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**OFFSHORE OUTSOURCING AND  
OFFSHORING TO CHINA**

Fraser Mendel  
*Morrison & Foerster LLP*

## Biographical Information

Name: **Fraser Mendel**

Position or Title: Of Counsel

Firm or Place of Business: Morrison & Foerster LLP

Address: 3408 Tower 2, China World, 1 Jianguomenwai Ave, Beijing 100004 China

Phone: +8610 6505 9090

Fax: +8610 6505 9091

E-Mail: [fmendel@mofa.com](mailto:fmendel@mofa.com)

Primary Areas of Practice: Cross-border licensing, Outsourcing, Information Technology, Privacy, E-Commerce, Foreign Direct Investment in China

Law School: University of Washington School of Law, 1994

Postgraduate: University of Washington Jackson School of International Studies, M.A. History 1994

New York University School of Law, LL.M. Tax, 1996

Work History:

2000-present Morrison & Foerster LLP - Beijing

1998-2000 Goodman Phillips & Vineberg - Beijing

1997-1998 Claydon Gescher Associates - Beijing

Membership in Associations, Committees, etc.: American Bar Association, Washington State Bar Association, International Bar Association

## I. OFFSHORE OUTSOURCING AND OFFSHORING TO CHINA

Many businesspeople have an idealized vision of offshoring to China, stoked by stories about the advantages of China. While there are compelling reasons for looking to China as an offshoring destination, these advantages need to be weighed carefully against both the practical and legal hurdles that must be overcome in order to make the transaction worthwhile.

Outsourcing parts of a company's business has become a commonly used business tool. When executed properly it can yield cost savings, increased efficiency, greater profitability, and other benefits that can make a company more competitive. Outsourcing can also protect a company by shifting risk to a third party while permitting the company to leverage outside expertise and resources. However, it remains a complex business strategy that can be difficult to manage even when the outsourcing vendor is located next door. Outsourcing to a foreign vendor can be much more complex. A multitude of issues can arise that can be costly not only in terms of direct monetary expenditures, but in siphoning management energy away from building a business to deal with offshore problem.

The following discussion of outsourcing employs the following terminology:

"Customer" is a business that is typically shifting parts of its business to a "Vendor", usually pursuant to a master services agreement ("MSA"). "Offshore outsourcing" involves a Customer hiring a third-party Vendor in a country other than the one that is the major market for the final product or service. "Offshoring" involves the transfer of business functions to a foreign affiliate, such as a subsidiary. This may involve the establishment of a wholly owned subsidiary or a joint venture. By offshoring, a company is typically able to exert more control, and is therefore theoretically in a better position to manage the relationship. In the context of offshoring, a detailed MSA may not always be put in place in advance, and the affiliate relationship be depended upon to minimize the typical adversarial relationship that commonly arises in outsourcing relationships.

The choice of the People's Republic of China ("PRC" or "China") as the site for an offshore outsourcing operation poses various unique challenges. Companies frequently overlook the PRC's legal and regulatory requirements when they decide to outsource activities, particularly when they are offshoring to a subsidiary. While compliance with U.S. legal requirements cannot be ignored, those are only one component of the successful China offshoring strategy.

Failing to take measures to comply with PRC regulatory requirements can result in a Customer preparing a detailed MSA that may be unenforceable, or create unintended liability for the Customer.

In considering an offshore outsourcing and offshoring strategies for China, this paper is divided into three sections:

First, practical (not necessarily legal) challenges faced by companies that involve fundamental challenges to initiating a project in China, including the language barrier, a still nascent respect for intellectual property rights (IPR), and the government's assigning of a low priority to enforcing IPR violations.

Second, the unique legal characteristics of the PRC legal environment including the fact that while there are difficulties in seeking enforcement of IPR, there is still an extensive set of IPR laws and regulations meant to protect copyrights, trademarks, patents, and trade secrets, which all involve registration requirements. Failure to undertake the necessary registrations can significantly compromise a foreign party's ability to protect their IPR. Under this regulatory framework, it is in most instances necessary to register one's IPR before it is possible to claim any rights to it in China.

