



# How to Choose a China Lawyer

*Foreign companies in China can now choose among many law firms—but that doesn't make the decision easy*

Robert Lewis

Although China has been “open for business” for about 30 years, the country remains an enigma for many businesspeople. This is particularly true for most US and European in-house counsel when they need to identify outside Chinese legal counsel.

One reason choosing a lawyer can be difficult: There are more than 130,000 licensed Chinese lawyers in more than 12,500 law firms across China. In addition, more than 200 foreign law firms, nearly 70 of which are from

Hong Kong, have registered offices in mainland China. Though these numbers seem underwhelming when compared to the number of lawyers and law firms in the United States, only about 15 years have passed since private domestic law firms were established and foreign law firms were permitted to set up formal offices in China. Given the relatively short history of a modern legal services market in China, how does a company decide which counsel to use?

## What foreign law firms may do in China

For many foreign companies doing business in China, the threshold question is whether to use a foreign or a Chinese law firm for a particular legal issue. The answer depends in part on the scope of services required in each case because the scope of permitted activities for each type of firm varies. Regulations that govern foreign law firm activities in China are fairly straightforward and can be summarized as follows:

- Foreign law firms in China may not practice local law but may advise on all aspects of international law and practice in the context of the PRC legal environment;
- Foreign law firms may not employ Chinese lawyers, except as paralegals;
- A Chinese lawyer who is employed by a foreign law firm must suspend his or her practicing license certificate; and
- Foreign law firms may instruct practicing Chinese lawyers on behalf of foreign clients in the provision of Chinese legal services and are encouraged to enter into long-term cooperation arrangements with local firms but cannot enter into fee-sharing arrangements.

This scope still provides ample room for foreign law firms to operate legitimately in China. Under China's regulatory regime, foreign lawyers in international law firms can and should be well acquainted with the PRC legal environment and can lead, structure, document, negotiate, and manage deals in accordance with international norms and practices that are appropriately adapted to the PRC commercial and legal environment. When novel questions on the interpretation or application of PRC law arise, foreign lawyers should consult with Chinese lawyers and can (and should) add value to the process by framing the questions appropriately and testing the responses from a position of familiarity with the overall Chinese legal framework and regulatory environment. This practice ensures that the client receives the most reliable advice on PRC law.

## Foreign firms vs. local firms: Evaluating comparative advantages

When it comes to "plain vanilla" foreign direct investment (FDI) work, local PRC firms continue to gain market share. Local firms have significant competitive advantages: They can practice local law, and their rates are lower than those of foreign law firms. An increasing number of lawyers in Chinese firms have studied law overseas (US Master of Laws programs are the most popular), and some are dual qualified (New York bar qualifications are the most common). Many Chinese lawyers in leading local law firms in major cities are bilingual and have worked in foreign law firms, principally in the China offices of such firms.

Consequently, these local lawyers have become quite competitive vis-à-vis many foreign law firms in the market for FDI-related legal services for foreign clients in China.

Yet foreign law firms in China also have significant comparative advantages when it comes to cross-border transactions and many other categories of inbound investment, such as mergers and acquisitions, private equity, distressed assets, and privatization of state-owned enterprises. An increasing number of China inbound and outbound investment deals have significant onshore and offshore elements, and the clear market trend is for international and domestic firms to work side by side on the more complex matters. In almost all such cases, the allocation of roles complies with the PRC regulatory framework: The foreign firm leads the

structuring, documentation, negotiation, and management of the deal, while local counsel manages all aspects of PRC law. For example, in an acquisition project, an international law firm can take the lead on all aspects of the project. It can reduce the total project costs while maintaining overall service quality by cooperating with a local firm on due diligence, preparation of various local documentation, advice on PRC law issues, and management of the approval process. With respect to litigation matters, the role of the local lawyers must, of course, be more prominent. But the foreign firm still has wide scope to participate

in case preparation and strategy, particularly when the onshore legal action is part of a series of related actions in various jurisdictions.

