

International commercial law and 6 keys to success in China

By following these suggestions, American enterprises will be well-prepared for the challenge of expanding operations into Asia's 'Central Kingdom'

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According to the [World Bank](#), China now boasts a Gross Domestic Product (GDP) of \$9.24 trillion, which is second only to the \$16.8 trillion GDP of the United States. And while China's annual economic growth has slowed from double digits to [7.4 percent](#), that rate is far better than the [-2.9 percent](#) growth (i.e. decline) of the U.S. for the first quarter of 2014. It is therefore no wonder that more and more U.S. companies are seeking to tap into China's burgeoning market and its enormous customer base of 1.357 billion people.

There are, of course, many different means for expanding one's business into China, and finding the best option requires a thorough risk-reward analysis. For some American businesses, the best course may simply be to enter into a contract for the export, sale, or manufacture of goods, but other U.S. companies are choosing to actually move their operations into China — perhaps by opening a wholly foreign owned enterprise ([WFOE](#)), or by forming a joint venture.

Contracts between U.S. and Chinese firms are largely governed by international commercial law, which encompasses a myriad of conventions and trade agreements promulgated by such bodies as the [United Nations Convention on Contracts for the International Sale of Goods](#) (CISG) and the [World Trade Organization](#) (WTO). However, business conducted *within* China will be governed by China's local and national laws, particularly the Chinese Civil Code. Therefore, it is vital that U.S. businesses seek guidance from counsel with expertise in both international and Chinese commercial law before attempting to open a facility in China.

Business owners must also do their own homework, for despite China's rapid economic growth, making a profit in in this highly competitive market is far from guaranteed. By following the suggestions below, however, American enterprises will be well-prepared for the challenge of expanding operations into Asia's "Central Kingdom."

6 keys to success in China

Key #1: Learn to speak a little conversational Chinese.

Learning important phrases and terms in Mandarin — China's national language — can go a long way toward facilitating communication and making a good impression. In many ways, Chinese is an easy language to speak, and one may be surprised to discover how much can be learned in a short time. Learning to read and write Chinese, however, can take years, so one should begin by focusing on studying basic, conversational Mandarin.

Key #2: Read a little about Chinese history and philosophy.

By reading such classics as Sun Tzu's Art of War, the Three Kingdoms, or the writings of Laozi, Mencius or Confucius, one can glean valuable insights. These works continue to have a great influence on Chinese thought — particularly regarding the concepts of duty and respect. For a masterful look at Chinese history and its impact on today's society, read *The Search for Modern China*, by Yale historian Jonathan Spence.

Key #3: Build “Guanxi.”

In China, forming a business relationship requires first developing “Guanxi.” This word is difficult to translate directly as there is no real equivalent in English, but it includes such meanings as “connections,” “networking,” “influence,” and “good reputation.” In short, building a strong relationship is a prerequisite to forming a strong agreement. It can even be argued that understanding “guanxi” is just as important as understanding the Chinese Civil Code when it comes to making a contract in China.

Key #4: Be quick and agile, but also be patient!

The business environment in China is prone to unexpected and dramatic changes. American companies may suddenly be confronted with new regulations and new market competitors with little forewarning. American companies must therefore be alert and quick to adjust. At the same time, patience is required as it may take many months for business relationships to produce fruit. One must be prepared to hold out for the long haul because attempting to make a quick buck by taking shortcuts can lead to very bad deals.

Key #5: When it comes to social etiquette, don't sweat the small stuff.

The internet is filled with tips on proper Chinese etiquette, and many people have agonized over the possibility of blowing a major deal by making a minor social misstep. Unfortunately, much of the advice on the web is out of date, or is only true in certain regions. Generally speaking, Chinese businesspeople are modern and pragmatic, and they do not expect westerners to know all there is to know about Chinese culture. Some traditions, however, are still very important, and efforts should be made to avoid the following faux pas:

- *Don't cause someone to lose face.* The concept of face – “mianzi” – is still taken very seriously in China, so one should avoid doing something that shows disrespect or causes embarrassment. Therefore, one should be very cautious about correcting or admonishing one's Chinese counterpart in public. One gives face by showing respect. This includes greeting someone with a slight bow and a handshake, and by using two hands to give and accept business cards.
- *Don't show up empty handed.* Bringing a nice gift to a prearranged meeting, especially at someone's home, is an excellent opportunity to give face to one's host. However, some gifts are to be avoided because they may have negative connotations; for example, clocks or towels should not be given because such things are associated with funerals. One should also avoid giving sharp objects — such as knives or scissors — as these objects can symbolize a desire to sever a relationship.
- *Don't take an initial refusal as a final answer.* An offer to give something to someone, or perhaps to pay the bill for dinner, may need to be made several times. One's Chinese counterpart may refuse to accept, at least at first, in order to ensure that the offer is sincere.

This initial refusal provides an opportunity for the offeror to save face should they not really be willing and able to fulfill the offer.

- *Don't refuse a toast.* Two of the first words many Americans learn in China is “gan bei,” a phrase spoken during toasts that means “cheers,” or more literally, “empty the cup.” A long dinner may include many such toasts, and this can easily lead to inebriation and poor decision making. One should therefore be careful to only drink small amounts at a time; however, this may be easier said than done in a roomful of people pressuring one to “empty the cup.” If one does not drink alcohol, the best option may be keep a cup of tea in one’s hands, as toasts should never be declined.

Key #6: Help is available.

On-the-ground support is available for American companies that do not have the time or desire to learn all of the complexities and nuances involved in conducting business within China. There are U.S.-based law firms that specialize in international and Chinese commercial law, and the attorneys at these firms may come from China, or they may have spent years studying the Chinese language and developing local connections. Having an attorney with this level of skill and experience alongside during business negotiations is like having an ace in the hole.

About the Author

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