意到一个正在发生的问题，市场资源的有限性会产生外国律师和中国律师界的矛盾，中国官方对于外国律师所明紧暗松的监管态度，一方面要保护本土的律所，一方面又要发挥外国律所在引进国际资本时的作用考虑。

笔者进一步具体撰写本文，描述了中国法律服务市场从九十年代初至今的发展历程，尤其是中国律师市场环境的发展情况，从限制外国律师事务所权利的立法，来分析外国律师事务所的组织形式，最后参考几位作者的观点和想法以此为论点来作为结论。

首先，为了更好地理解本文，在第一章中将对中国法律框架进行简短的描述，并分析其主要思想和从“以法治国”到“依法治国”政策的重要转变。此外，笔者还将对中华人民共和国国务院，司法部及中华全国律师协会等在中国法律环境中发挥主要作用的领导人进行简要介绍，以及外国律师和本地律师合作的重要性。另外，考虑到中国律师界多年来的复杂演变，通过分析现行的“中华人民共和国律师法”（2017年9月修订），这是1996年发布的第一份“律师法”，指出此立法对这个行业的影响使中国经济有了大幅提升。

第二章将研究制定和限制外国律师事务所在华活动的法律，特别是从1992年第一版到2004年最新版本的修订。

第三章将分析各种公司运营模式的相对优势与不利条件。外国律师事务所在中国的诞生于1992年，但是由于中国的社会习惯，法律和政治环境因素的影响，甚至国家高度的参与，中国有关部门限制外国律所的经营。从那时起，这些规定严重限制了外国律师事务所的实践和发展。本章将考虑外国律师事务所在中国可以选择的两种不同类型的组织形式，分析一些（案例研究）案例和相关的利弊。最后将更具体的分析以下组织形式的各个特点：

1. 中国律师事务所

2. 外国律师事务所:

A. 跨国律师事务所及中外合并事务所 dentons

B. 意大利独立律师事务所：Chiomenti

3. 意大利参与合法市场的方式：GWA advisory 意大利咨询公司

4. 四大：毕马威，普华永道，德勤，安永。

关于外国律师事务所的三种运营模式，笔者将做简短的介绍，外国律师事务所可选择的在中国的运营方式和组织形式。

首先是跨国律师事务所及中外合并事务所，当时司法部正式允许外国律师事务所在中国设立代表机构。从那时起，许多外国律师决定通过设立

代表处，乘着国际投资浪潮进入中国市场。笔者将对 Dentons 跨国律师事务所进行研究。特别是，Dentons 和大成律师事务所的成功并购，它们成为了世界上最大的律师事务所。全球有55多家分公司，7千多名律师。然后介绍意大利的独立律师事务所的结构，意大利的独立律师事务所的实践领域涉猎很广，Chiomenti 是意大利第一家1991年出国的律师事务所之一，十多年后在伦敦开设分支机构，也是第一个移居中国的企业之一，考虑到在实践活动，业务范围等方面的成果，所以Chiomenti是一家很具有研究性的律师事务所。意大利律师事务所多年来一直与中国著名的律师事务所建立了牢固的合作关系。这种多元化的组合使Chiomenti成为中国领先的独立意大利律师事务所，特别受到那些愿意投资意大利的客户的重视。

最后笔者还将介绍外国律师参与合法市场的方式，例如咨询公司，外贸服务台，发展与中国的项目合资。在这种运营方式下外国律师的自由度是相对较高的，其中的业务还包括了提供外国驻华律所可以向相关的法律服务需求者提供服务。对比之前的两种事务所模式，咨询公司的限制是相对较少的。在中国设立咨询公司中执业自由比在外国律师事务所或代表处获得的自由更大。并且有的立法还规定了在咨询公司的业务范畴中，比对外国律师事务所更宽容。而且，咨询师的专业考试是向外国申请人开放的。

3.四大：毕马威,普华永道,德勤 ,安永 它们是世界四大跨国投资集团，四巨头在法律市场上的地位正在不断增长，预计到2020年，它们将在全球律师事务所的影响力将会增大。它们的营业额，业务领域和地域扩张都是最有名和最具影响力的。它们在过去几年中经历了一次重大转型，开发了多领域的专业服务，并提供更加全球化的业务解决方案，包括法律部分。这些公司正逐渐在全球范围内扩展他们的法律服务业务，但由于

其更广泛的法律自由和全球影响力，使得像中国这样严重制约的合法市场工作的外国律师事务所出现了担心。

在第四章中，笔者将对此做出一些建议。中国法律服务市场正确的道路就是在规范中前行，而不是在竞争中倒退，应该不断的提高律师的自身素质，中国法律界在过去的20年里发展十分迅速，中国律师界也发生了翻天覆地的变化，政府对法律和管理模式都进行了重大的改革，尽管国家作出了调整，但是中国的法律制度现在还处于一个非常微妙的发展阶段，国家的作用一开始肯定是非常积极和重要的。它保护了新出生的中国律师行业，避免与最发达的国际律师事务所的直接竞争。可以说，一开始政府的干预和控制就是正确的战略，但是随着时间的推移和行业环境的变化，笔者认为它是一把双刃剑。政府控制中外律师事务所合并，不允许中外律师事务所之间的直接竞争，在一个没有竞争关系的行业里，这个行业是无法进步的，这间接影响了中国律师行业的成长。开放中国合法市场可能成为中国律师行业最终达到国际标准的胜利武器。时代在变，他们必须改变战略，与时俱进，加强中外律师界的合作，引入先进的管理模式和执业理念，实现共赢的目标。

自从1992年7月中国开始允许外国律师事务所在中国境内设立办事处后，根据2012年12月22日中国政府公布《外国律师事务所驻华代表机构管理条例》已有219家外国律师事务所驻华代表机构通过2011年度年检，获准在中国境内执业并提供境外的法律服务。入世后，中国也进一步放宽了对外国律师事务所的市场准则和限制，但由于文化等方面的差异，其问题也凸显出来，笔者选择这个研究课题是因为两年前在大学学习了相关的课程，并且之后有机会参与广州的敬海律师事务与大学的合作项目，在该事务所有三个月的实习经验，在一个意大利部门工作，工作的过程过读者发现面对外国律师的异军崛起，不少国内律所感到空间被压迫，

生存环境变的恶劣，所以国内的律所开始要求有关部门限制外国律所的经营，所以政府不断的控制外国律师事务所来保护本土律师的竞争力。在中国对于外国律师没有一个公平的竞争机会，与其说这是不公平的竞争，不如说是中国法律服务监管制度的缺陷所致。中国的法律环境并不是那么成熟，可以说是非常年轻。

看到了这些问题，笔者非常想研究和了解中国法律的发展的过程，它是怎么形成现在的状况。在笔者看来法律服务全球化，自由化是法律服务行业的发展趋势，严格来说，跨境服务涉及两地法律，原本是中外律师的互补合作，不应该存在两者之间的竞争，但是因为某些不公平的法律条款，形成了如今的局面。外国律师在华的执业限制使其不能在中外经济贸易交流中发挥积极的作用和提升法律服务业的管理水平和服务能力，人才的恶性竞争导致的直接后果就是造成律所难以负担。

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Introduction

Chinese legal environment nowadays is still evolving and even if it is weak and unperfected, for foreign law firms it still represents *the place to be*.

Undoubtedly, having a branch office abroad has many positive aspects as in essence, it helps a law firm to build a cosmopolitan image and an international reputation. In addition, it contributes to having a good perspective on the current international changes of the market, as well as being able to assist clients who wish to invest abroad. Nevertheless, the choice of setting up an office in China nowadays, can be also justified through the words of Richard Abel¹, which ironically describes the dynamics that often rule the internationalisation of law firms. Writing back in the 1993, he stated: “*Law firms sometimes appear to be seized by the adolescent angst that all your friends are at a party to which you haven’t been invited—it is unbearable not to be there, even if you know you would have a terrible time*”. In those days, Richard Abel used this analogy to describe the trend of that particular period when many law firms were setting up offices in global financial centres such as London, Tokyo, and Hong Kong². The primary business, similarly to that of foreign law firms in China, was about consulting clients on mergers and acquisitions (M&A) or financial market transactions³. Evidently, being those cities so in vogue in that time, there are a few factors which remained implied in the deal, such as the exceptional level of competitors in the same minority area; the surely high initial costs of the investment; the difficulties in the establishment of a new office on a foreign land, and other possible negative variables which, in any case, compared to the great margin of potential profit, are equal to little issues. Richard Abel’s analogy still perfectly fits the latest

¹ Richard L. ABEL. *Transnational Law Practice*, Case Western Law Review 44, 1993, p.741.

² John FLOOD, *Lawyers as Sanctifiers: The Role of Elite Law Firms in International Business Transactions*. Indiana Journal of Global Legal Studies 14 (1)2007, p.12

³ FLOOD, *Lawyers as Sanctifiers... op.cit.p.13* and Carole SILVER, “*Globalization and the U.S. Market in Legal Services-Shifting Identities*”, *Law and Policy in International Business* 31, 2000, pp. 1093–1150.

foreign law firms' shift towards the Chinese market. A market full of difficulties and limitations, still with a high potential and huge number of opportunities, in which all the law firms that count must be present, even if it can be "unpleasant" somehow.

According to the *The Economist*⁴, a close look at China's framework helps to explain the lack of correlation between law firms' global presence and increased profits. Indeed, analysing the Chinese historical and legal background we can easily notice that, even if the world is going through an era of declining trade barriers, the State control in China is still very pronounced in many sectors, especially in those of high strategical importance (e.g. energetic sector, telecommunication, etc.) or in those represented by very weak firms, which is the specific case of the legal one. This is why the Chinese legal environment is typically described as a constrained market⁵ heavily shaped by the State involvement, in which foreign law firms are subjected to many limits and controls.

However, the difficulties that could emerge from a legal environment in continuous evolution and characterised by instability caused to political involvement, do not discourage the international law firms decision to invest and bring their presence to China. To justify such a trend "*there is general agreement that most law firms are reactive and go abroad in response to client demand for services*"⁶ and from the last 20 years on, China have indeed represented a new can't-miss opportunity for investors from all over the world. This is also an essential reason why the "go China fever" spread out among international lawyers, especially during an historical period in which, China has been seen by investors like the playground where the "big game" is played

⁴ "Homebodies Rule: Globalization Slows Profits for Many Law Firms", *Economist*, October 15. <http://tinyurl.com/3g7cyog> 2011(Accessed 10 Nov. 2018)

⁵ Rachel E. STERN and Su LI, "The Outpost Office: How International Law Firms Approach the China Market", *Law & Social Inquiry, Journal of American Bar Foundation*, 2005, p. 6

⁶ *Ibidem*.

Going more into specifics, writing this thesis the author intends to explain how the Chinese legal services market has evolved from the early ninety's till now a days, with particular references to the situation of foreign law firms in People's Republic of China (PRC), starting from the legislation that regulates their activities and their presence, going through an analysis of the different organisational forms a foreign law firm can choose, concluding with a few author's reflections and suggestions for a final liberalisation of the Chinese legal market.

Firstly, for a better understanding of the following article, in Chapter One will be given an essential description of the Chinese legal framework, taking in consideration its pillars and the important shift from a rule-*by*-law system to a rule-*of*-law one. Furthermore, the author will add a brief presentation of all the actors who are playing the major roles in the Chinese legal environment, such as the National People's Congress (NPC), the State Council (SC), the Ministry of Justice (MOJ). An additional sub-chapter will describe the complicated evolution Chinese lawyers went through the years, presenting the important players who have participated in this process such as the All China Lawyers Association (ACLA), its goals and the strives towards the independence of the judicial profession made throughout the years.

In Chapter Two will be taken into account and examine the laws that regulate and limit the activities of foreign law firms in China, in particular will be analysed the improvements made through the years from the first version of 1992, till the most updated one of 2004.

In Chapter Three will be taken in consideration the various organisational forms, and relative advantages and disadvantages, able to provide legal assistance in China. More specifically will be analysed the various aspects of the following organisational forms and relevant case studies:

1. Chinese Law firms: Wang Jing&Co. law firm's successful story
2. Foreign law firms:
 - A. Multinational Law Firm merging with Chinese one: Dentons and 大成

B. Italian independent law firm: Chiomenti

3. Italian ways of participating in Chinese legal market:

Great Way Advisory, Legal, tax and accounting

4. Big Four: KPMG, EY, PwC and Deloitte and their growing legal practice.

Chapter Four will entail the author's conclusions and suggestions for a better development within the Chinese legal environment, hoping for a final liberalisation of the legal market.

Chapter 1: Chinese legal system and the main actors

In this chapter, it will be given some informations about the main features and actors of the Chinese legal environment, making the reader sufficiently aware of its peculiarities, for an easier comprehension of its dynamics, often very different from the Western ones.

Given that “*a truly adequate description of the Chinese legal profession would take a lifetime of study*”⁷ as Professor Gerard Clark wisely said, the author will try to give a short, but exhaustive description of it, joining the forces with the major experts of the field.

Starting from the essentials, the Chinese society is a mix of different values. Primarily, it bases itself on the secular tradition and philosophy of Confucius, in which the creation and preservation of an “harmonious society” (和谐社会 *héxié shèhuì*) represents the primary value of the society. Hence, in order to keep peace and stability, the singular rights are necessarily subordinated to the public ones, as a consequence, “[*t*]he Western notion of enforcing one’s legal rights through litigation does not sit well with the Chinese”⁸.

Second, the Confucian philosophy strongly emphasises the importance of roles, both in the domestic and civil contexts, where a hierarchical organisation of the social actors is fundamental. These values are not just impressed in people’s minds and culture in China, but are also widely promoted by the government all over the country, carrying out an heavy advertising campaign, advocating for the return to the confucian values as the

⁷ Gerard J. CLARK, “An Introduction to the Legal Profession in China in the Year 2008”, *Suffolk University Law Review*, Vol. 41,2008, p. 833;
Available at: <https://ssrn.com/abstract=1270242>

⁸ *ibidem*.

right path leading to the realisation of the “Chinese Dream” (中国梦 *zhōngguó mèng*)⁹ and a real welfare for China and its citizens.

For all these reasons, without a doubt, the concept of absolute individual rights in front of the law cannot be supported by Chinese law, moreover, it is fundamental to understand that in China the priority always belongs to the public interests or to the person who belongs to an higher hierarchical position, and not to everyone. Surely, there have been a few upstream episodes, but to fight for an individual right in front of a court, despite the public interests or the hierarchical superiority of the counterpart, is intended as an expression of anti-social individualism, hence, it is not welcome at all.¹⁰

Consequently, the socialistic nature of the PRC is not a factor that can be ignored. The socialistic ideology is based on two pillars: the unity of State’s powers and the guiding role of the Chinese Communist Party (CCP). Even though, these principles are evidently not compatible nor with the Chinese traditional values, nor with the delicate equilibrium of the Western concept of rule of law,¹¹ they are somehow inserted within the Chinese system of traditional values, transforming this culture in a hybrid creature made of Chinese traditional philosophy and modern communist doctrine.

⁹ “Xi’s Chinese Dream is described as achieving the “Two 100s”: the material goal of China becoming a “moderately well-off society” by about 2020, the 100th anniversary of the Chinese Communist Party, and the modernization goal of China becoming a fully developed nation by about 2049, the 100th anniversary of the People’s Republic. The Chinese Dream has four parts: Strong China (economically, politically, diplomatically, scientifically, militarily); Civilized China (equity and fairness, rich culture, high morals); Harmonious China (amity among social classes); Beautiful China (healthy environment, low pollution). “A moderately well-off society” is where all citizens, rural and urban, enjoy high standards of living. This includes doubling the 2010 G.D.P. per capita (approaching \$10,000 per person) by about 2020 and completing urbanisation (roughly one billion people, 70 percent of China’s population) by about 2030. “Modernization” means China regaining its position as a world leader in science and technology as well as in economics and business; the resurgence of Chinese civilization, culture and military might; and China participating actively in all areas of human endeavor.”

<https://mobile.nytimes.com/2013/06/05/opinion/global/xi-jinpings-chinese-dream.html?referer=https://www.google.it/>

For more infos read: Maurizio SCARPARI, *Ritorno A Confucio. La Cina di oggi tra tradizione e mercato*, Bologna, Il Mulino, 2015

¹⁰ Renzo CAVALIERI and Cristiana BARBATELLI (ed.), *La Cina non è ancora per tutti. Dialoghi sul mercato cinese*, Milano, Edizioni Olivares, 2015

¹¹ *ibidem*.

