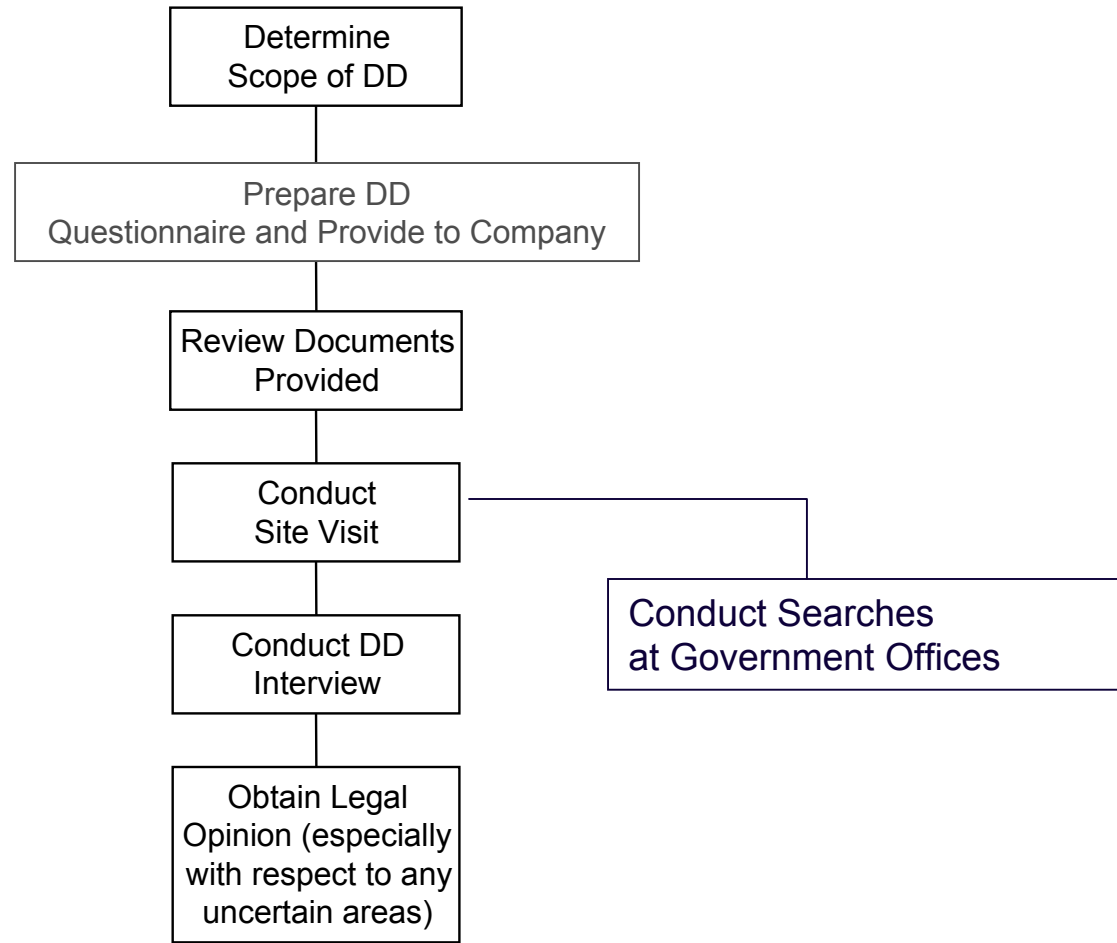


# **Due Diligence In The PRC**

**Leo Seewald / August 2004**

**Goodmans**

# Due Diligence Process



# Matters To Be Covered In The Due Diligence Process

- Constating Documents
- Approval and Licensing Issues
- Corporate Structure
- Accounting Procedures and Assets
- Tax
- Land and Buildings
- Material Contracts
- Labour Issues
- Environmental Matters
- Intellectual Property

# Constating Documents

- Duly established
- Carrying out business in required scope
- Annual business license
- Paid up its capital as set out in approval
- Verification report
- Articles of association
- Joint venture agreement (if applicable)
- Make certain any changes in ownership
- Make certain any changes in corporate documents track through

# Approval and Licensing Issues

- Is the entity approved to conduct the business it is doing?
  - Is the business it is doing covered by the scope of business?
  - Is it permitted to do the business that is set out in the scope of business?
- Special operational permits/approvals/licenses
  - Each locality has different requirements.