In these more complex matters, the client corporation's in-house counsel always plays the key role in determining what work is to be done in-house, what is to be done by a foreign law firm, and what is to be given to local counsel. The goal is to avoid duplicating efforts while still achieving the desired results.

## Sifting through inadequate market data

Once a company decides whether to select a foreign or domestic law firm, the company must narrow its options further. The key criteria for selecting outside counsel in China—and anywhere in the world—typically include expertise, resources, and location. Finding reliable data points on these selection factors can be especially difficult in China, where directories of domestic law firms are incomplete, promotional materials of most firms are generally suspect, and word-of-mouth can be unreliable. This problem is particularly acute among local Chinese law firms—especially because of the common tendency to oversell claimed specialized expertise and experience. The problem, however, is also true of foreign law firms in China (after all, overzealous marketing is not confined to any one group or profession).

### Quick Glance

- When choosing a lawyer in China, companies should look beyond head count to management structure.
- In many cases, Chinese and foreign law firms that work together offer the best services.
- For matters outside of Beijing and Shanghai, a local regional firm may be best.

**Table 1: Regional Chinese Law Firms Selected to Join the Sino-Global Legal Alliance (head offices in alphabetical order)**

Firm	City
AllBright Law Offices	Shanghai
China Commercial Law Co.	Shenzhen, Guangdong
Deheng Law Firm	Qingdao, Shandong
Dewell & Partners	Wuhan, Hubei
Guangda Law Firm	Guangzhou, Guangdong
Join & High Law Office	Tianjin
Solton & Partners Law	Chongqing
T&C Law Firm	Hangzhou, Zhejiang
Wang, Wu, Yang & Ma Law Firm	Shenyang, Liaoning

Sources: Lovells LLP, Sino-Global Legal Alliance

In connection with the recent establishment of the Sino-Global Legal Alliance (SGLA), a non-exclusive cooperation among nine leading independent Chinese law firms and London-based international law firm Lovells LLP, Lovells conducted extensive market research and due diligence on more than 100 Chinese law firms in 15 major Chinese cities. This research involved more than 6,000 hours over nearly one year. Lacking a reliable independent guide in the form of professional directories or other sources, Lovells created its own framework for evaluating local firms and collected detailed, concrete information that delved deeper than self-promotional law firm brochures (see below).

As a result of this extensive market research, Lovells selected nine leading local law firms from nine different cities in China to join the SGLA (see Table 1). (In comparison, the 20 leading foreign law firms in China and the 10 leading Chinese law firms ranked in the 2007–08 edition of *Asia Pacific Legal 500* are all based in Beijing and

Shanghai [see Tables 2 and 3].) The establishment of the SGLA represents the first time that the top local firms in these key regional commercial centers have been identified through objective market analysis. The SGLA permits these firms to pool their resources on a shared platform through cross-firm virtual practice groups and related internal training and the coordinated provision of legal services on an alliance-wide basis.

### Counting noses in foreign law firms

Expertise is clearly the most important criterion in the selection of outside counsel. It is difficult, if not impossible, however, to develop expertise without critical mass. In general, the China offices of foreign law firms are quite small. Consequently, the level of practice-area-specific expertise is less developed than in other jurisdictions.

Fifteen years ago, so-called “China law practitioners” were based almost exclusively in Hong Kong. While foreign law firms have, over the last five to ten years, steadily shifted resources into Beijing and Shanghai, the relatively stronger Hong Kong offices of the UK firms provide a pool of cross-practice area expertise that can supplement the necessarily more general-practice skills of the Beijing- and Shanghai-based lawyers. This is helpful when clients require expertise in a wide range of disciplines, including capital markets, private equity, intellectual property, cross-border insolvency, bank finance, and litigation.

Based on independent rankings by two leading international legal directories, UK law firms seem to have a clear advantage over their US counterparts in China. Six of the top seven foreign law firms in mainland China are from the United Kingdom. Generally, the Hong Kong offices of UK firms are much larger than those of US firms. (Baker & McKenzie is the clear exception to this rule, as it has the largest office in Hong Kong of all US and UK firms.)

