



Programme international de recherches

Working Paper AED-EAL-2007-5

Nanterre, le 4 avril 2007

The World Bank Doing Business Reports – Regulation and Change in China and Australia

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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.

Under the auspices of the World Bank, Doing Business reports have been issued in relation to business activity in economies around the world in 2004, 2005 and 2006². The fourth report, Doing Business 2007, How to Reform” has just been issued (September 2006)³. The Reports focus on business regulation by looking at “the scope and manner of regulations that enhance business activity and those that constrain it”⁴. In order to do so, the authors of the Reports have created quantitative indicators to measure business regulation and various types of regulated activities in a number of identified sub-indices (now 10) and to rank economies (primarily countries) on the basis of the indicators. An overall “Ease of Doing Business” ranking is accorded to each country in the study (175 in the 2007 Report) on the basis of the rankings in the various sub-indices. The data is then used to “analyse economic outcomes and identify what reforms have worked, where, and why”⁵. While the reports provide a far-reaching comparative study of the regulation of various carefully defined aspects of business activities across the world, the indicators and rankings themselves and the sometimes sweeping conclusions which the authors draw from them, are, however, problematic in a number of respects, in particular, the use of the data and rankings to promote a definite program of regulatory reform.

The question must be asked - to what extent does the compilation of quantitative data in relation to certain closely defined and circumscribed business activities

² World Bank, the International Finance Corporation and Oxford University Press, 2003, “Doing Business in 2004, Understanding Regulation”; Washington D.C. Online <http://rru.worldbank.org/Documents/DoingBusiness/2004/DB2004-full-report.pdf> (last visited 29 September 2006); World Bank, the International Finance Corporation and Oxford University Press, 2004, “Doing Business in 2005, Removing Obstacles to Growth” Washington D.C, Online <http://www.doingbusiness.org/documents/DoingBusiness2005.PDF> (last visited 29 September 2006); the World Bank and the International Finance Corporation, 2005, “Doing Business in 2006, Creating Jobs,” http://www.doingbusiness.org/documents/DoingBusiness2006_fullreport.pdf (last visited 29 September 2006).

³ World Bank, 2006, “Doing Business in 2007, How to Reform” (*Report Overview*), Washington D.C. Online: http://www.doingbusiness.org/documents/DoingBusiness2007_Overview.pdf (last visited 22 September 2006).

⁴ Doing Business in 2006, *supra* note 1, at Contents.

⁵ *Ibid.*

give an accurate indication of the way in which business operates and is regulated in a particular country? Is it valid to use this data to make an overall comparative assessment of the “ease of doing business” in a particular jurisdiction? Does the data support the assertions and recommendations which the authors make in the text in of the Reports? In the 2007 Report, for example, Australia is ranked 8th overall in terms of ease of doing business⁶, which is expressed to be a move up from a rank of 9th, while China is ranked 93rd, expressed as a move up from its previous position of 108th⁷. At the same time, Australian business groups complain of excessive red tape and bureaucratic regulation⁸, while foreign investment funds continue to pour into China⁹ and private participation in the business sector in China grows at an exponential rate¹⁰.

This paper looks at the data and methodology used in relation to the Starting Business sub-index and, to a lesser extent, the Enforcing Contracts sub-index, in relation to Australia and the People’s Republic of China and raises a number of issues in relation to its accuracy and relevance overall in a business context. It

⁶ Doing Business in 2007, supra note 2, *Overview*, Table 1.2.

⁷ *Ibid.* In the 2006 report, however, Australia’s ranking was 6th, while China’s was 91st (in a table of 155 economies.) The change in rankings is due not only to the addition of more economies, but also to the retrospective re-configuration of a number of the indicators.

⁸ See Business Council of Australia, 2005, “Business Regulation Action Plan for Future Prosperity,” Online

http://www.pageup.com.au/platform/editor/v4.0/downloadFile.asp?p=%98%8C%5BSb%87it%8DV%81%8Bwglj%B0%8B%B0%94%A0%BB%B6%A7%9C%9E%D0%A6%BF%BB%B2%A6%BC%BD%C5%A4%BA%8D%9B%A4%8C%9C%CA%CC%C7%CA%91%B7&f=Business_Regulation_Action_Plan_Fo_r_Future_ProspertyFINAL.pdf (last visited 29 September 2006).

⁹ According to the Foreign Investment Department of the Ministry of Commerce of the People’s Republic of China, the realized value of foreign investment in China in the first 8 months of 2006 was almost US\$40 billion or €2.16 billion. See “Invest in China” Online <http://www.fdi.gov.cn/common/info.jsp?id=ABC0000000000034951> (last visited 29 September 2006).

¹⁰ China.com.cn, 2006, “National Industrial Actual Profits rose 28% in the First Half of this Year”, <http://www.china.org.cn/e-company/06-08-10/page060602.htm> (last visited 29 September 2006). According to this article, in the first half of 2006, actual profits of private enterprises were 118.2 billion Yuan (approximately US\$14.83 billion or €1.58 billion), an increase of 52.9% over the previous year.

also considers the general question of regulatory reform, the subject of the 2007 Report, in those two jurisdictions and its relationship with business activities.

The Doing Business Reports attempt to establish an objective quantitative methodology primarily by looking at and assessing the number, cost and timing of regulatory procedures required by the facts of a particular fact situation or case study, as well as other factors such as the strength of the legal rights index and so on. The results so obtained are then used by the authors to support a ranking in relation to each sub-index, a general “Ease of Doing Business” ranking and general comments and recommendations for changes to business regulation. The focus on a limited numbers of closely defined topics relating to business, such as business establishment, means that the indicators and hence the Reports do not consider other important factors which may be equally relevant to the actual overall cost of doing business in a particular jurisdiction, the country’s chance of attracting investment capital or a company’s chance of business success. Indeed, the preamble to the 2007 Report makes clear that “other important areas, such as infrastructure, proximity to markets and so on, are not studied directly...”¹¹. Although they do provide an interesting comparative list of procedures and timing in relation to a limited number of topics, therefore, it is difficult to see how they show that one place is overall an “easier” place in which to do business than another. Indeed, the expression “ease of doing business” is, in view of the information which is not included in the study, potentially misleading, as it purports to set an objective standard for something which, if the ordinary meaning of the term is used, is essentially a matter for subjective assessment.

¹¹ Supra note 2, Contents page.

As Daniel Kaufmann of the World Bank Institute¹² comments in his article comparing data obtained from firms operating in countries around the world on their perceptions of issues relating to doing business with the data obtained from the World Bank reports “[I]nvestment climate and business development issues cannot be narrowly viewed, merely by counting the number of legal or regulatory steps, and without understanding the institutional context within which such regulations and policies are formulated... and implemented”¹³.

Another important issue is the use to which the data and rankings in the Report are put, both by the authors in their own summaries and comments in the Reports and by other commentators. Despite the methodological limits in the compilation of the data, which the Reports themselves highlight, the publicity and momentum which the Reports, as reports issued under the World Bank name, have achieved gives the indicators considerable weight.

