

Building an Internationalized City: Planning for Innovation

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Presented by

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ABSTRACT

The Georgia Institute of Technology is privileged to have been granted membership in the Shenzhen Virtual University Park and now invited to offer some thoughts at this Symposium on “Building an Internationalized Bay Area Famous City.” The amazing growth of Shenzhen has been marked by thoughtful and courageous experimentation in the first of China’s Special Economic Zones. The question of what additional steps might be taken in Qianhai creates an opportunity to envision a special zone that can become a global leader in research, development, experimentation, innovation and commercialization of services and technology. Qianhai has proximity to Hong Kong and Macao and to the strong technology, finance and insurance firms in Shenzhen. The Virtual University Park and the availability of amazing talent and potential investments from across China and beyond create a unique opportunity to become a global star. Recognizing that innovation is a key ambition of China there is an opportunity in this small zone to experiment with further adjustment to various arbitration, finance and IPR processes and regulations that would make Qianhai a “living laboratory” for the growth of an innovation economy in China. This paper sets forth some suggestions that the leaders might consider to advance and accelerate the growth of innovation in the zone.²

Shenzhen was the first of the Special Economic Zones in China, created in May 1980 under the leadership of Deng Xiaoping. The tradition of “opening up” initiated by Deng

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² The author would like to express his appreciation to several for their assistance in the preparation of this paper. These include Dr. Tong Zhou, Director of Georgia Tech- Shenzhen, Yuchen Zhen and Ning Tian, graduate students at Georgia Tech and Rui Bu, a recent graduate of the University of Georgia Law School. The comments and suggestions offered herein are solely mine and not of any other person, organization of government. Any errors in fact or understanding are also solely mine.

has been carried forward with great success within the zone and has transformed the coastal city into a significant economic center. Its proximity to Hong Kong and Macao as well as its strategic location within the Pearl River delta places the city on the Asian maritime corridor (the 21st Century Maritime Silk Road) and positions the entire region for significant additional growth.

The various financial and structural reforms instituted in the Shenzhen Zone have created an environment that now enjoys a prosperous economy, an open market, active innovation and reform leadership. Much of this success should be attributed to both the local leadership and the willingness of the Chinese Government to allow significant experimentation and reform.

Under the broad, global and long term vision of the Chinese central government and the Guangdong provincial government and the leadership of the Shenzhen municipal administration, there is a renewed focus on the Bay Area Economy in an effort to develop new advantages for coordinated regional growth.³ The “Bay Area Economy Development (Plan) of Shenzhen” issued by the Shenzhen Foreign Affairs Office sets forth the objectives to speed up the creation of an open economic system, to enhance economic depth and create an open, interactive bay area economy . . . to participate in global competition and cooperation more widely and at higher levels, to realize higher-quality and higher-level growth.⁴

In examining the success of other global bay area economies around the world the Shenzhen Plan notes five key elements: a high level of openness; leading innovation; agreeable living and working conditions; clustered development; and regional collaboration.⁵

While all are important characteristics, the successful growth of bay area cities - such as New York, London, San Francisco - have resulted from the human talent they have been able to attract, retain and develop, in an environment that nurtures their talents to be creative in many forms and rewards them appropriately. This is often called an “innovation economy.” Importantly, there are often significant cultural differences among many of these successful bay area cities. The diverse cultures among and within such cities frequently add to their capacity to be innovative.

Certainly there is no requirement that to be successful as an innovation community there must be adherence to any particular culture. As Deng famously said, “It does not matter whether the cat is black or white, as long as it catches mice.” Therefore, Shenzhen should continue to forge its own brand of innovation culture – but it is clear that any effort to create a culture of innovation that can be successful in the global

