

Chapter 1 : US-China trade dispute | Financial Times

Managing business disputes in today's China: introduction / Michael J. Moser --Mediating Chinese-foreign business disputes: the U.S.-China business mediation center / F. Peter Phillips --JAMS: a longstanding provider of dispute resolution services to the international business community / Robert B. Davidson and Richard Chernick --Choosing an.

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The UK is the second largest European investor into China and Chinese investment into the UK has increased dramatically in recent years to establish the UK as the most popular major destination in Europe. The Chinese government is now seeking to rebalance the economy away from investment-led growth and towards consumption. The emerging focus on innovation, higher-end consumer goods and services represents a significant opportunity for UK companies. However, doing business in China can be challenging. While China has started to open up its economy in some areas, there are restrictions on the extent to which foreign companies can operate in large areas of the economy. Personal relationship networks can exercise significant influence. There is a widely held perception that local companies may also enjoy greater political protection, including from local courts. Latest Regulatory Updates 2. The law applies to all non-profit, non-government organisations legally established overseas including Hong Kong, Macao, Taiwan that wish to register offices or conduct activities in mainland China. Organisations that do not register or report activities under the law will not be able to legally operate in mainland China or transfer funds to locally-established NGOs. A number of high-level officials have been charged with corruption and expelled from the Party, including former security chief, Zhou Yongkang. Despite this, China is yet to become a high income country. China economy updates from our embassy in Beijing [here](#) and [here](#). There are various options available to settle a commercial dispute, principally litigation, arbitration and mediation. Before entering into a contract in China, companies should take appropriate legal advice, both in the United Kingdom and in China on including dispute resolution clauses and governing law clauses in the contract to plan how, where and under what law, any disputes will be resolved. Chinese law restricts both the choice of law and the types of resolution mechanisms that can be used in China-related commercial contracts, so the contract needs to be drafted carefully. Contracts entered into in the United Kingdom are not generally enforceable by Chinese courts. Many foreign companies seek to resolve disputes by arbitration rather than litigation. Although it is possible for parties to reach agreement on arbitration after a dispute arises, in most cases an arbitration clause is better included from the outset. Joint ventures operating within China are considered to be domestic Chinese entities and disputes involving joint ventures will mostly be considered to be domestic disputes to be arbitrated in China. We have published advice on how we can help British nationals with commercial disputes [here](#). Chops are red stamps which act as an official seal. There are several other chops with specific functions. They are used as a form of signature that is accepted as legally binding. Chops have to be made by a specialist company and registered with the local Public Security Bureau. The holder of an official chop can bind a company in important transactions even where they have not been authorised by the legal representative or shareholders. If chops or other corporate documents such as business licences are lost or stolen a company may be unable to sign contracts, pay wages or withdraw funds. This makes it possible to request the cancellation of the lost or stolen chop, to have it remade and to register the new chop with the Public Security Bureau. A company must present its original business licence in order to register a new chop. If the licence has also been lost or stolen companies must request a replacement. It is possible to file a complaint with the police with evidence a theft has occurred. However, the police are rarely willing to intervene in what they regard as commercial disputes and filing a complaint generally requires the company chop. Owners based outside China are at a particular risk if no regular checks are carried out on the company. It is therefore essential to put in place preventative measures and effective internal controls. This should ensuring chops can only be accessed by trusted individuals who need them as part of their job, that no one individual other than the company owner holds or has access to them all, that they are kept under lock and key and that documents that bear the company chop are checked

