Using rural lands for industrial activities in Shanghai,China

Description

A client came to me with a question regarding the use of a rural land in the suburbs of Shanghai.

The client has set up a wholly foreign-owned company in the outskirts of Shanghai back in 2001, engaged in industrial manufacturing activities. Instead of obtaining the state-owned land use right, the WFOE ventured to take up a site with existing building and facilities. After heavy investment on the premises, the company has not recovered its invested money. However, with Shanghai getting more and more concerned with its own pollution situation, local government had signalled that client's business is not the type of business that is welcomed any more, and they wanted the client to moved to other places.

The client wanted to understand where it is standing in such a situation.

I. Rural Land cannot be Leased for Industrial Construction under National Laws

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China has enforced its most stringent rules in administering its land with a view to keeping sufficient arable land to support the world's biggest population. To avoid reckless waste of land in the rural areas, China Land Administration Law has made it clear that construction projects shall only use state-owned land. Rural collective-owned land (referring to land owned by farmers organizations) shall only be used for construction activities after being converted into state-owned land by way of state expropriation.

However, the China Land Administration Law has also allowed limited access to use of rural land for the following construction activities:

(1) residential houses for farmers of that certain farmer collective;

(2) setup of local village-township enterprises invested mainly by farmer collectives or farmers supporting agricultural production;

(3) rural public facilities;

(4) such land is transfered to others as a result of bankruptcy or merger from original users.

Other than those, rural land cannot be used for construction activities, in particular, as industrial operation premises and manufacturing sites.

The same land law also declared that rual land cannot be LEASED for non-agricultural constructions. This provision has served as good legal ground for courts to invalidate leasing agreements often causing substantial loss to business operators on the rural land.

II. Buildings on Rural Land can be Leased for Industrial Purposes

While the National Law prohibits the leasing of rural land for non-agricultural constructions, there are no laws prohibiting leasing of legally built buildings on rural land. In practice, there are a large quantity of non-residential buildings and structures on rural collective-owned land many of which were built in the village-township enterprise spree in early nineteen eighties but with proper government approvals and licenses.

Such existing properties cannot be left idle if no longer used. Apparently there are not enough village-township enterprises to make full use of those buildings, so it is reasonable and necessary to allow those buildings to be made use of by other kinds of business entities.

Most importantly, the law has not expressly banned leasing of buildings and houses on the rural land. This is enough to give legal comfort to investors that are keen to use business premises in the rural land because of its much cheaper prices.

In summary, business entities including foreign invested enterprises can lease houses and buildings on rural collective-owned lands provided however that such buildings are legally built with proper title registration.

On the other hand, it shall be noted, nonetheless, such leasing arrangement on rural land can be on the rocks due to the often changing administration team of farmer organization who are in many cases not keen on rule of law.

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III. Breakthroughs and Developments in the industrialized Eastern China

Furthermore, with the rapid industrialization of eastern coastal areas of China including Guangdong, Zhejiang, Shanghai, Jiangsu provinces (in fact the western Sichuan province has advanced substantially in this regard also), the shortage of land for industrial purposes has bottlenecked local economic development. While there are vast rural lands to be converted into state-owned lands paving the way for such lands to be used for industrial activities, the expropriation and compensation work are very difficult to carry out as Chinese farmers are more and more vocal and active in protecting their own rights and interests in their lands. The only possible way is to allow the rural lands to enter into market on parallel with state-owned lands.

Quite a number of provinces have stepped up their local rules of allowing rural collective-owned lands to be directly used by industrial activities. For example, back in 2005, Guang Dong provincial government mapped out its local version in which it allowed rural lands to be used in ways similar with state-owned lands such as land grant, leasing, sub-leasing, mortgage etc, except that rural lands cannot be used for residential property development.

Shanghai is sort of backward in this regard. Only till January of 2010 did Shanghai government drew up its own version of rules in regard of transfer of rural construction land. Under this trial regulation:

(1) Shanghai made it clear that rural construction land can be used in the similar way as of state-owned construction land in terms of transaction method, price and period of use.

(2) rural collective-owned lands can be used for industrial, commercial, tourism purposes except residential development;

(3) subject to two thirds of voting rights of farmer organizations, rural construction land can be granted or leased to users for such terms as not exceeding terms of similar state-owned lands. In other words, rural lands can now be leased for a term of more than 20 years, a limit for leasing term set by China Contract Law. In other words, rural land leasing is deemed as not governed by China Contract Law.

(4) rural land shall enter into the market also through the public bidding system for state-owned lands.

(5) in follow up piece of rules, Shanghai government required that rural construction land shall be granted at a minimum price not less than 70% of base price for similar state-owned construction land.

If you want to know more about this topic regarding using rural construction land for your investment, you may contact the author of post, Jason Tian.

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