AustCham Beijing
中国澳大利亚商会

2004 Business Issues Paper

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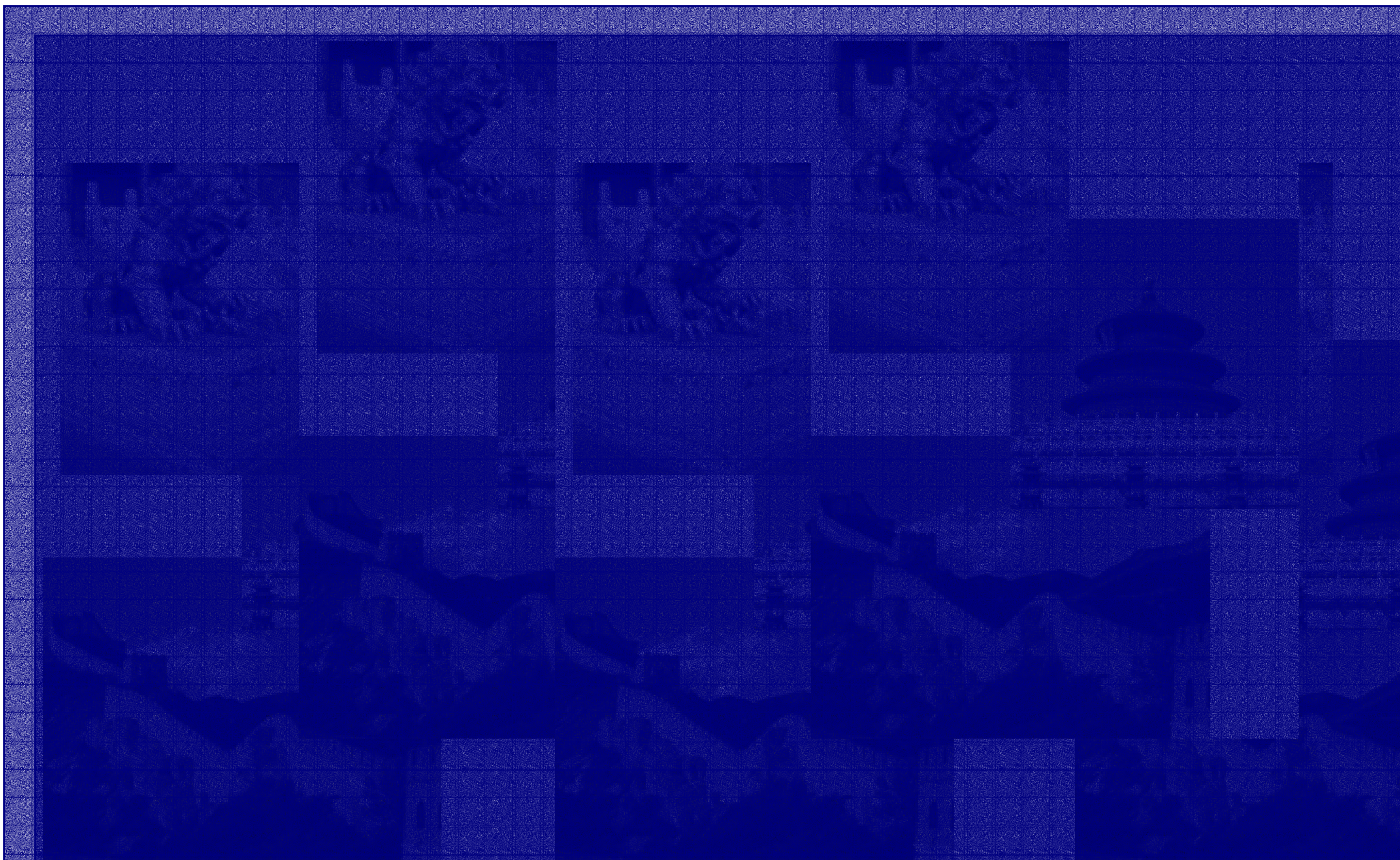

About AustCham Beijing

The China-Australia Chamber of Commerce (AustCham) Beijing was founded in 1996 and is a non-profit, private sector organisation promoting Australian business and AustCham member interests in China. AustCham Beijing's membership comprises of more than 170 corporations and 250 members that represent Australia's services, manufacturing, and mining sectors. AustCham Beijing is part of a larger network of AustChams in China which include AustCham Shanghai, AustCham Hong Kong and AustCham Guangzhou.

Our members include the who's who of Australian companies, including: ANZ Banking Group Limited, Rio Tinto, BHP Billiton, Qantas, AMP Limited, Cadbury, Telstra, Australia LNG, the Australian Broadcasting Corporation, ACTERNA, ALCOA, PWC, News Corp, Latrobe University, Commonwealth Bank, CPA Australia, National Australia Bank, etc., not to mention a large and fast increasing number of SME's. We play a constructive and meaningful role in the development of the Australia-China relationship by being a representative body for the Australian Business community in China. AustCham helps connect Australian and Chinese businesses to the mutual benefit of both countries.

AustCham Beijing would like to extend its thanks to its Members, DFAT Beijing, Austrade Beijing and the Australian Community in Beijing for their support during the publication of this paper.

Abbreviations

FDI	Foreign Direct Investment
FIE	Foreign Invested Enterprise
HR	Human Resources
LNG	Liquefied Natural Gas
MOFTEC/MOFCOM	Ministry of Commerce (formerly MOFTEC)
PRC	People's Republic of China
RMB	Renminbi
SAFE	State Administration of Foreign Exchange
SAT	State Administration of Taxation
SME	Small Medium Enterprise
T/T	Telegraphic Transfer
VAT	Value Added Tax
WFOE	Wholly Foreign Owned Enterprise
WTO	World Trade Organisation

2003 Exchange Rate: USD$ 1.00 = RMB 8.28
AUD $1.00 = RMB 4.70

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Message from the Executive Committee

The Australia-China Chamber of Commerce in Beijing (AustCham Beijing) was established in 1996 against a backdrop of growing foreign direct investment – both Australian into China and vice versa – and expanding bilateral trade. The number of Australian businesses with incorporated ventures or representative offices in Beijing had grown dramatically as had the flow of visiting business delegations from Australia. A fledgling AustCham Beijing emerged at that time to serve as the institutional voice of the overall and sectoral interests of Australian business in north China.

Since its inception, AustCham Beijing has progressively refined its mission and operations to better serve the interests of its members and foster more efficient investment and trade between Australia and China based on the open and fair market principles underlying the WTO. Today AustCham Beijing's mission is to promote Australian business and the interests of its members in China through being an effective source of information, connections and representation.

This Business Issues Paper arises from AustCham Beijing's role in representation to promote Australian business and member interests. Our members are the coalface of practical interaction with China's regulatory and market environment. They have intimate knowledge of remaining barriers and distortions impeding China's smooth transition to a fully-fledged open market economy as per the Chinese Government's belief in, and commitment to, WTO principles. Of course many barriers and distortions have already been removed, and the Chinese leadership deserves congratulations for driving these reforms.

The Business Issues Paper encapsulates that coalface knowledge of remaining barriers and distortions. Furthermore, it takes the next step of making practical recommendations about how these problems might be ameliorated. It is a briefing sheet based on contemporary practical experience in the business environment of China for advising both Australian and Chinese senior politicians and public servants of issues which can be addressed to achieve greater effectiveness and efficiencies in investment and trade between the two countries.

AustCham Beijing intends that the Business Issues Paper becomes a resource relied on by Australian political and public service leaders in their negotiations and advocacy with their Chinese counterparts.

Of course, business issues will change with time and with new reform steps. Thus the Business Issues Paper is conceived of as a living document. Based on the on-going experience of our members, new issues will be added as they arise and current issues dropped as they are resolved.

Executive Committee
AustCham Beijing
People's Republic of China

Friday, August 13, 2004

A. Executive Summary

Australia and China have a strong and rapidly expanding commercial relationship. The relationship is highly complementary: Australia mostly supplies raw materials and services required to help sustain China's rapid economic growth and development; China supplies an increasingly sophisticated range of manufactures and inputs needed by Australian industry and households. Over recent years, the commercial relationship had broadened considerably. Australian firms now are active in niche areas of the Chinese economy including architecture, medical and health services, mineral processing, and environmental products and services. Chinese firms similarly are active in Australia in areas like agriculture, food processing, resources, property, and tourism.

The underlying strength and complexity of the Australia-China commercial relationship should increase over the next few years, continuing the trend of the last 30 years. This assessment is based on:

- China's capacity to maintain economic growth rates of around 7 per cent a year and therefore to manage successfully the difficult social, political and bureaucratic challenges that are an inescapable feature of large-scale structural change;

- China's continuing commitment to liberalizing its economy and promoting economic cooperation and liberalization in East Asia and beyond;

- Australia's commitment to economic reform, rapid economic growth and closer engagement with the region; and

- The mutual benefits arising from a closer economic partnership between Australia and China.

Well-targeted measures to facilitate trade and investment are one of the keys to establishing a closer economic partnership. AustCham Beijing recognises the many improvements to China's facilitation of trade since China's accession to the WTO. This is a message to the world of its focus to become integrated with an existing international system. It is foreseeable that China will become instrumental in shaping a prosperous future for Asia and the World in general.

There are still some inefficiencies and regulations that concern AustCham Members when doing business in China. Foreign business is hampered by an intricacy of differing interpretations of procedures and regulations when entering or importing into the China market. Restrictive regulations in regard to business scope and registered capital requirements for foreign invested enterprises also limit foreign investment and cause inefficiencies when doing business. Relaxation of these regulations would enhance doing business in China.

Based on the input from our Members, AustCham Beijing has provided the following recommendations covering 'Generic Business Issues' to improve China's business climate.

List of Recommendations – Generic Business Issues

Business Scope

- Allow a free-range scope of business to companies who have shown a good track record after two years in operation.
- Improve transparency by listing publicly the types of business scope that will be approved for the various common categories of company that are frequently registered.

Policy Implementation Variance

- Implement and enforce consistent regulations and policy nationwide.
- Ensure transparent policy for each location.
- Promote non-discrimination against international or foreign investments.

Registered Capital Requirements for FIE

- Set the registered capital requirements for foreign invested enterprises in line with domestic companies in the same industry.
- Eliminate the minimum requirements for registered capital in line with other countries investment requirements.
- Clarify and clearly document on a National level.

