

CHINA LESSONS FOR SMALL/MICRO IT/CONSULTANCY BUSINESSES

I have considerable experience working on international contracts, so I entered into a contract in China with, I thought, eyes wide open. I have travelled often to China, and have a good understanding of Chinese business culture. I established what I thought was a sound and trusting relationship with the principals of a high tech start-up in Shanghai, both expat Chinese who spoke fluent English and were still US citizens. I thought I had developed considerable 'guanxi' (a harmonic relationship) with the principals and the project team.

I had great hopes for establishing my patented infrared sensor technology in China. It is an extraordinary country with admirable work ethics which we in the West should take notice. It was a pleasure to work with a young and highly talented project team.

However, the project I was working on was funded by a large manufacturer of products in my technology field, and this company breached the contract. By breaching I mean that with the exception of some costs I was not paid a single Yuan. There has been no resolution after two years despite numerous attempts to seek an amicable settlement.

The contract document was, incidentally, essentially the same as others I have had in the USA and elsewhere outside China, but had intrinsic weaknesses for business in China.

I would like to share the lessons learned from this disastrous venture.

Some general observations based on this (my personal) experience:

- Contracts in China are viewed as non-binding and can be breached on a whim if the contractor thinks it can get away with it.
- There is little corporate conscience concerning illicit obtaining of intellectual property if it can be acquired without penalty.
- Treaties on tax are ignored in China; expect to pay.
- If a company decides to breach it will simply ignore you. This is Chinese Business Strategy 4: "Wait leisurely for an exhausted enemy".
- Chinese are very smart people and can easily arrange language translations; but they may use language difficulties to justify their position.
- Westernised Chinese people will revert to Chinese business culture in China.
- Arbitration on disputes is common in China, but whilst your dispute would be settled in your favour in your own country, cost and procrastination by your contractor may not warrant going to court in China. It's your word against theirs, despite strong evidence supporting your case.
- Small/micro businesses are pretty much on their own. Your Chinese lawyer may simply walk away because the business is not worth the effort or return, or may be colluding with the contractor. Your own government may be sympathetic, but will stay clear of taking a strong position (although large corporations will get high level support if the stakes are high).

The four main lessons I learnt from my failed Chinese contract are:

1. No matter how experienced you are in international contracts, seek legal advice from a Mandarin speaking lawyer who specialises in Chinese business contracts. Do this from the outset.
2. Negotiate an upfront non-conditional retainer, but other than goodwill offerings don't provide any IP/trade secrets until money is in the bank.
3. Insist on clear rules in the contract as to where the work may be done (it was in mine, but still became a matter of dispute).
4. Insist on a dispute settlement option in the courts of your own country.

If you would like to follow up or comment, contact me at k.liddiard@eosd.com.au

