

China strives to enhance the administration of its legal profession

In 1979, China had only 212 lawyers and 79 law firms, since 1994 the number of lawyers has increased by 10,000 per year, meaning there are approximately 140,000 lawyers in China and 10,000 law firms. In light of such rapid development, the issue of how to regulate the legal profession has become a serious one. *By Changchun Yuan and Hongchuan Liu, Partners of Broad & Bright. For full text translations please see pages 84 and 96.*

The legal profession in China is a fast growing sector. And 2008 is fast proving to be a remarkable year for the administration of the legal profession and legal practice in China. On June 1, the Law of the People's Republic of China on Lawyers (New Lawyers Law), which was promulgated on October 28, 2007, became effective. Then, on July 18, China's Ministry of Justice (MOJ) enacted two new regulations - the Measures for the Administration of Law Firms (MALF) and the Measures for the Administration of Legal Practice by Lawyers (MALPL) which are enacted for the purposes of implementing the Lawyers' Law. With these law and regulations, China has further improved a regulatory system on the administration of its legal profession and legal practices.

The Administration of the legal profession has experienced dramatic changes in China since the founding of the new republic in 1949. During the 1950s, China tried to establish a legal profession similar to that of the Soviet Union in which lawyers were considered "legal workers" of the State. After

MALPL provide further details in this regard for the implementation of the New Lawyers Law.

The MALF contains seven chapters and 55 sections which cover a broad range of matters including the thresholds and procedures for the establishment of law firms, changes and termination, administration rules for law firm operations and management and responsibilities of judicial administrative organs at various levels.

A notable development in the MALF is the provisions regarding "special general partnership" (特殊普通合伙). Based on the provisions of the New Lawyers Law, the MALF provided three forms of law firms: partnership law firms, solo practicing law firms, and state-run law firms. Following European and American practices, the MALF divides partnership law firms into two types: general partnership (GP) and special general partnership (SGP).

China's Partnership Enterprise Law (effective June 1 2007) lays the foundation for a SGP, which is similar to a general partnership except that it must be a professional service firm providing services that require professional knowledge and specialist skills. This special form of partnership helps shield other partners from liabilities due to willful misconduct or gross negligence of one or more partners in the firm. An SGP is very similar to limited liability partnership law firms in the US. After the promulgation of the New Lawyers Law, lawyers in China have been anticipating a green light for limited liability law firms. The adoption of the MALF suggests that green light will be forthcoming.

SGP law firms are different from GP law firms in several respects, most notably:

- (i) threshold: An SGP firm needs to have more than 20 full time attorneys as founding partners (with each having more than three-years practicing experience) and assets of more than RMB10 million (US\$1.4 million) capital; while a GP firm needs only to have more than three full time attorneys (with each having more than three-years practicing experience);
- (ii) liability: In a SPG law firm, if the firm suffers losses due to intentional acts or gross negligence of one or more partners, such partners shall bear unlimited liability or unlimited joint and several liability, and other non-culpable partners

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1957, lawyers, as a profession, had all but disappeared in China. In 1979, China decided to reestablish a legal profession. As a result, the Interim Regulations of the PRC on Lawyers were enacted in August 1980. These regulations were transitional in nature which still treated lawyers as "legal workers of the State" working at state-run legal advisory agencies (Fa-Lu Gu-Wen-Chu). The Law of the PRC on Lawyers promulgated in May 1996 (1996 Lawyers Law) finally made lawyers independent "professionals providing legal services to the society." The 1996 Lawyers Law had provisions on the qualifications of lawyers, the prerequisites for establishing law firms, the authorities for regulating the legal profession and legal practice and responsibilities and liabilities of lawyers. However, such provisions were rather general and vague in nature.

The new Lawyers Law enacted in 2007 has made significant improvement by providing detailed regulations concerning the administration of the legal profession. The MALF and

in the firm shall only bear limited liability based on their respective shares in the firm's assets. In a GP law firm, all partners bear unlimited joint and several liabilities for all debts of the firm.

Allowing the formation of SGP law firms will bring Chinese law firms closer to international practices. However it also raises new concerns over how to regulate this new type of law firm in China.

The principle characteristic of an SGP law firm is that one or more partners shall bear unlimited liability or unlimited joint and several liability for the debts of the partnership incurred due to its or their intentional misconduct or gross negligence, and other partners in the firm shall only bear limited liability based on shares in the firm's assets. All partners shall bear unlimited liability for the debt of the firm not attributable to any partner's fault. Obviously, liability allocation is a key issue in an SGP law firm's administration.

To deal with this issue, the following questions should be addressed:

- How should an SGP firm inform its clients and the general public about the nature of the firm?
- What are the standards for judging "intentional acts" or "gross negligence"?
- How are liabilities among partners allocated within a firm?

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and how is compensation awarded and measured to a client in the case of a malpractice?

- What kind of professional insurance should an SGP firm maintain and what is the amount of mandatory coverage of such insurance?

In addition, the question of how an existing GP law firm can be transformed into an SGP law firm should also be addressed. The current MALF does not provide answers to those questions, but we believe relevant provisions will come out soon.

The MALPL include six chapters and 52 sections which cover following matters: qualifications for an attorney; procedures for permitting attorneys to practice and to switch firms; rules that attorneys need to abide by in their practices; responsibilities of judicial administrative organizations at various levels; and the combinations of administration by judicial administrative organizations and self-regulation by lawyers' associations.

The noteworthy provisions in the MALPL include the following:

- **Protection of attorneys' legal rights.** Attorneys' practice in accordance with the law is protected by law; no individual or entity shall violate attorneys' legal rights and interests. At a time when many Chinese lawyers are complaining about difficult practicing environment, this provision is no doubt a welcomed provision for lawyers. However, the issue remains in practice: to what extent the fundamental rights of lawyers are respected by various law-enforcing authorities in China.
- **Use and maintenance of practicing license.** Attorneys shall use and maintain their practicing licenses adequately. No one shall forge, pledge, lend or rent his or her practicing license. This is the first time a legislation sets out such a requirement.
- **Switching Firms.** Attorneys cannot switch firms during the period while they are under a penalty of suspension from their practice. If a law firm is imposed a penalty of suspension from operation, then the managing partner, other partners and attorneys liable for the firm's operation cannot switch firms until the expiration of the suspension period. Should a law firm be wound up, the managing partner, other partners and attorneys liable for the revocation of the firm's operation permit cannot switch firms until the liquidation and deregistration are complete. Attorneys frequently switching firms is a common phenomenon in China. When an attorney switches firm, his clients' interests may be affected (unfinished work, confidential information, conflict of interest, unsettled bills, etc). Therefore it is important for regulators to make sure that the interests of clients and, in some cases, interests of the general public should be well protected.
- **A lawyer's concurrent position as a member of the standing committee of the People's Congress.** Attorneys who are also members of the standing committee of the People's Congresses at various levels cannot act as litigation lawyers during their terms of office. This provision has caused some controversy. Some think that if these lawyers are prevented from practicing law, their income will be affected since they are not paid for being members of the standing committees. Others argue that if these attorneys are allowed to practice law, they may use their special status to influence or even obstruct justice.

Compared with all previous laws and regulations concerning law firms and the legal profession, these two recent regulations set out more detailed and more practical provisions. On this basis, we believe that administration of law firm and legal practice will be further enhanced, and the environment for attorneys to practice law in China will be further improved. ■