

Adapting the MGA for Negotiating with Chinese Counterparts

Background

It is both a cliché and a vast understatement to say that China has changed dramatically in the past 20 years. Politically and economically, Chinese Communism now seems to have some very capitalistic characteristics. The country is opening up to international markets, having joined the World Trade Organization, and is a major global investor. Chinese companies are growing rapidly. In 2000, China had 10 companies in the Forbes 500 list. In 2015, it has 99.

Government influence remains high. The top 12 Chinese companies are all State-Owned Enterprises (SOEs). There is some evidence to suggest SOEs are slowly adapting (or being forced to adapt) to international standards and requirements. China's top SOEs are banks and energy resource companies, all of which now have joint ventures and partnerships with international institutions. There has been considerable growth in China's private sector with the rapid rise of wholly private companies such as Alibaba and Tencent, which have been seeking IPOs on overseas stock exchanges.

There has also been a large influx of international investment and personnel into China. Walk through the business districts of any Tier 1 Chinese city today and you will see a sizeable minority of internationals, many of whom are fluent in Mandarin.

China remains Australia's largest trading partner and at this writing, the two countries are close to ratifying a Free Trade Agreement.

Australian negotiators should be aware of the rapid rise of a sophisticated group of internationally experienced businesses and leaders. Chinese with overseas education, international MBA degrees and regular exposure to overseas counterparts are now increasingly common. This sophisticated group is however mixed with areas and personnel in which there is still 'traditional' thinking – where older ideas, perceptions and ways of operating still prevail. And there is the continuing complexity of often very strong government involvement in the economy and in specific businesses.

Age and industry can be partial predictors of a Chinese counterpart's approach – younger Chinese executives in non-SOE companies may be more comfortable with 'Western' norms. Understanding Chinese cultural influences on negotiation is an important first step to appreciating the roots of Chinese business culture and adapting the MGA to China.

Chinese Cultural Influences on Negotiation

Chinese culture has been influenced by three religious and philosophical codes: Confucianism, Taoism and Buddhism. Confucianism speaks about a benevolent society being built on a foundation of social relationships where the strong care for the weak, and the weak respect the strong. Taoism speaks about the futility of direct conflict and the importance of holistic thinking. Buddhism encourages harmony and enduring suffering in order to achieve eventual happiness. These tenets give rise to cultural norms that are important to Chinese negotiations.

Guanxi

When a senior person from the other side gives you their personal mobile phone number and lets you know you can call them any time, it's a critical milestone.

The comment above, from an Australian executive, highlights the importance of relationship building in China. *Guanxi* is the most-covered topic in China negotiation literature, with literally hundreds of books and articles written on this one subject. *Guanxi* literally translates to 'relationship' and means having a connection with someone. It ties very much to the Confucian principles of social relationships. Family blood ties, going to the same university, being in the same sporting club, offering assistance during a time of financial stress – these are all ways in which *guanxi* can arise.

Culturally, China has low levels of trust towards strangers and high levels of 'favour' given to friends. Going beyond Western interpretation of friendship, *guanxi* can be extraordinarily powerful. It unlocks resources that are otherwise unattainable – better prices, speedier administrative approval, preferential interest rates and access to 'blocked' real estate are real-world examples. If two companies compete for a contract, the amount of *guanxi* is a very strong factor in deciding which company will win the bid.

Additionally, contracts tend to be more vague in China than in Australia, and even if you have a contractual right, enforcement in a foreign jurisdiction can be troublesome. Good *guanxi* encourages more favourable interpretations where there is lack of clarity and more positive action when unexpected situations arise.

Hierarchy and Paternal Leadership

Chinese companies are likely to have a more obvious and strict hierarchy than Australian companies. An Australian company will have executives addressing each other by first name. Chinese executives will use, and expect, formal titles and family names.

Chinese teams strongly emphasize agreement and unity within the team. If they have differences of opinion, this happens behind closed doors. In a negotiation, all information is channeled through one lead negotiator with whom the entire team agrees. This is sometimes called 'Paternal Leadership' following the Confucian principle that the family always obeys the father.

Chinese subordinates have less authority and freedom to act, and after every discussion, a Chinese negotiation team will report back to the decision maker. Identifying that decision maker can be critical to closing a deal.