Finally, this paper presents a limited number of prophylactic measures that can be employed to address some of the challenges posed by the Chinese environment with a particular focus on protecting the Customer's IPR.

These sections address key risks for a Customer's IPR in an outsourcing transaction with a Vendor located China. If a Customer does not address these issues up front, it could impact its future business in the event of IPR infringement by third parties or a dispute arises between the Customer and the Vendor.

Please note that this addresses high-level issues only and is not specific to any particular outsourcing arrangement. As with any complex business transaction that involves unique facts, one should seek counsel with practitioners experienced in handling such outsourcing and offshoring transactions.

## **II. PRACTICAL ISSUES**

The most frequent destination for offshore outsourcing transactions has traditionally been India. In our experience, companies that have already had successful outsourcing experiences with Vendors in India have a tendency to underestimate potential problems with Vendors in China. While

India has its own set of challenges for an outsourcing relationship, it does enjoy the advantage of English as an important second language, and a common cultural heritage among its educated members that understands (if not fully protects) IPR. The following section addresses what we consider to be among the more prevalent problems encountered with outsourcing transactions in China: language and cultural/educational issues; business environment and regulatory transaction costs; and "hidden" costs of transactions.

### **A. Language And Cultural Issues**

Foreign companies often neglect to fully understand their Vendor in China. This is evident even in companies that have successfully managed outsourcing relationships in India. This includes realizing that there will be higher transaction costs associated with language and cultural differences in China, as well as understanding that information costs in China are typically higher than in other countries due to a lack of transparency in the system. It is important to note that this also applies to offshoring transactions with a company's subsidiary in China, since many of the language/cultural issues can arise in the more time-critical activities associated with outsourcing functions.

The fact that China has a much more limited pool of English speaking workers must also be addressed up front. Failure to do so can result in numerous operational challenges when implementing an outsourcing arrangement. While the managerial level individuals may have communicative competence in English, many of the working level employees will not, which can impose delays, a higher number of mistakes, and associated transactional costs related to simply managing the flow of information and instructions.

Educationally there can also be significant gaps in understanding, even among employees of the Vendor that have come from the best universities in China. Many background concepts that managers of foreign companies take for granted do not form part of the educational background of Chinese employees. If a foreign company does not address the educational/cultural gap issues directly, it can result in slowdowns, excessive levels of errors, and increased friction in the relationship.

### **B. Business Environment Issues**

When establishing an outsourcing relationship with a Vendor in China, a Customer needs to conduct thorough due diligence in order to be very clear on the capabilities of the Vendor. When dealing with

third party Vendors, due diligence is an important consideration in an outsourcing arrangement. There are limited sources of information about companies in China and, depending on the geographic area of the vendor, it can be difficult to even obtain confirmation from the State Administration of Industry and Commerce (SAIC) as to whether a Vendor has been incorporated. Since there are limited private party business information organizations in China, it is necessary for a Customer to independently undertake due diligence in the areas of financial stability and corporate establishment, as well as land use rights, ownership of assets and compliance with employment requirements. If the Customer does not have the ability to gather and evaluate the information in-house, there are various companies available that can perform informal investigations on Chinese companies.

With respect to third party outsourcing Vendors, it is not uncommon for them to have impressive offices in Silicon Valley or Hong Kong – places that are much more accessible to a Customer wanting to retain them. However, these offices often do not reflect the actual operations in China. It is important for a Customer to confirm that the Vendor actually has the staff and facilities necessary to do the work, or if they will be subcontracting the work. It is therefore important for a Vendor to provide the necessary official documents showing their due incorporation and license to engage in business. There are also industry-specific licenses and qualifications, such as a Certified Software Enterprise certificate, that can provide further evidence of an enterprise satisfying certain minimum requirements with respect to staffing, hardware and experience, particularly if the Vendor will be providing any of the outsourcing services to the Customer directly in China. When entering into an outsourcing contract with a Vendor whose primary assets and operations are in China, it is important to ensure that the contract is validly executed by the legal representative of the Chinese entity itself.