³ *Report on the Work of Shenzhen Municipal People’s Government 2014, cited Id.*

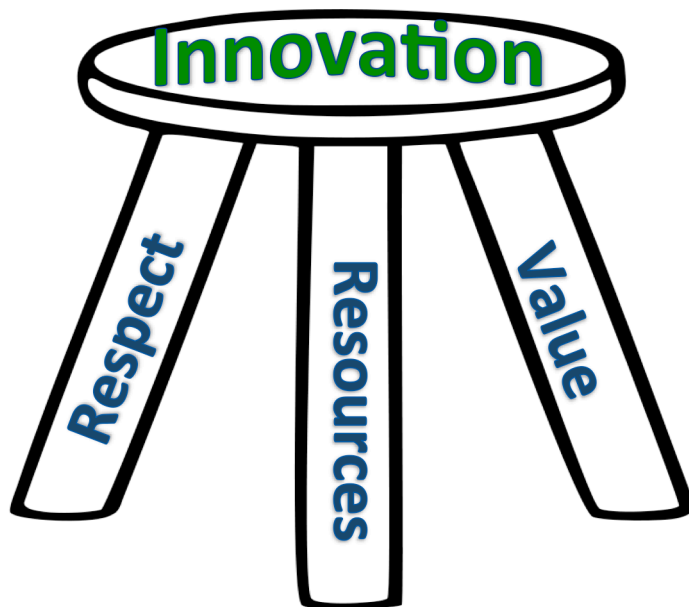
⁴ *Ibid.*

⁵ *Ibid.*

marketplace must also be respectful of other cultures and systems and able to collaborate as well as compete.⁶

China's leadership has clearly recognized the importance of creating a culture of innovation that works for China.⁷ The vision is to move from "Made in China" – to "Created in China." The challenge for Shenzhen in its two phase Plan is how to best proceed to build its infrastructure and its innovation framework to establish an advanced, modern and international city. "Cities and places quite simply are the outcome of supply and demand. If you wish to engineer the future of a place, it will come down to the people who live there."⁸

My experience over 32 years as an Intellectual Property attorney and advisor to many innovative firms and as someone now chairing the planning for our center of innovation in Mid-Town Atlanta, Georgia, has taught me that "useful innovation" wherever it exists is like an old wooden "stool" that sits on three strong legs. These "legs" are: (1) mutual trust and respect of talent; (2) protection of value of innovation; and (3) resources needed to support research, development and meaningful use of the innovation.



Each of these three characteristics relate to the others.

⁶ The author does not wish to be misunderstood. I am NOT suggesting that "harmonization" with "Western" systems is the only path for further IPR development. China will need to find its own paths (for there is not just one) consistent with China's history and culture as well as China's need and ability to interact with and impact the rest of the world.

⁷ See *Infra*, pp. 6-9

⁸ Peter Saville, HUGE Inc. Creative Director, remarks at the Bilbao Urban Innovation Leadership Dialog (BUILD), Bilbao Spain, June 2014

1. **Mutual trust and respect** requires talent, but also respect and encouragement of collaborations of talent from diverse backgrounds and expertise. Respect for talent also requires protection of the value of innovation created by the talent and appropriate rewards and incentives derived from the value of the innovation.
2. **Protection of value of innovation** requires a system of state sponsored protections for innovation – but more is needed than just a large number of patents or trademarks. Protecting value and respecting talent requires an unbiased system that can determine the source and validity of the IPR as well as enforce the value of the IPR. It requires a system that is broadly trusted to resolve disputes arising from innovation efforts that will fairly protect both individuals and firms engaged in creating and supporting innovation.
3. **The resources needed** to support innovation are both financial and physical infrastructure. Useful innovation does not happen automatically as a result of investment. It requires empowerment of individual and collective talent. Thus there must be structure and permission to enhance the capacity of both large and small firms and entrepreneurs to engage in (and be rewarded for) their innovation efforts. It also requires that those who have invested in the innovation (either as individuals or as firms) be able to share and secure the benefit of their investment.