and recorded. The legal representatives of some foreign companies in China are individuals who have never set foot in China. In some cases facilities have been surrounded by employees or casually-hired support who have refused to allow the foreign partner to leave until a payment is made. Threats of violence are common although actual violence is rare. Stand-offs can last hours or days. The police may be reluctant to intervene and generally will not do so unless a situation does turn violent. If you or your family are threatened in the course of a commercial dispute, you should report it to the local police and obtain a police report. This is known as a travel ban and can last for an indefinite period. Individuals might not be aware they are subject to a travel ban prior to trying to leave the country when they may be stopped; interviewed and refused boarding. If you are the subject of a travel ban, you should immediately inform the British Embassy or local Consulate-General and seek legal advice. Business and Human Rights In September the UK launched its action plan on business and human rights , becoming the first country to set out guidance to companies on integrating the UN Guidelines on Business and Human Rights into their operations. The Chinese government condemns child labour. But reports suggest child labour remains a problem, particularly in the manufacturing and service industries. Education law supports work-study programmes where this does not interfere with normal study, but some internship programmes appear to violate Chinese and ILO standards. There are no applicable provisions against discrimination on the basis of sexuality or gender identity. Domestic laws are in place to promote gender equality and prevent gender discrimination and sexual harassment. Most are ineligible for many urban public services, and are employed in low-skilled, low-paid jobs in the secondary and tertiary sectors. Minimum wage guarantees are undermined by illegal employment practices. Migrant workers may be employed without a contract, or sign unfair contracts that stipulate a very low basic wage with long overtime needed to earn a living wage. Withholding wages is illegal, but reportedly rife and frequently causes labour disputes. Recent reforms to the hukou system of household registration have alleviated but not solved, the problem in some cities. In addition, enterprises wishing to set-up production in China must obtain a permit from provincial authorities under the Safety Production Permit Regulations, revised in Allegations of unsafe working environments and workplace abuses in a range of industries remain widespread. These include excessive forced overtime; exposure to hazardous materials and inadequate safety management training. Official statistics show the number of industrial accidents is steadily declining, but approximately people are still killed every day in workplace accidents. Despite new regulations for filing workplace injury compensation claims, procedures remain complicated and time-consuming. In recent years Chinese workers have become more assertive at the grassroots level about using collective action to secure their rights: A number of labour NGOs operate informally to advise and support workers in labour disputes. In Guangdong Province, where most strikes occur, regulations on collective bargaining have been introduced. They place a greater obligation on i employers to honour minimum wage requirements, working hour directives and social security payments and ii the unions to play an engaged role in dispute resolution. Intellectual Property China has increasingly sophisticated IP and legal systems which are used by large numbers of British companies to obtain IP protection and enforcement relief. However, IP problems still cost British business in China hundreds of millions of pounds each year. Damage is not restricted to businesses in the Chinese domestic market - IP infringing Chinese businesses often have global export capacity. One source of risk is that IP rights are territorial, that is they only give protection in the countries in which they have been granted or registered. If you are thinking about trading internationally, then you should consider registering your IP rights in overseas markets. If you are a UK company selling to China, sourcing from China, or even attending the same trade fairs as Chinese companies, your IP is already exposed to risk of infringement. We distribute a monthly newsletter informing companies of IP regulatory updates in China. For more information on our IP cooperation with China or to discuss possible Embassy support please contact Tom Duke via email. Legal advice may also be obtained from legal services providers based in both the UK and China. General information on IP is provided on our intellectual property page. Bribery and Corruption Bribery is illegal. It is an offence for British nationals or someone who is ordinarily resident in the UK, a body incorporated in the UK or a Scottish partnership, to bribe anywhere in the world. In addition, a commercial organisation carrying on a business in the UK can be liable for the conduct of a person who is neither a UK national or resident in

