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# China and the Australian legal profession

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**Speech given by Mr Joe Catanzariti,  
President-elect, Law Council of Australia  
at Services Sector Promotion Forum Lunch,  
Beijing**

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## Introduction

1. It gives me great pleasure to be here today to speak to you about the Australia legal profession.
2. For the past 24 years I have been a partner of Clayton Utz, one of the largest law firms in Australia and ranked among the top 100 law firms in the world. Yet it is a matter of great significance that the relationship between the Law Council of Australia and the Chinese legal professions is even older.

## Historic friendship between China and Australia

3. The Law Council of Australia first visited China in 1982 and in 1985 signed its first Memorandum of Understanding with the China Law Society.
4. The MOU signed in 1985 recognised a desire by both legal bodies to strengthen cooperation and exchange ideas on areas of mutual interest.
5. It recognised a mutual interest in promoting and preserving the rule of law.
6. It also acknowledged the growing importance of trade and other ties between our two nations.
7. Back then who could have guessed how much the world was about to change both socially and economically, or how much the practice of law would change with the rise of technology and the adoption of the 'free trade' model?
8. In 2010, a Ceremony was held during the Shanghai World Expo to mark the 25th Anniversary of that MOU. A new MOU was signed reaffirming our mutual commitment to advancing the interests of the legal profession in our countries.
9. Since 1982, we have participated in countless bilateral meetings, delegations, seminars, exchange programs and other activities to further the objectives of this MOU and the MOU signed with the All China Lawyers' Association in 1994.
10. As a lawyer, I believe that the strength of the relationship between Australia and China is well demonstrated by the recent

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combination of King & Wood and Mallesons – the first ever formal combination of a Chinese law firm and a foreign law firm.

11. Without wishing to advertise for the competition, King and Wood Mallesons is the only law firm in the world which is currently licensed to practice Australian law, Chinese law and English law.
12. While news of this merger gripped the interest of the legal world, we in Australia were not so surprised.
13. Australia has a history of firsts when it comes to innovation in law and legal regulation.

## Innovation of Australian legal regulation

14. Since 1992, and with the support of the Federal Government, state and territory governments and the legal profession, the Law Council has overseen 20 years of almost continuous legal profession regulatory reform.
15. Back in the early 1990s the Law Council recognised that to compete in the rapidly developing global economy, the Australian legal profession needed to cast off protectionism and embrace liberalisation.
16. The Law Council's work over the past 20 years, has resulted in a 'single national market for legal services' which, by embracing concepts of open markets and competition, has increased the competitiveness of Australia's legal profession domestically<sup>1</sup> and facilitated its participation in the international legal services market.

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<sup>1</sup> For example, by enabling large law firms to create truly 'national' partnerships, expertise was no longer localised and could flow freely between jurisdictions. The recasting of legal services in terms of 'markets' and competition is likely a key element in the rapid corporatisation of the legal profession since the mid 1990s, the development of incorporated legal practices and the modelling of law firm governance on business structures.

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## What has been innovative about our regulatory reform?

17. Australia is a world leader in developing alternative business structures for law practices.
18. Today, in conference rooms around the world, 'alternative business structures' for law practices is a 'hot topic' for legal profession regulators. There are three main types of alternative structures being discussed. The first two 'alternative structures' are:-
  - a. "incorporated legal practices" – permitting law firms to access the benefits of a corporate model;
  - b. "multi-disciplinary practices" – permitting lawyers to establish multi-disciplinary practices with other business professionals such as accountants and financial services providers to deliver comprehensive business services to clients.
19. By contrast, in Australia, debate on these two alternative business structures took place over a decade ago.
20. In fact, in July 2001, legislation was passed in New South Wales – my home state – permitting the creation of ILPs and MDPs making it the first jurisdiction in the world to do so. Similar legislation has subsequently been passed in each Australian state and territory.
21. Together, these alternative business structures enable much greater flexibility for a law firm to meet the needs of clients, apply best practice management and corporate governance procedures and to provide 'one stop shop' business services for clients.
22. The third alternative structure usually receives a cold reception.
23. In 2007, an incorporated Australian law firm, Slater & Gordon made legal and corporate history when it became the first law firm in the world to list on a Public Stock Exchange.
24. A law firm with shareholders. These words make regulators around the world tremble. How can a regulatory system adequately balance a law firm's duty to its clients with its duty to its shareholders?

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25. Unfortunately our time is limited today, so all I can say is that it can and ours does.
  26. Earlier this year King and Wood Mallesons was established using a Swiss Verein structure with three financially independent partnerships.
  27. Another world first.

## Liberal system for the practice of foreign law in Australia

28. Our system for the regulation of foreign lawyers and law firms is one of, if not the most liberal system for foreign lawyer regulation in the world.
29. In Australia, there are no restrictions on the registered practice of foreign law and any foreign lawyer is permitted to practice on a temporary basis for up to 90 days without registration of any kind.
30. There are over a dozen Chinese law firms currently operating in New South Wales alone. These firms are entitled to employ Australian lawyers as employees or partners.
31. Our system is flexible, inclusive and enables Australian and foreign businesses to access expert legal advice on foreign and international law.
32. It is this principle of access to legal advice which underpins the Law Council's promotion of practice rights for foreign lawyers internationally.

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## The right advice at the right time by the right lawyer

33. The Law Council believes that the best lawyer to provide legal advice on Australian law is an Australian lawyer. Just as the best lawyer to provide advice on Chinese law is a Chinese lawyer and the best lawyer to provide advice on the protection of intellectual property is an IP lawyer.
34. Comprehensive legal advice as part of due diligence can prevent substantial losses through risk evaluation and mitigation.
35. Experience suggests that legal advice before things go wrong is a lot less expensive than legal advice after things go wrong.
36. The recent troubles of the CITIC Pacific Mining partnership is a troubling example where timely advice may have prevented losses and a budgetary blow out of nearly \$5 billion (USD).

## Conclusions

37. Australia's law firms, both those with a commercial presence internationally and without, are among the most innovative and experienced providers of legal and business services in the world.
38. The Forum earlier today is yet another example of the close friendship between Australian and Chinese business and services sectors.
39. The expansion of Asian economies and the integration of Asian markets has been brought about through decades of national and regional collaboration, trade and skills transfer.
40. The future is bright for Australia and China. Our experience as leaders at the forefront of innovative legal practice positions us well to support the continued growth of China.
41. As I commence my presidency of the Law Council in 2012 I look forward to continuing our effective and strong relationship not only with the Chinese legal profession, but with the broader business community.

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