THE GROWTH AND ROLE OF SHENZHEN

Shenzhen is well on its way to providing each of the required three elements for innovation. It now has the highest Gross Domestic Product (GDP) among the medium and large Chinese cities. It houses the headquarters of major Chinese firms creating or utilizing technology including:

- **Huawei** (the largest telecommunications equipment maker in the world)
- **ZTE** (the 5th largest telecommunications equipment maker in the world)
- **Tencent** (the largest internet company in China)
- **Mindray** (the largest medical equipment maker in China)
- **SF Express**
- **Ping An Insurance**
- **BYD Auto**

The Qianhai Modern Services Industry Cooperation Zone (“Qianhai”) now provides incentives to companies engaged in modern service industries with a reduced EIT tax rate of 15% (instead of the usual 25%) for qualified technology advanced service enterprises. There are also potential Individual Income Tax (“IIT”) rebates from the Shenzhen government. Provisions have been made for speedier customs clearance, allowance of Hong Kong professionals to practice in Qianhai and allowance of Hong

Kong service providers to establish wholly owned international schools and hospitals within the Zone. Located within Shenzhen this remarkable transformation of a former fishing village reflects the commitment and leadership of the city.

Shenzhen has also created a “virtual university”, creating a multi-lingual environment, building international communities and schools and expanding Shenzhen’s international sister city network with globally famous cities. In 2012, Atlanta Mayor Kasim Reed visited Shenzhen and the two cities entered into a Memorandum of Understanding to promote exchanges in fields of education, culture, business, trade, science, technology, and tourism.⁹

Georgia Tech is proud to have been the first United States University to become a member of the Shenzhen Virtual University Park in 2013.¹⁰ In April 2014 Georgia Tech announced the Georgia Tech – Shenzhen Master of Science program in Electrical and Computer Engineering (ECE) in partnership with Tianjin University. This new joint program was the result of efforts in cooperative education between the United States and China and an outgrowth of the friend-city agreement between Shenzhen and Atlanta, Georgia, USA.¹¹

This is not the first time that Georgia Tech has been engaged in mutual development with China. In April 1985 the Chinese government and Georgia Tech officials signed a “historic agreement” to form a US\$ 1.2 million joint venture company to help coordinate the development of new technology in China. The agreement created a 50-50 joint venture, the first and only one of its kind for science and technology in the United States. Funded by the China Association of Science and Technology (CAST) and by Georgia Tech and other private investors, this “for profit” joint venture was to assist United States companies and Chinese enterprises in forming other joint ventures and obtaining license agreements.

The 1985 agreement between China and Georgia Tech marked an early step in China’s modernization program that introduced new economic reforms in the four special economic zones – including Shenzhen as the first such zone. The agreement was the result of several years of negotiation between the People’s Republic of China (PRC) and the state of Georgia within the United States. The former Governor of Georgia, George Busbee, initiated these discussions.¹²

⁹ <http://www.atlantaga.gov/index.aspx?recordid=816&page=672>

¹⁰ Georgia Tech President, Dr. G.P. (“Bud”) Peterson was welcomed by Mayor Qin Xu of Shenzhen as the 55th member of the Shenzhen Virtual University Park on April 12, 2013

¹¹ This remarkable relationship has grown with the support and leadership of Dr. Jian Lu, Director-General, Shenzhen Science, Technology and Innovation Commission, Ms. Yurong Guo, Director of the Shenzhen Municipal Education Bureau; Ms. Xuan Qiu, Deputy Director-General Shenzhen Science, Technology and Innovation Commission; Mr. Jianling Xu, Higher Education Division of Shenzhen Municipal Education Bureau.

¹² The China-Tech Joint Venture was supported by joint investment totaling US\$ 1.2 million and governed by a board composed of former Governor Busbee; Tom Stelson, Vice President of Research at Georgia Tech; C.S. Kiang, director of the Georgia Tech School of Geophysical Sciences; Sam Ayoub, former Chief

ROLE OF INNOVATION IN CHINA'S FUTURE

The leadership of China has made it clear that independent innovation in science and technology is critical to its future. Chinese President Xi Jinping in addressing the opening of the 17th Congress of the Chinese Academy of Science (CAS) and the 12th Congress of the Chinese Academy of Engineering (CAE) in June 2014 stressed that the direction of China's science and technology development is "innovation, innovation, innovation."¹³

"We should follow the strategy of innovation as an impetus for development. Independent innovation should be the essence of the strategy and the most urgent thing to do is to eliminate the system and mechanism obstacles so as to free up the huge potential of science and technology as the primary force of productivity." President Xi¹⁴

