

## **NEGOTIATING SALE AND DISTRIBUTION AGREEMENTS IN CHINA**

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When considering pre-contractual negotiations in China some words need to be said about culture differences, skills to use in the negotiation process, and, drafting techniques.

All of those points are relevant in any negotiation with a foreign counterpart, but they are even more valid and important when dealing with China.

First of all, it is fundamental to get acquainted with Chinese culture before starting a negotiation, especially if the counterpart (as is often the case) is not well versed in international trade and has had very few occasions to deal with foreign businessmen and counsels.

Keep in mind that actual down-to-the-table business only comes into the picture once a personal relationship has been established and the fundamental elements of trust and respect have been set.

Those who believe that an important contract can be closed with a 2 day rush visit to China or, even worse, at a distance without a personal introduction, are very far away from the real picture of things.

It generally takes several lunches, dinners and quite a few drinks together to break the ice and prepare the ground for real business talks, and it may take several trips back and forth from China before a contract can be closed: so when applying for the visa, you should consider a multi-entry.

Of course now we are in the era of internet and it is very common that sales are concluded digitally, by means of an exchange of proposal and acceptance on the web: it is not by chance that, more often than not, such long distance contacts lead to fraud and contractual breaches, generally (but not only) on the side of the Chinese seller.

Expect long negotiations, and if a contract is eventually signed, don't relax and don't overestimate its value.



In western countries we tend to see the signed document as the final phase of contractual negotiations, as the bible of the future relationship.

In China contracts are often considered as nothing but the first milestone, very far from being rules carved into stone: the warning is that in most cases the contract will be regarded more like a letter of intent than like a binding agreement.

So expect the Chinese side to use a great deal of flexibility, and be ready to re-negotiate or, better yet, have in place from the start in your contract appropriate rules and mechanisms to adapt to the frequent changes that may happen.

When you finally make it to the meeting room, first of all, be sure that there is a good translator (if needed) assisting at the negotiations: quite often your counterpart will not speak English and will rely on a translator.

It can seriously harm the flow of discussion if the person appointed for this task is not familiar with the needed terminology.

Secondly, it goes without saying that it is important to be patient and not lose your temper, especially taking into consideration that the way in which negotiations unfold may be very different from your experience.

While we are used to a linear flow of discussion, so that the parties move from one clause to the next and so on and so forth, the Chinese attitude, in most cases, is holistic.

They tend consider the agreement as a whole: it is not uncommon to re-discuss several times clauses that had been agreed upon, but may need to be changed as a result of other discussions regarding other issues or, even more surprisingly, they may be changed without any explanation whatsoever.

A yes may mean no, and a no may mean yes: you will never know, and that is something to be always kept in mind.



The bottom line is not very different from what should be expected in all negotiations: the aim is to find a balanced agreement, that all parties find beneficial.

To start negotiating with a draft contract that is clearly unbalanced in favor of your client will not only complicate your negotiations, but may jeopardize them from the start.

As far as drafting a contract is concerned, it is important to know that contracts can be drafted in a foreign language, but (especially if the contract relates to activities to be carried on in China) a bilingual text is often used.

A common piece of advice is to keep the agreements simple and concise: we have seen how negotiations are usually long and can be a painful experience: you don't want to start to discuss a contract with 15 pages of definitions, unless it is strictly necessary.

The best way to proceed is to prepare your own standard contract, have it translated into Chinese and have it reviewed by a Chinese lawyer, and then to propose it to the Chinese counterparts and work on that text.

The other way around, to work on a document prepared by the Chinese side, unless you are dealing with lawyers who have a good expertise of international trade and contracts, may be a bad idea, as it can usually be a frustrating and time consuming experience.

Last but not least: it is not sufficient to sign the contracts (possibly in every page), keep in mind that in order to be valid the contract needs to be stamped with the chop of the company, which is a uniquely carved piece of wood made by the local authorities.

To be on the safe side, it is better to have the contracts stamped: moreover, it is not a good sign if the person who signs the contract is not in possession of the chop, as



this may mean that he is not the legal representative and has no power to bind the company.

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