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The legal profession of China in a globalized world: innovations and new challenges

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ABSTRACT

The legal profession is undergoing fundamental changes; and this is the case not just in established legal markets. Based on a state-of-the-art sketch, this paper identifies and analyzes the latest innovation initiatives and alternative business models in China's legal profession. It finds that, propelled by market demands and benefiting from technological advancements, the provision of legal services has become highly versatile today, giving rise to various alternative service providers, especially the rapidly rising online legal service portals. Because they are technically not law firms, the exclusivity requirements on lawyer ownership and legal service provision are not applicable to them. In the meantime, the competition for large corporate clients and lucrative business transactions is fierce and will continue to be so, not only within the club of big Chinese corporate law firms, but also between Chinese law firms and international law firms globally. In this course, some leading big corporate law firms in China are observed to have creatively incorporated key corporate features in running their business and compensating their partners, effectively deviating from the partnership + pure legal services regulation. Such market realities question the necessity and effect of the regulatory restrictions on law firm legal form and ownership structure, and call for an agenda for related research in the future.

> There are three types of baseball players: those who make it happen, those who watch it happen and those who wonder what happens. (Tommy Lasorda)

I. Introduction

Given the persistent need from clients for increased efficiency, predictability and cost effectiveness in the services they purchase from law firms, the dynamics of supply and demand have undergone profound long-term changes, indicating that the legal profession now lives in a buyers' market.[1] While this has certainly to do with the "fragile" business model of the large corporate law firms intrinsically,[2] external market forces and new technological developments have also been playing an increasing role in making it even shakier. On the one hand, legal services have never been so commoditized as today; while on the other, legal services have also become increasingly multidisciplinary and transnational,

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calling for cross-border collaboration of practitioners across vastly different jurisdictions, and also key input from experts in areas such as accounting, finance, taxation, management and organizational studies. From the perspective of the public, there has never been a point in history where access to justice and legal protection has been so simple, versatile and creative. This said, law firms nowadays must face fierce competition from the rapidly emerging alternative legal service providers, whose ground-breaking business models pose unprecedented challenges to law firms' conventional dominance in the realm of legal practice. And for good or for bad, the competition is by no means only on the level of pricing and costs.

Compared to other lines of business, lawyers maintain a highly confident relationship with their clients, bearing fiduciary duty to act in the latter's interests. Because the knowledge of law and the provision of legal services are a highly specialized expertise, there is natural information asymmetry between lawyers and clients. As such, lawyers are subject to strict ethical codes and heavy regulation, designed for the purposes of securing the clients' independent access to justice. Among other things, such regulation plays a significant role in shaping the entity choice of law firms, which are typically organized as partnerships. Furthermore, there has also been a prevalent prohibition of non-lawyer ownership in law firms, so that legal practitioners are free from the kind of pressure that the management of a corporation faces from their shareholders, and are thus able to maintain their independent professional decision-making power. The US, as the largest and most developed legal market in the world,[3] and continental Europe, most typically Germany,[4] still defend this school of thought. This prohibition on paper, however, has not been able to totally preclude innovative attempts from emerging. Although with highly controversial business models, a new generation of legal outsourcing and legal talents consultancy firms like Axiom and Outside GC, and online legal service providers such as the LegalZoom, have as a matter of fact gained considerable market share from traditional partnership law firms. This is achieved without crossing the delicate non-lawyer ownership + pure legal services redline, as they are neither partnerships nor "law firms" *per se*. In contrast, Australia has opened and the UK has reinforced a new and more entrepreneurial approach by confronting the real needs of clients and liberalizing their legal services regulation. From 2007, non-lawyers in the UK have been able to own up to 100% of a legal service provider under the regime of alternative business structures ("ABS").[5] Following the new wind, a number of common law countries soon jumped on the same boat and more are considering the same. Under the ABS regime, law firms are observed to have issued shares to the public on stock exchanges, and embraced the concept of multidisciplinary practice on both a broader and a deeper level.

As the world's second largest economy, China's exponential growth has given rise to a great demand for corporate and business related legal services. The

recent birth of the world's largest law firm (by the number of lawyers), namely, Dacheng-Dentons,[6] exemplifies how ambitious Chinese legal practitioners have avidly responded to the demand. But there is definitely much more than that going on in this vast emerging legal market. For a country whose private legal profession was spun out of the state apparatus less than 40 years ago,[7] it is surprising to see how fast China's corporate law practice has been catching up with the innovative trend globally. Along this line, this paper aims to provide a state-of-the-art sketch of the innovations in China's legal profession, primarily focusing on the corporate, business and civil law areas. Using a case study approach, it depicts and investigates a number of thought-provoking alternative practices and business models that are observed during recent years in two major groups, namely, the law firms, which are the mainstream incumbents; and the significant others,[8] most representatively the Internet-based legal service providers. Based on such an examination, the paper goes on to comparatively analyze the Chinese experience within the current debate on the regulation of legal service provision, and to discuss the potential implications and challenges of liberalizing the mandatory partnership requirement and prohibition of non-lawyer ownership in law firms. It finds that the latest developments in China's legal profession in general converge into the similar trends that have swept the other major legal markets, tilting the market towards the buyers' side. The current wave of leading Chinese corporate law firms avidly expanding themselves overseas, even creating massive global law firms on the one hand, and the various creative collaboration modes between Chinese law firms and their foreign counterparts on the other, are vivid examples of this finding. This being said, many legal needs are not met in the less developed geographic regions and in financially less rewarding practice areas. There, the market generates innovation not through the game of "survival of the fittest", but through a more general demand for access to justice and legal protection, which needs to be attended through creative ways as conventional channels are either inefficient or insufficient. As such, it is argued that the new generation of Internet-based legal service portals serve to provide an effective alternative to improve access. Instead of being organized as traditional partnership law firms, these sites are founded and financed by non-lawyers, and have rather adopted various innovative business models, which pose new challenges to China's restrictive law firm regulations. These challenges are reinforced by the fact that even some of the top tier corporate law firms in China have effectually deviated from the partnership legal form by incorporating key corporate features in running their business and compensating their partners. In this vein, China makes a unique contribution into the broader discussion on alternative business structure in general.

This paper is structured as follows. Section II reviews the relevant literature over the rationale for partnership as the traditional organizational choice for law firms and the challenges posed by the new realities. Section III sketches the regulatory framework and evolution of the legal profession in China,

where the legal market is rather fragmented and lawyers maintain a symbiotic relationship with the regulator and other legal service providers. Section IV makes a brief comparison of China's regulations with those of five other jurisdictions with respect to the issues of legal form, ownership and multidisciplinary services of law firms. Section V names and describes the key innovations in China's legal profession, whose implications are collectively discussed in Section VI. Section VII concludes.

II. Law firms as partnerships: the rationale and the challenges

When it comes to the choice of business form, law firms, as well as other professional service firms such as those doing accounting and consultancy services, have been historically inclined to partnership.[9] Based on the existing sociology and economics research, the benefits of this business form derive from the ability of balancing the competing claims of the three key stakeholders of professional service firms, i.e. the professionals, the owners and the clients.[10] Relative to the corporate business form, partnerships are more suitable to the realities of law firms, which are stratified apprenticeships organized by various practices, and are owned and controlled by partners simultaneously.[11] The classic argument in support of partnerships is that the key asset of a law firm, which is the knowledge about the needs and interests of clients, rests in lawyers' heads.[12] Because such an asset is hardly specific to a particular firm, it is impracticable to lock it in, thus rendering the capital lock-in function of the corporations unattractive to professional service firms.[13] From the perspective of economic efficiency, partnerships are also found to be able to lower the agency costs in professional firms. In particular, given that legal services are highly knowledge intensive and customized, it is hard for outsiders, who lack the expertise about the business and proximity to the managers, to monitor the activities in a law firm as partners themselves, thus making it inefficient to allocate law firm ownership to outsiders.[14] The natural solution is then the partnership form, where professionals share ownership and control, and monitor each other to achieve economies of scale.

A competing school of thought, however, questions the viability of such economic advantages. For example, Martin-Rhodes *et al.* offered rather pragmatic explanations for the results of their survey about the entity choices of American law firms, arguing that most business form choices had more to do with historical and short-term considerations than anything else.[15] In particular, it is submitted that the historical dominance of partnership archetype is better attributed to normative constraints, rather than managerial choice.[16] One such normative constraint is the vicarious liability feature embedded in the partnership form. Because substantial liability might arise from the personal legal services provided by a partner directly to a client, the limited liability protection embedded in corporate business forms was long viewed as "incompatible" with

professional relationships.[17] In the US, it was not until the development of professional corporation in the 1960s that the concept of limited liability was first extended to law firms.[18] In the UK, law firms have been permitted to incorporate since 1992, and many have converted to the UK limited liability partnership ("LLP") after it became available in 2001.[19] Germany followed suit in 1999 to allow law firms to limit partners' vicarious liability by incorporation,[20] which is realized in practice mostly through the well-known GmbH form.[21] More recently, however, partnership has lost its upper hand in the competition with newer hybrid organizational forms. Based on a 2002 empirical study, general partnerships accounted for 29% of the US law firms,[22] and this number reduced to only 16% in 2011, while professional corporations, LLPs, limited liability companies, all of which offer the limited liability feature, altogether accounted for the remaining 84%.[23] Similar to the US, incorporated companies and LLPs are much more popular among UK solicitor firms nowadays. Combined, they outnumber partnerships by more than three times.[24] It is worth noting that, although these newly added organizational forms offer some level of protection against vicarious liability for the professional negligence of other lawyers in the law firm, they do not completely shield a lawyer from the personal liability for his/her own professional negligence or that of lawyers that he/she immediately supervises.[25]

Another example of regulatory constraint related to the choice of partnership is the prohibition of ownership by and division of legal fees with non-lawyers in law firms, which used to exist around the world[26] but is nowadays most eloquently represented by the US.[27] This directly rules out public ownership, which will open law firms' ownership to non-lawyers,[28] as well as the possibility of importing private equity investors. In comparison, other countries have adopted more liberal approaches in regulating the legal profession. More recently, the most thought-provoking regulatory development has been the alternative business structures, which were made available by the Legal Services Act in 2007.[29] An ABS is a regulated organization which provides legal services and has some form of non-lawyer involvement, which can either be at the management level (e.g. partner, director or member) or at the owner level.[30] Essentially, ABS is made possible through entity regulation, which serves as an important supplement to the traditional regulatory focus on individual solicitor, barrister or other legal professional.[31] This trend of liberalizing law firm regulation has swept across smaller legal markets as well. To name a few: Australia legislated to remove the non-lawyer ownership prohibition and allow law firms to raise public funds in 2007, and the firm Slater & Gordon floated on the Australian Stock Exchange immediately after the reform to become the world's first public traded law firm.[32] Comparatively, a number of continental European countries have allowed ABS on a limited scale, often by putting a cap on the equity stake to be held by non-lawyers in these firms.[33] In Singapore, new amendments to the Legal Profession Act came into force in 2015 to allow a

form of ABS which provides only legal services, but allows non-lawyer employees to become partners, directors or shareholders, or to share in the profits of the law practice subject to prescribed limits.[34] Canada is also on the road to allowing ABS, but rather chooses to focus on ABS with only minority ownership by non-licensees.[35]