Even when a company is dealing with its own subsidiary in China, it needs to recognize that conducting employee background checks is significantly more difficult and, with respect to key personnel, may require special investigations. In the case of extremely sensitive information, it may be worthwhile for a company to require that its subsidiary undertake additional personnel background checks.

### **C. "Hidden" Costs Of Transactions**

The Customer must ensure that the Vendor is capable of managing legal issues that have the potential for impacting the Customer. A common issue is ensuring the Vendor's human resource arrangements are adequate – particularly if it will be desirable/necessary to have valid non-competition clauses in the MSA. This also involves ensuring that all work done under the outsourcing arrangement – by the Vendor, its employees, consultants, and sub-contractors – is clearly identified as "work for hire" and proper arrangements made to secure the Customer's rights in it.

Although one reason for outsourcing involves shifting most legal compliance obligations and risks to the Vendor, it is also important that the Customer require – and monitor – the performance of the Vendor in legal compliance. While legal liability for non-compliance will rest with the Vendor, especially if the outsourcing contract includes indemnification provisions, non-compliance by the Vendor can have broader impacts on the Customer and result in Customer's management needing to engage in immediate crisis control.

The formal PRC legal environment for labor tends to be employee-friendly. There is increasing fluidity in the labor market, and well-trained and educated employees frequently shift jobs to take advantage of opportunities that arise. It is therefore a relatively recent development to see post-termination non-competition provisions in domestic enterprise employment contracts. In some cases that we have seen, such provisions have been simply copied from U.S. companies' employment contracts. This can be less than effective in China, since such a provision is only enforceable if they provide for non-competition compensation in addition to the statutory severance payments. If a key employee of a Vendor goes to work for a competitor of the Customer, absent an enforceable non-competition provision there is limited legal recourse against that ex-employee or against the competitor. It is therefore important to make sure that the Vendor has the appropriate employment agreements in place prior to the start of the relationship.

## **III. LEGAL ISSUES**

### **A. Technology Import And Export**

We have noted that many companies have overlooked the PRC technology import and export regime, which can result in significant prob-

lems for a transaction. These regulations affect any proposed license or transfer of technology into or out of China. This technology transfer regime imposes affirmative registration requirements and, in some cases, approval obligations. It also provides domestic PRC transferee rights to improvements of technology, and imposes certain non-disclaimable terms and conditions on all technology licenses and assignment agreements between foreign entities and Chinese entities.

Vendors and Customers both need to be aware of the technology import and export regulatory regime and that there are instances in which technology related to certain applications may be subject to approval and permitting requirements. Although most outsourcing transactions will involve unrestricted technology, and would therefore only require registration, the Customer should obtain confirmation as to whether restrictions apply and require the Vendor to obtain any necessary approvals.

The Administration of Technology Import and Export Regulations ("Technology Regulations") and Administration of Registration of Technology Import and Export Contracts Procedures ("Technology Registration Procedures") require that all contracts that involve the import or export of technology be subject to the supervision of MOFCOM. The Technology Regulations defines a technology import to include cross-border transfer of technology into China by means of trade, investment, or economic technological cooperation. According to the Strengthening the Administration of Sale and Payment of Foreign Exchange in Connection with Technology Import Contracts Circular, technology imports include: 1. patent transfers 2. transfers of patent application rights 3. patent licenses 4. trade secret licenses/transfers 5. computer software licenses 6. trademark licenses/transfers that involve patent or trade secret licenses 7. technical services 8. technical consulting 9. cooperative design, research and development, and production.