The 2007 Report claims that the series of reports has “inspired or informed 48 reforms around the world”¹⁴. Meanwhile, the World Bank-IFC vice-president for financial and private sector development, Michael Klein, has been quoted as saying that the Asian region lags behind in terms of regulatory reform as “(l)ess than half of the East Asian economies introduced one or more reforms that improved the Doing Business indicators”¹⁵. The Egyptian government, while enjoying a surge in foreign direct investment into Egypt, is perplexed by Egypt’s ranking of 165th, which gives it the worst ranking of the 17 Middle Eastern

¹² Kaufmann, D., 2004, “Corruption, Governance and Security: Challenges for Rich Countries and the World”, in ME Porter and A. Lopez-Claros, *The Global Competitiveness Report, 2004* (Palgrave Macmillan), pp83-102. Online <http://avanza.org.co/archivos/676ff593dcb3454fd4de6c02316ed440/corrupcion.pdf> (last visited 29 September 2006).

¹³ Id, p87.

¹⁴ *Supra note 3*, pp6-7.

¹⁵ International Finance Corporation, 2006, ‘Doing Business 2007: China a Top Reformer, but Region Lags on Pace of Reform’, International Finance Corporation website Online <http://www.ifc.org/ifcext/eastasia.nsf/e11ffa331b366c54ca2569210006982f/18217802e3ef3d48852571e1002e63ff?OpenDocument> (last visited 29 September 2006).

countries in the report, including Iraq¹⁶. The International Confederation of Free Trade Unions has expressed its concern¹⁷ that the data in the Doing Business Reports in relation to labour has been used by departments of the World Bank and the International Monetary Fund to promote labour market deregulation and reduce labour protection, even though the data is not sufficiently detailed to be the basis for a prescriptive course of action, and the competing elements of free markets and worker protection (including protections prescribed by the International Labor Organisation) are not considered in the indicators or the recommendations or discussion in the Reports.

In this paper, I discuss a number of questions relating to the methodology in the Reports by comparing the relative positions of Australia and the People's Republic of China in relation to the category of Setting up a Business. I have also looked briefly at the category of "Enforcing Contracts".

First, the Reports look at the establishment of a limited liability company. An initial issue arises in relation to the choice of the limited liability company structure as the sole entity to be considered. It is presumably necessary for the purposes of an overall study to look at an entity which is relatively similar as the basis for the study. It is not, however, clear from the discussion to what extent, in each of the countries studied, the limited liability company is, or is likely to become, the dominant business form for a small or medium-sized enterprise, which is the model which is used in formulating the comparisons across

¹⁶ Abdel-Razek, Sherine, 23 September 2006, "Factors at Play", Zawya. Online <http://www.zawya.com/Story.cfm/sidZAWYA20060923055449/secIndustries/pagLegal/chnMiddle%20East%20Regulatory%20Analysis/objFE783C6C-5769-11D5-867D00D0B74A0D7C/> (last visited 29 September 2006).

¹⁷ Bakvis, P., 2006, "How the World Bank and the IMF Use the *Doing Business* Reports to Promote Labour Market Deregulation in Developing Countries" <http://www.icftu.org/www/PDF/doingbusinessicftuanalysis0606.pdf> (last visited 25 September 2006); also cited in Du Marais, 2006, "Methodological limits of 'Doing Business' reports", Working Paper AED-2006-1 (v4), *Attractivité Economique du Droit* http://www.gip-recherche-justice.fr/aed/publications/WP-AEDDuMaraisMethodologicalLimitsDB_EN09-09-06.pdf (last visited 26 September 2006), Bibliography.

jurisdictions. The procedures required to establish such a company are by no means the sole or even the main reason for a person deciding to use that form of entity. The cost and complexity of operating such an entity (as compared, for example, to operating as a sole trader) is also highly relevant.

In order to ensure that the form studied is comparable across different economies the study also assumes that in all of the jurisdictions which are covered, the company established operates in the most populous city in the country, and that it is “100 percent domestically owned and has 5 founders”¹⁸. I have not looked in any detail at the validity, in Australia and in China, of the assumption made in the Reports that the limited liability company has 5 founders, although it seems unlikely that small or medium sized enterprises in either jurisdiction would generally have so many shareholders.

In Australia, there are a limited number of business forms that are available for adoption by businesses. At the end of August 2006, there were 1,439,876 companies in Australia (including listed and public companies)¹⁹ for a population of approximately 20 million people. The concept of a company in Australia goes back to the original creation of companies in Great Britain, and they have a long-standing history in Australia.

This is, however, not the case in the People’s Republic of China, where a national Company Law did not become effective until 1 July, 1994²⁰, although the concept of “limited liability” and “legal personality” were referred to in the 1979 Law of

¹⁸ 2004 Report, *supra* note 1, page 3.

¹⁹ Statistics from website of Australian Securities and Investment Commission, 2006 Company Registration Statistics
http://www.asic.gov.au/asic/asic_pub.nsf/byheadline/2006+company+registration+statistics?openDocument (last visited 29 September 2006).

²⁰ *The Company Law of the People’s Republic of China*, amended and adopted at the 18th session of the Standing Committee of the Tenth National People’s Congress of the People’s Republic of China on October 27, 2005, effective January 1, 2006; originally effective 1 July 1994.

the People's Republic of China on Sino-foreign Equity Joint Ventures²¹ and the 1986 General Principles of the Civil Law of the People's Republic of China²². It should therefore be borne in mind that the Chinese limited liability company is a form of entity which has become available only relatively recently and that it is available only to Chinese investors. Foreign investors, which provide a considerable amount of the capital for Chinese development, are generally not able to invest directly in Chinese limited liability companies²³. Foreign investors are restricted to making their investments through various forms of foreign investment entity, and must go through an approval or verification process which is distinct from the process of establishing a limited liability company (and can be expected to take longer). The state-owned sector, similarly, generally uses different kinds of entities. In contrast, a foreign investor setting up operations in Australia could, and often would, use an Australian limited liability company. An individual, however, may well choose to operate as a sole trader.

The next question which arises is the number and nature of the procedures required in order to set up a limited liability company. Australia achieves its high ranking due to the statement that there are only 2 procedures involved in establishing a business in Australia – establishment of a company and registration for tax. By way of contrast, the 2006 Doing Business Report indicates that there are 13 procedures required to set up a company in China, which would take a total of 48 days to complete. (The 2007 Doing Business Report cuts the timing to 35 days, due to the inclusion of a provision in the Registration Rules which allows an applicant to receive the business licence for his new company

²¹ Adopted by the 2nd session of the 5th National People's Congress of the People's Republic of China on 1 July 1979; revised in the 3rd session of the 7th National People's Congress on 4 April, 1990; further revised in the 4th session of the 9th National People's Congress on 15 March, 2001; Article 4.

²² Adopted by the 4th session of the 6th National People's Congress of the People's Republic of China on 12 April 1986; effective 1 January 1987; Chapter III.

