

*Presenting a live 90-minute webinar with interactive Q&A*

## **Business Negotiations in China: Navigating Chinese Systems, Laws and Cultural Differences in Structuring Deals**

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1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

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Today's faculty features:

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The audio portion of the conference may be accessed via the telephone or by using your computer's speakers. Please refer to the instructions emailed to registrants for additional information. If you have any questions, please contact **Customer Service at 1-800-926-7926 ext. 10.**

## Corporate Governance

### Tips for Protecting a PRC Business from Wrongful Conduct

#### Pre-Establishment Protections

- Conduct a Background Check of what is not on the CV
  - Family and University Connections
  - English and Chinese social networks and internet searches
  - Investigation ~ Industry and Personal
  - Evaluate Information Obtained from a Chinese Culture Perspective
- Carefully Consider Officer Appointments
  - Appoint Senior Employees as Officers
  - Don't Appoint 1 Person as Multiple Officer Positions
  - Consider Which Officers will be Physically Present in China
- Handbook, Ethics Code, Design Policy & Confidentiality Agreement (signed)

#### Operational Protections

- Have Internal Policies Requiring Documentary Evidence
- Mark Documents or Emails as "Confidential", when possible
- Include Routine and Annual Cross Checks and Balances by Headquarters
- Routine Training
- Transparent accounting and financial procedures
- Entertainment at a mutual level
- Gifts given and received - but in moderation

#### Security Measures

- Routine Procedures to Lock Up Information
- Passwords or Codes
- Restrict Visitors where there is Confidential or Sensitive Information or Procedures
- Establish Company Protocols
- Confidentiality Contracts – for Employees & Third Party Providers

## Attorney – Company/Client Relationship

- Know the Confidentiality Obligations in Your Region
- Understand that an Attorney could be Required by China Law to Testify about Confidential Information Against a Client or its Company Employer
- A Law Firm should ensure that Conflicts Checks are Conducted for every Client/Matter
- A Client should ask about the Type and Level of a Conflicts Check
- Appreciate that the Attorney-Client Privilege is a USA Evidentiary Rule
- There is no Attorney-Client Privilege under China Law, Regulations & Bar Rules
- Mark Documents “Confidential” as a Precaution, knowing the USA Attorney-Client Privilege does not apply in China but the Mark may apply in a Foreign Litigation Matter
- A Client should Build a Business Relationship with the Attorney or Law Firm it Hires in an attempt to gain Loyalty for the Attorney to Honor the Confidentiality Obligation
- Using a Referral for Selecting an Attorney or Law Firm is Suggested

## Protecting IP

- Register at a very early stage of market entry into China
- Carefully select the classifications based on current and future expected area of business
- Reference them in the labor documents
- Use license agreements and brand usage agreements

## Set a High Standard

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**Corporate Governance  
Tips for Minimizing or Avoiding Corruption  
“Red Flags”**

**Warning signs for detecting risks**

Fraud occurrences are unpredictable. Fraudsters seek out and exploit weaknesses in an organization. Warning signs should be taken seriously. They are indicators of mistakes, risks or system flaws, errors or misuse. Most problem situations start small and, if detected early, could easily be remedied. Too often, however, managers fail to appreciate a warning and do nothing. This inaction is at the company's peril.

**Pre-establishment decisions headquarters should be wary of and re-evaluate.**

- Short contracts to maintain flexibility or because contracts don't matter in China
- A partner that is currently copying your products
- Operations established in a remote area because of “*guanxi*”
- Complete trust in a consultant
- Hastily hiring a manager
- Not establishing a corporate governance program as the company should conform to local ways

*Proposed Solutions:*

- *Strong due diligence regarding Chinese laws and systems as well as management, vendors, suppliers and partners*
- *Create and implement corporate policies similar to the parent company recognizing cultural differences with China*
- *Understand the legal requirements and industry standards and norms in the China region in which you want to do business as each one is unique (Doing business in New York is different than in St. Louis)*

**Operational circumstances that local management and headquarters should take seriously, and then establish a new practice.**

- Rapid business growth without sufficient attention on the operation, laws, industry standards and financial reporting
- Management without regular visits due to excessive costs, geographical remoteness and assurances from the Chinese partner or team that business is running smoothly
- Limited control over accounts and operations
- Fluctuating bookkeeping records
- Poor documentation procedures
- Poor and no background checks for employees, vendors, agents and consultants

- Inadequate training about corporate governance, and how to implement them within the local culture
- Insufficient communication to vendors, agents and consultants about the corporate policy
- Compensation to government officials, individuals or someone with "*guanxi*" without full understanding of the relationship and without receiving an official receipt ("*fapiao*")
- Person in charge alters schedules when headquarter management visits to make sure that certain people are or are not present for the visit
- Abnormal transactions
- High turnover of staff (or no turnover)

*Proposed Solutions:*

- *Conduct Routine cross-checks and regular visits to build a relationship with the Chinese team*
- *Create and implement policies and protocols with regular documentary reporting so as to maintain control over the operation*
- *Use an independent consultant for due diligence and back-ground checks*

## Personnel

- Family members and friends are involved in the business (i.e.: The general manger, legal representative, accountant, bookkeeper, sales manger and landlord all have the last name "Qian")
- Lifestyle change by an employee (i.e.: An employee has an expensive car and clothes and is going on elaborate vacations.)
- Long term employee who is established with the company (i.e.: An employee that refuses a promotion, transfer to a different region or to take annual leave.)

*Proposed Solutions:*

- *Conduct background checks*
- *Have rotating positions*
- *Have a strong Human Resources manager trained to look for the "Red Flags" with a protocol for investigation*