

CONTRACTS. A CHINESE PERSPECTIVE

The Chinese have a reputation for “not abiding by the contract” or for changing contractual terms after they have been agreed.

Different View of the Contract. An Unfolding Continuum. Flexibility

Chinese people tend to think (and feel) that a contract merely sets out the basis of the business relationship.

Therefore, they do not focus as much in setting and regulating all the details in the contract as a westerner would do.

Chinese people would think that if there is agreement on the main terms and principles, this will be enough foundation for reaching a consensus regarding other specific matters.

Also, considering that the Chinese counterparties are operating in their own business environment, most of them feel confident of being able to make the contract work. The western counterparties stand in a different position. The Chinese business environment is less transparent and predictable to them and therefore they try to reduce contingencies and risks by regulating them in the contract.

Additionally, Chinese parties believe that as the relationship develops and grows, the agreement will also unfold and make things easier in all respects. This would give the relationship a “flexible framework” instead of a rigid one.

Decision Making Process and Implementation Work-flow

The mentioned approach needs to be managed carefully, especially when the contract requires input from several different levels and departments from the Chinese side.

There can be many conflicting messages. In large Chinese companies and even in provincial or local governments, there can be confusion as to who should manage contractual negotiations and communications.

This may become a serious hurdle in the process of contract negotiation or implementation.

It is very important to identify the responsible agents in the decision-making process and implementation workflow. This should be done in the very beginning and should also be set out in the main agreement for the future implementation of the same.

Balance of Interests

The standard Western contract templates not necessarily work in China.

Both parties need to contribute with ideas and suggestions in order to make the contract a useful platform for continued cooperation and communication.

However, this flexibility should not exist at the expense of excluding essential terms.

The western party should be ready to study new proposals from the Chinese party –that involve a change in the agreement-. These proposals could eventually become new business opportunities. They could make the contract work better.