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Doing Business in China and Indonesia

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¹ The findings, interpretations, and conclusions expressed here are those of the author and do not necessarily reflect the views of the “Attractivité économique du Droit- Economic Attractiveness of Law” program, or his partners.

The World Bank's *Doing Business in 2004: Understanding Regulation*² was the first of an annual series of cross-country analyses to compare and contrast the impact of legal systems, laws and regulations on the environment in which private business operates in countries around the world. The 2004 report was produced after asking more than 2000 lawyers, accountants, government officials and interest groups to answer specially prepared, standardised questionnaires.

As the 2004 report acknowledges,³ the *Doing Business* reports entered a crowded field of indicators and ratings of various aspects of the business environment. It noted that while many other sources provide up-to-date indicators on international competitiveness, economic freedom and the like, "few indicators focus on the poorest countries, and most of them are designed to inform foreign investors".⁴

Central to the *Doing Business* reports is the philosophy that less developed countries regulate business the most; that heavier regulation brings worse outcomes; and that "one size can fit all". A particularly controversial and strongly emphasised finding of the first report was that the Civil Code systems – especially the French system – are less efficient as instruments for promoting economic efficiency than the common law system⁵.

Thirty years ago, as China emerged from its cultural revolution, it was a country facing what appeared to be an uncertain future, with only a handful of statutes representing its legal system; Indonesia, by contrast, was enjoying increasing economic prosperity. But these positions had been reversed by 2004. How did it come about that China, a nation facing so many difficulties in the late 1970's, became the fastest growing economy in the world,⁶ while Indonesia's economy has been

² *Doing Business in 2004: Understanding Regulation*, 2004, World Bank, International Finance Corporation and Oxford University Press

³ *ibid*, pp. viii, 7

⁴ *ibid*, p. viii

⁵ *ibid*, p.xiv

⁶ See statistics on growth set out in Bath (2006)

unable to rediscover the strong performance it displayed prior to the Asian economic crisis of the late 1990s?

Indonesia and China are both developing countries, and their legal systems both have some resemblance to the Civil Code system. The disparity between their current rates of growth, and the fact that their relative performance has varied greatly over time, suggest that similarity in their legal heritage may in fact be of little importance in explaining the efficiency of their economies. In turn, this raises the prospect that case studies of these two countries may provide insights into the methodology used in the Doing Business reports, and allow an evaluation of the supposed link between legal origin and the nature of business regulation. Given that China and Indonesia both have close political and economic links with Australia, examination of the Doing Business reports through case studies of China and Indonesia are of particular interest to Australian academics.

DOING BUSINESS IN CHINA AND INDONESIA is a research project comprising individual papers written by academic economists (Fisher, McLeod, Melatos) and academic lawyers (Antons, Bath and Ip). The authors are from three leading universities in Australia, who specialise in inter-disciplinary research on China and Indonesia. Bath (2006) and Ip (2006) investigate the impact of business regulation relating to starting and closing a business in China; Antons (2006) and McLeod (2006) focus on the Indonesian system of business law, both during and since the Soeharto regime. A concluding review of the findings of Bath, Ip, Antons and McLeod is provided by Fisher & Melatos (2006).

These reports firstly note that in ambitious large-scale undertakings such as the Doing Business project there will inevitably be mistakes at the level of individual countries. While these mistakes are in general inconsequential, one theme that emerges is the essential futility of classifying countries according to their legal heritage, essentially because it is irrelevant to ongoing reform. In particular, legal systems evolve as a consequence of the particular circumstances each country faces.

Trade policy probably has more to do with economic success in China than the remnants of the German Civil Code still remaining after the impact of the Revolution in 1949 and the Cultural Revolution from 1966-1976.⁷

Ip refers in her paper to ‘yang wei zhong yong’⁸ (洋为中用), a uniquely Chinese approach in adapting Western experience and knowledge. An example of this process is the enactment in March 2006 of legislation for the regulation of notaries, based on the French notaire system, which is the subject of analysis in other research papers also published in this volume⁹. While the notary system was criticised in the World Bank report as an example of over-regulation,¹⁰ the notary system in China is considered an important part of the law reform process, because it enables proof of authenticity of documents, as the authors of this research project explain.¹¹

When Honoré de Balzac wrote his treatises “Voyage des Paris à Java” (1832) and “La Chine et les Chinois” (1842)¹², he was forced to rely on his imagination and hearsay accounts of life in these faraway countries. Although our knowledge of China and Indonesia has vastly increased over the two hundred years, these are countries with complex customary laws and social structures which are important factors which underpin their approach to economic development and reform.