the UK or a body incorporated or formed in the UK. In this case it does not matter whether the acts or omissions which form part of the offence take place in the UK or elsewhere. It created four prime offences: Two general offences covering the offering, promising or giving of an advantage, and requesting, agreeing to receive or accepting of an advantage; An offence of bribing a foreign public official ; and A new offence of failure by a commercial organisation to prevent a bribe being paid to obtain or retain business or a business advantage should an offence be committed, it will be a defence that the organisation has adequate procedures in place to prevent bribery. The Act recognises that no bribery prevention regime will be capable of preventing bribery at all times. A company will have a full defence if it can show that despite a particular case of bribery it nevertheless had adequate procedures in place to prevent persons associated with it from bribing. Companies must therefore make sure that they have strong, up-to-date and effective anti-bribery policies and systems in place to prevent bribery by persons associated with them. While the main focus has been on corruption within the Party and Government it has also targeted foreign and domestic companies in key sectors including energy, pharmaceuticals and transportation. It is likely that the anti-corruption drive will continue and there is therefore an increased risk of more British companies being caught up in bribery cases. China has enacted extensive anti-bribery legislation. For serious cases this allows for up to life imprisonment for offering bribes, receiving bribes can, in some cases, attract the death penalty. These are designed to help the police and courts in the prosecution of different crimes. Under the 9th Amendment and this new judicial interpretation, companies may be found guilty for providing money or property to former public officials, or close relatives of or any person close to the public officials for former public officials for illegitimate benefits. This act was not previously considered a criminal offence which now highlights the increased scrutiny companies and commercial relationships are now placed under. While the authorities have taken a number of steps to strengthen the independence of Chinese courts, the judiciary is not independent of the party and the rule of law remains weak. There have been instances of the official use of state media channels to pre-empt the judicial process. The courts can be influenced by ongoing political campaigns. Organised Crime A number of British companies have been attracted by potentially lucrative business offers in China, which have turned out to be scams. We therefore always recommend conducting basic due diligence before making any financial commitments e. Any request to pay a fee to have a contract notarised is liable to be a scam.

Chapter 2 : Business Disputes in China - Third Edition

While conducting business in China, foreign companies occasionally find themselves embroiled in disputes with Chinese individuals, companies, or the Chinese Government. The number of cases involving the first two categories far exceeds those of the third.

Both episodes were excellent. I often wondered how China could have so many great restaurants despite the Cultural Revolution. How could there be so many great chefs and incredible restaurants in China when the Cultural Revolution and even the entire period under Mao looked so askance at anything as bourgeois as great food? This episode answered this question for me. Food is so much a part of Chinese culture that I now realize it was silly of me to have thought any government could have annihilated something so important and ingrained. This episode did a story on fish farms wiped out by pollution from a leather factory. The story focused on a Beijing lawyer trying to determine whether he had enough evidence to sue the leather factory for damages on behalf of the fish farmers. This Beijing lawyer has won about half of his 70 environmental cases against Chinese companies. The lawyer talked about how the leather factory was violating the law and of how corrupt local authorities were ignoring the violations. The lawyer used the same methods and case analysis one would expect a United States lawyer to use. The lawyer talked again and again about the need for evidence. One should conclude from this that Chinese courts, like those in the west, focus on the evidence in deciding how to rule in business cases. Chinese law and courts are of virtually no use when challenging the Beijing government and its policies. This episode focused on a lawyer and his wife and her friend who had sued over the razing of a Shanghai apartment for development. The plaintiffs lost their case which by all rights they should have won and the lawyer was imprisoned for three years and his wife and her friend were constantly followed and harassed for having brought it. Chinese judges are well paid and closely monitored from Beijing in an effort to avoid corruption. Beijing uses the courts to extend its own powers and Chinese judges generally look to Beijing in determining how to rule. Beijing wants business in China to function smoothly and business functions smoothly when courts rule fairly in business disputes. The courts support the center or, at best, will not cross it. A few months ago, I asked a couple of top Qingdao lawyers what would happen if a Qingdao judge were to issue a ruling that went against a higher court decision out of Beijing. The lawyers told me they were unaware of that ever having happened and they could not even imagine it. They found my question funny. We will be telling you what works and what does not and what you as a businessperson can do to use the law to your advantage. Our aim is to assist businesses already in China or planning to go into China, not to break new ground in legal theory or policy.

Chapter 3 : Business disputes Archives - China Law Blog

China's court system is actually a very effective tool for defending the rights of foreign businesses, especially in the developed zone along China's east coast. The courts are used extensively by Chinese companies to resolve disputes and the level of expertise in the commercial field is high.

