



Globalisation and intellectual property in China

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Abstract

The open door policy since 1979 highlights the globalisation process in China. Since then, all walks of life, and businesses have been affected by globalisation. One clear sign of the global impact is China's effort to move gradually from a country ruled by government to that ruled by law although this process is slow moving, especially from an enforcement perspective. This paper intends to study the change of intellectual property (IP) environment in China under the global trend of legal harmony. Objectively, this paper discusses and analyses four related topics—the legal system in China, the rapidly expanding scope of IP, the evidential data and analysis of the IP activities, and finally, two cases highlighting practical aspects of IP.

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1. Introduction

This paper aims to provide a comprehensive understanding of the intellectual property (IP) environment in China under the impact of globalisation. It is no exaggeration to state that a firm cannot commence its business in any country without consulting the national legislation. With the above aim in mind, this paper is divided into four parts. Firstly, it describes the legal system in China, including the legislature, dispute resolution, court system, and characteristics of the Chinese legal system. Thereafter, this section will pay a particular attention to IP since it is an increasingly important dimension in international business (IB) especially from 1995 when the WTO directly integrated IP into IB. Firms are especially concerned about their IP assets because IP provides a competitive edge over rivals. The second section in this paper discusses the rapidly expanding IP scope in the world and related issues in China. The third section provides statistics to highlight the dynamic IP activities, which also shows the increasing awareness of the significance of intellectual assets for firms and individuals. The fourth section outlines two cases to endow the readers with some practical IP experience in China.

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2. The legal system in China

2.1. Two-tier legislature

China has a two-tier legislature where the central government, and its ministerial and provincial government have legislative and regulatory power (*The Constitution of the People's Republic of China, 1999*). The first tier of the legislative power is the National People's Congress (NPC). Members are elected from ministerial, provincial and autonomous regions for a term of 5 years, but meet only once a year. The legislative function is the amendment of the constitution, enactment of laws, supervision of legal enforcement, and nominations and removals of presidents of the Supreme People's Court. The NPC functions through the Standing Committee—a permanent body of the NPC. The legal function of the Standing Committee is comparatively more specific than the NPC, and includes legal interpretation, examination of bills drafted by the State Council, and appointment and removal of vice presidents and judges of the Supreme People's Court, and members of the Judicial Committee. Since 1987, the Standing Committee has had the authority to enact and amend laws other than those under the jurisdiction of the NPC.

The second-tier legislature consists of local people's congresses and their standing committees in provinces, autonomous regions, municipalities, and ministries. They can issue rules and regulations based on local needs

and requirements in conformity with the constitution and laws from the first tier. It is worth noting that rules and regulations from the autonomous regions must be approved by the first tier before becoming effective, while other second-tier NPCs only need to report their stipulations to the high level for record, including the ministerial government reporting to the State Council.

2.2. Dispute resolution

Disputes may arise between Sino-foreign partners when doing businesses in China due to differences in cultural, political and economic background. According to the Economic Contract Law of *The People's Republic of China* (1993), foreign firms doing business in China should abide by Chinese laws or international treaties and agreements if Chinese laws do not cover the specific disagreement. Therefore, it will be of use for managers to be familiar with the four major ways of dispute settlement—consultation, mediation, arbitration and litigation in China. When disputes occur, business people in China tend to seek consultation first, i.e. parties in dispute try to resolve their disagreements and conflicts through negotiations between themselves without involvement of any other parties. As a result, they may set aside their differences and look for common interests and compromise for the benefit of cooperation between them.

Like consultation, mediation is also a simple and flexible method aiming at further cooperation between partners in the future, but the difference is that disputing parties try to resolve problems through a third party under the parties' consent. The third party may be a government organisation, administrative institution or association, dispute mediation institution, or arbitration organ, such as Beijing Mediation Centre. However, the third party involvement may complicate matters even if the dispute parties agree on a mediator. This is especially the case when some confidential issues are involved. Consultation and mediation are the preferred ways of dispute resolution in China, as the traditional culture is to emphasise harmonious living in the society where people should avoid conflicts. Mediation as a method of resolution has also become a globally effective method. However, the drawback of these two methods is that there is no legal binding for resolution in comparison to arbitration and litigation.

Arbitration is a quasi-judicial procedure in which parties in dispute agree to seek resolution in an arbitration body. Usually, the parties can select their own arbitrators, but the chief arbitrator is nominated by the arbitration body. The losing party must abide by the adjudication; otherwise, the prevailing party can apply in court for the losing party's compulsory execution. The main guiding law in China on arbitration is the *Arbitration Law of the P. R. China* (1994). The China International Economic and Trade Arbitration Commission (CIETAC) has become a reputable arbitration institution for dealing with disputes. The number of cases

Table 1
Arbitration cases received and handled in 1985, 1995, 2001, and 2002

	1985	1995	2001		2002	
Cases received	37	892	731		684	
			Foreign 553	Local 178	Foreign 468	Local 216

Source: Based on Chan (1997) and Wang (2003).

received is detailed in Table 1 and highlights a dramatic increase in recent years.

The final resort of dispute resolution is litigation in which one party sues the other party or parties in a court for legal settlement of a dispute. Like arbitration, losing parties have obligations to unconditionally execute the court judgement. As litigation can be brought to a court without consent from the relevant parties, it may not yield any future cooperation between them. Moreover, due to its lengthy and costly nature, firms tend to seek one of the other three methods for more efficient and effective outcome (Yang, 2003). In relation to the above four resolving methods, a comparison and contrast is provided in Table 2. Many disputes can be internationally significant not only to the economy but also bear political and cultural consequences. For example, Elli Lily's dispute with two Chinese companies and the State Drug Administration in China has been in court since the 1990s. It has become so important that it was discussed between Presidents Clinton and Jiang Zemin.

2.3. Court hierarchy

The court system is a four-tier People's Courts. The Supreme People's Court directly reports to the NPC and its Standing Committee. Below it, there are High People's Courts at the provincial, autonomous regions, and municipal levels. The Intermediate People's Courts deal with litigating cases in provincially administered cities. The bottom tier is the Basic-Level People's Courts at the town and county level. Besides the four-tier courts, there are also tribunals, which are lower than the bottom tier, to provide legal services for people in remote areas. In addition, since 1992, Special People's Courts have been set up above some Intermediate People's Courts (The State Council, 1994). The jurisdictional power enables them to resolve business disputes with efficiency. Decisions by the courts may be appealed. For example, a decision at the Basic, Intermediate or High Court levels can be appealed to a High Court. High Court decisions can only be appealed to the Supreme Court, which is a court of appeal.

2.4. The legal mechanism

A legal mechanism refers to the laws and regulations that guide business practice and facilitate dispute resolution. The Chinese government's decision in 1978 to open its economy and attract foreign capital and technology into China

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