This peculiar situation brings along with its nature many issues, such as the political interferences in the development of the economy, in the management of private or state-owned enterprises and in the legal courts. This continuous involvement of the state in every matter, makes the relations with the State organs necessarily different from the typical Western ones.

In a system where the common interests are more important than the individual one's, is not difficult to come to a bitter conclusion "*[f]ar more than in many other systems, the Chinese legal system is willing to forgo the enforcement of rights when other pressing values seem to be at stake, to the point where it might be more accurate to say that the system recognises interests more than rights*"¹².

Fully understanding the fundamental principles of the Chinese society, it is clear that, the use of law has always been seen just as a tool in the hand of the government, who decides if benefitting from it or attempting to use other ways to judge who is right and who is wrong.¹³ As a matter of fact, in Chinese courts, the most used way of solving contentious is the mediation of the parties, trying to generate, if possible, a win-win situation for both: *ergo*, as mentioned before, courts generally do not welcome litigation and often try to discourage it.¹⁴ Even though, the idea of law in China may seem very different from the Western one, the truth is that the Chinese legal system is inspired by the civil-law model, this is why the role of the judges appears to be less important than the one they have in common-law systems. Consequently, it is right to say that "*in the Chinese system, thus the civil-law model, the judge is more a follower of the law than a custodian of it.*"¹⁵ This statement finds its confirmation in the "weight" the legal system gives to the role of judges, that is to say no more important of a common state-worker.¹⁶

¹² CLARK, *An Introduction to the Legal Profession...*, p 834

¹³ CAVALIERI and BARBATELLI (ed.), *La Cina non è ancora per tutti...*, p.46

¹⁴ *ibidem*.

¹⁵ CLARK, *An Introduction to the Legal Profession...*, p 834

¹⁶ CAVALIERI and BARBATELLI (ed.), *La Cina non è ancora per tutti...*, p.47

Seen the preconditions at the bases of the Chinese legal environment, it is a normal consequence that the concept of sovereignty of the law, hence, rule of law idea is not the same as the Western one, even if the situation is actually developing in this direction.

1.2 China's path towards Rule of law

In its historical past, China used the law only as a tool to govern the country. The law was not binding on the regulating elite and was not absolute on every individuals. This old tradition made China a rule-*by*-law country, far away from the Western concept of rule-*of*-law. However, this situation evolved during the years and China went through a long process before starting to applying the rule of law principle.¹⁷

Throughout the 30-years reform, China managed to free its institutions from the soviet and maoist ideology¹⁸, moving always towards grater modern changes. Finally, in 1999 China made an important implementation to its constitution. Article 5.1 of the Constitution of PRC is the official mark signing the shift from a rule-*by*-law system to a rule-*of*-law one.

Due to its meaningful role, Article 5.1 is reported below, both in English translation and original language:

Article 5

The People's Republic of China governs the country according to law and makes it a socialist country under rule of law. ¹⁹

第五条

¹⁷ Randall PEERENBOOM, *China's Long March toward Rule of Law*, Cambridge, Cambridge University Press, 2002, pp.5

¹⁸ *ibidem*

¹⁹ "Constitution Of The People'S Republic Of China" *English.Gov.Cn*, 2018, http://english.gov.cn/archive/laws_regulations/2014/08/23/content_281474982987458.htm.

中华人民共和国实行依法治国，建设社会主义法治国家。²⁰

As it always happens in regulations, the choice of the right words make all the difference. The word “socialist”, which in the Chinese version is *shèhuì zhǔyì* “社会主义”, preceding the phrase “country ruled under rule of law”, substantially changes the Westernised idea of a rule-of-law system, since has been made very clear that the Chinese one is going to be “a socialist country governed under rule of law”. It is true that there is not just one definition and one idea of rule of law²¹, since this concept cannot be estranged from the social and political context it is born in, hence, it is necessary to make a clear distinction between the Western idea of rule of law and the Chinese one.

Professor Peerenboom²² gives the following definition rule of law:

“At its most basic, rule of law refers to a system in which law is able to impose meaningful restraints on the state and individual members of the ruling elite, as captured in the rhetorically powerful if overly simplistic notions of government of laws, the supremacy of the law, and equality of all before the law.”

According to Chinese law, government state bodies are obliged to abide by the law, but since in China the separation of the legislative, executive and judicial powers doesn't exist, there is no official body to ensure the constitutionality of laws and the magistracy is not recognised as an independent state body.²³ Through a semantic analysis of the Chinese version of Article 5, we find the word *fǎzhì* 法治, which in Chinese stays for “Rule of law”, hence, it implies that the law is above the government bodies; however, the use of the antecedent preposition *yī* 依, and the consequent result: *yīfǎ zhìguó* 依法治国 literally means “rule *by* law”, which implies that the needs of the politics, *ergo* of the government, are above the law. It may seem impossible to make two

²⁰ "Constitution Of The People'S Republic Of China, ”中华人民共和国宪法” *Zhōnghuá rénmín gònghéguó xiànfǎ* Gov.Cn, 2018, http://www.gov.cn/test/2005-06/14/content_6310_3.htm.

²¹ PEERENBOOM, *China's Long March toward Rule of Law...*, p. 4

²² *ibidem*.

²³ CAVALIERI and BARBATELLI (ed.), *La Cina non è ancora per tutti...*, p.47

antithetic concepts coexist in the same environment, but in China this is nothing strange since it happens all the time. We find the roots of this habit deep-seated in the Chinese culture, where two principles that are the opposite of each other, are anyway complementary, denying the existence of an absolute reality.²⁴

Former president Jiang Zemin²⁵ and other Statist Socialist defined China as a state-centred socialist rule of law country, characterised by a socialist form of economy, which nowadays became an increasingly market based economy, where public ownership still plays a somewhat larger role than in other market economies; a non democratic system in which the party plays a leading role; where the interpretation of rights emphasises stability and collective rights over individual rights.²⁶ However, China's efforts trying to live by rule of law system are proven by the always greater role law is playing in everyday life, without forgetting society's clientelistic and socialist roots.

Looking for obstacles interfering with the application of a rule of law system, one among all is surely represented by the lack of judicial independence. In fact, as mentioned above, Chinese judges in China are considered nothing more than state employees, and they have no greater job security than any other state appointee. As it often happens in PRC, there is a lack of coherence between the law in the books and the *law-in-action*²⁷. The current constitution recognises the judicial independence of courts, which are required to adjudicate cases independently and abide by law and free from any political

²⁴ Maurizio SCARPARI, *Ritorno A Confucio. La Cina di oggi tra tradizione e mercato*, Bologna, Il Mulino, 2015

²⁵ "Jiang Zemin was born the 17th August 1926. He is a retired Chinese politician who served as General Secretary of the Communist Party of China from 1989 to 2002, as Chairman of the Central Military Commission from 1989 to 2004, and as President of the People's Republic of China from 1993 to 2003. Jiang has been described as the "core of the third generation" of Communist Party leaders since 1989. Under Jiang's leadership, China experienced substantial economic growth with the continuation of reforms, saw the peaceful return of Hong Kong from the United Kingdom and Macau from Portugal, and improved its relations with the outside world."
https://en.wikipedia.org/wiki/Jiang_Zemin#cite_note-1

For more infos read: Robert Lawrence KUHN, *The Man Who Changed China*. New York, Crown Publishers, 2004.

²⁶ PEERENBOOM, *China's Long March toward Rule of Law...*, p. 3

²⁷ CAVALIERI and BARBATELLI (ed.), *La Cina non è ancora per tutti...*, p.51

interferences²⁸. Unfortunately, the judicial independence is not guaranteed, seen that judges can be removed or replaced very easily, in the same way they can be selected in the first place. Quoting professor Gerard J. Clark's²⁹ words: "[t]he government selects a judge because he or she is favoured by the State, Provincial or Municipal Council or the State, Provincial, or Municipal Communist Party leadership, depending on who is calling the shots at that particular time." It is generally known that reports of corruption in Chinese courts are still widespread, in the same way as "back-door" connections³⁰ and interpersonal relations (*guānxi* 关系³¹) play significant roles in Chinese society, however this trend is slowly declining. In fact, the anti corruption policy carried out by President Xi Jinping in the last years, is trying to purge all kinds of bribery inside and around the ruling elite. This attempt of purification from the old bad corrupted habits is definitely a stride towards rule of law, while the true judicial independence of courts would represent the conclusive step to actually achieve rule-of-law in China.

1.3 Chinese legal sector's main actors

In this sub-chapter will be presented the principal actors of the Chinese legal system. Will be described which role they play and which are their functions.

²⁷ Mo ZHANG, "International Civil Litigation in China: A Practical Analysis of the Chinese Judicial System", 25, *Boston College International and Comparative Law Review* , 59 , 2002

²⁹ CLARK, *An Introduction to the Legal Profession*...,p 834

³⁰ 走后门 *zǒuhòumén*: lett. Entering through the back-door. Using connections with influencing people to get advantages

³¹ "The word 'Guanxi', in Chinese: *guānxi* 关系, describes the basic dynamic in personalised networks of influence (which can be best described as the relationships individuals cultivate with other individuals) and is a central idea in Chinese society. Guanxi largely originates from the Chinese social philosophy of Confucianism, which stresses the importance of associating oneself with others in a hierarchical manner, in order to maintain social and economic order. Particularly, there is an emphasis on implicit mutual obligations, reciprocity, and trust, which are the foundations of *guanxi* and *guanxi* networks."

https://en.wikipedia.org/wiki/Guanxi#cite_note-2

For more infos read: Yadong LUO, Ying HUANG and Stephanie Lu WANG, "Guanxi and Organisational Performance: A Meta-Analysis." *Management and Organization Review* 8.1 (2011)

At the apex of the Chinese state structure there is the **National People's Congress** of the People's Republic of China, (Chinese denomination: 中华人民共和国全国人民代表大会 *Zhōnghuá Rénmín Gonghéguó Quánguó Rénmín Dàibiǎo Dàhuì*), hereinafter NPC. This is the supreme organ of the state and it represents the China's "parliament"³², which issues laws binding over all China. It is composed of almost 3000 deputies elected from People's congresses below them at them provincial level, including autonomous regions, municipalities directly under the Central Government, Special Administrative Regions (SAR) and the armed forces.³³ The NPC also have the right to appoint the head of the State council, the presidents of the Supreme People's court and the Supreme people's procuracy³⁴. The NPC is elected every five years, and gather annually every spring in the heart of Beijing, Tiananmen Square.

State Council of the People's Republic of China, (中华人民共和国国务院 *zhōnghuá rénmin gònghéguó guówùyuan*), hereinafter SC, is also named as the Central People's Government. This is the highest executive organ of State power and the highest of State administration. It is composed by 35 members, among them there are the premier, vice-premiers, State councillors, the heads of each governmental department.³⁵ The State Council directly oversees provincial governments and several state agencies and is responsible for carrying out the principles and policies of the Communist Party of China, as well as the regulations and laws adopted by the National People's Congress,

³² *"The word 'parliament' is not be intended in Western sense. In fact, more than the 70 percent of the delegates are also members of the Communist Party, so their loyalty is to the party first, the NPC second. Hence, the delegates do not act freely from the political influences. Moreover, the real power lies within a standing committee of about 150 members elected from congress delegates. It meets every couple of months.*

As a matter of fact, the real role of the NPC is to "approve" the law drafted by the Party; this is also called 'speedy approval'".

"BBC NEWS", *News.bbc.co.uk*, 2018. http://news.bbc.co.uk/2/shared/spl/hi/in_depth/china_politics/government/html/7.stm.

³³ http://www.npc.gov.cn/englishnpc/stateStructure/node_3826.htm

³⁴ PEERENBOOM, *China's Long March toward Rule of Law*...p.348

³⁵ http://www.gov.cn/english/2005-08/05/content_20763.htm

and dealing with such affairs as China's internal politics, diplomacy, national defence, finance, economy, culture and education. ³⁶

Ministry of Justice of the People's Republic of China (中华人民共和国司法部 *zhōnghuá rénmin gonghéguó sīfǎbù*), hereinafter MOJ, is a ministry of the State Council. It is responsible for the legal affairs, including judicial process, drafting legislation, developing legal framework, participating in national and international treaties, prosecution and sentencing. The ministry is also guarantor of the maintenance and improvement of China's system of law and justice and its national security. The executive head of the ministry is the Justice Minister, which is equivalent to "Attorney general" in Western countries.³⁷

1.4 The revaluation of the law profession in China in the last 20 years

A short historical excursus is due to explain how great the change has been for the legal profession from the fifty's till now.

China saw her first Constitution in the 1950, and from that moment on, the new People's Republic of China saw many political, economic and social improvements, which generated a long craved moment of stability. This rose circumstances all together paved the way for a fair development of the legal profession and the legal sector.

First of all, in the 1980 lawyers were defined by the Provisional Regulation on Lawyers as "*legal workers of the State*". Their tasks were directly listed in the regulations, which were to "*provide legal assistance to government, enterprises, social associations and citizens; to safeguard the interests of the State and collectives and the lawful rights and interests of citizens*" ³⁸.

³⁶ http://english.gov.cn/state_council/2014/09/03/content_281474985533579.htm

³⁷ *ibidem*.

³⁸ Jude HOWELL, *Governance In China*, Lanham (Md), Rowman And Littlefield Publ., 2004, p.61.

The strong subordination between State and lawyers was very evident, and inevitably caused strong conflicts of interests even in the simplest business routines. For instance, how could a Chinese lawyer, as State legal worker, be possibly hired by a foreign enterprise? Or, how could a Chinese lawyer represent a foreign enterprise in court, advocating against a State Owned Enterprise without being blamed of violating the PRC's Law? Noticeably, the situation strongly urged a change.

In the late 1980s, the first cooperative and partnership law firms, not under the State ownership, began to emerge in China, and in 1996, the legal profession finally witnessed a great change: the Lawyers Law of PRC of 1996, in fact, in Article 2 and Article 3 finally defines the figure of lawyer as a “*practitioner who has acquired a lawyer's practice certificate pursuant to law and provides legal services to the public. [...] [Which] must abide by the Constitution and law, and strictly observe lawyers' professional ethics and practice discipline.*”³⁹. This implementation of the legislation represents a big step towards the emancipation of the legal profession from the Central State, but even more important, Chinese lawyers are definitively and legally able to act in the best interests of their clients, especially in cases involving foreign businesses or foreign enterprises.

In this new modified regulation also the requirements to be a lawyer were subjected to a shift from a political base to a constitutional base. More precisely, taking in consideration the Lawyers law of PRC issued in 1980, it is clear how the profession of the lawyer was strictly linked with the political background and behaviour of the candidates, which besides having the right to vote and being elected under the PRC Law, were required also to swear to uphold the socialist system.⁴⁰ In the newest Lawyers Law issued in 1996, the requirements for candidates willing to become lawyers have been reworded as follow: “*who uphold the constitution of the PRC may apply for lawyers*

³⁹ http://www.npc.gov.cn/englishnpc/Law/2007-12/11/content_1383584.htm

⁴⁰ *id.*

license”⁴¹. Clearly, this verbal and apparently small change has the function to modify the appearance of the PRC legal services market’s freedom and the State’s approach, but in the reality the link between the legal profession is still very tight, and the evidence is in the fact that, “*to uphold the socialist system*” is already one of the four basic principles contained in the PRC’s Constitution, which makes of the legal profession still a big subordinate of the CCP’s political and ideological position.

Reflecting on the great struggle Chinese lawyers have been into the latest 20 years, it worths to analyse the reasons and the background that characterised the evolving of the events. For example, how important and how necessary has the role of lawyers been for the growth of the gigantic Chinese economy. In fact, with the opening of the Chinese market in the late 90s, followed a huge flow of foreign investments and with it an impressive mole of bureaucracy work regarding foreign transactions. Chinese lawyers, even if yet partially unprepared for foreign business issues and protocols, were urgently needed to take care of the legal assistance that the few authorised foreign law firms, based in PRC alone, were not able to sustain.

