

CONTENTS

<i>Preface</i>	v
<i>Introduction: Sino-Foreign Joint Ventures in China</i>	vii
Chapter 1	
Legal Developments in China: Law and Society Developing Together	1
<i>(Mary L Riley)</i>	
A Legal System Under Development	1
The Inconveniences of Operating in China	2
Law with Chinese Characteristics	2
A Practical Understanding of the Legal Environment in China	3
What is Special about Chinese Society?	3
Comparisons with the Legal System in Hong Kong	4
Chapter 2	9
Directors' Liability in China	
<i>(Mary L Riley)</i>	
Directors' Duties under the Company Law	10
Liability of the Company	13
Acts that are Ultra Vires vis-à-vis the Business Licence	13
Acts that are Ultra Vires vis-à-vis the Land Use Right Certificate	14
Acts that are Ultra Vires vis-à-vis the Articles of Association	14
Civil Liability of a Company	15
Liability of a Company Under Administrative Regulations	15
Possible Criminal Liability of a Company	15
Employees and Accidents	17
The Liability of the Legal Representative of a Company	20
Lawsuits from Employees	21
Dealing with Accidents	22
Inspections	22
Supervisors	23
Examples of Liability for Workplace Accidents	24
Conclusions	24
Chapter 3	26
Environmental Liability	
<i>(Mary L Riley with research assistance from Anna SF Lee and Liu Shan)</i>	
Environmental Safety from the Start	26
Criminal Liability for Failure to Follow Environmental Regulations	27
Administrative Liability	28
The Chemicals Industry	30

The Problem with Pollution Control in China	32	Valuation of Tangible Assets	79
Cases	33	Valuation of Intangibles	83
Conclusions	38	Valuating Cash Assets	83
Chapter 4 Liability Arising from Technology Transfer into China	40	Demarcating State-Owned Assets	85
<i>(Mary L Riley)</i>		Title	88
What is Technology Transfer?	40	When Differences of Opinion Occur Over Valuation Results	89
Chinese Technology Legislation	41	Chapter 7 Risk and Liability Hiding in China's Property Market	90
Warranties	41	<i>(Mary L Riley and Asa Jansson)</i>	
Restrictions on the Recipient, Restrictions on the Supplier	42	General Introduction to the Chinese Property Market	90
The Statutory Warranties and Restrictions Do Not Really Protect the Customer	43	Issues to Keep in Mind when Analysing China's Property Legislation	92
The Examination and Approval Process	44	Detailed Background Considerations	93
If the Guidelines Pose Negotiation Strategies, What Can a Foreign Supplier Pose in Reply?	49	Summary of Issues Applicable to Enterprises with Foreign Investment	94
Contract Law Issues	49	Land Ownership in China	94
No Misrepresentation	52	Registration of Ownership and Land Use Rights	95
Cases	52	The Land System in Shanghai	103
Conclusions	58	Dispute Resolution	104
Chapter 5 Product Liability	59	Land Title as a Basis for Commerce in Real Property	105
<i>(Mary L Riley and Asa Jansson)</i>		Liability Generated by Advertising Real Property in China	106
The Legislative Basis for Strict Product Liability	59	Land Use Inspections	109
Standards	60	Foreigners Putting Up Buildings in China	111
Civil and Administrative Liability of Manufacturers	61	How to Do It	113
Labelling	62	Chapter 8 Advertising in China	118
Civil and Administrative Liability of Retailers	63	<i>(Mary L Riley and Asa Jansson)</i>	
Procedures for Disposing of Substandard Goods	64	Liability Generated Through Advertising	118
Civil and Administrative Liability of Transport Operators	65	Forbidden Content	118
Civil and Administrative Liability of Marketing Firms	65	The Approval Process	121
Importers	66	How to Certify the Accuracy of the Content of an Advertisement	122
Implied Product Warranties	66	The Advertising Law of the People's Republic of China	122
Express Warranties	67	The Scope of What Constitutes an Advertisement	127
Consumer Protection	68	Outdoor Advertising	130
Exclusion Clauses	69	General Comments about Local Advertising Legislation	139
Special Provisions for Sensitive Industries	69	Chapter 9 White-Collar Criminal Liability in China	141
Penalties	70	<i>(Mary L Riley and Asa Jansson)</i>	
Sources of Product Liability	74	What Constitutes a Crime in China?	141
A Manufacturer's Defences	75	Infringement of Intellectual Property Rights and Criminal Liability	143
The End-User Need Not Find the True Culprit	75	Criminal Procedure	150
Conclusion	76	Investigations	151
Chapter 6 Avoiding Losses Through Asset Valuation in China	77	Defence Counsel	156
<i>(Mary L Riley)</i>		Conclusion	157
The Principles Behind Asset Valuation	77	Chapter 10 Civil Liability	158
Practical Considerations with Respect to Valuations of Assets to be Invested into a Sino-Foreign Joint Venture	78	<i>(Mary L Riley)</i>	
		A Court System that is Not Independent	158
		Avoiding Civil Liability	161

Mediation	162
Legislative Sources	163
Other Sources of the Civil Law	165
Contract Issues	166
Administrative Agencies	166
Conclusions	167
Index	169

Chapter 1

Legal Developments in China: Law and Society Developing Together

The law must serve the society. Not the other way around.

This principle is understood rather well in China, and effort has been put into making the rule of law a constructive one, rather than a traditional one. While much has been learned from examination and study of foreign legal systems, Chinese law-makers have also put much thought into structuring a rule of law by and for China. It is because the Chinese legal system is very much a system of law with Chinese characteristics that foreign businesses and their advisors must be careful not to jump to conclusions about how things are in China. The only way to really understand Chinese law is to understand Chinese society, or at least the Chinese business environment.

People who study Chinese society come to this study from very many standpoints. The basic assumptions vary greatly, and of course the choices of basic assumptions determine the conclusions reached. This book is based on experience gained from helping foreign investors set up business transactions, resolve disputes and pull out of China. On this basis, the book is very much directed to the foreigner. Chinese people study their own laws for somewhat different purposes, and of course reach somewhat different conclusions. Even though perhaps the conclusions or observations set out in this book might be of interest to Chinese nationals, they are written for the benefit of foreigners who wish to set up and properly manage businesses in China.

One can relay observations on the business environment in China without reaching conclusions such as whether foreign business is good or bad for China. However, it appears that the growing interaction between China and world, through healthy business relations, has been beneficial for all parties concerned.

A Legal System Under Development

This interaction has taken place during a time of growth and development of China's legal system. It is almost never possible to comment accurately on the Chinese legal system because it is almost never possible to quite determine where that system has gotten to. High quality legislation is produced well ahead of its assimilation. Reading the legislation alone, one concludes that the legal system is soundly based. Looking at enforcement alone, one concludes that the legal system is poorly assimilated. Which conclusion is accurate; which conclusion should determine the answer to one's questions?

China's legal system as such is already rather well developed. Human rights in the occidental sense are another matter. China has redefined human rights as the right to eat and congratulates herself on meeting minimum requirements. Due process is not a right in China the way it is in the United States, nor is transparency of official action, or official accountability.