



| | |
|--------------------|--|
| Title | A profession reborn: the enactment of the PRCs new lawyers law is a major step forward in the restoration of the Chinese legal profession |
| Author(s) | Zhang, XC |
| Citation | Hong Kong Lawyer, 1996, Aug, p. 32-34 |
| Issued Date | 1996 |
| URL | http://hdl.handle.net/10722/53593 |
| Rights | Creative Commons: Attribution 3.0 Hong Kong License |



A Profession Reborn

The enactment of the PRC's new Lawyers Law is a major step forward in the restoration of the Chinese legal profession

On 15 May 1996, the Standing Committee of the National People's Congress enacted the first legislation specifically tailored for lawyers within the PRC, entitled the *Law on Lawyers of the PRC* (the Law). It will come into effect on the 1 January 1997 and replaces the outdated *Interim Regulations on Lawyers of 1980*.

The enactment represents an ideological breakthrough after seven years of drafting and several serious discussions among the top leaders of China. In addition, it sets the stage for the further development of the legal profession in China.

Lawyers Defined

In contrast to the old regulations which defined lawyers as state legal workers, art 2 of the Law characterises lawyers as legal practitioners who have obtained practice licenses in accordance with the Law and who provide society with legal services. In addition, arts 1 and 3 state that the legislative purpose is to protect the practice of law by lawyers, to have lawyers play an active role in socialist legal construction and to safeguard the correct application of laws.

However, some inconsistencies can still be found. For example, art 4, pro-

vides that the Ministry of Justice through the State Council and its local offices (judicial administration offices) shall be in charge of the supervision and guidance of lawyers, law firms and lawyers' associations.

Qualification

To become a lawyer a person must qualify through the national lawyer qualification examination, which can be taken by both law school graduates and others with equivalent knowledge. Although currently only a quarter of the more than 90,000 qualified lawyers in the PRC are law school graduates, the Ministry of Justice has set the goal of increasing the number to 150,000 by the end of this century, as part of the first stage in meeting President Jiang Ze Min's call to have 300,000 lawyers by the year 2010.

As a consequence, it is inevitable that other qualified people will be allowed to join the profession. Certain

people, including law school graduates, with senior academic titles or those with equivalent competence may not be subject to examination, but only to an assessment conducted by the judicial administration offices.

In addition to the qualification, candidates still have to meet certain other substantive as well as procedural conditions before they are permitted to practise law. The substantive conditions require candidates to support the Constitution, to have finished a training programme in a law firm for a full year, and to be of good character.

A licence will not be issued to those who have been penalised under criminal law for intentional crimes, or who have been dismissed from a public position for fault; who have no or limited civil competence; or who have been disciplined by revocation of their practice licences.



Armed with the right documents, candidates are also required to apply to the local judicial administration offices for their licences. Although lawyers' practices are not subject to any geographical restrictions, each lawyer can only practise in one law firm. Government functionaries may not practise as lawyers, and a lawyer may not practise law where he or she is elected as a member of the Standing Committee of the People's Congress at any level. A person without a practice licence is prohibited from practising as a lawyer and from engaging in litigation for economic gain.

Although lawyers' practices are not subject to any geographical restrictions, each lawyer can only practise in one law firm. Government functionaries may not practise as lawyers, and a lawyer may not practise law where he or she is elected as a member of the Standing Committee of the People's Congress at any level. A person without a practice licence is prohibited from practising as a lawyer and from engaging in litigation for economic gain.

Practice Scope and Legal Rights and Duties of Lawyers

The new legislation specifies the scope of a lawyer's practice areas (see Figure 1).

Once a lawyer is appointed, he or she shall uphold his or her client's legal rights and interests, and will not

Practice Areas

According to the new legislation, lawyers' practice areas include the following:

- being legal advisors for individual citizens, legal persons or other organisations
- being litigation attorneys in civil or administrative proceedings
- being the defendant's or victim's attorneys in criminal proceedings
- representing parties to petition against legally-effective decisions
- providing legal services on non-litigation matters
- participating in mediation and arbitration on behalf of their clients, and
- legal consultation and document drafting.

Figure 1



refuse to defend or represent without proper reasons, except where the entrusted matter's intention is one of evading the law.

A lawyer's practice will be protected by the law. For example, a lawyer's rights to engage in debating and defending his or her client, and to enjoy his or her own personal autonomy during practice are explicitly guarded by arts 30 and 32.

Lawyers have a legal duty to observe the Constitution and laws, to act on the basis of fact, to comply with professional ethics and practice discipline, and to defend correct application of the law. More specifically, lawyers must not:

- disclose state or business secrets or personal matters of which they become aware of during their practice
- represent both parties in the same case
- receive any private appointment and payment
- seek any benefit from the interests under the dispute between the parties
- illegally meet or bribe judicial personnel or arbitrators, or
- disrupt legal or arbitration proceedings.

In order to prevent illegal dealings, the Law subjects lawyers to the supervision of the state, society, and interested parties. Former judges or prosecutors may not be appointed as litigation attorneys or defendants' representatives within two years of ceasing their judicial functions.

