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Interview for Khabar 24 TV channel: "Minimization of risks when concluding contracts with Chinese counterparties"

GRATA International Partner, Head of the China office, Mrs. Gulnur Nurkeyeva, gave an interview to the Kazakhstani national television channel Khabar 24. During the interview, Mrs. Gulnur Nurkeyeva shared the insights on how to minimize the risks when concluding contracts with Chinese counterparties.

The Beijing office of GRATA International Law Firm often receives requests for legal assistance in the recovery of paid funds by Kazakhstani companies to Chinese suppliers, due to the fact that the supplied batch of goods was of poor quality or, in some cases, was not delivered to the buyer at all.

There are cases when the buyer finds the necessary product on the marketplace such as <https://www.alibaba.com>, <http://aliexpress.com/>, or <http://www.made-in-china.com/>, but then the buyer is contacted by an organization that claims to be a manufacturer and will be able to provide a discount only in case of a direct conclusion of the contract, bypassing the marketplace. Practice shows that in most cases, such offers are falsification aimed at generating income, and the so-called "manufacturers" have no affiliation with the suppliers registered on the marketplace.

Concluding contracts through marketplaces does not guarantee the quality of the purchased goods, but it does provide the possibility of subsequent settlement of the disputes over the quantity and quality of the goods, and allows to avoid the conclusion of the contracts with fraudulent companies. Surely, this method is applicable only for contracts involving small amounts.

When it comes to significant amounts of supplies (for example, over USD 100 000), and it is truly necessary to directly conclude a contract with the manufacturer, it is recommended to take the following factors into account.

It is important to take into account the peculiarities of Chinese characters and conclude contracts in at least two languages, one of which is Chinese.

For example, the arbitration award was issued in Kazakhstan regarding the Chinese Agricultural Holding (Holding). As it turned out at the stage of the recognition and enforcement of the arbitration award, the Holding could not act as the defendant in the case, since it had not entered into any contractual relationship with the claimant.

The Chinese company, which had entered into a contract with the claimant and received payment, has the same transliteration of the name as the specified Holding, but consists of different characters. Translations of the title documents and a copy of the extract from the unified state database of the actual Holding were provided for the conclusion of the deal. However, the deal was concluded by a fraudulent company specially created for these purposes with an identical name.

This example demonstrates that in China it is very important to take into account its linguistic peculiarities. Due to the writing system based on hieroglyphs, there can be thousands of different companies with identical phonetic names. For instance, the Chinese name of Volkswagen Group is Dazhong (Da Zhong), wherein the sound "Da" can be expressed by 77 different hieroglyphs (大, 打, 达, 搭, 答, 哒, 沓, 瘩, 塔, 奘, 鞞, 烜, 拏, 揸), and the sound "Zhong" by 84 different hieroglyphs (中, 种, 重, 终, 众, 肿, 忠, 衷, 種, 恫, 汝, 盅, 殁, 媪). Therefore, the name of the company can be expressed in countless combinations, and each of these combinations will be considered legally valid in the transliteration of title documents and contracts, resulting in the same name - Da Zhong.

In this regard, measures should be taken to verify the counterparty at the contract conclusion stage. The first step is to request the certificate of state registration of the Chinese supplier company, which has a unique company identification number.

In China, there is a National Enterprise Credit Information Publicity System, similar to E-Gov in Kazakhstan. On the website <https://www.gsxt.gov.cn> a potential buyer can verify:

- ▶ the presence of a business license;
- ▶ registration number;
- ▶ type of activity;
- ▶ information about the authorized capital;
- ▶ information about the current status of the company;
- ▶ legal representative;
- ▶ date of establishment;
- ▶ period of business activities;
- ▶ information about shareholders;
- ▶ information about subsidiaries;
- ▶ information about pledges;
- ▶ information about trademark registration;
- ▶ information about administrative penalties.

It is necessary for the supply contract to be signed by the legal representative indicated in the certificate of state registration or by a person under a notarized and legalized power of attorney by the Embassy of the Republic of Kazakhstan in the PRC. It is recommended to request copies of documents that confirm the identity of both the legal representative and the authorized person.

It is also necessary to check whether the supplier company has participated in legal proceedings as a defendant, which can be verified on the following websites <http://zxgk.court.gov.cn/>, <https://wenshu.court.gov.cn/>. These websites are similar to the judicial cabinet that operates successfully in the Republic of Kazakhstan.

Our law firm was contacted with a request to represent the interests of a Kazakhstani buyer of medical masks and PCR tests. The defendant was indeed registered in China, but according to the database of court cases, there were 125 court decisions against the defendant. Thus, even in case of a positive court decision, the decision on the Kazakhstani client would become the 126th in line for execution. As a result, the likelihood of the actual execution of the decision was reduced to zero. In such cases, there is no economic feasibility for Kazakhstani companies to bear legal costs in China.

There is also a possibility that the potential supplier is at the stage of bankruptcy. The company's status in relation to liquidation due to bankruptcy can be checked on the website <http://pccz.court.gov.cn/>.

Other means of verification involve checking of the establishment date of the website of the potential supplier on <http://whois.domaintools.com/>, as well as on the following websites: www.tianyancha.com and <https://www.qichacha.com/>.

We hope that this information will help Kazakhstani companies to minimize risks when entering into contracts with Chinese suppliers.

The interview of Mrs. Gulnur Nurkeyeva can be viewed at the following [link](#).

Practice areas

[COMMERCIAL CONTRACTS](#)

Locations

CHINA

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