²³ See, the *Provisions on Acquisition of Domestic Enterprises by Foreign Investors*, issued by the Ministry of Commerce, the State Assets Supervision and Administration Commission, the State Tax Administration, the State Administration for Industry and Commerce, the China Securities Regulatory Commission and the State Administration of Foreign Exchange on 8 August 2006, effective 8 September 2006, Articles 2 and 9.

within a day if he turns up in person. For other applications, the regulatory requirement continues to be 15 days)²⁴. The comprehensive and detailed list of procedures involved in establishing a company in China includes such steps as setting up bank accounts, adopting a corporate seal, filing for recruitment registration and registering with the social welfare insurance office. The process, in short, involves not only the formal establishment of a company, but the completion of other steps necessary to set up a functioning business.

The description of the Australian procedures used in the Reports is, however, a distinctly short-hand way of describing what must actually be done to set up a functioning business. The first step is described as requiring the completion and submission of Form 201, issued by the Australian Securities and Investments Commission (“ASIC”), “Application for Registration as an Australian company” and payment of the prescribed fee (which, as from 1 July 2006 has been reduced by 50%, and is now AUD400 for a company with share capital)²⁵. The second step in the procedures required to set up a company in Australia refers to an application online for an Australian Business Number with the Tax Authority. An examination of Form 201 reveals that a significant amount of preparation would be required before an applicant with no experience in company registration would be able to complete the form. Indeed, the ASIC website commences its discussion on establishing a company by stating that “[a]pplications to register an Australian company can be made through a number of business service providers that use software that deals directly with ASIC. A company can be registered in minutes”²⁶. The website then goes on to

²⁴ *Rules on Administration of Company Registration of the People’s Republic of China*, issued by the State Council on 24 June 1994, as amended on 18 December 2005, effective 1 January 2007, Article 54.

²⁵ See the Australian Securities & Investments Commission website, at http://www.asic.gov.au/asic/asic_srchlodg.nsf/byheadline/Reduction+in+company+registration+fees+from+1+July+2006?openDocument (last visited 25 August 2006).

²⁶ Ibid, “Starting” at http://www.asic.gov.au/asic/asic_infoco.nsf/byheadline/Starting+a+company+or+business?openDocument (last visited 29 September 2006).

indicate where such service providers can be located²⁷. This reflects the fact that in jurisdictions such as Australia, it is often less trouble to acquire a “shelf” company than to set one up oneself despite the 2 step procedure.

If the applicant wishes to complete the form himself, the website (and the form) provides detailed instructions. The website sets out 7 steps in registering the company, of which one (obtaining a commemorative certificate, step 6) is truly optional. Although the other matters listed in the 7 steps do not fit within the criteria set out in the World Bank Report, which limits procedures to “any interaction of the company founder with external parties (government agencies, lawyers, auditors, notaries”²⁸ and assumes that the “founders complete all procedures themselves”²⁹, these steps are none the less essential to the establishment of the company. For example, an applicant cannot complete the application form if he does not understand the difference between (and the implications of) choosing to use the Replaceable Rules under the Corporations Act (Cth) (41 rules found in the Corporations Act which may be used as the fundamental constitution of a company) or a constitution drafted for the company. Obviously, the establishment of a Chinese company (or any other sort of company) also requires the preparation of a set of Articles of Association as a preliminary to the registration process. The question in relation to the Australian procedures is whether limiting the procedures to those involving an interaction with government actually results in an accurate indication of the timing and complexity of the overall process or tells us whether an “ordinary” person who wishes to set up a business would in fact be able to do so.

²⁷ A quick web search readily finds a number of suppliers offering shelf companies at very reasonable rates, although, of course, for more than the basic government charge.

²⁸ 2006 Report, Supra note 1, p78.

²⁹ *Ibid.*

A comparison in relation to the actual process of effecting company registration in Australia and China can be made by going through the respective websites of the corporate governance bodies in China and in Australia. In China, the company registration authority is the State Administration for Industry and Commerce (“SAIC”), which operates a website, <http://www.saic.gov.cn>. (Local bureaus of the SAIC also operate websites.) The company registration authority in Australia is ASIC, which also operates a website, <http://asic.gov.au>. Both websites make available the basic forms for the establishment of a company of the type referred to in the Doing Business report. The process of getting to the form in Australia requires going to the “home” page and clicking on the heading “Your company: starting, running, closing your company”. The “starting” entry takes you to the “How to register a company” page, which sets out, and elaborates on seven steps which the putative business owner should take in order to start a company, starting with deciding on the company structure, and ending with understanding your legal obligations. If the applicant wishes to register the company him or herself, he/she can go to Form 201 (two clicks, as the form is in pdf). Form 201 is 13 pages long, including 2 pages of instructions for filling in the form (although much of the space is taken up by duplicated questions for multiple shareholders to complete).

The SAIC site has an “enterprise registration” tag on the home page. “Enterprise registration” offers a number of options, one of which is web download. The web downloads comprise a number of options, including an option for establishment registration forms, which include a “company establishment registration form”. The form is 4 pages long, including explanatory notes (and space for multiple officers and shareholders) and the company legal representative registration form. The website itself does not provide explanations as to the overall process of setting up a company or what steps should be taken other than completing the various forms.

The content of the forms is in many ways similar, as one would expect, although the Chinese form (4 pages, including the company legal representative registration form and notes) is considerably shorter than the Australian form (13 pages, including 2 pages of instructions). Both forms call for additional material to be attached to the application. The accompanying documents for a Chinese registration, which include investment verification certificates, showing that the initial investment has been paid in, articles of association, proof of addresses and appointments of directors and officers and a certificate showing the domicile of the company, are more burdensome than those which would be required in Australia³⁰. The Chinese form itself, however, is shorter and more straightforward than the Australian form, which, among other things, calls for a choice between the replaceable rules and a company constitution (page 2), requires information about the office hours of the company, whether an ultimate holding company is involved, information about the type of shares and information about any written contracts pursuant to which shares may be issued (page 6), and a statement whether shares are “beneficially held” (page 7 et seq).

It would be unreasonable to expect that the Doing Business Reports should assess the complexity of each form which is used in order to satisfy regulatory requirements. Nevertheless, the content and accessibility of the forms and availability of information as to how to complete them quickly and accurately is important in assessing the provision of government services, particularly if the assumption is made that the company founders will not be seeking the advice of assistance of professional advisers.

Secondly, in comparing procedures, it should be noted in relation both to certain of the Chinese requirements which are a prerequisite to registration and to a

³⁰ *Rules on Administration of the Registration of Companies of the People’s Republic of China*, supra note 23, Article 20.

number of the procedures which are listed in relation to company establishment in China that their exclusion from the list of compulsory Australian procedures does not mean that a prudent company would not carry them out regardless.

For example, the first procedure on the list of Chinese procedures in the 2006 and 2007 Reports is the requirement to obtain pre-approval of a company name, a step which can be undertaken in a day. It is no longer necessary in Australia to pre-reserve a name, but the ASIC website makes clear that this does not mean that an applicant is free to choose whatever name he wishes. In fact, a comparison of the requirements of the Chinese Implementing Regulations on the Administration of the Registration of Enterprise Names³¹ with the restrictions specified on the ASIC website (spelt out in detail in Schedule 6 to the Corporations Act 2001 (Cth)), which provides a detailed list of terms and expressions that cannot be used and allusions that must not be made in company names, suggests that the process of having the SAIC review and pre-approve the chosen enterprise name may well be quicker and easier than choosing a name for an Australian company³². It is true that Chinese rules on what constitutes an acceptable name are quite prescriptive. However, in Australia, the freedom of the applicant to choose a name means that he/she is required to search the available registers online and read the requirements of Schedule 6 in relation to names which are not permissible in order to be sure that he/she has selected a name that is acceptable. In addition, there may be issues of trademark infringement, which may also necessitate a trademark search. The ASIC website notes that “[i]t is entirely your responsibility to be aware of any problems that might arise from names already registered which are similar to, or likely to be

³¹ State Administration for Industry and Commerce, Order No. 93, promulgated on 8 December 1999; revised by the State Administration for Industry and Commerce Order No. 10 of 10 June 2004, effective 1 July 2004.