Barriers to Trade

- Remove VAT on imported goods. Charge VAT at the wholesale level only, thereby removing the need for import claims, and easing company cash flow.
- Make operating hours at inbound ports more flexible to coincide with inbound shipments.

Foreign Exchange Constraints on the Operations of WFOEs

- AustCham feels that the processing of WFOE foreign exchange requirements should be simplified to a ‘one-stop-shop’ exercise. While recognising that China will, for the time being, continue to reform the foreign exchange regime incrementally, AustCham would like to see WFOEs being given complete freedom over the foreign exchange earnings that they are allowed so that they can transfer this within and outside China as business needs arise.

List of Recommendations – Industry Sector Issues

Manufacturing Sector

- Efficiency of the Import/Export process
    - Adopt international standards for import and export processing
    - Improved coordination between Customs and other government agencies

- Foreign Exchange
    - Eliminate current regulations that limit the amount that can be prepaid to an overseas supplier
    - Eliminate the requirement that import invoices must be paid within 90 days of customs clearance.
    - Eliminate all State Administration of Foreign Exchange (SAFE) rules that create administrative barriers that cause difficulties with accounts receivable.
    - Permit both Chinese and foreign commodities users and traders to hedge sales or purchases using efficient instruments such as overseas futures markets, options, or structured trade financing

- Taxation
    - Simplify the procedures for claiming the VAT refund and VAT refunds should be provided in a timely manner.
    - Revise the State Tax Bureau regulations regarding pre tax deductions for bad
    - debt and fixed assets to simplify the use of these deductions
    - Eliminate import duties on all capital equipment used in production
    - Reduce personal income tax rates to a level comparable with other countries in the Asia-Pacific region, to help attract skilled professionals.

- Provincial Protectionism
    - Ban all provincial protectionism and establish a hotline for reporting of complaints and publish the number of complaints, the number of investigations launched and the outcomes of investigations.

Tourism Sector

- Substantially reduce the capital requirement for obtaining a licence as a wholly foreign owned tour company. The current requirement of USD 100 million in worldwide revenue acts as an effective barrier to forming a WFOE.
- Allow foreign companies access to outbound tourism
- Enhance regulatory measures for the facilitation of online bookings and payments

Property Investment Sector

- Support Chinese government initiatives to open up the range of fundraising vehicles for property developers, along the lines of the Australian Real Estate Investment Trusts (REIT). But, push for these fundraising vehicles to be open to foreign and domestic companies alike.
- Simplify the property development approvals process for overseas companies.
- Improve transparency of land transactions.
- Increase flexibility in transferring land use rights.
- Permit efficient forms of investment from a tax and finance perspective for foreign investors such as unincorporated co-operative joint ventures.

Insurance Sector

- To push for a guarantee that all geographical restrictions on branching will be removed by the end of 2004, in line with China's WTO commitments
- To push for life insurance companies to be given more flexibility in the sort of investment and insurance vehicles they are able to offer consumers.
- To review markets in other countries with a view to adopting a more open liberalization process.
- To push for new licenses to be issued according to objective criteria (recent licenses have only been issued after intense political lobbying)
- To push for the Chinese government to issue tax policies that encourage saving through life insurance.

Business Services Sector

- AustCham Beijing recommends that the PRC government relax such restrictions for all companies in line with the situation in other countries and permit companies to operate freely across all business sectors.
- AustCham Beijing recommends that foreign firms be given the same status as Chinese firms in regard to establish national licenses with a one-off capital payment, and not to have regulations which subject them to a per branch requirement
- AustCham Beijing recommends that the Government should set the registered capital requirements for foreign invested enterprises in line with domestic companies in the same industry.

Mining Sector

- Access to geological information: Develop a register of geological information similar to that in Australia, with access codes for registered users.
- Categorisation of certain mining sectors and corporate structures: Implement and enforce consistent categories and regulations nationwide
- National treatment: Promote non-discrimination against international or foreign investments.
- Intellectual Property Regulation and Enforcement: Enforcement of registration, trademarks etc. remains a challenge.
- Vague project approval process and Fair competition/procurement: Implementation of National laws needs to be implemented in an enforceable way at local level and to introduce an arbitration body or ombudsman to appeal to if when unfair competition exists.
- Tariffs: Equal treatment of tariffs for Australian resource providers should be implemented
- Government policies not transparent: Introduce a clear and enforceable policies at all levels of government.
- Tax treatment of exploration expenditure for foreign mining companies in China: Need equal tax treatment similar to tax treatment in Australia where future revenues can offset past exploration costs.

B. Australia-China Business Relations

Australia and China have a rapidly growing trade and economic relationship in which each brings particular strengths to the relationship and supplies products and services that are important to the growth and prosperity of the other. Australian exports are dominated by primary products. Resources and energy form over half of our exports - iron ore and alumina are particularly important. Agricultural products form around one quarter – wool is the most important export, but barley, canola seeds and in some years wheat also are important. Manufactured exports, mainly business inputs, account for only 9 per cent of exports. Services currently comprise 10 per cent of exports. Education services are growing rapidly and preliminary data indicates China just became our largest education market. Tourism also is growing very strongly; with arrivals of PRC nationals in Australia now exceeding 160,000 per year.

Australia has invested between USD2-4 billion in China – a relatively small amount in terms of our global portfolio of investments - divided fairly evenly between manufacturing, property and business services, and a range of sectors including wholesale and retail trade, finance, construction, education, and information services.

China mainly exports labour intensive manufactures to Australia, although the share of more sophisticated higher value added products and services are increasing. Clothes, toys, shoes and travel goods are prominent, but computers and telecommunications equipment are expanding rapidly. However, in producing many such manufactures, China still uses labour intensive processes to assemble imported components, which embody most of the advanced technology.

China has around USD3 billion invested in Australia, making it one of China's main investment destinations. Most of the investment is in resources, including iron ore mining and metals processing; recently, China also has invested in the North-West Shelf gas project as part of the Guangdong LNG contract.

WTO entry and ongoing Chinese agricultural sector reforms are increasing opportunities for Australian agricultural exporters. Chinese farmers are gradually changing the mix of production, and where appropriate are switching out of land intensive crops and grazing and into more profitable labour intensive horticulture, where they are more competitive. Recent grains sector reforms are accelerating this trend. These changes should generate new markets for efficient broad acre producers like Australia.

Australia is becoming a key supplier for China's rapidly expanding industrial raw material and energy markets. · From 2005/06 onwards, exports of liquefied natural gas should be in the order of AUD 1 billion per year. WTO reforms, particularly to trading and licensing procedures, will complement other minerals and energy market sector reforms, increasing Chinese demand for high quality imported mineral and energy resources, particularly iron ore, alumina, copper ore, and possibly lead and zinc ores. · As mining reforms continue, opportunities seem particularly good in coal and minerals mining, machinery and washing equipment, advanced smelting, processing and design technologies, infrastructure services and environmental goods and services. ·

Over the medium to long term, opportunities for Australian manufactured exporters should expand from their current modest base. Intermediate goods for industry and advanced manufactures in which Australian firms own intellectual property seem to be the most promising areas. ·

Australia's experience in privatising public infrastructure and providing new private infrastructure and services should generate opportunities for infrastructure investors, consultants and exporters of infrastructure-related goods and services. The Chinese Government has spent heavily on upgrading its infrastructure networks in recent years. However, infrastructure quality varies greatly by sector and location, ensuring a steady stream of new infrastructure projects required in the 2000s.

China's WTO services sector accession commitments were among its most significant, and when fully implemented should remove important impediments to trade in services and open major services sectors to foreign investment. Australian banks may find expanding opportunities to service high wealth individuals and Chinese corporations, although high capital and prudential requirements, entrenched domestic players and rapidly increasing international competition make this a competitive sector. Financial firms may find more opportunities in niche areas including mortgages, credit cards, risk and funds management and business restructuring assistance. Growing incomes, salary premiums for foreign educated graduates, increasing openness and shortages of quality higher education and vocational training places are driving China's strong demand for Australian education. An estimated 30 000 Chinese students were studying in Australia in the first half of 2002, with an estimated 20,000 plus Chinese students studying in Australian run programs taught in China.

Australia's innovative ICT service application, adaptation and skills training firms should find good niches in China's rapidly growing ICT market. Opportunities also are emerging in environmental services, professional services, logistics and distribution.

While resource and rural exports should remain the mainstay of the commercial relationship over the medium to long term, the combination of rising real incomes, service sector reforms and potential mining reforms should boost significantly services and manufactured exports and related flows of investment. WTO entry and ongoing reforms also should contribute to a more predictable and transparent business environment, although this improvement is likely to be gradual.

There are great opportunities in the Chinese market but also significant risks. To succeed, Australian businesses will need to be committed, well prepared, well resourced, and very vigilant.

C. Generic Business Issues

1. Business Scope

Summary
In China, when you register a company you must specify the areas of business in which you wish to operate. These are then submitted for government approval and sometimes rejection. You are then only allowed to undertake business activities in the specified sectors / fields. This limits a businesses activity and prevents it from expanding freely into new areas to follow market developments and change.

AustCham recommends that the PRC government relax such restrictions for all companies in line with the situation in other countries and permit companies to operate freely across all business sectors.

i) Background
The Company Law of China was adopted in 1994. Under this law, all companies are required to specify their Scope of Business in their Articles of Association. The Articles of Association are then submitted to the government company registration organizations (i.e. MOFTEC, SAIC, etc.) for approval.

> The shareholders of the company shall sign and seal the articles of association. As mentioned earlier, the Chinese government has adopted a cautious position in relation to the company's scope of business. Prior to the adoption of the Company Law, the business scope of every enterprise had to be approved by the government. Article 22 of the Company Law requires the articles of association to stipulate the business scope of limited companies. Nevertheless, it does not oblige the companies to obtain approval from the government. This provision therefore represents an advance in China's company law practice. It is still doubtful whether this provision will be implemented on its face value, for the Chinese government does not appear to have been convinced that the establishment of enterprises should not require approval of the government. It is therefore submitted that it will be some time before this provision can be effectively enforced.

Source: www.china-laws-online.com

Note: The PRC government's reliance on the definition of each company's scope of business is also related to its use of a "catalogue" of industries for which FDI is encouraged, restricted or prohibited, which is published by MOFTEC / MOFCOM

ii) Current Situation
In practice, when a company is registered, the applicant lists a wide range of business areas that they hope to operate in.