The Technology Regulations classify imported technology into three categories: unrestricted, restricted or prohibited. MOFCOM is responsible for identifying which technologies are restricted and prohibited. A compilation of technologies that have been so categorized is contained in the Catalogue of Technologies Prohibited and Restricted from Import. Items not listed in this catalogue are normally considered unrestricted and are, therefore, only subject to the filing and registration requirements. Registration of unrestricted technology contracts with MOFCOM is not a condition precedent for validity, but failure to

register such a contract may result in a variety of practical problem since, without the registration, the PRC transferee may be unable to complete relevant foreign exchange, banking, taxation and customs procedures related to the use of the technology. This has the further effect of preventing the transferee from making any payments to foreign technology providers such as licensors that may be required under such a contract.

More critically, failure to register the contract can limit the foreign party's ability to enforce the contract in China. Contracts for the import of restricted technology, on the other hand, are invalid under PRC law until approved by MOFCOM.

A key feature of the PRC technology transfer regime is that the Technology Regulations provide that a transferee of technology not only has the right by law to make improvements to that technology, but becomes the owner of the rights to such improvements. This creates important issues within the context of an outsourcing transaction to consider when a PRC Vendor expects to further develop or modify an imported technology.

The Technology Regulations also prohibit a foreign transferor from imposing various mandatory requirements for a technology import contract. These mandatory obligations cannot be disclaimed. Technology import contracts cannot contain provisions that:

- require the transferee to accept ancillary conditions that are not indispensable to the technology import, including purchase of unnecessary technology, raw materials, products, equipment, or service;

- require the transferee to pay royalties for or assume corresponding obligations with respect to expired or invalidated patents;

- restrict the transferee from improving the imported technology provided by the transferor or using the improved technology;

- restrict the transferee from obtaining technology from other sources that are similar to or compete with that provided by the transferor; unreasonably restrict the transferee from freely choosing channels or sources for purchasing its raw materials, spare parts, products, or equipment;

- unreasonably restrict the production volume, production types or sale prices of the transferee's products; or

- unreasonably restrict the export channels of the products made by the transferee by using the imported technology.

A foreign transferor is also required to warrant that it is the lawful owner of the imported technology, or has the right to assign or license the technology, and that the imported technology, documents and information provided are complete, free of error, effective and able to attain the objectives stated in the contract.

These Technology Regulations potentially affect many facets of an outsourcing transaction involving a Vendor in China, as well as any transfers by the Vendor to the Customer outside of China. Each element of an outsourcing transaction needs to be considered in light of the potential application of the Technology Regulations.

Any technology contract that a Customer enters into with a Chinese Vendor - including its own subsidiaries - is subject to the Technology Regulations. Therefore, in structuring the transfer or license of any technology into China, it is important that the Customer require the Vendor to properly register the contracts and, if necessary, receive approval from MOFCOM. Many of the types of technology represented in an outsourcing transaction fall within the "unrestricted" category with respect to the Technology Regulations and therefore would only be subject to a registration requirement. In practical terms this means that any technology contract would be valid upon execution, but that until it is properly registered the Customer may not be able to enforce its rights against the Vendor in China.

Although the Technology Regulations clearly cover software licensing agreements, to date MOFCOM's position with respect to mass-market software has been that it does not need to be registered. However, since there is no published regulation that exempts mass-market software, application of the registration requirements is subject to MOFCOM's discretion. A Customer entering into an outsourcing contract with a PRC Vendor that includes the license or sub-license of software may wish to take steps now to revise the licensing agreements that it uses to anticipate the Technology Regulations in the event it does become necessary to register the software.

Since the Technology Regulations grant rights to improvements to the party that undertakes them, any assignment or licensing agreements must ensure that any improvements are assigned or licensed back.

One additional issue that should be considered is that while it may be possible for an import of technology to be only subject to registration requirements, subsequent re-export of improvements made to it could be subject to approval requirements. It is therefore important,

prior to entering into the outsourcing arrangement, to get confirmation on both the import and export status of the technology in question.

