

China's Entry into WTO: A Redrawing of the Rules of the Game

By Ng Chee Wan

In the course of my professional experience as a corporate lawyer specializing in Sino-Singapore cross-border transactions, I have observed the existence of a vast underground extralegal culture in China, whose basic operating rules are quite different from our Singapore mainstream working culture, where adherence to laws is the norm rather than the exception.

It is not that China does not have any laws - any China practice lawyer will tell you that China has produced an astonishingly enormous amount of laws and regulations over the past 2 decades. However, having many laws and regulations promulgated on paper does not necessarily mean that they are adhered to or enforced in real life.

Rather there exists an active underground culture in China where there are astonishing degrees of non-adherence to laws or 'extralegality', ranging from merely adhering to the letter but not the spirit of the laws, deviance from the laws at the edge and outright evasion of the laws.

One of the reasons why many native people in China opt out of the legal system is that hailing from a history of central planning, the laws in China are often so much more restrictive in nature: for example, only designated state-owned entities are permitted to operate in many business sectors. Otherwise you must be one of the biggest players in town to be able to satisfy the formal rigorous entry criteria laid down by the laws or be able to obtain special approval or exemption from the central government to enter the sector in question.

The second problem is that laws may not be effectively enforceable in China. Many provincial governments turn a blind eye to the sprouting of the underground culture of extralegality to promote their self-interest and the economic development of their respective locality. Indeed one of the biggest headaches for foreign investors is whether the contracts they have signed with Chinese parties in China are enforceable, so much so that their lawyers often opt for arbitration in a favourable forum instead of going directly through the Chinese courts.

This 'grey' culture of extralegality forms one of the biggest obstacles to Singapore businesses operating in China, who are often more attuned to the workings of Singapore's 'black and white' culture of transparency and legality. It forms one of the basis for the perception by some that Hong Kong and Taiwanese businessmen are generally more successful than Singaporean businessmen in China.

Over the past thirty years, Singapore has successfully built up an impressive hard and soft infrastructure for linking up with the western world. Many western businessmen are very comfortable with the Singapore culture and with dealing with Singapore businessmen – indeed many of them have expressed a willingness to pair up with us to penetrate the Chinese market. Yet our inability to grapple with the grey culture in China prevents us from developing a second wing to take us to the paradise in the East. We need to master the tactics necessary for navigating this grey culture in order for us to succeed in China.

Without the protection granted by the law within the grey culture of extralegality, many businessmen (especially those from family businesses) are forced to rely on their relatives or trusted subordinates to manage their business in China, depending on family ties or past loyalties instead of legal sanctions as the basis for trust. Yet such family members or subordinates are no substitute for local Chinese managers who, drawing from a whole lifetime of personal experiences, would best understand how to navigate the grey culture of extralegality in China. The challenge remains as to how to retain the loyalty and to ensure the accountability of such local managers – otherwise you may wake up one day and discover that your business in China has gone down the drain.

Through the development of such a network of grey culture navigators in China, many Hong Kong, Taiwanese and even some Singapore businessmen have managed to establish successful and profitable businesses in China. In fact many western businesses have sidestepped the whole issue of navigating the grey culture by relying on these successful Hong Kong and Taiwanese businessmen as intermediaries to penetrate the Chinese market.

However, the successes of such businessmen may prove to be short-lived. The entry by China into the World Trade Organization represents a firm commitment by China's top political leaders to subordinate their internal regime to the 'black and white' system of WTO rules based on the principles of equal treatment and transparency. This constitutes a fundamental redrawing of the rules of the game that has the potential to drastically reshape the entire business landscape in China. The imposition of WTO rules will initiate a reshuffling of the cards away from those existing players, whose success depend on the existence of a grey culture of extralegality, or who cannot or are unwilling to adapt to the new WTO rules, in favour of new players who can survive in the new wave of competition unleashed under the new rule-based WTO system.

Although this process of reshuffling the cards may take years to complete, the rules of the game in China will in the long run tilt in Singapore's favour, who has long learnt to swim in the WTO ocean. However, this does not mean that Singaporean businessmen will have their cake cut out for them. They will need to continue to grapple with the twin problems of localisation (WTO rules will not erase China's own local features) and intensified competition under the new post-WTO business landscape in China.

The timing for Singapore businessmen to enter the Chinese market is ripe. Once China has fully adapted to the black and white WTO regime, it would be too late for us. In fact China's successful entry into the WTO shall over the years exert enormous competitive pressure on both Hong Kong and Taiwan: unless they find alternative means of upgrading their industries, they shall find themselves being swiftly overtaken by China's fast-growing cities. The gap between China and us is also narrowing. Singapore should venture forth into the dragon's lair to seek its treasures before it is too late.