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# The development of the construction legal system in China

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China has been developing at an amazing speed since it carried out reform and open-door policy in 1978. Construction industry is playing a leading role in the rapid Chinese economic development. At the same time, China has also worked hard to encourage overseas investors to expand their investment in the construction industry. With its development over the years, China has established a legal system for governing construction activities. To participate in such a major market in the world, it is important to understand the legal system governing it and the impact of China's joining the World Trade Organization. The Chinese construction laws and practice are still very different from the international norm. If foreign participants are to make a success out of doing business in China, they must understand the Chinese way of life. Particularly, they must prepare to adapt to an environment where new rules are created as circumstances and situations change.

**Keywords:** Construction laws, legal system, construction industry, China, foreign investment, foreign designers and contractors, World Trade Organization (WTO)

## Introduction

China has been developing at an amazing speed since it carried out reform and open-door policy in 1978. The rapid economic development in China has resulted in many construction activities and has nourished one of the largest construction markets in the world (Sjoholt, 1997). During the "Eight Five-Year Plan" period (1991–1995), the total production of the construction industry was valued US\$210.6 billion (at rate of US\$1 equivalent to RMB8.28), progressively increasing by an average of 33.6% a year; the total construction value-added was US\$139.5 billion.<sup>1</sup> In 1996, the construction industry employed 34.08 million workers, about 4.95% of the total labour force in the country.<sup>2</sup> In 2000, according to statistics of the State Statistical Bureau of PRC, the construction value-added of that year reached US\$71.5 billion (at rate of US\$1 equivalent to RMB8.28); the contribution of the construction industry to the national economy, measured by the percentage of construction

value-added to the gross domestic product, has been increasing from 3.8% in 1978 to 6.6% in 2000.<sup>3</sup>

As China has traded more with the rest of the world, it has worked hard to attract foreign direct investment (FDI). Especially in the 1990s, rapid growth and liberalization of the Chinese economy have made China a much more attractive investment destination. China was the largest recipient of FDI among developing countries and the second largest recipient of FDI in the world, behind just the US (Anand and Delios, 1998). By the end of 1996, China had approved 283,793 projects invested by foreigners and the actual amount of foreign investment totalled US\$177.2 billion (Zhang, 1998). In 2000, the actual amount of FDI was US\$40.7 billion.<sup>4</sup> China has also worked hard to encourage overseas investors to expand their investment in the construction industry. Foreign investors became interested in developing advanced commercial buildings, building new residential housing and renovating existing buildings. Some projects such as public infrastructures, energy plants are, with government encouragement, becoming favourite projects for foreign investors.

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To participate in such a major market in the world, it is important to understand the legal system governing it. This paper will first present some characteristics of the legal system in China. Next, a summary of some problems in the construction market will be included. The major laws and regulations governing construction activities at 2001 are then presented. It is followed by a presentation of the impact of China's joining WTO on its construction legal system. An examination of the regulations concerning foreign participants in China's construction market is then provided. Some discussion and conclusion will also be given.

### **Some characteristics of the legal system in China**

For a better understanding of the legal system in the Chinese construction industry it is useful to examine some characteristics of the system.

#### **Influence of Marxist-Leninist jurisprudence**

On the surface, the commercial law system of the PRC, like its counterpart in the Western world, provides rules that govern and regulate economic relations. However, one must remember that the Chinese commercial law system or Chinese law in general, had its origin in the traditional communist theory of law (Lakritz, 1997). Zhao and Fu (1999) comment that jurisprudence in socialist countries seems to have a common view with regard to law. They all say that law is part of the superstructure of the society, and nothing more than an instrument of the ruling class. Under Marxist-Leninist jurisprudence, the "rule of law" (*fa zhi*), where law acts as a restraint of state power, cannot exist under a communist legal system. Laws and regulations within the communist jurisprudence, therefore, are intended to be instruments of policy enforcement. Then laws and regulations are not intended as expressions of immutable general norms that apply consistently across all forms of economic activities, but as tools to achieve immediate policy objectives of the Chinese Communist Party (CCP). In other words, laws are not restraint on state power, but an instrument of it (Zhao and Fu, 1999). As a consequence, the development of the legal system is not a desirable end in itself. Rather it is a means to develop the socialist market economy, to promote prosperity and ultimately to achieve socialism (Zhao and Fu, 1999).

