

Dear Ric,

I attended a session with you on Tuesday 19 July 2005. Just to remind you I spoke about transparency issues.

My company provides assistance to Australian companies that want to expand into China. Generally these companies are SME's already successful in Australia usually privately owned but sometimes publicly listed.

I have worked on China for over 20 years and the type of companies that I have been assisted cover a large number of industries. As my business is usually associated with China start-ups the request that I have for assistance from the Australian government in the FTA process is in the "getting started" phase.

1. Cost of Establishment - Transparency

Cost of business is one of the major considerations of companies and the set up of new business of major concern to SME's. Registering a business in China is more expensive for a foreign company than a local company. While the Chinese government advises that the Foreign Enterprise Service Co. Ltd (FESCO) is assist for a fee of AUD2500 this is only possible for the most basic forms of business such as representative offices and consulting companies. Other forms of business activity requires approval from a variety of government departments. As you are aware there are internal publications, sometimes books produced by municipalities and provinces which details the approval process. To gain access to this information companies normally appoint a lawyer. Foreign lawyers rates are fixed at inflated rates by the government, quality local lawyers are also expensive. These lawyers may in turn appoint an approved agent of the local government to provide the information requested. The end result is that the cost of legal fees average between USD10,000 and USD30,000 depending upon which lawyer is used and how difficult the local government decides to make your application.

Added to this is the cost of the companies personnel or consultants time in meeting with the government authorities, liaising with lawyers and preparing documentation. Local officials use the lack of information available to companies to obtain personal benefit, the most common a trip to Australia requiring additional expenditure.

While the Chinese government has indicated that approval can be obtained in 3 months this is rarely the case.

If the internal approval publications were made public the degree to which lawyers are required will be reduced and setting up times reduced resulting in a substantial reduction in set up costs. If a SME starts off in China with a set up cost of over USD50,000 it is already behind the local competition. Likewise an extended period of consultations during the application process can also lead to the missed opportunity. As part of the approval process companies are required to hand over business plans to local government authorities who in turn can hand them to competitors and local companies and as a result commercial advantage is lost.

The lack of transparency has not occurred by accident but a deliberate policy of the Chinese government to protect local industries by delay and increase in costs for foreign companies. The central government provides brief "guidelines" for interpretation to provincial and municipal governments which in turn include ambiguous statement like "Only foreign companies that have advanced special technology" may receive an approval for a business licence". Which is then in turn open to interpretation by lower level officials that have control over smaller invested companies.

Many SME's that get caught in this trap become China fatigued as their budget becomes exhausted and often leave the market. Others find ways around the regulations or attempt to ignore regulations only to be caught later, if their business is successful, by a reinterpretation of the regulations by a new local or central government body. Usually only the most cashed up or largest companies can survive these government policy changes.

Ideally the Australian government should aim to have the transparency issue resolved during the FTA process rather than at its conclusion by which time opportunities for Australian companies may have already been missed.

2. Franchising

Some of my clients are involved in franchising in Australia and plan to take these systems into China where potential has been identified. In 2004 new guidelines for foreign invested enterprises were introduced which included provisions for franchising and retailing. While some progress was achieved by introducing guidelines they remain unclear and subject to local government interpretation. In the short term the guidelines provide opportunities for companies to obtain business licences from local government organizations. The lack of information about how foreign business can operate provides an opportunity for local business to establish themselves in new markets before foreign companies can obtain approvals.

Franchising regulations are ambiguous and combined with retail regulations which limit the number of stores that companies can open in any geographic location, outlet size regulations and the number of employees required, provide opportunities for larger companies from Europe or the United States as is impossible for Australian companies to take advantage of opportunities that have been identified without taking an enormous business risk.

The Australian government should be able to assist SME's in the service sector and particularly the franchise industry by seeking the Chinese government to clarify its franchise and retailing licensing policies and ensuring that Australian leading companies in these sectors that on a world scale are only small and medium sized are able to compete with the major players.

3. Health Sector

One of the companies that I have provided assistance to is involved in the health sector and is investigating the possibility of managing hospitals in China and in providing internationally patented medical services to the Chinese market. The company has a strong presence in Australia and has several overseas investments in the Asia Pacific region.

The health sector is slowly opening to overseas companies. At present companies from Japan, USA, Taiwan, Hong Kong and Korea have already invested in the market. However, market entry is difficult and foreign companies are forced into joint ventures and approval process run into years. While new policies are being developed current regulations are not inconsistent between cities and provinces and approval processes are unclear. Some of the foreign companies have been able to obtain approval to operate which Australian companies have been unable to achieve.

As this market is expected to open in the next few years, it would be appreciated if the Australian government could ensure that the health services market could be opened to Australian service providers.

Yours sincerely

Bruce Richardson