

Call to strengthen arbitration

By Lu Hongyong

HONG KONG — Business litigation in China is better settled through law courts rather than through arbitration. However, arbitration boards are badly needed but they need to substantially polish their image, said attorney David Buxbaum from Brand Farrar Buxbaum LLP.

One of the most vocal critics of arbitration services in China, which was preferred to court ruling five years ago, Buxbaum said the mounting work load and too many inexperienced arbitrators are to blame.

There is an urgent need for China to recruit more arbitration board members and grant management power to the capable people, he said.

A widening disparity in pay compared with lawyers also affects the morale and work ethic of arbitrators, Buxbaum said.

And as China charges rather high fees for arbitration services, it is only reasonable to bring the pay scale of arbitrators in line with the fees charged, he said.

Arbitration board management has also to improve to make sure no court staff or lawyers sit on the boards, Buxbaum said.

He said 10 to 15 years ago, disputing business partners chose to seek settlement through arbitration for fear a court



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ruling will cut off their business ties.

"The distinction is largely gone now, with many Chinese thinking it natural to sue to settle a problem, if friendship cannot help," he said.

"Of most business disputes in China, it is Chinese against Chinese," he said, adding that 90 per cent of disputes on intellectual property rights involve only Chinese.

Buxbaum said different legal systems will not jeopardize relations between Hong Kong and the mainland.

Citing the examples of US State of Louisiana and Canada's French State of Quebec, he said different legal systems can be applied successfully within one sovereign state.

China has been incredibly quick in the past decade building up its legal system, with 70 per cent of laws being drafted by learning from foreign expertise, he said. Law firms have flourished as a result.

The biggest problem with China's legal system is its judges, who are underpaid, unable to keep pace with the progress in the country's legal system, and dependent on local governments, he said.

Earlier this month, provincial and metropolitan governments in Guangdong Province took steps to halt corruption, which seems to pervade the city courts in Shenzhen and Zhuhai and the high court in Guangdong.

Two judges in Shenzhen have been detained including Zhao Yongku, the head of the important economic tribunal of the Shenzhen Court where virtually all business related litigations are heard.

Two other judges from the same tribunal were under investigation.

"This is excellent news. The Chinese

Government's willingness to attack official corruption is vital to strengthen the judiciary in China," Buxbaum said.

It also has been reported that more than 20 law firms in Shenzhen are under investigation in a major bribery scandal.

This apparently followed the arrests of judges in the Zhuhai Economic Tribunal in November, along with a prominent judge in Guangdong's high court.

"Nothing could be more important to foreign investors and Chinese citizens than to know that courts in China are being administered in a fair and honest way," Buxbaum said.

"Otherwise it might adversely affect public behaviour and its view of society," he said.

It will be hard to solve the problem, he said, citing that the motion to legalize higher pay for judges was aborted when the laws relating to judges in China were drafted.

Mismanaged financial systems and corrupt courts are mainly to blame for the economic crisis in East Asia, making it a must for China to improve the quality of its judges, Buxbaum said.

"The flaws are hardly discernible during time of growth, but by letting them stay, things will go from bad to worse in hard times," he warned.