Of course, it is too simple to treat the Chinese commercial law as simply the puppet of the CCP while ignoring the merit of the commercial law system. Generally speaking, the lawful rights and interests of the parties involved in market, including foreign investors, are protected. Additionally, the "rule of law" is embodying in the

Chinese commercial laws. Chinese legal scholars (Zhou, 2000, etc.) conceded that an appropriate legal system must seek to be fair, just and predictable, in order to have credibility among the people and enable an effective market economy.

#### **Flexibility in the Chinese commercial law**

As one can observe, there is a contradiction between traditional communist jurisprudence, where law is seen as an instrument to implement policy, and the need for an objective set of rules to develop the market economy. In this regard, the Chinese government is faced with a dilemma. On the one hand, a concrete, objective set of laws and regulations would assist the long-term economic development by increasing certainty. Greater certainty in law would ultimately attract more foreign investment and promote economic progress. On the other hand, detailed rules in the short run would limit the flexibility of the government to implement changes to policy so as to adapt to the economy. It seems that the Chinese government favours short-term flexibility over long-term benefits. Scholars in China (e.g. Chen, 1995; Chen, 1996) argued that law must be flexible enough to deal with different situations and the varieties of human behaviour. In other words, regulators must be given enough discretionary power to adapt rules and regulations to local circumstances.

However, one must realize that although such discretionary power ensures in some extent the flexibility of the government, it brings extensive negative effects, especially preferential treatment through connections and corruption. In China, the art of using connections (*guanxi*) to subvert the formal system, also known as "using the back door" (*zou houmen*), exists everywhere in the Chinese administration. Because of the broad discretion given to bureaucrats under the Chinese commercial law system, good contacts with officials will result in success in obtaining preferential treatment.

#### **Fragmentation of regulatory authorities**

The Chinese commercial law system is still evolving and therefore the central government may wish to test effects of a law or regulation in one area, before introducing the rule nationally. The central government often picks "model" areas (*shi dian*), and special rules are implemented within those areas. In addition, as the Chinese commercial law system is an instrument to enforce economic policy of the CCP, the central government may delegate some authority to local officials so that they can exercise the authority in accordance to local circumstances. However, in allowing local authorities the flexibility to adopt laws and regulations to "local circumstances" or be used as a model for national law, laws become uncertain (Ho, 1994).

### Ambiguity in legal drafting

Another common feature of the Chinese commercial legal system is that rules are stipulated in an ambiguous fashion. The Chinese economic laws often paint a broad picture, leaving many issues unanswered. This could be explained in two ways. Because of the rapid pace of legal and economic development, the Chinese government may not have time to consider every facet of the legislation, but at the same time there may be urgent need for some regulations in the market economy. Thus the government enacts most laws or regulations hurriedly with some details left out.

### Problems in the construction market

During the past 20 years, the Chinese construction market has been developing rapidly. Unfortunately, the rapid growth exacerbated already existing problems in the construction industry. Many regulations and rules were then promulgated to deal with these serious problems. LAB and MOC (1997) summarize the problems as follows.

#### Disorder in the construction market

With the development of market economy, irregular practices in the construction market have grown very fast, and have brought about some chaos in the construction market. It is because the old economic order in the construction market has been shattered and the new economic order has not yet been completely established. Irregular practices, at the side of the employers, include bribery, parcelling out of projects to more than one contractor, contracting out project to contractor who has no qualification or whose qualification does not meet legal requirements, failure to enforce specification requirements, and so on. At the side of the contractors, such irregular practices as contracting for projects without qualification, using the name of another enterprise to undertake projects (*gua kao*), multi-level assignment, doing shoddy work and using inferior materials, etc. are common.

#### Serious quality problems in construction projects

Irregular practices inevitably led to appalling building quality and accidents. The public are very much dissatisfied with the quality of construction projects. According to a spot check for the quality of residential projects of 26 provincial capitals and 3 municipalities directly under the Central Government in 1994, 20 percent of the projects were not up to standard (LAB and MOC, 1997).

### Numerous safety accidents

The safety problems are very serious (Liu and Cai, 1996). Safety accidents happen frequently and there have been numerous casualties. According to statistics, the rate of death on duties per year in construction industry is about 0.03%, just after the mining industry. Considering the construction industry in China employs over 34 million workers, the manpower loss due to death on duties per year is appalling.

