Never forget to add a clear liquidated damage clause in your business contracts with China

Description

The world is now sourcing various products in and from China. You may be one of them.

Wherever you do business with China (I mean, Chinese businessmen), you need to sign a contract with your Chinese counterparts.

Unfortunately, as a new market economy where most businesses esp the small ones don't really know much about market, Chinese businesses don't take contracts serious and may often dishonor their promises clearly written in the business contracts. They tend to forget about the contracts they have entered in particular when their counterparts are far away in another continent.

So it is tough to deal with Chinese business people, and many times, you may get really frustrated when a dispute arises. I receive inquiries of this sort frequently from foreign businesses that run into trouble with their Chinese business counterparts.

Very often, the same problem keeps appearing before me and apparently that warrants writing a tip for foreign business people when they deal with Chinese counterparts.

The tip is simple: add a clear liquidated damages clause in your business contract.

As noted in my post, without liquidated damages clause, a contract is a tiger without teeth.

Especially for Chinese business people, when they don't foresee a clear penalty for their breach of contracts, they may well be ready to go about something that is breach of the contracts. This aspect of doing business in China is greatly attributable to Chinese weak judicial enforcement in relation to imposing and enforcing penalties for breach of contract disputes. In particular, if a contract fails to stipulate a liquidated damage clause, the non-defaulting party shall bear the full burden of proof to prove what actual losses they incur as a result of the breaches. Very often, this is something difficult to prove. Consequently, the non-defaulting party may end up with a humble or pitiable reward of damages, while the defaulting party may gain much more than the damages it is ordered to pay.

It is not that you are assured of successful lawsuit with a liquidated damages clause, it is just that you are in a better position from the outset and will be better off in the end.

Date Created
January 2015
Author
admin

Shanghai Landing Law Offices