

A resourceful chapter in developing the laws of an emerging China

More than 25 years since Robin Chambers made his first trip to China and delivered a speech on joint venture law to a high level Australian-Chinese audience, he is now considered one of the foremost identities who has delivered numerous Chinese investment deals to Australia.

In this edition of The ASIA Miner magazine, editor Yolanda Torrisi tells the story of how Melbourne lawyer Robin Chambers, senior partner of Chambers & Company, became a key player in attracting and growing Chinese investment in the Australian mining industry.

HE says: "It all started by accident. At the time China was just another airport when I had been working in more than 30 countries in the past. There were no hotels, just guest houses and other government accommodation. It was generally pretty bleak after the cultural revolution. I remember being famously told there were very few lawyers and no local or foreign law firms at all in China.

I first went to China in 1981. I was general counsel for CRA (now Rio Tinto) in Australia then. I was there with the first Australian legal delegation and was asked to make a speech on Australian law and I talked about joint venture law. The leader of the Chinese delegation, who was head of the China Council for the Promotion of International Trade which organized all foreign visits to China, invited me to join him for tea after my speech and asked if I would help China in the development of a joint venture law.

I went back a number of times after that, delivered more lectures and provided hundreds of pages of advice on joint venture law. I was invited to be an adviser to the State Council's Economic Legislation Centre which was responsible for drafting China's new economic laws.

In 1978 when China started to open to the world there were no laws in existence of this kind. China was desperately trying to draft a whole new legal system to provide a base for foreign investment. China's National Peoples Congress's Economic Legislation Centre was overhauling its working on a new corporations law, a foreign investment law and a bankruptcy law to be adopted in China and I was invited to assist them with these new laws as well.

At the end of 1984 I left Rio Tinto and set up our law firm. Bob Hawke was the Prime Minister at the time, and he and the Premier of China Zhao Ziyang were discussing making a major investment in the Channar Project with Rio Tinto.

It became China's first mining investment in Australia, and the first globally, and the Chinese say I became the first foreign lawyer to be supported by the Chinese government when I was appointed for this project to negotiate this deal. I still represent the Chinese on the management committee of the joint venture and I am a director of the holding companies for the Chinese.

Bob Hawke played a crucial role in the project being completed. It took until May 1987 for the documentation to be agreed and it started operations in 1990.

Since that first trip to China in 1981, I would have been back some 150 times, maybe more. I have been involved in many projects for Australian and US clients, and in various joint ventures in chemicals, mining, oil and gas, mineral processing, electronics and agriculture.

Most recently I worked on the transfer of a



Melbourne lawyer Robin Chambers

chemical plant from Michigan to Hebei province in China for a major US joint venture.

I have worked on eight of the iron ore projects in Western Australia that the Chinese have had an involvement with.

Since 2003 China has become the world's largest importer of iron ore and the largest steel producer of steel in the world.

My involvement in iron ore has been the core business for my law practice. I have acted for most six of the giant leading steel mills in China.

2003 marked another milestone. I worked on the Chinese investment in BHP Billiton's Wheelarra Project, where I acted for four of the top mills in China. It was a landmark project as it was the first time that China's competing steel mills came together on the same project and it was also BHP Billiton's first iron ore joint venture with China.

In April 2007 we did China's first uranium project investment, Sinosteel's joint venture investment with PepinNini, followed in May with China's first significant resources IPO on the Australian stock exchange where I acted for Yunnan Tin Company Group, the world's largest tin producer. I am also working on coal bed methane projects in China, a major clean coal project in Australia, resources projects in Australia in iron ore, nickel, zinc, zircon, vanadium, titanomagnetite, and a variety of projects in China, including the Kazakhstan to China pipeline and Rosneft's setting up of oil operations in China.

More Chinese companies are moving into Australia. It's floodgate stuff. The Chinese are now into base metals - nickel, lead, zinc, tin, copper, gold and also heavy metals. China is also casting further afield to Africa, India and South America.

The current mining boom started in the second half of 2003. China has worked out that the country risk in Australia is very low with good political relations, and a stable and inviting foreign investment climate. In addition to Channar, Chinese investment in the Portland Aluminium Smelter has also been profitable.

Together these two projects were important tests for Australia and provided the benchmark for growing Chinese investment in Australia. Their success, in my view, was initially important in establishing China's primary focus on Australia

as the source of so much resources investment. On the other hand Africa is a significant area of interest for the Chinese but the political risk is high and China has had mixed relations with India. Mongolia is proving interesting but a small market place for China and Brazil is also offering significant opportunities in iron ore.

It's been a long journey. It was lonely in the early days. There were very few foreign investors in China, a few ex-lawyers in China and a legal system that was only just being established to be the vehicle for the later massive investment.

The single most significant contribution from a legal viewpoint was China's joint venture law. China perfected the joint venture as the way to bring in foreign capital and technology while retaining significant Chinese ownership and control. It was a fascinating time. In the 1980s China could have gone either way - it could have reverted to its conservative communist roots with a strictly planned economy under full party control or continued its policy of opening up to the world.

I was in China in 1989 during the days leading up to the drama that unfolded in Tiananmen Square. I was a guest of the Chinese government at that time.

This was a pivotal time in China. There was great uncertainty about what would happen and many large companies withdrew. Those that stayed were well-rewarded by the Chinese government later. Investment did not really return until 1993 when suddenly the floodgates opened and China for the first time became the world's largest destination for foreign direct investment.

China was quiet until 1993-94 and then it opened up. An American engineering firm, Agricultural Projects, was one of the first early investments in China.

China is poised to become Australia's major trading partner, overtaking Japan. What we are seeing today with more and more investment interest out of China is unprecedented in our history. Australia is clearly the primary target for China's unsatisfied demands for minerals and energy to sustain China's burgeoning industrial development.

What does the future hold? History shows that everything is cyclical, however, I am confident of the boom continuing until at least 2010.

China is driven by internal demand. There is political pressure on the government to develop the country, provide jobs and spread the wealth.

There is probably a lot of over development in China as well and that must be a matter of concern. My Chinese friends in the central government predict that iron ore prices will turn in 2011 when the massive new iron ore mine expansions will likely change the market economics.

But the central government is driven by political pressures to continue the economic miracle in China. It has to spread the benefits to the poorer western regions to ensure political stability. It will most likely only be external forces, such as an economic downturn in the US, which will temper China's growth.

In Australia, it is possible that not all the projects China is investing in will be successful. In time there must be a reckoning for some being promoted as part of the current boom by the Central Government of these projects. It's my personal view but it's inevitable. This has happened in the past, but that is largely forgotten.

But for most the boom will continue with this amazing chapter in Australian history."

Translation page 55