Beyond the new regulatory trends challenging traditional normative constraints in the legal profession, the declining prevalence of partnerships among law firms is also attributable to the different realities of modern law firms today.[36] Traditionally, the legal profession was characterized by fluid partnerships and casual apprenticeships.[37] Things began to change at the beginning of the twentieth century when big corporations rose as the engine of economic growth, demanding complex legal services that would require the simultaneous efforts of many attorneys. This gave rise to big corporate law firms.[38] Given the sheer size and geographical dispersion of many of these firms today, it is logical that they are less unified by loyalty and shared values, but more by the "corporate" type of control through a bureaucratic hierarchy over most of the employee lawyers.[39] In addition, the risk of litigation rises along with the globalization of legal services, and in this regard limited liability provides legal practitioners with the much needed security. Empirically, this corresponds with the finding that although generally LLP is the least popular business form among law firms in the US, it is comparatively most prevalent with large law firms.[40] Moreover, the growth of partnership in size also gives rise to greater demand for (outside) capital, and in the meantime erodes the non-financial benefits of partnerships, as a result of the increased free-riding problems and the decreased effectiveness of collegial control mechanisms.[41] In this sense, the adoption of certain techniques and systems that usually characterize the more formal, less personal corporate business form does impose a challenge on the managers of global law firms.

III. The legal profession in China – regulatory framework, key participants and evolution

This section aims to pinpoint the key applicable regulations on legal form choice and market entry qualification issues of the various participants in the legal profession in China, as well as the essential business models that are not directly regulated by statutes but rather formed themselves in practice. It is further divided into four subsections. Section III.1 deals with practicing lawyers and law firms, both domestic and international, which are the major players in the market. Section III.2 covers the other legal professionals, who are much more under the radar relative to lawyers yet still significant, given the ability and position of some of these occupations to maintain a closer symbiotic exchange with the state power.[42] The discussion in Section III.3 is specifically devoted to the bar association in China and its regulatory power *vis-à-vis* the state. The final

Section III.4 briefly discusses how the Chinese legal profession, especially the corporate law sector, has evolved to its current status, which resulted from the combined forces of both the local institutional context and globalization.

III.1. The mainstream: lawyers and law firms

III.1.1. Domestic law firms and lawyers

In China, one can only provide legal services in the name and capacity of a "lawyer" once he/she holds a valid license.[43] A lawyer must only practice in a law firm,[44] which acts as the entity to contract with and accept fees from clients.[45] In this sense, although the concept of solo lawyers has been made available after 2007 when the Lawyers' Law was amended,[46] a practitioner wising to avail this possibility still needs to set up a sole proprietor law firm.[47] In addition, three other types of law firms, namely, partnership law firms, limited liability partnership law firms and state-funded law firms, are also allowed under the current regulatory framework.[48] Table 1 summarizes the key regulations pertaining to each of the four types of law firms.

In China, law firms can only be owned by lawyers. Limited liability protection is only partially available if a law firm is organized as an LLP, where partners are shielded from other people's intentional misconduct or gross negligence, but will still be held liable for the contractual obligations of the LLP as a whole.[49] As shown in Table 1, the non-lawyer ownership prohibition is sustained both as of the time of law firm inception, and when the law firm expands and admits new partners. In addition, law firms should also refrain from engaging in business activities other than providing legal services, and failing to comply with such restriction may lead to temporary suspension or even revocation of the law firm's license for practice.[50] For that matter, the allowed business scope of lawyers is defined to include *only* the following: (a) acting as legal consultant for a client; (b) representing clients and participating in civil, administrative and criminal litigations; (c) representing clients in filing petitions in all types of litigations; (d) participating in mediation or arbitration; (e) providing non-litigation legal services; and (f) answering law-related inquiries, writing legal documents for clients.[51] In this sense, hybrid services where technology, business processes and project management are deployed tactically to meet the clients' actual need for streamlined one-stop solutions, such as what Allen & Overy has been exploring recently,[52] may face practical difficulties to develope in big Chinese law firms due to such an exhaustive definition.

While the "Cravath system", which is marked by deferred compensation and the up-or-out tournament, is generally maintained as the industry standard for American law firms[53] as well as in other major legal service markets such as the UK,[54] this practice are far less institutionalized in China. Instead, Chinese law firms have been seen to run their business under two major models, namely,

Table 1. Different types of law firms in China.*

	Sole proprietor law firm	Partnership law firm	LLP law firm	State-funded law firm
Articles of Association	Yes	Yes	Yes	Yes
Partnership Agreement	Not applicable	Yes	Yes	Not applicable
Number of founder(s)	1	At least 3	At least 20	Not applicable
Nature of founder(s)	Full-time lawyer with at least 5 years of practicing experience	Full-time lawyers with at least 3 years of practicing experience	Full-time lawyers with at least 3 years of practicing experience	Local judicial administrative authority The firm should have at least two full time practicing lawyers
Nature of new partners	Not applicable	Same as above	Same as above	Not applicable
Liability	Unlimited liability	Unlimited joint and several liability	Unlimited joint and several liability in general Limited liability offered as "partial shield"	Limited liability to the extent of all the firm's assets
Firm assets	RMB100,000	RMB300,000	RMB10 million	Not specified To be provided and guaranteed by the local government

Note: *Summarized on the basis of the Administrative Measures for Law Firms, *op. cit.*

the commission-based model and the corporate model.[55] Under the commission-based model, partners pay a percentage of their fees, i.e. the commission, to the firm and keep the rest. As such, each partner is an individual profit center and is responsible for administrative matters such as hiring associates. While this type of arrangement is familiar in most domestic firms in China, including some reputable ones,[56] its popularity is on the decline as a trend, especially among large firms, primarily due to the difficulty of building a long-lasting brand for the firm as a whole.[57] In particular, the reduced prevalence of the commission-fee system is resulted from a series of policies by the Ministry of Justice ("MOJ") in the late 1990s to encourage the development of large partnership law firms with a corporate structure, in order to meet the demand of global convergence after China's accession into the World Trade Organization ("WTO").[58]

By contrast, law firms operated under the corporate model centralize the key management functions like paying office rent, employee salaries and other costs, hiring associates and distributing profits, to partners.[59] Rather than each partner bringing in and keeping his/her own clients, the firm contracts with potential clients universally, and the cases are distributed to the appropriate partner afterwards.[60] With respect to the issue of partner compensation, commission-based type of law firms typically adopts the "eat what you kill" model, where a partner simply gets what he/she earns from the billings, after paying the commission to the firm.[61] Comparatively, compensation systems in corporate-type law firms tend to be more sophisticated, and partners are often paid according to their positions in various bands of points, the accumulation of which is not only tied to their objective performance of the current year.[62] In general, there is some fusion and convergence of partner remuneration practices, with traditional corporate-type law firms introducing performance-based elements to modify the hardcore lockstep, and long-time commission-based firms starting to let partners share the firm's profits so as to motivate them to work cooperatively for the firm's overall growth.[63] Figure 1 illustrates the key features of the business models of four leading corporate law firms in China. From left to right, the weight of performance in deciding partner compensation increases, while the level of collegiality among partners and integration among local offices decreases. It is worth noting that some of the practices enumerated in Figure 1 do not necessarily compete with each other, but can co-exist in a law firm. For example, Tahota, the largest comprehensive law firm in the western part of China, has two tiers of offices when it comes to expanding its presence in China. The firm adopts the "corporate model" and centralizes the management of both the human sources and capital for the offices located in its home cities (such as Chengdu and Chongqing) and cities of high strategic value (such as Beijing). All the other offices largely remain independent and assume responsibility for their own profits and losses, which manifests the application of the "commission model".[64]

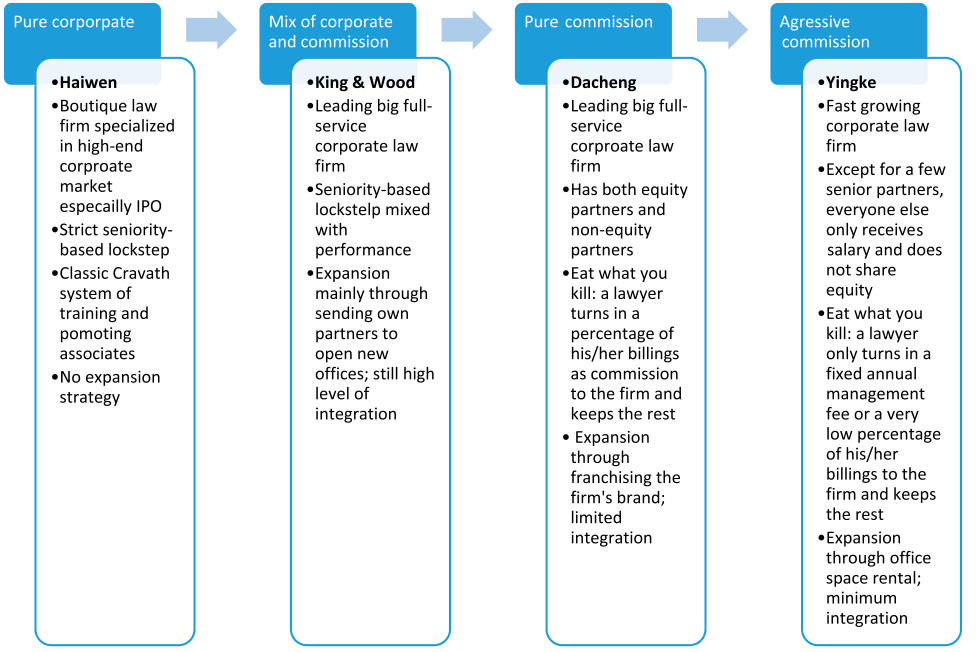

Figure 1. A spectrum of business models of four leading Chinese corporate law firms.

Note: Summarized on the basis of Liu & Wu, *op. cit*.