Law Firms

Under the Law, law firms are the practice units for lawyers. A law firm must have its own name, articles, offices, minimum capital of RMB 100,000 and qualified lawyers. Both state-owned law firms and law firms under private ownership are permissible. Although the 'Two No and Four Self' policy (not being a state establishment, not taking state funds, self-association, self-support, self-development, and self-discipline) has been used to promote the growth of private sector practices since 1993, and with approxi-



Zhang Xian Chu: The main theme running through the provisions of the Law is still the struggle between the freedom of practice and autonomy of the profession, and government control based on conservative political ideology

mately 1,700 private law firms having been established, state-owned law firms still constitute over 75 per cent of the 7,200 law firms in the nation today. Therefore, the dual-track system is aimed at smoothing the transition of the current structure, which is dominated by state ownership, to a more open market with private sector competition and, at the same time, guaranteeing availability of legal services in poor rural areas.

The Law provides that a private law firm may be established either as a corporation or as a partnership. The provision for sole practices that has existed in some cities, was deleted at the last minute from the draft legislation on the grounds of it being somewhat premature.

The judicial administration offices are responsible for the examination of, and, within thirty days, the rendering of their decisions on whether to approve applications for the establishment of law firms or branch offices of a law firm. They are also empowered to terminate a law firm or to approve any significant changes to a firm.

According to the Law, all legal work must be accepted by the law firm itself, rather than from any individual lawyers, on a basis of written appointment contract. The fees shall be charged in accordance with the relevant state regulations. No law firm or lawyer shall accept any business by means of unfair competition, such as slander or by offering 'kick backs'. To further deter such behaviour the Ministry of Justice last year promulgated a detailed regulation against unfair competition among law firms and lawyers.

The Lawyers' Association

The Law stipulates that the National Lawyers' Association of China is a self-disciplining social organisation with local branches nation-wide. A lawyer must join a local association, which automatically makes him or her a member of the National Association.

The responsibilities of the Association include the protection of lawyers' legal rights and interests, practical training and the promotion of exchanges, ethical education and practice supervision, international professional exchange, and mediation of disputes between lawyers over their practices. The Law, however, subjects the Association to government control by providing that only standard articles of association may be adopted by the National Association, and that the associations at different levels shall be guided and supervised by judicial administrative offices. In addition, articles of association will be registered with the Ministry of Justice.

Legal Aid

Legal aid as a legal system is provided in the Law for the first time. It will be provided by lawyers in cases involving maintenance payments, employment-related injuries, criminal offences, compensation claims against the government and pension claims. Eligible individuals include the disabled, families of the deceased, those in need of legal services but who are unable to pay. In recent years, legal aid centres have been opened in some



cities including Guangzhou and Shenzhen. However, resources for the funding of such operations has yet to be settled. Thus, the detailed measures of funding have been left to the State Council.

Legal Liabilities

A lawyer may be sanctioned by the local judicial administration office by a warning, confiscation of unlawful income, or suspension for three-twelve months for minor violations including private receipt of appointment and payment, unfair competition, refusal to represent without proper reasons, disclosure of private or business secrets, unlawful treatment of judicial personnel, or disruption of judicial proceedings.

Revocation of practice licence or even criminal liabilities may be imposed against serious violations, such as disclosure of state secrets, bribery, fabrication of false materials or other

intentional crimes. A person practising without a licence may be subject to confiscation of unlawful income, fines and detention of up to 15 days. A penalised lawyer or law firm may seek reconsideration of the sanction imposed by appealing to a higher level or by directly filing an administrative action against the judicial administration office concerned.

A law firm may also be penalised through an order to correct, confiscation of unlawful income, fines, suspension of practice for consolidation or revocation of practice licence. In addition, it may be held liable for any damages caused to its clients by any malpractice or for any other violations by its lawyers. Although it may seek further recourse against the lawyer concerned, such civil liability to the clients may not be exempted or restricted by any law firm or lawyer.

Conclusion

The enactment is clearly a positive

step towards the modernisation of the legal profession in China which is in itself a necessary component to the establishment of a market economy. The main theme running through the provisions of the Law, however, is still the struggle between the freedom of practice and autonomy of the profession, and government control based on conservative political ideology.

Compared with the previous draft and some other local regulations, the Law seems not as bold as many had expected. The fact that all the disciplinary powers of lawyers' associations, as provided in the previous draft, are now completely held by the government branch is an illustration of this point. The Law may, therefore, play only a limited regulatory role during this transitional period.

Zhang Xian Chu
City University of Hong Kong

The
One Stop Delivery Shop...

- Free 90-Minute Delivery to all Members
- Premium 2hr Door-to-Door Deliveries
- 55% Off International Courier Charges
- Inter Office Deliveries 6 Times a Day
- Service of Court Document Facilities

**Remember,
each time you use the DX,
you save time and money.**

DX Group (Hong Kong) Limited
921 Whitebeck House
277A, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th
Tel: (852) 2121 2301
Fax: (852) 2815 5195
DX, 007007, Global 1

GUARDFORCE group

Document Exchange • Courier Services