The government then eliminates many of these areas, leaving the company with a restricted business scope to choose from. Companies that operate outside their legally approved scope of business are regularly fined large sums by the SAIC.

While in theory companies can simply apply at a later date to expand their business scope, approval is often difficult to obtain.

An added complication is that there is little transparency in the process (i.e. there is no list of which business activities are permitted for what types of companies). Thus, applicants are often unaware as to what they will finally be approved and able to do.

For Example:

(1) When an Australian invested joint venture fitness centre in China requested to operate a restaurant and massage facilities as part of its business scope in 2001, they were rejected, forcing the business to change its plans and limiting its scope of business.

(2) A well-known and successful Australian joint venture recruiting company finds its business scope does not allow it to expand into new areas that its clients would value. It cannot, for instance, undertake employee leasing (i.e. acting as an employment agency), nor hold personnel files, nor run job fairs, nor outsource HR management.

(3) When you register a consulting company, you are not permitted to also engage in corporate training as part of your business scope.

iii) Issue

By narrowly defining companies' scope of business, the government is effectively restricting the performance of both domestic and foreign invested companies.

To branch into a new area, an existing business must thus establish a whole new company, with all the added administrative procedures, registered capital requirements, etc. In many cases, this is simply not feasible.

Even worse, in some cases, businesses are simply kept out of attractive market segments, which are reserved for domestic companies.

In some cases, a business' expansion and further investment will not occur because of these restrictions, thereby foregoing FDI and employment opportunities.

iv) Suggested Solutions

In light of the Chinese Government's past record of micro-management, and its likely reluctance to simply remove the scope of business criteria in the near future, it is suggested that any company whose track record is good, be allowed to have a free-range scope of business after two years in operation.

It is also suggested that the government improve transparency by publicly listing the exact business scope that will be approved and allowed for the various common categories of companies that are frequently registered.

v) Benefit

By allowing successful companies to broaden their scope of business, it effectively encourages them to increase investment in China. This also brings Chinese company law more into accordance with practice in other parts of the world.

2. Policy Implementation Variance

Summary

National policies have been promulgated to cover most business issues. Implementation of such policy is open to local interpretation and application varies across the country. Haphazard local application of National policies and standards impedes the expansion of companies to other cities and regions.

AustCham feels that National policies should be made clear and implemented in a uniform manner across the country. An appeal process should exist when companies feel they are facing unfair / or non-uniform policy implementation.

i) Background

National policy and regulations have determined company approval requirements, investment requirements and basic business scope for foreign investment in certain sectors. In general, national policy is a guideline for implementation at provincial, city and district levels that can often diverge extensively from location to location. The fact that a company has met registration requirements in one or more locations, does not mean that registration is assured or will have the same requirements in another.

Interpretation and establishment of standards associated with regulations can vary substantially from location to location.

In many cases domestic or local operations get favourable treatment in registration or license approvals, or there might be local restrictions against establishing branches of existing ventures.

One obvious example of this is how land rights are handled and how the documentation and legal land right usage is granted. Such rights and their documentation differs from location to location, contains different and often non-standard terms and conditions. Land is a standard commodity so the legal and approval issues for land usage is one that could be implemented in a standard way.

Such inconsistency in the implementation of a national or provincial policy exists across a range of issues not limited to;

- Business Registration and Licenses.
- Scope of Business
- Registered Capital Requirements.
- Taxation.
- Business Registration Checks and Approvals.
- Mandatory Personnel Benefits.

ii) Current Situation

For a number of foreign investors with multiple investments and locations, the fact that local regulations differ from National requirements means that the company is not able to establish a National standard and policy or operating system. This in turn indicates that foreign investment and international business interest in these areas will be stifled by inconsistent regulations. Much time and energy must be wasted on understanding and complying with different regulations in different geographic areas.

iii) Issue
The Inconsistent implementation of national policies and regulations on investment hampers further investment into new locations and / or further investment westward or to secondary cities.

iv) Suggested Solutions
- Implement and enforce consistent regulations and policy nationwide.
- Ensure transparent policy for each location.
- Promote non-discrimination against international or foreign investments.
- Create channels for companies to report and seek resolution of non-consistent policies, thereby having companies help identify and correct inconsistencies.

iv) Benefit
National policies if made clear and implemented in a uniform manner across the country would result in more positive investor sentiment and increased foreign investment on a national scale.

3. Registered Capital Requirements for FIE

Summary
Under existing policy, registered capital requirements for foreign invested enterprises and domestic enterprises are substantially different. In some cases foreign investment requirements for a company can be 10 times the size of domestic companies in the same industry. High registered capital and investment requirements dampen the interest of small to medium size Australian businesses to invest in China, while also giving an advantage to domestic companies and well capitalized 3rd-Country companies (i.e. US and European companies which tend to be better capitalized).

AustCham feels that registered capital requirements should be the same, irrespective of investment source.

i) Background
Under the regulations for the establishment of foreign invested enterprises in the PRC, foreign investors have been required to commit a certain amount of money and assets to their project that has been pre-determined by the authorities. While this investment requirement exists for local companies setting up operations, the amount required is substantially less in most cases. For example the registered capital requirement to establish a foreign invested consulting company is USD 100,000, while the registered capital requirement to establish a domestically invested consulting company is only RMB 100,000.

Domestic Companies
Registered capital requirements vary from industry to industry as the following article shows. The below figures are for domestic companies.

> Article 23: The registered capital of a limited liability company shall be the amount of the paid-up capital contributions of all its shareholders as registered with the Company Registration Authority.
>
> The registered capital of a limited liability company shall be no less than the following minimum:
>
> (1) RMB 500, 000 Yuan for a company engaged mainly in production and operation;
> (2) RMB 500, 000 Yuan for a company engaged mainly in commodity wholesale;
> (3) RMB 300, 000 Yuan for a company engaged mainly in commercial retailing; and
> (4) RMB 100, 000 Yuan for a company engaged in science and technology development, consultancy or services.
>
> Where the minimum registered capital of a limited liability company in specified trades needs to be higher than those stipulated in the preceding paragraph, it shall be stipulated by the laws and administrative rules and regulations separately.

Foreign Invested Enterprises
While the above are listed as standard requirements for domestic enterprises there are a variety of different requirements from around China for foreign invested enterprises. Some actual examples are;

> In Nanjing High-tech Development Zone, the local government generally requires a minimum USD 200,000 for setting up a manufacturing company.

In Beijing, a manufacturing company may be set up with a minimum paid-up capital of USD 150,000.

In Guangzhou and Beijing, the minimum paid-up capital for setting up a consulting firm is generally USD 150,000.

Examples such as this are common and new examples are uncovered regularly. The variance and inconsistency carries down to local level implementation. While there is very clear documentation on capital requirement for domestic companies, it is not so for foreign invested enterprises. In each case the investor is required to liaise with the local authorities to determine their local requirements.

Local Variations
Such inconsistency in registered capital requirements is not limited to different provinces, but can also be different from city to city and district to district within a province. It is also subject to final approval from local authorities

New Regulations
In addition, new policies are being released determining the minimum investment requirements across a range of industries.

The Administrative Regulations of Foreign Investment in Distribution of Books, Newspaper and Periodicals, the new rules governing the foreign-invested book, newspaper and magazine distributor sector, was published on April 2 and went into effect on May 1, 2003. The new rules, issued by the Ministry of Foreign Trade and Economic Cooperation (now a part of the Ministry of Commerce) and State Press and Publication Administration, provide specific guidance on the establishment of foreign-funded book, newspaper, and magazine distributors.

The rules set out requirements on application procedures, registered capital, and business scale of foreign-invested distributors. A registered capital of RMB 5 million (US$ 604,000) is needed for retailing companies and RMB 30 million (US$ 3.62 million) is required for wholesale enterprises. In the rules, there are also administrative requirements on place of business and technical qualifications of employees. The rules also allow for the creation of online retailers.

Registered Capital Composition
Current policies also state the amount and value of the portion of registered capital that can be considered as intellectual property, equipment, technology and land. The valuation and the proportions of total registered capital that non-monetary components amount to are subject to local approval.

Once the registered capital composition has been approved, it is very difficult to make alterations or alter the composition.

ii) Current Situation
Registered capital requirements for small and medium sized business in many industries are greater than is deemed necessary for investing in China. Registered capital requirements for Foreign Invested Enterprises are not clearly documented, they vary from city to city and are subject to local approval and authorization.

Strict policies exist regarding the proportions of registered capital that can be contributed by technology, equipment and intellectual property.

iii) Issue

The current registered capital requirements favour larger investors, primarily manufacturing and production businesses, and also US and European investors.

Australian businesses which are primarily service focused find the registered capital requirements an impediment to investing and operating in the PRC.

In addition direct domestic competitors do not have the same up-front investment requirements and are therefore given a competitive advantage.

Australia, being a knowledge economy, is hampered in moving forward with investments where the Australian contribution is “technology” or “know-how” that is not available in the China market.

iv) Suggested Solutions

- Set the registered capital requirements for foreign invested enterprises in line with domestic companies in the same industry.
- Eliminate the minimum requirements for registered capital in line with other countries investment requirements.
- Clarify and clearly document these regulations in a transparent way on a National level.. E.g. Publish them in English and Chinese on a website.

v) Benefit

- Increase in transfer of technology and know how.
- Higher level of investment by small and medium sized knowledge businesses.
- Increased business and profit taxes from increased business activity.

4. Barriers to Trade

Summary
Inconsistent and inefficient import and customs procedures are still very much a problem at Chinese ports. As well, phytosanitary requirements are being used to create import barriers, and imports of many products are required to undergo duplicative and expensive quality and safety inspection procedures. In addition, transparency continues to be an issue for both foreign and domestic firms, as inconsistent notification and application of existing laws and regulations continues to create problems for businesses.

AustCham feels that customs procedures should be streamlined and phytosanitary requirements be relaxed to ensure a level playing field for foreign firms importing and exporting goods in and out of China.

i) Background

"Following nearly 15 years of negotiations, China acceded to the WTO on December 11, 2001. Although China had begun the difficult process of reforming its trade regime in order to become WTO compliant, this process is ongoing. It is expected that WTO accession will further open China's market to foreign goods and services. In the long run, it is also expected that adherence to WTO rules and international norms should encourage structural reform and promote the rule of law throughout China." (Source: http://www.us-mission.ch)

ii) Current Situation

WTO accession obliges China to abide by the WTO General Agreement on Tariffs and Trade. Implementation of this agreement means that the customs regime must become more transparent and uniform throughout China.