III.1.2. Foreign law firms and lawyers

Against the background of globalization, international law firms have also rigorously expanded their presence in China, building both a collaborative and a competitive relationship with their Chinese counterparts. They are a unique group of participants in China's legal services market, in that the state has imposed a special set of regulations that are directed particularly at them.[65] In general, market access offered to international law firms is quite small. The one and only permitted legal form for foreign law firms to do business in China is representative office. In particular, it is explicitly prohibited for any foreign individual or entity to render legal services in China in the name of a "consultancy firm".[66] These representative offices are not allowed to hire Chinese lawyers,[67] meaning that a licensed Chinese lawyer must suspend his/her license during the entire period of working for an international law firm in China.[68] In terms of permitted business scope, they can practice international law and the laws of their home country, hire local counsel and enter into long-term relations with Chinese law firms, and provide information on the impact of the Chinese legal environment; but they are generally excluded from practicing Chinese law.[69] According to the interpretation of the MOJ, this means that they must refrain from participating in litigations in China, opining on Chinese law related matters, and representing clients in the relevant procedures at governmental and administrative authorities.[70]

Despite these statutory restrictions, international law firms have been creative in operating in China, effectively expanding their business scope beyond the regulatory constraints and competing with their Chinese counterparts on many Chinese law related fronts. Typically, this is done via a number of practices including but not limited to the following: (a) hiring licensed Chinese law professionals as "paralegals" or "law assistants"; (b) engaging in non-litigation legal services and advising on Chinese law matters, not in the form of "legal opinion" officially but rather in various informal forms such as memoranda, emails and/or telephone calls; (c) conducting legal due diligence about projects located in China; (d) effectively participating in litigations and arbitrations in all stages except for appearing in court; (e) cooperating with a "puppet" Chinese law firm on Chinese law matters which is either capitalized or controlled by the foreign firm; and (f) branding, on the basis of the abovementioned practices, them as qualified in Chinese law.[71] It is interesting how these practices, tiptoeing on the verge of being legal and illegal, have generated drastically different reactions from domestic Chinese practitioners and the community of foreign law firms. In the eyes of the former group, they are identified as evidence for the serious but illegitimate competition from foreign law firms, which has cut into the profits of Chinese lawyers.[72] In the eyes of the latter, these practices rather showcase the difficulty of doing business in a highly closed market, and are thus used to support their claim for further liberalizing the legal service industry and allowing equal access also to foreign lawyers.[73] All in all, it is submitted that

while the business competition between foreign law firms and their local counterparts in the market is significantly intensified, the jurisdictional boundary between them is also becoming increasingly blurred, which gives rise to a hybrid of localized expertise among Chinese corporate lawyers.[74]

In 2014, Shanghai Free Trade Zone launched a pilot program to allow mutual secondment of lawyers across, and joint ventures between, Chinese and foreign law firms.[75] Specifically, a Chinese law firm can second Chinese lawyers to a foreign firm to act as consultants on Chinese law related issues, and a foreign law firm may also second foreign lawyers to a Chinese law firm (or its branch) to act as consultants on foreign law matters, as long as either of the two firms has a premise in the Shanghai Free Trade Zone ("FTZ").[76] As a more alleviated form of collaboration, Chinese and foreign law firms are also allowed to set up joint operation offices in the Free Trade Zone, where they can provide legal services within their respective scope of practice to both Chinese and international clients, and join forces to handle cross-border and international transactions.[77] In April 2015, Baker & McKenzie and Fenxun Partners, a Beijing-based Chinese law firm, formed their FTZ joint operation office in Shanghai, thus becoming the very first mover under the new pilot program.[78] It is worth noting that this kind of joint operation office is based on a rather loose contractual arrangement, under which two partners must still remain structurally separate in terms of their legal status, names and financials, and should be separately liable for each of their contractual obligations.[79]

While certainly liberalizing, the significance of such measures is rather modest. For years, foreign firms were found to have chosen the appropriate form and level of collaboration with domestic Chinese firms strategically based on the practice areas and financial costs involved. Even in the cases where a clear division of labor exists with respect to who is in charge of what, foreign and local firms still cooperate with each other to the extent of exchanging comments on the relevant transactional documents.[80] In this sense, although both mutual secondment and the joint operation office between local and foreign law firms do contribute to the end of streamlining the collaboration process, actually neither of them bring about substantive changes to the current regulation on foreign firms, which are still explicitly prohibited from practicing Chinese law. As such, these recent innovations initiated by the Shanghai Bureau of Justice in FTZ are rather passive in nature. On the one hand, because law is a field where a great deal of professional and cultural stakes are involved,[81] the Chinese regulator is unwilling to open up the legal market to the same extent as other similar lines of professional services, despite its general obligation of gradually offering market access liberalization after its WTO accession.[82] On the other hand, the regulator is surely aware of the reality of foreign law firms offering Chinese law services in many ways, in particular through hiring qualified Chinese legal professionals and establishing *de facto* collaboration with their Chinese local counterparts. Such practices are

already too entrenched to be completely corrected. It is under such a dilemma that the new measures came into being: in a special zone where more liberal regulations are expected, the regulator repackages what's already there and attaches a new label on it so as to show a good gesture from the outset, but refuses to make any concession on the core issues.

III.2. Legal service providers other than practicing lawyers

The legal profession in China is highly fragmented in nature, which is deeply rooted in its unique historical development as well as the political fragmentation in the regulatory regimes, both competing and inter-depending on each other, that are applicable on it.[83] Note that the current bar exam of China is officially titled the "State Judicial Examination", and passing this exam is a must if one is to work as a lawyer, prosecutor, judge or notary.[84] But this is far from the only qualification examination out there that decides who is able to enter China's legal profession. In addition to lawyers practicing in law firms (both domestic and international ones), there are also a number of "significant others" in the competitive landscape, including at least "basic-level legal workers" (基层法律工作者), various types of advisory agencies offering legal consulting services, enterprise legal advisors (企业法律顾问), patent agents and trademark agents, each of which is separately licensed, and also a large number of unauthorized "black lawyers" (黑律师) and "barefoot lawyers" (赤脚律师).[85] Table 2 lays out the regulatory framework of these alternative lines of occupation in the legal profession, to the extent that they are separately regulated in the first place.

While it is indeed true that different lines of legal professions carry different legal missions which may call for separate regulatory bodies for each of them, it remains debatable to what extent such a fragmented regulatory regime is really motivated by this concern. To the contrary, the table arguably presents a highly kaleidoscopic system where a variety of law practitioners do similar work under different labels, filling up the large interstitial space between market and state, consistent with the findings of Liu (2011a).[86] A direct example is the "enterprise legal advisors" and "company lawyers". To be sure, it does make sense to treat corporate in-house counsel differently than normal lawyers in law firms, because the embedded position of the former as an internal employee of the corporation may impair his/her independent professional judgment.[87] Difficult situations may rise for an in-house counsel, when the role as a lawyer for the single client demands confidentiality on the basis of client–attorney privilege, but the role as a compliance officer requires blowing the whistle and disclosing illegal conduct to third parties.[88] Looking around the world, actually more jurisdictions do not grant bar membership to in-house counsel, who are instead licensed and trained under different procedures than normal lawyers.[89] This said, there is hardly any substantive reason for granting two different licenses

Table 2. Regulatory framework for alternative legal service providers.*

	Place of practice	Regulatory authority	License needed	How to obtain license?	Law degree required?
Basic-level legal workers	Basic-level legal service firms	Ministry of Justice	License for basic-level legal workers	By passing a separate qualification exam Exam is waived for certain groups of people, who can also be licensed upon the approval of the competent local Bureau of Justice	Not required But a law degree is one of the waivers for the exam
Enterprise legal advisors	All kinds of enterprises, especially state-owned ones	Ministry of Personnel, State-owned Assets Supervision and Administration Commission, and Ministry of Justice	License for enterprise legal advisors[a]	By passing a separate qualification exam Exam is waived for certain groups of people, who can also be licensed upon the approval of the competent local Bureau of Justice	Yes
Company lawyers (公司律师)	Companies	Ministry of Justice	License for company lawyers[b]	The candidate already holds a lawyer's license The company agrees to retain the candidate as a company lawyer	Yes
Patent agents	Patent agency firms, intellectual property agency firms or law firms with patent agency business	State Intellectual Property Office	License for patent agents	By passing a separate qualification exam	No, but rather the knowledge about Patent Law is required
Trademark agents	Trademark agency organizations	State Administration of Industry and Commerce	License for trademark agents	By passing a separate qualification exam	Yes
Notaries	Notary offices	Ministry of Justice	License for notaries	By passing the State Judicial Examination Exam is waived for certain groups of people, who can also be licensed upon the approval of the competent local Bureau of Justice	Yes
Government lawyers (公职律师)	Party committees and government at all levels	Ministry of Justice	License for government lawyers[c]	The candidate already holds a lawyer's license and works at a governmental agency	Yes

Notes: [a]This license was cancelled in 2014 by the State Council. See 国务院关于取消和调整一批行政审批项目等事项的决定 (国发〔2014〕27号) [Decision of the State Council on Matters on Canceling and Adjusting a Group of Administrative Approval Items] (No. 27 [2014] of the State Council), *LawInfoChina*. Available at: www.lawinfochina.com

[b]This license was created as a result of a 2002 MOJ pilot program. See 司法部关于开展公司律师试点工作的意见 (司发通 (2002) 79号) [Opinion from the MOJ on Starting Company Lawyer Pilot Program (MOJ (2002) No. 79)]. Although the pilot program was never officially stopped, its practical significance is almost non-existent nowadays.

[c]This license was created as a result of a 2002 MOJ pilot program. See 司法部关于开展公职律师试点工作的意见 (司发通 (2002) 80号) [Opinion from the MOJ on Starting Government Lawyer Pilot Program (MOJ (2002) No. 80)]. Although the pilot program was never officially stopped, its practical significance is almost non-existent nowadays.

