

Tips for drafting business contracts to be used in China

Description

Doing business in China can be so much different that you may feel it hard to adapt in your initial interaction with Chinese business people. As a business lawyer working for foreign clients, I have personally witnessed and experienced such differences in various occasions.

One of the conspicuous differences is the perception of the significance of business contracts.

Having worked in an international law firm, overwhelmed in dealing with detailed, lengthy English-written contracts, I come to realize and understand that western businessmen always attach great importance to their transaction contracts spending big bucks on employing expensive international lawyers. On one hand, as a natural result of real-sensed rule of law, it has been a tradition of western business people to use well-drafted business contracts in deals demarcating clearly the responsibilities of each party to the contract to ensure a smooth carryout of the contemplated deal; on the other hand, as foreign investors in a country whose legal system, in particular, the judicial system is far backward and even corrupt, it will be advisable to prepare an air-tight contract in place with their Chinese partners so that they will be able to predict and control their risks associated with their investment in China. Otherwise, they are always worried what if a dispute arises later after the honeymoon peters out eventually. So it is understandable to see a foreign investor throwing a thick business contract before their Chinese counterparts.

However, it is a completely different picture when it comes to Chinese business cultural landscape. Overall, China is a society based on connections or familiarity instead of contracting or deeds.

Between Chinese businessmen, contracts are very often considered as insignificant, much less a long one. In many cases, contracts do not exist at all, but businesses are going on well. They believe that as acquainted people, the other party will do as they say. They will not spend much time and money on negotiating the terms of a contract. This is especially true in relatively backward second or third-tiered cities in China.

Such comparison reminds me of one of the research findings done by a western economic professor to the effect that western business people tend to think they will make good friends with their counterparts after making a successful deal, and conversely, Chinese business men tend to think they need to make good friends with their counterparts in order to make a successful deal. I think that is an insightful understanding of the business culture differences between China and the west.

Therefore, in practice, it will be helpful to bear in mind when drafting a business contract to be used in a China deal that:

(1) make the contract pithy and lean and concise, avoiding using redundant and repeated synonyms. One of the marked features of an English-written contract is that in a sentence, synonyms are gathered in order to make a meaning clear and complete. For instance, ...a contract (as supplemented, modified, revised, amended or restated from time to time)... Though it may make sense in English language to write a clause this way, it will, after translation, look amusing or ridiculous to a Chinese

businessman, as they cannot appreciate why words of similar meaning are compiled here. Legally speaking, the meaning conveyed by those similar words of supplement, modify, revise and amend can be well covered by the Chinese word “*bian geng* (变更)”.

(2) While it may look silly to Chinese businessmen to write a contract in the way described in (1) above, it may be helpful for foreign investors to add some “smiley” in the contract to show respect and give face to their Chinese counterparts. By “smiley”, I mean calculated wording in the contract that can attain the said purpose. For example, it is common to find wording like “the Parties agree that...” in a contract. Now to make your Chinese partners, you may change it this way “upon obtaining consent from [Chinese Party]...”. While this is not detrimental to the foreign party’s interests, it may prove to be helpful to be connected with Chinese people as they can read respect and face out of these lines.

There is much more to be discussed in regard of comparison of business cultures in Chinese and western worlds. I would like to hear your stories. Please share your story and comments with me by leaving a reply or writing to me at jie.tian@dachenglaw.com or jasontian78@gmail.com.

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