One of the most significant changes to the customs regime as a result of China's WTO entry is the reduction in tariffs. Under its accession package, China is committed to significantly reduce tariffs. China has already substantially reduced its tariff rates from the average rate of 15.3 percent to 12 percent in 2002. The reduction affected 5,332 customs product categories, accounting for 73 percent of the total. It is anticipated that the average duty rate for all items will further be reduced to about 9 percent by 2005.

Prior to its accession to the WTO, China imposed non-tariff barriers such as import quotas and import licensing requirements on 240 items. In line with its WTO commitment, China will gradually eliminate these non-tariff barriers over a five year period.

iii) Issue

- There is a value added tax (VAT) of 17 percent on inbound goods. The VAT charged at wholesale level is then refundable. This is refund process is lengthy, taking up to 90 days.
- Uncertain declaration times and irregular operating hours at inbound ports.
- Identical rule with different procedures, supported by anecdotal evidence that demonstrate rules are policed differently in different ports.

iv) Suggested Solutions

- Remove VAT on imported goods. Charge VAT at wholesale level only, removing the need to claim. This will ease company cash flow.
- Make operating hours at inbound ports more flexible to coincide with inbound shipments.

v) Benefit

Streamlining customs procedures (more flexible operating hours at ports, fixed clearance times and standardised national procedures) would in practice provide savings that could be passed on to the local consumer. Also, where perishable products are concerned, more efficient procedures would instill confidence into foreign investors who may rely on such produce for end products.

5. Foreign Exchange Constraints on the Operations of WFOEs

Summary
National policy is establishing the sovereignty of the Chinese Yuan, or Renminbi (RMB) for domestic commerce. The RMB is, however, not freely convertible and is unlikely to become so in the next couple of years. Instead, national policy has made incremental steps in the giving WFOEs access to foreign currency. WFOEs need access to foreign currency to, for example, pay part of their expatriate staff salaries, various insurance premiums and retirement contributions for their expatriates, and upstream services imported from abroad. Restrictions apply to the access WFOEs have to foreign currency - some being absolute, others involving complicated procedures and approvals. Restrictions and excessive transaction costs also apply to overseas remittances that expatriate staff wish to make from their personal USD accounts in China.

AustCham feels that the processing of WFOE foreign exchange requirements should be simplified to a ‘one-stop-shop’ exercise. While recognising that China will, for the time being, continue to reform the foreign exchange regime incrementally, AustCham would like to see WFOEs being given complete freedom over the foreign exchange earnings that they are allowed so that they can transfer this within and outside China as business needs arise.

i) Background
China’s sequential reform steps relating to foreign exchange stipulations affecting the operations of FIEs have been premised on keeping China’s foreign exchange reserves strong and, more recently, building the “sovereignty” of the domestic RMB currency in all domestic commerce. Indeed FIEs, while being bound by foreign exchange restrictions, have had greater freedom in this area than most domestic corporations. Significant foreign exchange reforms have made life easier for FIEs. An example of this is the reform, about two years ago, which removed the need for the common stipulation in JV agreements that they must balance their own foreign exchange needs.

Making the RMB freely convertible will be a major step towards creating a level playing field for FIEs and domestic enterprises and, more importantly, allow a convergence of accounting prices (financial face value) and shadow (or real opportunity cost) prices. The latter will facilitate greater efficiency in the use of a nation’s resources (and greater GDP growth) complemented by efficient reliance on international comparative advantage. This theme of freely convertible currencies, positive for China’s own economic growth, is part of the WTO ethos.

Yet despite several predictions and statements of intent by the former Premier, Zhu Rongji, and other leaders since 1999, China’s economic-political hierarchy has not yet been prepared to move to free currency conversion. Hence a whole raft of regulations is in place to shore up a foreign exchange flow protection strategy.

The strategy may be augmenting China’s foreign exchange reserves, but it is simultaneously causing China to loose taxation revenue as FIEs find other channels to have freer access to the foreign exchange that they need.

The recent history of foreign exchange reform has been one of piecemeal incremental change. As this pattern is likely to continue for the next couple of years, the focus of this paper is to identify specific aspects of foreign exchange regulation that, from a FIE perspective, should be priority targets for incremental reform.

ii) Current Situation

A WFOE's need for foreign exchange can easily exceed the cap placed by the State Administration of Foreign Exchange (SAFE) on a WFOE's foreign exchange bank account. Since October 2002, the maximum of foreign currency a WFOE can keep in its foreign exchange operational account[1] is 20 percent of its total foreign exchange revenue in the previous accounting year. This means that when an overseas client pays hard currency into the WFOE's operational account, if the resulting balance exceeds the 20 per cent cap, then that excess is automatically converted to RMB which is swept into the WFOE's RMB operating account. Because the 20 percent is linked to the previous year's foreign exchange revenue, the effective cap is more constraining on a WFOE that is expanding (which should be the normal case).

Several foreign exchange restrictions and practices increase the need for WFOEs to freely access foreign exchange and in the process to try to keep transaction costs low. For example, expatriate employee salaries. Most expatriate employees want at least part of their salary paid in hard currency. If WFOE employers pay that foreign exchange component into the USD private accounts of their employees held at Beijing Banks, the employees have difficulty when they want to repatriate that money. Withdrawals in hard currency on private USD accounts are limited to USD 500 per day. This applies also to telegraphic transfers and the local bank fee for each T/T is USD 30. So, if during the course of a year, an expatriate employee saves US$ 10,000 in her/his private USD account and wants to remit this abroad, s/he has to make 20 withdrawals of USD 500 daily over 20 days, send 20 T/Ts and pay USD 600 in T/T bank fees. Alternatively, it is cheaper for the employee to withdraw the USD10,000 over 20 days and carry it out in cash when s/he takes recreation leave. A further alternative is for the expatriate employee to obtain a foreign exchange bank card against her/his USD account, and when overseas s/he can take out through ATMs, in hard currency, up to USD 1,000 per day but no more than USD 5,000 per month. International ATM transaction fees apply.

WFOEs may make arrangements with local banks to pay a hard currency component of an employee's salary into her/his personal USD account in Hong Kong (and maybe elsewhere), but unless a WFOE has a handful of other official approvals, the WFOE can only withdraw up to USD1,000 in one day for this purpose. These arrangements for off-shore salary payments are only available to the WFOE after it goes through bureaucratic procedures to gain the necessary approvals.

These restrictions of foreign exchange remittances combined with the cap on how much foreign exchange can be kept in a WFOE's account means that a WFOE often finds it simpler to have certain allowances of the employee or even top-up bonuses of the employee paid by the WFOE's mother company directly into the employee's nominated hard currency account outside China.

Secondly, take the case of workers compensation cover (or death and disability insurance) for expatriates employed by WFOEs or other FIEs. The expatriate employee wants the compensation paid to her/him (or her/his estate) in hard currency. The People's Insurance Corporation Of China (PICC) will agree to pay in USD in the event of an accident provided the premium is paid in USD (the maximum level of cover is too low for Australian commercial standards). However, in Beijing, only if the WFOE has its USD operational account with the Bank of China HQ Office (where PICC has its own prime USD account) can the WFOE pay

[1] The discussion here is about foreign exchange operational accounts not capital accounts. WOFEs on provisional incorporation open a foreign exchange capital account into which all of the declared registered capital must be paid [not a cent more, not a cent less] – and is restricted by SAFE to that purpose

the premium in USD. Interbank payments for domestically provided insurance have to be in RMB. Of course, many WFOEs don't have their foreign exchange accounts with the Bank of China.

There is considerable bureaucratic red tape confronted each time a WFOE wishes to make a foreign exchange payment in excess of USD1,000 to an overseas-based supplier of services. Usually the contract between the WFOE and the overseas supplier must first be registered with SAFE (a modest contract registration fee applies). Then, armed with the registered contract and the suppliers invoice for payment, the WFOE has to approach both the Beijing Tax Office and, separately, the national State Administration of Taxation Office to get their determinations as to how much withholding tax should be paid to each of them in respect of the invoice (depending on the sector of the service, this could range from 5 percent to 20 percent of the invoice total). Each of these tax requirements must then be paid and the WFOE has to get tax payments receipts from both levels of tax offices and a supporting letter from each tax office. The SAFE, after seeing proof of the tax payments, will then approve a draw down of foreign exchange to make the payment. The WFOE takes all documentation and SAFE approval to its bank, and then a telegraphic transfer (or bank draft) in foreign exchange can be made for the due amount.

It is not a simple matter for a WFOE to open a foreign exchange operational account. There must be supporting evidence by way of international contracts (in Chinese) that illustrate your organisation has foreign interests and will receive payment for products/services in a foreign currency. This evidentiary support needs to be provided to the SAFE in order to receive permission to set up a foreign exchange account.

Foreign-country Chambers of Commerce do not have this option. In a strict legal sense, they are not permitted to have foreign exchange accounts.

For a WFOE to receive a foreign exchange payment from a foreign-based customer is quite difficult. The sweeping of foreign exchange amounts above the WFOE's allowed cap on foreign exchange holdings into RMB has already been discussed. Each time a foreign exchange payment from overseas in excess of USD2,000 is made into a WFOE foreign exchange operational account, the WFOE has five days in which to complete and stamp the receipt with their WOE seal on a special foreign exchange report form supplied by the bank. This form must be sent by the bank to SAFE.

iii) Issue

Current regulations and practices regarding foreign exchange require WFOEs to expend an inordinate amount of administrative time in compliance, force WFOEs to be inventive in handling their foreign exchange needs, which in turn may reduce the amount of revenue and foreign exchange reserves that flow to China. The higher "invisible" barriers to foreign direct investment (FDI) posed by the official foreign exchange regime contributes to raising the minimum expected return on capital figure (as calculated in feasibility studies) that boardrooms of multinational corporations set as preconditions for approving FDI projects in China. In other words, it contributes to restricting the flow of FDI.

iv) Suggested Solutions

- Short-term 'One Stop' shopping by regulators of all the paper-work and approvals in processing foreign exchange requirements. This would apply pressure for interagency cooperation and efficiency of the regulators, rather than forcing WFOEs to bear the real cost of these regulatory inefficiencies.