# 中华人民共和国外商投资企业

# 批准证书

## CERTIFICATE OF APPROVAL

FOR ESTABLISHMENT OF ENTERPRISES WITH FOREIGN  
INVESTMENT IN THE PEOPLE'S REPUBLIC OF CHINA

电脑编号 310000  
批准号 外经贸 沪合资 字[ 19 ] 04 号  
APPROVAL NUMBER  
进出口企业代码 310060  
CODE FOR IMPORT AND EXPORT ENTERPRISE  
批准日期 一九九七  
DATE OF APPROVAL YEAR MONTH DAY  
发证日期 二〇〇三  
DATE OF ISSUE YEAR MONTH DAY



企业名称 NAME OF ENTERPRISE	中文 CHINESE	上海 房地产 有限公司	
	英文 ENGLISH	SHANGHAI LTD.	REAL ESTATE CO.,
企业地址 ADDRESS	上海市顺昌路		
企业类型 TYPE OF BUSINESS	中外合资企业		经营年限 DURATION OF OPERATION
			伍拾年
投资总额 TOTAL INVESTMENT	壹亿壹仟壹佰万美元		
注册资本 REGISTERED CAPITAL	叁仟柒佰万美元		
经营范围 BUSINESS SCOPE	在批租受让的地块内从事房地产开发、经营，外销商住综合楼的建造、出售、出租，物业管理，并提供配套的服务设施（商务中心、餐饮、停车）及房地产咨询。		
投资者名称（中、英文） NAME OF INVESTORS (IN CHINESE AND ENGLISH)	注册地 PLACE OF REGISTRATION	出资额 CAPITAL CONTRIBUTION	
新加坡 HOLDING 有限公司 LTD. 上海 有限公司 COMPANY LIMITED	新加坡 中国 维尔京群岛	出资2590万美元 出资185万美元 出资925万美元	

副本 1

# Corporate Structure

- Due to historical reasons, many companies have complex organizational structures
  - (a) Make certain the corporate structure is as it appears on the organizational chart
    - All transfers properly effected and approved
    - The corporate entity's legal status is what you have been told
  - (b) Make certain assets are where you are told

# Accounting And Assets

- Make certain title to the assets properly vested in the company
  - (a) Often there is no written contract or record of agreements
  - (b) Assets are sometimes overpriced
  - (c) Charges and other third party rights on assets difficult to search
  - (d) Loans (especially intra-company loans) may not be properly documented
- Review the accounting principles used by the company
  - (a) Often local companies do not use GAAP
- Check foreign exchange approvals are in place

# Tax

- Check to see company has paid all its taxes
  - (a) Corporate
  - (b) Personal
- PRC tax is complicated. Relevant taxes include:
  - (a) Income tax Corporate 30+3% except SEZ (15%-24%)
  - (b) Personal tax (5%-45%)
  - (c) Business tax (3%-20%)
  - (d) VAT (13% - 17%)
  - (e) Consumption tax (3%-45%)
  - (f) Duties
  - (g) Land appreciation tax (on transfers of state-owned land) and capital gains tax (20%)
  - (h) Other quasi-government fees
- Also check for tax exemptions

# Land And Buildings

- Complex area
- Lease agreements (look like purchase and sale agreements)
  - Commercial (50 years)
  - Personal (70 years)
- Check terms of agreement
- Search for mortgages/charges on land
- Buildings
  - Permits
  - Lease or Sold

# Chinese Party Injects Land as its Capital Contribution

Category of Contribution	Documents to be Examined	Purpose of Examination
	Land Use Certificate	To confirm the nature of, and title to, the land as well as the legal validity of the certificate
Allocated Land	Building Ownership Certificate	To confirm the nature of, and title to, the buildings as well as the legal validity of the certificate
	Appraisal Report	To confirm the value of the land
	Urban Planning Requirement	To confirm that the State has no intention to change the use of the land, especially for any public welfare purposes, during the term of JVC
	Land Use Certificate	To confirm the nature of, and title to, the land as well as the legal validity of the certificate
	Certificate Regarding Ancillary Rights to Land	To conform the right to lease, grant or mortgage the land as well as the status of the land-use rights and to confirm if the land has already been leased, granted or mortgaged
Granted Land	Building Ownership Certificate	To confirm the nature of, and title to, buildings as well as the legal validity of the certificate
	Land Grant Contract (including appendices)	To confirm the rights and obligations of the grantor and grantee (or the rights and obligations of the transferee, lessor or mortgagee)
	Appraisal Report	To confirm the value of the land
	Red-Lined Map	To confirm the geographic boundaries and location of the land

# Material Contracts

- As in North America, except special issues:
  - (a) No written agreements
  - (b) Many non-arm's length agreements
  - (c) Agreements not properly drafted

# Labour Issues

- Are labour practices in line with the law?
  - (a) Overtime policy
  - (b) All workers permitted to work?
- Have the necessary contributions been made to the required funds?

# Environmental Matters

- Examine all environmental assessments and audit reports
- Examine all permits
- PRC government often tougher on foreign companies
- If environmental issues are a major part of your business, hire experts to do an assessment

# Intellectual Property

- Check to see if the Chinese party has registered/patented its IP
- Check to see Chinese party not infringing on IP of third parties
- Check the terms of any licenses/agreements to make sure continued use is not vitiated by your transaction

# Legal Opinions

- Obtain a PRC legal opinion to support the due diligence but be aware of two things:
  - (a) PRC law firms will often just adopt the wording your counsel gives them for the opinion which leaves you to question if you can really rely on the opinion
  - (b) Most PRC law firms are not insured for professional negligence