

# Double vision

**Despite real legal reforms, China's court system still appears a maze of contradictions, say Brunswick's TIM DANAHER and LE SHEN**

**T**HE CONCEPT OF A "RULE OF LAW" SOCIETY was enshrined in China's constitution in the 1990s and has been reaffirmed repeatedly since then. Yet for many outside the Middle Kingdom – and even for many citizens – its legal system remains a puzzle of contradictions.

The progress of recent years is evident: precedent-setting cases that would previously have been denied a hearing are now going to court. Interference by outside parties and higher-ranking officials is diminishing; the government has even established a mechanism for reporting such abuses.

However, a company involved in a legal dispute in China is often faced with conflicting realities – whether between the central government's preferred best practices and local customs, or between the expectations of different bodies.

In developed centers, such as Beijing, Shanghai and Guangzhou, the litigation process is often more predictable and transparent. In other locations, processes can be less clear, with uncertain deadlines. In some cases involving foreign companies, one side in the dispute has been able to access the judge without the other present. In court, legal or technical arguments are not often given the attention they would receive in the West, creating loopholes that can change the outcome.

Viewing the rule of law, accessible to all, as a means to ensure stability, China's central government is no longer turning a blind eye toward such inconsistencies. The government is pushing ahead with legal reforms that include clear steps to actually curtail corruption, not just restrain its appearance.

Increasing transparency is one such step, with the higher courts more open to external scrutiny to demonstrate that justice is being served. When the Supreme People's Court of China agreed to accept a retrial brought by US basketball legend Michael Jordan against Chinese company Qiaodan Sports, for alleged naming rights infringement, it opened the case to the public and televised

“  
**A company in China can control the effects on its reputation only by having a plan in place to tell its own story**  
”



it on [ts.chinacourt.org](http://ts.chinacourt.org), an outlet dedicated to providing live public access to court hearings.

The Court heard the case on World Intellectual Property Day in April. The timing was not likely a coincidence, and reflected the Supreme Court's desire to show its commitment to IP protection and transparency. It also set a public example for lower-level, provincial and city courts to follow.

An increasing number of court proceedings are also visible on the country's growing social media outlets. National and even some provincial courts are publishing live transcripts of cases and rulings on Sina Weibo, the Chinese equivalent of Twitter.

While this trend toward transparency is positive, the Party remains the ultimate authority. In addition, a skeptic might point out that it has taken four years for the Jordan case to get as far as it has – and a verdict is yet to be delivered. Certainly, for international companies in China, litigation remains a minefield despite the ongoing reforms.

Civil disputes such as IP infringement and contract disagreements are still not usually a priority for Chinese courts, which prefer the parties to reach a negotiated settlement. As a result, foreign companies can face negative coverage fanned by Chinese opponents trying to win in the court of public opinion.

To do business in China, foreign companies must be prepared for these conflicting pressures: on the one hand, the newer culture that emphasizes transparency and the rule of law; and on the other, the still-active older culture that

those reforms are designed to change. A base of relationships with relevant officials and media is critical. Once a dispute becomes public, a business entangled in litigation will find it hard to make friends or explain its case.

A company in China can control the effects on its reputation only by having a plan in place to tell its own story – as it would almost anywhere else. A foreign business must consider how its litigation, including a settlement, will be perceived and how that could be used by its opponent.

Ultimately, these preparations could decide if and how the company has to settle with its opponent, or whether it can appeal to a higher court and ultimately pursue the case to victory.

**TIM DANAHER** is a Partner in Brunswick advising on corporate and financial communications. **LE SHEN** is an Associate specializing in public affairs and crisis. Both are based in the firm's Beijing office.