*Summarized based on the relevant regulations of these professional groups.

to essentially one group of people, i.e. corporate in-house counsel. The only meaningful explanation for such a dichotomy is the failure of the MOJ to establish, after competing with other more powerful administrative agencies, universal regulatory authority over the fragmented legal market, which resulted from the historical privatization of lawyers from the state apparatus in the 1980s. In particular, because of the strong confrontation from the State-owned Assets Supervision and Administration Commission, and also of the low level of practical relevance to the existing professional groups, the MOJ's effort to create a separate company lawyer license under its power has barely brought any substantive change to the regulatory framework of corporate in-house counsel.[90] As a result, except for state-owned enterprises ("SOE"), lawyers working in private and foreign-invested companies in China are almost entirely left out of state regulatory power. Practically, these firms just recruited experienced lawyers as their in-house counsel.[91]

The most recent effort from the MOJ to make up the fragmentation is the contemplated reform of the State Judicial Examination, which is renamed from 2018 as the "National Unified Qualification Examination for Legal Profession" and broadened to embrace more occupations into its big umbrella, including arbitrators (of the legal kind), and governmental officials engaged in the verification, reconsideration, adjudication, and legal counseling on administrative punishments.[92] Although this new testing and licensing system is well intended in that it surely contributes to enhancing regulatory clarity, this is not the first time that the MOJ has tried to broaden its jurisdiction by taking other professional groups under its regulatory power. Historically, the MOJ has already failed twice in its "palace wars" with other ministries in fighting for the regulation over the legal work in governments and state-owned corporations in China.[93] Such failures are not only explained by the MOJ's own weak structural position in China's political system, but also by its lack of contacts with the professional groups that it seeks to regulate.[94] This said, the practicality of the endeavor to consolidate every potential line of the law-related profession under one roof remains questionable even if the unique institutional context of the fragmented regulatory powers in China is disregarded. As will be discussed later in this paper, because of the disruptive innovations in legal service provision, legal professionals can no longer fully control access to the market as unlicensed new entrants offer a widening range of services. In this sense, the exclusivity enjoyed by legal professionals, and the precise scope of activities to which it applies, are becoming unclear; and the existing regulations may face the risk of being circumvented.[95] While such questions cannot be sufficiently answered within the scope of this paper, which for now only focuses on the regulatory issue of the legal entity choice and ownership structure of law firms, the analysis here nevertheless helps to shed light on the question.

III.3. Bar association – the limp self-regulator

Every licensed lawyer and law firm in China shall become a member of the All China Lawyers Association ("ACLA"),[96] which is the nationwide self-regulatory organization for lawyers.[97] According to existing literature, one important rationale for respecting private ordering and adopting self-regulation in knowledge intensive professional services like lawyering is to maintain the profession's independence from the state's regulatory power, and create its own "living space" between the government and the market.[98] Essentially, the co-existence of self-regulation with state regulation means that the state partially outsources the authority of establishing rules relating to the access and pursuit of a profession to the respective professional associations.[99] Typically, self-regulation rules delineate a sphere of expertise, establish conditions for membership, limit competition from non-members and impose conduct on professionals, for the purposes of safeguarding the integrity of the profession and the quality of the service provided.[100] In order to ensure compliance by the members with such rules, self-regulatory bodies are also equipped with certain enforcement mechanisms,[101] which for the most part include the implementation of legal ethics rules against misconduct or fraudulent and deceptive practices of lawyers.[102]

The ACLA also carry the aforementioned functions which are explicitly conferred by the Lawyers' Law upon it.[103] Theoretically, the intention is to leave the MOJ and its local counterparts only with overall supervision powers, and let the bar association exercise specific administrative tasks.[104] In practice, however, the ACLA barely has any substantive independence from the MOJ or the state regulatory power in general. By contrast, "upholding the leadership of the Chinese Communist Party" ranks first among the various key missions of the ACLA according to its articles of association, prior to the missions of "defending and preserving the constitution and laws", "protecting lawful interests of clients", "ensuring the rightful implementation of laws" and "ensuring the fairness and justice in the society" (as in their original order).[105] In addition to such an express declaration of its subordinate status to the power of the ruling party in its mission statement, China's bar association is also very closely connected to the MOJ and local bureaus of justice ("BOJ"). This is often referred to conveniently as "one troop, two flags". Very often, offices of the local bar associations are located within the same building as the local BOJs, and the secretariat, which is the most powerful position within the organization, is almost always served by former or future officials from the local BOJ.[106] Such service is essentially just "job-rotations" that are part of their career paths within the Communist Party. When it comes to enforcement, the bar association can deploy such soft mechanisms as reprimand, criticism within the industry, public condemnations and disbarment. It may also suggest the relevant governmental regulatory authorities take measures in the case when a member is found

to be in violation of the laws, regulations and disciplines.[107] Based on the analysis above, the self-regulation of China's bar association can at best be described as "ancillary" to the state regulatory power, if not completely a "puppet". Because of the lack of independence, the bar does not play a substantive role in regulating the profession.

III.4. Evolution and institutional context

Having sketched the regulatory framework and the key participants in China's legal profession, one important question still remains unanswered, namely, how did these institutions and organizational structures evolve into their current status? After its establishment in 1949 and resulting from its policy of demolishing the Republican old relics and leaning towards the Communist camp, the People's Republic of China has built up its judicial system largely by transplanting that from the former Soviet Union.[108] Among other things, lawyers were considered as "legal workers for the state",[109] working in the so-called "legal advisory divisions" (法律顾问处), which were modeled after the Soviet law offices and were set up in major cities following the order of the MOJ.[110] This did not change much even within the first few years after the mid-1980s, when the legal profession started to witness a long-lasting unhooking and privatization (脱钩改制) reform.[111] Formally, lawyers lost their membership in the state-sector, as legal advisory divisions were gradually transformed into law firms; in practice, however, the earliest law firms were still state-owned public institutions, where the lawyers were allocated slots in the quotas for state employees and were paid by state funds.[112] In this sense, lawyers remained embedded in an inextricable part of the state bureaucracy.[113] The privatization of lawyers started from the creation of "cooperative law firms" (合作所) in 1988, which were characterized by being "formed on voluntary basis, responsible for their own profits and losses, and able to self-regulate".[114] These cooperative law firms are considered as a transitional business form during the privatization process, as China did not recognize partnerships back then.[115] More conventional law firms did not emerge until 1993, when the MOJ started the first partnership law firm pilot program in Beijing.[116] Private law firms finally became the mainstream after a massive "unhooking" campaign, which took place already around the beginning of the new millennium.[117] Given such a historical path, it is not surprising that Chinese lawyers have shown deep political embeddedness.[118]

It is worth noting that, relative to the largely laissez-faire history of the Anglo-American professions, the development of professions in most so-called Global South countries has not followed such an endogenous route.[119] The legal profession in the Anglo-American world is known as being organized in a rather uniform manner, in that a lawyer may perform a large number of tasks that on the European continent are performed by different and specialized legal professionals.[120] Moreover, it is also distinguished by the professional autonomy

from the state and self-regulation as the founding features of professionalization.[121] By contrast, and consistent with existing research,[122] China's legal profession has been characterized by a strong and interventionist nation-state from the very beginning, and the relationship between the professions and the state involves more than a universal form of compromise. As show above, this is evidenced by the co-existence of many professional groups that compete in China's legal service market, which are regulated by multiple state agencies with distinct interests and power.[123]

In addition, the development of China's legal profession is also to a great extent a result of the interactions between local and global actors in the process.[124] According to Faulconbridge and Muzio, the foundations of a transnational sociology of professions involve, beyond the nation-state, a five-level analysis where clients, practitioners, super-national governance regimes, universities and firms jointly play a role in reshaping the professional realities.[125] They find that one representative feature in contemporary professions is the global professional service firms ("GPSF"), which serve as a vehicle for sustained interaction between different national varieties of professionalism and the rescaling of the mechanisms of the control of production of and by producers.[126] Such findings find support in the Chinese case. In particular, it is submitted that the entry and development of global law firms in China have not only brought valuable expertise to the Chinese legal profession, but also greatly facilitated the globalization of the Chinese economy, especially since China's WTO accession in 2001.[127] The very first 12 foreign law firms, out of which 11 were from common law jurisdictions,[128] came into China in 1992, not long after the start of the privatization of lawyers. By allowing their entry, the government intended to signal to foreign investors that China also had a legal profession that was autonomous to the state and the Communist Party, thus convincing them to stay and invest in China.[129] As a matter of fact, the early privatized Chinese firms were first exposed to foreign-related legal work through their cooperation with foreign law firms, which was a major step for these new corporate firms.[130] Such expertise was quickly enhanced when more and more talent with international legal education experience, mostly from the US and UK,[131] returned to China to found or work in domestic law firms.[132] According to the official records of the MOJ, an aggregate of 223 foreign law firms have offices in China as of September 2017, among which 106 are from the US and 31 are from the UK.[133]

Along with the massive growth of foreign law firm offices in China, lawyers became more mobile between the two group of firms in both directions, and the social boundaries between foreign and Chinese lawyers were blurred by global market forces, giving rise to an increasingly large number of lawyers with both global "know-how" and local "know-who" in complex corporate transactions.[134] Although China, despite its WTO accession, places significant limits on the entry and business operations of foreign law firms,[135] they have nevertheless acted much more aggressively in practice by effectively performing many tasks

that are beyond their allowed business scope.[136] However, the MOJ chose not to actively enforce its rules because substantive sanctions on foreign law firms would have hampered efforts to attract foreign investment into China.[137] Arguably, such an approach was a more flexible and realistic strategy for regulating professionals in a rapidly changing legal services market like China.[138] This also provides a vivid example of how GPSFs have managed to exploit the WTO regulations to expand their markets and challenge local jurisdictions, which contributed to the hollowing out of the role of the nation-state and the consolidation of transnational governance regimes around the profession.[139]

The impact of globalization on China's legal profession can also be observed in the evolution of organizational structures and operational practices of law firms. As business grows and the interaction with international law firms deepens, elite Chinese corporate firms grow in size, and gradually adopt management styles similar to their Western counterparts, departing from the traditional "eat what you kill" model.[140] The introduction of the LLP as an entity choice for Chinese law firms is considered to symbolize the final step in their structural convergence to the global norms in law firm organization and management.[141] In particular, it is observed that for many partners in Chinese law firms, the 2008 global financial crisis has taught them the first major lesson on the importance of nurturing long-term attorney–client relationships, as well as personnel management and cost control.[142] Overall, it can be said that the evolution of law firms in China from the 1980s to the 2000s was a process of global convergence and structural diversification, in which the privatization of Chinese law firms and the expansion of foreign law offices were the two main themes of transformation.[143]

IV. Other approaches in regulating alternative legal services provision: a spectrum

While allowing non-professionals to capitalize and/or manage law firms may contribute to the enhanced availability of legal services in general, such practices also give rise to inevitable concerns about the quality of the legal services, and the potential conflicts of interest between legal and non-legal professionals. Traditionally, the rationale for regulating the legal service provision includes information asymmetry and negative externalities, which may lead to the failure of market coordination. In addition to market failure, regulations are also made on the basis of fairness, so that the access to justice can be safeguarded at certain quality and certain price.[144] Across different jurisdictions, such potential market failures are generally addressed by imposing restrictions on: (a) market entry issues, both qualitative and quantitative; (b) fees; (c) advertising; and (d) legal form, ownership and management of law firms.[145] This section compares China's regulations on the business form and multidisciplinary practice ("MDP") of law firms, which are highly restrictive, to those of five other

jurisdictions, which are all more liberal yet to different degrees. As presented in Table 3, the different approaches adopted by the six jurisdictions in total can be roughly placed into a spectrum, with China and the US standing on the restrictive end, the UK and Australia representing the liberal end, and Upper Canada (Ontario) and Germany covering the middle band.