### The Chinese construction laws and regulations

With its development over the years, China has established a legal system for governing construction activities. The major Chinese construction laws and regulations as at 2001 are summarized in Table 1. As shown in Table 1, the construction legal system in China mainly consists of the laws and regulations at three levels. The highest governing laws for the Chinese construction industry include two laws promulgated by the National People's Congress of the People's Republic of China: the Construction Law 1997<sup>5</sup> and the Bidding and Tendering Law 1999<sup>6</sup>. Among all laws and regulations on construction matters, the Construction Law 1997 is the most important one. The Construction Law provides the governing legal framework for construction activities in China. Its legal effect prevails over construction rules and regulations.

The Construction Law has eight chapters and 85 articles. In their paper "China's First National Construction Law", Nelson and Chan (1999) provided more details of the various chapters. As the Construction Law only states several basic rules regarding bidding and does not provide any detailed tendering procedures, the Bidding and Tendering Law 1999 was then promulgated to provide the specific tendering and bidding procedures.

At the second level are the administrative regulations (*xingzheng fagui*) promulgated by the State Council of PRC. The regulations at this level are fewer. They are mainly concerned with some important issues, such as construction project quality management, registered architects regulations, etc.

Departmental regulations and rules (*bumen guizhang*) are at the third level. These regulations and rules are promulgated by the Ministry of Construction (MOC), the State Council's administrative department in charge of construction. They are numerous and involve many aspects for governing construction activities. These laws, administrative regulations, and departmental regulations and rules (henceforth laws and regulations) altogether establish a construction legal system in China.

**Table 1** Major Chinese Construction laws and regulations as at 2001

Level	Titles of laws or regulations		Date of promulgation
Laws		The Construction Law	1 November 1997
		The Bidding and Tendering Law	30 August 1999
Administrative regulations		Regulations for Administration of Construction Project Quality	30 January 2000
		Regulation for Administration of Construction Project Surveying and Design	25 September 2000
		Regulations on Registered Architects of PRC	23 September 1995
Departmental rules	Qualification	Regulations for Administration of Qualification of Construction Surveying and Design Units	25 July 2001
		Regulations for Administration of Qualification of Construction Enterprises	18 April 2001
		Regulations for administration of Approval for Establishment of Chinese-foreign Joint Venture Design Institutes	16 April 1992
		Measures for Administration of Qualification of Foreign Contractors Contracting Projects in China	22 March 1994
		Several Regulations Concerning the Establishment of Foreign Investment Construction Enterprises	18 September 1995
	Bidding and tendering	Regulations for Administration of Qualification of Construction Supervision Units	29 August 2001
		Measures for Administration of Bidding and Tendering for Design in Construction Projects	8 October 2000
		Measures for Administration of Bidding and Tendering for Construction in Building and Municipal Infrastructure Projects	1 June 2001
	Design, construction, supervision	Regulations for Administration of Surveying and Design Market in Construction Projects	21 January 1999
		Provisional Measures on Review of Construction Drawings	17 February 2000
		Measures for Administration of Construction Permission in Construction Projects	4 July 2001
		Regulations on Construction Supervision	15 December 1995
		Regulations on Scope and Standards of Scale of Construction Supervision	17 January 2001
		Provisional Regulations on Completion Check of House Buildings and Municipal Infrastructure Projects	30 June 2000
		Provisional Regulations on the Procedures for Administrative Penalties in Construction Projects	3 February 1999
	Mandatory standards	Regulations on Supervision for Implementation of Construction Project Mandatory Standards	25 August 2000

## **The impact of China's joining WTO on its construction legal system**

China formally became a member of the WTO on 11 December 2001. The WTO agreements are not only concerned with transnational trade in goods but also concerned with a wide range of issues such as trade in services, intellectual property, trade related investment measures, dispute resolution and the like. It is not exaggerating to say that the WTO regulates almost every aspect of the world economy. Under the Chinese law, international treaty provisions prevail in case of conflict with domestic laws and administrative regulations. Thus, on China becoming a member of the WTO, the related agreements resulted from the Uruguay Round, including all the agreements between the members entered into after its accession, will be binding on China.

After joining the WTO, it is necessary for China to implement substantive reforms on the economic system, legal system, legal framework and principles of law enforcement, so as to make its economic system meet the requirements of a market economy and its laws and legal systems meet the requirements of a society governed by the rule of law.