## **B. IPR Registrations**

The ownership, licensing and protection of IPR are key issues in outsourcing, particularly in the context of offshore arrangements. When a Customer engages a Vendor to perform work that the company had been performing itself, the Customer may no longer be deemed to own the IPR under applicable law. Moreover, the Customer may be transferring to the Vendor technology owned by third party lessors or licensors, rather than by the Customer itself, further complicating the transaction.

Therefore, in practice, it is imperative that a company with significant IPR assets involved in an outsourcing transaction take active measures to protect that IPR and minimize risks to it. While the key components of an effective IPR protection strategy apply in most jurisdictions, in China it is particularly important to address registration of the IPR with the relevant government agencies, implement practical protective measures, and seek enforcement of violations and infringements.

China has an extensive regulatory regime concerning IPR. In addition to standard registration procedures for patents, trademarks and copyrights, there are various other requirements that many companies fail to consider. When preparing an outsourcing transaction, the following should be considered:

- \* That all registrable IPR, including patents, trademarks and copyrights have been appropriately registered and defective registrations corrected.
- \* Advantages and disadvantages of software copyright registration have been evaluated and, if necessary, software copyrights have been registered.
- \* Any software that may ultimately be distributed in China has been properly registered with the Ministry of Information Industries ("MII"). Software that is imported must also be registered before it can be sold domestically. All software products must receive a software registration number and certificate prior to being distributed in China. Any software that has not been registered with the MII or a software product which has

had its registration cancelled cannot be sold or distributed in China.

- \* All "in-bound" assignment, license, sublicense and other agreements, pursuant to which Vendor has obtained any technology or intellectual property rights from any third party, including, without limitation, technology incorporated into Customer's products and/or used in Customer's business are properly filed and registered and comply with relevant provisions of PRC law.
- \* All "out-bound" assignment, license, sublicense and other agreements of Customer's technology pursuant to which Vendor has granted any rights in the technology to any third party comply with relevant provisions of PRC law.
- \* Software containing encryption functionality subject to PRC encryption regulations has been properly registered.

## **C. Contract Issues**

While the outsourcing to Vendors in China of expensive research and development, as well as localization, is increasingly attractive to firms setting their strategic sights on China, it is necessary to consider what happens when there are contract dispute issues with an independent Vendor, or a third party misappropriates the underlying IPR. The most common contractual issues that arise are proper forum for dispute resolution and ensuring enforceability of the contract in China, handling data protection and privacy issues, and ensuring proper attribution of copyright.

### **1. Dispute Resolution**

While outsourcing contracts between U.S. companies and Chinese Vendors are commonly governed by U.S. law, it is important to realize that certain PRC laws will continue to apply to the transaction, including the technology import/export regulations discussed above.

All outsourcing contracts should provide for binding arbitration to avoid the possibility of winding up in court over a contractual dispute. While there has been improvement in the PRC court system over the years, there remains significant variations in the quality of the courts and there are a very limited number of courts which have experience in handling complicated cross-border contracts such as

the specialized IP tribunals established at the First and Second Beijing Intermediate People's Courts. If a dispute resolution clause provides that a party can choose either arbitration or the courts, this may be treated in the PRC as a non-binding arbitration clause.

Although there is provision under PRC law for recognition of foreign judgments, it is so restricted that the result is typically the requirement that another hearing be held in China on the merits of the case in order to be able to seek enforcement. Therefore, unless the Vendor has assets in the U.S. to satisfy a judgment, any litigation will wind up being in China.

With respect to arbitral awards, on the other hand, it is straightforward to seek enforcement since China is a signatory to the United Nations Convention on the Recognition and Enforcement of Arbitral Awards (commonly known as the "New York Convention"). In addition to arbitral and court actions, enforcement can also be sought through the local administrative enforcement authorities, particularly for third party infringements. However, such actions involve considerably more activity on the part of the Customer, and lack the range of remedies available in through other means. PRC civil authorities and Courts typically impose high evidentiary burdens and require airtight chains of authenticity. In actions for software infringement, for example, the recommended approach for obtaining evidence is to make arrangements to have a purchase of the offending software witnessed and certified by a local notary public officer. If infringement is suspected, the Customer should retain an investigator early to start collecting evidence.

