



Contracts and Dispute Settlement

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- Have a contract...good contract
- Dispute settlement options
- Useful tips



- Based on laws and regulations not on precedents
- Comparatively young – starting 80s, 90s
- Independent legal profession with not a long tradition
- Laws and regulations are often vague and imprecise, judges are provided with a wide range of latitude of judgment
- Laws changes often
- Local authorities have space for implementing rules, adds to variety and inconsistency

1.

Contract – set the strong frame

Law which shall be used for interpretation of contract clauses

Chinese law

- Both parties are registered in China and
- Contract does not contain foreign element

Choice of law

“Foreign related contracts”

- Where either both parties or one party is registered abroad
- Subject matter is within the territory of a foreign country

- Ideally bilingual
 - Translated\drafted by lawyer

- When both versions are equally binding
 - Chinese court will look at Chinese version primarily

- When English version prevails
 - Chinese court will engage official translator

- Use information from your partner's **business licences**
- **Official name** = registered Chinese name
- English name for convenience
- **Name of legal representative**
- Full address
- Business licence number

- Be on a safe side and ask for
 - Company official stamp and
 - Legal representative name and signature,
 - In case an authorised person signs, ask for Power of Attorney with company stamp and legal representative signature
- Check all names against business licence



Validity and entry into force

- Date
- Conditions
- Approval

Termination

- Date
- Fulfilment of contract
- Notice
- Breach of the contract

- Have you signed other docs on the same topic before?
 - Previous agreements, contracts, letters of intent, memorandums of understanding
 - What superceeds?
- Quality – independent inspection
- Price – include all taxes and fees

- Attachments to the contract
 - Business licences
 - Certificates and special permits
 - Technical specifications, lists of material, plans, pictures, plans
 - Power of Attorney
 - ID of Legal representative or authorised person

- Will you need cooperation of third parties?
 - Subcontractors
 - Suppliers
 - Inspection companies

- *What are the rules for their selection?*
- *Liability?*

- Exclusivity
 - Set clearly conditions for exclusivity
 - geography, time, targets and way of their assessment

2.

Dispute Settlement options

Litigation and Arbitration

In China

- In case of “domestic transactions” or
- When you agree so
- Set of rules to follow to determine the place of litigation

Out of China

- Not recommended as for **enforcement** of the award you have to usually go to China

- Fear of
 - Favouring domestic companies
 - Takes too long
 - Corruption
- Effort to give positive picture about rule of law
- Hot line for complaining over discrimination in the litigation

- Both parties submit evidence
- Proof burden lies with the complainant
- Evidence must be collected using legal means
- Form of evidence
 - Any evidence from outside China, must be notarised by a local public notary, and then legalised by the Chinese Embassy
 - Evidence preservation

- 0,5 – 2,5% of the claim amount on and accumulative basis
- Collected separately for 1st and 2nd instance
- Costs of enforcement must be added
- Court fees and preservation fees must be pre-paid by the claimant, legal cost can be reimbursed when reaching favourable judgment

If the amount of claim is less than RMB 10,000	50 RMB
For the portion exceeding RMB 10,000 but less than RMB 100,000	2,5% of the exceeding amount
For the portion exceeding RMB 500,000 but less than RMB 1,000,000	1% of the exceeding amount
For the portion exceeding RMB 20,000,000	The court fee will be 0.5% of the exceeding amount

- **Mandatory provisions**
 - Expression of application for arbitration
 - Matters for arbitration
 - Arbitration body
 - Eg. CIETAC, Hong Kong, Singapore, Stockholm

- Recommended provisions
 - Language
 - Place of arbitration
 - Set up of arbitration tribunal

- Arbitration fees at CIETAC:
 - 10.000RMB initial fee
 - Less than 1mio RMB 4% of claimed amount
 - Between 1 and 2mio – 40.000RMB plus 3,5% of the amount exceeding 1mio

- Foreign court judgments are rarely enforceable in China
- Arbitration awards are enforceable
- Before you start litigation or arbitration make sure that you know where the counterparty has its property and ask for preservation of his property

Employment contract

Written labor contract is compulsory!

- Only exception – part time employment

Risks and consequences of not signing written labor contract depends on length of period without the contract

- Within one month; within one year; more than one year after starting work
- Consequences
 - Double pay
 - Severance pay
 - Open ended contract

- Name, address of both parties; name of the legal representative as well as the ID card number of the employee
- Term of the contract
- Job description and the place of work
- Working time and leaves
- Remuneration
- Social insurance
- Labor protection and occupational protection

- Staff Handbook
 - Ethical code
 - Benefits
 - Bonuses
 - Violation and serious violation of employment contract
- Let employees comment on it and make record on this procedure
- Ideally let employees sign (at the beginning)

- Termination for other reasons than those allowed by Law, or without any reason the employer will be regarded
 - to have illegally terminated the employee, and
 - will be ordered by the court to reinstate the employee, or
 - to pay damages to the employee which general amount to twice the rate of the severance pay

5.

Tips and summary

- Do not rush, if possible
- Involve your business, legal, finance\tax people
- Know your “emergency exists” and act fast then
- Check on the partner regularly during the contractual period
- Have trustworthy qualified legal advisor specialize in the area of the law
- Preserve all written documents during the performance, including emails



info@eusmecentre.org.cn

www.eusmecentre.org.cn