The key question is, to the extent that the regulations deviate from the conventional "partnership + pure legal services" model to adopt a more liberal approach, whether they are sufficient to address the potential market failures resulted from breaking lawyer exclusivity and introducing multidisciplinary practices. To the extent of the regulations surveyed in Table 3, these concerns are dealt with through a number of substantial holdbacks. For the non-lawyers part, the owners/managers in a MDP are generally limited either by the lines of business they are in, or by a "fit-to-own" test, or both. To check and balance non-lawyers' participation, legal professionals are empowered with greater control in the business, which can be at the levels of ownership or management, or both. Moreover, they are also vested with greater responsibility, both for the business in general and for the non-lawyers actions in particular. To be sure, in order to judge the efficacy of these regulatory measures, one must first understand what kinds of potential market failures may arise from the innovative legal and multidisciplinary services, which further requires important empirics about how the service providers operate and how clients accept and review their services. All such research is certainly not to be contained within the scope of this paper. For now, it is only intended to open up academic discussions about the topic and its potential challenges to current legal profession regulations, which are still completely missing in China so far. As the very first step, the following section goes on to spotlight the innovative practices that are already emerging, both from within and outside the camp of licensed legal professionals in China.

V. Innovation initiatives in China's legal profession

Having sketched the status quo, this section goes on to identify and discuss the various innovations that have happened or are emerging in China's legal profession over recent years. As a commonality, they all pose challenges to the current regulations on the legal form and ownership structure of law firms, as well as the provision of multidisciplinary services by law firms. These innovation initiatives have been identified not only among the largest corporate law firms in China, but also from "significant others" than the mainstream incumbents, most noticeably from the online legal service providers.

V.1. Innovation from law firms as the mainstream market participants

V.1.1. Birth of international big law – all roads lead to Rome

In January 2015, Dacheng Law Offices and Dentons merged to form the world's largest firm by number of lawyers, surpassing Baker & McKenzie.[146] In an

Table 3. Regulations on business form and multidisciplinary practice of law firms.

	Restrictive		Permissive		Liberal	
Jurisdiction	China	US	Upper Canada (Ontario)	Germany	UK (England & Wales)	Australia
Applicable regulations	Lawyers' Law	ABA Model Rule	By-Law 7 of the Law Society of Upper Canada	Bundesrechts-anwaltsordnung Berufsordnung	Legal Service Act	Legal Profession Act
Incorporated law firm allowed?	No Only LLP	Yes	Yes (professional corporation, but not applicable for MDP)	Yes (Rechtsanwalt GmbH)	Yes	Yes
Public law firm allowed?	No	No	No	No	Yes	Yes
MDP allowed?	No	No (except for District of Columbia)	Yes	Yes	Yes	Yes
Can MDP provide non-legal services?	Not applicable	No	Yes, but only to the extent of the services from a profession, trade or occupation that supports or supplements the legal service	Yes	No in case of legal disciplinary practices ("LDP") Yes in case of ABS	Yes
Requirement for lawyer majority ownership and/or control	Not applicable	Not applicable	Yes	No For Rechtsanwalt GmbH, both yes	Yes in case of LDP No in case of ABS	No
Mandatory presence of lawyer(s)	Not applicable	Not applicable	Yes	At least one lawyer in every MDP office	Overall at least one active lawyer owner/manager	Overall at least one Legal Practitioner Director / Partner
Non-lawyer investment in law firms	No	No	Yes	Yes	Yes	Yes
Requirement for non-lawyer to be "fit-to-own"	Not applicable	Not applicable	"Good character" requirement for non-lawyer	No	Yes if the interest of the non-lawyer is more than 10%	No To be ruled by the Supreme Court
Restrictions on lines of business of non-lawyers	Not applicable	Not applicable	Non-lawyer should be a professional, and should be from a profession, trade or occupation that supports or supplements the practice of law of the MDP	Patent lawyer, tax advisor, auditor, tax assistants, sworn-in accountant	No	No
Requirement for higher malpractice insurance than normal law firms	Not applicable	Not applicable	No	Yes	No	Not mentioned

(*Continued*)

Table 3. Continued.

	Restrictive		Permissive		Liberal	
Jurisdiction	China	US	Upper Canada (Ontario)	Germany	UK (England & Wales)	Australia
Obligations of lawyers *vis-à-vis* non-lawyers under professional code of conduct	Not applicable	Not applicable	The lawyer "shall have effective control" over the non-lawyer's professional practice of his or her profession, in a sense that the lawyer may, without the agreement of the professional, take any action necessary to ensure compliance with professional conduct	Non-lawyer must abide by lawyers regulations and ethics	Disciplinary sanctions can be imposed against the entity as well as lawyer and non-lawyer managers and employees	Legal Practitioner Director / Partner is responsible for ensuring the entity to provide legal services in accordance with the legal professional obligations

industry whose top tier almost always consisted of the super big law firms from either the US or the UK, it is a fair surprise to see a China-based international firm suddenly surpass all the well-known names from Wall Street and the Magic Circle and become the new number one. But actually this is not even the first time. The debut was made already in 2012 when King & Wood, a leading Chinese firm, joined forces with Australia's top firm Mallesons Stephen Jaques, creating the record for the largest law firm merger without a US or UK partner.[147] Obviously, the internationalization strategy of these Chinese law firms goes hand in hand with the emergence of China as a substantial outward investor, which gives rise to significant demand for cross-border legal services.[148] It is worth mentioning that although the term "merger" is often used to conveniently denote the association of two or more law firms, it is actually not an accurate depiction of the real situation in that the connection between the law firms is actually much looser than in real mergers. Officially, these mega law firms such as Hogan Lovells, Baker & McKenzie, DLA Piper, Squire Sanders, and Norton Rose Fulbright take the business form of Swiss verein,[149] under which each of the members remains only responsible for the commercial and professional liability of itself, and there is typically no sharing of revenues and pooling of profits.[150] Instead, they only share marketing strategy, common branding and information technology, and thus are often criticized for lacking a common culture and standardized practices.[151]

It is worth mentioning that these two names do not complete the list yet when it comes to the internationalization of big Chinese law firms. A couple of other prestigious ones, such as Jun He, Tahota and Tiance, have also managed to avidly expand their presence and/or influence overseas, each using a unique dominant strategy. Comparatively, another top Chinese law firm, Zhonglun, chooses not to rely on one particular strategy for internationalization, but rather deliberately to leave itself open to all possibilities, thus remaining flexible and responsive to the highly diversified institutional, business and cultural conditions in foreign jurisdictions.[152] Table 4 summarizes the internationalization strategies of the six Chinese law firms.

Although one may contend that these strategies in general do not look so innovative when compared to law firms from other countries or even to other lines of business in general, it must be noted that important empirics are still missing. Among other things, not much is known with respect to the number of Chinese vs. foreign lawyers in local branches, how they serve their clients, the legal structure used for the local presence, and the rights and obligations of the Chinese law firm and its local partner firms. This being said, the sheer fact that Chinese law firms are keenly expanding themselves is in itself already remarkable, especially considering that all these significant achievements have been achieved after the 2008 financial crisis.[153] As a particularly notable trend, prestigious Chinese firms nowadays seem less enthusiastic in benchmarking themselves with the practices of the traditional Anglo-American big law firms

Table 4. Internationalization strategies of big Chinese law firms.

Representative law firm	Key strategy	Important features of the key strategy	Level of collaboration/ integration
Dacheng	Merging with foreign firm but does not assume control	• Merges with Dentons to form the world's largest law firms by number of lawyers • A poly-centric global law firm with no headquarters, no centralized management, no revenue sharing or profit pooling, and no firm-wide culture • Shares common branding and marketing • Sets up the "Nextlaw Global Referral Network"	Low
Jun He	"Best Friends" model	• Joining leading global networks of independent law firms such as Lex Mundi and MultiLaw • Setting up long-term non-exclusive "best friends" relationship with prestigious local firms in foreign jurisdictions • Collaborating on an *ad hoc* basis with small and mediums-sized local law firms	Low
King & Wood	Merging with foreign firms but assumes dominant position	• Merges with Mallesons (Australia) and SJ Berwin (UK) • Aims at learning management experience and not at financial profits • Takes dominant position and does not lose the firm's brand in the Swiss verein • Maintains good collaborative relationships with other big American firms in the meantime	High
Tahota	Opening overseas offices	• Setting up new offices by sending lawyers there • Forming alliance with local firms • Merging and integrating with local firms when the time comes	Low
Tiance	Initiating own global referral network	• Initiates China's very first global law firm network, namely, Sino Global Legal Alliance, of which Lovell is also a member • Beside this, Tiance has only two offices	Low
Zhong Lun	Flexibility	• No one particular model, open to various strategies	Low

Note: Summarized on the basis of Liu & Wu, *op. cit.*; interviews from the TV show "Going Global" (*Going Global*, Prod. Lin Ying, SMG Oriental Financial Channel, 9 February 2017. Available at: https://mp.weixin.qq.com/s?__biz=MzAwNTQ3MDUxMw==&mid=2652709970&idx=1&sn=b7deb356b7c847065b00a628951028ca&source=41#wechat_redirect); "Road to Big Law" series interviews done by *Intelligeast* (大所之路 [Road to Big Law]. Available at: http://www.zhihedongfang.com/category/zhuanlan/%e5%a4%a7%e6%89%80%e4%b9%8b%e8%b7%af/); official websites of the concerned law firms; and various anecdotes and websites.

or the so-called "international standards". Rather, more and more of them have been seeking to define their unique competitive edges and initiate their own referral networks, with the goal of cutting a striking figure in the global legal services market. An eye-catching example is the "Nextlaw Global Referral Network" set up by Dacheng-Dentons.[154] According to its website, this network differs from virtually all the other existing legal referral networks – it charges no fee to member law firms nor does it grant members territory

exclusivity, but rather uses a tracking system and a technology platform that promote reciprocal repeat referrals.[155] In particular, the network attaches special focus on small to mid-sized law firms, and firms of any size that are in one location, country or region, or that specialize in one practice area or industry sector. In other words, the network targets at approximately 90% of the legal market.[156] Upon the official launch in October 2016, the network had already attracted 283 law firms with more than 18,600 lawyers, offering to clients in 160 countries, debuting as the broadest legal referral network in the world.[157]

Apparently, merely joining forces to become the biggest out there does not guarantee long-term success, especially when other firms can replicate the strategy by forming even larger associations, and the high-end legal service market is already crowded with the super big law firms in the first place. In this sense, the Nextlaw Global Referral Network is a more innovative initiative than the Dacheng Dentons association itself, in that it smartly focuses on the mid-range market that has been long ignored by the elite law firms, and leverages the existing market power of the two big players to take boutique, specialty, and small and mid-sized firms under its umbrella. This virtually expands the influence of Dacheng Dentons without the obligation and cost of a formally integrated scheme. In addition to this Nextlaw network, other Chinese firms such as Tiance,[158] Boss & Young[159] and Zhonglun W&D[160] have also followed suit and each created its own law firm network.