## Framework for Evaluating Local Law Firms

To identify the leading local law firms in key Chinese cities, Lovells LLP studied local firms’ market profiles, representative clients and matters, specialized practice area capabilities, and management structures and systems. The evaluation process was divided into three progressive stages: market surveys, preliminary due diligence on top-tier firms in each jurisdiction as identified in market surveys, and in-depth due diligence on the final shortlist of candidate firms based on the preliminary due diligence results.

The two key criteria in the initial market survey stage were the profile of the firms

among their peers in the local market and whether the firm had qualified to receive the “National Outstanding Law Firm” qualification issued by the PRC Ministry of Justice (MOJ). In almost all surveyed cities, there was a clear consensus, with only one or two firms consistently rated at the top end of the scale. In nearly every case, the leading law firms identified in the market surveys in each city had obtained MOJ’s National Outstanding Law Firm certification (or satisfied the same evaluation criteria). This certification is based on a comprehensive set of evaluation criteria that focus primarily on

structure, business and business development, general infrastructure and management systems, and regulatory compliance.

In the subsequent due diligence stages, Lovells delved more deeply into the management structures and systems employed by each firm. The management structures and systems form the foundation on which firms can develop practice area specialization and foster quality of service.

—Robert Lewis

The UK firms' size advantage in Hong Kong likely reflects Hong Kong's colonial past and the continuing high entry barriers to the top of Hong Kong's legal services market for US and other foreign law firms. For example, because Hong Kong law is based on English law, UK firms more readily possess local law expertise. In addition, many UK law firms have long-standing relationships with key Hong Kong-based clients.

Precise figures are generally unavailable, but it appears that the correlation between scale of resources and market ranking also applies to the Beijing and Shanghai offices of the top 20 foreign law firms. Based on publicly available information, four of the top five foreign law firms in China

lawyers who, as noted above, can only be hired as paralegals and cannot provide advice on PRC legal matters. These foreign law offices in China are comprised principally of local Chinese lawyers with no foreign legal education, qualification, or experience, but notwithstanding the practice restrictions noted above, they typically are still billed out at international law firm rates. Consequently, in China, even more so than in other countries, one has to look beyond staff numbers to select a law firm.

### Chinese firms: Size is only one factor

Scale is an even less reliable indicator of quality when it comes to Chinese law firms. Perhaps because China is a

## The primary indicator of expertise in Chinese firms is the sophistication and stability of management structures.

have more than 40 lawyers in their mainland offices combined, while none of the second five has achieved this scale.

Of course, size does not automatically equal quality, and in a market thin on highly qualified practitioners, new market entrants in mainland China that aim to grow quickly will often hire second- or third-tier talent. Many foreign law firms also pad their numbers by counting local Chinese

vast country with an enormous population, the country's prevailing business culture reveres grand scale; it follows that in many Chinese law firms, size is admired for its own sake.

With more than 600 lawyers, Beijing-based King & Wood PRC Lawyers is the largest Chinese law firm. The Beijing-based Jun He Law Offices and Shanghai-based AllBright Law Offices, which join King & Wood in the list of top three local Chinese law firms, each have roughly 250 lawyers. About one-quarter of the lawyers in these top firms have had some foreign legal education.

The vast majority of local Chinese law firms are composed of a loose collection of sole practitioners operating under a shared name. Offices of the same firm are, more often than not, completely independent profit centers. Not surprisingly, cross-selling is uncommon, quality control measures are weak, and staffing and coordination of larger transactions can be problematic in the absence of cohesive teams within the local law firms. Even though