In conclusion, issuing an updated regulation for lawyers, the Central State recognised the importance of the lawyers for the development of the country, while in the same time lawyers used the situation in their favour. Such a background gave a great input for the upgrade of Chinese Lawyers status, which in essence taking inspiration from the foreign lawyers associations and culture, started to organise themselves in one lawyers’ association: the All Chinese Lawyers Association, from here and after named using the acronym ACLA, which in this day and Ange it is the most important legal organisation of lawyers in China.

⁴¹ HOWELL, *Governance In China*...,p.61

1.4.1 The All Chinese Lawyers Association (ACLA)

The All Chinese Lawyers Association (ACLA), 中华全国律师协会 *Zhōnghuá Quánguó Lǚshī Xiéhuì*, was already founded in the 1986. Throughout the years, Chinese lawyers tried to form coalitions in many different ways, for instance creating partnerships and cooperative law firms, but mostly relevant for their development has been the ACLA. By definition, this is the official professional association for lawyers of the PRC (the Bar association in American terminology). Besides being a non-governmental and social organisation with legal status, it is also the self regulatory body for the legal profession in China, carrying out professional administration over lawyers in pursuance of law. All lawyers of China are members of ACLA and nowadays it approximately counts 110,000 lawyers.

Organisation⁴²: The highest authority of All China Lawyers Association is the National Lawyer's Congress (original name: 全国律师代表大会 *quánguó lǚshī dàibiǎo dàhuì*). Every four years, the All China Lawyers Association holds a national lawyer's congress and elects the council (理事会 *lǐshì huì*). The council elects the president, vice president and executive director of the association. During the period when the national lawyer congress and the council are not in session, the standing council exercises the powers of the council and implements the resolutions of the national lawyers' congresses. Secretary-General leads the executive body to carry out routine work.

Objectives and responsibilities: According to the Law of the People's Republic of China on Lawyers and the Articles of Association of the All-China

⁴² thefreedictionary.com

Lawyers Association, the main responsibilities of the All-China Lawyers Association are as follows⁴³:

1. To ensure that lawyers practice their duties in accordance with the law and maintain the lawful rights and interests of lawyers;
2. To summarise and exchange experience in lawyers;
3. To formulate industry norms and disciplinary rules;
4. To organise lawyer training and ethics education and practice discipline education;
5. To organise and manage the practice of lawyer practitioners; to practice internship assessment;
6. the implementation of the lawyer or law firm incentives and discipline;
7. to receive complaints or reports of lawyers, lawyers dispute mediation activities;
8. laws, administrative regulations and rules

Surely, the development of the ACLA has not been simple throughout the years, but there has been progresses and it is still improving itself every year to keep up with the times, using at its advantage the continuous government promotion for a change in order to create a better country, more civilised.

Initially this association had a very marginal and inferior role compared to the one of the MOJ, but since Chinese legal profession is becoming private, the ACLA has gained a growing important role both from a national and international point of view. As stated in the Article 3 of the General Rules in the official statute of the ACLA, this association aims to defend lawyers' rights and interests, to unite and motivate its members to act always rightfully and ethically, to fight the bribery at every level of the association, to enhance professional competences of lawyers and to strengthen self regulation in order to guarantee a fair and positive development of the legal profession. Moreover, ACLA also holds contacts with similar foreign associations and takes care of

⁴³ <https://web.archive.org/web/20130108042932/http://www.aclaedu.cn/committees/index.php>

pursuing lawyers who do not abide by professional ethics or rules of conduct, encouraging its members to build up a socialist state with rule of law, developing social civilisation and progress.⁴⁴

For a further understanding, here follows Article 3 of the General Rules, both in English translation and Chinese original version:

Article 3

The purposes of this Association: to uphold the leadership of the Chinese Communist Party, to unify and lead members to hold high the great flag of socialism with Chinese characteristics, to loyally perform the duties and responsibilities of legal personnel according to the Rule of Law for a Socialism with Chinese Characteristics, to strengthen the ideological and political principles of lawyers, to promote the realisation of the legal services Party, to advocate the leadership of the Chinese Communist Party and uphold the socialist rule of law as a basic requirement for lawyers, to strengthen the awareness and determination of the vast numbers of lawyers on the road of the socialist rule of law with Chinese characteristics, being loyal to the Constitution and laws, safeguarding the legitimate rights and interests of litigants, and safeguarding the correct implementation of laws Maintain social fairness and justice and work hard for the Chinese dream of completely governing the country according to law and building a socialist country governed by the rule of law so as to promote harmonious social development and progress of civilisation and realise the great rejuvenation of the Chinese nation.

第三条

本会宗旨：坚持中国共产党的领导，团结带领会员高举中国特色社会主义伟大旗帜，忠实履行中国特色社会主义法治工作队伍的职责使命，加强律师队伍思想政治建设，推进律师行业党的建设，把拥护中国共

⁴⁴ https://www.americanbar.org/content/dam/aba/uncategorized/international_law/all_china_lawyers_association.authcheckdam.pdf

产党领导、拥护社会主义法治作为律师从业的基本要求，增强广大律师走中国特色社会主义法治道路的自觉性和坚定性，忠于宪法和法律，维护当事人合法权益、维护法律的正确实施，维护社会公平和正义，为全面依法治国，建设社会主义法治国家，促进社会和谐发展和文明进步，实现中华民族伟大复兴的中国梦而奋斗。

Taking into consideration the last sentence of Article 3, it is evident how the political commitment is deeply involved in the roots of the association and to confirm this strong inter-dependance, in fact, in Article 4 it is explicitly stated:

Article 4

This association will accept the supervision and guidance of the administrative departments of the judicial administration at the same level.

第四条

本会接受同级司法行政部门的监督和指导。

In conclusion, the regulatory system of lawyers in China is a combined force of the self-regulation and the government regulator, which means that the self-regulation's strength given by the ACLA and its members, is combined with the State's regulation. The synergy most likely may might create some confusion in western minds, where usually "private" and "state owned" are two words that represent the opposite of each other, but in China, this is a normal condition in many aspects of the Chinese system and economy.

Chapter 2: Regulation of Foreign Law Firms' operating in China

2.1 The legal environment in the past

On the 26th of May 1992, China issued the first regulation governing on foreign law firms under the name of Provisional Rules of the Ministry of Justice and the State Administration for Industry and Commerce on the Establishment of Offices in China by Foreign Law Firms⁴⁵, (from now on called “*Provisional Rules*”), which original Chinese denomination is 司法部关于外国律师事务所在中国境内设立办事处的暂行规定 *sīfǎbù guānyú wàiguó lǚshī shìwù suǒ zài zhōngguó jìngnèi shèlì bànshì chǔ de zhàn xíng guīdìng*⁴⁶ (shortly called: 暂行规定 *zhàn xíng guīdìng*). Before the establishment of this new regulation, the foreign law firms already present in China usually organised themselves under the form of representative offices of consultancy companies, being regulated by the provisions that ruled on representative offices of foreign enterprises in China. This situation came to its end with the issuing of *Provisional Rules*.

Even though the Provisionals Regulations finally legitimated the existing situation and the presence of foreign law firms in China, it also limited foreign law firms's activities. In fact, as reported below, both in English translation and original language, Article 15 and Article 16 expressively set out the permitted business scope and the activities foreign law firms are not allowed to undertake:

Article 15

Offices of foreign law firms and their personnel may undertake the following business activities:

⁴⁵ <http://www.asianlii.org/cn/legis/cen/laws/ipotmojsafiacoteoowttocbflf1723/>

⁴⁶ <http://www.people.com.cn/zixun/flfgk/item/dwjff/falv/9/9-2-2-3.html>

1. providing consultancy advice to clients on the laws of the country in which the lawyers of the law firm are permitted to practise and on international treaties, inter- national commercial law and international practice;
2. accepting instructions from clients or Chinese law firms to undertake legal matters in the countries in which the lawyers of the law firm are permitted to practise;
3. acting on behalf of foreign clients and instructing Chinese law firms to undertake legal matters within China.

第十五条

外国律师事务所办事处及其成员，可以从事下列业务活动：

(一) 向当事人提供该律师事务所律师已获准从事律师业务的国家的法律和有关国际条约、国际商事法律和国际惯例的咨询；

(二) 接受当事人或中国律师事务所的委托，办理在该律师事务所律师已获准从事律师业务的国家的法律的事务；

(三) 代理外国当事人，委托中国律师事务所办理在中国境内的法律事务。

Article 16

Offices of foreign law firms and their personnel may not undertake the following business activities:

1. representation in relation to Chinese legal matters;
2. interpretation of Chinese law to clients;
3. other business activities that foreigners are not permitted to undertake under Chinese law.

第十六条

外国律师事务所办事处及其成员不得从事下列业务活动：

- (一) 代理中国法律事务；
- (二) 向当事人解释中国法律；
- (三) 中国法律不允许外国人从事的其他业务活动。

Whereas, in Articles 15 and 16 are drawn the limits to foreign law firms' business scope, another very significant passage is the article 17, reported below in bilingual version, where is stated a new restriction, which formally prohibits foreign law firms to hire Chinese lawyers.

Article 17

Hiring of employees by offices of foreign law firms are handled with reference to the relevant provisions on the administration of employees of permanent representative organisations of foreign enterprises.

Offices of foreign law firms may not employ Chinese lawyers.

第十七条

外国律师事务所办事处聘用工作人员，参照外国企业常驻代表机构人员管理的有关规定办理。

外国律师事务所办事处不得聘用中国律师。

The choice of the term “Chinese lawyers” included every individual that in his life has been qualified as a lawyer and personnel with Chinese law qualifications, making unfeasible the possibility for a Chinese lawyers to be hired by a foreign law firm, even if willing to relinquish his practice certificate. Luckily, eventually this situation will see a rose change in the future implementation of the law.

From another point of view, looking for an analogy with other jurisdictions, Andrew Godwin⁴⁷ found out that the language of the Provisional Rules is very similar to the one used in the restrictions on foreign lawyers adopted in Japan, where the terms are anyway used in a more precise way. In fact, the key problem of the Provisional Rules is the language: since the terms are not specific enough to define concepts such as “*representation in relation to Chinese legal matters*” and “*interpretation of Chinese law to clients*”. The meanings of this provision can be easily interpreted in total different ways. Hence, even if China is a country where the enforcement of legislation is subject to arbitrary interpretation, the ambiguity of the words used in the Provisionals affected also the enforcement of the law itself. As an evidence of this result, the mild way regulators upheld the provision back in those days.

2.2 China’s access to WTO

Year 2001 has been a crucial one for China, which decided to take a series of strategic decisions: here is a short summary of the most significant moves China made towards liberalisation and free development.

In 2001, China formally accessed the World Trade Organisation (WTO), after 15 years of negotiations and adjustments of many facets of China’s internal structure, PRC finally conquered the milestone of being part of the WTO. Among the many requirements carried out by the state members, an essential one was: China’s “*membership is contingent on: greater transparency in the lawmaking process, more effective and formal procedure for challenging administrative action, and greater judicial independence.*”⁴⁸

In order to become a state member of WTO, China also had to make a few commitments, among all, a very significant one regarded the opening of the legal services market. The EU’s members were craving for the opening of a

⁴⁷ Andrew GODWIN, “Professional Tug of War: The Regulation of Foreign Lawyers in China, Business Scope Issues and Some Suggestions for Reform”, 33, *Melbourne University Law Review* 2009 pp.134

⁴⁸ Margaret Y.K. WOO and Yaxing WANG, “Civil Justice in China: An Empirical Study of Courts in Three Provinces”, *American Journal of Comparative Law*, 53, 2005

strategic and profitable sector as the Chinese legal one, imagining a global market where foreign law firms could finally have the right to freely operate at one hundred percent of their potential, and most of all, where foreign lawyers would have had the right to practice Chinese law.

Unfortunately, China's access to WTO roughly coincided with the privatisation of the Chinese Bar. As a consequence, no foreign lawyers would be admitted to take the Lawyer's Bar Exam in China. This action cut out foreign lawyers from the possibility to ever become a Chinese lawyer once for all.

Following the privatisation of the Chinese Bar, another important change that deserves to be taken in consideration is the decision of the State Council to convert state-owned law firms into private partnership. After this move, suddenly the proportion of state-owned law firms fell from 98 percent in 1990 to 14 percent in 2004⁴⁹. This quick shift created a brand new situation in the country, where thousands of Chinese lawyers found themselves free to collaborate with foreign law firms or to compete with them. This new liberal and enthusiastic spirit spread out all over the Chinese legal environment, it is possibly the consequence of the new foreign law firm's permitted business scope, carried out as one of the commitments for China's WTO access. In fact, the permitted business scope for foreign law firms was reworded and modified as follow:

Business scope of foreign representative offices is only as follows:

- (a) to provide clients with consultancy on the legislation of the country/region where the lawyers of the law firm are permitted to engage in lawyer's professional work, and on international conventions and practices;

⁴⁹ Rachel E. STERN, *Environmental Litigation in China: A Study in Political Ambivalence*, Cambridge University Press, New York, 2013.

- (b) to handle, when entrusted by clients or Chinese law firms, legal affairs of the country/region where the lawyers of the law firm are permitted to engage in lawyer's professional work;
- (c) to entrust, on behalf of foreign clients, Chinese law firms to deal with the Chinese legal affairs;
- (d) to enter into contracts to maintain longterm entrustment relations with Chinese law firms for legal affairs;
- (e) to provide information on the impact of the Chinese legal environment.

Entrustment allows the foreign representative office to directly instruct lawyers in the entrusted Chinese law firm, as agreed between both parties.

Examining step by step the commitments, firstly we notice that subparagraphs (a), (b) and (c) have the same content of Article 15 of *Provisional Rules*, almost without any modifications. The relevant innovations of this new version of the permitted business scope are the subparagraphs (d) and (e), whose meanings will be largely misunderstood and will create discrepancy between the expectations of EU's members and the reality of China's intentions. Seeking the reasons why such a chaotic situation arose between the parties, a close semantical analysis of the articles may be the key to this question. Exception made for the subparagraph (d), where the term "entrustment" will be later explained in the added last sub-paragraph of the Business Scope, making clear that "to directly instruct lawyers in the entrusted Chinese law firm" is not equivalent to hire a Chinese lawyer; The content of subparagraph (e) was later to prove contentious. In fact, according to this sub-para, foreign law firm representative offices are allowed "to provide information on the impact of the Chinese legal environment", but it not specified till which extent and what this article is intended to explain. It

appears as an ambiguous concept of difficult interpretation, which does not find any parallels in other jurisdictions.⁵⁰

This article seems to bring the shape of a partial compromise between the China and WTO: on the one hand, the ambiguity of the used words let on the Chinese government's firm determination of not to give up on the control, even if partially, of the development of a such a crucial, yet weak, sector like the legal one; on the other hand, there is the strong pressure from EU's negotiators, willing to finally see formalised the already existing reality in China, achieving the goal of being free of operating and practicing Chinese law. The main issue is that EU's state members misled the real meaning of subparagraph (e), believing to have finally obtained the permission for foreign lawyers to practice Chinese law. In response, Chinese commentators afterwards made very clear that China's commitments, exclusively included the right to advise on the laws of foreign jurisdictions where foreign lawyers were qualified to practise, but absolutely did not include a commitment to allow them to practice Chinese law nor to allow foreign law firms to employ Chinese lawyers.

Pulling the conclusion on this big misunderstanding between the parties, it is evident how an unclear use of the words can be used at one's advantages, in this case of the Chinese side. Nevertheless, the ambiguity of the provisions also played the role a double-edged sword, since it is true that the it lightened the burden of the WTO commitments, but it also hindering the strict enforcement of the law, creating risky grey zones in which actors are forced to operate.

2.3 The Administrative Regulations 2002

On the 19th December 2001, China's State Council issued the Administrative Regulations on Representative Offices of Foreign Law Firms in China, hereinafter '*Administrative Regulations*', of which the original name is 外国律

⁵⁰ GODWIN, *Professional Tug of War...*, *op.cit.* p.3

师事务所驻华代表机构管理条例 *wàiguó lǚshī shìwùsuǒ zhùhuá dàibiǎo jīgòu guǎnlǐ tiáolì* (shortly called 管理条例 *guǎnlǐ tiáolì*). The regulations came into effect on January 2002.

Before starting a specific analysis of the amendments made on the previous regulation, it worths to mention that, although the *Administrative Regulations* and the relative future implementations were issued shortly after China's entrance to the WTO, they apparently let on a less favourable attitude towards the liberalisation and transparency of the legal services market.

