

Difference in cultural background has often shown to be one of the most important issues in any business partnership. There is a great difference into how Chinese and Europeans view a partnership. Below are some of the issues which can pose an IP risk...

Contracts in China

When looking to identify your supplier, you should consider how you want the relationship to work and what controls you need to put in place to secure your rights. These issues need to be spelt out in a written agreement which can form the basis of a contract. It is not advisable to start any business partnership in China without a signed contract. It is important to keep in mind, that a contract could be viewed as a "guideline for cooperation" in China, whereas in Europe a signed contract is viewed as legally binding. Contracts should not be rushed through, but should instead be a process where the contract can work more as a relationship manual.

As an SME you should ensure that the potential business partner really is who they say they are. This can be done in a number of ways, but initially check whether the company is legally registered, and whether it is trading under the registered name. Helpdesk team leader Simon Cheetham from ERINYES INTERNATIONAL, a firm used to performing background checks, says:

"Often we find that we can save SMEs a great deal of trouble and expenditure by doing a simple background check prior to negotiations with a potential supplier. In this way we can ensure that the legal entity that the SME is to enter a sourcing contract with is also the company that can be held responsible for any wrong doing. It pays to know who you are dealing with."

In the contract, it is advisable to clearly state what Intellectual Property Rights are owned in respect of the items to be supplied and to clearly state that any know-how, discovery, invention (whether patentable or not), design, drawing, computer program, photograph, plan or record relating to the development of prototypes and the subsequent final version of products or any future developments to products which are made, created, developed or acquired by the supplier (together with all Intellectual Property Rights and any future rights in respect of any such matter) will belong to the SME absolutely.

Preventing disclosure of valuable information

When handing over material to another company or individual in any business matter, it is important to use confidentiality, non-competition and non-disclosure agreements to minimise the risk that the company or individual will disclose such information to third parties or use the information to compete against your company.

Employee contracts in China

Especially when conducting R&D in China, Chinese lawyers should be appointed to prepare employee contracts. For more information about finding the right lawyer in China please see the 'Finding the Right Lawyer' section.

Cultural differences

Learning about the Chinese culture before entering into a business negotiation with a Chinese partner is beneficial. If you understand who you are dealing with you will have a better chance of success. Chinese culture is best learned by living in or visiting the country.

Different business set-ups mean evaluating different IP risks, follow the links below to explore these closer.