

acquire industrial lands in China, take Shanghai as example

Description

Foreign investors that wish to shift their manufacturing base to China will be very keen to know how the industrial land can be obtained in China. A side product of buying instead of leasing industrial land is that over time the land will for sure appreciate in value. In our law firm, lawyers representing different clients often post information regarding purchasing industrial land in Shanghai. Shanghai has already seen a shrinking industrial land available for market. Just this April, Shanghai local land bureau has launched new campaign in sorting out and further managing its precious land in order to make available more land for construction.

Industrial land used to be loosely managed by local governments and very often was used a tout for attracting investors. Ever since the introduction of China Property Law, lands used for industrial purpose shall only be supplied through public bidding process. National land administration minister has stepped out rules guiding on the sale of industrial land through public bidding approach. Legally speaking, local land bureau may sell or grant the land use right to investors by way of tender, auction and listing. In practice, listing is more commonly used throughout the country.

1. Public Announcement of Planned Granting of Land Parcel

Once the local land department wants to grant the land use right of a certain parcel of land, it shall, as required by regulation, put up an announcement of the planned granting twenty days (the “**Announcement Period**”) in advance prior to the actual bidding period. During this advance notice period, prospective buyers may request materials from and raise questions to local land department.

In the announcement, the boundaries, area/size, types of industrial activities allowed (for example, medical equipment, wind turbines, general motors etc.), plot ratio, greening ratio, investment intensity, construction density etc. will be stated.

2. Posting Security Money

This security can be posed in cash or in the form of bank guarantee. Foreign investors may pay the security in four currencies, namely, USD, Euro, Japanese Yen and Hong Kong dollars.

The amount of security money varies from parcel to parcel in light of their values.

3. Submitting Bidding Application Forms

Once the investor decides to buy the land use right, it shall apply to land department by filling certain forms and submit certain materials which generally include:

(1) application form in which the foreign buyer (or foreigners in the case of joint bidding by several investors) shall indicate that it will set up a new Chinese company to sign the future land use right grant contract if it successfully bids for the land. In the case of joint bidding by several investors (composed of foreign and Chinese investors or of several foreign investors), it shall be indicated in the application

form that what percentage of each participant holding in the land which ratio must be the same as the shareholdings in the future company to be set up by these investors.

(2) incorporation certificate indicating that the foreign buyer is in good standing;

(3) power of attorney in the case that the foreign investor entrusts an agent to bid on its behalf, together with the identification information of the agent.

It shall be noted that these documents sent from abroad into China shall be notarized locally and authenticated by Chinese consulate in the home country of the foreign investors, which could take some days to finish.

4. Bidding Period

As required by regulation, the period for public bidding shall not be less than ten days and in practice, local governments will generally give ten day bidding period (the “**Bidding Period**”). During the Bidding Period, buyers will use the bidding machines to bid for the land. Price increment will generally also be pronounced in the Announcement.

On the morning of the last day of the Bidding Period, the bidding host or auctioneer will announce the best bidding price. Upon that announcement, the host will ask whether anyone will be willing to make a greater bid. If yes, the live auction/bidding on site will begin till the best price is determined.

At the end of the day, the final successful bidder will sign a written confirmation of the deal on site, which is binding on both seller and buyer.

5. Conclusion of Land Use Right Grant Contract

Successful bidder shall afterwards enter into the formal land use right grant contract with local land bureau. Foreign buyer shall conclude this land contract within three months in which the foreign investors shall set up their project company on the land. The contract cannot be directly concluded by the foreign company and cannot be concluded in the name of the project company. The said three months can be extended upon consent of local land bureau.

6. Breach Liability

If the final bidder refuses to sign the written confirmation of the deal or refused to conclude the land use right grant contract, it will be deemed as a breach of contract, which will result in penalties including forfeit of security money posted, and prohibition of participation in similar land bidding in Shanghai for three years.

Before we close this post, it will be helpful for foreign investors to understand what the industrial lands are.

The answer generally lies with local zoning codes. For example, in Shanghai's Technical Regulation on the Administration of Municipal Zoning, industrial lands are defined to be lands used by industrial and mining enterprises for manufacturing houses, storage and ancillary facilities and are further classified into three categories based on the level of pollution of the manufacturing activities.

In practice, land used for warehousing is also deemed to be industrial land.

It is worthy of a good note that land used for scientific research (in opposite to manufacturing activities) is not regarded as industrial land but belongs to the “education and scientific research and design land” category. Literally, the current laws and regulation do not require the land used for education and scientific research and design purposes to be granted by way of public bidding. So we notice that on the website of Shanghai local land bureau, a parcel of land in Pudong New Area is put up there for sale through private agreement whilst it is made clear that if there are more than one prospective buyers, the land will be granted by way of public bidding just as in the case of land for industrial purposes.

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