

## **Success in China: Adjust Your Expectations and Be Ready to Change**

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China trade is booming. More trade means more contracts, more negotiations, and more misunderstandings. Planning for the problems is as important as planning for everything else in business. And like everything else in business with China, it's never as simple as it looks.

Almost all business disputes are resolved through negotiation. That's true around the world. But a dispute with a company in Des Moines is different from a dispute with a company in Guangzhou. Not only are Chinese laws different from American laws—Chinese business is conducted differently, and Chinese negotiation processes take place in an entirely distinct cultural and business environment.

For negotiations between different cultures to work, both parties' expectations sometimes need to be adjusted. Here are five keys to success when negotiating with your Chinese business partners.

**1. Negotiating authority.** It is a basic principle of American negotiation that you never negotiate with someone who can't close the deal. Not so in China. Usually no single person has individual authority to close the deal. Managers of enterprises in China often have limited discretion. Rather, an offer will be returned to "management" for group consideration. There is no strong tradition in China of personal authority, and the Western negotiator should be prepared to be told, "I will consult and return to you with our response."

**2. Accountability.** Just as there is less discretion in negotiations, there is more accountability for the outcome. An individual negotiator may not be empowered to determine whether a deal is a good one.

It may be easier for Chinese management to approve the payment of RMB 100,000 pursuant to an arbitrator's award than the payment of RMB 10,000 in a negotiated compromise of the claim. The manager can always say that the 100,000 payment was required by the arbitrator, but cannot justify the obligation for the 10,000 payment. This reflects deference to communal authority, rather than individual entrepreneurial enterprise.

**3. Business interests.** In America, businesses negotiate based on their interests. Companies look for ways to resolve disputes in a way that meets their business

objectives. The test for a successful commercial mediation in America is whether both parties are equally pleased (or equally frustrated).

In China, by contrast, a third party brought into the negotiation process will not further the parties' business objectives, but rather the "right" outcome. The Chinese tradition of conciliation is not to persuade the parties to compromise, or find the middle ground—it is to persuade the parties to stop fighting, and to revert to the balance and respect that the community expects of them. The test of a successful conciliation in China is whether the parties agree to accept the right outcome by private assent, rather than losing face publicly. By the time a mediator enters the picture, private business interests will take a back seat to the "right" result, according to the law or custom.

**4. Organizational affiliations.** American businesses are used to the American Arbitration Association, CPR Institute, JAMS, and other mediation providers. Increasingly, business managers call up their lawyer or the chamber of commerce to arrange a private and confidential mediation.

In China, there is no tradition of ad hoc commercial mediation. Instead, the conciliation process is part of a formal arbitration or lawsuit. It is conducted by the arbitrator or the judge, and (at least so far) Chinese law does not recognize the enforceability of a settlement agreement that is reached outside these two processes.

Chinese parties have no problem with a judge, in the middle of a trial, meeting separately and privately with the parties "as a conciliator" and then returning to the bench and issuing a verdict. Many Chinese judges and arbitrators cite this practice with pride. "I listen to them, I look up the law, and I tell them the right result," one judge said. "And I explain to them that it is much better for them to accept this result now, in private, than to lose face at public trial." He added, "They always settle."

**5. Relationships.** After several weeks of expensive arbitration hearings, a large U.S. company learned that its Chinese arbitrator was going out to lunch each day with the lawyer for the opposing side. They then discovered that the arbitrator was a cousin of the opposing lawyer.

The company representative confronted the arbitrator, arguing that it was unacceptable for the arbitrator to have private communications with the adversary, and it was absolutely unacceptable for the arbitrator to fail to disclose a family relationship with opposing counsel. The Chinese arbitrator was amazed. "But I thought that was why you selected me," he said. "Surely you wish me to communicate with the other side on a special basis—how else will the dispute be resolved?"

Relationships are everything with the Chinese. In the short term, someone who knows *someone* may be far preferable than someone who knows *something*. In the long term, preserving a good relationship may be more important than winning a dispute.

In the early 1990s, McDonald's lease for a property at a prominent corner of downtown Beijing was abruptly withdrawn by the government in order to build the magnificent Oriental Plaza. But McDonald's maintained its good relationships, and

now not only is there a large McDonald's in the plaza, but also a huge McDonald's 200 yards up the pedestrian walkway, and in many other prime locations in the city.

Businesses preparing to work in China have a lot to do. It pays to have a healthy respect for the logical and reasonable, but completely different legal and business expectations embedded in Chinese culture. There is no substitute for adjusting your expectations and being prepared to ask your Chinese counterparty "why"—and listening to the answer.

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