Below, the updated Article 15 regarding the permitted business scope for foreign law firms in China, both in English translation and the original Chinese version:

Article 15

Representative offices and their representatives may only undertake the following activities not including Chinese legal services:

- (1) providing advice to clients on the laws of the country in which the lawyers of the law firm are permitted to practise and consultancy advice on international treaties and international practice;
- (2) accepting instructions from clients or Chinese law firms to undertake legal matters in the countries in which the lawyers of the law firm are permitted to practise;
- (3) instructing Chinese law firms on behalf of foreign clients to undertake Chinese legal matters;
- (4) maintaining long-term retainer relationships through contracts signed with Chinese law firms in relation to handling legal matters;
- (5) providing information concerning the impact of the Chinese legal environment.

In accordance with the provisions of the agreements entered into with Chinese law firms, representative offices may directly make requests of the lawyers at the Chinese law firms that have been instructed.

Representative offices and their representatives may not undertake legal services activities or other profit-making activities outside the scope of paragraphs (1) and (2) of this article.

第十五条

代表机构及其代表，只能从事不包括中国法律事务的下列活动：

（一）向当事人提供该外国律师事务所律师已获准从事律师执业业务的国家法律的咨询，以及有关国际条约、国际惯例的咨询；

（二）接受当事人或者中国律师事务所的委托，办理在该外国律师事务所律师已获准从事律师执业业务的国家的法律事务；

（三）代表外国当事人，委托中国律师事务所办理中国法律事务；

（四）通过订立合同与中国律师事务所保持长期的委托关系办理法律事务；

（五）提供有关中国法律环境影响的信息。

代表机构按照与中国律师事务所达成的协议约定，可以直接向受委托的中国律师事务所的律师提出要求。

代表机构及其代表不得从事本条第一款、第二款规定以外的其他法律服务活动或者其他营利活动。

In a similar position to the relative article of *Provisional Rules*, the permitted business scope for foreign law firms in China is set out in the Article 15 of the *Administrative Regulations*. At first sight, the article may look completely identical to the one proposed as commitment to the WTO's access, in fact the first five subparagraphs coincide perfectly with the subparagraphs (a) to (e) of the one proposed to the WTO negotiations, but a meaningful difference in article 15 is the added paragraph at the close of the article, which effectively has the role to nullify all the commitments reported in sub-para (3), (4), (5).

This paragraph modifies the permitted business scope agreed as commitment for China's WTO access, since it excludes the provision (5), which is "to

provide information concerning the impact of the Chinese legal environment”, from the permitted business scope. These provision not only represents foreign law firms’ biggest achievement got from the negotiations, but this is also one of the most meaningful commitments China agreed to concede, hence, to nullify such a relevant concession, makes China inconsistent with its commitments. Furthermore, this closing paragraph also forbids the following activities, listed in sub-para (3), (4) and (5), “*instructing Chinese law firms on behalf of foreign clients to undertake Chinese legal matters*”; “*maintaining long-term retainer relationships through contracts signed with Chinese law firms in relation to handling legal matters*” and “*providing information concerning the impact of the Chinese legal environment*” to be part of profit-making activities. This latter preclusion appears to be pretty hard to imagine, since a foreign law firm will obviously charge its client for the hours spent to instruct or leasing with Chinese law firms on client’s behalf, irrelevantly if the matter is linked with the permitted business scope in sub-paragraphs (1) and (2). In addition, in the same position to the one held in *Provisional Rules*, Article 16 of *Administrative Regulations* takes care of making clear the prohibition to hire Chinese lawyers. The updated version of the Article, reported below both in English translation and original language, presents some semantic modifications, which totally innovate the meaning and the extent of the limits.

Article 16

A representative office shall not employ Chinese practising lawyers;
its support staff employed shall not provide legal services to clients.

第十六条

代表机构不得聘用中国执业律师；
聘用的辅助人员不得为当事人提供法律服务。

The underlined word “practising” and the relevant Chinese translation “执业” *zhíyè*, represents a huge change of perspective regarding the prohibition of hiring Chinese lawyers. In Article 16 under *Provisional Rules*, where no Chinese lawyer, even if willing to relinquish his licence, would be eligible to be hired by a foreign law firms, whereas in the updated version of Article 16 under the *Administrative Regulations*, there is instead an encouraging shift of Ministry of Justice’s position. Thus, this new provision formalises the already exiting custom among Chinese lawyers who, in order to be hired by foreign law firms, used to resign their licence to get the job and complying with the law. Analysing the Ministry of Justice’s shift slightly in favour of foreign law firms, it is recognisable an innovative Real Politik based approach, instead of a protectionist one. Given that, even though this is just a small step in a counter-trend direction, it cannot be ignored.

From foreign lawyers’ perspective, in the second part of Article 16 however, there is a less comforting change. In fact the prohibition to issue any legal services by supporting personnel, if strictly interpreted and consequently enforced, would mean that any activity that involves a local professional in client’s work, even if the ultimate responsibility for the matter would be borne by a qualified lawyer, could not be carried out.

As mentioned before, the ambiguity of the words used to describe the permitted practice of areas causes an inevitable “*blurry boundary of allowable activities which leads to endless debates and conflicts between Chinese and foreign lawyers*”.⁵¹

⁵¹ Sida LIU, “Globalization as Boundary-Blurring: International and Local Law Firms in China’s Corporate Law Market”, Vol 42, *Law&Society Review*, 2008, p.780

2.4 The current regulation: the Implementation of the Administrative Regulations 2002

The 4th July 2002, the Ministry of Justice issued the first implementation of the *Administrative Regulations*, named Rules for the Implementation of the Administrative Regulations on Representative Offices of Foreign Law Firms in China, hereinafter *Implementing rules*, which original Chinese name is 司法部关于执行《外国律师事务所驻华代表机构管理条例》的规定 *sīfǎ bù guānyú zhíxíng “wàiguó lùshī shìwù suǒ zhù huá dài biǎo jīgòu guǎnlǐ tiáoli de guīdìng* (shortly called 执行规定 *zhíxíng guīdìng*), came into effect on the 1st September 2002.

Considering the significant role of the *Implementing Rules*, which is to bring a ray of light above the ambiguous concepts superficially defined in the *Administrative Regulations*, in this sub-chapter are going to be taken in analysed the most relevant provisions, which contributed to give a further definition to the already existing terms used in the previous regulations.

Going more into specifics, the author will examine some articles from “Chapter 5 - Practices of the Implementing Rules” such as Article 32, where is given a further definition on what “Chinese legal services” stands for; Article 33 which defines to what extent a foreign lawyer can “*provide information about the impact of the Chinese legal environment*”; Articles 37 which limits the use of promotional materials; Article 38 that sets out the prohibition for foreign law firms of using the title “Chinese law consultant” and Article 39 which regulates on the relationship between Chinese law firms and foreign law firms.

Article 32 of the Implementing Rules finally defines the concept of “Chinese legal services”. This term is been used in article 15 of the *Administrative Regulations* to determine all those activities out of the foreign law firm’s permission area. In this newly modified version has been added some more

“no-go zones” for foreign lawyers. The related articles are reported both in English translation and original language:

Article 32

The following activities shall be considered to be ‘Chinese legal services’ as provided in art 15 of the *Administrative Regulations*:

- (1) participating in litigation proceedings in China in the capacity of a lawyer;
- (2) providing opinions or certification on specific issues concerning the application of Chinese law in contracts, agreements, articles of association or other written documents;
- (3) providing opinions or certification on actions or events to which Chinese law applies;
- (4) in the capacity of an agent, expressing an opinion on the application of Chinese law in arbitration activities;
- (5) representing clients in undertaking registration, amendment, application and filing procedures and other procedures with Chinese government authorities or other organisations that have administrative management functions conferred on them by other laws and regulations.

第三十二条

下列行为，应当认定为《条例》第十五条规定的“中国法律事务”：

- (一) 以律师身份在中国境内参与诉讼活动；
- (二) 就合同、协议、章程或其他书面文件中适用中国法律的具体问题提供意见或证明；
- (三) 就适用中国法律的行为或事件提供意见和证明；
- (四) 在仲裁活动中，以代理人身份对中国法律的适用以及涉及到中国法律的事实发表代理意见或评论；

(五) 代表委托人向中国政府机关或其他法律法规授权的具有行政管理职能的组织办理登记、变更、申请、备案手续以及其他手续

Article 32 contributes to enlarge the limits drawn around foreign lawyers' permitted activities, definitely throwing the above mentioned business activities in Chinese law firms' hands.

Article 33 of the *Implementing Rules* gives us an ulterior definition of the concept “to provide information about the impact of the Chinese legal environment” reported in sub-para (5) of Article 15 in *Administrative Regulations*. Given that Article 15 is all about the description of permitted activities foreign law firms can carry out, it is bizarre how the closing paragraph at the end of it seems to transform the core matter of the article from ‘what foreign law firms can do’ into ‘what foreign law firms can partially do’, in fact this paragraph excludes activities like “to instruct Chinese law firms of client’s behalf”, “maintain long-term retainer relationships throughout contracts with Chinese law firms” and “to provide information concerning the impact of the Chinese legal environment” from the permitted legal activities. The real issue is that this concessions appear in the agreed business scope as China’s commitment for the entrance in the WTO, despite this, the implementation of the contested previous version did not bring positive modifications.

Article 33, both in English translation and original language, is briefly reported below.

Article 33

When providing information concerning the impact of the Chinese legal environment in accordance with sub-para (5) of the first paragraph of art 15 of the *Administrative Regulations*, representative offices and their representatives may not provide specific views or conclusions on the application of PRC law.

第三十三条

代表处及其代表根据《条例》第十五条第一款第五项的规定，提供有关中国法律环境影响的信息时，不得就中国法律的适用提供具体意见或判断。

A legit reflection of such an extensive limitation of the permitted activities would be: besides taking care of the photocopies and the law firm's newsletter, is there any other legal activities for foreign lawyers left in China? A brief answer to this question is surely impossible, this is why the answer to this question will be widely discussed later in this chapter.

Article 39 regulates the relations between local law firms and foreign ones, reported below the bilingual version:

Article 39

Representative offices and the law firms to which they belong must not engage in any of the following conduct:

- (1) directly or indirectly investing in Chinese law firms;
- (2) forming practice associations with Chinese law firms or Chinese lawyers to share profits or jointly undertake risks;
- (3) establishing joint offices or seconding personnel to Chinese law firms to undertake legal services;
- (4) managing, operating, controlling or enjoying equity interests in Chinese law firms.

第三十九条

代表处及其所属的律师事务所不得实施下列行为：

- (一) 直接或间接地向中国律师事务所投资；

(二) 与中国律师事务所或中国律师组成共享利润或共担风险的执业联合体;

(三) 建立联合办公室或派员入驻中国律师事务所从事法律服务活动;

(四) 管理、经营、控制或享有中国律师事务所的股权性权益。

Reading this provisions, the intention of China's regulator is evident: to lift massive boundaries between local law firms and foreign law firms, limiting their interactions, but still safeguarding the collaboration between the two, probably only till the day local firms will reach the same level of their foreign competitors. Many experts have tried to point out the reasons why the Chinese government adopted such a behaviour. Among those, the author agrees with the protectionist hypothesis catted out by Stern and Li.⁵² Taking in consideration the historical moment this provisions took place, we find Chinese lawyers for the first time free from the title of state employees, able to embrace the importance of their role in China's legal environment. The government's limiting provisions can be easily resumed as a way to shelter and protect the newborn legal profession from the international competition, giving it the time to ripe, learning enough about cross-border commercial practices, in order to properly compete in the future with the always more numerous foreign law firms in China. However, this strategy is not new to the hear of political scientists, and it is usual of developing countries, like Brazil or India, where foreign lawyers find similar limitations to their area of practice⁵³. Eventually, analysing the huge growth of the Chinese law firms in

⁵² STERN and LI, *The Outpost Office...*, p.7

"Though no Chinese official has yet gone on the record to explain the rationale for restricting foreign law firms' scope of work, protectionism is likely."

⁵³ David B. WILKINS, *Law Firms In the International Encyclopedia of the Social and Behavioral Sciences*, ed. Neil J. Smelser and Paul B. Baltes, Oxford, Pergamon, 2001, pp. 8517

the last fifteen years, whose a great example is Dacheng law firm⁵⁴, the adopted strategy seems to have been a winning choice.

Besides protectionism, someone also reckon that quite a lot of authoritarian logic plays a fundamental role in the drafting of Chinese regulations on foreign law firms. It is widely known: lawyers in China have often been the first category to call for more freedom and less state control. Hence, keeping foreign lawyers away from Chinese lawyers, may be a way to limit the contamination and the spreading of Western legal values⁵⁵, considering also the practical difficulty to actually control foreign lawyers' work.

Another element that proves the particular sensitivity of Chinese legal sector is the different treatment the government reserved for accounting firms. As a matter of fact, accounting firms also play an essential part in securing FDI and accessing the capital market, although so, they enjoy the right to assist Chinese companies and to form joint ventures with local firms already since the early ninety's.⁵⁶

However, the importance of foreign law firms is never been denied by the authorities and local experts, which have always seen in foreign competitors an opportunity to learn and develop a new expertise, using the cooperation to acquire the *know-how* about high-end non-services-related strategies, as well as foreign capital related practices and new ways to dialogue with foreign clients. Furthermore, local firms would undoubtedly benefit from an unconditional opening to the global market, using the uncontrolled competitively at their favour, using it as a incentive to improve their conditions and their knowledge. From a true competition is possible to achieve greater goals and results. However, the new generations of lawyers are very sensible to the internationalisation of the country and the position it has in the

⁵⁰ China's largest law firm, founded in 1992. In 2015 merged with the multinational law firm Dentons, creating the world's largest law firm by count of lawyers. For further info go to Chapter 3.2.1, page 66 of this thesis.

⁵⁵ STERN, *Environmental Litigation in China...*, *op.cit.* pp. 5

⁵⁶ Paul L. GILLIS, *The Big Four and the Development of the Accounting Profession in China*. Bingley, Emerald, 2014

international panorama. Thanks to China's role in the global legal services market, among the youngest generation of lawyers arose a new positive phenomenon: nowadays, young Chinese lawyers are aware of the importance of a multidisciplinary and international curriculum of studies, this is why more and more of them are willing to spend a period of specialisation abroad, or directly complete their degree in another country, (usually in the United States or Australia) and once obtained the title, they return to their homeland ready put in service what they have learnt. They play a fundamental role in the internationalisation of the local firms, lifting the quality of services and providing a total assistance which covers China and countries abroad.

2.4.1 The setting up and registration of representative offices: Chapter 2 of the Implementing Rules

In Chapter 2 of the Implementing Rules are set out new conditions to evaluate, and in certain circumstances satisfy, a request of opening a foreign representative offices in China. In fact, comparing the former provision with the updated one, the latter adds new "genuine needs" which restricts the circumstances in which foreign law firms may open additional representative offices. Even though, the terms "genuine needs" appear to incarnate a highly discretionary and ambiguous concept, eventually, this provision gives the reader some clues on how the MOJ will evaluate a request of setting up an additional office.

Regarding this subject, the author selected, as most meaningful for this matter, Article 4 and Article 10, respectively reported in English and original language, below:

Article 4

"Genuine needs to conduct legal services business" as provided for in Article 7(3) of the Regulations shall be determined on the basis of the following:

- (1) the socio-economic development of the place where the setting up of the representative office is intended;
- (2) the needs for development of legal services in the place where the setting up of the representative office is intended.
- (3) the applicant's size, time of establishment, major areas of business and expertise; analysis of the business prospects for the intended representative office and the plan for future business development;
- (4) restrictions imposed by the laws and regulations of China on the carrying out of specific activities and business of legal services.

第四条

《条例》第七条第三项规定的“有在华设立代表机构开展法律服务业的实际需要”，应当根据下列因素认定：

- (一) 拟设代表处住所地的社会经济发展状况；
- (二) 拟设代表处住所地法律服务的发展需要；
- (三) 申请人的规模、成立时间、主要业务领域和专业特长、对拟设代表处业务前景的分析、未来业务发展规划；
- (四) 中国法律、法规对从事特定法律服务活动或事务的限制性规定。

Even more significant and limiting results to be Article 10. In fact, in this article are stated two more requirements in order to open an additional representative office in China:

Article 10

For an application to set up additional representative offices, the following requirements shall be met:

- (1) the last representative office set up in China has been in operation for three years continuously;
- (2) the representative offices already set up and the representatives concerned comply with the laws, regulations and rules of China as well as the codes of conduct and practice for lawyers and are not being held legally

liable under the Regulations.