**Table 2: Top 20 Foreign Law Firms in China (ranked in order of overall best law firm)**

Rank	Firm	Country/Region
1	Baker & McKenzie LLP	United States
2	Freshfields Bruckhaus Deringer	United Kingdom
3	Clifford Chance LLP	United Kingdom
4	Lovells LLP	United Kingdom
5	Linklaters LLP	United Kingdom
6	Allen & Overy LLP	United Kingdom
7	Herbert Smith LLP	United Kingdom
8	Jones Day	United States
9	O'Melveny & Myers LLP	United States
10	White & Case LLP	United States
11	Simmons & Simmons	United Kingdom
12	Johnson Stokes & Masters	Hong Kong
13	Morrison & Foerster LLP	United States
14	Sherman & Sterling LLP	United States
15	Deacons Hong Kong	Hong Kong
16	Paul, Hastings, Janofsky & Walker LLP	United States
17	DLA Piper UK LLP	United Kingdom
18	Sidley Austin LLP	United States
19	Skadden, Arps, Slate, Meagher & Flom LLP	United States
20	Latham & Watkins LLP	United States

Sources: Adapted from *Asia Pacific Legal 500*, 2007–08 edition; and *PLC Which Lawyer? Recommended Firms in China*, 2007

**Table 3: Top 10 Chinese Law Firms (head offices ranked in order of overall best law firm)**

Rank	Firm	City
1	King & Wood PRC Lawyers	Beijing
2	Jun He Law Offices	Beijing
3	Global Law Office LLC	Beijing
4	AllBright Law Offices	Shanghai
5	Jingtian & Gongcheng	Beijing
6	Llinks Law Offices	Shanghai
7	Fangda Partners	Shanghai
8	Commerce & Finance Law Offices	Beijing
9	Boss & Young Law Firm	Shanghai
10	Haiwen & Partners	Beijing

Source: Adapted from *Asia Pacific Legal 500*, 2007–08 edition

the top three local firms listed above have advanced management systems by local standards, their management structures have not yet fully matured to international standards. The market consensus is that they still suffer from many of the above problems to one degree or another, although they are making important strides in this regard.

will be able to deepen their specialized areas of expertise only after such reforms have been properly implemented and have matured.

When Lovells commenced its market survey to identify leading local law firms in key second-tier cities across China, it expected to find that these firms lagged even further behind most Beijing and Shanghai firms. But to

## The day of the “one size fits all” China lawyer is gone.

Clients must be careful not to hire either a “dinosaur” or a partially retooled specialist outside his or her narrow area of expertise.

### Seeking concrete indications of expertise in Chinese firms

Consequently, the primary indicator of expertise in Chinese firms is not scale alone but the sophistication and stability of management structures. Management structure is also one of the more difficult factors to assess, since firms are rarely candid about their management systems in the context of a pitch to a potential client. The key elements of law firm management that directly affect specialization and service quality are profit-sharing systems among partners and compensation systems for associate lawyers. While systems differ from firm to firm even in developed jurisdictions, the goal of management systems in leading law firms is to strike the appropriate balance between individual incentives, collective investment, and shared rewards. Finding this balance has proven to be the most significant challenge facing local Chinese law firms today.

The majority of local law firms in Beijing and Shanghai, including many top-rated firms, have either initiated partial management reforms in the last two years or have yet to do so. The delay reflects the long-standing market advantages of these Beijing and Shanghai firms with respect to work for foreign clients or on matters acting opposite foreign clients. Business was so good that the firms had little incentive to undertake management reforms.

More recently, however, local firms have realized that they cannot achieve the levels of specialization and service quality that the market increasingly demands with their current management structures. Law firm management structures are now correctly viewed as the key advantage in a competitive market, but law firm management concepts are not well developed in China and change can be painful. To date, only a small leading group of local firms in Beijing and Shanghai have started to reform their management structures, typically by taking incremental steps toward the goal of collective investment and shared rewards. It will take several more years for these management systems to mature and stabilize, and Chinese lawyers

its surprise, Lovells discovered that the best firms in second-tier cities had identified the importance of solid law firm management structures much earlier than most of their counterparts in Beijing and Shanghai. In most cases, the core partnership of the firms invited to join the SGLA had remained stable for 12 to 15 years, and these firms commenced serious management system reforms in the early part of this decade, well before most Beijing and Shanghai firms. This remarkable result likely reflects the differing demands of the first- and second-tier marketplaces. Local law firms in Beijing and Shanghai often benefit from the superior market conditions in those cities. Local firms in second-tier cities, however, needed stable management and a strong and sustainable vision to build a robust regional practice.