- Where an expatriate employee is legally employed, legally paid all or part of her/his salary in foreign exchange into her/his foreign exchange bank account in China, and all legally required individual income tax has been paid on that salary, then there should be no limit on how much of the accumulated foreign exchange in the account the s/he can remit abroad by telegraphic transfer or bank draft.
- The capping level of 20 percent of last year's foreign exchange earnings on how much foreign exchange can be held in a WFOE's operational foreign exchange account needs to be raised.
- The use of foreign exchange monies held and accumulated legally by a WFOE in its foreign exchange account should not be subject to any foreign exchange constraints such as official approvals of transactions and maximum size limitations on single T/Ts. Even under the present cap of 20 percent of the previous year's foreign exchange revenue, it would be a considerable improvement if WFOEs was given freedom over that 20 percent, while the State continued to add to its foreign exchange reserves by compulsory conversion of foreign exchange revenue above the 20 percent cap into RMB.

v) Benefit

- Less outlays by WFOEs on non-productive administrative work
- Compliance of FDI with the foreign exchange regime made easier
- Fewer inventive techniques by WFOEs of meeting their foreign exchange needs and, as a result, more revenue to SAT and less administrative cost to involved regulators (unnecessary paper work).
- Contribution to lowering barriers to FDI (pro an increase in FDI volume)

C. Industry Sector Related Issues

1. Manufacturing Sector

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Recommendations

- Efficiency of the Import/Export process
  - Adopt international standards for import and export processing
  - Improved coordination between Customs and other government agencies

- Foreign Exchange
  - Eliminate current regulations that limit the amount that can be prepaid to an overseas supplier
  - Eliminate the requirement that import invoices must be paid within 90 days of customs clearance.
  - Eliminate all State Administration of Foreign Exchange (SAFE) rules that create administrative barriers that cause difficulties with accounts receivable.
  - Permit both Chinese and foreign commodities users and traders to hedge sales or purchases using efficient instruments such as overseas futures markets, options, or structured trade financing

- Taxation
  - Simplify the procedures for claiming the VAT refund and VAT refunds should be provided in a timely manner.
  - Revise the State Tax Bureau regulations regarding pre tax deductions for bad
  - debt and fixed assets to simplify the use of these deductions
  - Eliminate import duties on all capital equipment used in production
  - Reduce personal income tax rates to a level comparable with other countries in the Asia-Pacific region, to help attract skilled professionals.

- Provincial Protectionism
  - Ban all provincial protectionism and establish a hotline for reporting of complaints and publish the number of complaints, the number of investigations launched and the outcomes of investigations.

Summary

Much improvement remains to be seen in a number of areas within the Manufacturing Sector. The issues outlined below are not exclusive to the Manufacturing Sector and are closely related to China's overall business infrastructure. Here the issues are raised to emphasize the overall impact on the Manufacturing Sector. The main issues highlighted are:

- Efficiency of the Import/Export process
- Foreign Exchange

It is hoped the recommendations outlined below will provide a guideline to improve the investment environment by making it a more efficient and cost effective place in which to operate manufacturing businesses. Having more cost effective operations that are efficient are the basis for successful competition and competitiveness and in turn raise the attractiveness of China as a manufacturing FDI destination.

AustCham Beijing believes that if China fails to eliminate these inefficiencies, foreign investment flows into China will slump when the preferential income tax treatment for foreign-invested manufacturing enterprises is withdrawn and import duties fall in accordance with China's WTO accession commitments.

Background

Efficiency of the Import/Export process

Import/export procedures at Chinese ports, in addition to being insufficiently transparent, are also inefficient compared with other Asian markets. This is a major issue, especially for firms that rely in part on imported raw materials and/or packaging and need to react quickly to customer demand. Delays also hurt Chinese importers who want to bring the best and latest international products into China.

Foreign Exchange

Some requirements and restrictions in the foreign currency regime are incompatible with standard International practice, hinder the flow of goods and services across the Chinese border, and retard efforts to restructure and modernize China's economy. AustCham Beijing believes having a foreign exchange regime that meets international standards is in China's long-term interest.

Taxation

China's current tax regime, including Value-Added Taxes (VATs), import tariffs, and other direct and indirect taxes (such as social insurance and welfare benefits for PRC employees), often makes manufacturing in China more expensive than importing. This reduces China's ability to attract foreign investment. Meanwhile, the VAT refund for exported goods has been reduced and no longer covers the full VAT, which discourages exports. The import duty on capital equipment used in production discourages building higher production capacity.

Issues

Efficiency of the Import/Export process

Procedures are slow, inflexible and there is little communication between the relevant government agencies. Although an automated customs processing system was introduced it has not improved efficiency: the new system breaks down often and has trouble and cannot handle discrepancies. The system is also inflexible. When customs forms do not cover all the characteristics of some product, processing has to stop. This makes it more difficult to import new products, especially modern high-tech products. Efforts to standardize port procedures have led to delays of almost 30 days for import approvals that in the past took 48 hours.

Also, the State Administration of Foreign Exchange requires original documents in order to approve foreign currency payments. However, Customs does not normally release such documents, making it difficult for foreign companies to obtain foreign currency to pay for imported products. This problem can be resolved if the two agencies institute uniform requirements. Improved coordination with Quarantine-related officials will also help reduce or eliminate delays.

Foreign Exchange

Current regulations limit the amount that can be prepaid to an overseas supplier. These limits make it difficult to utilize "wire transfer before shipment" terms for small value items needed urgently. This results in the added cost of arranging Letters of Credit and the time delays associated with this process. Also, the limit of the lower of $30,000 or 10% of the total contract creates problems with vendors that have requirements for greater amounts of down payments. This interferes with freedom of commerce and can eliminate competitive suppliers that are unable to accept these terms.

Eliminate the requirement that import invoices must be paid within 90 days of customs clearance. After 90 days it is extremely difficult to receive foreign exchange to make the payment. This requirement causes cash flow problems and increases costs for companies in China. Many overseas suppliers will accept payment terms longer than 90 days. The payment terms should be agreed between the buyer and the seller.

Eliminate all State Administration of Foreign Exchange (SAFE) rules that create administrative barriers that cause difficulties with accounts receivable. For instance, SAFE rules require standard Chinese import contracts for all imports needing foreign exchange, while global standard practice would accept simple purchase orders. This practice adds costs to purchases from foreign investor firms, but no benefits to the Chinese buyers.

Provide simple, straight- forward procedures to allow accounts with foreign partners or investors to be settled by "offsets". As an example: If a foreign company owes a Chinese company $100,000 for products supplied and the Chinese company owes the same foreign company $75,000 for raw materials purchased. The international standard for settlement is for the foreign company to make a payment to the Chinese company of $25,000 and issue a credit to the Chinese company for $75,000. This is not allowed in China because the Chinese customs verification sheet for the export of $75,000 of product can not be reconciled with the $25,000 payment. The result is additional bank transfers and cash flow difficulties. The inefficiency of this and the resulting added costs reduce competitiveness. Provide simple, straight- forward procedures for obtaining foreign exchange to pay for services provided by an overseas supplier. It is difficult to obtain foreign exchange to pay invoices for overseas services because the invoices do not have customs stamps on them and, therefore, cannot be approved for foreign exchange. This is a competitive constraint on business operating in China as it adds cost with no market or operational benefit.

Permit both Chinese and foreign commodities users and traders to hedge sales or purchases using efficient instruments such as overseas futures markets, options, or structured trade financing, all of which are severely restricted by current SAFE requirements. Without hedging, buyers and sellers cannot protect themselves against abrupt price changes in volatile commodities. This makes China's market risky, and a "risk premium" attached to all transactions raises prices. Inability to hedge also impairs trade

Taxation

The current VAT rate of 17% is too high. It significantly raises the cost of production in China, which discourages economic growth. Meanwhile compliance is uneven. Many domestic firms illegally avoid paying VAT, and thus can charge lower prices than compliant firms, creating unfair competition. Fewer firms will try to avoid VAT if a lower rate is set. Lower VAT rates increase growth, competition and compliance, and thus can actually increase tax revenues. The high VAT cost is compounded by tariffs on imported raw materials, creating combined rates as high as 25%. This significantly raises the price of goods made in China.

Meanwhile, reduction of the VAT export refund makes exports more expensive and less competitive. Current practices are inconsistent, with the percentage of refund ranging from 85% to 91%. Lack of full refund increases manufacturers' cost by that amount. Exports are reduced because of this. Other countries do not charge VAT on export sales.

The lengthy waiting time for VAT refunds, which often takes one year, and the failure to allow VAT offset when purchasing from domestic suppliers, also causes considerable cash flow problems for manufacturing firms. Current practice requires a cancellation after sales certificate as evidence of being paid for exported goods to be submitted within 90 days from date of the export customs declaration sheet.

This must be submitted within 90 days or the request for refund is denied. Payment terms are agreed between the buyer and seller based their commercial and competitive relationship. This commercial term should not influence the ability to receive a refund of VAT.

Current practice requires that applications for approval of these pre tax deductions must be submitted to the tax bureau within 30 days after year-end. The required supporting documents cannot be completed in this short period of time making it a difficult and unworkable procedure. Use of this deduction is an accepted international accounting procedure and using it should not be difficult. Eliminate the import duty and VAT charges for imported capital equipment for use in production.

These added costs discourage investment and formation of higher technology production capacity. Customs regulations limit the value of duty free imported capital equipment to a percentage of total capital investment. When additional capital equipment is needed due to the successful development of the company taxes of 25% or more are often imposed which can make justification of the additional investment impossible.

Provincial Protectionism

In some cases, firms who manufacture a product in one province and transport it to or through another province are being taxed for bringing the product into another province. This is grossly unfair and not the practice in other countries. Such local protectionist taxes should be abolished and a system set up whereby companies have a hotline they can call to report such unfair practices. In some cases, neighboring provinces also different required certification for selling manufactured products. This needs to be standardized and approval by one central organization or a system of clear mutual recognition of provincial certification enshrined.

2. Tourism Sector

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Recommendations

- Substantially reduce the capital requirement for obtaining a licence as a wholly foreign owned tour company. The current requirement of USD 100 million in worldwide revenue acts as an effective barrier to forming a WFOE.
- Allow foreign companies access to outbound tourism
- Enhance regulatory measures for the facilitation of online bookings and payments

Summary

Although there is huge potential in China for growth in the Tourism Sector, AustCham Beijing views that there is significant barriers for Foreign tour companies to access this market.