Details of the researchers are as follows:

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Christoph Antons is Professor of Comparative Law and Director of the Centre for Comparative Law and Development Studies in Asia and the Pacific (CLDSAP) at the University of Wollongong, Australia. He is a QEII Fellow of the Australian Research Council, Adjunct Research Fellow at the Max Planck Institute for Intellectual Property, Competition and Tax Law in Munich, Germany, and Senior Fellow (Postgraduate Program), Faculty of Law, University of Melbourne. His recent book publications are “Intellectual

⁷ See the comments on this issue by Fisher & Melatos (2006)

⁸ Ip (2006)

⁹ See the report on the new Notary Law in China which is published in this volume.

¹⁰ *Doing business in 2004: Understanding Regulation*, pp.xviii-xix

¹¹ See the report on the new Notary Law in China

¹² H. de Balzac, *Voyage de Paris à Java* (1832), *La Chine et les Chinois* (1842), Babel, Livre de Poche, 2006

Property Law in Indonesia” (Kluwer 2000), “Law and Development in East and southeast Asia” (Routledge Curzon 2003), “Intellectual Property Harmonisation Within ASEAN and APEC” (Kluwer 2004; with Michael Blakeney and Christopher Heath) and “Globalisation and Resistance: Law reform in Asia Since the Crisis” (Hart, in print; with Volkmar Gessner).

VIVIENNE BATH

Vivienne Bath is a Senior Lecturer in Law, Faculty of Law, and Director of the Centre for Asian and Pacific Law, at the University of Sydney. She has first class honours in Arts (Asian Studies) (specializing in modern and classical Chinese) and Law from the Australian National University, and a Masters in Law from Harvard Law School. She is admitted to legal practice in New South Wales, the Australian Capital Territory, New York, England and Hong Kong. She has extensive experience in international commercial legal practice and, prior to joining the Faculty of Law, was for many years a partner of Coudert Brothers, working in the Hong Kong and Sydney offices, specialising in foreign investment, mergers and acquisitions, and commercial transactions in the Asian region, particularly the People’s Republic of China. Vivienne teaches International Business Law, Doing Business in China and Chinese Law. She has published widely in the area of Chinese law, and is a frequent participant in conferences and seminars focusing on developments in the Chinese legal regime. Vivienne is vice-President of the New South Wales Branch of the Australia China Business Council and speaks both Chinese (mandarin) and German.

TIMOTHY C G. FISHER

Timothy C G Fisher received his PhD in Economics from the University of British Columbia in 1989. After working for the Bank of Canada and Wilfrid Laurier University, he joined the University of Sydney as Associate Professor of Economics in 2004. His primary area of research is law and economics, with a particular interest in commercial bankruptcy.

MARY IP

Mary Ip is an Associate Lecturer with the University of Sydney and the University of New South Wales. Mary conducts multi-disciplinary research in Chinese commercial law, with a particular focus on comparative aspects. She was a visiting scholar at Peking University and Nanjing University in 2005. Mary is a training consultant for the Research Institute for Asia and the Pacific, and is a member of the Australian Law Teachers Association.

ROSS McLEOD

Associate Professor Ross McLeod is an economist with the Indonesia Project, Division of Economics, Research School of Pacific and Asian Studies, at the Australian National University. He has been working in and on Indonesian various capacities – postgraduate student, consultant and academic researcher – since 1978, and is a fluent Indonesian speaker. Since October 1998 he has been Editor of the ANU's Bulletin of Indonesian Economic Studies, a journal that has provided continuous commentary on the Indonesian economy since 1965.

MARK MELATOS

Dr Mark Melatos is a lecturer in the Economics Department at the University of Sydney, and an adjunct lecturer at the Australian Graduate School of Management. Mark's principal research area is in international trade theory and policy. His work is published in leading international economics journals, including the European Economic Review and the Review of International Economics. Mark is also a consultant for the OECD in Paris, where he is undertaking research for the Agriculture and Trade Directorate.

DOING BUSINESS IN THAILAND, an annexure to these papers, is prepared by Dr Jakkrit Kuanpoth, a lecturer at the University of Wollongong.