

➤ Edito:

Legal competitiveness

The campaign launched recently on the basis of the « law made in Germany » brochure (www.lawmadeingermany.de) is energetically being prosecuted to impress upon German and foreign entrepreneurs the importance of a legal component to business strategies. Several dozen information meetings have already taken place in many countries, which demonstrate a growing awareness of this reality amongst decision-makers. In France, Mr Prada, the former head of the financial services supervision entity, has been entrusted jointly by the ministries of finance and justice with a mission to report on the legal competitiveness of Paris. Next to an appraisal of the specific issue of arbitration, the mission brief focuses on the place legal issues take in business policies, as expressed by the implication granted to legal professionals. An increasing number of initiatives worldwide thus confirm the linkage between economic growth and the impact of legal services.

There was however nothing self-evident in this new notion of legal competitiveness. Two reasons may explain this situation, which are largely cultural in nature. Deep respect for law, in the formal sense of the word, tends to equate it with the best rule available at a point in time, as it is by nature the democratic expression of the people's will as well as the norm that supersedes any other. It therefore simply should be instrumentalized by a competition with any other rule, be it national or foreign. The historical repugnance to mix up commercial considerations with justice is another dominant characteristic amongst our legal professions. The clear refusal to make a commodity out of law and justice permeates their everyday practice. It is quite apparent that any change of approach in this respect is dictated by the influence of common law customs, which seem far less under the influence of such scruples.

Such a change is nevertheless doomed if it is restricted to the simple imitation of what is done elsewhere. Copying illustrates a clear lack of imagination and competence. Quite to the contrary, efficiency lies in accepting to be challenged to change without reneging on core values. For our legal systems, this amounts to accept the fact of legal competition through the promotion of their specific performance with those who choose the rules applicable, be they public administrations or businesses. For instance, this is the reason why our Foundation is currently working to illustrate the legal competitiveness of continental law through the drawing up a world index based on the notion of legal certainty. Contrary to the old saw of the « flexibility » of a given set of rules, which all too often barely conceals legal instability and brute force, a quest for legal certainty is the adequate answer to the need for trust to feed the development of economic exchanges and therefore growth.

The Foundation Website, new version www.fondation-droitcontinental.org

The Foundation's new website has been live since November 15, 2010.

With this new site, designed with the latest technology, and its intuitive and user-friendly navigation, allowing immediate access to information organized and generated by analytical documents, the Foundation has three objectives in mind:

- To provide information on the Foundation's activities and report globally the latest news related to continental law,
- Offer discussion groups and joint work space to internet users and target communications by major geographical area. A key innovation is the creation of separate, independent platforms in five foreign languages (English, Arabic, Spanish, Chinese and Portuguese). Each of these languages will be gradually supplemented, especially by Foundation members who sit on our Scientific Board..

With the Foundation's new permanent office in Brussels, one page will be fully dedicated to Europe as early as the end of the year.

Site : www.fondation-droitcontinental.org

Washington Conference, November 29 and 30, 2010



November 29 and 30, 2010: The Foundation is organizing a 2nd Conference in Washington on the topic of evidence as an element of legal certainty.

The format of this Euro-American meeting will be a two-day seminar, including debates and practical case studies conducted by legal professionals and supplemented with a more academic approach.

Li Bin, First Prize for Thesis



The First Prize for Thesis was awarded to Mr. Li Bin, on Thursday, October 14 at the French Embassy in Beijing, for his thesis on «Property Protection in China - Transformation of Domestic Law and the Influence of International Law ». This ceremony was organized with the support and participation of Mr. Hervé Ladsous, French Ambassador in Beijing.

Chinese delegation visit to Paris, from December 5 to 11, 2010

From December 5 through 11, as part of the partnership created between the French Embassy in Beijing and the **Chinese Ministry of Environmental Protection**, the Foundation will host a 7 person delegation lead by Mr. Chaofei Yang, Head Engineer for Nuclear Safety with the Ministry of Environmental Protection. The purpose is to share French expertise with the Chinese Ministry and more generally, to establish the advantages of continental law for codification of environmental law.

The program is currently being modified and will address the role, the rights and obligations of each type of actor such as the State, the citizen and the corporation.

Publication of a sukuk FAQ by the AMF (the French financial market regulatory agency)

On October 27th, the AMF (the French SEC) announced the publication of **an FAQ on drafting a sukuk prospectus (Islamic bond)** and the practical steps to obtain approval for trading on a regulated market. This guide, whose English version should be available soon, will be useful for all professionals wanting to issue a sukuk in France in compliance with European law. Publication of this FAQ constitutes an important step under the objectives set by the High Committee in place to advance the development of Islamic financing in France.

