

Arbitration not the answer, says expert

By Lu Hongyong

HONGKONG — A multinational law firm suggests that in China, it is better to take business disputes before a court of law rather than seek arbitration.

Too many cases inundated most Chinese arbitration tribunals, making it impossible for them to function as they should, observed David Buxbaum, a senior partner of Brand Farrar Buxbaum.

Disputing business partners prefer arbitration to court ruling to preserve their business ties, and it was the best way out for business litigation in the past, but not any longer, he said.

The growing capital inflow to China is creating mounting needs for foreign-related business arbitration and revenue thus generated has become a major source of income for the China Council for the Promotion of International Trade, which is a dominant player in business arbitration.

Its regional arbitration outlets mushroomed in provinces, with the Hong Kong International Arbitration Centre being its most prominent branch.

Flooded by the growing number of cases in the past years, most Chinese arbitration tribunals have had to recruit new hands who had to start work without thorough training, he said.

And the tribunals barely have

time to implement their decision, he said.

Also, disputing parties forfeit the right to appeal to a court of law if they do not agree with the arbitration tribunal's decision, he said.

Buxbaum also blamed the overload on the Chinese arbitration sector on a lack of uniform decision-making procedure. Also, tribunals often appear at a loss dealing with types of problems that have come up only recently, he added.

Legislation and law enforcement in China have improved tremendously over the past two decades, while exposure to foreign legal systems has greatly enhanced the expertise of Chinese lawyers, he said. However, Buxbaum remained sceptical about the performance of some Chinese judges.

The fundamental problem lies in the fact that hundreds of thousands of local courts rely on local governments for salary and housing for their staff, he explained, and local courts are under great pressure not to tarnish the credibility and economic position of firms attached to local governments, he said.

Buxbaum said it will be extremely hard for China to finalize the building of market-based financial system and legislation within this century, adding that achieving this target will be "the greatest feat of the century."

Brand Farrar Buxbaum in merger regeneration

The international firm of Arnberger, Kim, Buxbaum & Choy has merged with the California-based Brand Farrar Dziubla Freilich & Kolstad to form Brand Farrar Buxbaum.

The new firm, effective from 1 November 1997, has a network of offices stretching from New York to Mumbai, with particular strengths in the PRC, where it has offices in Beijing, Chengdu, Guangzhou, Hong Kong, Shanghai, Xiamen and Ulaan Baatar. The firm will be headquartered in Los Angeles.

Brand Farrar Buxbaum's senior partner is David Buxbaum, who in 1972 was the first foreign attorney invited to represent foreign businesses in China.

美專家讚華打擊司法貪污

稱對民衆及外國投資者有利

他相信這是江澤民在十五大提出嚴打貪污口號所引發的「一場運動」。

他指出，中國司法機關的貪污



【本報專訊】近期廣東省作出一連串的打擊司法貪污行動，美國的中國商業法律專家包恆（圖）接受本報記者專訪時表示，這很可能代表中央政府已經察覺到地方的中國法律專家。

有多年從事中國商業法律工作的美國執業律師包恆說：「中國政府終於於猛力打擊司法人員的貪污，對外國投資者及中國民衆來說都是好事。」包恆是前美國總統尼克遜訪華後，首批獲中國邀請訪問的美國法律人員之一。他諳熟中文，是美國著名的中國法律專家。

司法人員貪污問題的嚴重。他認為，司法人員的專業操守是現時中國法制改革的關鍵。

日前，深圳經濟法庭庭長因多次收受利益，與被告的代表律師在開審前達成協議而被捕。另外，

料屬中央政策命令

包恆認為這類大刀闊斧的舉動，是中央政府的「政策性命令」多於純地方性的「頭疼醫頭」反應。

問題日漸普遍，而經濟特區特別嚴重，中央政府不能不干預。雖然近年不少司法人員也被派往國外學習，但西方的法治思想似乎不足以造成突然的打擊貪污措施。包恆稱中國法制改革中最落後的環節是司法人員制度，並認為反貪污的關鍵在於大力提高法官目前過低的工資，加強法律培訓及保證司法人員的獨立性。

就知識產權的保護問題，包恆表示同意美國微軟公司董事長比爾·蓋茨的看法，指中國已作出了一定努力，但仍然不夠。他認為問題的癥結是司法部門的權力有限，執法的嚴格程度不夠，政府（如公安部門）的干預太多。