Ten Biggest Mistakes Negotiating in China

Presentation to Corporation Law Department

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“Oh, East is East, and West is West, and never the twain shall meet”

Rudyard Kipling, *Barrack-Room Ballads*, 1892
Learning From History

10 BIGGEST MISTAKES

COMMITTED BY WESTERN COMPANIES

ENJOYING THE HOSPITALITY

OF THE OLDEST WORLD-BEATING ECONOMY IN HISTORY
Ten Biggest Mistakes – Divided Into Six Categories

- **Getting acquainted** – things to keep in mind as you get to know each other
- **Bracing yourself** – things to think about before you get on the plane
- **Efficiency vs. process** – things to remind yourself about late at night on the fifth straight day of negotiations in a town without a good hotel
- **Closing the deal** – pride goeth before the fall
- **When the going gets tough** – when you’ve had just about enough
- **After the party** – congratulations. Now what?
So Here They Are – The Ten Biggest Mistakes

Mistake No. 1  – Falling for the Flirt
Mistake No. 2  – People are People
Mistake No. 3  – Business is Business
Mistake No. 4  – Putting Your Cards on the Table
Mistake No. 5  – The Shortest Distance Between Two Points
Mistake No. 6  – Gotta Run
Mistake No. 7  – Bing Bam Boom
Mistake No. 8  – Taking It Personally
Mistake No. 9  – The Fat Lady Sings
Mistake No. 10 – Telling It to the Judge
Mistake No. 1 - Falling For The Flirt

- *Falling for the Flirt* – the Chinese will talk to you for months before you realize they don’t really want the deal or are just trolling for information.

- *Big Company, Must Have Lots of Resources* – first, just because it looks big doesn’t mean it is big. Do your diligence. Second, even if it is big, it may not be able to deploy resources to do your deal. Inquire politely about this before spending months negotiating the details.

- *I Don’t Sign Documents That Don’t Mean Anything* – the Chinese love MOUs. Be sure they’re non-binding, and after that, don’t be afraid of them. Your counterparty will use them to build consensus and you’re unlikely to be boxed in by the language as the deal progresses.
Mistake No. 2 - People are People

- *People are People* – not in China. Don’t underestimate how deeply different business people will be in China, and in ways that you don’t expect.

- *Everyone Wants To Be An American* – actually, the Chinese feel sorry for you that you weren’t fortunate enough to be born Chinese. China is every bit as intensely patriotic and nationalistic as the US.

- *You’re Bigger and Badder Than They Are* – you may be from a world-beating, Fortune 50 corporation. You may be the biggest guy on your block. Be assured the Chinese have lived under worse than you and succeeded.
Mistake No. 3 – Business is Business

- *Business is Business* – not in China. Business is personal, interpersonal and political as well as business-like. Business success reflects on your counterparty’s home town, social standing, perhaps even future within the parallel world of the Party.

- *It’s Not Personal* – yes, it is. Establishing a relationship with your counterparty is essential. China does not have a well-developed intermediation structure (courts, predictable laws and regulations, etc.), so knowing and trusting your business partners is paramount. Rudeness will be punished. Politely, of course.
Mistake No. 4

Mistake No. 4 – Putting Your Cards on the Table

- You’ve Made Yourself Perfectly Clear – you are as mysterious to the Chinese as they are to you. You try to speak plainly, but (a) your counterparty can’t figure out your motivations any better than you can figure out his, so he doubts his own ears; and (b) your counterparty would never make himself clear and therefore can’t believe you would, either.

- Tough Guys Finish First – Western negotiators will often come on strong, try to box their counterparties in, try to pick up all the marbles. In China, all these things means your counterparty is losing face, and your counterparty would much rather lose the deal than lose face. Offer alternatives, ask how the counterparty would solve your problem, express appreciation.

- What You See Is What You Get – what you see is never what you get. Hidden agendas have hidden agendas. Some of them have nothing to do with you. This seriously interferes with your ability to “read” your counterparty. And your inclination to “put your cards on the table” will never, repeat never, be reciprocated.
Mistake No. 5

Mistake No. 5 – The Shortest Distance Between Two Points is a Straight Line

- *Negotiations Travel in a Straight Line* – not in China. No line is straight, and nothing is settled until everything is settled. If then.

