

I have been in serious talks with a Chinese state-owned enterprise about doing business together, and it seems to be going fairly well without any major hiccups. I am about to fly to China with my team to negotiate some final points with the Chinese before drafting the contract, but am concerned about what to expect. I'm unsure of how cultural differences and language barriers may play a role, and I am positive there will be areas of contention to be worked out.

## How should my team best manage negotiations?

### *The international perspective*

**N**egotiating with the Chinese can be challenging, particularly for Western companies that do not have extensive experience doing business in China. Here are some tips on negotiating with the Chinese:

- Get both parties to sign a Non-Disclosure Agreement (NDA) to pre-empt any possible confidentiality leakage and to facilitate free-flow discussions – although it may be difficult to enforce the terms of the NDA.
- Wherever possible, do your due diligence well in advance. How extensively you should conduct this depends on the nature of your transaction. Due diligence for an acquisition deal is different from that of a sale and purchase or licensing agreement.
- Research the enterprise you deal with, including the Chinese personnel. State-owned enterprises (SOEs) are government-owned. Understanding what political functions the SOE serves will help you to appreciate the driving force behind the negotiations.

For example, some SOEs are keen to strike a deal if a transaction involves technology transfer, while others are keen to acquire management skills through joint ventures.

Yet others are simply interested in attracting foreign capital for job creation purposes. Find out who the real decision-makers are as they have a big say on the deal even if they do not participate in the negotiations.

- Organise your team carefully. Pay special attention to hierarchy, ensuring that the seniority of your team members corresponds to that of their Chinese counterparts. Wherever possible, include someone who is fluent in Mandarin and knowledgeable in Chinese culture, although Chinese companies increasingly have personnel who can negotiate effectively in English.

Cultural nuances can make or break a deal in China. The Chinese do not take kindly to “losing face”. Anyone on your team who is too aggressive a negotiator should remain at home. When in doubt, bring along an adviser who is experienced in doing business with the Chinese.

- The Chinese will play host and engage in small chat. This is their way of sizing you up. They value face-to-face meetings, so be prepared to make several trips to China.
- Be prepared also to make concessions.
- Do not rush through your negotiations; extend your stay in China, if necessary.
- A Memorandum of Understanding (MOU) or a Term Sheet (TS) is the prelude to a formal contract. Although the MOU/TS is not usually binding, it will be poor form if you deviate too much from it.
- Finally, enjoy your visit in China.



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