It is worth pointing out that the Chinese government, consistent with its image as an interventionist nation-state in professional regulation, also takes a highly supportive position in encouraging the Chinese legal service providers to "go out". In an official policy paper jointly issued by four ministries at the end of 2016,[161] the government has coined four major areas where Chinese lawyers can compete with foreign lawyers in a global context. More specifically, they are expected to provide the related legal services for: (a) significant development strategies of the state, such as the One Belt, One Road initiative; (b) Chinese firms and citizens outside China; (c) China's diplomacy policies and practices; and (d) cracking down on international crime.[162] When it comes to law firms, more specific implementing measures are also under development, such as setting up in three years time at least 30 representative offices in countries along the "One Belt, One Road", and fostering cooperation and business alliances between Chinese and foreign law firms through the help of bar associations.[163]

But beyond such high-profile governmental support, what are the other forces that have led these Chinese corporate law firms to internalize? Without a doubt, clients play an important role there by virtue of demanding global approaches to professionalism.[164] As pointed out above, inbound investments into China from foreign corporations constituted much of the high-end corporate legal work during the 1990s and mid-2000s, which effectively accelerated the transformation of domestic law firms from small, state-owned firms to large and

sophisticated partnerships.[165] After the 2008 financial crisis, however, Chinese clients have become increasingly important sources of business for both elite Chinese law firms and their international collaborators, thanks to the aggressive outbound investments of Chinese companies, especially SOEs.[166] As a matter of fact, the balance of power in the Chinese corporate legal market is already shifting towards the increasing dominance of elite big Chinese law firms.[167] The need to serve the related legal needs of these Chinese corporations as they go abroad is thus the endogenous reason propelling the internalization of Chinese law firms.[168]

Thus far, it can be argued that the internationalization of Chinese law firms has shown patterns of "client following" and "market seeking", which are the initial two stages of the organizational strategies of GPSFs.[169] The third stage, i.e. market making, involves deeper integration into the global context, where GPSFs become active agents in the institutionalization of new transnational regimes.[170] Based on the existing empirics, Chinese law firms do not seem to have reached that level yet, but have nevertheless shown inclination towards that direction. An example in support of this observation is that Chinese law firms are nowadays more interested in setting the standards or starting their own alliance, rather than following or joining existing ones. Looking into the future, it is a policy goal of the Chinese government to select and recommend qualified talents to join international economic, trade and dispute resolution agencies as experts, so as to have a leading voice in these supra-national institutions.[171]

V.1.2. Partnership or corporate law firms?

In July 2015, Shandong Deheng became the very first law firm in China to float on an equity exchange, namely, Qingdao Blue Ocean Equity Exchange ("QBOEE").[172] Although Deheng branded this event as a "law firm listing" in its public relations campaigns and pitches to clients, it actually differs in significant aspects from high-profiled precedents such as Australia's Slater & Gordon Ltd (listed in the Australian Stock Exchange in 2007) and the UK's Gateley PLC (listed in the London Stock Exchange's Alternative Investment Market in 2015).[173] Firstly, rather than a normal stock exchange, QBOEE is only a regional over-the-counter market limited exclusively to sophisticated investors. Secondly and more importantly, with the debut on QBOEE, Deheng did not do an initial public offering but rather raised funds through a very narrowly defined private placement, open only to the internal professionals working in the firm already.[174] Apparently, these arrangements directly result from the regulatory restrictions in Chinese law, i.e. law firms must be organized as partnerships, which then must be owned by licensed lawyers.

Although Deheng's flotation on QBOEE might seem like a mere "word game" played by a local Chinese firm with the aim of making itself sound "trendy", this small experiment actually raises some challenging questions with regard to the

organization and financing of law firms. As discussed in Section II, the theoretical rationale for law firms to be organized as partnerships is that the key asset thereof is the long-term relationship with clients, which is neither tangible nor firm specific. This said, partnerships find it difficult to raise substantial loans and investment capital. While this was not much of a problem in the past when the law practice was still small and did not have significant capital needs, things are no longer the same for most of today's big law firms.[175] One important reason for such difficulty is that a law firm lacks a firm-binding asset to be sold to attract and retain outside investors, and thus can only obtain equity financing from lawyer-partners.[176] However, because law firms are essentially work cooperatives whose income is generated by highly mobile professional employees, such equity does not exist beyond the exit for death of partners. This may give rise to short-termism. Conversely, if there are indeed some interests that law firms can sell to outside investors, the existence of firm-specific permanent equity may help to correct the short-term vision of law firms.[177] Partners will be more willing to invest time in training and supervising young lawyers, knowing that they will eventually benefit as the shareholders of the firm even if they retire at some point in the future.[178] This is beneficial to the aim of defending the reputational bonding model of the big law firms, which actually stems from the rigorous monitoring and screening that they offer to their lawyers as a promise of the high quality legal service.[179] On a practical note, it is also submitted that as many of today's legal services are in fact becoming highly standardized, they could be commoditized to form a basis for law firms' assets so as to attract outside financing of law firms.[180] From the perspective of junior lawyers, being able to own a share of their firm's equity and thus be part of its future growth can also incentivize many of them to stay longer with the firm, even if the majority of them cannot or will not make it to the partner level given the up-or-out tournament.[181] As a matter of fact, this is one of the goals that Deheng wanted to achieve with its QBOEE private placement: by introducing employee ownership across its partners, of counsels, key associates and outstanding administrative staff, the firm aims to keep its important human resources and let them share its long-term growth.[182]

While apparently not every law firm is able or willing to embark on the same route as Deheng and quote its equity interest on an exchange, there are nevertheless other creative solutions to circumvent the explicit regulatory restrictions in Chinese law on the legal form and capital structure of law firms. At least two other examples are also worth mentioning here. The first example is Yingke. Yingke is a leading Chinese law firm that has been rising at a stunning speed in recent years. Two important reasons are identified to be attributable to such rapid expansion. On the one hand, Yingke adopts a "professional managers" system where a separate tier of "managing partners" is retained. Despite being licensed lawyers, these partners do not practice law themselves

but only manage the other lawyers in the local office. Their work is essentially renting office spaces to lawyers and managing the office's case sources and daily administrative affairs. If the office loses money in a given year, the manager would cover 15% of the loss out of his/her own pocket.[183] For the practicing lawyers, they can choose to be compensated by a fixed salary, or according to a commission system.[184] In the latter case, a lawyer only pays an annual management fee to the firm, which is a modest fixed amount in case of a non-partner lawyer and 5% of annual billings for a partner, and keeps the rest for him/herself.[185] On the other hand, Yingke largely eliminates the traditional equity partner tier. Except for a few partners in Beijing, all other lawyers, whether they are titled as associates or partners, sign employment contracts with the firm which exclude them from sharing the firm's profits or equity.[186] These two arrangements, plus the fact the Yingke received a large amount of capital from non-lawyer investors,[187] exhibit a drastically different model of law firm operation. The voting power of partners is determined by the amount of capital investment into the firm, rather than by the "one partner one vote" rule. The firm is operated under the belief that the law is a business rather than a profession.[188] As such, traditional notions of equality, professionalism and collegiality are thus not very much manifest in Yingke; and the firm is actually more akin to a corporation in practice despite the fact that it is still a partnership by its legal form. True, Yingke has been frowned upon by other legal practitioners for its lack of collegiality and poor visibility in the high-end legal services market.[189] Nevertheless, one must still admit that without such a capital-centered hierarchical business model, it couldn't have grown into what it is within such a short period of time when it does not have much of a historical reputation like the other prestigious Chinese corporate law firms.[190]

Another Chinese law firm, namely Duan & Duan, has also reached that end, though via a different route. Faced with the infeasibility of granting lawyers with (permanent) equity incentives with the legal form of partnership, the firm has invented a creative "parallel equity" system. To begin with, some of the firm's founding partners pooled their capital to set up a company, which specializes in entertainment and media related business investments.[191] Upon passing certain performance thresholds, a partner is entitled to receive a certain amount of shares in this investment company, calculated in such a way as to correspond to his/her performance in the firm.[192] It is worth noting that such parallel equity in the investment company does not compete with the partner's equity in the law firm and a partner can get both.[193] Unlike the equity interest in the partnership, the investment company has its independent legal personality and thus can offer permanent equity, which can survive a partner's retirement from the law firm. If the partner however leaves the law firm before retirement, he/she must first return his/her shares in the investment company.[194] On a further note, the investment company is not merely a special purpose vehicle. Rather, it has actively made investments in the film and TV industry, including

two popular TV dramas about lawyers.[195] Arguably, by creating parallel permanent equity in an entity other than the law firm itself, Duan & Duan manages to offer an effective incentive device to its lawyers to encourage them in making long-term investments into the firm, while innovatively circumventing the mandatory requirement that a law firm must be organized as a partnership.

Taken together, the examples of Shandong Deheng, Yingke and Duan & Duan show that the mandatory requirement that a law firm must be organized as a partnership does not mean that it will have a true partnership ethos in practice. Without breaching the regulation, the three law firms have creatively worked out different solutions to effectively deviate from it. While these three cases are certainly not yet sufficient for one to argue in favor of the concepts of "corporate law firms" and "firm specific equity", as the sustainability of these practices is still to be observed for the longer term empirically relative to the "partnership law firms", they nevertheless open up the window for discussions on these issues. To say the least, one may already question the necessity of compelling a law firm to organize itself as a partnership, when the efficacy of such a requirement can be significantly discounted in practice.

V.1.3. Legal services vs. multidisciplinary services

Innovative solutions have also emerged when it comes to law firms providing non-legal services. Deheng is again the example here. While trying to get quoted on an equity exchange is already a remarkable step for the firm, it is actually not the first attempt by Deheng to try to test the regulatory waters. Distinguished from most of its peers in China, Deheng operates two parallel law firm brands, namely, Shandong Deheng (the one quoted on QBOEE, only for business within Shandong province) and Beijing DHH (for all other China business outside Shandong province and overseas business) under Deheng Law Group Company Limited, which is officially registered in Hong Kong.[196] The reasons for such parallel operations are largely historical: Deheng originally started out as a regional firm in Shandong in 1993 and has largely established itself as a market leader in the province. In 2008, it relocated a significant portion of its business in Beijing to embark on an ambitious expansion strategy. However, because of the MOJ's restriction on using the word "group" in the name of law firms,[197] Deheng had to register itself under Hong Kong law to maintain the group management structure.[198]

But Deheng Law Group is not merely about maintaining two parallel law firm brands. More importantly, it already builds up a semi-multidisciplinary business, covering an intellectual property agency firm in Beijing and a school providing vocational legal trainings in Qingdao next to its legal practice.[199] Although both of these two side businesses are still law related, this already starts to look like the hybrid business explorations of big law firms like Allen & Overy,[200] in a sense that related services can be easily integrated with assured consistency in quality and thus help to establish stronger bonds with

clients.[201] It certainly qualifies as an innovative initiative within the current regulatory framework in China, where law firms must just remain law firms and nothing else – they cannot be owned or controlled by non-lawyers in the upstream, nor can they adopt a group structure to own/control non-legal services in the downstream.