- *Chinese Companies Are Monolithic and/or Autocratic* – they often look both monolithic and autocratic. But everyone has a constituency in China and the web of favors and obligations will be totally invisible to a Western negotiator. The Chairman of your counterparty certainly has to build consensus in the government-business environment in which the company exists. He also must build consensus among his staff. Uncertainty at the negotiating table could mean the Chairman actually is uncertain about the deal, or that he hasn’t yet built consensus for it. Ask how you can help.

- *You’re Hearing The Straight Story* - if at all possible, establish a back-channel line of communication at the staff level. Then listen to it.
Mistake No. 6 – Gotta Run

- **Underestimating the Home Court Advantage** – if you’re in their home town, they control the agenda (when to start, when to break, when to have lunch, when to adjourn). Negotiating on your home turf or in a neutral location, such as the business center of a hotel, can level the playing field.

- **There Will Be a Schedule** – but you won’t know what it is. People will be unavailable at odd times, breaks will occur at unusual moments (generally when the negotiations become uncomfortable). You can help this problem by controlling the venue. “Controlling the other party’s schedule is fundamental to the Chinese negotiating process (Brahm, *When Yes Means No*, p. 49).”

- **Gotta Run** – no, stay for dinner. And dinner the next night. Even if it seems like nothing is getting done. Especially if it seems like nothing is getting done. Also, keep in mind the audience for the dinner may not be you – imagine that – but your counterparty’s constituencies, who will fill up the room and enjoy the banquet and thereby generate an obligation to reciprocate the favor with your counterparty.
Mistake No. 7 – Bing Bam Boom

- **Bing Bam Boom** – not going to happen. In fact, your aggressively efficient timetable will be turned against you, jujitsu-style. The Chinese counterparty will wait until you’re happy and longing to get back on the plane before they put the real deal-breaker on the table. By the way, when the negotiations are dragging on and your CEO wants to just come over and close the deal, it will only happen if he/she gives away the store.

- **Efficiency Is A Universal Value** – your drive to be efficient will work directly against you. It isn’t valued; more valuable is a good deal, even if it takes a little longer. If your counterparty knows that and you don’t, who will get the better deal?

- **You Can Sell Ice to Eskimos** – or Igloos to Inuit. Maybe, but you can’t sell anything to a Chinese counterparty that they don’t want to buy. Better than you have tried. If they want to do the deal, it will go quickly. If it’s not going quickly, they don’t (yet) want to do the deal.
Mistake No. 8 – Taking It Personally

- **Honesty Is The Best Policy** – yes, but there is a time and place for everything. In a relatively less mediated economy (fewer fixed rules, fewer enforcement mechanisms), transparency is not always a virtue. Indirection may seem to go further than you would expect in a purely Western context. Don’t take it personally.

- **They Can’t Be Trusted** – trust is a scarcer commodity than it should be. But Western negotiators are all too likely to see the multi-level agenda driven, unpredictable ebb and flow of negotiations in China as evidence of bad faith on the part of the Chinese. It isn’t. Breathe.

- **Playing the Wild Card** – don’t lose your temper or pound the table; your counterpart will just lock down.
Mistake No. 9

Mistake No. 9 – The Fat Lady Sings

- *It’s Over When the Fat Lady Sings* – actually, she never stops singing. Have you ever been to Peking Opera? The negotiations are never over, even after you have signed the deal.

- *A Deal’s A Deal* – no, a deal is the beginning of a relationship. Or, in a one-off situation, that which must be signed so that your counterparty can get on with making a profit off you.
Mistake No. 10 – Telling It To The Judge

- **Tell It To The Judge** – on second thought, don’t. Arbitrate in Hong Kong instead. And never let go of more than you can afford to lose. Contracts are living documents in China, not something to sue on when the deal goes bad.

- **The Law Is The Law** – assuming there is a law, you can find it, the authorities will interpret it the way you do, and the authorities are available this year to interpret it. China now has the Rule of Law but really hasn’t let go of its millennia-old system of Rule by Discretion. You will need to get permission for everything in China, and no permission is assured. Try getting a joint venture ICP license.
Conclusion

The only thing more dangerous than doing business in China …. Is not doing business in China.
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Thank You

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