While calling for further reform of China's scientific and technological system, President Xi vowed to eradicate ideological and systemic obstacles. He also stressed the need to pool resources and make concerted efforts when seeking new scientific and technological breakthroughs. The cultivation of talents, President Xi said, should be placed first when it comes to the pursuit of science and technology innovation.¹⁵

At this same meeting Chinese Prime Minister Li Keqiang reported on the steady growth of the economic situation in China. Li Keqiang stated, "For the long-term development of China, in order to release millions of people's creativity, we must reform. There is no other choice." The Premier told the assembly that "The Chinese economy has to be promoted to the middle and high end. And the only choice we have is innovation. This is China's fundamental path to development."¹⁶

"We should not only reward the scientists and engineers with honors, but also increase their income. The reformed research and development institutes should have the right to dispose of their scientific and technological achievements, and their scientists and engineers should enjoy stock rights and share options, so their incomes can rise to the middle and upper levels. We must prove to the whole of society that science has values that are tangible as well as intangible." Premier Li¹⁷

Financial Officer of The Coca-Cola Company; Lamar Oglesby, Vice President of Kidder Peabody & Co.; Wang Shi-guang, Chief Engineer of the Chinese Ministry of Electronics; Yang Guang-gi, Vice President of China International Trust & Investment Company; Shen Yuang, Chairman of the Chinese Association of Aeronautics; and Yu Qi-yu, President of the Technology Clearinghouse of China. George Busbee served as Governor of Georgia from 1975 to 1983 after which he joined the law firm of King & Spalding in Atlanta and became one of my law partners. Source: Atlanta Journal Constitution, February 28 1986, page B3

¹³ http://news.xinhuanet.com/english/china/2014-06/09/c_133394743.html

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ <http://english.peopledaily.com.cn/n/2014/0617/c98649-8742026.html>

¹⁷ *Id.*

Against this background – it is clear there are opportunities for the Qianhai Zone in Shenzhen to play a pivotal role in enhancing and accelerating the pace of research and development and commercialization of innovation in China.

CHINA'S STRATEGY ON INTELLECTUAL PROPERTY

In June of 2008 the State Council of the People's Republic issued an "Outline of the National Intellectual Property Strategy" for the future of China. The Outline was formulated for the purpose of improving China's capacity to create, utilize, protect and administer intellectual property, making China an innovative country and attaining the goal of building a moderately prosperous society in all respects.¹⁸

China has also adopted a specific National Patent Development Strategy (2011-20) for the purpose of implementing the Outline of the National Intellectual Property Strategy.

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"In the 21st century, with rapid development of knowledge economy and acceleration of the globalization process, the patented technology has become strategic resources for the core competitiveness of a country . . .

"Over the past 30 years, China's patent undertakings have made notable achievements. The laws and regulations on patents have fully developed. The capacity to create and utilize patents has constantly enhanced and the capacity to examine and approve patents has significantly improved. The patent protection mode with Chinese characteristics has initially been established. The level of disseminating and serving the patent information has steadily improved. The patent talent pools have basically met the demand for the development of the patent work. The international exchange and cooperation on patents has created a new situation. All this has created favorable social and legal environments for China's technological innovation and economic development.

"However, as China has a short history of establishing the modern patent system, with the development of the situation, currently there remain some problems that cannot meet China's economic and social development. The patent system has not become fully integrated with development of socialist market economy, and its role has not been brought into full play in guiding industrial restructuring and upgrading and promoting China's innovation capacity. The patent policies are not closely consistent with China's policies on economy, science and technology, and effective patent policy system to encourage and protect innovation has not been fully established. The market entities have inadequate number of core patents and their capacity to utilize patent is poor. The system and mechanism of patent administration need to be improved and law enforcement on patent protection need to be further enhanced as well . . ."²⁰

The Patent Development Strategy laid out specific numeric targets to encourage a dramatic increase in the filing of patents in China:

¹⁸ http://english.gov.cn/2008-06/21/content_1023471.htm

¹⁹ <http://graphics8.nytimes.com/packages/pdf/business/SIPONatPatentDevStrategy.pdf>