V.2. Innovation from the other legal service providers

In today's world, information technology ("IT") is profoundly changing people's lifestyle in so many ways, and legal service provision is certainly no exception. Motivated by the role models of LegalZoom and the like, Chinese entrepreneurs have quickly realized the great potential of alternative models of legal service provision, which can either be based on or derive from this technology. As such, they have made a series of interesting attempts that contribute to refining the traditional law practice. This section briefly depicts two important new trends, namely, online legal service provision and a new generation of legal outsourcing.

V.2.1. Online legal service provision: technology as matchmaker

For many people, the impression about online legal service provision still stops at specialized legal search engines, portals selling contract templates and legal information resources, and law related discussion forums where lawyers provide brief answers to the questions asked there in the hope of generating potential deal flows. The business model of such traditional online legal service providers is rather straightforward. The Internet is used for the most part only as a platform on which the suppliers and potential users find each other. There is no matchmaking, and the real transactions, i.e. the provision and payment of legal services, happen offline.[202] Along with the maturing and penetration of the relevant technologies, legal service websites have also evolved. Things are different in the new generation of online legal service providers, which offer a much higher level of resource integration and real-time matchmaking.[203] An illustrative example is the mobile phone app Pocket Lawyer (www.pocketlawyer.cn).

Basically, the app runs a platform on which registered users can place and pay for orders for legal services using standard forms and at competitive transparent prices. Similarly, licensed lawyers can also become registered users on the supply side, upon submission of the relevant documentation showing their credentials, on which the Pocket Lawyer will conduct a formal check. More importantly, every registered lawyer is asked to deposit an amount of money to Pocket Lawyer's escrow account, which will be used to cover the potential liabilities in case the lawyer fails to render services to the satisfaction of the users. A user may have different rights depending on the legal service he/she chooses to get. He/she can choose the one desired lawyer from the app's pool based

on the credentials and ratings of the lawyers. But if the case is rather urgent or if the user cannot make a decision, he/she can also choose the "speed service". The system then will, based on the data of the lawyers in the pool, transmit the order to the competent ones located nearby the user to respond. For fixed-price services, the lawyer that comes back with the quickest response will automatically get the order. Otherwise, the lawyer can decide whether the transmitted order is interesting, and if so, respond with a quote for the price. If there is more than one quote, the user has the final say over which lawyer to transact with. Once the order is accepted, the lawyer then should perform the relevant legal services according to the request in the order, be it a telephone consultation, calling a third person on behalf of the user, drafting a contract or attending a business negotiation meeting. In order to guarantee the quality of its services, especially these speed services, Pocket Lawyer enforces a whole set of code of conducts on its lawyers, such as the effective duration of the call, number of mandatory call-backs, the timeframe during which the service must be rendered, etc. A lawyer must fill in a short report form online in order to close a case and get paid. Users are always offered the opportunity to rate the services of their lawyers, and the ratings will be displayed online for the reference of future users.[204]

It is worth noting that Shanghai Bestone, the firm that owns and runs the Pocket Lawyer app, is an IT company.[205] It does not provide legal services itself, but rather integrates the providers of such services and resources on a smartly-designed online platform, so that they can be easily found by and/or matched to potential clients based on pre-defined matchmaking rules.[206] Essentially, it is the technology that does the matchmaking. Its business revenue comes from the fee splitting agreement with the basic telecommunication operators, which charges users directly, because the traffic generated on the platform has to go through the network and facilities of the basic operators.[207]

V.2.2. Online legal service provision: humans as gatekeeper and business conduits

Compared to Pocket Lawyer, other new generation online legal service providers adopt more or less the same conceptual framework of linking and matching upstream lawyers with downstream website users, but they use a rather different manner to do so. Instead of merely presenting the information and leaving all decisions to users (conventional online legal portals), or purely relying on technology to match users with lawyers (Pocket Lawyer), they retain an in-house legal consultant team to serve the roles of gatekeeper and business conduit. Typically, these people are recruited from new graduates and young paraprofessionals, who have legal degrees but are not yet licensed and are limited in experience.[208] Primarily, they are tasked to conduct a *prima facie* review of the submitted cases to identify the major issues and classify the area of law practice. Accordingly, they will then shortlist a number of potential competent lawyer(s) for the users to select from. Once the user makes the

decision to retain the lawyer, legal fees are paid online through the escrow account maintained by the platform, which charges a percentage thereof as a commission fee for the matchmaking and transaction facilitation service.[209] Representative websites implementing such business models include Yifatong (www.yifatong.com), which offers routine legal services to individual consumers and small businesses, and Yingle (www.yingle.com), which focuses on litigation related legal services.[210]

The advantage of such a business conduit model is obvious. Given the inherent information asymmetry, a client is naturally less informed about the nature of the legal problem, the potential remedies, and the quality of the professionals, and thus would find it difficult to shop for skilled and trustworthy lawyers.[211] One without previous legal training may not get effective legal help if he/she merely relies on the very rough specialization areas of the lawyers shown on a portal's website. In this respect, having dedicated consultants to filter and recommend lawyers for them may help to mitigate the information asymmetry, especially when the legal issues are complex and involve more than one law practice areas. However, given the great importance that users may attach to the portals' recommendation, the quality of such intermediation and matchmaking may still leave much to be desired. Among other things, can we comfortably trust that a young new law school graduate with only one or two years of legal experience, and within the few minutes of listening to the user's narrative in the phone call, is able to make the correct diagnosis of the problem, point to the most relevant and efficient specialization(s) of law, and match the user with a list of potential lawyers?[212] Moreover, we also have to remember that a portal is technically not a law firm and the in-house consultants that it retains are not licensed lawyers. As such, can we also comfortably trust that a portal, without being bound by professional ethics, will not prioritize its own interests on top of the users' best interests by connecting them first to the lawyers in the portal's contracted law firms, despite the fact that the legal problem may be solved in a more cost-effective manner by other lawyers?[213] This being said, the limited empirical findings available so far do not seem to provide hardcore evidence for the criticism that alternative business structures will impede lawyers' professional judgment, which still largely remains a hypothesis.[214]

V.2.3. New generation of legal outsourcing

Another innovation in the camp of alternative legal service providers is the emergence of legal outsourcing business. In this sense, China has already been observing the emergence of business models that are analogous to those of Axiom and Thomson Reuter's Pangea3. In essence, these legal process outsourcing ("LPO") firms work with big corporate clients, originally only focusing on rendering low-end legal services such as document review and litigation discovery, but have recently shifted to the provision of a more sophisticated and

integrated set of legal solutions, which both supplement and compete with the hard core legal services provided by conventional big law firms.[215] The LPO firms can retain their in-house lawyer team, like Axiom,[216] but can also act as a human resource placement company by contract and commission outside lawyers to perform the tasks they procure from corporate clients, like Outside GC.[217]

The above largely already describes the legal outsourcing business that Shanghai Bestone does besides operating the Pocket Lawyer app. To be more specific, Bestone's business consists of two major parts, with Pocket Lawyer directed at individual and small business users, and legal outsourcing targeted exclusively at big company clients, such as banks and insurance companies.[218] It is worth noting that the outsourced legal services are not to be offered to the banks and insurers themselves, but are actually intended for their designated customers. These services differ from typical law-firm work, and often involve customer legal education and provision of law information packages. Because Bestone is essentially a technology company specializing in the legal service market niche, it engages law firms and specialized legal talent placement firms to perform these outsourced tasks.[219]

VI. Major findings and regulatory implications

VI.1. The power of the market

The legal profession in China has changed tremendously and many changes are still going on. The first key finding is that many of the innovation initiatives named in Section V above are shaped by the power of the market. This is, however, not to say that China's legal profession has already entered the buyers' market. Quite to the contrary, one may have the opposite opinion if taking a look at the numbers. As of 2012 year end, there are altogether 232,384 licensed lawyer in China, or merely 1.6 lawyers per 10,000 residents.[220] This aggregate number saw a significant increase during the past few years and reached almost 300,000 as of 2016,[221] but that's still against the population base of nearly 1.4 billion. In comparison, the total number of lawyers in the US is over 1.3 million as of 2016, or 40 per 10,000 residents on average.[222] While the US is admittedly an outlier given its unique litigious culture, other high- and medium-wealth Western countries still hold one lawyer in 300–500 residents.[223] Put simply, there are actually too few legal practitioners in China than too many, and they are still very much needed in general.

As such, the more accurate proposition would be that China's legal service market presents a rather discrepant competitive landscape at two extremes. On the one end, the 2008 financial crisis has taught many Chinese law firms to attach greater importance to client needs and satisfaction.[224] The competition for large corporate clients and lucrative business transactions is fierce and will

continue to be so, not only within the club of big Chinese corporate law firms, but also between Chinese law firms and international law firms globally. This has to do in particular with the aggressive overseas expansion of Chinese companies, and the fight for them is an important motivation for Chinese law firms like King & Wood and Dacheng to also go global via various different expansion strategies. In this sense, the balance of power in the corporate legal sector does shift towards the buyers. On the other end, however, many legal needs are not met in the less developed geographic regions and in financially less rewarding practice areas. There, the market generates innovation not through the game of "survival of the fittest", but through a more general demand for access to justice, which needs to be attended through creative ways as conventional ones are either inefficient or insufficient.[225] This is particularly evidenced by the rise of online legal providers which serve as an intermediary to match the supply and demand sides. Although the quality of such intermediation and matchmaking still leaves much to be desired, we cannot be fully confident that Googling, obtaining recommendations from acquaintances or dropping a random visit to a nearby law firm will necessarily provide better solutions to consumers' legal problems. Therefore, it is arguable that the most significant contribution of these portals is that they help to improve access to justice in China, by virtue of offering an extra channel of acquiring and comparing potentially useful information in searching for legal help.[226]

VI.2. More versatile ways of legal service provision

Propelled by the market demands and benefiting from technological advancements, the provision of legal services has become so versatile today, going beyond the office of lawyers. This finding carries two-fold implications. Firstly, the term "legal service" has developed a much richer connotation, covering not only hardcore law firm work, but also those services that are related to or derived from it. These services may still be legal in nature, but may also be only marginally law-related. A frequently stated concept here is the so-called "service unbundling" – such as unbundling legal work from non-legal work, or complex, sophisticated work from routine, standardized work.[227] This said, it is also to be admitted that given the complexity and sophistication of modern business transactions, it is not always possible or economically efficient to separate the services. In this light, legal outsourcing firms and various multidisciplinary consultancy firms have been sharing the market with law firms for years, such as by offering legal services as a side but integrated part of a hybrid professional advice package,[228] or by tapping into those simple or derivative legal services that big law firms would or could not do by themselves. The same is also identified in China recently, and the example discussed in this paper is Bestone. But incumbents certainly do not want to stand passive and simply let the alternative providers invade their territory. In fighting back, innovative Chinese law firms

have employed creative ways to circumvent the regulatory restriction that law firms may not engage in other business activities than legal service provision. The examples in this paper are Deheng and Duan & Duan.