Access to the document:

http://www.amf-france.org/documents/general/9663_1.pdf



China's Stake in Today's Legal World.

Gérard Tavernier,

Foundation Administrator, member of the Jury for the best thesis on China, Honorary Counsel

Several articles published by the Foundation for Continental Law indicated the respective weight, in terms of the population they govern, of various major legal systems in the world. The Foundation was born, moreover, from comments which arose during the bicentennial observance of the French Civil Code and the conviction that legal rules defined in France at the beginning of the 19th century and adopted by many countries on the five continents remained fundamentally well suited to the organization and proper functioning of these societies. Successive contributions to the initial set of laws, oftentimes positive, occurred in several countries, particularly in Germany, France and Switzerland. But changes to law did not alter the feeling of community felt by the legal professionals who implemented these rules.

Now that China, on March 15, 1999, has adopted contract law clearly inspired by civil law, their conviction of the coherence and success of this system of rules prompted a visit to Paris in 2000 by Mr. Cao Jianming's , at the time Vice-president of the Supreme Court of the People's Republic of China (1). Prime Minister Mr. Jiang Zemin had tasked him with the mission to formulate and start implementing a reform project for the training and mobilization of Chinese legal institutions, still recovering from the Cultural Revolution, and proved the project with significant initial funding (2). The choice among legal systems, especially including legislative ones, was naturally a major issue.

During a fascinating meeting with Mr. Jianming and some of the partners of the firm which I led at that time (3), , I presented him with our own "little red book" (4) and we discussed, with commentary on its most frequently cited section, Article 1382,, :

- The unifying role that this text, wonderfully well written and easily understandable by judges and litigants, has played over the years in harmonizing the rules applied in those countries with regard to civil liability,
- The scope it leaves to a judge to adapt the law as laid out to the specific cases the come before him, as illustrated by dozens of pages of jurisprudence cited in this Article.

Our young and brilliant visitor, already well informed, saw in concrete terms the usefulness of this approach to his assignment and requested that we provide him with a proposal (5). In the absence of comprehensive help from national governments (6), various legal institutions of the continental law system (7) became involved in cooperative projects (8) for the implementation of new codified rules as well as for training programs. Despite a few setbacks, the cooperation among universities has been growing over time, though we would like to see the quantity and quality of these exchanges improve.

The award granted by the Foundation for Continental Law, for the first time this year, for the best legal thesis on a subject addressing the development and outlook for development of Chinese law, in all fields, is a constructive and positive step toward the mutual understanding of the legal problems specific to the countries in question in the subject areas addressed in the thesis. Four were presented to the jury (9), three defended in France and one in Great Britain. They ranged in quality but in general were very in depth, highlighting the value of the comparative legal research conducted and the encouragement given to China to adopt certain legal rules or practices arising mostly (but not exclusively) from continental law. The thesis defended in Paris by Mr. Li Bin was clearly the best one. Let's hope that in the years to come, we will see work of comparable quality.

A legal professional from continental Europe reading the various laws adopted by China since the beginning of this century, will them quite familiar, particularly:

- The law on corporations of October 27, 2005 which includes concepts and institutions much closer to those systems in place in continental Europe than the Hong Kong model,
- The law on property of March 16, 2007, which took effect on October 1, 2007, a law on which French notaries had been consulted,
- The law on employment contracts of June 29, 2007, which took effect on April 1, 2008.

It is obvious that, given China's great rise to power and the historical observation that legal rules must generally evolve toward those adopted by the most important political and economic power, the continental law countries understand their interest in multiplying their exchanges with Chinese legal professionals so that their country's rules are defined by reference to, or evolve toward, their own legal principles.

(1) He is today President of Chinese Court System.

(2) Over 200 million Francs.

(3) Gide Loyrette Nouel.

(4) The Civil Code in the Dalloz edition, in the small format of that time.

(5) The scope of the proposed task, proved to be too daunting: participating in the training of over 200,000 judges!!

(6) What we understood with regard to France given the scope of the task and the Chancellery's available funds and staff.

(7) Including Canadian.

(8) One of the most successful projects is the creation by French Notaries of a Notary school in Shanghai and regular visits by French Notaries to various Chinese cities to present the manner in which they provide, through their services, certainty and transparency to transactions. In addition, the French Notaries were consulted by China regarding the implementation of recent texts related to property transfers.

(9) Two Chinese academics and two French legal professionals including Professor Michel Grimaldi, President of the Jury.