第十条

申请增设代表处，应当符合下列条件：

（一）在华最近设立的代表处连续执业满三年；

（二）已经设立的代表处及其代表遵守中国法律、法规、规章，遵守律师职业道德和执业纪律，没有被追究《条例》规定的各项法律责任。

In particular, the requirement to wait three years, between the opening of a representative office and another, constitutes a delay for foreign firms that are late-comers to China⁵⁷, but also for firms already present in China willing to amplify their presence on the territory, by exploring other areas of the country where is present a peculiar sector of the industry or a majority of international investments from their country of origin. However, it is not clear weather the three-years waiting period is valid only for the opening of a second office or whether the counting restarts for every additional office.

Seen the latest provisions of the *Administrative Regulations* and its relative *Implementations Rules*, issued roughly a year after China's assessment to the WTO, it is evident that the MOJ's approach to the liberalisation of the legal services market seems to facilitate the growing process of local Chinese law firms, restricting the expansions of foreign law firms in China. Given this as a general truth, the author believes that fostering and protecting the local firms from the direct competition with their foreign counterparts has a negative impact on the general improvement of the Chinese legal sector.

TO SUM UP

⁵⁷ Jane J. HELLER, "China's New Foreign Law Firm Regulations: A Step in the Wrong Direction", *Pacific Rim Law and Policy Journal*, 12, 2003, pp. 770

The updated limits for foreign law firms and its representatives' business activities are as follow:

- Cannot hire Chinese practising lawyers under the PRC law;
- Cannot sit for the Chinese Bar exam;
- Cannot participate in litigation proceedings in the capacity of lawyer;
- Cannot represent clients in undertaking registration, amendment, application and filing procedures and others with Chinese government authorities;
- Cannot issue legal opinion concerning the application of Chinese law in contracts and other documents;
- Cannot interpret and give opinions on actions or event where Chinese law applies;
- Cannot built a Joint Venture with Chinese law firms;
- Cannot use the title of "Chinese law consultant" .

Regarding the constitution of a representative office in China, foreign law firms' request will be evaluated for the following requirements:

- satisfy specific requirements on bases of the socio-economic development of the area where is intended to open the office; the future prospectus of the growing business; the size of the law firms and the area of practice and finally comply with the PRC law and on its limits on some specific activities and business of legal services;
- wait a minimum of three years, to open an additional representative office.

By contrast, all the activities law firms and its representatives CAN engage in are the following:

- to offer consulting services on legislation of the country or region where the lawyers are licensed, and on international conventions and practices;
- to handle the legal affairs of the countries or regions where they gained permission to become lawyers;

- entrust Chinese law firms to deal with Chinese legal affairs, on behalf of foreign litigant;
- enter into contract with Chinese counterparts to entrust them to deal with legal affairs;
- provide information on the impact of the Chinese legal environment;

2.5 Taxation treatment: fair or unfair ?

Regarding the taxation subject, representative offices in China suffer a discriminating tax treatment, since they cannot organise themselves as partnerships under PRC law, hence they are subjected to a double taxation: the first on profits and the second one on the repatriation of after-tax profits⁵⁸. On the other hand, Chinese law firms are only taxed once, at a lower rate compared to the one used for the foreign law firms. Interesting point is that a total different situation exists for foreign accounting firms. Even though the accounting sector is also a weak and sensitive one in China, foreign accounting firms can organise themselves as partnerships under the PRC law, can audit Chinese companies and can create joint ventures since the early ninety's. *Dulcis in fundo*, foreign accountants can sit for the licensing exam of accounting by Chinese authorities,⁵⁹ in opposition to the absolute exclusion of foreign lawyers from the Chinese Bar which became private just after China's entry to WTO.

2.6 Chapter's conclusions

A legitimate reflexion would arise in readers mind: China's access to WTO represented an opportunity both for China and states members to spread their businesses in a new global way. Nevertheless, with references to the

⁵⁸ Mark A. COHEN, "International Law Firms in China: Market Access and Ethical Risks", *Fordham Law Review* 80, 2012, pp.2571

⁵⁹ GILLIS , *The Big Four and...* p. 16

liberalisations of legal services sector, whereas China reached almost a total freedom in the United States, Japan and European countries to set up law firms, to hire local lawyers, to form joint ventures with foreign lawyers, to engage in matters like litigations and corporate law, it is still regrettably true that similar rights are totally denied or partially restricted for foreign law firms in China. As a matter of fact, they are still widely limited, not only in their everyday activities and official area of practice, but also in the establishment of one or additional representative offices. Furthermore, a discriminating attitude can be observed also in the tax treatment which negatively effects the foreign law firms' profits, since they are taxed twice.

Another deplorable result is that many of the rights achieved during as commitments of China's entry to the WTO, have been nullified through followed provisions in which have been added important modifications.

As a result, Chinese law firms can freely operate abroad thanks to the market global trends in which, the ability to provide a comprehensive legal service to clients willing to have assistance in their foreign key markets, is the principal cornerstone of global market. Unfortunately, more than fifteen years after China's entrance to WTO, quoting one of the most prepared expert on the subject, Professor Mark Cohen, "*the situation of foreign law firms [...] has very much become one where the 'cobbler's son wears no shoes'.*"⁶⁰. This is sadly true, when we compare the small concessions made and truly achieved by foreign law firms in China, consisting in a mere permission to set up additional representative offices, and the great benefits China enjoys from the moment of its entry to WTO.

Although the latest regulations seems to limit completely foreign law firms to provide and be involved in more profitable areas of practice, drastically reducing the possibility to increase their profits, the truth is that there are still plenty of high-end, non litigation services related to foreign capital that can be carried out. Furthermore, for those activities apparently off-limits for foreign

⁶⁰ COHEN, *International law firms...*, p. 20

law firm, the ambiguity of the terms and the legal loopholes often represent a short-cut to provide an high-quality and complete service, complying with Chinese law.

The main reasons why the relation between China and foreign lawyers has not come to a bitter end yet, despite all the difficulties and sabotage-like government actions, are the following:

1. First of all, the informal Chinese practice of foreign law firms in China is an undeniable factor that boosted the huge wave of foreign investments in China. Even though, the local lawyers's lobby and some politic exponents have tightly fought against the foreign lawyers presence and the establishment of their offices, the Government had not choice but giving priority to the Real Politik instead of the contestants voices, in order to avoid the jeopardising of the investors' confidence in China. This is a possible explanation of why it took so long before having a regulation on foreign law firms in PRC, and why, although the presence of effective laws, the regulators always kept a mild approach in the moment of the enforcement of the provisions.
2. Secondly, the softer enforcement of the law towards foreign law firms is also a valid reason why foreign lawyers keep operating and having hope in the business within the PRC. Following, a more detailed explanation of "mild approach in the enforcement of the provisions" is given: the regulator will strictly enforce the law against informal Chinese practitioners of foreign law firms only when foreign law firms have clearly operated outside the permitted business scope, by way of example, when a Chinese employee of a foreign law firms presences at an arbitration proceedings calling himself a Chinese lawyer or when he witnesses documents, which should report the authorisation of a licensed Chinese lawyer.
3. Thirdly, the grey zones of the provisions caused by the ambiguity of the therms used by the regulators, allow foreign lawyers to work, with some little precautions, on the edges of forbidden business scopes. As a matter of

fact, it is not always possible to judge if the infraction has taken place or not. For instance, how is it possible to determine if a foreign law firm breached or not the imposed limitations, pursuing activities like: analysing the structure of a proposed transaction giving opinion on the hypothetical rising problems from a Chinese law perspective; issuing legal opinions on Chinese law matters in a suitable form which complies with the law; explaining or quoting information or advice issued directly by Chinese government agencies; participating in negotiations in which Chinese legal issues are discussed and drafting contracts and transactions documents regulated under the PRC law, and so on.

4. Fourthly, although on the one hand Chinese lawyers have lobbied tightly to make their voice heard by the government and obtain always more limits for the informal Chinese practice of foreign lawyers, on the other hand, foreign governments have fought side by side for the opening of the Chinese legal market, aware of the important role foreign law firms have played so far and the continuing impact their practice and presence mean for the foreign investors⁶¹. Government cannot ignore none of this voices, consequently decided to adopt a mid-way behaviour: in fact, it tries to facilitate the development of the local lawyers through to the cooperation with foreign law firms and, while limiting the open competition with them, at the same time, tries to keep foreign lawyers hoping for a change towards the real liberalisation of the sector. The result is that in this way, the government manages to keep every party waiting, while their coexistence keeps boosting the economic growth of the investments.

⁶¹ GODWIN, *Professional Tug of War...*,p.3

Chapter 3: Law firms in cross border transactions and litigation

In this chapter will be analysed the different entities that participate in the international business activities in China, with particular reference to the cross border transactions and litigation cases. Specifically, will be analysed the following organisations:

1. Chinese Law firms: Wang Jing&Co. law firm
2. Foreign law firms:
 - A. Multinational Law Firm merging with Chinese one: Dentons and 大成
 - B. Italian independent law firm: Chiomenti
3. Italian ways of participating in Chinese legal market:
Great Way Advisory, Legal, tax and accounting
4. Big Four: KPMG, EY, PwC and Deloitte and their growing legal practice.

Going more into specifics, will be taken in consideration a few case studies which will serve to demonstrate how the legislation has shaped somehow the development of different law firms, considering the legal environment and legislative limits or incentives imposed by the regulator.

At the end of each case study will be resumed the positive and negative sides of development experience made by the considered organisation, analysing the factors that have influenced it. In addition, a few author's conclusions will be included in the last paragraph too, in order to give a easier explanation of the dynamics of the legislative environment in China and abroad.

3.1 Chinese law firms

The Chinese legal system came out from the Maoist period, especially thanks to the Cultural Revolution, drastically compromised. This explains a lot about the present situation of the Chinese law firms and the huge efforts they made trying to catch up with the times, striving to achieve a better competitive position in the national and global market.

Throughout the whole Maoist period, the legal services sector was basically inexistent and lawyers were discriminated and condemned as the worst of the “stinking ninth category” of antisocial elements called “intellectuals”.⁶² They were persecuted, sent to re-education camps⁶³ and their offices were shut down. The legal practice was officially banned in China in 1949, and except for a short period (from 1954 to 1957) in which it was permitted, it remained impracticable till the death of chairman Mao in 1976. As a result, by the late seventy’s, there were no law schools left opened and only a few thousands of lawyers decided to remain in China.⁶⁴

With Deng Xiaoping’s ascent to the chairmanship of the Communist Party in 1973, Chinese legal profession finally experienced a political revival ⁶⁵. Deng identified lawyers as the key profession able to help realise his ambitious reforms, modernising China’s political and economic systems, in order to finally show the world PRC’s huge potential. Therefor, many Soviet-style state-owned law firms were founded between the seventy’s and eighty’s in China. This law firms were financially supported by the Chinese government and lawyers were directly hired by the State, so, they were at all effects “state workers”. This new state-owned law firms represented the seeds for a new chapter of Chinese legal profession. The government tried its best to speed up

⁶² PEERENBOOM, *China’s long march...* p. 345

⁶³ The term “re-education camp” indicated real hard labour camps. It was an easy way to get rid of dissident and enemies of the Communist regime.

⁶⁴ PEERENBOOM, *China’s long march...* p. 361

⁶⁵ Jerome A. COHEN, “The Chinese Legal System: A Primer for Investors”, 17, *New York Law School Law Review Journal of International and Comparative Law*, 1997, pp-345-347

the rebuilt of this sector: all schools of law around China, shut down during the Maoist period, were reopened. The enrolment to law schools was largely promoted by the state, emphasising the importance of training new lawyers and cadres for the good of the country. In order to foster the development of this crucial sector, in 1980, the National People Congress issued the Provisional Regulations on Lawyers, according to which any individual who has a minimal formal education or training on-the-spot, love for the Country and the Party, the eligibility to vote and standing for election can become a lawyer. It evident how a greater importance is given to the political criteria, at the expenses of the quality of education. Moreover, in this initial period lawyers were not required to pass a Bar Exam, since the Ministry of Justice did not institute China's first national Bar Exam until 1986. ⁶⁶

The strives made to foster the rapid growth of the legal profession partially gave its fruits. In fact, numbers show that “by 1994, more than 400,000 individuals had taken the exam, and some 78,000 had passed.”⁶⁷ The rate of new enrolled in law schools, as well, increased significantly. On the other side, the negative note comes along with the poor quality of the candidates' education. However, the reasons of such a low efficiency rate are also related to the following factors: firstly, being the Chinese legal sector re-built from zero after a long absence from the stage, there was a lack of experienced senior lawyers, hence, of a good role model for young lawyers⁶⁸. Secondly, the lack of the independence and autonomy of the profession precluded the possibility to work freely, to cooperate with foreign firms, to explore more challenging fields of the legal market, *ergo*, limiting the professional growth. Simultaneously with the establishment of many new state-owned law firms, thought to be prepared enough to deal with the grate mole of bureaucratic work brought along with the many foreign investments, the inadequacy of this

⁶⁶ William P. ALFORD, “Tasselled Loafers for Barefoot Lawyers: Transformation and Tension in the World of Chinese Legal Workers”, 141, *The China Quarterly*, Cambridge University Press, 1995.

⁶⁷ PEERENBOOM, *China's long march...* p 39 and HELLER, *China's New Foreign Law Firm Regulations...* p. 755

⁶⁸ PEERENBOOM, *China's long march...* pp. 366

system became evident. The government could not ignore the bitter truth: the State-owned soviet-style Chinese law firms did not have sufficient experience and knowledge to take care of high-end corporate transactions. This gave rise to another forms of law firms: “a *transitional organisational form between state-owned and partnership law firms*”⁶⁹ the “cooperative” law firm, *hézuòsuǒ* 合作所. A famous law firm who was founded in Beijing in 1989 using this organisational form is Jun He⁷⁰. This form can be described as the first form of private law firm before 1992, when the government finally gave its permission to create partnership law firms. This new organisation did not count on state financial support nor on administrative facilitation, it exclusively relied on the market.

Throughout the ninety’s, many corporate Chinese law firms arose in the legal panorama. Although the impressive pace of growth of the legal profession, Chinese corporate law firms of that time were relatively small, by a way of example, the largest law firm was Dacheng with a total of 74 employees among practitioner lawyers and assistants.

In that period, the most profitable areas of legal services market were the international transactions activities, including foreign direct investments (FDIs) and merger and acquisition (M&As) related deals. The main role in this legal business was absolutely played by the few foreign law firms in China, while even leading Chinese law firms like Jun He and King&Wood could not do much more than play a complementary role in this game, cooperating with foreign law firms at need. This situation was due to Chinese law firms’ lack of expertise in complex business transactions, their small dimensions and their unsophisticated approach to foreign clients⁷¹.

⁶⁹ Ethan MICHELSON, “Lawyers, Political Embeddedness, and Institutional Continuity in China’s Transition from Socialism”, 113, *American Journal of Sociology* 2007, pp. 370-373 and Sida LIU and Hongqi WU, “The Ecology of Organizational Growth: Chinese Law Firms in the Age of Globalization”, *American Journal of Sociology*, 122, 3, 2016, pp.12

⁷⁰ <http://www.junhe.com/?locale=zh>

⁷¹ LIU and WU, “*The Ecology of Organizational Growth: ...*”, p.13

However, there were other profitable areas left in the Chinese legal market, like the real estate, initial public offering (IPO) and commercial arbitration. This areas of practice were basically monopolised by few Chinese corporate law firms such as Zhong Lan, Haiwen and Tongshan.⁷² In this flourishing period for Chinese law firms, the first steps towards a self-owned jurisdiction were made, trying to emancipate the profession from the suffocating government control.