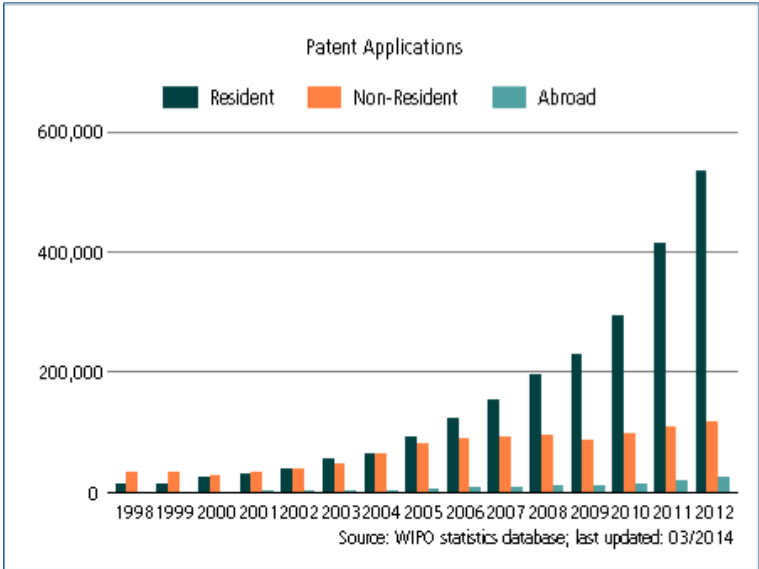
²⁰ National Patent Development Strategy, pp. 1-2

<http://graphics8.nytimes.com/packages/pdf/business/SIPONatPatentDevStrategy.pdf>

By 2020, China will become a country with a comparatively high level in terms of the creation, utilization, protection, and administration of patents...The quantity of patents for inventions for every 1 million people, and the quantity of patent applications in foreign countries will quadruple. A large number of core patents will be acquired in some key fields in emerging industries and in key technological fields of traditional industries.... The proportion of patent applications [by] industrial enterprises above a designated size will reach 10%....

By 2015, the annual quantity of applications for patents for inventions, utility models and designs will reach 2 million. China will rank among the top two in the world in terms of the annual number of patents on inventions granted to domestic applicants and the quality of patents filed [will] further improve.²¹

China’s focused emphasis on Intellectual Property and increasing the number of patents sought and granted in China has been remarkably successful. Published applications from China’s Patent Office rose by an average of 16.7% annually from 2006 through 2010. China became the world’s top patent filer in 2011, surpassing the United States and Japan as the country has sought to increase innovation to improve its intellectual property rights. Published patent applications from China are expected to total nearly 500,000 in 2015.²²



Not surprisingly, this dramatic increase in patent activity has created significant burdens on both the administration and enforcement of Intellectual Property Rights (IPR) in China. One of the key impacts has been in the area of domestic Chinese IP disputes within the Chinese court system.

²¹Suttmeier and Yao, *China’s IP Transition*, National Bureau of Asian Research Special Report #29, 2011, at p. 12 quoting the National Patent Development Strategy

²² *Id.*

The importance of unbiased enforcement of IPR is recognized for its incentive to create and to allocate fairly the value of the IPR that may be created or utilized.

“By reasonably determining people’s rights to certain knowledge and other information, the intellectual property system adjusts the interests among different groups of persons in the process of creating and utilizing knowledge In the world today, with the development of the knowledge-based economy and economic globalization, intellectual property is becoming increasingly a strategic resource in international development and a core element in international competitiveness, an important force in building an innovative country.”²³

The implementation of this IP Strategy has resulted in a dramatic increase in the number of domestic IPR disputes within China. The IP Strategy stimulated legal development with further expansion of a system of specialized IP courts, led by judges who are acquiring a reputation for being among the most educated and professional judges in China. But the burdens are significant:

“With the expansion of courts has come a notable increase in IP litigation, most of which has involved Chinese litigants against other Chinese. In 2009, there were some 30,626 IPR civil cases, a figure that rose to 42,902 in 2010. Copyright cases accounted for roughly 24,700 cases in 2010, trademark cases rose to 8,460 in 2010 from 6,906 the previous year, and patent cases totaled 5,785 (up from 4,422). This data indicates that China has become the most litigious country in the world with regard to IP. Compared to China, the United States in 2009 had only 2,192 copyright cases, 2,792 trademark cases, and 1,674 patent cases.”²⁴

