# A BILLION REASONS TO DO BUSINESS WITH CHINA

EXPORTING brings about opportunities and profits from an expanded customer base. China's accession to the World Trade Organization improved access for UK exporters. With a population of over 1.1 billion, a policy towards promotion of trade and investment, a rather staggering broad consumer led market, businesses of all sizes should consider exporting to the People's Republic of China.

A good way to successful business with China in the long term is to build up relationships of trust and understanding ("kwan zi") with your business partners. This can be achieved through regular visits and face to face meetings assisted by a reliable interpreter or team member with a working knowledge of your business and Mandarin. The issue of trust is paramount. Once established with your choice of prospective trading partner, commercial business should follow. The valuable relationship gained can be developed in a way that will benefit business and both parties in the long term.

Understanding cultural differences and values in the Chinese approach to business is key to the exporter's success. Care should be taken to ensure the parties fully understand the terms upon which business is to be transacted. Sometimes when obligations are perceived to arise from "kwan zi" by one party and stipulated terms in a contract by the other, disputes can arise.

All commercial ventures have inherent commercial and legal risks. The exporter will be familiar with the former but the latter requires legal advice. Preparation through market research and obtaining support from an export orientated UK government can reduce risks associated with exporting. Some banks have a wealth of experience in trade and investment finance which exporters draw on. It is important however for exporters to obtain timely legal advice and assistance before entering into binding legal relationships and when encountering legal issues or disputes with trading partners.

Businesses can export goods and services in several ways. The main ones include direct sales, agency, distributorship and joint ventures. Direct sales of goods are straightforward but careful consideration, legal advice and well prepared legal agreements are required for agency, distribution and joint ventures. Services can be exported directly to the Chinese or through Chinese representatives. The main concerns of an exporter in direct sales include timely performance of the terms of the contract and the receipt of full payment. Most exporters of goods use INCOTERMS (internationally recognized trade terms) and documentary credits as a method of payment whilst stage payments for services are popular.

In the export of goods and services, it is fundamental that the parties to the contract are fully identified. Enforcement of contractual rights depends on the parties being correctly identified. In most high value transactions, visits to the offices or factories to meet prospective partners and the exercise of due diligence are recommended. Regardless of the volume of correspondence and telephone conversations, you will be well advised to verify the existence, location and trading status of the prospective trading partner.

Quotations, pro forma invoices and agreed contractual terms that determine the rights, obligations and liabilities upon which you are prepared to export your goods or services, must be clear, unambiguous and recorded in a written contract to avoid disputes, misunderstandings and to facilitate implementation. Translation of the contract into Mandarin for the Chinese partner is advisable and mandatory in some types of agreements. The contract should provide for force majeure (events outside the control of the exporter which will excuse performance of contract obligations, e.g. war, flooding), stipulate the law, jurisdiction and language that will govern the contract and how disputes between parties are to be resolved, for example, mediation, reference of the dispute to arbitration or court.

Agency and distribution agreements can be confusing. A Chinese trading partner, as agent, may not buy but will instead find buyers in China for the exporter's goods and services in return for payment of an agreed commission. The contract of sale is therefore between the exporter and the buyer. The exporter is the principal and can, in certain circumstances, be held liable for the agent's acts, for example, misrepresentation. It is therefore important that you choose your trading partners carefully. Distributors on the other hand, buy from the exporter and resell directly to their customers on their own terms and profit margins. The exporter may be required to provide the local distributor with technical know-how, support and training in some cases and such obligations attract potential liability. Both types of agreements can be on an exclusive basis and limited by geographic territory.

Joint ventures are used to share the risks of exporting to new markets and provide an alternative to the expense of setting up overseas. The approach is to form a joint venture company that offers the exporter and Chinese partner the opportunity to pool resources, spread risks, cooperate and jointly exploit the market. The parties become shareholders and are normally expected to contribute to setting up costs, working capital, equipment, land, premises, labour, expertise, know-how and goodwill in agreed proportions. The legal agreement must address protection of the parties' interests, structure, profit sharing, the rights, obligations and liabilities of the parties provide for decision making and resolution of disputes during the life of the venture and address legal issues that will arise after the venture is at an end, for example, intellectual property rights.

Culturally, the Chinese prefer to maintain goodwill by resolving differences or disputes with their trading partners through discussions, negotiations and amicable settlement of disputes in commercial transactions. Established relationships take precedence to the enforcement of legal rights in proceedings. Ironically, this approach may be changing with exposure to foreign competition and use of arbitration and the courts has increased. Generally, the longer the business relationship, the stronger the trust and the less likely the parties will need to have recourse to litigation. If you are willing to come to the table to discuss grievances, it is likely the Chinese trading partner will do too.

James Chan & Co has been working with UK and Chinese businesses to provide legal and commercial solutions and is committed to assisting clients with achieving their objectives.



Key Points - Exporting to China

- Research market and local culture
- Preparation, due diligence and visits
- Identify & check on trading partners
- Clarify and confirm intention of parties
- Written contracts & agreements
- Disputes - attempt resolution discussions
- Obtain timely legal advice always