What we cannot do Overview Disagreements and disputes can occur in the business community in China, particularly involving small companies which may be perceived as vulnerable to pressure. Disputes may arise between companies or between a company and the authorities. We generally refer to such incidents as business or commercial disputes. While the majority of foreign-owned businesses in China operate successfully, commercial disputes can damage confidence and cause concern in the business community. Who we can help We can offer advice and consular assistance to British nationals, including dual nationals who are not Chinese nationals. We can offer support to UK-registered companies. What we can do We can offer basic advice and information on the local legal system. We can offer a list of English-speaking lawyers , though the list may not always include law practices specialising in commercial disputes. This advice is updated regularly. FCO also provides Overseas Business Risk guidance which covers issues relating to the political, economic and business security environments in China. You can contact the China Britain Business Council , who may have further experience and useful contacts for commercial disputes issues. Legal advice The most appropriate option will always depend on the circumstances of the case. In general, settling a dispute in a way that avoids litigation or an arbitration procedure is the best way to avoid potentially unnecessary high costs and risks. Companies should carefully consider whether the legal costs are worth the potential benefits, especially since not all these costs are recoverable. Before entering into a contract in China you should take appropriate legal advice, both in the United Kingdom and in China. Your lawyer should advise you on including dispute resolution clauses and governing law clauses in the contract to plan in advance how, where and under what law, you want any disputes to be resolved. Chinese law restricts both the choice of law and the types of resolution mechanisms that can be used in China-related commercial contracts, so the contract needs to be drafted carefully. Contracts entered into in the United Kingdom are not generally enforceable by Chinese courts. Contract fraud is treated as a crime in China and a defendant may be held in custody until the dispute is resolved. Many foreign enterprises are reluctant to bring litigation in China because they fear local jurisdictions will favour local companies, or that the legal process will be susceptible to outside influence. If you do decide to take your case to court in China, you should be prepared for a long process. Even if a court finds in your favour, you may find it difficult to have any award enforced. Where legal action is necessary, most foreign companies operating in China choose to resolve disputes by arbitration rather than litigation. Companies have the option to plan ahead for potential disputes and consider arbitration. Although it is possible for parties to reach arbitration agreement after a dispute arises, in most cases an arbitration clause is better included from the outset. If the contract has an arbitration clause, it may specify things like: The contract may also contain a governing law clause. This gives effect to the choice of law by the parties. Many companies choose to arbitrate outside mainland China. However, this is not always an option. Chinese law requires certain disputes to be arbitrated in mainland China. In particular important for foreign parties to be aware that joint ventures operating within China are considered to be domestic Chinese entities. Disputes involving joint ventures will therefore mostly be considered to be domestic disputes. Details of its fee schedule can be found on their website. Intimidation and threatening behaviour There have been some incidents of foreign nationals being detained as part of a business dispute, usually between Chinese and foreign joint venture partners. In some cases the Chinese partner may send employees or other casually-hired support to surround a facility and refuse to allow the foreign partner to leave until payment has been made. Threats of violence are common in such cases, and stand-offs can last hours or a couple of days. The police may be unwilling to intervene and usually will not do so unless the situation turns violent. It is rare that violence is actually instigated. However, the threat of violence is a recurring theme. If you or your family have been threatened in the course of a commercial dispute, you should raise this with the local police and obtain a

police report. The Chinese authorities are responsible for the safety and security of British nationals while they are in China, and it is important to report your concerns to the police. You can also contact us. This is known as a travel ban. If you are the subject of a travel ban, you should inform the British Embassy or Consulate-General for that area. In addition to providing a list of English-speaking lawyers, we can: But please be aware that intervention by the Embassy or Consulate-General may result in further action, including arrest and detention pending investigation. Detentions can last for several weeks while the authorities decide whether to charge you and bail can be set very high. During the investigation phase of a detention in China, you will not generally be permitted a visit from family or friends; and during some stages of the investigation, your lawyer will not be able to visit you. What we cannot do Business disputes are primarily a matter for arbitration or the courts. We are not qualified to offer you legal advice. We cannot pay your legal fees, undertake an investigation or guarantee your safety in China, nor can we get you special treatment because you are a British citizen. Published 16 April

China has become a magnet for international business. At the same time, the.