The report of the People’s Supreme Court on IPR caseloads in 2013 shows continued growth:

Compared to 2012, the number of first instance civil intellectual property cases accepted and disposed by local courts grew by 1.33% and 5.29% to 88,583 and 88,286 cases respectively. Within each intellectual property branch, the case numbers and percentage change compared to last year were as follows:

Newly accepted cases: 9,195 patent cases, 5.01% lower; 23,272 trademark cases, 17.45% higher; 51,351 copyright cases, 4.64% lower; 949 cases involving technology agreements, 27.21% higher; 1,302 cases involving unfair competition (of which, 72 were first instance civil cases involving monopoly disputes), 15.94% higher; 2,514 cases involved other intellectual property disputes, 13.91% higher.²⁵

COMMERCIAL DISPUTES RESOLUTION – OPPORTUNITY FOR SHENZHEN

There remain significant challenges to the evaluation, management and utilization of the IP that is being created in China. At the Third Plenary Session of the 18th CPC Central Committee in Beijing, on Nov. 12, 2013, an important policy document was adopted that

²³ Outline of the National Intellectual Property Strategy,” State Council of the People’s Republic of China, June 5, 2008, 1.

²⁴ Suttmeier and Yao. *Ibid*, pp. 13-14

²⁵ Intellectual Property Protection by Chinese Courts in 2013
http://www.court.gov.cn/zscq/bhcg/201404/t20140425_195314.html

decided major issues concerning comprehensive and far-reaching reforms.²⁶ Among these was the decision to strengthen protection of intellectual property rights (IPR), improve the mechanism to encourage innovation, and explore ways of setting up the IPR court.²⁷

This may present another strategic opportunity for further innovation within the Qianhai – Shenzhen Zone that would attract both IPR investments and strengthen the existing commercial base. Shenzhen was among the first in the liberalized commercial arbitration commissions – and it should aspire to be first in the development of a specialized court for the handling of IPR disputes consistent with the mandate from the Third Plenary Session.

China has liberalized the arbitration rules in various of the Economic Zones as a means of attracting investments and efficiently resolving the commercial disputes that always arise in successful centers of commerce. In 1983 the South China International Economic and Trade Arbitration Commission (also known as the Shenzhen Court of International Arbitration; previously known as the China International Economic and Trade Arbitration Commission Shenzhen Subcommittee – “SCIA”) was created in the Shenzhen Special Economic Zone.

The SCIA became the first arbitration institution established by legislation with its own legal person governance model. The SCIA has adopted advanced international commercial arbitration systems and implements the Council-centered management model with effective check-and-balance in decision making, implementation and supervision to ensure independence of the arbitration institution and arbitral tribunal.²⁸

The SCIA has been a pioneer in the exploration of China’s commercial arbitration. It was the first to include arbitrators from foreign jurisdictions (1984) and was the first to render an arbitral award that was enforced outside China (1989). More than one third of the members of its governing Council and its arbitrators come from outside Mainland China.²⁹

There have been technical challenges to the enforcement of arbitration agreements and award by some of the Courts in China. This has created uncertainty among the participants to these arbitration agreements and caused the People’s Supreme Court (PSC) to issue a directive that lower China Courts hearing a case from SCIA report to the SPC before making any decision.³⁰

²⁶ The Third Plenum blueprint may be as consequential as Deng Xiaoping’s economic reforms that began in 1978. President Xi Jinping has embraced the market as the “decisive force” to help the Chinese people realize the “Chinese dream.”

