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## 5a. Teaching “American Corporate Law” in Beijing University

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(Bo LI and Weiheng CHEN)

In December 2003, we made a teaching trip to Beijing University (Beida) to teach a course on American corporate law, with an emphasis on corporate governance and corporate finance. This was the first teaching trip under a joint program established by the Overseas Young Chinese Forum (OYCF) and the Financial Law Institute of Beijing University (FLIBU). The program is funded by the U.S.-China Legal Cooperation Fund.

### **Preparation**

We spent a significant amount of time developing the course and selecting teaching materials. In early December, we sent a complete set of reading materials for the course to Dr. Peng Bing of FLIBU, who helped organize the course. With the help from several students, a bound reading packet was made for each student. We used our lecture allowance for RMB 4,000 from FLIBU to pay for the reading packets. We also prepared power point slides for each class.

Over thirty graduate students enrolled in the course. More students would have signed up, according to Dr. Peng, had the course not been held close to the final exam week. We had hoped to teach the course over a three-week period, but because of the upcoming final exams, we had to squeeze the course into two weeks by extending the length of each class. The course was worth two credits and was officially listed in Beida Law School's curriculum. Weiheng arrived in Beijing on December 14 and Bo shortly afterwards on December 20. Both received warm welcome from Dr. Peng and Liu Jingming, our teaching assistant.

### **The Course**

The course title was “American Corporate Law.” We organized the course into six sessions: (1) introduction and formation of corporations, (2) corporate governance, (3) introduction to corporate finance, (4) the debt-equity relationship and protection of corporate creditors, (5) federal securities law and protection of public shareholders, and (6) mergers and acquisitions. Weiheng and Bo each taught eight hours. We also invited two guest lecturers, Greg Pilarowski, an American lawyer based in the Beijing office of Sullivan & Cromwell LLP, and Tong Ke, a partner at the leading Chinese law firm Jun He Law Offices who has both American and Chinese law practice experience, to teach the IPO process and cross-border M&A involving Chinese companies, respectively. The total length of our course was twenty hours.

Considering the relatively short term and intensity of our course, as well as the students' English proficiency level, we selected teaching materials mostly from an easy-to-understand course book, Soloman & Palmiter's *Corporations: Examples and Explanations* (Aspen, 1999), supplemented by important cases, statutes (Delaware corporate statutes, the Model Business Corporation Code and selected federal securities laws), and other teaching materials. We combined different types of teaching materials in order to provide students with accurate source of black letter law as well as that of real-life cases, explanations and analytical tools.

To earn the course credit, students were required to write a short paper on a topic covered by or related to the class. We suggested a number of potential paper topics on the syllabus and, to give incentives to the students, we announced that we would publish selected papers in the Chinese edition of *Perspectives*.

Our course had two major themes: corporate governance and corporate finance. Corporate governance has been a popular topic in academic, business and policy discussions in China in the past several years as it is closely linked to the ongoing reform of state-owned enterprises and the development of China's securities market. Weiheng covered various aspects of corporate governance in the first part of the course, including shareholder voting rights and fiduciary duties. Students were led to explore the proper roles of corporate board and its directors, the rights of shareholders, the fiduciary duties of directors and officers, and the balance between directors' responsibilities and the reasonable protection of directors. We had an interesting discussion with the students on the differences between the American system of corporate governance and the current system in China, and explored possible ways for improving corporate governance in China.

In our presentation of the second major theme, corporate finance, we explored financial rights of corporate participants, and the legal and contractual protection of creditors and shareholders. Bo covered most parts of this theme. In one class, Bo led students to investigate ways through which equity holders could exploit debt holders in the absence of legal or contractual protection for creditors. The students were then asked to think about how law and contracts could be drafted to protect the interest of creditors. The students were led to find that, in reality, there is only minimal legal protection for creditors and that therefore most creditors rely on contractual protections. Later the class had a productive discussion on some important protective provisions in a sample bond indenture.

In addition to teaching black letter law, cases and analytical tools, we also tried to introduce the students to the practice of corporate and securities laws. Our guest lecturer Greg Pilarowski taught students how a typical IPO deal is actually structured and done in the U.S. In addition, Greg discussed certain special issues involved in an overseas IPO by a Chinese company. Another guest lecturer Tong Ke demonstrated to the students how a cross-border M&A transaction involving a Chinese company is typically structured and executed.

