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Newsletter

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Are you ready for the Chinese dragon's ferocious appetite?

In less than a month, there have been official visits by Prime Minister Justin Trudeau to China and by Chinese Premier Li Keqiang to Canada. Today, more than ever, these two countries want to strengthen economic ties and begin discussions about a possible free trade agreement.

Commercial agreements between China and Canada have increased exponentially over the past few years. Recently, more than 60 China-Canada agreements have been signed, many with Québec companies such as Cavalia, Cirque Éloize, D-Box Technologies and HEC Montréal.

With Beijing-Montreal and Shanghai-Montreal direct flights, Québec entrepreneurs now have a fast and strategic access to one of the world's largest economies. While China offers attractive business opportunities, the Chinese market remains very complex due to language barriers, culture shock and bureaucracy.

How can a Québec SME succeed in establishing a presence in China? Proper preparation is critical. Here are a few recommendations:

- ❖ **Inform yourself about the restrictions.** Check whether there are restrictions or prohibitions regarding the services or products you offer. Some products and

services require approval or certification from Chinese authorities. For example, most categories of electrical products require China Compulsory Certification (CCC).

- ❖ **Validate the shareholder structure of your Chinese business partner.** The shareholder structure will determine whether the business partner is a state-owned enterprise or a private company and help identify the person designated to conduct negotiations. The Chinese government is closely tied to the business community. Generally, in the case of a state-owned enterprise, regulation is more complex and the authorizations required are numerous.
- ❖ **Choose the type of company to enter the Chinese market.** There are three main types of company: 1) joint venture; 2) wholly-owned foreign enterprise, known by the acronym WFOE, or 3) social enterprise. Procedures, regulations, investments and the capital required may vary from one type of company to another and from one economic zone to another.
- ❖ **Carefully assess the production capacity and services of your company.** Production as well as human resources will need to be mobilized to meet the volume demand of the Chinese market. In some cases, it will difficult to meet the demands of Chinese customers without jeopardizing activities related to existing customers in Québec.
- ❖ **Sign a confidentiality agreement.** It is crucial to sign a confidentiality agreement with your prospective partner to protect the confidential information that will be disclosed, such as trade secrets and intellectual property. During the negotiation period, we recommend to enter into an exclusivity agreement to preclude your partner from dealing with competitors.
- ❖ **Obtain a corporate seal for the Québec company.** In China, the corporate seal must be affixed to contracts in addition to the signature of a designated representative. This practice is rather obsolete in Québec.

- ❖ **Protect intellectual property.** Chinese trademark and patent practices operate on the principle of “first to file.” It is therefore in the interests of a Québec company to begin the patent and trademark registration process before entering the Chinese market. This recommendation applies not only to companies wishing to establish a presence in China but also to companies manufacturing products in China that are solely for export. Registration of intellectual property can be done in three separate territories: mainland China, Hong Kong and Macao.
- ❖ **Select the English version.** Generally speaking, contracts with the business partner will be written in English and Chinese. It is recommended to provide in the contract that only the English version shall prevail. However, under Chinese law, for certain contracts such as employment contracts, the Chinese version shall prevail over the English version.
- ❖ **Opt for arbitration.** For dispute resolutions, it is more effective to resort to arbitration than to the courts. However, to resort to arbitration, it is necessary that such a remedy be provided in the contract. The China International Economic and Trade Arbitration Commission (CIETAC) is one of the preferred options for foreign investors.
- ❖ **Obtain a Chinese visa.** Before leaving for China, do not forget to obtain a Chinese visa for commercial business. The visa application must be accompanied by a letter of invitation from your Chinese business partner.
- ❖ **Travel frequently to China.** The Chinese attach a great deal of importance to interpersonal relationships and prefer to negotiate in person. Once a relationship has been well established, they will be more willing to discuss business with you. So be prepared to travel frequently to nurture your relationships and to fully understand the culture.
- ❖ **Have your own interpreter.** To facilitate discussions and avoid misinterpretations, it is recommended that you hire your own interpreter who is familiar with the local culture and who can comfortably negotiate in Chinese.
- ❖ **Benefit from the services of a Chinese lawyer.** Chinese law is constantly changing. It is imperative to consult a Chinese lawyer who will work together with your Québec lawyer on your business project in China.

As member of the TerraLex® network, LRMM has an extensive global network of legal advisers enabling it to meet the needs of its customers and to serve their business interests around the world, including China. Do not hesitate to contact us so that we can help you make the leap to the Middle Kingdom!

The content of this newsletter is intended to provide general commentary only and should not be relied upon as legal advice.

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