³² The World Bank Report does not include the procedure of obtaining exclusive rights to a name if a business can use a number for identification. 2006 Report, *supra* note 1, p78. The difficulty with this approach is that founders of companies may not wish the company to be known exclusively by its business number.

confused with, the name you register”³³. Indeed, as noted in the discussion in this paper on business complaints about regulation in Australia, one of the issues for Australian business is the complexity arising from the regulatory requirements relating to the registration of the Australian Business Number, company names and trademarks. In comparison, the compulsory Chinese procedure may have a great deal to recommend it in terms of speed and reliability.

To some extent the differences between the Australian and the Chinese requirements are due to the fact that the Chinese authorities, in a rather paternalistic fashion, require evidence that these steps have been carried out as part of the corporate registration process. This does not mean that it would not, as a practical matter, be necessary to carry out a number of the same steps in Australia. It is difficult to imagine an Australian business without a bank account, for example, although it would not have to set up both a preliminary and a final account. An Australian company is required to show that it has a business address on the application form. In China, it is necessary to provide evidence of this in order to obtain registration by producing a certificate of domicile (for which the company will have to have entered into a lease or other arrangement). Other requirements may come from slightly different customs. For example, an Australian company may have, but is not obliged to have, a common seal under S.123 of the Corporations Act 2001 (Cth). However, in China, where a seal may be, and often is, used instead of a signature³⁴, formal controls over the production of seals may be regarded as a necessary protection against forgery rather than an unconscionable regulatory burden.

³³

ASIC

website,

http://www.asic.gov.au/asic/asic_infoco.nsf/byheadline/Starting+a+company+or+business?openDocument
(Last visited 29 September 2006).

³⁴ See *Contract Law of the People's Republic of China*, adopted at the 2nd session of the Ninth National People's Congress on 15 March 1999, effective 1 October 1999, at Article 32, which provides that a contract must be signed or sealed.

The second stage of the description of the Australian process for setting up a company goes on to state that “depending on the circumstances and location of a company it will need to comply with different requirements for taxation”³⁵. This is considered to be one procedure in the Doing Business Reports, that is, registering for tax by applying for an Australian Business Number. The business website, www.business.gov.au, which is funded by the Australian government and coordinated by the Australian Department of Industry, Tourism and Resources, however, lists as requirements for business establishment: registering for an Australian Business Number, registering for Goods and Services Tax (GST), registering for a Tax File Number and registering for Pay As You Go (PAYG) withholding, that is, 4 different filings, each of which requires completion and submission of a different form. In addition, as a practical matter, even if a business is not required to register for GST, it may still have to obtain an Australian Business Number so as to ensure that other businesses do not withhold tax from amounts payable on invoices.

Thirdly, as noted above, the Doing Business Reports disregard the role and cost of professional assistance in setting up a business. The methodology adopted specifically excludes the use of professional advisers in assessing cost and time unless required by law³⁶. If the aim is to obtain an accurate assessment of time and cost, however, this should surely include the involvement of professional advisers in jurisdictions where they are generally used and practically required as part of the establishment process. In Australia, the www.business.gov.au website, which was set up so that “businesses are able to comply with

³⁵ Doing Business Explore Topics (which explain in more detail the methodology behind the procedures listed in relation to particular topics and countries in the World Bank Reports) “Starting a Business in Australia”, <http://www.doingbusiness.org/exploretopics/startingbusiness/moredetails.aspx?economyid=12> (last visited 29 September 2006).

³⁶ “The founders are assumed to complete all procedures themselves, without middlemen, facilitators, accountants or lawyers, unless the use of such a third party is mandated by law.” “Starting a Business - Procedures” <http://www.doingbusiness.org/MethodologySurveys/StartingBusiness.aspx> (last visited 29 September 2006).

government requirements more simply and conveniently”³⁷ repeatedly recommends that a person proposing to set up a business “consult an experienced business adviser, accountant or solicitor” as to the actions which should be taken in starting up a business. In a jurisdiction where tax is so complicated that 75% of individuals submit their annual tax returns through a registered tax agent³⁸, it would certainly be prudent even for a small business to take tax and legal advice on its corporate structure and obligations before starting to operate.

The results in the Reports in relation to enforcing contracts in particular jurisdictions also raise a number of issues. Obviously it is very difficult to establish assumptions and parameters which can be used across all of the jurisdictions studied. Similarly, it may well be valuable to consider such questions as the number of formal procedures and the time which would be taken overall in a court or administrative action in order to recover debts under the legal system. The quantitative data does not, however, address the crucial question of the rate of recovery after judgment is given or any issues which may arise from the defendant having an arguable case. In fact, what is being discussed under the heading “Enforcing Contracts” in the 2006 report is really debt recovery, a matter which involves many issues in addition to court procedures and costs. The strength of the court system, the availability of non-litigious methods of dispute settlement, bankruptcy and other enforcement mechanisms, and corruption in the official and commercial context are all factors which will have a strong impact on the ability of creditors to collect their debts and hence their willingness to take legal action to pursue them. Indeed, the

³⁷ “About business.gov.au”, <http://www.business.gov.au/Business+Entry+Point/About+business.gov.au/> (last visited 29 September 2006).

³⁸ “Updated Compliance Program 2005-06”, Australian Taxation Office website http://www.ato.gov.au/corporate/content.asp?doc=/content/61826.htm&page=5&H4_1 (last visited 29 September 2006).

discussion on Enforcing Contracts in the 2006 Report³⁹ refers to complaints in relation to matters such as protracted appeals, incompetence and corruption. In the 2007 Report, the case study has been revised to reflect a contractual dispute, with the aim, presumably, of dealing with a more realistic scenario⁴⁰.

Although the focus of the study underlying the World Bank Reports is on producing quantitative data, which in the case of contract enforcement relates to procedures, time and cost, the authors of the 2006 Report make a number of sweeping recommendations for judicial and other reforms aimed at improving contract reform. These suggestions include overall court reform, including the reduction of delays, cutting the number of appeals to the highest court, and competitive enforcement of court judgments by private companies, among others⁴¹. Certainly, there is considerable scope for urging judicial reform in a number of countries. In all cases, however, there is a balance to be struck between the interests of the parties to the contract, as well as an assessment of the impact of changes on the overall system of justice and a more thorough review of what may be systemic issues in the justice system. The assumption of the authors of the 2006 Report, for example, appears to be that quick resolution of claims by instituting a system of summary procedures, abolishing appeals and so on, would be a positive improvement in all cases. This does not assess, however, whether the interests of both creditor and debtor are taken into account (since it may well be the case that the debtor has a defence in relation to all or part of the non-payment). In addition, the argument on “Why reform” draws a number of parallels for which the support is questionable. The reference to an “association” between the higher rate of private lending in Venice, a more efficient judicial district in terms of creditors’ claims, and the lower rate of private lending in

³⁹ Supra note 1, p61 et seq.