We know too that a foreign company prevailing against a powerful local company in a Chinese court is always going to be less likely than if all parties are of the same strata: But, they are fair way more often than credited by the western media and I am absolutely convinced as are all of the Chinese lawyers with whom we work that they are fair often enough to make it as ill-advised to do business in China without written contracts or Intellectual Property IP protections as to do business that way in the West. Professor Yang posted a comment to our post here , disagreeing with our assertions regarding China court fairness. Before we respond to Professor Yang, however, we would like to thank him and all our readers who comment on our posts, particularly those who disagree with us. China is a hugely complex place where the only constant seems to be change. Your comments sharpen our knowledge and make for a more interesting blog, and for that, you have our heartfelt thanks. His success, by his own statements to me, has been unusual. We have never talked to a good litigator who does not ascribe his victory solely to his own brilliance. We have no doubt Wang Can-fa is a great litigator We could tell that just by how thoroughly he prepares his cases , but even a great litigator cannot win if the case is fixed. One simply cannot get away from the fact that Mr. Professor Yang then says we are comparing apples to oranges: The reason why I think you are comparing apples to oranges is that judges act differently depending on the type of case. When they have commercial disputes involving businesses or, for that matter, lawsuits between private individuals, I would expect them to act quite impartial, save for problems of direct bribes and corruption. However, whenever one deals with lawsuits against state-owned enterprises or against local and provincial governments themselves, I think that judges act quite differently. We agree with Professor Yang that Chinese judges do behave differently depending on the case, but I thought we said that very thing in our post by distinguishing between commercial and criminal cases, between cases in Shanghai and cases in Anhui, between cases involving local companies and those involving foreign companies, and when we placed cases involving Beijing government policy in their own separate sphere. Professor Yang then talks about how there is no judicial independence in China: I am sure that you are aware that under the Chinese governmental system, judges are subordinate to other governmental officials at that level of government. So local judges are essentially subordinate to the top local official. There is no judicial independence in China “ or at least not as of yet. However, there are a number of Chinese constitutional law scholars and judges who advocate judicial independence. So the reality is that judicial outcomes are controlled, or at least strongly affected, by the desires of other local government officials. But, to a certain extent, Beijing controls everything. Another Beijing ministry monitors judges for corruption. United States Federal Judges are appointed for life so, to a large extent, they are not controlled by anyone but themselves. This is most emphatically not the case in China. No judge in China is independent to the extent we think of judicial independence in the West. I once asked a couple of Chinese lawyers what would happen if a local, lower court judge were to issue a case ruling that contradicted a previous Supreme Court ruling. It took these lawyers about five minutes to get their heads around my question asked in perfect Chinese by Steve because, as they eventually told us, this simply has never and would never happen. But, this lack of judicial independence does not mean every Chinese judge takes orders on his or her cases directly from the government. Beijing wants its citizens to resolve disputes in the courts, rather than with violence, protest, or local party hacks. Beijing therefore wants its citizens to trust the courts. The Citizens will not trust courts that are inherently biased and corrupt. Beijing therefore gives give judges pretty free reign to rule on those cases that do not directly impact Beijing government policies and Beijing tries to monitor corruption. Professor Yang then states that when a lawsuit is brought against a local government, the fix is in: When a lawsuit is filed against the local government, as often occurs with land takings and environmental cases, the dynamics should be easy to figure out. These dynamics are at the root of current social unrest about land takings in China and the many petitions that are filed in Beijing about local government misdeeds “ because the courts do not provide a remedy for such complaints. But Professor Yang now finds his own numbers suspect: And if

astonishment is not convincing enough, then the statistics themselves must be wrong.

Chapter 5 : KWM | Dispute Resolution & Litigation

arisen with China and their fruitless efforts to persuade PRC foreign trade companies to honor their contract arbitration clauses in order to settle those disputes.

