

5 common mistakes in contracting with Chinese parties



In practices, we see some common mistakes appear repeatedly in commercial contracts concluded between western parties and Chinese parties. Those mistakes may lead to serious negative legal consequences (such as invalidity of the contract), however, they are also very easy to avoid. The way is to know the mistake when you are making one.

Mistake 1. Did not verify the registration of your Chinese counterparty

The first thing when you conclude a contract with a Chinese party (or even before that), is to verify whether this company really exists. This can be done efficiently through an on-line verification of the registration at the website of the Ministry of Industry and Commerce. Information such as legal representative (equivalent to the managing director under Belgian law), shareholder, type of company (limited liability or not), registered address, changes in past registrations are disclosed, and can be consulted by the general public. Please do kindly note that the annual accounts of a Chinese company are not usually published, except for public listed companies. Therefore, by several clicks, you could know if the company you are dealing with exist or not, whether it is subject to any legal enforcement procedure, whether the contact is indeed the representative of the company. A company research report can be generated to this end.

Mistake 2. The contract is signed in English name or does not have a stamp

Under the Chinese law, legal documents are validly made if they are affixed with the company's stamp. Signature from the legal representative alone would not suffice. A company's stamp needs to be affixed either at the end of the document (signature column) and(or) on the edges of all pages.

In addition, people often ignore that the English name of a Chinese person does not have legal effect, only his or her Chinese name is officially registered and represent the right signature of the person.

Mistake 3. Prefer to have Belgian law as the governing law

Very often the Belgian party chooses Belgian law as the governing law of the contract. This is not always the best choice. Imagine you have signed a distribution contract with a Chinese partner for the distribution of your products in China, how would you apply Belgian law on the distribution activities in China? Another typical circumstance is when the parties have chosen an arbitration

in Hong Kong or China for disputes, and they have also chosen the governing law to be Belgian law, what are the chances that you would meet a Belgian law specialist in the arbitration panel? Not always easy!

Therefore, the choice of governing law needs to take into account the characteristic performance of the contract, as well as the choice of jurisdiction.

Mistake 4. Always apply Belgian court for settlement of disputes

I have Belgian clients who were shocked when they discovered that a judgement made by the Belgian court is impossible to be enforced in China, and the reason is simple, there is no bilateral treaty between Belgium and China on the enforcement of court judgements.

Therefore, in a commercial contract with Chinese parties, it is recommended to consider arbitration over court procedure. An arbitration award can be enforced in China through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Mistake 5. Did not mention the prevailing language

Very often the contracts with Chinese parties are drafted in English and Chinese. We often see the provision stating which version shall prevail is missing from the contract. These may cause discrepancies in interpretations of the contract terms when disputes arise.

A good contract creates an extra protection layer for you, especially when you are dealing with a party which seems so far away and untouchable. Hope the present article could give you some useful tips in putting in place a good contract, clear, valid and enforceable.

Xiufang (Ava) TU (China Desk - Monard Law)