Ça va sans dire, the presence of foreign law firms in the major business centres like Shanghai and Beijing intensified the competition between foreign and leading Chinese law firms, seen more as useful cooperators, than dangerous competitors. Fortunately for the local legal system, the activities and the presence of foreign law firms in China was, and is even nowadays, adequately limited by the government. Foreign law firms are excluded from practising Chinese law, from hiring Chinese lawyers and from establishing more than one office in China. This restrictive and protectionist regulations, protected the immature Chinese legal profession, giving it the time to develop the experience necessary to fairly compete with the foreign competitors. In this protected environment no few Chinese law firms decided to use the situation at its favour by incorporating foreign lawyers, their knowledge and perspective to grow out the national walls.

Obviously, many local law firms tried to specialise themselves in a specific field of the legal services market, without directly ride the wave of international investments and international transactions business. The area of specialisation is naturally related with the environment conditions where the law firm is founded. China is a huge country and the social and economic environment can be highly different from region to region. This is why, analysing the main areas of practice of major law firms founded in those years, we find similar areas of practice in similar geographic areas.

⁷² *ibidem*.

By way of example, the south-east part of the country, like Guangdong and Fujian provinces, is been of crucial importance for the development of China's economy and legal sector. This regions in 1979 gained a special autonomy on the administration of FDI, on the approval of new investment projects and on the possibility of issuing new policies.⁷³ Moreover, throughout the eighty's, in this areas were established four Special Economic Zones (SEZ). Creating this experimental zone was a clear try for the central government to see how to exploit and induce FDI in China at best. Furthermore, another significant objective was to boost the development of the coastal area near Hong Kong and Taiwan in order to attract FDI and gain new *know-how* and new technology, while enhancing the link with Mainland China. This fertile area further from the Beijing and much nearer to the more developed countries, some how, represented a new perspective on the outside world for China, and at the same time for Chinese lawyers. The greater level of freedom was largely used by Chinese lawyers to absorb and transfer foreign law firms knowledge to their offices. This is not a casualty, if the first Chinese law firm with international staff taken in exam in this thesis was founded in Guangdong in that very historical period.

⁷³ Owen C. H. HO, *Determinants of foreign direct investment in China: a sectorial analysis*, School of Economics and Commerce, University of Western Australia, 2002, p.6.

3.1.2 Wang Jing&Co. law firm: a success story

An important example of Chinese legal firms established in the ninety's and very successful nowadays is the Wang Jing&Co. law firm.

Wang Jing&Co. law firms was founded by Mr. Wang Jing in 1994 in Guangzhou FTZ, Guangdong province. Initially, the main area of practice of the legal office was shipping and maritime insurance law. Thanks to the the strategic geographic position of the province, the proximity to the sea and the increasing amount of imported and exported goods, the specialisation in this subject was very profitable and led the law firm to greater achievements. Thanks to the professionalism of the provided services and the attentive eye on the political and economic developments, Wang Jing&Co. became leader in this sectors dealing with a multitude of cases involving maritime, admiralty and insurance matters. In witness of its outstanding role among law firms of the time, Wang Jing&Co. claims distinguished clients including the world's leading Protection and Indemnity Club (P&I Club)⁷⁴, shipowners and insurance companies.⁷⁵ In less then a decade, Mr. Wang managed to spread the presence of his firm building long-term cooperations with other first-tier law firms in other major Chinese cities and abroad.

In year 2000, the firm achieved a whole new level. Exploiting the new generation of lawyers, which usually concluded their studies with a period of specialisation abroad in prestigious universities, acquiring a good proficiency in English and an international perspective of how to be a lawyer, Wang Jing&Co. became a bigger legal organisation, able to satisfy the increasing demand for specialised legal services related to FDI and commercial law.

Also the firm's dimension muted throughout the years. From a small legal office made of about 10 people, Wang Jing&Co. currently counts over 200

⁷⁴ “ ‘P&I’, is the policy ship owners purchase to protect them against liability claims from crew, passengers and third parties. Liability claims include those such as collision, property damage, pollution, environmental damage and removal of wrecks.”

<https://www.shipownersclub.com/what-is-pi/>

⁷⁵ <http://www.wjnco.com/eng/practices.asp>

staff members, among practising attorneys, senior consultants and other professionals figures of support, such as paralegal, translators, assistants and secretaries.

3.1.2.1 Areas of practice

The unparalleled strength of the Firm in shipping and insurance matters is complemented by professional divisions, providing a full range of legal services in litigation, arbitration and non-contentious matters, including legal assistance on corporate law, banking law, investment, M&A, corporate finance, taxation, IP rights protection, and real-estate issues. Wang Jing&Co. has an excellent global reputation for its dedication and effort, and received a number of international awards successively over the years.

3.1.2.2 International skills

In order to give a always more personalised and international experience, Wang Jing&Co established a series of *ad hoc* professionals able to take a better take care of international clients. The first characteristic is a good proficiency in the major foreign languages: at the moment, the law firm is proficient in Chinese, English, Japanese, French and Italian. The firm's advanced partnership-style management model encourages the development of supplementary services to help Chinese clients to invest abroad, such as lawyers with double lawyers licences valid in more than a country.

As guarantee of the Italian proficiency and assistance for Chinese investors who intend to invest in Italy, the team leader of the Third FDI and Corporate Department is the Italian lawyer Franco Fornari. This is a good example of how Italian lawyers can operate in the Chinese legal environment without establishing a representative office *ex-novo*.

The Italian presence at Wang Jing&Co. can be seen like an evolution of an Italian desk, where the Italian and Chinese lawyers that compose the capable team of the department, can advise both foreign and Chinese clients, in

compliance with Chinese law, on the best solutions and investments according to their field of practice.

Franco Fornari⁷⁶ joined the firm in 2009, and recruited legal talents among the best candidates, forming a valid staff mostly composed by Chinese lawyers, mastered in American and British universities, proficient in English and experienced with international knowledge on the business transactions. Currently, Fornari's team counts about 40 staff members among practising Chinese lawyers, international lawyers, paralegal assistants and accountants. A significant support role is played by the Italian lawyer Valentino Lucini, who joined the firm in 2014. Besides the Italian lawyers license, he also passed the Spanish Bar Exam, and together with Mr. Fornari, he plays a significant role in advising Chinese outbound investors. Throughout the years Mr. Fornari and his international team became a point of reference for the Italian and Western community in the southern provinces of China, serving both corporations and individuals to better deal with the peculiar Chinese legal system.

3.1.2.3 Main Clients of the Italian Desk

A great portion of clients are foreigners, more specifically from mediterranean countries, who refer to Franco Fornari's professional staff when it comes to deal with the Chinese legal and bureaucratic system. Both private enterprises and single individuals contact the Wang Jing&Co. law firm, sure to find an international team ready to provide an high quality legal assistance, combining foreign and local expertise. The main area of practice is undoubtedly related to

⁷⁶ Mr. Fornari has much experience living and working abroad as both his father and mother worked for the Italian Ministry of Foreign Affaires. Among other cities he lived in the United States of America, in Tunisia where he attended courses of Arabic language and in Italy where he majored at the Università degli Studi di Pavia in Law. Mr. Fornari, who is fluent in Italian, English, French and Chinese, moved to China in 2008 after working for two years as a Business Consultant in Italy for two leading Chinese companies in the fields of services and manufacturing. Mr. Fornari joined Wang Jing & Co Law Firm in 2009 and is working with European and international clients as a Senior Manager ever since. Throughout the years at Wang Jing & Co Law Firm Mr. Fornari achieved a solid specialisation in Chinese law and handled dozen of foreign related cases in the PRC. His legal background, paired with a daily foreign oriented legal practice, made him today an expert in the fields of commercial and contractual disputes and ADR, foreign investment strategies, intellectual property rights and labor disputes.

national and international trade activities, dispute resolution and corporate establishment, besides services like drafting, amending and reviewing of the commercial contracts; the firm also offers service like: foreign trade control investigation, such as anti-dumping, anti-subsidy and protective measures; solving issues related to customs, commodity inspections and bonded zones; keeping foreign exchange and foreign capital control under import and export trade laws and drafting of contracts for the establishment of M&As, wholly foreign owned enterprise (WFOE), joint ventures and branches. However, besides the FDI's related activities, the international team is able to offer a full-range assistance, included registration of copyrights, authorisation of patents and trademarks; legal analysis and dispute resolution; litigation in courts of various levels in China and abroad; representation in arbitration institutes in China or abroad.

Ça va sans dire, the great flow of outbound Chinese investments towards Europe carries along a whole series of different legal services that Wang Jing&Co. is able to provide. The clients are prepared and guided through the whole process from the starting phases to the advanced ones, according to the chosen country and the relative legislation, carefully selecting the most profitable area of investment at the lower risk. Thanks to the well-known fame of the firm, the main clients for outbound investments are both private and state-owned enterprises or singular individuals.

3.1.2.4 Branches

The headquarter of the Wang Jing&Co is sited in Guangzhou FTZ, through the efforts of Mr. Wang and his partners, continue to lead the Firm's expansion in new services' fields and new cities. Currently the law firm counts ten branches, of which 8 are sited in China and two abroad. The first Chinese branch was founded in Shanghai in 2002, strategic city considering the flow of FDIs related deals and international clients. After this first expansion more branches have been opened in major cities like Tianjin in 2004, Qingdao and

Xiamen in 2005, Shenzhen FTZ and Fuzhou in 2007 and Nansha in 2013. The most recent opening in China is the representative office of Beijing.

The firm expanded its presence abroad as well, opening a branch office in Hong Kong in 2015 and one in New York in 2016.

3.1.2.5 Overall considerations on Wang Jing&Co.'s case

This is a practical example of how a Chinese law firm have developed itself in a international and complete way throughout the years, surely taking advantages of its geographical position and of the changing trends. In this particular case some positive factors were represented by the cooperation with international lawyers, the implementation of the local staff, the union of international expertise and domestic connections and, of course, fundamental role was played by Mr. Wang Jing's ambitious plans of expansion, not limiting them to the domestic area, but considering also to export the firm's presence abroad. Great importance is due to the favourable regulations, aiming to protect and ensure some areas of practice exclusively to Chinese law firms, at foreign law firms' expenses. The winning features of Wang Jing&Co. is surely its combination of international and local expertise, able to satisfy a wide range of clients, benefitting of the freedom of practice in any area of legal services market, differently from foreign law firms who are constrained to operate exclusively in some fields, and forbidden to operate in others. This case study demonstrate how the legislation heavily influences the development of the domestic and international law firms in China.

3.2 Foreign law firms in China

The birth of foreign law firms in China is dated back in 1992, when the MOJ officially allowed foreign law firms to establish representative offices inside PRC. From that moment on, altho, the regulations heavily limited foreign law firms' practise and expansion, many foreign lawyers decided to ride the wave of international investments diving into Chinese market, through the establishment of a representative office.

Two decades after, it is possible to analyse the fruits of the choices made in those years. For some pioneer law firms, the decision of moving into an evolving and complex market like the Chinese one, resulted to be destructive. The reasons may have been the lack of knowledge about the Chinese social structure, the legal and political environment or simply the lack of experience in a constrained market highly shaped by state involvement⁷⁷. On the other side, many foreign law firms who moved to China in the ninety's, made of that choice the reason that led them to success.

In this chapter will be taken in consideration two different types of organisational forms foreign law firms can choose in China, analysing two different cases and the relative pros and cons.

Specifically, are going to be taken in exam the following organisation types:

1. Multinational law firm.
 - Dentons, a multinational law firm with global presence signed an union agreement with Dacheng (大成), China's biggest law firm, creating a brand new, world-leading international law firm with global presence. The biggest for head counting of lawyers, approximately 7.600 plus.
2. Independent Italian law firm in China: Chiomenti Law firm. An interesting example of how ambitious and elite Italian law firms can become pioneers in a so peculiar and constrained legal market such as the Chinese one.

⁷⁷ STERN and LI, *The Outpost Office...*, *supra* note 5, p.6

3.2.1 Multinational law firms: Dentons Law Firm

Dentons is a multinational law firm and is the result of a three-way merger between the European firm Salans, SNR Denton⁷⁸ and the Canadian firm Fraser Milner Casgrain (FMC) ratified by the parties in 2013. They combined together under a Swiss Verein⁷⁹ structure, aiming to create the “*most multicultural*”⁸⁰ law firm with more than 79 offices in 52 countries across Africa, Asia Pacific, Canada, Europe and Central Asia, the Middle East, the UK and the US. In 2013 the global firm counted more than 2500 practising lawyers and professionals, ranking as the seventh-largest law firm in the world.⁸¹

Only few years after this crucial union, Dentons decided to sign a new agreement combining with China’s largest law firms Dacheng, in Chinese 大成 . Dacheng was one of the first partnership law firm established in China in 1992. Throughout the years its growth was impeccable and outstanding. Already in 1994 the law firm was reported on China’s Legal Daily as the largest law firm in China. The firm’s progresses did not go unnoticed and by 1998 the MOJ awarded the law with the title of Civilised Law Firm at the Ministry level. Pursuing excellence and always higher level of quality and

⁷⁸ It was a multinational law firm resulted from the merger between the UK-based Denton Wilde Sapte LLP and the US-base Sonnenschein Nath & Rosenthal in 2012, structured as a Swiss Verein and head quartered both in London and Washington D.C.. After the three way merger, this multinational law firm became part of Dentons Law firm.
https://www.washingtonpost.com/business/capitalbusiness/snr-denton-prepares-for-mega-merger/2012/11/09/a4504996-2a0e-11e2-bab2-eda299503684_story.html?utm_term=.e92c550e807b

⁷⁹ “*Swiss vereins have been used in several mergers of large multinational law firms, as they allow regional profit pools and their related tax, accounting and partner compensation systems to remain separate while allowing strategy, branding, information technology and other core functions to be shared between the constituent partnerships. The main disadvantage of the verein structure is that profits cannot be shared between constituent partnerships, which removes incentives for partners to share clients and work between the member partnerships. Most law firms as vereins overcome this problem by sharing costs in return for work referrals, which allows for the indirect sharing of profits.*”
https://en.wikipedia.org/wiki/Swiss_association#cite_note-Johnson-3

Nick JARRETT-KER and Ed WESEMANN, “Enter the Swiss Verein: 21st-century global platform or just the latest fad?”, *Edge international review*, 26, 2012.

⁸⁰ <https://www.thelawyer.com/issues/online-november-2012/salans-snr-and-fmc-approve-three-way-merger-after-partner-votes/>

⁸¹ *id.*

efficiency providing professional legal services, in 2009, the Asia-Pacific magazine Asian Legal Business (ALB) named Dacheng as one of the “Top 20 Chinese Law Offices by Size”, while the law firm ranked first among the “Top 50 Asian Law Offices by Size” of the same year.⁸² The head office was based in Beijing, with more than 40 branches mainly in China, plus some branch offices abroad, with a total of approximately 2500 lawyers. The areas of practice of the Chinese law firm include, but are not limited to capital market, financial services regulation, litigation and arbitration, taxation, real estate, criminal law, etc.⁸³

The 27th of January 2015, Dentons and Dacheng signed their union agreement, becoming a new leading global-firm with its presence in over 50 countries, counting more than 6500 layers and professionals, in approximately 120 offices spread in the world.⁸⁴ Reaching a global turnover at the end of 2015, over two billions dollar. The new firm’s logo keeps the names of both firms, combining the Eastern and Western culture.

The logo for Dacheng Dentons, featuring the Chinese characters "大成" followed by "DENTONS" in a purple arrow-shaped box.

However, a different approach to two different markets is due, that’s why the firm is called “大成律师事务所” (*Dàchéng lǜshī shìwù suǒ*) in Chinese and “Dentons” in English.