In the sphere of construction industry in China, the State Council and the Ministry of Construction have realized the necessity of accelerating the step of modifying those laws and regulations unfit for the requirements of new situations. For this purpose, the MOC established a special working team, whose duties are to check laws, administrative regulations, departmental rules and regulatory documents pertaining to construction according to the general principles of WTO. According to China's promises to WTO, within 5 years after China's accession to WTO, relevant governmental departments must abolish or modify the laws, regulations and governmental decrees unfit for the WTO's rules (Chen, 2001).

The Chinese-foreign Cooperative Design Regulations 1986<sup>7</sup>, the Foreigners' Private Housing Regulations 1984<sup>8</sup> and the Urban Public Housing Regulations 1994<sup>9</sup> have been abolished. For the 1986 Chinese-foreign Cooperative Design Regulations, many of its provisions set too many constraints on foreign participation and did not meet the principle of national treatment. According to "national treatment", each member in WTO shall accord to the nationals of other members' treatment no less favourable than that it accords to its own nationals. A brief review of the 1986 Chinese-foreign Cooperative Design Regulations will be provided later. For the Urban Public Housing Regulations and the Foreigners' Private Housing Regulations, they stipulated specific rules regulating housing sale related to foreigners in case that public housing was sold to foreigners. As these rules made obvious distinctions between nationals and foreigners on housing sale and they contradict the

principle of national treatment, the Regulations were then abolished.

In addition, to meet the requirement of WTO agreements, many regulations were modified. The Construction Supervision Unit Qualification Regulations 2001<sup>10</sup> was promulgated to replace the Construction Supervision Unit Qualification Provisional Regulations 1992<sup>11</sup>. The former deleted the unsuitable provision, which stipulated that, prior to commence of business and operation, Chinese-foreign joint ventures in construction supervision must gain a specific permit. The requirement for supervision permit was set specially for Chinese-foreign joint ventures and the domestic enterprises are not required to do so. So this provision does not meet the principle of national treatment and needs modifications.

Another important modification is aimed at the Construction Tendering and Bidding Regulations 1992<sup>12</sup>. The Regulations set restrictions on the participation of foreign companies in tendering activities which contradicts China's promises to WTO. So the Municipal Infrastructure Construction Tendering and Bidding Regulations 2001<sup>13</sup> were issued to replace it.

Some very new regulations were also modified. On 25 July 2001, the MOC promulgated the Surveying and Design Units' Qualification Regulations<sup>14</sup> which superseded the previous one of 1997, as the 1997 version set many restrictions on contracting design tasks by foreign designers; it contradicts the principle of national treatment.

## **Regulations concerning foreign designers and contractors in China's construction market**

The Construction Law and the Tendering and Bidding Law do not contain specific provisions related to foreign participation in China's construction market. But Article 2 of the Construction Law stipulated, "This law shall be observed in all construction activities within the People's Republic of China". Article 2 of the Tendering and Bidding Law also stipulated that "this law shall be observed in all tendering and bidding practices within the People's Republic of China". Therefore, these two laws shall apply to the participation of foreign contractors and designers. Besides these two laws, there are some regulations concerning foreign participation in design and construction.

Formerly, there were two specific regulations governing foreign designers: the 1986 Chinese-foreign Cooperative Design Regulations and the 1992 Joint Venture Design Institutes Regulations<sup>15</sup> and another two specific regulations governing foreign contractors: the 1994 Foreign Contractors Measures<sup>16</sup> and the 1995 Chinese-foreign Construction Enterprises Regulations<sup>17</sup>. The 1986, 1992

and 1995 Regulations have been abrogated and the 1994 Foreign Contractors Measures will be abrogated with effect from 1 October 2003. Two new regulations: the 2002 Foreign Investment Design Enterprises Regulations<sup>18</sup> and the 2002 Foreign Investment Construction Enterprises Regulations<sup>19</sup> have been promulgated in September 2002. To better understand the Chinese construction legal system, it is useful to review and have some understanding of the main content of all these regulations.

### **A review of the 1986, 1992, 1994 and 1995 Regulations**

#### *The 1986 Chinese-foreign Co-operative Design Regulations*

According to the 1986 Chinese-foreign Cooperative Design Regulations, if a foreign designer intends to be engaged in projects in China, he must work jointly with local designers. In principle, foreign designers may not be engaged for local-invested projects if they can be designed by the Chinese designers. Foreign designers can be engaged for foreign-invested projects and local-invested projects only if the Chinese designers are not capable of designing them. However, these projects must still be designed jointly with the Chinese design companies. Application for engagement of foreign designers must be submitted to the project approval authority with project proposal or design work documents. As mentioned before, the 1986 Regulations set too many constraints on foreign designers and have been abolished.

