

Chinese Perspectives on Long Term Contracts

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Key points

1. A combination of philosophies informs the Chinese approach to negotiation, including the Maoist bureaucrat (promoting national interests), the Confucian gentleman (preferring cooperation to conflict) and the Sun Tzu strategist (continuous and strategic bargaining).
2. In China, contract law is largely sourced from the Contract Law of the People's Republic of China (1999) and the Economic Contract Law of the People's Republic of China (1981) (China having a civil law system, in contrast to Australia's common law system). Chinese contract theory bears many of the hallmarks of relational contract theory rather than classic contract law as understood in Western legal systems.
3. There are several levels of legislative and bureaucratic regulation which should be considered when participating in projects in China. Broadly speaking, parties must comply with a variety of laws sourced from a combination of the applicable legal codes, regulations prescribed by the relevant government ministry, and specific directions issued by various levels of Chinese bureaucracy.

A Brief History of Chinese Contract Law

The beginning of the 20th century saw the first steps towards the reform of the Chinese legal system.¹ In 1907, a Codification Commission was founded and charged with the responsibility for reform. With the overthrow of the Qing Dynasty, work stopped on the draft and only recommenced in 1912 after the proclamation of the Republic of China. A draft Civil Code based on German and Japanese civil codes was produced in 1925, and in 1928 the Yuan legislature established a Civil Law Commission with the mandate to finish the draft, which included a chapter on contracts. The

¹ Decree of 1902.

This is a preview. Not all pages are shown.