⁴⁰ See <http://www.doingbusiness.org/MethodologySurveys/EnforcingContracts.aspx> (last visited 29 September 2006).

⁴¹ 2006 Report, supra note 1, pp63-64.

Calabria, a less efficient judicial district, for example, clearly suggests that the reader draw the conclusion that fewer pending cases result in higher levels of private lending, although no evidence is cited for such a conclusion (and there may well be many reasons for the different levels of lending, such as the level of economic development, personal wealth of the populations of the two districts, and other matters).

A serious review of the Chinese system of contract enforcement would also look not so much at the list of procedures which must be instituted in order to recover debts through the court system, but at the substantial gaps between law and practice, particularly in relation to debt recovery, and the impact which the lack of an adequate bankruptcy regime has hitherto had on the issue of enforcement of contracts and debt recovery generally⁴². The ability of the courts to enforce judgments in China is highly relevant and is not easily dealt with by merely reforming procedures. Similarly, privatising enforcement in China (and elsewhere) is a matter which would call for serious consideration. In Hong Kong, for example, the debt collection industry is an area in which organised crime has traditionally played an active role and it would not be at all desirable for it to extend its operations in this area into mainland China⁴³.

The 2004 World Bank Report offers various conclusions in relation to the amount of regulation. One is that “Poor countries regulate business the most”⁴⁴. Another is that “Common law countries regulate the least. Countries in the French civil

⁴² See the *Bankruptcy Law of the People’s Republic of China*, promulgated at the 23rd session of the Standing Committee of the 10th National People’s Congress on 27 August 2006 and effective from 1 July 2007.

⁴³ Hong Kong government, 2006, “Hong Kong: The Facts – The Police” <http://www.info.gov.hk/hkfacts/police.pdf#search=%22hong%20kong%20debt%20collection%20organised%20crime%22> (last visited 27 September 2006). This describes the functions of the Organised Crime and Trial Bureau as including the investigation of major and organized crime, including debt collection. Also see Bradsher, K, 25 August 2006, “Shadowy thugs give city’s image a beating”, South China Morning Post Online <http://www.smh.com.au/news/business/shadowy-thugs-give-citys-image-a-beating/2006/08/25/1156012739792.html#> (last visited 29 September 2006).

⁴⁴ *Supra* note 1, p.xiii.

law tradition the most”⁴⁵. Similarly, the Report comments that “Countries like Australia, Denmark, the Netherlands, and Sweden present best practices in business regulation, meaning regulation that fulfils the task of essential controls of business without imposing an unnecessary burden”⁴⁶. The views of Australian business and the Australian government on this question are discussed below.

The 2007 Report focuses on reform. China is referred to favourably as a reformer, though it still ranks 93rd overall in the “ease of doing business” ranking. The Report itself looks at reform in relation to the Doing Business indicators, that is, in particular areas of regulation, without attempting to quantify or assess the overall burden on business or the economy imposed by different levels or types of regulation or the social policy implications of reform. Indeed, there are many issues which regulation can create – the overall burden of regulation may make compliance expensive and time-consuming; legislation may be inaccessible or difficult to understand; the assistance offered by officials may be inadequate or expensive; corruption may make dealings with officialdom an expensive burden. Each of these issues may contribute to the number and cost of the procedures enumerated in the Reports. Even if they do not, they may be part of a larger problem which needs to be addressed. Regulatory and administrative reform is a broader matter than just establishing a credit information registry for consumer loans, or improving the time for company establishment. It affects the lives of individuals, as well as business operations and it should not necessarily be assumed that facilitating business even at the expense of individuals is government’s first priority. Even in relation to regulatory reforms which affect business, the focus on the 10 indices created by the Reports and the procedures which are used to assess the performance of the economies studied can draw attention away from equally important steps which countries may take to

⁴⁵ *Id.*, p.xiv.

⁴⁶ *Id.*, p.xvi.

improve the standard of government. As Kaufmann comments in relation to the response by companies carrying on business overseas “, governance factors appear to be extremely important in explaining the firms’ reported ease or difficulty in starting up a business; in fact, they appear to matter more than the particular number of official steps required”⁴⁷.

What are the steps which the governments of Australia and China have decided to take in relation to administrative and regulatory reform? What relevance do the Doing Business indicators have to the reforms undertaken?

Despite its relatively high ranking in the Doing Business Reports, the Australian system of regulation has been strongly criticised by Australian business groups for what they see as the unreasonable escalation in the quantity of government regulation at all levels which has had a major impact on business. As a result, the Commonwealth government of Australia has recently undertaken a comprehensive review of its own regulatory system to deal with criticisms that due to excessive legislative and regulatory requirements imposed at all levels of government, the Australian system is not particularly business friendly. The quantity of Australian legislation, at both the State and Federal level, has been growing at an exponential rate⁴⁸. The Report of the Taskforce on Reducing Regulatory Burdens on Business (the “Taskforce Report”)⁴⁹ established by the Australian government in 2005 concluded that there is a need for reform in terms of the amount and quality of regulatory red tape in Australia. The Taskforce made 178 recommendations on the reduction of red tape in its report, of which

⁴⁷ Supra note 11, p86.

⁴⁸ Taskforce on Reducing Regulatory Burdens on Business, 7 April 2006, “Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business,” Online <http://www.regulationtaskforce.gov.au/finalreport/regulationtaskforce.pdf> (last visited 29 September 2006) (the “Taskforce Report”). Chapter 2, at 2.1, p5, comments that “since 1990, the Australian Parliament has passed more pages of legislation than were passed during the first 90 years of federation.” This does not take into account legislation which has been repealed.

⁴⁹ *Ibid.*

the government has agreed, partially or fully, to implement 158⁵⁰. These include adoption of a comprehensive set of recommendations designed to address the causes of excessive regulation, as well as specific recommendations in particular industry sectors. In addition, the Council of Australian Governments, on 10 February 2006, and 14 July 2006, agreed to take steps to reduce regulatory burdens across the three levels of government in Australia⁵¹, including developing a “seamless” process for the online registration of Australian Business Numbers and business names, including trademark searching⁵².

Although Australia is a country within the common law system, the role of legislation is substantial. Companies are creatures of statute. Government policy at all levels of government is implemented through legislation. The Taskforce Report refers specifically to the tax legislation, and State and Territory business regulation and licensing in commenting on the sheer volume of regulation which particularly affects business⁵³. A significant part of the agreed Australian reforms, therefore, is the concept of systemic reform designed to control the amount of new regulation and to eliminate existing regulations as they become outdated or redundant. (This is consistent with the principles laid down in Part 6 the Legislative Instruments Act 2003 (Cth), which provides that Commonwealth regulations and other subordinate legislation will, generally speaking, cease to be effective 10 years after the date of effectiveness unless specifically preserved.) The Doing Business indicators do not pick up these issues in relation to Australia, due to the focus on the 10 sub-indices. As a number of these are areas in which Australia does well, Australia’s overall ranking is high,

⁵⁰ Australian government, 15 August 2006, “Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business – Australian Government’s Response” (“Government Response”), found on <http://www.treasury.gov.au/contentitem.asp?ContentID=1141&NavID> (last visited 29 September 2006).

