Inheritance of Corporate Shares in a China Company (II)

Description

In the first post regarding inheritance of corporate shares or equity interests in a China company, we have discussed the general procedures of completing such an inheritance.

In this second post, I will specifically address the issue of inheriting the corporate share estate left by a foreign national who is a foreign investor in a foreign invested company which may take the form of Sino-foreign equity joint venture, Sino-foreign contractual joint venture or wholly foreign owned company. Basically the scenario is where foreigners (the heirs or legatees or testamentary trustees) seek to inherit the shares or equity interests bequeathed by the late foreign investor in the foreign invested company.

So Can a foreigner inherit shares in a foreign invested company?

One shall take note that the China Company Law is a general corporate law regulating the common issues of corporate entities, and there are other specific laws in China that are promulgated to regulate foreign investments in China. So the inheritance of corporate shares in such Sino-foreign joint venture companies shall trigger the application of both the general company law but also the special foreign investment laws.

Shanghai Landing Law Offices

The coordination between China Company Law and foreign investment laws is addressed in Article 217 provides:

> Foreign invested limited liability companies and companies limited by shares shall be governed by this Law, unless foreign investment laws provides otherwise.
>
> ??

The three laws/acts regarding foreign investments have no clauses regarding inheritance of shares in those three foreign investment forms (as mentioned above), so the inheritance provision in China Company Law shall apply, which means the shares or equity interest in foreign invested companies is inheritable by the heirs of the deceased shareholder.

But it is not the full picture.

Unlike domestic companies, in the course of setting up a foreign invested company, before concluding the articles of association, the parties shall first enter into a shareholder agreement which is not a required document for incorporating a domestic company. For this reason, a foreign invested company (esp the Sino-foreign joint venture companies) is more a contractual creature than domestic counterparts.

In addition to the contractual feature of foreign invested companies in China, the change of shareholder in a foreign invested company entailed the approval from China foreign investment

authority as part of the overall approval system related to foreign investment in China before the new round of reforms on foreign investment starting from the introduction of free trade zone in China back in 2013.

Indeed in one of the lower-level regulation (see more for the hierarchy of China legislation) promulgated by foreign investment ministry and company registry ministry back in 1997, the inheritance of shares in a foreign invested company is addressed as follows:

Where an inheritance takes place in regard of shares in a foreign invested enterprise, if the other investors in the company don't agree on the continuation of the enterprise operation, the parties may apply to the approval authority for terminating the original shareholder agreement and articles of association of the company. Upon termination thereof, the recipient of the shares shall be entitled to claim residual assets of the company; if the recipient of the shares doesn't agree on the continuation of the business operation, other investors upon consensus may acquire the shares in question or procure the same to be acquired by a third party.

Apparently, the regulation allows the inheritance to be effected subject to the approval by the foreign investment authority and subject to the provision in preceding paragraph.

With the reform on foreign investment administration system, China has made it easier for foreign investors to set up companies in China by removing or transforming approval system into filing regime where the authority accepts the change of shareholders so long as the required documents are in order.

Shanghai Landing Law Offices

Date Created
March 2018
Author
admin