

The arrest of several Australian and non-Australian Crown Resorts employees is a stark example of how foreign businesses aren't always successful in navigating a system where the rule of law doesn't apply. It's impossible to try and circumvent the law to get a better outcome in China because the government has the final say.

It's reported the arrests [are in relation to "gambling related crimes"](#). China's law disallows the marketing of overseas gambling opportunities in China. Crown employees could have been working around this restriction by marketing not the gambling opportunities but the locations and providing other tourism services.

Businesses from Australia or other countries often rely upon law and formal institutions to dictate how their employees should behave overseas and provide certainty. However in China these norms don't exist.

There are significant deficiencies in China's legal systems as well as the lack of clarity in formal rights. For example, in certain circumstances businesses can't determine whether a tax will be imposed on a transaction from the laws about it. This is because administering officials may depart from the law even to the extent of not imposing certain taxes at all.

Navigating this challenge is essential for all those who seek to thrive in China. As part of my research I have investigated how foreign businesses still manage to work in China [in the absence of the rule of law](#).

Business can make significant mistakes in China by either thinking that the Chinese law will provide certainty or by thinking that China is free of constraints as the law does not work. In the first case businesses may think they can cleverly plan around the law of China to achieve their outcome. In the second case, they may think they can simply do as they please.

My research shows large western businesses assume the rule of law exists in China because this is usually the case in other countries. One good example of this is legal tax avoidance, where companies use the law to plan to avoid paying tax, not only in the country they are based in but others as well.

The essence of tax avoidance is to achieve a better outcome than the initial reading of the law, while managing to remain within the parameters of it. In other words, it is all legal but it can be said to have somehow circumvented the spirit of law.

The appeal of tax avoidance is that it works (on the face of it at least – there are anti-avoidance rules to worry about). It works because the rule of law itself ultimately protects it. However, tax is just another example of the use of legal planning to achieve commercial outcomes that challenge government policy. Similar types of planning occurs in relation to investment and business law as well.

What then of China? Strict rule of law, the ultimate protector of the clever legal planner is missing.

Strategies that seek to outsmart the regime can be simply ignored. China's authorities will be little concerned about technical arguments.

They may be concerned about the importance of the overall business to China or a part of it. They may provide a better deal than the law strictly allows for when they see something as desirable. However, a legal approach that seeks to defeat the State through the reading of the law is unlikely to succeed.

[Usually academics argue](#) that the rule of law and clarity in property rights is essential to economic success. So it would be easy to conclude that China should not be economically successful.

Yet China is a thriving economy. This leaves a gaping hole in our understanding.

There must be something other than rule of law that provides constraints on behaviour and provides certainty for doing business in China. My research indicates that this is local administrative leadership, where businesses can ask officials to indicate how they are going to act and do generally act accordingly.

Crown employee arrests show danger of assumptions about China

Written by The Conversation

Why this happens in China is complex and deserves further study. However, the fact that successful business happens in China at all is testament to how some businesses work with this system.

Nolan Sharkey has received research funding from the Australian Research Council in relation to tax problems in China.

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