⁵¹ Council of Australian Governments Meeting, 14 July 2006, “Communiqué” <http://www.coag.gov.au/meetings/140706/docs/coag140706.pdf> (last visited 29 September 2006).

⁵² *Id.*, attachment E “Priority Regulatory Reform Areas” (summary of areas agreed on 10 February 2006).

⁵³ *Supra* note 47, at p6.

notwithstanding the perceptions of Australian business in relation to excessive red tape.

China has adopted a civil law model of legislation, rather than the common law system in which the courts play a major role in determining the meaning of legislation. The Constitution, for example, gives the role of interpreting constitutional issues to the Standing Committee of the National People's Congress⁵⁴, while legislation often gives an interpretative role to a named government department, rather than to the courts. Nevertheless, the Supreme People's Court, in particular, does play a major role in coordinating and systematising the judicial handling of particular legislative issues⁵⁵.

Although the Law on Legislation in 2000⁵⁶ attempted to impose a logical order and hierarchy on the proliferation of legislation at all levels of government, the position in relation to bureaucratic red-tape and regulatory requirements is considerably complicated by the fact that so many different government entities have the ability to pass legislation. The National People's Congress, the Standing Committee of the National People's Congress, the State Council, the Ministries and departments under the State Council, the provincial and municipal people's congresses and their respective departments, all have the ability to promulgate instruments with law-making effect. None of them have had much hesitation in exercising this power. A quick review, for example, located a minimum of 20 documents issued by the State Administration of Foreign Exchange and the Chinese Banking Regulatory Commission on foreign exchange in the first 6

⁵⁴ *Constitution of the People's Republic of China*, adopted at the 5th session of the 5th National People's Congress on 4 December 1982, promulgated on 4 December 1982; amended at the 1st session of the 7th National People's Congress on 12 April 1988, the 1st session of the 8th National People's Congress on 29 March 1993, the 2nd session of the 9th National People's Congress on 15 March 1999 and the 2nd session of the 8th National People's Congress on 14 March 2004, at Article 67.

⁵⁵ See, for example, the recent *Interpretation of the Supreme People's Court concerning several issues on application of the Arbitration Law of the People's Republic of China*, issued 23 August 2006.

⁵⁶ *Law on Legislation of the People's Republic of China*, adopted at the 5th session of the 7th National People's Congress on 15 March 2000, effective 1 July 2000.

months of 2006 and, in the same period, at least 60 different legislative instruments in relation to companies and securities matters were issued by different central government agencies⁵⁷.

China has, however, been actively taking steps, at least at a central government level, to reduce the amount of bureaucracy and to improve the efficiency and answerability of the services which are provided to the public in China. These include the imposition of limitations on licensing requirements required by the provisions of the Administrative Licensing Law⁵⁸ and the recent changes to the Company Law made in 2005, which reduced the minimum capitalisation requirements, allow for payment of capital by contributions and permitted the establishment of one-person companies. Although the criticism can certainly be made of China that from a country with very little law it has moved to being a country with altogether too much regulation, these changes indicate an intention, at least at the central government level, to reduce the regulatory load on business and individuals and to encourage the continued development of the private sector. The fact that it is not easy in the rapidly developing Chinese system to balance existing interests with the rights of the private sector is demonstrated by the delay to the promulgation of the draft Property Law, apparently due to internal dissension about the protection to be guaranteed by the law towards state assets, as well as private property⁵⁹.

The Chinese Company Law was originally passed in 1994. In October 2005, the National People's Congress adopted a revised version of the law, which includes a number of major changes with potential impact on businesses established

⁵⁷ Information drawn from www.orrick.com/chinalaw . Thanks are expressed to Orrick, Herrington & Sutcliffe LLP for allowing me access to this excellent database.

⁵⁸ *Administrative Licensing Law of the People's Republic of China*, adopted at the 4th session of the Standing Committee of the 10th National People's Congress of the People's Republic of China on 27 August 2003, effective 1 July 2004.

⁵⁹ Liu Li, 23 August, 2006, "Draft law backs right to property", http://www.chinadaily.com.cn/cndy/2006-08/23/content_671403.htm (last visited 29 September 2006).

under the law. Changes include the reduction of the amount of registered capital which is required for establishment of a limited liability company to RMB 30,000 (approximately US\$ 3,800 or €2,900), from a minimum of RMB 100,000 (approximately US\$12,560 or €9,800) and a change in the requirement that all of the registered capital of the company be paid prior to establishment. Under the new Company Law, only 20% of the required minimum capital amount must be paid in advance of registration of the company⁶⁰. When the increase in income of the average Chinese person since 1994 is taken into account, this change should make establishing a company considerably more affordable. This change in the capital requirements is reflected in China's ranking in the "Starting a Business" category in the 2007 Doing Business Report, although the reduction in capital requirements, together with the reduction in time required for company registration, still only brings China up to 128th in the overall rankings in this category⁶¹.

Additional flexibility for shareholders is provided in the Company Law by the inclusion of provisions which allow for more flexibility in the Articles of Association to vary voting and dividend rights as among the respective holders of interests in the companies. In addition, the revised Company Law gives shareholders, particularly minority shareholders, considerably more rights to demand a buy-out of their interests in certain circumstances, and in others to demand that the company be wound up where their interests have been adversely affected⁶². Shareholders also have increased rights against directors and senior officers of the company⁶³. Again, this change is reflected in China's

⁶⁰ Supra note 19, Article 26

⁶¹ See "Doing Business, Economy Rankings" Online <http://www.doingbusiness.org/EconomyRankings/Default.aspx?direction=asc&sort=2> (last visited 29 September 2006).

⁶² Supra note 19, Articles 75 and 183.

⁶³ Supra note 19. Article 152 gives shareholders the right to take action against directors, supervisors and managers for breach of their Article 150 duties; Article 153 gives shareholders the right to bring an action for activities infringing their interests as shareholders.

ranking in relation to the category “Protecting Investors”, where China is now ranked 83rd, up from 114th. The effect of the changes in terms of investor protection is entirely untested, however, and the legislation is quite vague in setting out how shareholders can call upon the protections so provided. If the protections are effective, however, they will be significant for investors in both public and private companies.

On the regulatory front overall, the promulgation of the Administrative Licensing Law (“ALL”), and its requirements that licensing and approval requirements be reduced while the processes for applying for and being granted licences, where required, must be simplified and made considerably more transparent. These changes are intended to make a material impact on the levels of bureaucracy which ordinary Chinese citizens and companies are obliged to deal with on a continuous basis.