## **2. *Data Protection And Privacy***

China has very limited privacy and information security laws. These are not consistent with the obligations imposed by the U.S. data security laws or those of other industrialized countries. As opposed to many other types of liabilities that outsourcing allows a Customer to shift, these particular obligations cannot be shifted to the Vendor. It is therefore imperative that Customers ensure that their Vendors, both third party and subsidiaries, understand the privacy and security obligations of the Customer under laws such as Gramm-Leach-Bliley and that the Vendor and its contractors comply with any applicable requirements as well. Since an offshore Vendor is not likely to be independently subject to such laws, it is the Customer's responsibility to ensure compliance contractually.

### **3. *Copyright/work-for-hire***

It is important for an outsourcing contract to ensure that all work performed by the Vendor be "work for hire". Moreover, the Vendor must also maintain proper legal chain-of-ownership documentation and contracts with its employees, consultants and sub-contractors. Under the PRC Copyright Law, other than work specifically performed as part of the employment relationship and using the employer's resources, an employee creating a copyrightable work may own the copyright. In the case of the Vendor subcontracting work to a subcontractor, barring specific provision in the contract otherwise, that subcontractor will retain any copyright.

### **4. *General Enforcement Issues***

In addition to the discrete issues identified above that affect outsourcing transactions with Vendors in the PRC, there are several broader issues that companies must take into consideration when planning an outsourcing transaction.

As is frequently seen in the press, the PRC has extremely high incidences of IPR violations. These may include localized violations, such as a company making numerous copies of a single legitimately purchased software package, to the wholesale counterfeiting of products. The government periodically cracks down on a few high-profile infringers, but day to day enforcement is sporadic. The quickest means of taking action against IPR infringement is to seek an administrative action. However, government agencies responsible for enforcing IPR actions are considered to be under-funded, and it can be difficult for a company that has suffered IPR infringement to convince the relevant administrative authorities that the economic harm warrants government involvement. The agencies will normally require a company seeking enforcement to provide clear evidence that its IPR is being infringed - and if a company has not completed the relevant registrations noted above, the government agencies may decline to take action. In those instances where they do take action, it is common practice for them to require the company seeking enforcement to pay for the costs of an enforcement action up front.

The alternative to an administrative action is bringing a court action. However, this can be considerably slower than an administrative action, and is normally only possible in a few cities where the court system has established specialized IPR court. If a company whose IPR has been infringed attempts to bring a court action, it

also faces the evidentiary requirements required for an administrative action, as well as the necessity of having complied with all registration filings.

Due to these limitations on seeking enforcement against IPR violators, it is critical that a company take all possible prophylactic measures to protect their IPR, rather than depending on the PRC legal system to protect their rights after the fact.

#### **IV. PROPHYLACTIC MEASURES TO ADDRESS SOME OUTSOURCING ISSUES**

Due to the limited enforcement mechanisms to stop infringement, it is cheaper and more effective to implement proactive protective measures to mitigate the leakage of technology.

Depending on the type of technology being used in the outsourcing transaction, there will be various methods available to protect it. While not always feasible, segmenting work among several Vendors so that no single Vendor has a complete picture of the technology can be one of the most effective measures.

##### **A. Measures To Address General Issues**

Baseline measures that companies should implement in the MSA include requiring the Vendor to:

1. Obtain assignments from everyone involved in developing the technology, including employees and any consultants that may have worked on the project,
2. Treat the information and technology as confidential information and apply trade secret precautions,
3. Ensure that all employees should have signed confidentiality agreements with copies on file,
4. Restrict physical access to Customer's technology, including measures such as:
  - \* Defined number of employees with access (e.g. badges or passes). Information access sign-in/out logs that identify individuals accessing the confidential information and for how long.

