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The Business of Doing Business in China

by JEFFREY C. P. WANG

Every nation approaches life and business in a unique way—a product of its own history, culture, and experience. Both China and Great Britain are good examples of this. Britain has a long tradition of respecting and protecting the individual rights and liberties of its citizens. This is not because the British enjoy constitutional protections similar to the United States. In fact, Britain lacks a written constitution, a Bill of Rights, a Supreme Court, and most of the checks and balances that Americans take for granted. Yet, strong cultural and legal norms protect a tradition of liberty and individual freedom that goes back to the Magna Carta.¹

Similarly, Americans doing business in China must open their cultural eyes. It is natural that many Americans—living in the United States, the global superpower—think that the way things are done at home is the standard way to do things. However, business in China is conducted by different sets of norms, customs, and laws than in the United States. Adjusting to these different rules of the game is critical to business success in China. And one of the best ways to get on track in China is to draw on the experience and skill of legal counsel with deep knowledge of the Chinese legal system and business culture.

One striking difference between doing business in China and the United States concerns contracts.² In the United States, a meticulously detailed contract spells out all the understandings between the parties. However, in China much of the legal protection for contracting parties lies in the all-important Chinese Civil

Law code, and the two parties involved mainly negotiate basic numbers and how long the contract will last. In Chinese business deals, the personal relationship and a person's reputation in the local business community are much more important than the written contract. American businessmen looking to sign papers and move ahead may become frustrated in China.³

Another major difference between the Chinese and American legal systems is the discovery process. In Chinese courts, it is the judges, not the attorneys, who undertake discovery. In China, the judge

handles all the investigation, hiring an investigator for assistance. This, of course, strikes American-trained lawyers as strange. In fact, both contracts and discovery point to a critical legal fact about China: the legal process is far less adversarial and less litigious than in the

United States. Consequently, business relationships and trust, built up over time, are more important in business transactions in China than in the West. Despite the legal and cultural challenges, China continues to be a place of opportunity for U.S. investments and a giant market.⁴ For more than a decade, the Chinese and American economies have been so intermeshed they essentially function as one integrated economic engine at the heart of the global economy.⁵

Yet when Americans express interest in doing business in China, they often hear warnings about the difficulties and hurdles some United States companies have experienced operating in China.⁶ To be successful in China, entrepreneurs and business leaders new to China need

all the business skills and resources that have made them successful in the United States and a highly skilled legal adviser to help them navigate the Chinese system.

To be an accomplished lawyer, dealmaker, and business guide in China requires a great deal more than language skills and legal training. Many large American law firms employ lawyers who speak Chinese and have family roots in China or Taiwan. But bilingual does not mean bicultural.⁷ And these China specialists are rarely authorized to practice in Chinese courts, very few sit on a business's management team, and the China practice is just one small element of the firm as a whole.

Beneath contentious political rhetoric about trade and currency lies a very beneficial economic bond between the world's two largest economies. Promoting open communication and understanding between the two business cultures is



paramount. Fluency in both cultures and their respective legal systems forces the realization that the cultural gap between America and China can be large. A law firm must be focused on China to be well-situated to assist American business leaders to negotiate what is sometimes confusing and perplexing terrain in their quest for business success. A crucial part of an American-Chinese business attorney's role is establishing *guanxi* (relationships) and allowing each side to understand the other.

Certainly, Chinese are eager to finance and conduct business in an obvious effort to contribute to the infrastructure of developing Chinese industry; therefore, technology and the know-how to utilize and to promote the technology are the primary transferable commodities sought in any business venture. The risks of losing ownership of such commodities and of possibly creating a future Chinese competitor present a legitimate concern; so, with that in mind, significant due diligence of prospective partners' background, motivations, and character are of critical importance before any terms of agreement for a business venture may be effectively formulated. There is the need to know who controls a potential partner (whether relationships or the influence of government and government groups) and who really controls the business (the players and resources). Again, in China, contacts and relationships are critical to a business's success. And above all, overriding consideration of and sensitivity to "saving face" (*Mianzi*) and to the "zero sum mentality" are critical in establishing business rapport.

Apart from government direct investment abroad, much of Chinese venture wealth is concentrated in wealthy businesspeople who generally have accumulated their wealth by bargain purchases of assets from the government followed by resale of those assets. Others have profited from speculation in booming real estate construction or complementary supply and furnishings businesses. Such businesspeople are naturally protective of their wealth. So while dealings and negotiations may

well take many turns with lip service to a variety of issues, success likely will be predicated on the mindset that they have gained what someone else has lost, and this is a "win"—in a zero sum economy. There is no sense of "synergy" occurring where the result is greater than the sum of its parts ($1+1=3$). This runs generally contrary to the American business model predominately focusing on positive synergy of transactions. Nevertheless, with the perception of having gained and

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not lost, *Mianzi* of a Chinese counterpart remains intact, and resulting negotiations can be successful.

ENDNOTES

(1) Samuel H. Beer, *British Politics in the Collectivist Age* (Random House 1969).

(2) *Distribution in China – Legal Issues*, McDermott Will & Emery LLP (Mar. 20, 2013), http://www.mwechinalaw.com/uploads/doc/DistributioninChina_Part4.pdf.

(3) *China Specific Challenges*, The AmCham China Small Business Handbook, <http://www.amchamchina.org/smallbusinesshandbook#anchor2> (last visited May 23, 2013).

(4) Yuval Atsmon, Max Magni, Amy Jin, & Lihua Li, *From Mass to Mainstream: Keeping Pace With*

China's Rapidly Changing Consumers, McKinsey & Company, 2012 Annual Chinese Consumer Report, <http://www.mckinseychina.com/wp-content/uploads/2012/09/McKinsey-2012-Annual-Chinese-Consumer-Report.pdf>.

(5) See, e.g., Ben Baden, *40 Years of US-China Commercial Relations*, 40 *China Bus. Rev.* 1 (Jan.-Mar. 2013); James Fallows, *China Makes, The World Takes*, *The Atlantic* (July 1, 2007, 12:00 PM), <http://www.theatlantic.com/magazine/archive/2007/07/china-makes-the-world-takes/305987/>.

(6) Thomas I. Ross, *Enforcing Intellectual Property Rights in China*, 39 *China Bus. Rev.* 4 (Oct.-Dec. 2012).

(7) John Grossmann, *New Path for Trade: Selling in China*, *New York Times*, January 23, 2013. Available at http://www.nytimes.com/2013/01/24/business/smallbusiness/tips-for-companies-that-want-to-sell-in-china.html?pagewanted=all&_r=1&.



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