The number of cases involving the first two categories far exceeds those of the third. The best approach in dealing with individual disputes varies from case to case. Nevertheless, Department of Commerce DOC officials with extensive experience with such disputes have prepared the following guidelines to assist U. Dispute Avoidance Good planning can help you avoid disputes. DOC officials recommend U. Have clear contract terms. Specify exact terms of payment and performance standards. Include specific dispute resolution clauses, including details on the procedure and maintenance of operations during the pendency of a dispute. Pay careful attention to details, such as initialing pages of contracts and signing properly. Make sure the Chinese version of the contract is consistent with the English version. Do not attempt to enter into an agreement without sound legal advice. Make certain your project is economically viable by its own terms. Profitability of a project or the sale of goods and services should be based on sound economic criteria. Do not rely on promises of subsidies, special considerations, or non-market sources of income to generate a profit. Make sure you know your partner. Choose your partner carefully and only after a careful examination of experience and dependability. Check the reliability of the data your partner provides from independent sources. Avoid being "stovepiped" - talking only to those people to whom your partner or buyer directs you. Make sure you get paid. A contract with an insolvent partner or customer is worthless. Pay careful attention to how you get paid, when you get paid, and in which currency. If you have agreed to be paid in Chinese Yuan, verify that you can convert profits to U. Use letters of credit or other financial instruments to protect yourself. Do not enter into prohibited agreements. American companies have often entered into agreements with promises from local officials that central government rules will not be enforced in the provinces. While this is sometimes true, problems may arise when these rules are suddenly applied--sometimes retroactively--leaving the company with little recourse. Be careful not to base your business on WTO-noncompliant rules. Government cannot support you if you are relying on a business plan that is dependent on Chinese regulations that violate the WTO. As such rules are replaced, you may find your competitive advantages eroded. Search for problems before they materialize. In addition to creating pro forma balance sheets, spend some time at the beginning of a project to examine what you will do if things go wrong. Try to anticipate possible problem areas. Create a strategy to deal with potential problems. You know how much profit you want to make. Do a thorough risk analysis. Be realistic about how much risk you are willing to accept in your business venture. Make sure you use reliable sources for this assessment. Use more than news media sources or your immediate partners to evaluate the risk. Set milestones in the project for performance. Projects and sales in China require constant attention. Do not assume they will run themselves. Disputes with Chinese Companies or Individuals There are four primary ways to resolve a commercial dispute in China: Negotiation Simple negotiation with your partner is usually the best method of dispute resolution. It is the least expensive and it can preserve the working relationship of the parties involved. In fact, most business contracts in China include a clause stipulating that negotiation should be employed before other dispute settlement mechanisms are pursued. When a foreign firm experiences difficulty in directly negotiating a solution to a dispute with its Chinese partner, companies sometimes seek assistance from Chinese government officials who can encourage the Chinese party to honor the terms of the contract. Companies should specify a time limit for this process. Unfortunately, negotiations do not always lead to resolution. Mediation The principle of mediation is that the parties may present their proposals to the mediator who suggests a solution based on those proposals. Mediation is by definition non-binding and has achieved great success as a means of settling commercial disputes between foreign and Chinese parties. In both the arbitration and litigation contexts, mediation represents an early step in the resolution of the dispute. In arbitration before a Chinese arbitral tribunal or in litigation before the Chinese courts, parties are encouraged to participate in mediation with mediators selected by the arbitral panel or during an in-court session, respectively. The less confrontational nature of mediation