- \* Locked storage (e.g. secure file room, security cabinets or safes for critical trade secrets).
  - \* Policies limiting employee ability to remove trade secret material from secured area or from premises.
  - \* Security (e.g. surveillance cameras).
  - \* Sensitive documents isolated from networked computers, photocopiers, fax machines, scanners, and telephones.
5. Restrict physical access with respect to visitors:
    - \* Restricting where visitors may go in the work place.
    - \* Requiring all visitors to sign-in.
  6. Segregate confidential information in secure area,
  7. Ensure security of all office entrances (including posting signs concerning unauthorized entry),
  8. Establish policies with respect to transmitting confidential information over communication channels that can be tapped. Some companies prohibit use of voicemail, e-mail, and video-conferencing to communicate sensitive information due to the multiple levels of network monitoring conducted by the government. Consider establishing written protocol for discussions conducted by telephone.
  9. Limit access only to employees, contractors and/or other third parties with a "need to know" to such information and who are bound by confidentiality and nondisclosure agreements,
  10. Marking all trade secrets and other Customer confidential information as "Confidential",
  11. Clear policies / procedures have been distributed regarding publications or speeches which might disclose trade secrets, and
  12. Ensuring that all employees and contractors are obliged to disclose and assign to Customer all trade secrets developed by them relating to their work for Customer or based on Customer confidential information.

Additional measures that companies may place in the MSA include:

1. Transferring information and technology under the MSA in stages in order to reduce leakage and make monitoring easier,
2. Establishing transfer protocols for secure internal storing and routing of confidential information, such as requiring use of couriers rather than e-mail or fax to transmit extremely sensitive information, or routing information through designated recipients which minimizes the number of people actually seeing information,
3. Limiting access to critical confidential information so that no single employee knows all the steps in a sensitive process or design, which prevents a single employee from leaking the entire process, or leaving with Customer's trade secrets,
4. Establishing monitoring mechanisms, to the extent possible, as to whether trade secrets have been acquired by a competitor by proper means, reverse engineered, or have become publicly known, and
5. Educating employees and contractors regarding protecting trade secrets, as well as use of any confidential information of any third party.

**B. Measures To Address Legal Issues**

A company should also ensure that certain legal issues noted in Section III above have been properly addressed, including:

1. Ensuring that the MSA complies with PRC regulations, particularly the limitations under the Technology Regulations with respect to limitations on the Vendor's rights to subsequent use of the technology,
2. Requiring the Vendor to complete any necessary registration of the MSA, including the technology import/export filing and confirming whether the approval is required with respect to the underlying technology,
3. Completing any necessary IPR registrations - trademark, copyright, patent, software, encryption - prior to the transfer of IPR to the Vendor,
4. Drafting the dispute resolution mechanism in the MSA to permit functional enforcement in the PRC, and

5. Requiring that all employees and sub-contractors (if sub-contractors are permitted under the MSA) have executed the proper assignments for any work performed.

## **V. CONCLUSION**

We anticipate that the attractiveness of China as an outsourcing destination will grow over the coming years. Many of the infrastructure problems discussed above will be resolved, especially as the government brings more resources to bear on enhancing China's attractiveness as a destination for such high value-added activities as outsourcing. However, between now and then there will be some transactions that fail, due to various combinations of the issues addressed above. As an increasing number of attorneys advise their clients on these transactions, it is important that they provide not only the relevant advice on how to mitigate the legal risks of an outsourcing transaction, but also to sensitive them to look deeper into the "real world" issues that an outsourcing transaction can pose. Provided that foreign companies take the necessary measures to protect their IPR, comply with legal requirements, take necessary steps to know their vendors, and understand the rules and diligently enforce their rights and remedies, China's environment can be managed to allow successful outsourcing transactions.