The management reforms of the law firms in second-tier cities have, to a surprising degree, struck the right balance between individual incentives and collective interests. This balance gives them a more stable basis for developing specialized practice groups and a framework for sustainable growth in the scale of, and improvements in quality of, service. None of these regional firms, and in fact no Beijing- or Shanghai-based Chinese firm, is yet close to international standards, but the establishment of proper management systems sets a foundation for further progress.

### Seeking on-the-ground expertise in foreign firms

For most of the last 20 years, FDI was the main game for law firms in China, and China specialists had to be able to run investment projects in a range of industries. It was a fairly simple game, and any reasonably competent bilingual lawyer could make a decent living. Specialization was irrelevant because most deals were variations on the same simple theme. Virtually everyone was a China “corporate” lawyer.

In the last five years, however, the game has started to change dramatically. China deals are more sophisticated and complex, and as the economy flourishes and the regu-

latory environment develops, legal issues are growing more complex. In today's market it is no longer adequate to dress up equity transfers in a Sino-foreign joint venture as merger and acquisition experience applicable to public company takeovers or pretend that handling a couple of manufacturing license negotiations makes one an intellectual property rights expert.

But, just as the balance of resources in China's legal services market shifted from Hong Kong to Beijing and Shanghai in the first part of this decade, the legal services market began to shift from its Beijing and Shanghai focus to a national and international focus in the last two to three years. In the next five years, regional firms in cities such as Chongqing; Guangzhou, Guangdong (which will

In the next five years, **regional firms** in cities such as Chongqing, Guangzhou, Hangzhou, Tianjin, and Wuhan **will continue to gain prominence.**

At the same time, there is not always enough work in a particular category to be a single-practice specialist. This can cause banking specialists, moved from Hong Kong into mainland offices, to work on corporate deals for which their specialized experience is ill-suited. The day of the "one size fits all" China lawyer is gone. Clients must now ensure that they do not hire either a "dinosaur" or a partially retooled specialist outside his or her narrow area of expertise.

**Location, location, location**

PRC regulations originally permitted foreign law firms to establish only one law office in mainland China. In 2003, just over one year after China's World Trade Organization entry, China allowed foreign firms to open a second office. To date, virtually all of the leading foreign law firms have opened offices in Beijing and Shanghai. Though PRC regulations permit foreign law firms to open a third office three years after opening the second, no foreign law firm has done so. Since small offices are generally unprofitable, no firm is expected to open a third office in the near future.

A handful of Chinese firms, almost all based in Beijing, have attempted to create a national footprint by establishing multiple offices. Beyond their home market of Beijing, these firms have achieved the most success in Shanghai and Shenzhen. In Lovells' market surveys, no office of a Beijing or Shanghai firm ranked in the top five firms in any other regional market outside of these three cities.

continue to emerge from the shadow of Hong Kong); Hangzhou, Zhejiang; Qingdao, Shandong; Shenyang, Liaoning; Tianjin; and Wuhan, Hubei, will continue to gain prominence.

This market trend follows the flow of foreign investment across all parts of China. Certain categories of legal services are local by nature, however. For example, although China has a single, unified national bar, a lawyer from Beijing or Shanghai can no longer effectively litigate cases in second-tier cities because the local content and *guanxi*, or connections, requirements are too high. Similarly, labor law matters, environmental and other regulatory issues, real estate projects, and virtually any other matter that requires local approvals can be handled best by lawyers in the local jurisdiction.

Almost unnoticed by the foreign legal community in China, leading domestic firms in many of these regional cities are preparing to rise to the next level. The opportunity and challenge for foreign companies in China is to find these firms and include them as part of their overall team of in-house and external legal professionals in a balanced and complementary manner. The establishment of the SGLA represents an important first step in this critical process of creating a new model for legal services delivery in China. 完

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