



Risks and Failures of a Joint Venture in China

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comments are welcome

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pre-contract difficulties

- Don't think it's a marriage made in heaven
- You will have always the same bad, but different dreams
- What does your partner "really" expect?
- Saving his company from severe difficulties (financial, technological, employ people from the mother company, earn foreign exchange)

pre-contract

- what is the role of the province and central government
- is the company, which is presented to you the only feasible partner
- what choice do you have (wholly owned foreign enterprise, contractual JV, cooperative JV)

What partner and which location

- become familiar with the partner company
- You do not have always the luxury of choosing the company and location
- be aware of the power relations within the buerocracy
- who is authorized to negotiate with you!!

check list pre-negotiation

- is the proposed project part of the province's of the Ministry's plan
- is the approved project part of the province's and Ministry's plan
- make sure that your partner is authorized to negotiate with you and contract with a foreign company
- take the letter of intent and the feasibility study seriously

project plan of your cooperation

- the project find not the needed support (water, energy, transportation, other state-supplied facilities)
- insufficient support could result in invalid and unenforceable contracts

To whom negotiate?

- the Chinese - although acting in good faith - are often not authorized to negotiate with foreigners
- prove the right of a Chinese company make contracts with foreign companies
- this issue is carefully controlled in China
- most companies in China have not the necessary “foreign trade rights”

What information?

- You will have to gather your own information
- You cannot risk to depend on your partners selection of information you need
- You will have to learn how the “System works” - it is extremely important that you are sure that your negotiating partner is fully authorized to talk to you!
- additionally you need uninformal contacts!

Approval process

- Usually the MOFTEC is the key to the project proposal
- MOFTEC wants to have more control over the approval process by keeping a distance to the foreign company!
- You will not always get to know the details which are negotiated between MOFTEC and your partner in China

letter of intent

- take the letter of intent very seriously
- it will be a part of the project proposal and an indefinite element of your business scope
- at least the letter of intent should content:
business scope, corporate control, foreign exchange and export figures, production scale, source of technology, suppliers, materials you need, markets you will serve

feasibility study

- the feasibility study MOFTEC as one of the main documents
- be aware that marketing is a difficult and often underestimated activity in China (“buyers will line up at the company doors”)
- Chinese companies see production as their main goal
- manpower costs for feasibility study are considerable

misconception

- not all chinese are the same; their are severe conflicting interests
- make sure you have a good lawyer; MOFTEC does not need your lawyer, but you do!
- the Chinese have enough time for negotiation
- the Chinese will always try to make the project successful (but for whom?)

misconception

- Chinese do not like contracting everything
- contracts should be clear and short
(but its better to have a long and clear contract as a short and ambiguous one)

What should be done

- choose your own partner and do not rely on introductions and official visits
- you have to get to know your partner
- you confirm informations and the authority of your negotiation partner
- if the Chinese party supplies land, plant or other equipment - check the real extent out

What should be done

- take the letter of intent very seriously (think about negotiating this document)
- same with the feasibility study
- check if letter of intent is practicable
- review and confirm all Chinese approvals and documents affecting your project
- meet with your JV partner to meet Government people and built up relations
- plan your negotiation