Land Regulation Framework in China

Description

1. types of land
According to the Land Law of the Peopleâ€™s Republic of China, effective as from January 1, 1999 (the â€œ1999 Land Lawâ€•), land in China is basically categorized into three kinds, namely, agricultural land, construction land and unutilized land. The agriculture land refers to those directly used for agricultural production, including arable land, forest land, pasture (grass) land, water areas, etc., and construction land refers to those used for building, structures and facilities both in urban and rural areas and the rest is the unutilized land to be tapped by the offspring.

The above categorization is based on the nature of the land use and there is another equally important classification of our land based on who owns the land. There are only two owners of the land in China, one is the state and the other is the collective, a heritage of the trial by our people of socialism which preached public ownership depriving of private any form of private ownership. Here, the collective refers to the group of people in certain area of the rural area who are regarded as a whole at law entitled to own land in that area.

By the way, the word â€œownershipâ€• as used herein means the absolute (subject only to law) right a person can have against certain any piece of property, very much similar to the concept of fee simple absolute estate in the common law family.

Shanghai Landing Law Offices

2. regulation of land use
Use of land is tightly regulated in China. At the state level, the Ministry of Land Resources has worked out and maintained a general land planning program encompassing all the land nationwide, and accordingly the local governments from the provincial level all the way down to city to county and finally to township also maintain their respective land planning program in respect of land in their respective territories in compliance with and subject to immediately higher program. Such programs will basically decide on how much land shall be reserved for agriculture use and how much for construction purposes and even on the nature of use (i.e. for growing crops or for office building or for utilities etc.) regarding a certain piece of land.

It shall be noted that except for the land use planning program effectuated by land resources departments, there is another type of land use regulation that is more relevant to most foreign investors, which is, as existing in most western states, zoning code maintained by the city zoning department. While the land use planning program covers every corner of land in China, zoning plan is only related to part of land of a city or municipality. Zoning plan tends to regulate the use of construction land with heed being given to what kind of building (office, tourist, manufacturing etc.) to be erected on a certain piece of construction land and what plot ratio and density of development concerning such piece. In most cases of foreign investment, zoning law may more directly affect their investment.

However, only construction land in urban area is available to be obtained for housing and other industrial development and the construction land in the rural area (owned by collectives) is largely of

little alienability for industrial development except that such rural construction land is expropriated by the state and converted into state-owned land and then put to market for development. Such expropriation as schemed in the land use planning program takes place every year as Chinaâ€™s industrial progress has raised huge demand for construction land.

3. Obtaining construction land in China
As mentioned above, land in China is either owned by the state or by the collective and only construction land in urban area is available for industrial development. Therefore, investors, domestic or foreign, can only obtain the right to use rather than own the land.

For a long period of time, land can be obtained by applying to the land bureau which would in turn arrange land for the applicant upon private negotiation regarding the price and other contents without going through any public bidding process. From the year of 2002 when the Ministry of Land Resources promulgated rules governing the bidding and auction of land to be used for certain uses like commercial, tourism, housing etc., and however before that, cities like Shanghai have begun their practice of selling land use right through tendering and auction.

With the new Property Law coming into force on October 1, 2007, virtually all land will have to be sold through tendering, auction or listing, as provided for in Article 137 thereof which set forth: â€œConstruction land use right may be created by way of granting or allocation etc..

Industrial, retail, tourism, entertainment and housing land and other commercial land and land with more than one person intending to use it shall be granted by way of public budding processes such as tendering or auction.â€•

Shanghai Landing Law Office

Granting of construction land use right means the sale of construction land use right by local governments on behalf of the state to land users for specific purpose and for certain period of time in consideration for land grant fee.

According to the regulation promulgated by the state council in 1990, the granted period of time for using a certain piece of land varies in light of the specific use intended for the land, as shown below:

Residential land for 70 years;
Industrial land for 50 years;
Educational, technological, cultural, health or sports for 50 years;
Commercial, tourism or entertainment for 40 years;
Multi-purpose land or other land for 50 years.

Date Created
November 2011
Author
admin