Be a bit adventurous when making investment in China

Description

For any foreign investors initially making foreign direct investment in China, it must be a real adventure and challenge as China is a country with unique history, culture that are alien to any newcomers from outside of China.

As always till now, we as legal advisors for foreign clients, esp, those relatively big companies with serious commitment to Chinese market, advise our clients to abide by Chinese laws and regulations when they conduct businesses in China. Only in this way can foreign investors protect their interests because foreign investors, when they are in compliance with Chinese laws, can fend off uninvited interference and unreasonble demands from local governments and can be in a much better position when there is a dispute with any other parties. For those relatively big investors, it is always their best policy to be honest with Chinese laws.

However, for relatively small corporate investors or individual foreign investors who are not easily captured by the radar of local governments, they may and can be a bit more adventurous when making their investments in China. Here, by “being adventurous”, I mean they may not have to strictly comply with Chinese laws and regulations which are very often too much for small businesses. It is true, as many put it, that a lot of businesses will simply die if they observe each and every Chinese laws and regulations earnestly.

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In practice, from my experience of advising and helping foreign investors in Shanghai, quite a number of such adventurous stories have proved to be successsful, and have prompted me to write this article.

1. Purchase Real Properties in Shanghai

From 2006, China has come to restrict foreign buyers from purchasing Chinese real estate in a bid to rein in the runaway property market. In Shanghai, local government has stepped up clear rules sanctioning purchases of properties in violation of such restrictions. Many are daunted and stopped buying. However, there are still people including foreigners looking for ways of skipping the restrictions. People who have ventured to buy properties should have gained a nice return on their investment as Chinese property prices rocketed up again in the year of 2009.

Even now it is still possible for unqualified foreigners to buy real estate in Shanghai, like the recent buyer from Singapore who has just closed a purchase of luxury apartment in the XinTianDi area.

2. Open Catering Business in Shanghai

Shanghai is home to almost all kinds of foods in the worlds. Catering businesses are prospering in this metropolis city. Many of them are small businesses indeed, but still very profitable.

It is a complicated and lengthy process to set up a legal catering business in China esp by foreign investors. Back in 2011, I helped two foreigners set up an Italian style restaurant in Shanghai. Instead

of following China's foreign investment regulations, the two clients determined to use a Chinese friend's name to set up the business entity in order to expedite the process as it takes less time to set up a domestic company. Further, in order to pass strict scrutiny by governmental departments, they resorted to the very Chinese ways of doing business by taking an advantage of some connections with the governments and as a result, they managed to obtain the desired licenses that were otherwise difficult for them to get. Their business has been doing very well making millions of RMB since then. They would otherwise not be able to do the business at all if they chose to be conservative and yellow-bellied.

By the way, the two clients are of course expats that have been in China for quite a few years.

Just recently, another client from Australia who has begun his snack chain business in Shanghai decided to lease a business premise despite the apparent flaws in the leasing (involving a middle "landlord") as he believed that that is a good business vending place and it is worth to take the risk to roll out his business.

3. Dormant Investors

Dormant investment is quite common in practice in China where a foreign investor use a Chinese person's name to set up and operate a business that is not legally allowed to be engaged by foreign investors. The risks associated with such dormant investment arrangement can be enormous, despite that there is generally a contract or agreement between the dormant investor (foreign party) and the registered investor (Chinese party).

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There are many reasons for a foreign investor to use the dormant arrangement among which is in particular that the business is not legally accessible by foreign investors, either restricted or prohibited. On the other hand, because of such restrictions or prohibitions, there is very often big potential therein for foreign investors to make money. Given this backdrop, only a few good risk-takers may dare make the venture.

It is quite interesting to note that businessmen from Hong Kong, Taiwan (people from there are subject to foreign investment rules in mainland China) and Singapore and other South-east countries seem to be more willing and ready to be adventurous in terms of playing with Chinese laws and regulations. In part, it is because that those people are somehow more familiar with Chinese culture and understands Chinese society better than people from other parts of the world.

In conclusion, what I am trying to say is that foreign investors esp small investors may have to be bold when doing business in China in order to achieve greater success. But it shall be bore in mind that I am not advising foreign investors to think little of Chinese laws and regulations. It is the investor's duty to seek professional legal advice about the consequences of their conducts when they are ready to go venturous here in China.

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