#### *The 1992 Joint Venture Design Institute Regulations*

According to the 1992 Joint Venture Design Institute Regulations, wholly foreign-owned design institutes are not permitted. Foreign designer (individual or institute) may register a joint venture design institute jointly with one or several Chinese design institutes. The establishment of a joint venture design institute is subject to the approval of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) and its qualification is subject to the examination and approval of the Ministry of Construction. The 1992 Regulations have been abrogated in December 2002.

#### *The 1994 Foreign Contractors Measures*

According to the 1994 Foreign Contractors Measures, subject to approval, foreign contractors may be engaged only in a limited range of projects (Chen and Wills, 1996; Chen, 1998):

- projects that are completely funded by foreign investment;
- projects that are financed by the international financial organizations;
- Chinese-foreign joint venture projects that are

technically difficult for local contractors working independently; and

- domestic-invested projects that are difficult for local contractors working independently.

A foreign contractor seeking to work on a construction project in China must obtain a "Foreign Contractor Qualification Certificate" from the MOC (if it proposes to work in more than one province) or from the relevant provincial construction commission (if it proposes to work within one province only). The 1994 Regulations will be abrogated with effect from 1 October 2003.

#### *The 1995 Foreign-invested Construction Enterprises Regulations*

According to the 1995 Foreign-invested Construction Enterprises Regulations, wholly foreign-owned construction enterprises are not permitted. Instead, there are two forms: Chinese-foreign joint ventures and Chinese-foreign co-operative enterprises (henceforth joint venture construction enterprises). Chinese-foreign joint venture construction enterprises are classified into three grades. Grade one joint venture construction enterprises must be approved by the MOC and the MOFTEC, and grade two and grade three joint venture construction enterprises may be approved by provincial construction commissions and provincial foreign investment commissions. The 1995 regulations have been abrogated in December 2002.

#### *Comments*

The above regulations have been or will be repealed because they do not meet the requirements of WTO agreements and contain defects which include the followings.

First, some constraints in the regulations are not appropriate any more. For example, according to the regulations, wholly foreign-owned construction enterprises or design institutes are not permitted. But, since China became an acceding state of WTO, the Chinese construction market should open more to the world. It will be inappropriate to forbid establishment of wholly foreign-owned construction enterprises or design institutes. Of course, the Chinese government will have to bear the pressures from interest groups such as contractors association, etc., who argue that participation of more foreign designers and contractors will harm the interests of domestic designers and contractors (Luo and Gale, 1996). However, the government has to consider the negative sides of such constraints. These constraints may establish an impression that the Chinese market is sealed. Such impression will shake the foreign investors' confidence in China's market and discourage the entry of foreign investment.

Second, there are inconsistent provisions between regulations. For example, Article 8 of the 1994 Foreign

Contractors Measures stipulated that “Foreign Contractor Qualification Certificate” should be obtained before the foreign contractor registers itself with the administrative department in charge of industry and commerce. However, under the 1995 Foreign-invested Construction Enterprises Regulations, Article 6 stipulated that registering with the administrative department in charge of industry and commerce should be ahead of obtaining the “Foreign Contractor Qualification Certificate”. Thus, the regulations are confusing.

Third, ambiguity exists in the regulations. The meaning of some provisions is ambiguous and this may cause misunderstandings. For example, under the 1994 Foreign Contractors Measures, because there are provisions for registration of foreign contractors, it is likely to be misunderstood that an independent foreign-owned construction enterprise is permitted to establish. In fact the Regulations do not permit these foreign-owned construction enterprises to do so. The 1995 Foreign-invested Construction Enterprises Regulations further confirm that independent foreign-owned construction enterprise is not permitted to be established. It seems that such ambiguity is not caused intentionally, but results from shortcomings in legislative techniques.