²⁷ <http://english.people.com.cn/90785/8458097.html>

²⁸ <http://www.sccietac.org/main/en/aboutus/introductions/index.shtml>

²⁹ *Id.*

³⁰ Supreme People’s Court, *Notice on Certain Issues Relating to Correct Handling of Judicial Review of Arbitration Matters* September 4, 2013, No. 194

Other trade areas within China are taking steps to strengthen the effectiveness and the efficiency of their arbitration tribunals. On May 1, 2014, the Pilot Free Trade Zone arbitration rules in the new Shanghai Free Trade Zone came into effect.³¹ At the press conference announcing the new Pilot Rules on April 8, 2014, it was stated that these new rules would promote commercial arbitration in the Free Trade Zone to a more professional and international stage and be a significant measure for establishing an international rule of law environment in the Free Trade Zone.³²

There are a number of differences between the new Pilot FTZ Arbitration Rules and the current Shanghai International Arbitration Center Arbitration (SHIAC) Rules as well as other institutional arbitration rules in China including those in Shenzhen. These differences are set forth in the (non-official) Interpretation of China (Shanghai) Pilot Free Trade Zone Arbitration Rules published by the International Commercial Arbitration Research Center of SHIAC and the China Free Trade Zone Law Institute of the East China University of Politics and Law (ECUPL)³³

As summarized by Rui Bu, the main differences as set forth in the non-official Interpretation are that the Pilot FTZ Arbitration Rules contain³⁴:

- Broader provisions for interim relief, including pre-arbitration interim relief.
- Provisions for the appointment of an emergency arbitrator to rule on applications for urgent interim relief before the constitution of the tribunal in the main proceedings. **(Emergency Arbitrator Procedure)**
- More substantive provisions regarding the appointment of arbitrators from outside SHIAC's panel of arbitrators. **(Open-List Arbitrator Appointment)**
- Expanded provisions for the consolidation of arbitrations and joinder of parties.
- Express provisions for mediation to be conducted by a mediator, as an alternative to the tribunal conducting the mediation, and the establishment by SHIAC of a panel of mediators.
- A *de minimis* threshold of RMB 100,000 for the summary procedure to apply, and a small claims procedure for claims that do not exceed RMB 100,000.

In his thoughtful analysis of the new Pilot FTZ Rules in comparison to other arbitral forums available to global contracting parties, Rui Bu, offers some suggestions that might further improve the attractiveness of the FTZ to global parties. Without delving into great detail – these may be worthy of further consideration by the leadership:

³¹ <http://www.shiac.org/English/FreeTradeZoneRuleEN.pdf>

³² <http://www.shiac.org/English/NewsDetails.aspx?tid=7&nid=630>

³³ http://www.shiac.org/upload/day_140430/20140430110640784.pdf

³⁴ Rui Bu, *Emergency Arbitrator Procedure and Open-List Arbitrator Appointment Under the New China (Shanghai) Pilot Free Trade Zone Arbitration Rules: Dawn of a New Era?*, University of Georgia Senior Thesis, (unpublished)

1. Permit the filing of applications for emergency relief before an Emergency Arbitrator prior to the formal acceptance of arbitration after an Application of Arbitration is filed, so long as the Application of Arbitration is duly accepted and a Notice of Arbitration is filed shortly afterwards;
2. Require that the Emergency Arbitrator promptly set up a schedule for considering the application for emergency relief within a certain period of time after the emergency appointment so that the process will be expedited;
3. Authorize the Emergency Arbitrator to grant any interim relief that may be appropriate and have it binding when rendered, but clearly limit the power of the Emergency Arbitrator to the parties signing the arbitration agreement;
4. Explicitly state that the official Arbitral Tribunal when formally convened is not bound by the Emergency Arbitrator's decisions or findings of fact;
5. While the FTZ rules now permit parties to "recommend" arbitrators from outside the list of approved arbitrators, the rules should clearly state the approval of any arbitrator from outside the list should be expedited and if reviewed, subject only to clear and objective standards.

Adoption in Qianhai of the Pilot FTZ Rules for commercial arbitration with these modifications might enhance and distinguish the SCIA and Qianhai as a forum for commercial arbitration and allow a further experimentation and growth within the Shenzhen – Qianhai Zone pursuant to General Secretary Xi Jinping's instructions to "explore and experiment with bold initiative and to create independently."

