

THE AUSTRALIAN Business WITH THE WALL STREET JOURNAL

December 01, 2008 03:17am AEDT

Financial meltdown leads to bigger role of China's firms

Rowan Callick, China correspondent | October 24, 2008

Article from: *The Australian*

THE financial meltdown in the West seems certain to accelerate the international appetite for Chinese investment.

Chinese companies going global at first tended to believe that a grateful world would accept them and their capital as they were. But a trail of setbacks overseas, in both direct investment and in buying equity, has taught them the need to work harder at accommodating foreign settings, and learn how to operate beyond their unique domestic economic framework.

Lawyers are starting to play a crucial role in that development.

Involving lawyers in strategic negotiations -- let alone appointing them as directors -- is a novel idea for Chinese companies. The controlling heights of the economy remain dominated by state-owned enterprises, where lawyers have never taken prominent roles.

The leaders of such firms may have risen through the ranks, most often from engineering backgrounds. But once they reach the top, they become political players and are usually also the party chiefs of their companies. They require professional and technical advice, but China's legal profession has not been a favourite source in the past.

In general, going to court is the last resort in China.

The outcome is often unpredictable because it is usually determined on political rather than strictly legal grounds, since judges and other court officials are answerable to party structures. So people seek other remedies where available.

Some of the larger state-owned corporations, such as Baosteel, have legal departments of their own, and have appointed people to a general counsel role. But this is far from universal.

Next year, Melbourne-based lawyer Robin Chambers will be celebrating 25 remarkably successful years focused on this growing engagement of China in the global resources industry.

Before that, he was general counsel for CRA, today's Rio Tinto, whose pioneering partnership with Sinosteel in the Channar iron ore joint venture in Western Australia's Pilbara region helped set the standard for such relationships. Chambers represents Sinosteel on the Channar board.

Chambers says China Inc has come a long way and rapidly learnt that, when operating in Western commercial worlds, it needs to involve Western, or Western-trained, lawyers early and prominently.

But, he says, "Western-style legal departments are still unusual in China."

Chambers' firm has an office in Beijing, which he visits often because of the need to maintain frequent face-to-face contact with key clients. He has recently gained two new Chinese clients interested in iron ore

investments in Australia.

"They've invested a lot of time in preparing for these projects," he says.

One had seven Australian law firms on its short-list competing for the work. "They are smart enough to work out that they need to have competition. They want full-scale due diligence, and they want someone to write the documentation. They know by now what they need."

And they would not necessarily look to lawyers to perform such tasks within China -- almost certainly, they would not -- in Australia, it is to the legal sector that they now naturally turn.

"Sometimes," says Chambers, "Chinese clients can be a bit slow to accept the need also to involve tax accountants and to gain tax advice, but we always insist on covering that aspect of transactions."

The Chinese business world is in a hurry -- in part because it is often hard to align, politically, the approvals needed for an investment and it is essential to bed it down before circumstances, and senior officials, change.

Chambers' Chinese clients thus tend "always to want work completed tomorrow". The pressure can be relentless. "They may have unrealistic time lines, but we're used to that by now."

Chambers has developed some clients from remote parts of China who have had very little exposure to Western ways of doing business.

"Naturally, this can be frustrating for both sides. Australian companies sometimes don't get a response from the Chinese, and the Chinese don't know how to move forwards because it's new territory to them. There's a shared frustration."

But he also works with big state enterprises that are sophisticated and "have been around the traps".

Even the larger firms "can be fairly naive still", so they too depend substantially on advice from lawyers "and they will take advice" -- a key element in forging strong relationships.

"We are their insurance policy," and if things turn sour and someone needs to carry the can it's natural that outsiders, like Australian lawyers, are high on that list.

One word that rarely if ever gets mentioned by Chinese clients, is "courts". Chambers says: "The conventional understanding is that if problems occur within joint ventures, they will be settled, if it comes to that, by arbitration. Thinking of going to court would be like conceiving going into outer space."

But time and care goes into working out how and where to arbitrate -- with venues like Stockholm and Singapore often involved in the terms.

"I think they've got it pretty much right," he says. That China's growth has come to depend so heavily on inward foreign investment, which rivals that in to the US, backs up that judgment.

As everywhere, relationships count for much. "It's good to have friends in China," says Chambers, who is a member of Fortescue Minerals' new China advisory board.

"We use our networks there as much as we can. It's very helpful to know who is who" when working on investments going either way.

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