The issues outlined below are mutually exclusive to the Tourism Sector and these issues are:

- Revenue Restrictions to attain WFOE or JV Status
- Barriers to access outbound travel
- Poor regulation to facilitate online bookings and payments

It is hoped the recommendations outlined below will provide a basis to assist the development of a more level paying field in the Tourism Sector in China. AustCham Beijing believes that Australia should place high priority on opening up this sector to Australian investment in China.

Background

Foreign tour companies are able to access the inbound and domestic tourism market in China as either a joint venture or as WFOE. According to some foreign tour operators, many joint ventures have encountered problems with their Chinese joint venture partners. As such some of these would like to apply for WFOE status, but are unable to meet the extremely high requirement of USD 100 million in world wide revenue. Also, there are other barriers for the foreign enterprises which are still high, for example joint ventures are only allowed to be established in Beijing, Shanghai, Guangzhou, Shenzhen, and Xian; and the income of the joint ventures should be higher than 40 million USD; in addition they cannot run outbound business.

At present one AustCham Member Company operates tours in China by subcontracting through Chinese tour companies. The representative office in Beijing liaises with the Chinese tour company and acts as a contact point for inbound Australian tourists. The rep office can only act as a middleman and cannot employ its own guides or deal with airlines. Helen Wong would like to be able to establish its own tour networks in China, without subcontracting through a Chinese company or taking on a Chinese joint venture partner.

Issues

<u>Revenue Restrictions to attain WFOE or JV Status</u>

There are currently two options open to foreign tour operators to access inbound and domestic tourism to establish themselves in China. The first option is to establish a Joint Venture and the second is to establish a WFOE. With both of these routes the expected revenue upon application is excessively high and this condition is not placed upon Chinese tour operators.

With a condition of 40 million USD for JVs and 100 million USD for WFOEs the Chinese regulators have effectively closed off the market to all but a few very large foreign tour operators. This in turn causes the tourism market to be uncompetitive and overly expensive for Chinese tourists.

<u>Barriers to access outbound travel</u>

Foreign tour operators have no access to supply outbound travel to Chinese Tourists. This is only possible for full Chinese companies. Again this in turn causes the tourism market to be uncompetitive and expensive for Chinese tourists.

Poor regulation to facilitate online bookings and payments

There is currently low Internet and credit card usage with Chinese consumers and this coupled with poor regulatory measures over credit card and online payments deters consumers from committing to purchase when booking online. Enhancing regulatory control in this area would instill confidence with Chinese consumers overall and also boost sales in the Tourism Sector.

3. Property Investment Sector

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Recommendations

- Support Chinese government initiatives to open up the range of fundraising vehicles for property developers, along the lines of the Australian Real Estate Investment Trusts (REIT). These fundraising vehicles should be open to foreign and domestic companies alike.
- Simplify the property development approvals process for overseas companies.
- Improve transparency of land transactions.
- Increase flexibility in transferring land use rights.
- Permit efficient forms of investment from a tax and finance perspective for foreign investors such as unincorporated co-operative joint ventures.

Summary and Background

In 2003, a total of 1.01 trillion Yuan (US$122.05 billion) was invested in China's real estate sector, rising 29.7 per cent over 2002. The production value of the real estate industry grew 5.3 per cent and property prices rose 5.1 per cent. The increase comes as China's real estate market is looking for new capital sources.

The People's Bank of China (PBOC), the nation's central bank, released tighter mortgage regulations in June 2003. Under the new policy, mortgage rates for luxury apartments, office buildings and villas have been increased and limited only to finished housing. Purchasers of unfinished homes cannot qualify for a mortgage.

Meanwhile, commercial banks are permitted to lend money only to real estate developers with good credit, and only when they can provide at least 30 per cent of the capital needed for the projects. PBOC officials have said the policy is designed to control the increasing number of bad loans, but the policy might also cut off the capital flow to most of China's real estate developers. An estimated 70 per cent of the capital for real estate developments in China comes from bank loans.

With dwindling sources of capital, domestic real estate developers have closely eyed Hong Kong and foreign funds. And numerous foreign real estate developers are reportedly seeking mainland investment projects. Despite the capital thirst in China and foreign fund operators' enthusiasm to invest in China, their deals are not immediately operable in many cases, due to policy barriers relating to investing in property.

Issues

<u>Lack of Industrial Fund Laws</u>

China does not have industrial fund laws, and fund companies are not allowed to finance in the mainland. They can only collect money in the overseas market and then invest in the mainland as a real estate developer or as shareholders of the real estate development companies. The Chinese laws also forbid insurance and pension funds from investing in real estate markets, while in the US and most markets, most REITs involve pension or mutual funds. As such, AustCham Beijing would like to support the Chinese government to open up the range of fundraising vehicles for property developers, along the lines of the Australian Real Estate Investment Trusts. These fundraising vehicles should be open to foreign and domestic companies alike.

<u>Approvals Process and Transparency</u>

Even though, barriers for market access will be removed this year. According to China's WTO commitment, wholly foreign-funded companies will be allowed to enter the nation's real estate market within three years after its WTO accession, and Sino-foreign co-operative and joint venture real estate companies will receive national treatment. Following this principle, Beijing has relaxed its restrictions for overseas investment in the city's property market. Though overseas investment in the sector has appeared mostly in the form of joint ventures, some foreign companies still plan on setting up wholly owned firms in China.

Beijing has also witnessed the improvement of the financing market and opening of land transactions, both of which serve as important conditions for the sound development of its real estate market. In early 2004 Beijing issued a new regulation on the use of land for commercial projects. According to the regulation, the former practice of transferring the right to use land on the basis of agreement is replaced by auction, public biddings and other open ways, which is seen as a tangible step toward the establishment of an open, transparent and regular real estate market.

This news is positive however evidence from AustCham Beijing members suggests that this compounds problems yet to be resolved in the areas of approvals and transparency. At best the project approval process is vague for foreign companies. The lack of transparency is seen as a major issue and although the bidding process might be clear the final decision might not be transparent.

AustCham Beijing recommends simplifying the property development approvals process for overseas companies to a similar format as found in countries like Australia or the US as well as improving transparency of land transactions.

4. Insurance Sector

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Recommendations

- To push for a guarantee that all geographical restrictions on branching will be removed by the end of 2004, in line with China's WTO commitments
- To push for life insurance companies to be given more flexibility in the sort of investment and insurance vehicles they are able to offer consumers.
- To review markets in other countries with a view to adopting a more open liberalization process.
- To push for new licenses to be issued according to objective criteria (recent licenses have only been issued after intense political lobbying)
- To push for the Chinese government to issue tax policies that encourage saving through life insurance.

Summary and Background

The Chinese Insurance market opened in the early nineties, with an American company receiving the first license to sell both life and non-life products in Shanghai. From that time until China's accession into the WTO, the operating guidelines had not changed dramatically. Commercial Insurance Providers have been licensed only in limited numbers, based on lengthy and intensive application procedures, and have been restricted geographically, and only permitted to sell their products to Joint Ventures or entities with foreign investment.

Despite these restrictions and many more, China's insurance markets have continued to grow and The China Insurance Regulatory Committee (CIRC) has passed several new regulations with the aim to expand insurer ability to expand their existing geographical restrictions. AustCham Beijing members are of the position that commitment to follow full WTO compliance is slow and the CIRC still needs to address other issues which will ensure China is fully compliant with WTO.

At the same time, although the new regulations and China's commitment to following the implementation of the WTO agreement are encouraging, we believe that several areas must still be addressed. These are outlined below.

Issues

<u>Branch Networks</u>

In a number of industries in China, Holding Companies have emerged as a popular structure for managing corporate assets across geographies, allowing investors to expand their networks without excessive capitalization requirements or geographic/market restrictions. However, at present the Holding Company form remains severely restricted in the insurance industry.

CIRC should allow insurance companies to establish Holding Companies consistent with those in use in other industries. Current regulations stipulate that each foreign branch of an insurance company must be capitalized at US $24 million, while also continuing to impose geographic restrictions. This creates obstacles to achieving operational efficiencies and profitability goals, and thus reduces market attractiveness to investors. This is also a potential issue under the national treatment requirements for compliance under China's WTO commitments, since Chinese companies are permitted to establish national licenses with a one-off capital payment, and do not have regulations which subject them to a per branch requirement.

<u>Allowing General Insurance Companies to Provide Accident and Health Products</u>

To date, Chinese regulators have only permitted Life Insurance Companies to provide this coverage. It is common in many markets worldwide for both Life and Non Life Companies to be permitted to offer these services. Chinese regulators should allow general insurance firms to provide accident and health insurance products. This will generate stronger product development and rate competition. In addition, it is our contention, as demonstrated in other markets; non-life companies have developed unique products especially for Travel Accident and Health. This need is becoming more pertinent with the advent of increasing overseas travels for both business and pleasure by local Chinese.

Lack of Clarity and Specific Guidelines for Intermediary Market and Loss Adjusters
Greater effort should be put toward cultivating the insurance Intermediary market, strengthening supervision of insurance brokers/agents, publishing relevant guidelines, and improving the professionalism of local loss adjusters. The Insurance Industry is made up of a variety of key players. These parties' roles must be specifically laid out in order for the industry to function at its best. Existing guidelines governing joint venture incorporation, and other limitations, fail to fully clarify these roles. AustCham Beijing would suggest that the CIRC review markets in other countries with a view to adopting a more open liberalization process.

Other Issues
More focus needs to be placed on the process by which both foreign and local firms are given licenses to provide services in the market. To date the process is unclear at best and involves lobbying which by international standards is excessive. AustCham Beijing would like to recommend that licenses be issued solely according to objective public criteria.

AustCham Beijing is also of the position that the Chinese government should implement tax policies that encourage saving through life insurance. This would assist in providing impetus for the local market to purchase insurance products and hence stabilize this industry.

5. Business Services Sector

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Recommendations

- AustCham Beijing recommends that the PRC government relax such restrictions for all companies in line with the situation in other countries and permit companies to operate freely across all business sectors.
- AustCham Beijing recommends that foreign firms be given the same status as Chinese firms in regard to establish national licenses with a one-off capital payment, and not to have regulations which subject them to a per branch requirement
- AustCham Beijing recommends that the Government should set the registered capital requirements for foreign invested enterprises in line with domestic companies in the same industry
- Allow foreign professionals to establish themselves as sole traders

Summary and Background

There are still many issues within the Business Services Sector, and AustCham Beijing will continue to lobby government bodies to ensure a better business environment.