IPR DISPUTE RESOLUTION – OPPORTUNITY FOR QIANHAI-SHENZHEN

As specialized IPR Courts or tribunals are created – it would be most helpful to the growth of Qianhai to have one located in the Qianhai Zone. This location would be ideal because of the number of high tech firms already located in Shenzhen and the Virtual University activities for further innovation research and development.

It might also be useful to establish a panel of independent experts in diverse technical areas who could serve as potential party appointed arbitrators in IPR disputes that may be subject to arbitration agreements or as expert mediators in a mediation process that might precede any IPR litigation in the courts.

Consistent with the honored culture of China to seek consensus and in order to reduce the number of litigated matters related to IPR – requiring mediation before litigation in the courts using very skilled and trained mediators (who would not thereafter be involved in any related litigation) might avoid unnecessary time, expense and controversy while protecting the interests of both the innovators and society.

In order to expedite the resolution of IPR disputes in the courts – it might also be useful to consider direct appeals of all IPR judicial decisions in the Qianhai Zone to be subject to prompt (and consistent) judicial review at the highest level. This might be part of the creation of the new IPR Court and would expand the provisions now applicable to "foreign-related investments" in domestic Chinese courts.

Finally, in an effort to sort through all the large number of patent disputes that are purely between Chinese nationals – China might consider creating an automatic and “compulsory license” of Chinese patents for the sole and limited purpose of permitting further experimentation and development of other innovations. Seldom does a useful innovation involve a single patent concept. In order to advance the important interests of society in the further development of science and technology – the creation of a compulsory license available to all for that limited purpose would protect the commercial value of the patent while allowing further growth of technology and innovation.

If a commercial product or useful service is created as a result of experimentation under any such compulsory license – all patents holders could be given appropriate credit for the new innovation. The compulsory license to experiment might also then require an “expert assessment” by appropriate technical experts supervised by the IPR Court – to assess the relative contribution of each party and their patent to allocate shares of any IPR to the new innovation for the purpose of sharing in any economic benefits from the combined IPR.

SUPPORT FOR SMALL AND MEDIUM SIZE INNOVATION FIRMS

Innovation does not come on command – nor is size of a firm any assurance of advantage in innovation efforts. Some of the most remarkable innovations have come from those who never completed college – or were start-ups in garages or dormitory rooms.

To create an overall “innovation environment” it has become important to provide financial support and an attractive environment for small firms and entrepreneurs. Since smallness of size is also no assurance of innovation – it is necessary to have systems of financial support that can provide a scattering of seed funding to allow such small firm innovation efforts to grow. “Venture Funds” that provide such support are often created by accumulations of capital from wealthy individuals or other investment funds who wish to place a portion of their portfolio in start-up or “alternative” investment assets.

Consistent with the comments of Premier Li that “. . . research and development institutes and their scientists and engineers should enjoy stock rights and share options so that their incomes can rise . . .”³⁵ and the current allowance of private commercial banking in Shenzhen – efforts could be made to create several private investment vehicles or “Venture Funds” supported by local tax reductions or other incentives that might attract to Qianhai significant foreign investment for innovation in the Zone. Such funds might also provide broader opportunities for investment in innovation by individual Chinese as an alternative to current high levels of domestic investment in real estate.

³⁵ <http://english.peopledaily.com.cn/n/2014/0617/c98649-8742026.html>

CONCLUSION

The challenge of all IPR globally is to provide incentives for innovation by allowing both status and economic rewards to the innovators– while advancing the interests of the society by sharing the knowledge of the discovery and the benefit for the common good. The suggestions in this paper are intended as merely ideas for further consideration by the leadership of Shenzhen and the Qianhai Zone.

China is poised to blend its history and culture with the motivation and leadership of both national and local leaders. Qianhai and Shenzhen represent both early and continuing investments in economic reform and social development. The ability of these remarkable Zones to continue their advance is clearly assured with the mandate of the Third Plenum.

The Internationalization of the City of Shenzhen and its continued economic growth will depend on its continued commitment to innovation and its efforts to attract and educate talent as both individuals and firms and to provide the social, financial and technical infrastructure necessary to unlock the potential of a remarkable people.

The Georgia Institute of Technology is proud to play a part in this important mission.

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