Face

Translated from the Chinese term *mianzi*, this is similar to the Western idea of dignity. A good Chinese lead negotiator must show strength in front of his team and not appear weak or too willing to compromise. Traditionally, bringing a large team to a meeting is another way of showing face, both recognizing the importance of the event by bringing a lot of people and also showing the number of people over whom a leader has authority.

Holistic Thinking

Research indicates Western negotiators tend to think linearly and specifically, while Chinese tend to establish broad areas of agreement before moving into more specific areas, thus postponing direct conflict. A Western negotiator should be prepared for negotiation that seems very general or seems to spend large amounts of time on apparently non-task-focused discussion.

High-Context Culture

Many Asian countries such as China, Japan and Korea, are rated as 'high-context cultures'. Deriving from the Taoist philosophy of flexibility, it means the context and environment surrounding a deal are more important than a documented contract. A traditional Chinese contract is more simple, abstract and flexible compared with a Western one. Long-term relationships, *guanxi* and the way a negotiation

was carried out in terms of face and respect shown are just as important as the words written in a document – if not more so.

Chinese Regional Differences

There are significant cultural differences within China. Shanghai alone has a greater population than Australia. Understanding some differences within China is helpful for the Australian negotiator.

Although Mandarin is the official language of China, every province has its own linguistic dialect. Shanghaiese is completely incomprehensible to someone from Guangzhou, and it is not uncommon for Chinese to require translators when speaking to someone from another locality. One of Mandarin's primary original purposes was to serve as a common national language. The Chinese word for Mandarin, *pu tong hua*, literally translates to 'the common language.'

Outside of the mainland, Hong Kong primarily speaks Cantonese, and Taiwan speaks both Mandarin and its own Taiwanese dialect.

All mainland dialects are written the same, so everyone in China can write to each other, even if they cannot speak to each other. A contract will read the same to someone in Beijing as it does to someone in Shenzhen.

Beyond language, the eastern regions (such as Beijing and Shanghai) tend to be more developed, wealthier and more cosmopolitan than the western regions (such as Xinjiang). Chinese counterparts in eastern regions are more likely to have international exposure, speak better English and better match Western cultural norms. Infrastructure such as 5-star hotels, conference rooms and international professional firms are more present in the east. Eastern regions tend to be more expensive than western regions, and many companies have headquarters in Beijing and Shanghai but manufacturing and storage facilities in less-expensive areas.

Finally, there are significant differences in food, drink and business etiquette. Many Chinese will be parochial about their 'home' culture and deeply appreciate someone that knows their dialect and rituals. An Australian executive commented:

North China is more hierarchical and makes more use of guanxi. My experience is that from Shanghai going south, it is more "Western" style, more international. In Beijing and Tianjin up north, there is a much stronger ritual around meals – the "big boss" hosts and pays for the meal in a show of respect and authority, there are alcohol drinking expectations and face considerations, there is more guanxi being built and used and there is more hierarchy. In south China, it is increasingly frequent to split the bill, have less-demanding alcohol rituals and have more "flat" management structures.

State-Owned Enterprises vs. Private Companies

Many major companies in China are state-owned enterprises. An SOE is an entity, which is fully owned by the government. They can have tens of thousands of employees and the leader is almost always an influential politician within the Communist Party. The finance, energy and media sectors in particular are dominated by SOEs.

Modern SOEs are adapting to a new global environment. However, it is still useful for the Australian negotiator to understand that a traditional SOE may have different views of what is important, so one should not be hasty in making assumptions about an SOE's interests. For example, one Chinese executive said 'Media is a very old and traditional Chinese SOE dominated area. Most companies in this field don't have profit as the top issue. We are a massive media entity run by the government. Our primary interests are political, not commercial. So we have a totally different point of view when it

comes to content, advertising and audience. This had a big bearing on why our negotiations were so difficult with an Australian media company.'

Language Issues

Many Australian executives stressed that one of the key challenges in negotiating with Chinese counterparts is the language barrier. Sometimes, the Chinese counterpart speaks quite fluent English. Frequently, he or she does not. Managing the language issue from the outset is important. 'Chinese people are understandably uncomfortable if everything is in English. Similarly, we Australians are going to be uncomfortable if it's exclusively in Chinese. Running a bilingual process demonstrates respect to all. No one in the room should ever be excluded. Even if some of the negotiators speak each other's language, it's a sure bet that not everyone in the room speaks all languages equally.'