### **An examination of the two 2002 Regulations**

#### *The 2002 Foreign Investment Design Enterprises Regulations*

The 2002 Foreign Investment Design Enterprises Regulations were promulgated on 27 September 2002 and came into force on 1 December 2002. According to Article 2 of the Regulations, the term “foreign investment construction and engineering design enterprises” refers to a wholly foreign-owned construction and engineering design enterprise, a Sino-foreign equity joint venture construction and engineering design enterprise or a Sino-foreign co-operative construction and engineering design enterprise. For the first time, wholly foreign-owned design enterprises can be legally established in China. Also, the restrictions on the works that design enterprises can undertake are removed. However, there are some requirements in the Regulations for establishing a wholly foreign-owned design enterprise in China. One of them is that the enterprise must have a minimum of 1:4 ratio of foreign service provider, for example, qualified registered engineers or qualified registered architects in China, to total registered professionals required under the same qualification classifications (Article 15). Another requirement for setting up a wholly foreign-owned design enterprise is that each of their architects and engineers registered in China and their key technical personnel shall reside within the territory of the People’s Republic of China for not less than a cumulative period of 6 months each year (Article 16). Similar to previous regulations, the establishment of a foreign investment design

enterprise is subject to the approval of the Ministry of Foreign Trade and Economic Cooperation (MOFTEC) or the foreign trade and economic co-operation administrative department of the People’s Government of the province, autonomous region or directly administered municipality, and its qualification is subject to the examination and approval of the Ministry of Construction and the construction administrative department of the People’s Government of the province, autonomous region or directly administered municipality.

#### *The 2002 Foreign Investment Construction Enterprises Regulations*

The 2002 Foreign Investment Construction Enterprises Regulations were promulgated and came into force at the same time as the 2002 Foreign Investment Design Enterprises. According to Article 2 of the Regulations, the term “foreign investment construction enterprises” refers to a wholly foreign-owned construction enterprise, a Sino-foreign equity joint venture construction enterprise or a Sino-foreign co-operative construction enterprise. Also for the first time, wholly foreign-owned construction enterprises can be legally established in China. However, the wholly foreign-owned construction enterprises may undertake only a limited range of projects (Article 15):

- construction projects that are completely funded by foreign investment;
- construction projects that are financed by international financial organizations and awarded through international tendering in accordance with the provisions of the loan agreements;
- Sino-foreign joint venture construction projects that are funded at least 50% by foreign investment, or other Sino-foreign joint venture construction projects that are technically difficult for a Chinese construction enterprise working independently, subject to the approval of the construction administrative department of the People’s Government of the province, autonomous region or directly administered municipality;
- China invested construction projects that are technically difficult for a Chinese construction enterprise working independently, subject to the approval of the construction administrative department of the People’s Government of the province, autonomous region or directly administered municipality, may be undertaken by Chinese and foreign construction enterprises jointly.

These Regulations also set out the licensing, qualifications, skill categories and classification requirements, as well as formal application procedures and documents, to establish a foreign investment construction enterprise.



## Discussion

The Chinese construction laws and practice have been very much influenced by the China's unique culture, social system and historical background. Some characteristics and problems of the Chinese construction laws and practice are discussed below.

- (1) One of the important characteristics of the background to the construction industry is that the Chinese construction industry has developed from the centrally planned economy. In the centrally planned economy, almost all the construction projects were state-owned. The construction laws are promulgated under this specific development background of the Chinese construction industry (Mayo and Liu, 1995). The practice of establishing construction projects involved the formation of a temporary organization – Preparatory Office (PO) – which represented the Ministry/Provincial/Municipal Government in administering the project. The PO, as the employer of the project, was responsible for implementing the project, without any financial liability (Chan, *et al.*, 1999). “Power without responsibility” was and is an accurate description of the position of the employers of state-owned projects in China. One of its consequences was that the employer tended to abuse the power. For instance, the employer might, only based on his personal preference, require the designer to change the design to deviate from the plans approved.<sup>20</sup> “Power without responsibility” also resulted in the illegal practices, such as bribery, of the employer in procurement and contracting (Nelson and Chan, 1999). Although China is undergoing the transitional period from the centrally planned economy to market economy, as most projects are still state-owned, these transitional practices still exist.
- (2) One important characteristic of the legal system in China is that laws and regulations in China are often drafted in a way that policy-makers and implementing officials can interpret and implement these rules in a way that serve their purposes. By making the wordings in laws or regulations vague and ambiguous, the administrative authority can interpret their meanings, either in official documents or in other ways. This would give the regulators wide discretion to interpret the meanings of these words to suit current policies. However the uncertainty caused by such interpretation would make the law very confusing. Moreover, many internal regulations are confidential and are not disclosed to foreigners. Detailed and

comprehensive legal codes seem to be the exception rather than the rule in China (Nelson and Chan, 1999). Consequently, both domestic and foreign participants in the construction industry are often confused by the ambiguity in the laws or regulations (Wang and Lu, 1996) and the inconsistency of laws with practices.