There are many strategic aspects characterising this significant union among giants of the law firms’ environment. First of all, the new firm is structured as a Swiss verein⁸⁵, which implies the maximum level of financial independence, but also a great closeness and cooperation between the firms, included the possibility to share the costs in exchange of some business cooperation. The working environment, the geographical locations and original members of the

⁸² <https://web.archive.org/web/20101121223506/http://dachengnet.com/en/about/index.aspx>

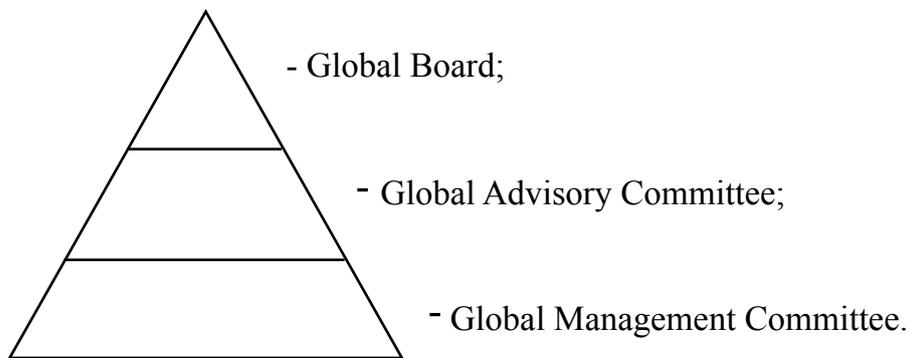
⁸³ <https://web.archive.org/web/20111103044638/http://www.dachengnet.com/en/business/index.aspx>

⁸⁴ <http://www.dachenglaw.com/en/news/dachengNews/33589.html>

⁸⁵ *id. supra note 73*

teams remains intact, but the new firm is guided under “one firm” principle. To sustain the global nature of the firm, it has no headquarter, altho the firm’s senior leadership is based in Beijing, London and Washington D.C..

The firm’s management bodies are structured in a three floor pyramid⁸⁶:



The top decision-making authority is the Global Board. Mr. Peng Xuefeng, the previous chairman of Dacheng, is the chairman of both the Global Board and the Global Advisory Committee.

Second, thanks to the excellence of a team composed of the international elite of legal profession, capable of covering all the branches of the legal practise areas and geographically covering world’s most of the countries, the services offered are provided with a unique global perspective, gaining a competitiveness level second to no other firms. Third, this is the first combination between a multinational Western law firm and a Chinese one to create a new law firm of this size.⁸⁷ For both the relative presidents of the merging law firms, this agreement is synonym of unprecedented opportunities. The president of Dentons, Mr. Joseph Andrew in occasion of the signing ceremony in January 2015, recognised the great chance this merger represents for firm’s foreign clients, which finally “*would get ‘unparalleled access’ to an economy that has witnessed explosive growth over the past decade, and stands*

⁸⁶ <https://www.dentons.com/en/whats-different-about-dentons/led-by-lawyers-who-listen.aspx>

⁸⁷ In 2012 the Australian’s Mallesons Stephen Jaques signed a union agreement with the Chinese law firm King & Wood, based in Beijing. This new law firm was also structured as a Swiss verein, but did not reach the same dimensions as the union between Dentons and Dacheng. <http://www.kwm.com/en/us/about-us/history>

poised to keep growing”⁸⁸. From foreign law firm’s legal point of view, this is a rare event: as discussed in previous chapters, foreign lawyers in China are subject to many limits, and there are many forbidden areas of practice, hence, in order to completely assist their clients, they need to cooperate with an external Chinese firm. Thanks to this agreement, Dentons’ clients have access to a stable of lawyers allowed to practice in China, deleting the forced need of “hiring” outside Chinese law firm. This situation brings along a more safe condition for clients sensitive informations, which are not divulged to third parties, but instead are kept inside the same firm. Nevertheless, Denton’s spokesman declared that *“the firm has developed a “comprehensive” cybersecurity approach, in which only lawyers and related staff will be able to access the client’s information if necessary to collaborate in serving the client”*.⁸⁹ From the Chinese perspective, this transformation also represents a significant opportunity as Mr. Peng Xuefeng, former president of Dacheng, declared during the same ceremony: *“The deal would bring the firm’s clients in much closer touch with the rest of the world - emphasising the latest phenomenon - [n]ow is the time for Chinese enterprises to go outbound, to invest in the rest of the world”*⁹⁰. Fourth, from a Chinese political point of view this union represents a great stride towards the internationalisation of China’s legal profession. This event follows the guides lines drawn by the government in occasion of the Fourth Plenary Session of the 18th CPC Central Committee, while it proves the achievement of China’s reforms to promote rule of law.

3.2.1.1 Dentons arrives in Italy

At the end of 2015, Dentons established its first branch office in Milan. At the beginning, the new office counted seven senior partner and sixteen

⁸⁸ <https://www.wsj.com/articles/chinas-biggest-law-firm-nears-merger-with-dentons-1421888402>

⁸⁹ *id.*

⁹⁰ *id.*

professionals. Italy was the only country of the continental eurozone in which Dentons did not have a base yet.

The managing partner Federico Sutti⁹¹, head of the first Italian branch, declared that the slow Italian recovery from the recession did not scare the ambitious plans of the giant law firm. Instead, this is not only a difficult period, on the opposite, according to market's movements, many institutional investors have interests towards the Italian market. In fact, in Europe Italy is one of the few strong economies in which many important assets are in the hands of debtors. These are appealing occasions for transoceanic investors, given by the exceptional low prices and the extremely high values of the goods .

As the first branch in Milan was established, the firm focused its services on the Real Estate, Energy and Labour Law, later it gradually expanded its areas of practice adding Corporate M&A, Taxation, Litigation&Arbitration. The final goal is to be able to provide assistance for all the twelve branches of law, being in line with other European branches. In 2017 a great importance was given to the banking area, which keeps playing always a greater role in Italian economy, while an attentive eye is always posed on the pharmaceutical industry, Intellectual Property sector, Information Technology, Competition & Antitrust issues.⁹²

The firm reached amazing results throughout the first year of business in Italy. In the end of 2016 the global firms established a second Italian branch, this time based in the dynamic Rome. The team, which is supposed to reach 100 professionals by the end of 2018, is in the middle of its growth, counting about 50 members. Speaking of numbers, the increased turnover the Milan branch

⁹¹ *"Federico Sutti has extensive experience in M&A transactions, particularly in the Real Estate sector, advising Italian and international clients on the acquisition of assets and portfolios, as well as relevant, complex developments. These include, in particular, some of the most prominent development transactions in the residential/office/retail as well as in the logistic sectors. In addition, he has carried out various brownfield transactions advising international investors operating in the hotel and/or office sectors. Moreover, Mr. Sutti advised the lenders in the context of the most relevant development projects in Italy."*

<https://www.dentons.com/en/federico-sutti>

⁹² http://www.repubblica.it/economia/affari-e-finanza/2016/03/07/news/ecco_i_piani_di_dentons_per_litalia_puntiamo_su_m_a_tax_e_banking-134992033/

realised in this first years of business is over the expectations and gives hope for even more impressive goals in the future. The managing partner Federico Sutti himself declared that the turnover at the end of year 2016 amounted of 11 millions of euros and in year 2017 has increased of the 92 percent reaching 22 millions of euros. The next goal for year 2018 is to reach 32 millions.⁹³ The Italian branches' turnover represent the 11 percent of the global turnover of the firm, and the final goal would be to reach the 22 percent, to be on the same level of other European branches.

Following the decentralised governance of the firm, in which there is not a predominant nationality or business strategies decided by the central governance, every decision is taken based on the different countries and cultures, promoting a local approach in every country. This politic gives every branch enough freedom to fairly compete in their field, according to the country's standards. The governance of the Italian branches, for instance, follows the Italian approach, in which partners are remunerated not only according to how many hours they have been working, but also according to what they have actually generated in terms of earnings.⁹⁴

The next ambitious step would be to open an Italian desk in London, since the 95 percent of institutional funds and private equity willing to invest in Italy have an office in the British capital. To create a reference point in London, with a team made of Italian lawyers would give a competitive advantage to the Italian firm.

3.2.1.2 Final considerations on Dentons' case

The benefit of a global structure are surely many, but the benefits of the combination between a Chinese leader law firm and a Multinational Western one are surely uncountable. As anticipated before, this new global law firm has many positive aspects: first of all, the free and tight Varen Structure, allows the regional profit pools, related tex, partner compensation and already

⁹³ <http://www.toplegal.it/news/2018/01/30/22342/dentons-italia-nel-2017-cresce-del-92>

⁹⁴ *id.*

existing internal structures to remain the same, while other functions like strategies, branding, information technology, etc are shared between the partners. Second, as declared by the two presidents of the merger firms, this strategic union is a true opportunity not only for the firms themselves, but also for the countries and firm's clients. There is a unprecedented free access through a "preferential" channel represented by the new 达成Dentons law firm. Third, from a career point of view, the staff of the firm have unlimited chances to develop an international perspective, to get to understand other cultures and societies and in case, they have the chance to move their career to another country, without quoting the firm.

However, there are is also a negative aspect of this great new combination of giant law firms. The Verein Structure does not allow the share of profits between partners. This situation do not incentive the collaboration intended as sharing clients or work, but this problem is commonly solved by sharing costs in return of work exchange.⁹⁵

Considering the immense turnover, the great geographical coverage, the unprecedented opportunity for both markets and countries to have a so close link, the author's judgement over this combination is totally positive.

⁹⁵ JARRETT-KER and WESEMANN, *"Enter the Swiss Verein..."*

3.2.2 Chiomenti: an Italian independent law firm in China

The Italian law firm Chiomenti, was founded in 1948 by the homonymous lawyers Pasquale Chiomenti. Back in those years, the legal profession was practised by a small niche of lawyers and almost exclusively in a domestic environment. This Italian law firm was one of the first to provide an international assistance, with a story that goes from the Second World War's recovery to the present. Currently, the Firm is chairmanned by Mr. Carlo Croff⁹⁶. Throughout the years, the Firm reached always greater areas of practice and thanks to its international perspective and the high reputation of its professionals, Chiomenti actively participated in the growth of Italian major businesses, managing the continuing increase of inbound and outbound investments.

The firm currently counts approximately 300 attorneys and tax advisers⁹⁷, with branch offices in Rome, Milan, London, Brussels, New York, Beijing, Shanghai and Hong Kong.

3.2.2.1 Areas of practice

Thanks to the international perspective and rooted presence in the Euro-zone the Firm is able to provide a full range of services. In addition to providing assistance in transactions in the finance, corporate and capital markets, the Firm provides an expert legal service in tax, administrative, employment, European Union, antitrust, public utilities, intellectual properties, financial market regulation practice area. According to the latest phenomena of internationalisation of the business the firm developed a consolidated expertise

⁹⁶ “Mr. Carlo Croff is a Senior Partner of the leading law firm Chiomenti Studio Legale in Milan, Italy. Mr. Croff joined Chiomenti Studio Legale in 1984. Mr. Croff has had extensive experience advising Italian and international clients on legal matters related to banking and real estate. He has been Member of the Board of Supervisory Director at Eurocommercial Properties N.V. since 2013. He holds additional degrees from Oxford, Cambridge and Harvard Universities.”
<https://www.bloomberg.com/research/stocks/private/person.asp?personId=33942580&privcapId=2398660&previousCapId=4481149&previousTitle=EUROCOMMERCIAL%2520PROPERTIE-CV>

⁹⁷ <http://www.chiomenti.net/about-67.htm>

in civil, administrative and EU law, litigation and in national and international arbitration.⁹⁸

3.2.2.2 Main clients

Throughout its history, Chiomenti law firm collected illustrious clients including major Italian and foreign industrial, banking, insurance and financial groups. Among government figures, the firm also assisted local public administration bodies, foreign own-stated and public entities, as well as international organisations.

3.2.2.3 International vocation

The international legal assistance has always been a vocation for the Firm and have never been more important than nowadays. With a global market in continuous expansion towards foreign countries and legislations, Chiomenti not only established branch offices in the main international business centres, such as London, Brussels, New York, Beijing, Shanghai and Hong Kong, but through the years has developed a wide and experienced network of relations with leading legal and tax firms all around the globe. A good network most of the times represent the key element to be able to priced clients with prompt and complete top level assistance in any cross border activity.

3.2.2.4 Presence in China

Chiomenti established the first office in China already in 2007, based in Beijing. The Asian expansion of the Firm was just began, and the in the next two years were established a representative offices in Hong Kong (2008) and in Shanghai (2009). To open a representative office in China is not easy, according to the regulation for foreign law firm's representative offices⁹⁹, the

⁹⁸ *id.*

⁹⁹ For more info go to pp. 46 of this thesis.

Firm had to wait over a year to obtain the MOJ's authorisation.¹⁰⁰ To establish the second office in Shanghai, the wait was even longer.¹⁰¹

Chiomenti, was one of the first Italian law firm to go abroad in 1991, opening a branch office in London, more than a decade later, was one of the first to move to China as well. As usual, law firms move together with their clients. The great flow of foreign investments inbounds and outbounds towards and from the Asian country represented a crucial reason to enter the Chinese world. The team of the Asian division of Chiomenti counts about 30 staff members, plus 3 partners. Considering the many limits in the area of practice, activities, business scope, etc. the long presence of the law firm in China is the key element for its success. In fact, throughout the years, the Italian law firm managed to create a strong network with the renowned Chinese law firms, cooperating together and offering the Italian knowledge and network, working as complementary partners for the execution of activities directed in Italy.¹⁰² The international presence of the firm represents an incentive for career-oriented new members of the staff, besides the opportunity of an experience abroad, there is also the chance to develop new skills in a challenging and new environment. For instance, surely the international staff has to deal with some cross-cultural team building, take consideration of different cultural backgrounds, study new laws applied to a different legal system and much more.

The Firm's main area of practice in China is mostly focused on corporate and commercial law, intellectual property, information technology, energy and international arbitration.¹⁰³ Thanks to its international staff, composed of foreign lawyers admitted to practice foreign jurisdictions related areas in China, the Firm offers international expertise to assist Chinese clients

¹⁰⁰ https://www.ilsole24ore.com/art/norme-e-tributi/2010-08-03/studi-legali-seguono-clienti-224302_PRN.shtml

¹⁰¹ *ibid.*

¹⁰² http://www.repubblica.it/economia/affari-e-finanza/2016/03/21/news/grandi_studi_legali_cos_la_cina_savvicina_allitalia-136031936/

¹⁰³ *supra note 96*

interested in foreign projects and investments. However, the presence of Chinese professionals admitted to practise the principal areas of Chinese law subject, in compliance with Chinese law applicable on foreign law firms' representative offices, gives an added value to the services provided. This heterogeneous combination makes Chiomenti the leading independent Italian law firm in China, managing clients willing to invest in Asia or in foreign countries, with particular prominence to those willing to invest in Italy.¹⁰⁴

3.2.2.5 Awards

The Firm's top-quality assistance has been widely rewarded by the press and legal's sector organisations. Among the many titles and awards gained by the firm, Chiomenti ranked among the foremost leaders by Chamber Global, The European Legal 500 and IFLR 1000. In support of the Firm's predominant role in the legal panorama, the impressive turnover of 2016, won the firm the second position among the 50 Italian law firms most active in Italy¹⁰⁵ with 126,5 millions of euros. ¹⁰⁶ Nevertheless, Chiomenti is the unique Italian law firm present in Lex Mundi, the world's leading network of independent law firms with in-depth experience in more than 100 countries worldwide.¹⁰⁷

3.2.2.6 Final considerations on Chiomenti law firm's case

Structured as a foreign law firm's representative office in China, Chiomenti law firm is a tangible example of how, despite the limits the Chinese regulator draws to the areas of practice and expansion opportunity to foreign law firm's representative office, it is still possible to carry out a legal business complying with PRC law, operating in the limits and in close collaboration with local firms. The theme of cooperation is of great importance for the government,

¹⁰⁴ <http://www.chiomenti.net/international-69.htm>

¹⁰⁵ legalcommunity.it

¹⁰⁶ http://www.corriere.it/economia/leconomia/la-classifica/17_maggio_22/erede-chiomenti-gianni-avvocati-d-italia-d-oro-51a1cf2c-3ef8-11e7-a386-529fb6dcf067.shtml

¹⁰⁷ <http://www.lexmundi.com>

and this law firm managed to turn the limits imposed by the law at its advantages. The long-term presence of the firm in the Chinese legal environment, and the choice of foreign lawyers with a depth knowledge about China's culture and social dynamics, were surely the key ingredient that led the firm to the creation of a trusted network among local law firms. As already discussed in this article, foreign law firms need to cooperate with Chinese local firms and this is one of the most difficult part of the business for newbie in the sector.