Preparation

Focus on Relationships

Given the importance of *guanxi*, it is important to build a robust relationship with your Chinese counterpart from the very beginning of a negotiation. It is an arduous process to establish reliably strong business relationships in China. Australian and Chinese executives have all heard horror stories of 'being cheated' and how dangerous it is to do business with 'them'.

The single most repeated mantra is that building good *guanxi* takes time and cannot be rushed. Many Chinese companies will treat a newcomer from overseas with a degree of caution. One major Australian financial CEO commented that he took 10 years to build a strong relationship with a Chinese bank. But when the time came for negotiating a multi-million dollar deal, the negotiation was completed within 3 weeks and implementation was very smooth.

Building *Guanxi*

Travel and face time are essential. No robust relationship can be built with a new partner via email or videoconference. Repeated social engagements are important – the restaurant is one of the most popular meeting points, but the golf course or a cultural site visit can also be useful. Traditional Chinese relationship-building exercises frequently involve large team gatherings and meals. The atmosphere naturally becomes more congenial around food and drink.

It is at these relationship-building events that you can exhibit your appreciation of Chinese tea, or a mutual interest in sports, or discuss children's education. Have they visited Australia before? Did they come with spouse or family?

Of course, business can be discussed, but remember that the purpose at the beginning is to build a relationship, not hammer out the concrete details of a contract. A regular Chinese comment on Western negotiators is that they seem to be so eager to fly in for a day, rush to sign a deal, and then fly away – leaving the Chinese side bemused, confused and possibly even a little suspicious. Gift giving is often part of the relationship-building process. It does not hurt to give and receive tokens of friendship – after all, who doesn't like presents?

But keep in mind two points of caution: First, the gift is a token; don't overstate its importance or impact. Second, be very familiar with the increasingly strict rules and laws around gift giving.

Guanxi and the ‘Cultural Connector’

Several Australian executives stressed the usefulness of having a ‘cultural connector’ as part of your negotiation team. This person would preferably be ethnically Chinese (whether Australian born or Chinese born) and certainly Mandarin speaking. Not only can this ‘cultural connector’ provide high-quality translations of technical terms and organizational nuances, but he or she also provides a natural link between your two teams. As one Australian executive commented, ‘The vast majority of senior Chinese executives don’t speak any English and even if they do, feel much more comfortable speaking in Mandarin. It’s what they use to speak with their family and friends and parents and close associates. If you have a Mandarin speaker of Chinese heritage in your consortium, you have a natural rapport-building opportunity.’

Does *Guanxi* Disappear If the Counterpart Moves On?

Guanxi properly built with one person does not necessarily leave with that person. ‘If a senior Chinese executive or official moves on, that person does not suddenly disappear – if you have a good relationship, that person will keep the relationship with you. You don’t lose a contact when a trusted counterpart moves up, you gain a new relationship, because a new counterpart moves in with a great background environment to build on.’

If possible, ask the person moving on to introduce you to the incoming person, to facilitate a smooth ‘transfer’ of *guanxi*.

Don’t Overvalue *Guanxi*

A good relationship alone will not win you a good deal if the rest of your offerings are insufficient. Being expected to agree to a bad deal or expecting the other side to do the same solely because ‘we are good friends with good *guanxi*’ is a sign itself of bad *guanxi*.

Defining the Team and Identifying Decision Makers

Understanding whom to bring to your side of the table is very important. Chinese negotiation teams are typically larger than their Western counterparts. However, Australian firms should consider boosting their numbers for meetings with Chinese teams, because sending a much smaller team may unintentionally convey disinterest, disrespect or weakness.

Additionally, the expertise on the Chinese side can indicate important issues and discussion topics – are they bringing architects, finance and accounting, engineering or IT people? The answer probably indicates that you should bring someone of similar expertise.

Identifying the Chinese decision maker is important. Is he or she at the table or ‘above and behind the scenes’? Getting the other side to bring decision makers to the table also allows you to communicate directly with him or her and build *guanxi*, instead of being channeled through subordinates. This also speeds decision-making time.

