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Those who adopt the approach of “learn to swim by swimming” in doing business in China normally drown. Careful planning can greatly reduce the risk of abject, embarrassing failure — at least most of the time.

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Many consultants seek to persuade us that success or failure depends on an appreciation of Chinese culture. Indeed, the economic realities seem to take a backseat to the ability to bestow the right gift and drink copious amounts of alcohol. Is this really the case or is it a bit of a con? Also, are all contracts simple in China? What are the potential pitfalls? Finally, is “guanxi” everything that it is cracked up to be — do those who have it really broadcast it to the world?

2. Picking the Right Vehicle for the Siege

A wise man¹ once said, “*As you know, you go to war with the army you have, not the army you might want or wish to have at a later time.*” Well, maybe it is better in such cases to just not go to war. In any event, a crucial decision for managers formulating a China strategy is to pick the right means of entry. Traditionally commentators have concentrated on the classic trio of joint ventures, WFOEs and representative offices, but there are alternatives.

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1. Donald Rumsfeld.

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The greatest single reason for failure in China is the tendency of some foreign managers to overestimate themselves and underestimate the competition and difficulties of doing business here. Although there is no guarantee, some introspection, assembling of an in-house and external project team will greatly reduce the risk of a shattering disaster ... well, mostly.

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INTRODUCTION

"In China ... everything is possible ... nothing is easy."

— China expatriate manager

The company was simply the most non-compliant company I had ever seen in my 12 years of working as a corporate lawyer in China.

The client was interested in acquiring a majority stake in a company manufacturing plastics near Wenzhou. We had been requested to carry out due diligence in respect of the company.

The basket cases in China can normally be identified as soon as you enter the factory¹. The factory had smoke billowing out of its smokestacks and an unusual, unnatural green oozed out of the cement. The employees were either asleep or sipping tea from Nescafe glass containers. Unlike the client, I had few expectations in respect of the target and I had only been there for half an hour.

In any event, the due diligence report was prepared and I was subsequently asked by the client to present the findings to the business development group.

The findings were brutal. Basically, the legal shareholders were not the same persons with whom the client had been negotiating the acquisition. Most of the assets were in the name of different, unrelated companies. Although many Chinese companies have compliance issues, this company was actually being sued by the local environmental bureau — at the same time when the client's business development manager was heralding the target's "incredible connections" with the local authorities.

Perhaps the defining result of the due diligence was in respect of human resources. In a bid to obtain extremely lucrative preferential tax treatment, the company officially employed a few hundred handicapped

1. Indeed as can the location of the toilets.