The ALL is part of the campaign led by the State Council to improve China’s administrative system⁶⁴. It is not directed specifically at facilitating business operations, although it recognises the importance of corporate registration and business by providing that no administrative licence or pre-administrative licence may be imposed on the establishment of a company⁶⁵. This is the only area which refers to a specific regulatory scheme and indicates the importance which the drafters placed upon ensuring that companies can be set up with a minimum of difficulty and intervention. In order to implement the ALL, by the middle of 2004, the State Council had engaged in three successive stages of

⁶⁴ See *Notice of the State Council in relation to the Opinion on Implementation of Reform of the Administrative Approval System*, State Council Notice [2001] No. 33.

⁶⁵ *Administrative Licensing Law*, supra note 57, Article 15.

reducing approval requirements and in June 2004 alone abolished 409 licensing procedures⁶⁶.

A major purpose of the ALL is the reduction of government licensing and approval requirements overall. Article 12 of the ALL sets out the categories of matters in which licences can be established, while Article 13 states that administrative licences are not required to be established for certain matters, which can be otherwise regulated. These are matters “which can be decided by the citizens, legal person or other institutions themselves”, matters which can be “effectively regulated by the market competition mechanism”, matters which can be the subject of the “self-discipline management of the trade organizations or intermediary institutions” and matters which can be resolved by administrative organs themselves through subsequent supervisory methods or other administrative means. Article 14 and the following articles make clear that control over licensing requirements is restricted to the central level of government and local governments may not impose new licensing requirements of their own⁶⁷. In the Chinese environment, with the often overwhelming involvement of government in all aspects of economic activity, this move by government to step back from imposing licensing and approval requirements represents a major commitment to regulatory reform.

The limitations on the imposition of licenses in the ALL are accompanied by provisions which aim to improve the equity and transparency of the licensing process. In particular, Article 33 requires that matters relating to administrative licences be announced on websites to be set up by government departments.

⁶⁶ *Decision of the State Council concerning Cancelling and Adjusting the Third Batch of Items for Administrative Examination and Approval*, issued by the State Council and effective on 19 May 2004.

⁶⁷ An interesting Australian comparison in relation to licences is the comment in the Taskforce Report is that “in mid-2003, the three levels of government appeared to administer more than 24,000 different types of licences for businesses and occupations”. *Supra* note 47, p. 6 (Box 2.1; attributed to Human Solutions 2005, Business licence information, <http://www.bli.net.au/>).

Potential applicants should also be able to file for administrative licences through data messages. Combined with the other provisions in the law which are designed to reduce the fees and charges associated with obtaining licences, to make forms accessible and to require government to provide assistance to applicants in completing them, the process of applying for and otherwise dealing with applications for licences should be easier, quicker and fairer.

It is, of course, too early to say whether these steps will actually result in a reduction in bureaucratic requirements and an increase in customer-friendly service from Chinese government departments. Similarly, it remains to be seen whether as a result of the activities of the Council of Australian Governments and the Taskforce on Reducing Regulatory Burdens on Business, the burden of Australian regulation on business will be significantly reduced. There are, however, several common threads to the actions taken by the Australian and the Chinese governments in relation to reform. First is the attempt to impose some form of systemic reform by limiting, in the case of the Chinese government, licensing and approval requirements, and in the case of the Australian government, new regulation unless it can be shown that it is necessary. Secondly, there is a focus on consultation with affected parties in relation to regulation⁶⁸. Thirdly, there is an emphasis on the provision of information, particularly through the internet⁶⁹. Fourthly, the reform is the result of a lengthy and comprehensive review of domestic issues related to regulation and represents an attempt to put in place a cohesive policy which is suitable for local conditions. The Chinese solution of centralised control over licensing is designed in large part to deal with the imposition of requirements and additional charges on citizens and companies at the local level; the Australian response is to a

⁶⁸ See ALL, supra note 5, Article 20; Government Response, supra note 49, response to recommendations 7.5, 7.6 and 7.7, at p78.

⁶⁹ ALL, supra note 57, Article 33; Government Response, supra note 49, response to recommendation 6.4, at p74.

considerable extent aimed at reducing the sheer volume of regulation (in addition to dealing with a number of issues in specified legislative schemes). Some of these changes may result in improvements in the Doing Business rankings (a reduction in licensing and approval activities in China, for example, may assist with China's current poor ranking (153rd) in the "Dealing with Licensing" area), although it is quite possible they will not have a major effect. If they work as planned, however, they should have a long term positive effect on persons and businesses interacting with government and in that way make doing business easier.

In conclusion, the Doing Business Reports do serve the useful purpose of highlighting anomalies and issues in regulation in countries across the world. Their limited nature, however, means that they do not pinpoint all or even most of the issues which are truly relevant to business operations, and by concentrating on procedures without reference to the context in which those procedures exist, they may serve to draw attention away from matters which are fundamental to good regulation and efficient business operations, such as corruption, overall governance issues, and the efficiency of the judicial and administrative review systems. As noted above, the effect of the reforms being undertaken by the Australian and Chinese governments, for example, will not necessarily have a further impact on the rankings of these two countries in the ease of doing business survey. They should, however, if fully implemented, have a material effect on the actual activities of business.

Thus, although the Doing Business Reports provide some useful information in a number of areas, the restricted scope of the indicators and the limited parameters used in constructing the indices means that the data is similarly of limited application. In this paper, I have looked at a number of areas in which, in relation to China and Australia, the data does not give a basis for a valid

comparison. Certainly the aggregation of data does not serve to give an accurate picture of the overall “ease of doing business” in a particular country and the index is therefore significantly misnamed. While Australia and China have taken major steps in an attempt to address some of the problems arising from the issue of regulation and the treatment of business generally, these steps, quite properly, aim to address the systemic issues which have been identified internally, rather than the issues based on procedural shortcomings on which the Doing Business Reports focus.

References

Abdel-Razek, Sherine, 23 September 2006, "Factors at Play", Zawya. Online <http://www.zawya.com/Story.cfm/sidZAWYA20060923055449/secIndustries/pagLegal/chnMiddle%20East%20Regulatory%20Analysis/objFE783C6C-5769-11D5-867D00D0B74A0D7C/> (last visited 29 September 2006).

Australian government, 15 August 2006, "Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business – Australian Government's Response", found on <http://www.treasury.gov.au/contentitem.asp?ContentID=1141&NavID> (last visited 29 September 2006).

Australian Taxation Office, "Updated Compliance Program 2005-06", Australian Taxation Office website http://www.ato.gov.au/corporate/content.asp?doc=/content/61826.htm&page=5&H4_1 (last visited 29 September 2006).

Bakvis, P., 2006, "How the World Bank and the IMF Use the Doing Business Reports to Promote Labour Market Deregulation in Developing Countries" <http://www.icftu.org/www/PDF/doingbusinessicftuanalysis0606.pdf> (last visited 25 September 2006)

Bradsher, K, 25 August 2006, "Shadowy thugs give city's image a beating", South China Morning Post Online <http://www.smh.com.au/news/business/shadowy-thugs-give-citys-image-a-beating/2006/08/25/1156012739792.html#> (last visited 29 September 2006).