The issues outlined below are not exclusive to the Business Services Sector. Here the issues are raised to emphasize the overall impact on business in general.

It is hoped the recommendations outlined below will provide a guideline to improve the investment environment by making it a more efficient and cost effective place in which to operate businesses. This AustCham Beijing believes this will raise the appeal of China as a destination for professional services companies, many of whom are SME's.

Issues

Scope of Business

In China, when you register a company you must specify the areas of business in which you wish to operate. These are then submitted for government approval and sometimes rejection. You are then only allowed to undertake business activities in the specified sectors / fields. This limits a businesses activity and prevents it from expanding freely into new areas to follow market developments and change.

By narrowly defining companies' scope of business, the government is effectively restricting the performance of both domestic and foreign invested companies. To branch into a new area, an existing business must apply for a revised business scope or in some cases establish a whole new company, with all the added administrative procedures, registered capital requirements, etc. In many cases, this is simply not feasible.

Even worse, in some cases, businesses are simply kept out of attractive market segments, which are reserved for domestic companies. In some cases, a business' expansion and further investment will not occur because of these restrictions, thereby foregoing FDI and employment opportunities.

AustCham Beijing recommends that the PRC government relax such restrictions for all companies in line with the situation in other countries and permit companies to operate freely across all business sectors.

Branch Offices

In a number of industries in China, Holding Companies have emerged as a popular structure for managing corporate assets across geographies, allowing investors to expand their networks without excessive capitalization requirements or geographic/market restrictions. However, at present the Holding Company form remains severely restricted in the business services sector.

For example just because a company may have a registered office in Beijing does not allow automatic registration in Shanghai. This creates obstacles to achieving operational efficiencies and profitability goals, and thus reduces market attractiveness to investors.

AustCham Beijing recommends that foreign firms be given the same status as Chinese firms in regard to establishing national business licenses with a one-off capital payment, and not to have regulations which subject them to a per branch requirement.

Registered Capital Requirements

Under the regulations for the establishment of foreign invested enterprises in the PRC, foreign investors have been required to commit a certain amount of money and assets to their project that has been pre-determined by the authorities. While this investment requirement exists for local companies setting up operations, the amount required is substantially less in most cases. For example the registered capital requirement to establish a foreign invested consulting company is USD 100,000 – 150,000 while the registered capital requirement to establish a domestically invested consulting company is only RMB 100,000 (approx USD 12,000).

Australian businesses which are primarily service focused find the registered capital requirements an impediment to investing and operating in the PRC. In addition direct domestic competitors do not have the same up-front investment requirements and are therefore given an unfair competitive advantage.

AustCham Beijing recommends that the Government should set the registered capital requirements for foreign invested enterprises in line with domestic companies in the same industry.

Sole Trader

For certain individual professionals (such as photographers, etc.) there is no structure such as the sole trader rules used in Australia available to foreign nationals. China should open its "sole trader" rules to Australians as well, as there is no need for such professionals to establish a WOFE (with required investment of USD 100,000+).

Foreign Investment Catalogue

The Foreign Investment Catalogue which restricts foreign companies to only being able to establish JV companies rather than WFOEs in many industries should be greatly relaxed.

Labor Market

Foreign companies should be free to hire staff without going through an intermediary firm such as FESCO. Eliminating these "middlemen" will result in increased salaries for Chinese employees and reduced labor costs for employers.

6. Mining Sector

Summary

In the last twenty five years since China opened its doors to foreign investors spectacular advances have been made in some sectors such as the manufacturing industry. Unfortunately, these successes have not also been achieved in the mining industry. At present there few large mining projects that are currently operated as Sino - foreign joint ventures.

Barriers are many and are not exclusive the Mining Industry and heavily restrict FDI in this sector whereby affecting direct benefits to China such as tax revenue and technology transfer.

The China International Mining Group (CIMG), an industry working group of AustCham Beijing, feel that by working with the Authorities to minimise these barriers would increase FDI as well as having direct benefits into other sectors and China as whole.

Background

China is one of the world's largest mineral producers, but the sector attracts very little overseas investment. There is a perception held by foreign investors and capital markets that China continues to be a challenging and high-risk environment. This perception continues even though the Ministry of Land and Natural Resources (MOLAR) has introduced new laws and regulations to reduce barriers to foreign investment. Initially, many commentators thought that even though the laws had improved, they remain largely as to date there are only a handful of foreign companies that have successfully moved into exploration in China.

Foreign exploration has not located many attractive deposits in China. Faced by a global reduction in exploration spending combined with an assessment that a development in China carries a higher risk than developments in other countries has discouraged some investors. Different priorities to local joint venture partners for management, operations and business goals have also caused problems.

Despite recent advances, the Chinese legal system for exploration and mining is not as developed as other countries that now attract more investment. Potential investors are still concerned about lack of transparent approval procedures and unwritten or unpublished laws and policies.

This being said, activity in the mining sector has increased in recent years, particularly since 2002, with a number of junior mining companies entering China, as well as the introduction several new laws further improving the business environment.

Given these advances members of the CIMG still recognize that there are many remaining structural and legal impediments to greater investment in mining in China that are outline below.

Issues

Currently there are many issues that face the Mining Sector in China. The issues that have been reported by the CIMG include:

1. **<u>Access to geological information</u>**
   Provincial bureaus are reluctant to release local data into the central database (New law that came into effect in 2002 to provide a much-improved regime to make geological data from previous exploration available in a central database) and the purchase and pricing of geological maps and reports remains unclear.

Therefore sufficient scale geological data is not available for purchase where as in Australia this information is freely available. China is denying itself foreign investment in the mining sector by not making this information available. Without access to this data, foreign mining firms are not in a position to make an investment decision. Access to geological data is further impeded by the following:

a. Central Ministry of Land and Resources maintains that most geological information should be made available by provincial Land and Resources Departments, but in reality is not available.
b. Confidentiality – requests for information can simply be refused on the grounds that such information is confidential from national defense perspectives.

2. Categorisation of certain mining sectors and corporate structures

Categorisation of certain mining sectors

Gold remains a major concern for foreign miners. Still uncertain whether current gold policy is unchanged (low grade mining is encouraged, common or high grade is restricted), or whether gold mining is totally restricted for foreign investors and companies.

Corporate Structures

Members of the CIMG recognize that current corporate vehicles available for mining entities require foreign miners to lodge registered capital. This acts as a significant deterrent, as it effectively places substantial funds in escrow as a qualification to explore or mine. This particularly affects exploration ventures as, if early results are unfavourable, companies want to be able to reduce capital or return it for use in another venture. The current requirement of having to terminate a joint venture through liquidation is slow and subject to approvals.

3. National treatment

This issue is apparent for most foreign companies and not exclusive to the mining sector. Foreign companies have to comply with more stringent regulations than domestic companies (on information access, employment of company workers, etc.). This extra burden increases business costs on foreign operations, and gives Chinese operations a comparative advantage.

4. Intellectual Property Regulation and Enforcement

Many foreign mining companies use technology or processes that in other markets are protected by intellectual property regulation. In China enforcement of registration, trademarks etc. remains a challenge.

5. Vague project approval process and Fair competition/procurement

Vague Project Approval Process

The project approval process is vague at best for foreign companies. Transparency (lack of) which is seen as a major issue by the CIMG and although the bidding process might be clear the final decision might not be transparent.

There are another four main areas of concern listed below:

i. Which level of Government?
Internationally, the standard practice in the mining industry is to negotiate a comprehensive agreement, at the outset, that covers all major issues impacting on the exploration, feasibility, construction, development and mining stages of any subsequent discovery. Investment then occurs at each stage, with a commitment to the next stage being made only after a prior stage indicates promising results.

The PRC system determines the appropriate approval authority based on the value of the project being approved. In the mining industry, however, the entire value of the project is difficult to estimate at the initial exploration stage. Parties may intend to spend US$25 million on a project, yet find nothing, or find a deposit estimated at US$1 billion. Foreign investors are concerned that an exploration project initially approved at the provincial level during the initial exploration stage will be assessed using different criteria when state-level approval is required to spend the larger sums needed to develop an exploration project into a mining operation. In particular, investors are wary that fundamental project terms will be altered or strict conditions applied once the results of the exploration are known.

ii. Duplicity and complexity
This concern is compounded by the duplicity and complexity of the approval process. Currently, two levels of government can issue exploration licences and four levels of government can issue mining licences. In addition, there is little cooperation or coordination between the different departments; this means that, although MOLAR may issue its approval in a timely fashion, the Ministry of Commerce, the environmental agencies and the SDRC approvals may take longer. Although improvements have been made to the approval procedure, a clearer, streamlined, coordinated approach is required.

iii. Valuation of exploration and mining assets
Agencies approved by MOLAR are responsible for the valuation of exploration and mining assets such as geological data, licences and existing equipment. This is necessary to ensure state assets are not improperly sold off; however, investors have found that the valuations do not generally accord with market value. Where investors are operating at arms length, foreign companies would like to have greater participation in the assessment process.

iv. Priority rights
Foreign parties remain concerned that exploring and finding a viable deposit may not lead to the right to mine that deposit. Exploration right holders have a 'privileged priority' or 'priority right' to obtain the mining rights to mineral resources within the exploration area.8 Although other jurisdictions do not 'guarantee' a right to mine (generally retaining some form of ministerial discretion to reject a mining application), the basis for rejection in these jurisdictions is clear, and not arbitrary. Investors in the PRC are unclear as to what extent the PRC government will protect the potential mining rights of legitimate explorers against a rival applicant, and what factors or criteria will be used when determining a mining licence application. Investors are wary even though government ministers and commentators have stated a right to mine will be granted if the applicant meets the conditions and requirements set out in the law in respect to, for example, adequate funding, technical qualifications, mining plans, environmental impact statements and so on. This is probably the case, but the concern is likely to remain until there are demonstrable examples of this law being applied.

