

Important Notes on Cooperation between Chinese and Foreign Entities

In the past, foreign enterprises were mainly focused on making use of China's resources such as abundant labor force and vast market when they made investments in China. But now, more and more foreign companies have integrated themselves into the new wave of restructuring and high-quality development of the Chinese economy, by initiatively participating in building industrial chain, supply chain, and value chain with Chinese enterprises.

Part 1

So, in order to achieve the win-win goal, what should foreign entities pay attention to when cooperating with Chinese entities? Some brief points can be seen below.

1. Check and verify the qualification and credibility of the Chinese entity

The Chinese government has preliminarily established a credit information publicity system for mainland enterprises. It is possible to retrieve information related to an enterprise's registered capital, members of shareholders, and other affiliated companies held by the shareholders as well as records of whether an enterprise has contract disputes or illegal administrative activities on the website. Such information may help when analyzing legal risks of business cooperation and thus guarantee one's legal rights and interests.

2. Find out whether the joint project falls into the negative list for foreign investment in China

If the joint project falls into the negative list for foreign investment in China, it is likely that the project cannot be implemented due to legal or policy reasons.

3. Understand the regulations related to local tax, preferential policies, and foreign exchange

It's important to make clear how to realize profit distribution to the investor.

4. Sign a detailed cooperation agreement

The input, rights and obligations, voting decisions, profit sharing of both parties, and so on during the cooperation should be confirmed and written in the agreement, so as to avoid any unnecessary disputes and protect legal interests.

Part 2

If the cooperation involves any technologies, the parties concerned should clarify the issues regarding the confidentiality of technologies, the prohibition of business strife, ownership of the improved technologies, and so on, and sign relevant agreements or contracts accordingly. Here are some notes on the formality issues of signing a contract.

1. The entity's name on the contract should be identical to the one in the business license.

If the name of the entity is different from the one in the business license, it may be another company. In China, a company name comprises “administrative area + trade name + industry + company type”. An identical trade name can be registered in different administrative areas. For example, while a company named “AB” has been registered in Guangzhou, another company named “AB” as well can be registered in Shenzhen. Although the names of the two companies are the same, they might be two individual ones as their shareholders, business scope, registered capital, etc. could be entirely different.

2. Contract terms have to be fully complete.

Different types of contracts have different terms. The common due terms in each contract should be the subject matter of the contract, breach clause, and settlement of disputes. Besides, the agreements settled by both parties should also be specified clearly on the contract. Only in this way can the parties concerned implement the agreements during the performance of a contract. Meanwhile, in case of any disputes, such terms can clearly determine the rights and obligations of both parties so as to facilitate accountability for breach of contract.

3. The contract should be properly sealed and the eligibility of the signer should be verified.

In China, the legal effect of the external documents of a company is subject to the seal. Therefore, the company seal (official seal or specific seal for contractual use registered with the Public Security Bureau) should be used when signing contracts. If the contract is signed by an individual, the authorization letter issued by the company is required. Otherwise, even signed by a legal representative, the contract will still be deemed as being entered into by an individual rather than a company when disputes arise.

4. Written communication is recommended when both parties have different understandings of the terms during the performance of a contract.

Such communication could be evidence in case of future potential legal proceedings.

I hope this article may help address some of your questions before working here with your partners here in China. Should there be others, please feel free to ask.