Business Council of Australia, 2005, "Business Regulation Action Plan for Future Prosperity," Online

http://www.pageup.com.au/platform/editor/v4.0/downloadFile.asp?p=%98%8C%5BSb%87it%8DV%81%8Bwglj%B0%8B%B0%94%A0%BB%B6%A7%9C%9E%D0%A6%BF%BB%B2%A6%BC%BD%C5%A4%BA%8D%9B%A4%8C%9C%CA%CC%C7%CA%91%B7&f=Business_Regulation_Action_Plan_For_Future_ProspertyFINAL.pdf (last visited 29 September 2006).

China.com.cn, 2006, “National Industrial Actual Profits rose 28% in the First Half of this Year”, <http://www.china.org.cn/e-company/06-08-10/page060602.htm> (last visited 29 September 2006).

Council of Australian Governments Meeting, 14 July 2006, “Communiqué” <http://www.coag.gov.au/meetings/140706/docs/coag140706.pdf> (last visited 29 September 2006).

Du Marais, 2006, “Methodological limits of Doing Business reports”, Working Paper AED-2006-1 (v4), Attractivité Economique du Droit http://www.gip-recherche-justice.fr/aed/publications/WP-AEDDuMaraisMethodologicalLimitsDB_EN09-09-06.pdf (last visited 26 September 2006)

Hong Kong government, 2006, “Hong Kong: The Facts – The Police” <http://www.info.gov.hk/hkfacts/police.pdf#search=%22hong%20kong%20debt%20collection%20organised%20crime%22> (last visited 27 September 2006).

International Finance Corporation, 2006, ‘Doing Business 2007: China a Top Reformer, but Region Lags on Pace of Reform’, International Finance Corporation website. Online <http://www.ifc.org/ifcext/eastasia.nsf/e11ffa331b366c54ca2569210006982f/18217802e3ef3d48852571e1002e63ff?OpenDocument> (last visited 29 September 2006).

Kaufmann, D., 2004, "Corruption, Governance and Security: Challenges for Rich Countries and the World", in ME Porter and A. Lopez-Claros, The Global Competitiveness Report, 2004 (Palgrave Macmillan), pp83-102. Online <http://avanza.org.co/archivos/676ff593dcb3454fd4de6c02316ed440/corrupcion.pdf> (last visited 29 September 2006).

Liu Li, 23 August, 2006, "Draft law backs right to property", http://www.chinadaily.com.cn/cndy/2006-08/23/content_671403.htm (last visited 29 September 2006).

Ministry of Commerce of the People's Republic of China, "Invest in China" website <http://www.fdi.gov.cn/index.htm> (last visited 29 September 2006).

Taskforce on Reducing Regulatory Burdens on Business, 7 April 2006, "Rethinking Regulation: Report of the Taskforce on Reducing Regulatory Burdens on Business," Online <http://www.regulationtaskforce.gov.au/finalreport/regulationtaskforce.pdf> (last visited 29 September 2006).

World Bank, 2006, "Doing Business in 2007, How to Reform" (Report Overview), Washington D.C. Online http://www.doingbusiness.org/documents/DoingBusiness2007_Overview.pdf (last visited 22 September 2006).

World Bank, the International Finance Corporation and Oxford University Press, 2003, "Doing Business in 2004, Understanding Regulation"; Washington D.C. Online <http://rru.worldbank.org/Documents/DoingBusiness/2004/DB2004-full-report.pdf> (last visited 29 September 2006)

World Bank, the International Finance Corporation and Oxford University Press, 2004, “Doing Business in 2005, Removing Obstacles to Growth” Washington DC, Online <http://www.doingbusiness.org/documents/DoingBusiness2005.PDF> (last visited 29 September 2006)

World Bank and the International Finance Corporation, 2005, “Doing Business in 2006, Creating Jobs,” http://www.doingbusiness.org/documents/DoingBusiness2006_fullreport.pdf (last visited 29 September 2006).

Websites

Website of Australian Securities and Investment Commission
<http://www.asic.gov.au>

Website <http://www.business.gov.au>

Website of the State Administration for Industry and Commerce of the People’s Republic of China <http://www.saic.gov.cn>

Orrick Chinalaw website <http://orrickchinalaw.com>

Legislation – People’s Republic of China

Administrative Licensing Law of the People’s Republic of China, adopted at the 4th session of the Standing Committee of the 10th National People’s Congress of the People’s Republic of China on 27 August 2003, effective 1 July 2004.

Bankruptcy Law of the People's Republic of China, promulgated at the 23rd session of the Standing Committee of the 10th National People's Congress on 27 August 2006 and effective from 1 July 2007.

Company Law of the People's Republic of China, amended and adopted at the 18th session of the Standing Committee of the Tenth National People's Congress of the People's Republic of China on October 27, 2005, effective January 1, 2006; originally effective 1 July 1994.

Constitution of the People's Republic of China, adopted at the 5th session of the 5th National People's Congress on 4 December 1982, promulgated on 4 December 1982; amended at the 1st session of the 7th National People's Congress on 12 April 1988, the 1st session of the 8th National People's Congress on 29 March 1993, the 2nd session of the 9th National People's Congress on 15 March 1999 and the 2nd session of the 8th National People's Congress on 14 March 2004, at Article 67.

Contract Law of the People's Republic of China, adopted at the 2nd session of the Ninth National People's Congress on 15 March 1999, effective 1 October 1999.

Decision of the State Council concerning Cancelling and Adjusting the Third Batch of Items for Administrative Examination and Approval, issued by the State Council and effective on 19 May 2004.

General Principles of the Civil Law of the People's Republic of China, adopted by the 4th session of the 6th National People's Congress of the People's Republic of China on 12 April 1986; effective 1 January 1987; Chapter III.

Implementing Regulations on the Administration of the Registration of Enterprise Names, State Administration for Industry and Commerce, Order No. 93,

promulgated on 8 December 1999; revised by the State Administration for Industry and Commerce Order No. 10 of 10 June 2004, effective 1 July 2004.

Interpretation of the Supreme People's Court concerning several issues on application of the Arbitration Law of the People's Republic of China, issued 23 August 2006.

Law of the People's Republic of China on Sino-foreign Equity Joint Ventures, adopted by the 2nd session of the 5th National People's Congress of the People's Republic of China on 1 July 1979; revised in the 3rd session of the 7th National People's Congress on 4 April, 1990; further revised in the 4th session of the 9th National People's Congress on 15 March, 2001.

Law on Legislation of the People's Republic of China, adopted at the 5th session of the 7th National People's Congress on 15 March 2000, effective 1 July 2000.

Notice of the State Council in relation to the Opinion on Implementation of Reform of the Administrative Approval System, State Council Notice [2001] No. 33.

Provisions on Acquisition of Domestic Enterprises by Foreign Investors, issued by the Ministry of Commerce, the State Assets Supervision and Administration Commission, the State Tax Administration, the State Administration for Industry and Commerce, the China Securities Regulatory Commission and the State Administration of Foreign Exchange on 8 August 2006, effective 8 September 2006.

Rules on Administration of Company Registration of the People's Republic of China, issued by the State Council on 24 June 1994, as amended on 18 December 2005, effective 1 January 2007, Article 54.

Legislation – Commonwealth of Australia

Corporations Act 2001 (Cth)

Legislative Instruments Act 2003 (Cth)