Wherever relevant, we would spend time discussing theories, policy considerations and analytical tools, be they general legal concepts or relevant economic analyses. Students particularly showed interests in this type of discussions. Throughout the class, we highlighted the application of basic American legal principles such as the "reasonable person" standard, the "prudent person" standard and the general principles of equity in corporate law practice. Bo took advantage of his training in economics and provided valuable insights from the economic analysis of law. Economic analysis of issues such as the agency problem, the problems of collective action and information asymmetry, and the problem of transaction costs showed students a new way of approaching and analyzing legal issues. In one class, for example, Bo introduced the economic analysis of law enforcement. Specifically, the comparative advantages and disadvantages of public and private enforcement of law were analyzed in an economic framework. Bo led students to using such analysis to think about the protection of public shareholders.

Through the class discussion, students found that shareholder rights are enforced both privately and publicly, and a good economic analysis could help explain and predict the presence or absence of certain enforcement mechanisms in various areas of shareholder protection.

### **Interaction with Students**

We had over thirty students in our class. Following the practice in American law schools, we used the Socratic (question and answer) method of teaching. We invited students to sign up for panels. Each panel consisted of three or four students and was responsible for one class session. Responsible panel students were expected to read the class materials more carefully and to participate actively in class discussion. We found that panel students were generally well prepared and ready to be called upon.

Most class sessions ran three hours (from 6:00PM to 9:00PM). The two classes with guest speakers lasted for four hours each. Before each class, we had dinner with the panelists of the day. Dinner was usually a good time to follow up on prior day's class discussion. At these dinners we also talked about student life in general and career choices after school. As expected, students showed a high interest in studying and working abroad. We shared with students our experience in the U.S., first as students and then as practicing attorneys,

During conversations with students, we found that many students in our class were concerned about their careers after school. Chinese universities produce a large number of college and post-college graduates each year, many more than when we were in college in the late 1980s and early 1990s. Competition is fierce, and good jobs are hard to come by. A number of students regarded a career in the government, in a securities firm and in other financial institutions as desirable. Practicing law, according to some students, is difficult in China and usually does not bring high income. For the small number of elite law firms that do pay handsome salaries, they only have a limited number of openings every year and it is difficult to get in. In addition, a number of female students pointed out that women get fewer opportunities, and face more challenges, to become practicing attorneys in China.

Overall, we were pleased with the level of student participation and encouraged by positive feedback from the students.

### **Student Feedback**

In the last class, we asked each student to fill out a feedback form. The following is a selection of comments we received from students.

“I learned a lot from this course, mainly on two aspects: (1) systematic understanding of American corporate law and (2) an introduction to the practice of corporate and securities law in the U.S. Thank you.”

“To me, the best part of this course was to learn new tools and perspectives to the study and understanding of law.”

“Twenty hours are too short. I wish the course could last longer.”

“I like the case study method and the Socratic teaching method.”

“I want to learn more about the practice of law and the practical aspects of law.”

“This course expanded my horizons. Hope to take more classes like this.”

### **Other Activities**

In addition to our teaching, we also tried to acquaint ourselves with new developments in China and explored opportunities for OYCF and its members to contribute to China's reform and opening process. In Beida we met with Professor Wu Zhipan, Vice President of Beida and also former Dean of Beida Law School. Professor Wu thanked us for our contribution and welcomed us to teach in Beida again. We also visited and met old friends at the Shanghai Institute of Law and Economics and China Securities Regulatory Commission and a couple of other government agencies. We enjoyed the hospitality of our friends, shared their stories, and appreciated their efforts in improving their own lives and the lives of many other Chinese.

We want to use this opportunity to thank those institutions and individuals who made our trip possible. Sincere thanks are due to OYCF, FLIBU, and the U.S.-China Legal Cooperation Fund. We especially want to thank Dr. Peng Bing, Greg Pilarowski, Tong Ke, Liu Jingming and Zhang Rui, whose advice, support and help were indispensable in making our trip a success.

### **Epilogue**

On January 10, 2004, we received 31 typed, well-written student papers by e-mail. Reading these papers, we were touched by how much effort our students put into this short course. The teaching lasted for only two weeks, but our memories will last forever.

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