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Doing business with China: The need for speed

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By Lorne Gross

The rise of China is like the steady movement of a train. We see the train accelerate with certainty and inevitability, but this acceleration is the result of something deeper. It is the unseen fuel deep within the train that powers its forward drive. Similarly, the economic rise of China is not simply a matter of business, but is fuelled by something deeper: an ancient and rich culture. Chinese culture infuses Chinese business and doing business with China often involves an understanding Chinese culture.

We have all read of the importance of cross-border business issues and sensitivities, but what has often been lacking in discussions are practical issues and practical solutions.

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Just like that fast-accelerating train, just like the amazing pace of Chinese economic development, one important aspect of Chinese business culture is speed. A Chinese businessperson will often seek to conclude a contract or deal in a much shorter time frame than their typical North American counterpart. Successfully doing so represents a challenging yet vital aspect of doing business in such a situation.

For example, in real estate transactions, from the purchase of a residential unit to a complex commercial acquisition, a Chinese purchaser may seek to create an Agreement of Purchase and Sale or structure a joint venture group at a far faster pace than North Americans are used to. All the businesspeople in such a situation must conclude their deal in a rapid time frame to create a successful agreement and transaction. At the same time, they must create a comprehensive agreement that will accommodate all the players, Chinese and North American.

This is more challenging because these two objectives appear to be at direct odds with each other. The faster one goes, the harder it is to be detailed and comprehensive. The more detailed and comprehensive, the more time required. This is no mere philosophical problem; this is a real dilemma facing business people every day.

The solution that I have found to being successful in creating both speed and comprehensiveness is to first create a memorandum of understanding (MOU) and later move forward to create a full legal agreement.

In the first phase, an MOU sets out in a relatively short way, the most important or most basic aspects of the deal. This can include things such as the purchase price, obligations and responsibilities of the parties and other items specific to each transaction. This has several advantages.

It allows the parties to solidify the important aspects of their relationship very quickly, but at the same time gives them space and time to work out the details. This solves the dilemma of getting something accomplished quickly and also allows for a comprehensive deal.

The MOU can state that it is not legally binding between the parties. This allows people flexibility when negotiating the final agreement, as the parties negotiating are not bound to stick to the terms of the MOU. A Chinese party can be comforted by both the speed and the flexibility this allows and the North American party can be comforted by the security of having the basic terms agreed upon. It also relieves an emotional pressure of having to finalize terms. Sometimes this emotional ease can actually help people come to terms that can be agreed upon.

The MOU can also state that it is in fact legally binding and that a later agreement will fill out its details. This option has the advantage of solidifying the deal at an early stage without getting into details that the parties either do not know yet or that may cause conflict at this early stage.

But there are no hard and fast rules of what should be in an MOU and this may be its greatest advantage. Setting out the basic things two parties can agree upon and leaving room to settle the rest allows for creative thinking. This scope and space for solutions allows for options to be considered and put into action. No matter what country a deal takes place in or no matter what culture, problem solving – both in business and law – is the dealmaker's ultimate tool.

With the tool of an MOU, the parties to a real estate deal can do something that seems impossible in achieving two opposite things at the same time. They can achieve speed and detail. In this way, this tool can be very effective in creating a workable deal between a Chinese and western negotiator, who between them want both objectives. In other words, achieving 'yin and yang' – the two opposites that can exist together or both parties can have their cake and eat it too.

TAGS CHINA



Lorne Gross

Lorne Gross is the managing lawyer of **Lorne Gross & Associates**, providing legal services in corporate and real estate law. He possesses an MBA from Oxford University, a law degree from Osgoode Hall, a master's degree in China Area Studies from the University of London and was a visiting undergraduate at Harvard University. In addition to his native English, Gross speaks Mandarin Chinese and Spanish. Previously, he has served as an associate vice president of a \$120 million hedge fund.

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