- (3) The major objectives of the Construction Law are to eliminate the irregular practices and to solve quality and safety problems. Other laws and regulations have the similar objective though they have their respective emphasis. Article 1 of the Construction Law states the legislative objectives:

### Article 1:

This Law is formulated in order to strengthen the supervision and administration of construction activities, to maintain order in the construction market, to ensure the quality and safety of construction projects, and to promote the healthy growth of the construction industry.

It is noted that prior to the promulgation of the Construction Law, there was already a substantial volume of national and local construction regulations (Chen, 1998). As such, the market malpractices and safety problems in the past years were not due to the lack of rules and regulations but the lack of effective enforcement by the authorities (Cong and Wang, 1996) and the lack of voluntary observance by the industry players (Le and Flanagan, 1996).

- (4) Due to the fact that the employers of the state-owned projects tend to pursue their personal specific interests (Flanagan and Li, 1997), the construction laws stipulate many constraints on the activities of the employers, such as prohibiting separate contracting.
- (5) Wholly foreign-owned design enterprises and wholly foreign-owned construction enterprises can now be legally established in China. However, as mentioned earlier, there are requirements to be met on their establishment. Also, there are restrictions on the range of projects that foreign-owned construction enterprises may be undertaken.

## Conclusion

With its great development and accession to WTO, the construction industry in China is no longer separated from the outside and is increasingly interacting with the international construction industry. Inevitably, international interaction has been bringing changes in the original

construction activities in China. Although the Construction Law 1997, with the existing construction regulations and rules, provides a governing legal framework for construction activities in China, this framework is still not completely satisfactory. The Chinese construction market is a major market in the world. The lack of proper infrastructure in terms of laws and rules and regulations will hinder foreign investment and weaken the construction industry's development and growth. It is vital and urgent for the Chinese construction laws and practice to develop further, be more sophisticated and more in line with international practice.

The Chinese construction laws and practice are still very different from the international norm. If foreign participants are to make a success out of doing business in China, they must understand the Chinese way of life. Particularly, they must prepare to adapt to an environment where new rules are created as circumstances and situations change.

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## References

- Anand, Jaideep and Delios, Andrew (1998) "Economic Liberalization and Foreign Direct Investment in Developing Countries: Japanese Investments in India and China," in Rao, C.P. (eds) *Globalization, Privatization and Free Market Economy*, Westport, Conn.: Quorum Books, pp. 81–100.
- Chan, William, Wong, Francis and Scott, David (1999) "Managing Construction Projects in China – the Transitional Period in the Millennium", *International Journal of Project Management*, Vol. 17, No. 4, pp. 257–263.
- Chen, Albert (1996) "The Development Theory of Law and Market Economy in Contemporary China" in Wang G. & Wei Z. (eds.) *Legal Development in China: Market Economy and Law*, Hong Kong: Sweet & Maxwell, pp. 101–136.
- Chen Jianfu (1995) "China: Constitutional Changes and Legal Developments" in Tay E.S. & Leung S.C. (eds.) *Greater China: Law Society and Trade*, North Ryde, NSW Law Book Co., pp. 35–70.
- Chen, Jean Jinghan and Wills, David (1996) "The Development of China's construction industry and the Market Opportunities for Foreign Investment", *CIB W89 Beijing International Conference*, PRC.
- Chen, Jean Jinghan (1998) "The Characteristics and Current Status of China's Construction Industry", *Journal of Construction Management and Economics*, 16, pp. 711–719.
- Chen Jianguo (2001) "Study on the impact of China's joining the WTO to the construction industry and some measures", *Ph.D. Thesis*, Tongji University, China.
- Cong Peijing and Wang Ruizhi (1996) "Cultivation and Development of the Chinese Construction Market", *CIB W89 Beijing International Conference*, PRC.
- Flanagan, Roger and Li Shirong (1997) *International Construction: A Perspective of China*, The Chartered Institute of Building Ascot, Berks.
- Ho, David (1994) "Conveyancing in China-A Special Report", *Asia Law & Practice Ltd*, Hong Kong.
- LAB and MOC (1997) *Interpretation of the Construction Law of the People's Republic of China*, Beijing, China: the Construction Industry Press.
- Lakritz, Robb M. (1997) "Taming a 5000 Year-old Dragon: Toward a Theory of Legal Development in Post-Mao China", [WWW document] URL <http://www.law.emory.edu/EILR/volumes/spg97/LAKRITZ.html>
- Le Shirong and Flanagan, Roger (1996) "How Far Away Towards Market Economy? – Chinese Construction Industry in Transition", *CIB W89 Beijing International Conference*, PRC.
- Liu Xila and Cai Hao (1996) "Warning! Safety of Civil Engineering in China", *CIB W89 Beijing International Conference*, PRC.
- Luo, Jun and Gale, Andrew (1996) "Transformation of State Construction Enterprises in P.R. China", *CIB W89 Beijing International Conference*, PRC.
- Mayo, Richard E. and Liu Gong (1995) "Reform Agenda of Chinese Construction Industry", *Journal of Construction Engineering and Management*, Vol. 121, No. 1, March, pp. 80–85.
- Nelson, Stephen and Chan, Rico, (1999) "China's First National Construction Law", *The International Construction Law Review*, Vol. 16, pp. 164–212.
- Sjoholt, O. (1997) "A Summary of Project 189", *Building Research and Information*, Vol. 25, No. 1, E&FN Spon, London, Jan./Feb. 1997, pp. 1–4.
- Wang Shouqing and Lu Youjie (1996) "Bidding for Construction Works in China", *CIB W89 Beijing International Conference*, PRC.
- Zhang Qinglin (1998) "The Building Market in China", *Proceedings of Second International Conference on Construction Project Management*, Singapore, pp. 19–48.
- Zhao Zhengjiang and Fu Zitang (1999) *The Contemporary Jurisprudence*, Beijing: The Beijing University Press.
- Zhou Yongkun (2000) *Jurisprudence: a Global Vision*, Beijing: The Law Press.