Towards this end, several Australian negotiators spoke about the utility of co-drafting a Letter of Intent. This is a nonbinding document, negotiated prior to the ‘actual’ negotiation, which acts as a blueprint for future talks. Such letters have been useful for very large and long-term deals with a new counterpart. One negotiator said ‘Some Western parties think that a Letter of Intent is an unnecessary waste – why spend time on a nonbinding document? However, the preparation of Letter of Intent should be treated with the same focus and attention as the final negotiations.’

A Letter of Intent gives you a chance to work together with the other side on a ‘trial run’ negotiation. Working towards a common goal is an effective way of becoming acquainted in a minimal-risk

environment, building trust and testing your compatibility with the other side. Who do they bring to the table and how can we reasonably match their team? What does their negotiation hierarchy look like? Through these 'pre-negotiations', can we identify the key decision makers and build a relationship with them?

Negotiating the Letter of Intent also gives both sides a chance to explore substantive issues and forecast what will be the important discussions down the line.

Finally, in terms of internal matters, negotiating a Letter of Intent can be a useful barometer to test how well your own team works together, and whether you need to make improvements.

Creating Value

There are several barriers to exploring interests and creating options with Chinese counterparts.

First, Chinese negotiators are particularly sensitive to the concept of face. They work hard to avoid direct conflict, especially in front of an audience. Making a negotiator 'lose' or appear weak in front of his or her subordinates is unhelpful. Proposals and 'inventing without committing' on sensitive topics or areas of direct conflict can be made away from the formal table, potentially at the social gatherings earlier mentioned. As you plan your negotiations, build in 'informal' time. Dinners, spouse events, cultural tours and strategic site visits with intentionally arranged personnel groups can offer an avenue to more direct and frank communication.

Second, it often seems all information from the Chinese side is being funneled through one 'big boss', resulting in diminished comprehensiveness of information. Western executives have commented on the power of modeling more open communication behaviour. If your own lead negotiator regularly calls on team members to speak, voice opinions, offer expert advice and stand up and present, your approach can influence the other side to do some of the same. Allowing a freer flow of ideas may open communication channels to their whole team, not just their one lead.

Third, in the view of some Western executives, Chinese negotiators can spend what seems to be too much time trying to understand everything in excruciating detail without making or responding to proposals. Additionally, they may seem to focus on seemingly unimportant abstract details without clarifying why that information is important to them. Australian negotiators reported positively on the importance of turning abstract thought and general questions into something concrete.

For us, the circuit breaker was often getting up and putting things on the whiteboard. Sitting across the table, it can be easy for people to get angry and frustrated and throw around words and numbers. We had a lot of technical people and engineers and you could feel that whenever someone began writing on the board, the concrete visuals on the board helped refocus the discussion and defuse tension.

Fourth, there can be communication differences regarding whether a matter has been conclusively resolved. As mentioned, Western negotiators tend to be more sequential in thinking, resolving issues one at a time, then moving on to the next one. Chinese negotiators generally are more holistic and assume everything is in play until the deal is made. Some Western negotiators have reported being surprised and upset that issues thought to be 'resolved' are instead returned to later in the negotiation. In this respect, Chinese negotiators may be more aligned with the Mutual Gains Approach. The MGA suggests that allowing issues to be reopened can help negotiators create 'packages' that involve trades across issues. A well-crafted package can give each party more of what they value than agreements created by resolving issues separately and sequentially.

Distributing Value

Reciprocity

Reciprocity is a widely recognized by Chinese negotiators as a means of distributing value – if I ‘win’ on this point, you should ‘win’ on another point. Following the Mutual Gains Approach, simply trading concessions sequentially does not lead to optimal outcomes. A more strategic use of reciprocity is to explore interests and generate options that incorporate benefits and concessions for both sides.

Using Local Parties

Having a Chinese local on your side in the room can help the division of joint gains.

Local team members can serve as a kind of lubricant. Because we know more about the local businesspeople, we can buffer any confrontations or discomforts that arise. When a problem cannot be solved, we can buffer the effects and help everyone move on.