may also help preserve the commercial relationship. Arbitration--Chinese, International and Enforcement 1. Since it is rare for the parties to agree on arbitration after the dispute has arisen, the underlying contract or separate agreement must expressly provide that disputes will be resolved through arbitration. In China, a valid arbitration agreement must reflect a clear intent to arbitrate and clearly identify the arbitration institute that will administer the case. If so, arbitration will be the only available binding means of dispute resolution available under the contract; otherwise, the dispute must be resolved by the courts. There are important differences in arbitration in China versus arbitration in other countries. For example, ad hoc arbitration is not recognized in Chinese law when it takes place within China. Rather, arbitration may be conducted only by officially recognized arbitration institutions. As a consequence, parties selecting China as their arbitration location will be constrained in their choice of applicable procedural and substantive rules, and, if an arbitration is necessary, will be required to choose arbitrators from lists maintained by the arbitration institution they select. In China, arbitration offers many advantages over litigation. A major advantage is the finality of the rulings. Court rulings are subject to appeal, which means litigation may continue for years. Judges in China are often poorly qualified, while arbitration panels are made up of a panel of experts, which improves the quality of the hearing. In addition, the proceedings and rules of arbitration are often more transparent than litigation. The Chinese legal profession is open only to Chinese citizens who have passed the PRC judicial examination and satisfied certain other admission criteria. Under current rules, the right of individuals to practice as a lawyer is suspended if they work for a non-Chinese organization eg, a non-Chinese owned law firm. Such firms are allowed to be counsel of record and to make submissions in Chinese arbitration proceedings but not in Chinese court proceedings. A foreign-invested enterprise FIE in China is not a foreign entity for these purposes, and as an organization established under Chinese law, it is considered a domestic entity. Unlike local arbitration commissions discussed below, CIETAC includes a considerable number of foreigners on its list, which as of September featured foreigners from other than Hong Kong and Taiwan among its potential arbitrators. Nevertheless, due in part to the fact that compensation for foreign arbitrators is quite low by international standards, foreign arbitrators rarely serve in CIETAC proceedings. CIETAC, not the arbitrators, decides such matters as the existence and validity of an arbitration agreement and fixes the dates for hearings. General international practice is for an arbitration panel to take equity into account only when the parties have explicitly empowered it to do so. On the whole, however, CIETAC seems to be moving gradually toward increased party autonomy over the terms of the arbitration. For example, CIETAC allows parties to specify the nationality of members of the arbitration panel in their arbitration clauses, and has enforced clauses stipulating that two of the three arbitrators, including the presiding arbitrator, must be non-Chinese, and CIETAC need not pre-approve any such contractual stipulations. CIETAC has published rules that govern the selection of a panel if the contract does not specify how the choice of arbitrators will be handled. While the local arbitration commissions are in principle civil institutions and not government units, they remain closely tied to government in a number of ways, including financing and personnel appointments. At least some of the commissions are on their way to financial independence. According to the BAC, it has been fully self-financing on the basis of arbitration fees since August. Despite initial misgivings in the foreign investment community about the quality of arbitration by local commissions as opposed to CIETAC, experience thus far indicates that at least some commissions, such as the BAC, are performing better than expected. However, the BAC still does not include foreigners in its listing of potential arbitrators. Convincing a Chinese party to agree to offshore arbitration, however, may be difficult at best. A few points, however, bear mentioning here. HKIAC arbitration can be both administered and ad hoc. The role of the U. Each of the above arbitration institutions calculates arbitration fees by reference to the amount in dispute. Parties who choose HKIAC have the freedom to determine the method of determining fees and can choose either fees calculated by the amount in dispute, as similar to the ICC, or by the hourly rates of the arbitrators. One of the most frequently cited difficulties of arbitration in China is enforcement. Once a domestic arbitral award is issued, securing payment is beyond the powers of the arbitration commission. As a result, the prevailing party most often must apply to a court to have the award recognized and enforced. Foreign awards that are not paid voluntarily also may be filed with a court to compel enforcement. While in principle the same should apply in China, in practice,

enforcement is problematic. Although China does not maintain any centralized record of enforcement of arbitral awards, existing evidence seems to confirm that enforcement is poor. It appears that enforcement is easier to secure in major cities such as Beijing, Shanghai, and Guangzhou, and smaller awards appear more likely to be enforced than larger ones. This fact is not surprising given that the primary reason for non-enforcement appears to be insolvency on the part of the Chinese party. The problem lies, however, in the greater relative weight accorded by Chinese judges to foreign awards made by arbitral bodies outside China versus that given to foreign and foreign-related awards coming from within. When Hong Kong returned to Chinese sovereignty, there was a concern as to whether mainland awards could be enforced in Hong Kong and vice versa. In , the central and Hong Kong governments enacted laws to permit reciprocal enforcement of arbitral awards, on condition similar to those provide in the New York Convention.