3.3 Italian ways for participating to the legal market :

Consulting&Accounting companies

Besides the establishment of a foreign law firm's representative office in China, there are other ways for Italian lawyers to enter the Chinese legal market. As described in the previous chapters, many foreign lawyers start their Chinese experience becoming part of a Chinese law firm, while others who are already part of multinational law firms, grab the chance to relocate their career in one of the branch offices abroad established in the PRC. Among the legal firms, another important role in Chinese legal market is played by consulting and accounting firms. It worths to explain that the establishment of a foreign accounting firm is easier and free from geographical or temporal limits. Moreover, foreign accounting firms have a wider area of practice in China, compared to foreign law firms' one. There is a different legislation that regulates the activities of accounting firms, which is more permissive than the one on foreign law firms. Moreover, as shortly introduced in previous chapters¹⁰⁸, the accounting Bar Exam is opened even to foreign applicants, which proves a lower level of state's protectionism.

An Italian example of this alternative way of operating in China is the Italian Consulting firm "GWA: Law, tax and accounting".

3.3.1 GWA: Great way Advisory — law, tax and accounting

GrateWay Advisory is an Italian Audit&Consulting firm established in China in 2004 by two Italian lawyers: Giovanni Pisacane and Daniele Zibetti. The firm celebrated a decade of presence in China in 2014 and during those years, it kept expanding inside and out the PRC. The Firm's headquarter is based in Shanghai, in the heart of the city near People's Square, while other offices are based in Beijing and Suzhou.¹⁰⁹ The Firm founded a direct branch office based

¹⁰⁸ For reference go to pp.33 of this thesis.

¹⁰⁹ <http://www.gwa-asia.com/index.php?section=home>

in Hong Kong, while thanks to a wide network of cooperation with other leader legal and consulting firms, the Firm possesses a great global presence, operating in Switzerland in cooperation with FLD Law Firm, in the Middle East with Izadi Law Firm, in India with Neeraj Bhagat & Co., as well as in Singapore, Vietnam, Indonesia, Cambodia, Thailand and other countries thanks to the cooperation with DFDL.¹¹⁰ The Firm also has two Italian desks both in Milan and Bergamo. Currently, the two founding partners manage an international team of approximately 30 people between Italy and China, among which there are international and local lawyers, Italian and international Certified Public Accountants (CPA) and other professionals. The cooperation of such a heterogeneous staff gives the firm the advantage of a global perspective and depth knowledge of many foreign legal environments.

3.3.1.1 Area of practice

The Italian GWA, like the Big Four, offers a wide range of services covering basically two main branches of assistance: the first, thanks to Mr. Pisacane's specialisation in international law and Chinese commercial law, is the legal assistance. Specifically, the main business includes M&As, JVs, WFOEs establishment operations; Contract Law-related cases, like Technology transfer agreements or labour contracts disputes; Intellectual Property rights, from the registration and the protection of the registered trademark; last but not least, litigation, arbitration and mediation in which Mr. Pisacane is a real expert. Just in 2016, the Italian lawyer became part of the Panel of Arbitrators of Shanghai International Economic and Trade Arbitration Commission (SHIAC). The second branch of assistance is about accounting and taxation: being an audit firm with legal characteristics, the firm is able to offer all the services related to tax planning and auditing, tax compliance and supervision and annual statutory audit. The accounting team provides services going through bookkeeping

¹¹⁰ <https://www.dfdl.com>

activities to payroll and HR management, bank, treasury and chops management.

3.3.1.2 Main clients

The Firm assists both Chinese organisations and Italian enterprises in China. Offering comprehensive legal and tax solutions to both multinational and Chinese companies in a wide range of cross-border and domestic transactions, the Firm acquired an high reputation among boutique audit and consulting firms. The many collaboration with other firms around the world, gives the firms the get its professionals and services globally known. The heterogeneity of the team, the presence of lawyers from different countries make the firm able to assist, besides Italian and Chinese corporations, also foreign ones.

3.3.1.3 Positive aspects of GWA organisation form.

GWA Firm is a practical example of how it is possible to operate in Chinese legal market, bypassing the government's limits imposed to foreign law firms. GWA has the right to hire both foreigners and Chinese practising lawyers. The opportunity to have Chinese lawyers working side by side with foreign specialist is something that foreign law firms can only imagine. Surely, foreign lawyers working for foreign law firms and foreign accounting firms have to operate inside the same limited area, but the opportunity to work together with Chinese practising lawyers inside the same firm, is something that foreign law firms' lawyers cannot enjoy, for now.

As described above, GWA is a small firm, but managed to integrate its activity, expanding the legal consulting area, just like the Big Four of accounting firms did. From foreign law firms point of view, this phenomenon is rather frowned upon. Chinese legal market is still in development and to operate in it despite the many limits is not easy, the entrance of new competitors in the legal market creates an hostile environment and fiercer competition.

3.4 Big Four's growing legal practice

The most renowned Accounting&Consulting firms for impressive turnover, area of practice and geographical expansion, are the Big Four¹¹¹, emblematic nickname to identify KPMG, PwC, EY and Deloitte.

These firms are gradually extending their legal services businesses on a global basis, alarming the existing law firms, which see in those, once simple audit firms, new strong competitors. This new phenomenon is irremediably shaping the global legal market, especially in those countries, where regulations highly limit foreign law firms' activities. As a matter of fact, those sophisticated and global firms which were born as accounting&advising firms, have gone through an heavy transformation in the last years, developing multidisciplinary professional services and providing always more globally integrated business solution, including the law component.¹¹²

This situation is perceived as a threat by world's law firms, as reported by the ALM Intelligence's survey¹¹³: the odds show that the 66 percent of law firms' leaders participating to the survey are concerned about those alternative legal services providers. This concern is even greater among those foreign law firms working in heavily constrained legal markets like China. The risk is to be overlooked in favour of one of the accounting giant firm's legal department, due to their wider freedom and global presence.¹¹⁴ Big Four's prominent position in the legal market is growing unimpeded, and they are expected to reach a prominent role, at global law firms' expenses, by 2020.¹¹⁵

¹¹¹ The Big 4 refers to the four largest accounting firms in the world: Klynveld Peat Marwick Goerdeler (KPMG), Pricewaterhouse Coopers (PwC), Ernst & Young (E&Y) and Deloitte Touche Tohmatsu Limited. These firms provide an extensive range of accounting and auditing services including external audit, taxation services, management and business consultancy, and risk assessment and control.

<http://www.accountingverse.com/articles/big-4-accounting-firms.html>

¹¹² <https://blogs.thomsonreuters.com/answeron/big-4-accounting-firms-legal-services/>

¹¹³ <https://www.alm.com/intelligence/solutions-we-provide/business-of-law-solutions/analyst-reports/elephants-in-the-room-the-big-4s-expansion-in-the-legal-services-market/>

¹¹⁴ <https://www.legalcheek.com/2016/01/big-four-accountancy-giants-are-expanding-their-legal-services-arms-globally-and-the-law-society-is-getting-worried/>

¹¹⁵ *ibid.*

The emerging markets have been a key part of the Big Four's expansion in the legal services area and ALM Intelligence's report shows that, Big Four's 76 percent of hires in the legal industry have taken place in Asia and Latin America. According to the specialist Nicholas Bruch¹¹⁶, considering the Firms main area of practice, in some cases the extension to the legal subject is a natural evolution of the existing business lines. By way of example, considering the countries where the major business involves audit work, tax, advisory or consulting, it is obvious to add lawyers, to the advisors and auditors lawyers. In the same way, the growing involvement in labour and employment-related legal matters, can be perceived as a natural development of their business, considering the strong immigration teams being part of their organic. In this peculiar field, the Big Four openly compete with top-notch global law firms, who have owned this market before audit firms' intromission.

However, the sorest point concerns the Big Four's growth in legal services related to M&As, which is seen as the major threat by global law firms. As Mr. Bruch explained: "*M&A is a bread and butter service for law firms, one in which they make a fair amount of profit and revenue. The more worrying thing for law firms is they see a unique selling point in the Big Four. The Big Four are offering a sort of complete package, a merger in a box.*" ¹¹⁷As a matter of fact, from CEOs' point of view, being able to realise a whole merger process through only one vendor would mean less work in managing different service providers, a lower level of disclosure of sensitive informations and, in terms of investment, the possibility to have all the needed services at a slightly lower price.

¹¹⁶ Nicholas Bruch, a senior analyst at ALM Intelligence
<https://www.accountingtoday.com/news/big-four-accounting-firms-are-increasingly-competing-with-law-firms>

¹¹⁷ <https://www.accountingtoday.com/news/big-four-accounting-firms-are-increasingly-competing-with-law-firms>

3.4.1 China's regulation on accounting firms

Following, a brief analysis of the relative regulations and the most relevant differences between the Accounting Firms and Foreign law firms.¹¹⁸

Reported below Article 44, both in English translation and original Chinese version, of Law of the People Republic of China on Certified Public Accountants¹¹⁹, which in Chinese is 中华人民共和国注册会计师法¹²⁰ (*zhōnghuá rénmin gònghéguó zhùcè kuàijìshì*), resumes the rights of accounting firms in China:

Article 44

Foreigner's application for participating in the national uniform CPA examination of China and their registrations shall be conducted under the principle of reciprocity. The establishment of representative office of a foreign accounting firm in China must be reported to and approved by the Finance Department of the State Council. The application for the establishment of a Sino-foreign joint venture accounting firm jointly run by a foreign accounting firm and a Chinese accounting firm must be examined and agreed upon by the department in charge of foreign economic relations and trade of the State Council or the departments as authorised by the State Council and the governments at provincial level before being reported to and approved by the Finance Department of the State Council.

Any foreign accounting firm that seeks to temporarily perform relevant professional activities in China in cases in addition to those that have been mentioned above must obtain approval from relevant finance department of the government of a province, an autonomous region or a municipality directly under the central government.

第四十四条

¹¹⁸ For more infos see Chapter Two p.50 of this thesis.

¹¹⁹ http://www.cicpa.org.cn/introicpa/laws/201210/t20121021_35703.html

¹²⁰ <http://hkoffice.cicpa.org.cn/web/showart/policy/53.html>

外国人申请参加中国注册会计师全国统一考试和注册，按照互惠原则办理。外国会计师事务所在中国境内设立常驻代表机构，须报国务院财政部门批准。外国会计师事务所与中国的会计师事务所共同举办中外合作会计师事务所，须经国务院对外经济贸易主管部门或者国务院授权的部门和省级人民政府审查同意后报国务院财政部门批准。除前款规定的情形外，外国会计师事务所需要在中国境内临时办理有关业务的，须经有关的省、自治区、直辖市人民政府财政部门批准。

Besides few conditions that need to be satisfied in order to open a foreign accounting firm in China, there are not evident limits to the business scope. Moreover, following the principle of reciprocity, it is given the possibility to foreign accountants to apply for the national accounting exam. Another significant advantage given to foreign accounting firms, which is still not given to foreign law firms, is the possibility to establish joint venture with Chinese firms, naturally after the approval from relevant government's bodies. An important role in the fast development of the audit and consulting market is played also by the Chinese Institute of Certified Public Accountants (CICPA), which has cooperated with the government in order to achieve always higher standards of service for the local accounting firms.

In the last years the CICPA has worked hard in order to ensure the accounting profession a rapid growth and higher levels of service. Many significant improvements have been made. First, the CICPA has established accounting and auditing systems in convergence with the international standards.¹²¹ This served as a boost for Chinese accounting firms to comply with international development of Chinese companies. Second, has been established auditing standards and codes of ethics meeting the standards of Hong Kong¹²², as well as an audit supervision system equivalent to the European Union's one. This important legal modification encouraged Chinese accounting firms to expand

¹²¹ <https://www.accountancyage.com/aa/feature/2222143/chinese-audit-firms-set-to-challenge-the-world>

¹²² *ibid.*

their services, to structure the firms as limited liability partnerships, consequently strengthening the firm's governance mechanism. The final goal of this implementation is to have Chinese auditing firms able to compete with their international peers, but most of all, able to assist "*country's huge state-owned enterprises and rapid growth businesses, especially as they increasingly look overseas for growth opportunities*"¹²³. This important goal explains the relevant freedom given by Chinese regulator, allowing joint-ventures between foreign and local audit firms. The scope is to absorb the *know-how*, the international perspective in order to have future Chinese talented accountants for successful local accounting firms. This decision, however, has a double positive effect, in fact it will prevent the overcrowding effect of audit Chinese market, which is a common phenomenon of developed markets.¹²⁴

3.4.2 Comparative synthesis

The undeniable growth of big accounting firms' legal practice, has already alarmed law firms all over the world. In China, a country characterised by an overcrowded, hyper-competitive and unfair legal environment, this new situation is lived with even greater anxiety, especially by foreign law firms. Significant importance is given to M&A and Litigation and Arbitration related areas of practice, since they represents "*bread and butter services*"¹²⁵ for foreign law firms, thank to which they make a considerable part of their profit. To compete with global entities like the Big Four, means to be small Davids fighting huge Goliaths. However, there are still a few living hopes, which are either a legislative action which limits the legal activities carried out by accounting firms or one that finally liberalise foreign law firms ' practice,

¹²³ *ibid.*

¹²⁴ *ibid.*

¹²⁵ <https://www.accountingtoday.com/news/big-four-accounting-firms-are-increasingly-competing-with-law-firms>

creating a free legal environment and a fair competition, having same rights and same obligations. A state's intervention is urged and advisable.

Chapter 4: Conclusions

The legal profession in China developed in a very fast way in the last 20 years. The State has had a significant role in this process, carrying out important legislative amendments and opening up the Chinese market. The legal profession went through many different changes and analysing the progresses made throughout the years, the present result is surely positive. Nevertheless, Chinese legal environment is still few steps away from reaching the standards of fully developed countries. The obstacles on the way for a full growth of the Chinese judicial system are easily identifiable. First of all, the involvement of politics needs represents a barrier to the free enforcement of the law. Moreover, it undermines the real independence of the legal profession. In fact, although the legislation recognises the autonomy of judges and lawyers before the law, the reality is still very different, since a judge is nothing more than a state employee, hence, the decisions taken during its office can actually influence his career. Second, the government protectionism which have shielded the development of the new-born Chinese law firms during the ninety's resulted to be successful strategy in the short-term, but unfortunately analysing the present situation, the lack of a direct competition between Chinese law firms and foreign ones actually did not help the growth of Chinese lawyers, therefor, of Chinese law firms' competitiveness. Third, the continuous limits imposed on foreign law firms activities and business scopes clearly do not foster the development of an equal legal environment.

Considering the always greater objectives listed by President Xi Jinping and the Communist Party, willing to elevate China's to developed countries level, there is the need for an legislative reform which would contribute in keep attracting foreign investments, while creating not only an equal welfare for the population, but also a fair legal environment where local and foreign lawyers

can freely cooperate for the good of Country's economic and international development.

Going more into specifics, the author suggests the following: first of all, foreign law firms should have the right to hire practising Chinese lawyers, and vice-versa, the same right should be given to foreign lawyers willing to join Chinese law firms. Foreign and Chinese lawyers should be given the same access to operate within Chinese legal system, considering the great access Chinese lawyers have in WTO state members territory. This amendment of the regulation would represent a positive strategy for the real internationalisation of Chinese law firms, but most of all of Chinese lawyers. The cooperation and the joint work between Chinese and foreign lawyers, the free competition and fair opportunities will be the fuel to boost the growth of Chinese legal environment towards global horizons. Second, if the possibility to hire foreign lawyers would bring new know-how, new perspectives and opportunities to deal with new clients, the possibility of creating partnerships or joint-venture with foreign qualified lawyers, would lead to the development of a multi-jurisdictional practices, absolutely not common in nowadays Chinese law firms. Third, in line with the concept of equal legal environment, also the taxation and ethical issues should be subject to amendments. All this changes together, in the long term would bring China to higher standards of legal practice, wider ranges of expertise and sufficient level on internationalisation to keep attracting FDI, getting the maximum profit from it.

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List of abbreviations

ALB :	Asian Legal Business
CCP :	Chinese Communist Party
CPA :	Certified Public Accountant
FDI :	Foreign Direct Investment
FTZ :	Free Trade Zone
IPO :	Initial Public Offering
JV :	Joint Venture
M&A :	Merger and Acquisition
MOJ :	Ministry of Justice
NPC :	National People Congress
P&I Club:	Protection and Indemnity Club
PRC :	People's Republic of China
SAR :	Special Administrative Regions
SC :	State Council
SHIAC:	Shanghai International Economic and Trade Arbitration Commission
WFOE :	Wholly Foreign Owned Enterprise
WTO :	World Trade Organisation

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