## Notes

- 1 See the Construction Industry Yearbook of China (1996, 1997), Beijing, China: the Construction Industry Press.
- 2 See note 1, *supra*.
- 3 See the Bulletin on National Economy and Social Development Statistics of China in 2000, promulgated by the State Statistical Bureau of China, 26 March 2001.
- 4 See note 3, *supra*.
- 5 The Construction Law of PRC, promulgated by the National People's Congress of China (NPC), 1 November 1997.

- 6 The Bidding and Tendering Law of PRC, promulgated by the NPC, 30 August 1999.
- 7 Provisional Regulations for Chinese-foreign Cooperative Design in Construction Projects, approved by the State Council and promulgated by the Nation's Planning Commission and the Ministry of Foreign Trade and Economic Cooperation (MOFTEC), 26 May 1986.
- 8 Several Provisions on Administration of Foreigners' Private Housings, promulgated by the Ministry of Urban & Rural Construction and Environmental Construction (replaced by the MOC in 1988), 25 August 1984.
- 9 Regulations on Administration of Urban Public Housings, promulgated by the MOC, 23 March 1994.
- 10 Regulations for Administration of Qualification of Construction Supervision Units, promulgated by the MOC, 29 August 2001.
- 11 Provisional Regulations for Administration of Qualification of Construction Supervision Units, promulgated by the MOC, 18 January 1992.
- 12 Measures for Administration of Bidding and Tendering for Construction in Construction Projects, promulgated by the MOC, 30 December 1992.
- 13 Measures for Administration of Bidding and Tendering for Construction in Building and Municipal Infrastructure Projects, promulgated by the MOC, 1 June 2001.
- 14 Regulations for Administration of Qualification of Construction Surveying and Design Units, promulgated by the MOC, 25 July 2001.
- 15 Regulations for administration of Approval for Establishment of Chinese-foreign Joint Venture Design Institutes, promulgated by the MOC and the MOFTEC, 16 April 1992.
- 16 Measures for Administration of Qualification of Foreign Contractors Contracting Projects in China, promulgated by the MOC, 22 March 1994.
- 17 Several Regulations Concerning the Establishment of Foreign Investment Construction Enterprises, promulgated by the MOC and the MOFTEC, 18 September 1995.
- 18 Regulations on Administration of Foreign Investment Construction and Engineering Design Enterprises, promulgated by the MOC and the MOFTEC, 27 September 2002.
- 19 Regulations on Administration of Foreign Investment Construction Enterprises, promulgated by the MOC and the MOFTEC, 27 September 2002.
- 20 There is no regulation in China that definitely stipulates that the employer must obtain the approval of the building authority when he intends to deviate from the plans approved. Therefore, the practices that the employer departs from the plans approved without building authority's approval are pervasive.