Trust Building

Chinese are said to ‘negotiate with enemies’ but ‘do business with friends’. Building trust is key to achieving successful negotiated outcomes. Almost all Australian and Chinese executives commented that any business in China should be seen as a long-term deal, not a quick ‘one-off.’ Seeking quick turn-arounds is seen by many Chinese as untrustworthy, and a strong predictor towards a failed negotiation.

Demonstrating by action that your side can be trusted to perform its commitments is strategically more sound than using ‘negotiation tricks’. One should push hard, but not for too much. Always negotiate for a profit, but not for everything.

‘A modest deal that actually works and lasts is better than a great deal that never happens.’

Follow-Through

The Flexible Contract

Western executives frequently report concerns about the flexibility of contracts in China. In Australia, a contract is generally a formal ‘set-in-stone’ document strictly outlining rights and responsibility. In China, contracts tend to be brief and seen as a symbol of a relationship. Chinese negotiators generally expect circumstances to change, which will naturally require renegotiating on important issues to deal with the new situation.

A Western executive may interpret Chinese partners as being unreliable and ‘slippery’ with contractual commitments. A Chinese negotiator may see Westerners as overly formal, strict and unable to adapt to a highly dynamic and volatile environment.

To minimize the risk of conflict during implementation of the agreement, it is important for the negotiation process to create good *guanxi*, creative reciprocity and a long-term view. When the negotiators and their organizations have built good relationships, the odds are better that the agreement will be robust enough to weather unexpected situations and generate advantages beyond what is written down.

Be Wary of Over-negotiating a Contract

Having a written document that clearly sets out rights and obligations is of course a key part of any negotiation. There are also dangers in trying to be overly prescriptive.

The Chinese philosophy is that you cannot plan for every single future scenario – so they don't try to have a comprehensive detailed contract. I know of contracts in which parties spend months – even years – negotiating over contingencies and possible eventualities. If you are too prescriptive, you may even demonstrate a lack of trust. You may start your partnership with many bruises, which is a bad way to start in any culture, let alone China.

Keep Regular Contact Even after the Deal Is Signed

Many deals have fallen apart because the leaders negotiated hard, signed the deal, then handed it away.

Too often, Western companies from America, Australia and Europe negotiate a contract, sign it and then just expect it to be set in stone forever. With an environment as dynamic as China, it is very important to keep very close contact with your Chinese partner. I believe most people – Chinese or otherwise – try to do the right thing. But when circumstances can change so drastically and so quickly, the “right thing” can be hard to describe. Things will change in China. You should keep regular close contact and you will know the situation quickly and can react.

Have the People Implementing the Contract Involved Early

It is a good idea to have the people that will be implementing the contract in the room, or at least be very regularly informed of what is going on. If you negotiate the deal and then hand it to someone who has had no input until the very end, implementation is difficult.

No-Fault Get-Out Clauses

Many Australian executives recommend 'no-fault get-out' clauses. In this manner, you are not held hostage to the need for a breach before you can terminate. Because proving breach can be frustratingly difficult in Chinese courts, the lack of such a clause puts you in a weaker strategic position post-negotiation.

Final Advice from Australian and Chinese Senior Executives

Don't go in and expect success overnight. Be prepared to spend the time and be ready to be disappointed. Things will not work out the way you both wanted. But you can still get a positive outcome with hard work and determination.

Allow double the time you expect.

Sometimes, we are quick to think the worst of the Chinese side. They are cheating us. They are lying. Sure, there are bad apples in China, but not everything is due to the other side being a bastard. If they are not performing, try to find out why instead of automatically assuming the worst. It can be a very challenging environment over there.

'Learn from others. Australians now have increasingly extensive experience working in China. There are great people who have experienced firsthand the challenges you are going through. And the Australian State and Federal governments have many China programs. There are also various chambers of commerce that can ably assist you.'

Appendix: Useful Australian Sources of Information and Business Networks

- Asialink Business
- Australian Embassy in Beijing and Australian Consulates-General in Shanghai, Guangzhou and Chengdu
- Australian Consulate-General in Hong Kong
- Austrade
- Australia Chamber of Commerce of Greater China
- Australia China Alumni Association
- Engaging China project
- Australian China Youth Association
- Australian China Young Professional Initiative

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