Secondly, even for those true legal services, people can access them through other channels, especially online. Admittedly, law firms and lawyers are still the actual service providers here, which are matched with the users through the intermediation of the online legal service portals. From this perspective, these portals bring about two-way benefits: on the one hand, they facilitate an easy channel for individual consumers and small-and-micro businesses to access legal services; on the other, they also connect solo lawyers and small law firms to a reliable source of potential clients. In a bigger picture, pooling lawyers with different specializations onto a platform in effect equals setting up a virtual all-service law firm, which can afford to offer services at very competitive prices thanks to the costs saved from doing business online. This helps to consolidate the lower-tier supply side of the legal market and generates an economy of scale.[229] In this sense, the platform economy model is disruptive to physical law firms, because it diverts many transactions from offline to online, thus reducing the need for people to visit brick-and-mortar law offices.[230]

VI.3. Reflecting on the current regulatory framework

The findings and discussions presented above provide a new angle to examine the restrictive regulations imposed on the legal form and ownership structure of law firms in China. To be sure, these issues have already been debated for years, generating loads of arguments both in favor[231] and against.[232] It is not my intention here to go further in that direction and try to argue which side has more merits. After all, proper judgment cannot be made without empirical knowledge on how the innovative initiatives work and how they are accepted in practice, which is beyond the scope of this paper. This being said, the market realities observed thus far can already lead one to question the efficacy of the regulations. On the one hand, the most entrenched incumbents in the legal industry, represented by some of China's top tier corporate law firms, have creatively incorporated various key corporate features in financing and managing the partnerships, cutting into the traditional values of equality and collegiality. As a result, the mandatory partnership requirement is carefully circumvented on a *de facto* basis, and is thus rendered toothless. On the other, a lawyer's office is no longer the only destination for the ones in search of legal services, which can be accessed from many alternative service providers. Because they are technically not law firms, the exclusivity requirements on lawyer ownership and legal service provision are not applicable to them, thus are not triggered in the first place.

On a further note, the case of online legal service portals shows that alternative providers nowadays have started to offer substantively similar legal services

as law firms. Contrastingly, however, they are free to bring in private equity investors, issue equity incentive plans to their employees, or raise money from the public stock market, just because they are technically not law firms and thus can organize themselves as corporations. Confronted with such competitive pressure, law firms are not even able to fight back properly, as they are prohibited from availing any of these tools given the business form and ownership restrictions unless they decide to make a *de facto* deviation from them in the first place. In this sense, these regulations work more as an extra burden, despite the fact that they are originally intended as an extra safeguard of lawyers' professional integrity. Therefore, maybe it is now the time for China to start reflecting on its restrictive position on the regulation of law firm legal form and ownership structure. This is arguable not only because deregulation may bring about potential benefits such as broadened finance sources and improved access to justice,[233] but also because the intended effect of the mandatory restrictions are significantly discounted in practice anyway. In particular, the Ministry of Justice should realize that its power cannot reach every corner, just as it has failed to prohibit a consulting company from hiring a number of lawyers to do preliminary legal consulting on projects.[234] Fundamentally, firms cannot survive in the long run unless they manage to listen and cater to the needs of their customers, including by building their reputations for long-term fair dealing.[235] In this reasoning, liberalizing legal form and ownership restrictions may even be truly beneficial, if, based on the relevant future empirical research, it is motivated by the changed client needs in the first place.

VII. Conclusion and future research

The legal profession in China is heavily regulated. In a fragmented market, lawyers co-exist not only with local peers, but also with foreign law firms and other separately-licensed legal service providers. But this is not yet the whole picture of the competitive landscape. Based on a description of the current regulatory framework and its evolution, the paper goes on to provide a state-of-the-art sketch of China's legal profession, in particular the latest innovation initiatives and alternative business models, which happen simultaneously among the law firms as the incumbents and the other legal service providers. It finds that the latest developments in China's legal profession in general converge into the similar trends as seen elsewhere in the world, tilting the market towards the buyers' side. Along with China's increasing weight and deepening involvement in the world's economy, the globalization of the Chinese legal profession has included not only the creative destruction of national barriers and the restructuring of the indigenous legal profession, but also the outward expansion of local law firms and their clients onto the global stage.[236] The current wave of leading Chinese corporate law firms avidly expanding themselves overseas, even creating mega global law firms on the one hand, and the various creative

collaboration modes between Chinese law firms and their foreign counterparts on the other, are vivid examples of this finding. This said, there is still an acute demand for access to legal services when it comes to small-and-micro businesses and individual consumers, whose legal needs are typically of small financial value and thus are not the targeted clientele of high-end service providers. As such, the new generation of Internet-based legal service portals serve to provide an effective alternative to improve access. Instead of being organized as traditional law firms, these sites are founded and financed by non-lawyers, and have rather adopted various creative business models which pose new challenges to China's restriction on non-lawyer ownership. Such creative innovations are met with similar initiatives from the incumbents as well, when some of the top tier law firms in China have also creatively deviated from the traditional partnership legal form and incorporated key corporate features in running the business and compensating partners. As such, this paper argues that it is now the time for China to start reconsidering its restrictive position on the regulation of law firm legal form and ownership structure, since the intended effects of the restrictions are significantly discounted in practice anyway.

In conclusion, it is worth noting that this paper is only the start of a series of potential research, and the questions it raises outnumber the ones that it can answer for now. For example, although this paper is more inclined towards the liberal regulatory approach, it does not touch upon how far China should go in that direction. With regard to the spectrum of the existing regulations by different jurisdictions, where should we position ourselves? Should we only allow non-lawyer ownership in law firms which must still only provide legal services, or should we embrace full-fledged multidisciplinary services? Based on the existing experience from other jurisdictions, what regulatory devices are effective and thus can be borrowed into China? What else can be done in order to strike the right balance between mitigating the information asymmetry in the legal services market and correcting potential market failures one the one hand, and encouraging competition and safeguarding access to justice on the other? All these questions certainly warrant future research, which should start first with a deepened empirical investigation into China's legal profession within the already changed competitive landscape.

Notes

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of Ethics 20/20 Concerning Multijurisdictional Practice of Law and Alternative Business Structures (July 2011), at 3. Available at: http://www.brak.de/zur-rechtspolitik/stellungnahmen-pdf/stellungnahmen-europa/2011/juli/position-of-the-brak-2011-47.pdf (submitting that under German law, it is prohibited for non-lawyers to own law firms, subject to very limited exceptions for certain multidisciplinary partnerships. The ABS firms under the English regime are believed to be "a serious threat to the independent professional judgement of the lawyer employed by such a firm").

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19. Empson, *op. cit.*, at p. 12.
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25. Martin-Rhodes *et al.*, *op. cit.*, at 18. In particular, it is submitted that the override on complete liability limitation typically takes the form of security requirements that impose vicarious liability when the entity fails to take out sufficient malpractice coverage.
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out that "many ABSs currently in the sector do not differ greatly from traditional firms … The motivation for many of these firms to seek ABS status has been to bring non-lawyers into senior roles within the firm, rather than to apply a fundamentally different business model or seek external capital for investment").

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224. Li & Liu, *op. cit.*, at 2860.
225. 刘音杰 & 冯莉 [Y. Liu & L. Feng], *法律援助服务质量探析* [*An Inquiry into the Quality of Legal Aid*]. Available at: http://www.chinalegalaid.gov.cn/China_legalaid/content/2017-05/31/content_7186566.htm?node=40883 (submitting that quality of legal aid in China often does not live up to expectations).
226. J. Li, *op. cit.*
227. See J.S. Dzienkowski, The future of big law: alternative legal service providers to corporate clients (2014) 82 *Fordham Law Review* 2995, 3015.
228. See C.W. Wolfram, The ABA and MDPs: context, history, and process (2000) 84 *Minnesota Law Review* 1625 (discussing how the world's largest accounting firms and others offer legal services through different forms of multidisciplinary practice models); and also Dzienkowski, *op. cit.*, at 3001 (pointing out that "for many years, management consulting firms, investment brokerage firms, banks, and other entities have delivered legal services and products in connection with their nonlegal businesses").
229. J. Li, *op. cit.*
230. *Ibid.*, at 152.
231. For academic research in favor of deregulation in the organizational and ownership structure of law firms, see e.g. Ribstein, *op. cit.*; G. Hadfield, The cost of law: promoting access to justice through the (un)corporate practice of law (2013) 38 *International Review of Law & Economics* 43; E.S. Adams, Rethinking the law firm organizational form and capitalization structure (2013) 78 *Missouri Law Review* 777; Dzienkowski,

op. cit.; and McMorrow, *op. cit*. All of these research papers argue for a more liberalized approach in the US on the capital and ownership structure of law firms.

232. The ABA largely represents the voice when it comes to the arguments against non-lawyer ownership and multidisciplinary practice. See, for example, ABA Commission on Ethics 20/20, *Summary of Actions by the ABA Commission on Ethics 20/20*, (28 December 2011), at p. 7. Available at: https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20111228_summary_of_ethics_20_20_commission_actions_december_2011_final.authcheckdam.pdf (submitting that the Commission has rejected the proposals to amend the Model Rules to allow non-lawyer ownership of and investment in law firms). See also N. Robinson, When lawyers don't get all the profits, non-lawyer ownership of legal services, access, and professionalism (2016) 29 *Georgetown Journal of Legal Ethics* 1 (questioning the impact of ABS on improvement of access to justice). For a summary of the arguments from both sides, see The ABA Commission on the Future of Legal Services, *For Comment: Issues Paper Regarding Alternative Business Structures*, (8 April 2016), pp. 7–11. Available at: http://www.americanbar.org/content/dam/aba/images/office_president/alternative_business_issues_paper.pdf
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234. Liu (2011a), *op. cit.*, at 292.
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