China court litigation? May not be bad for you

Description

For foreign traders or businessmen dealing with Chinese counterparts, is it a good idea to stipulate that disputes will be submitted to Chinese competent courts for settlement through litigation?

Many will shake heads firmly, as they have come to know how corrupt the Chinese court systems are, and how difficult or biased a Chinse litigation proceeding will be against them. True as it is, you don't need to take it for granted.

I was reviewing a cooperation agreement between a foreign realtor firm and a Chinese real estate agent under which they work together to match foreign real estate investors with Chinese real estate owner or developpers that are currently trapped by financial strain, and share commission equally.

In the part of dispute resolution, it is simply put that all disputes will be submitted to Chinese courts with jurisdiction for settlement. I think this is a smart draft in favor of the foreign party.

In their comtemplated transaction, the foreign party is in a better position to control the commision and it is the foreign party that will mostly likely breach the contract by not sharing the commision with the Chinese realtors. By stipulating Chinese court litigation for dispute settlement, the foreign party is availed of two advantages:

Shanghai Landing Law Offices

(1) in the event that the Chinese party commits breach under the contract, the foreign party may have no problem to recover his loss, as Chinese courts (esp Shanghai courts that are quite fair and efficient) will for sure have the jurisdiction and power and means to honor the winning judgment so long as the Chinese party is not bankrupt.

(2) in the event that the foreign party commits breach under the contract, the Chinese party will end up getting nothing. Because even the Chinese party wins the case, the judgment delivered by a Chinese court will most likely not be enforced in a foreign state, which point is often overlooked by Chinese business people even some Chinese lawyers who are not very familiar with international dispute settlement.

It shall also be noted that judgments delivered by foreign courts cannot be enforced in China, and therefore it is not advisable for foreign investors, traders or businessmen to sue their Chinese counterparts in their home countries. In other words, in your business contracts, it is often not a good idea to submit disputes to courts in your own countries esp when you can foresee your Chinese counterparts will easily default thereunder.

If you choose to submit disputes to Chinese courts, it shall be borne in mind that you'd better try to avoid choosing the court in the area where your Chinese rival or defendant operates, and also that you'd better choose a court in the China's first-tiered cities such as Beijing, Shanghai, Guangzhou or Shenzhen where local courts are more credible and fair than courts in second- or third-tiered cities where local courts may be too corrupt to uphold any justice at all.

Date Created

June 2012
Author
admin

Shanghai Landing Law Offices