Fair competition/procurement

It has been noted by the CIMG that local protectionism is widespread over all industries. Especially with regard to specialized industries, which are tightly controlled at local level. This effectively blocks outside companies to compete in the local market. In addition this creates burdensome administrative requirements, e.g. having to obtain permits from Public Security Bureau to transport materials across Provincial borders. Application and enforcement of regulations remains unclear and no arbitration body or ombudsman exists to appeal to if progress on this front is not being made.

6. **Tariffs**

   Concerns were raised that China FTA moves with other economies/groupings may reduce tariffs on gas (currently 6%). Australia must also receive tariff benefits.

7. **Government policies not transparent and unclear**

   As mentioned above government policies are transparent and are unclear. Another example concerns policies for selection of LNG. Policies may exist in the selection of the supplier, but is not clear to what extent these policies are followed or whether these are just guidelines or something more binding. (e.g. the requirement for Chinese purchasers/operators to acquire upstream equity in overseas supplier).

8. **Tax treatment of exploration expenditure for foreign mining companies in China**

   Investors are daunted by a complicated tax and royalty regime that is insufficiently developed to deal with the treatment of deductions for exploration expenditure or large capital outlays for a mining project. Recent preferential policies for mining in China's western provinces now allow some exploration expenses to be amortised as a carryover asset during the mining stage and provide exemptions from tariff and VAT for imports of equipment under certain conditions; however, it is often difficult to determine which government department applies this treatment. Both national and local taxation bureaus claim that implementation of the favourable tax treatment can occur only when the investment is approved. As a result, many investors are basing decisions on oral statements made during private meetings with tax authorities.

Suggested Recommendations

The CIMG and AustCham Beijing recommend the following solutions:

1. **Access to geological information**
   - Develop a register of geological information similar to that in Australia, with access codes for registered users.

2. **Categorisation of certain mining sectors and corporate structures**
   - Implement and enforce consistent categories and regulations nationwide

3. **National treatment**
   - Promote non-discrimination against international or foreign investments.

4. **Intellectual Property Regulation and Enforcement**
   - Enforcement of registration, trademarks etc. remains a challenge.

5. **<u>Vague project approval process and Fair competition/procurement air competition/procurement</u>**
   - Implementation of National laws needs to be implemented in an enforceable way at local level and to introduce an arbitration body or ombudsman to appeal to if when unfair competition exists. Create channels for companies to report and seek resolution of non-consistent policies, thereby having companies help identify and correct inconsistencies
   - Introduce a nationwide bidding process that is clear and transparent. This process would be implemented at all levels of government and linked to a central database of bids.

6. **<u>Tariffs</u>**
   - Equal treatment of tariffs for Australian resource providers

7. **<u>Government policies not transparent</u>**
   - Introduce a clear and enforceable policies at all levels of government.

8. **<u>Tax treatment of exploration expenditure for foreign mining companies in China</u>**
   - Need equal tax treatment similar to tax treatment in Australia where future revenues can offset past exploration costs.

Benefits
Mining Sector would provide benefits that are common with increased levels of FDI. The benefits are well known and include;

1. **<u>Direct economic benefits</u>**
   China's economic growth since 1979 has been very impressive. In order to sustain high levels of economic growth, China's mining industry will need to continue supplying many of the raw materials for development. FDI in exploration and mining will assist in fulfilling this need. While China is likely to increase its importation of copper, iron ore and alumina, it must also increase the efficiency of domestic mining to fuel further economic expansion.

   FDI directly creates jobs and income for China's economy. A successful Sino – foreign mining joint venture will pay taxes and royalties to the government, salaries to employees and provide opportunities for many local workers who will provide services to the mine. The exploration studies and construction of a mine will also bring many benefits. If the product from the mine is exported, foreign exchange will be earned by the joint venture in China.

2. **<u>Advancing development of Central and Western China</u>**
   FDI in exploration and mining has the potential to provide enormous economic benefits to Western and Central China. Western and central China is rich in mineral resources. Development of these resources will contribute great benefit to the region. In addition to the direct economic benefits, a mine development will also most likely require additional infrastructure developments. Housing and facilities for employees, reliable water and power supply and transport links to markets will need to the constructed in conjunction with the local and provincial governments. Such infrastructure will benefit all businesses and members of the local community.

3. **Exploration, Mining and Managerial expertise**
Globalisation of the mining industry has led to greater advances in mining technologies adopted by many foreign mining companies. Many people agree that most of the world's easily discoverable resources have already been located. Advanced technologies are needed for more efficient exploration to discover new "hidden" deposits. FDI will promote the exchange of mining and exploration technologies.

   Foreign mining companies are under considerable pressure to produce better returns and profits for shareholders. The industry faces declining prices for most products and must continually reduce costs to stay profitable. Companies must adopt modern and efficient management practices to compete in global markets. Changes are forced by customers that now require more reliability from supplies as they move to "just in time supply" and lower stockpiles.

   Chinese mines have, until recently, been managed under a planned economy where production targets and the number of jobs created for local workers were the measures of success. The sector is one of the last to move into a competitive market driven environment. Use of modern management systems will be vital for the survival of many Chinese mining companies.

4. **Safety environmental and community advantages**
Modern mining enterprises have high standards for occupational health, safety and the environment. International governments, unions, local communities, shareholders and Non Government Organisations are all pressuring foreign mining companies to continually improve in these areas. It is possible to adopt procedures that reduce safety hazards and limit environmental damage without substantially reducing profitability and efficiency of the mining venture.

   For international mining companies to prosper, it is necessary for them to have good relationships and the support of local communities. Sustainable developments require companies to work harder on these issues.

5. **Efficient utilisation of natural resources**
The mining of resources that have a low grade or are too expensive to recover is not an efficient use of capital. Mining only the high-grade areas of a resource is a waste of a country's natural resources. Foreign investors are interested in medium to large mines and will extract product very efficiently. Modern production plans also allow maximum utilisation of the resource.

6. **Long term investment of Capital**
Given the high entry costs to this industry, few new domestic companies are expected to emerge as effective competitors against the existing large SOEs. Capital is vital for both high-risk exploration activities and multi million dollar mining projects. Foreign capital utilised in developing and operating mines is a long-term stable investment. It takes many years of operations before the capital invested is recovered and a mine becomes profitable. It is therefore important to have a developed legal system to protect investments.

   An increase in foreign investment will stimulate competition by existing local producers. The manufacturing sector has already demonstrated how quickly and effectively local companies can adapt to increased competition. This will be even more important in the face of increased external competition following China's entry into the WTO.

7. Other Issues and Sectors

IT Sector

- There is an unreasonable level of complexity associated with the import of demonstration products. Rule in this area should be simplified in line with international practice.
- Double duty is often charged on equipment which is re-exported. Where companies can clearly demonstrate equipment is re-exported, all duties should be refunded.

Media and Performing Arts

- Media regulations should be changed to allow the private and business use of small satellite dishes for the reception of foreign TV broadcasts. Access to ABC Asia Pacific TV is currently severely restricted despite it being “technically” available across most of China. Proper access for ABC TV would have a profound impact on the level of knowledge of Chinese people about Australia and it would provide a powerful marketing platform for Australian companies.
- Assurances should be reached to prevent deliberate blockage of access to Australian government and media websites as these problems do persist.
- Access for foreign movies to be distributed in China remains severely limited.
- Regulations currently make it very difficult to establish a foreign owned magazine in China. Improved market access is required to match the access Chinese have in Australia. Currently there is no Australian owned magazine in China!
- Access for Australian performers is still tightly restricted and should be significantly relaxed.

Visas

- Visa regulations for Australians working in China are unreasonably complex. Australians, like all foreign nationals, are required to obtain a business visa from the Ministry of Public Security, undertake extensive and expensive health checks from the (single) Ministry of Health appointed provider, obtain resident permits, and obtain work permits (from the Ministry of Labour & Social Security), This process is complex and results in significant administrative overheads which are particularly difficult for SMEs to bear.
- Australian companies are entirely locked out of the market sectors for providing visa services to both Chinese traveling to Australia, and for foreign nationals visiting / living / working / studying in China.
- Visa regulations are unclear and need to be clearly specified on a public website.
- Given the large numbers of Australian Chinese / Chinese Australians, there are many people who would welcome the opportunity to hold dual citizenship, something which China currently does not allow.

Education Sector

- Current Chinese laws prevent Australian Universities and schools from establishing WFOEs and place tight restrictions on the format and conduct of Joint Venture companies in this sector. This is currently preventing major Australian education providers such as Monash University from investing in China.
- International Schools should be allowed to enroll Chinese students. Currently they are limited to enrolling foreign nationals.
- Australian invested Pre-schools have great difficulty in obtaining work visas for overseas nationals (who in many cases are the sole holders of their required level of training).
- Payment of international invoices is delayed by SAFE, as well as he local and national level tax bureaus causing them to take 4-8 weeks ! The process is unnecessarily complex and is a heavy administrative burden. Policy in this area is often unevenly implemented resulting in further delays. Such payments are often also heavily taxed with between 10-20% withholding tax and 5% business tax.
- Foreign invested education ventures should be taxed at the same rates as their Chinese competitors, who often pay no tax and so have an unfair competitive advantage.

- Foreign invested education ventures should be free to import textbooks directly. Currently they are required to go through an import / export company. They should also be able to publish their own textbooks with affordable access to "book numbers".
- Australian Universities and TAFES and schools should be able to establish their own operations in China to advertise for students, provide visa assistance, etc. Currently they are forced to use a limited number of Chinese agents.
- Many Australian qualifications are still not recognized by the Chinese government and so large groups of well-qualified Australians (such as Nurses) are frozen out of the Chinese labour market completely.

Intellectual Property

- It is quite common for SMEs to have their Intellectual Property infringed upon but to not have a suitable channel of recourse. AustCham Beijing would welcome the establishment of a Small Claims type tribunal for Intellectual Property issues of modest value (say below USD$100,000).

Corruption

Corruption remains a significant barrier to businesspeople in China. China should establish an Independent Commission Against Corruption which has the capability to receive and investigate complaints from international businesses as well as Chinese organizations.

NGO/Chamber Registration and Membership

- The current rule permitting just one NGO, or Chamber of Commerce, etc. from each country to be established in any sector should be scrapped and free access provided. Currently important Australian organizations such as AustCham Shanghai are being denied the ability to operate as a fully registered and recognized body.
- Currently Chinese companies and individuals are legally prohibited from joining Australian Chambers of Commerce, etc. thereby limiting the growth and function of such organizations. This prohibition should be relaxed immediately.