

DISPUTE PREVENTION AND CONFLICTS RESOLUTION IN CHINA

Disputes can generally be settled through four primary mechanisms: negotiation, litigation, arbitration and mediation. A foreign investor may choose any of these four mechanisms to solve the dispute, depending on its actual status.

Negotiation: compared to other dispute resolutions mechanisms, is usually the best method of settling disputes. The costs involved are not as large as in arbitration and negotiation has the benefit of preserving the parties relationship (arbitration and litigation always involve the break up of the parties in the dispute). Negotiation is one of the dispute resolution mechanisms most commonly included in contracts as a way of initially dealing with disputes between parties. However, although considered to be one of the best methods for dispute settlement, negotiations do not always lead to agreement between parties.

Mediation: is in general, a non-binding mechanism in which the parties to a dispute present their proposals to a mediator, who makes his decision based on those proposals. It is an increasingly successful means of dispute resolution and even in cases of arbitration and litigation, arbitration tribunals and courts encourage parties to engage in mediation in order to try to reach a more satisfactory and quicker solution to the matters in dispute while maintaining the parties' relationship. Mediation undertaken before an arbitration tribunal or court during the arbitration or litigation procedures is binding.

Arbitration: It is advisable that parties contract include an arbitration clause rather than a pure litigation clause or silence as to dispute resolution. If a dispute arises and cannot be settled through negotiation, arbitration will greatly improve the prospects of securing and effective means of enforcing the rights for the foreign investor.

Dispute prevention:

The need for foreign investors to resort to dispute resolution mechanism may be avoided if certain precautions are taken while doing business in China. Although it is impossible to guarantee that no disputes will arise if such precautions are taken, they will contribute to substantially reducing the risks. Seeking legal advice is also strongly recommended.

In order to avoid disputes, we can follow these tips:

First of all, **ensure that the terms and conditions of all contractual documents entered into with Chinese parties are clear.** It is extremely important that payment clauses are quite clear and never unambiguous and left to each part to interpret them. The terms and conditions of performance of the contract by the parties during its term are also very important and should fully describe how the contract is to be executed at the stage of

performance and settlement of any dispute. Foreign parties should always ensure that the Chinese version of the contract matches the English or other language version and it is also advisable that a clause be included providing that in the event of any disagreement as to how the contract is to be interpreted, the English version will prevail.

Secondly, **carry out a due diligence review of your Chinese partner.** It is very important to “know your partner” when doing business in China and proper due diligence review should therefore be carried out to assess who will be directly involved in your investment in China and to gather relevant general information (financial, legal, market data, etc) on the Chinese partner. Do not exclusively rely on the information provided to you by your Chinese partner; collect information from different sources.

Also, remember to **secure your payment:** filing legal action against an insolvent partner is generally ineffective and it is therefore advisable to seek special protection in order to mitigate any potential risks of credit unworthiness. Particular attention also must also be paid to the currency used, due to special rules on foreign exchange applicable in China. Additional measures of protection, such as letters of credit, bank guarantees (although most Chinese banks either do not issue or are unfamiliar with such guarantees, or Chinese partners may refuse to provide them) and other financial instruments, are advisable.

Avoid entering into agreements that are not legally permitted: there have been cases of companies being promised by local partners that laws and regulations issued by the central government authorities will not be enforced in relation to their investments. However, the situations must be avoided because it can never be guaranteed that local officials will not change their minds and seek enforcement at a later date. Therefore, each investment must have a solid legal basis.

To end with, **have a reliable local management.** If the investment involves the setting up of a business vehicle in China, you should hire a local manager who is a trustworthy person and willing to cooperate with the partner company in the administration or the local entity in order to avoid situations whereby the local manager refuses to follow the parent company’s guidelines, disappears with company information and official stamps, etc. You have to be careful about this. Ideally, you should place a person from the parent company in charge of local management.



All our [chinese contracts](#) include an arbitration clause adapted to the People’s Republic of China Contract Law.

CONTRACTS FOR THE INTERNATIONAL COMPANY

INTERNATIONAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- International Sale Contract
- International Distribution Contract
- International Commercial Agency Contract
- International Sales Representative Agreement
- Intermediary Contract for Trade Operations
- International Joint Venture Contract
- International Franchise Contract
- International Services Agreement
- International Consulting Agreement
- International License Contract
- International Supply Contract
- International Manufacturing Contract
- Expatriate Contract of Employment
- Pack 5 International Contracts English (Basic)
- Pack 12 International Contracts English (Premium)

COMMERCIAL CONTRACTS (ENGLISH, SPANISH, FRENCH & GERMAN)

- Distribution Contract
- Commercial Agency Contract
- Sales Representative Agreement
- Commission Contract
- Joint Venture Contract
- Services Contract
- Consulting Contract
- Technology Transfer Agreement
- Franchise Contract
- Supply Contract
- Manufacturing Contract
- Confidentiality Agreement
- Pack 5 Commercial Contract English (Basic)
- Pack 12 Commercial Contracts English (Premium)

CHINA CONTRACTS (ENGLISH-CHINESE DUAL VERSION)

- Distribution Contract China
- Agency Contract China
- Commission Contract China
- Supply Contract China
- OEM Manufacturing Contract China
- Confidentiality Contract China
- Memorandum of Understanding for Distribution Contract China
- Memorandum of Understanding for Joint Venture China

CONTRACTUAL LETTERS

- Letter Enclosing Contract for Signature
- Letter Proposing Amendments to Contract
- Letter Proposing Variation of Contract
- Letter Terminating Contract on Breach
- Letter Terminating Contract on Notice
- Letter Terminating Contract on Breach
- Pack 5 Contractual Letters

LETTERS OF INTENTS

- Letter of Intent for International Sale
- Letter of Intent for International Distribution
- Letter of Intent for International Joint Venture
- Pack 3 Letters of Intent