Chapter 6 : Business Lawyer In China » Dispute Resolution in China

Be prepared to see a lot more business disputes on projects linked to China's "Belt and Road Initiative", warns Sarah Grimmer, secretary general of Hong Kong International Arbitration Centre.

Dispute Resolution in China Dispute Resolution in China If you are doing business in China, chances are you may encounter a dispute sooner or later. You will feel more comfortable to deal with it if you understand the basic characteristics about the Chinese legal system. Chinese Court System China is a civil law country. A case in China is tried by a judge or a three-judge panel. Judges will decide cases based on the code of law, not the case law precedence. Judges from different courts usually have different interpretations of the law, and even different judges from the same court may hold different views. Because there is no requirement to follow the precedence, the result of litigation in China is usually more unpredictable than in a common law country such as the United States. Choose a proper forum Being a stranger of the Chinese court system, many foreigners tend to choose a familiar forum to resolve the disputes. For example, they like to put such terms in the contract: If you want a relatively predictable and enforceable decree, you may consider arbitration as an alternative forum to resolve the disputes. The arbitrators are usually national or international legal professionals such as law professors and lawyers. In most cases, Chinese courts will also honor a decree of an arbitration institution located in Hong Kong. In order to choose arbitration, you must put an arbitration clause in your contract. Rule of Thumb " Choose a proper local counsel Unlike US attorneys who can only practice law in the states where they are admitted, a Chinese attorney can practice law nationwide. For litigation cases in China, it is preferable to choose a local lawyer who is familiar with the local procedural rules as well as the local judicial interpretations on substantive issues. Prevent a dispute in advance Dispute resolution in China can be complicated and frustrating in some cases. However, there are ways to prevent a dispute from happening. The following are some of the common types of disputes you are likely to encounter when you run your business in China: Labor laws in China are very pro-labor, and to dismiss an employee is a very serious matter that requires the employer to follow stringent procedures and have sound basis for the decision. The dispatched workers are employees of the staffing agency. They work for your project based on your contract with the staffing agency. If you decide to hire employees instead of using dispatched workers, then you must establish detailed internal HR policies and rules. You should keep detailed written records of your employees, such as acknowledgement of receiving the employee manual, attendance record, notice of reprimand, etc. Before they conduct any serious business in China, the first thing they should do is to register their trademarks or patents with the Trademark Office or the Patent office in China. There may be similar or identical trademarks or patents already existing in China. Some disputes arise from the registration process due to pre-existing trademarks or patents. Other disputes arise from trademark and patent infringement activities. If you have not registered your trademarks or patents, it is impossible to protect your rights. IP disputes may also arise from licensing or distribution agreements, or work products created by employees during the employment. The rights and obligations of a shareholder in China are usually defined by laws and regulations, joint venture contracts, and articles of association. The local approval authorities in China usually require the joint venture contracts and articles of association to be in conformity with an official template. In many cases, the official template is written in general terms and does not reflect the detailed arrangement among the shareholders. Any ambiguity in the shareholder agreements or articles of association can trigger future disputes among the shareholders.

Chapter 7 : China business disputes Archives - China Law Blog

The Chinese courts (in China's business cities) are generally fairly thorough and fair in dealing with business disputes, even if those disputes involve a "connected" local factory and even if those disputes involve a foreign party.

Chapter 8 : In Pa. and N.J., brewing trade disputes with Canada and China could harm firms

News about China's Territorial Disputes, including commentary and archival articles published in The New York Times.

Chapter 9 : calendrierdelascience.com - Dispute Avoidance and Resolution

Arron Banks's business sale likely to have netted less than Â£2m Brazil's new finance minister eyes 'Pinochet-style' fix for economy US-China trade dispute Add to myFT. Add to myFT Digest.