

You won't be so lucky every time

Description

I have recently heard a very interesting story from a foreigner who inquired on restriction from leaving China after he read my article about banning foreigners from leaving China.

The enquirer was the legal representative of foreign invested company located in Shanghai. Apparently the WFOE company was poorly operated. For some reasons untold by the enquirer, the WFOE was sued by one of its managers in a labor dispute and was ordered to pay a fat amount of money to the manager. During the court proceeding, apparently the manager applied to court for a decision to bar the legal rep from leaving China. For some reasons, the foreign legal representative did not receive any court order in writing. Instead, he said he received a call from a man introducing himself as a court clerk informing that he was ordered by court not to leave China till the settlement of the case. Despite the warning of that call, the legal rep signed applications for changing the legal representative of the WFOE to a Chinese staff and then he fled China. After more than one year, the guy wanted to come back into China for business. Now he is very worried that he may not come out of China again. He asked me whether he would be stopped at China customs and whether he should come or not.

Ban of exiting China on foreigners is frequently used in Chinese court litigation proceeding involving a party that is a foreigner or a foreign invested company. Given the facts relating to the enquirer, I advised him that it was unlikely that there is any valid order banning you from leaving China. I even told him that the warning call was actually a bluffing call only. The grounds for my advice are (1) as a legal representative of the WFOE, the foreign legal rep is not a party to the dispute, and in such a case, no law authorizes court to restrict the legal representative from leaving China; (2) the foreign legal rep had smartly changed the legal representative of the WFOE to a Chinese person during the court trial proceeding. Therefore, in the enforcement proceeding, the court may only order the incumbent legal rep from exiting China. So there won't be any valid court order banning him from leaving China.

Then the guy did come into and get out of China without any trouble. He called this "unbelievable".

Still ban on foreigners from leaving China serves a serious and effective deterrent to foreigner perpetrators that are subject to court judgment. Foreigners should also be careful of not getting involved in China litigation or arbitration.

There is one area of uncertainty in respect of banning foreigners from leaving China. For example, a Chinese importor sues a foreign exporting company in China court and wins a case. The foreign exporter fails to honor the court judgment. Now if the court learns that the manager or director of this foreign exporting company is in China, can the court issue an order restricting this manager or director from leaving China? This is a quite complicated issue of international law. My understanding is that since the foreign company submits to the jurisdiction of Chinese court in the trial stage, China court should have power to enforce the judgment on this own soil. I am not aware of any such precedent case. If you come to know it, please share it with me.

Two further points for your attention:

1. According to a Shanghai High Court Notice regarding ban on foreigners from leaving China, when the court decides to restrict a foreigner from leaving China, it does not need to notify its decision to the foreigner before taking action. It may just take action at any time by seizing foreigner's passport or other measures.
2. According to a personal friend working in Shanghai Pudong airport responsible for entry and exit, the decision after being notified to China Entry and Exit bureau will be enforced throughout the country. You will not escape the ban anywhere in China.



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