

Translated from English

From: xxxx
Sent: Sunday, 18 October 2009 2:18 p.m.
To: xxx
Subject: Joint Venture Agreement (JVA) and Joint Venture Company (JVC)

收件人: xxxx
发件人: xxxxx
日期: 2009年10月18日, 星期日下午2点18分
主题: 合资公司协议和合资公司

Hello Mr. xxx

xxx 先生,

Thank you for your patience to date, there were some hold ups in the paper work from our end which should be resolved shortly on the above matters.

你好!

谢谢你的耐心等待, 我方在文案上有些耽搁, 但很快就会理清这些事情。

In the meantime, NNNN have appointed a firm of PRC lawyers (Rouse & Co) to review the Chinese documents prepared by you in xxxx. This is a normal step for a New Zealand company and investors to take before committing to a large investment, such as the one we are negotiating with you.

于此同时, NNNNN 已经委托了在中国的律师事务所 (Rouse & Co) 来审核你在 xxxx 准备的中文文件。这是新西兰公司和投资者在进行类似于我们正在商谈的这样大的投资项目前的惯常步骤。

During that review some questions arose which we hope you might be able to clarify so we can get on with the paperwork and the formation of the company.

在审核过程中出现了一些疑问, 我们希望你能给予解释说明, 以便我们可以着手起草文件及成立公司。

1 According to Article 8 of the Joint venture Agreement (JVA) the registered capital of the proposed Joint Venture Company (JVC) should be RMB 100 million and that separately the total investment for the JVC is the same amount as the registered capital (i.e. RMB 100 million).

1. 根据协议第八条, 合资公司的注册资金应是一亿元人民币, 而合资公司的总投资与注册资金一样都是一亿元人民币。

2 Our board has expressed its concern over this level of capital contribution. According to our PRC lawyers, the amount that is proposed does not reflect the normal amount of capital contribution for a foreign invested joint venture at such an early stage, where most of what you indicated to us that land in

2. 我方董事会已表示, 应把这一级的资本投入设置成包括股东贷款和股东自有资本, 比例可以是 40/60 或 50/50, 当然, 除非合资公司计划借贷更多资金 (此项内容还未商谈)。我们在中国的律师认为, 在这样一个初期阶段, 尤其我们处在你认为合资公司要买的土地合同已准备好待签字, 卖主可以移交产权和正确的土地区划的阶段, 所提议的投资额未能体现出外国投资的合资公司的资本投资额。

particular the company is buying is ready to be signed over and the seller can deliver – title, correct zoning etc. Can you confirm the current ownership of the land and who will be the vendor and at what stage the zoning of the land is at for our proposed development to ensure we have immediate right to begin development work. The NZ investors will not agree to any land settlement unless the matter noted are complete.

3 Is there any reason you think why this issue should not be open for further negotiation with a view to agreeing payments in instalments, instead of a lump sum within three months? This would alleviate some of these concerns and from what we understand this is a very appropriate way of introducing capital to the company.

4 In addition, do you have any objection to our board's suggestion that any payments made are in amounts and at intervals yet to be agreed between the parties, to match the progress in the redevelopment of the area, that will be crucial for the success of this investment for NNNN and the other investors.

5 As we understand from our PRC lawyers, NNNN and the other investors should only need to inject registered capital that is just enough for the initial operation of the JVC, and if the JVC runs well and its business expands in future, at which time all of us shareholders can agree upon a plan to increase the JVC's registered capital or loan money to the JVC to ensure the JVC's normal operation. What in your opinion is the necessity of having so much capital tied up in a bank account in Xxxx when the initial operations of the JV may take 6-12 months? I appreciate that you have said in the past that the capital of the company goes to credibility with the Govt. to complete the project, but it seems non commercial to our minds to have such a large amount sitting doing nothing if the land is not ready.

6 While we understand your suggestion that the local Xxxx government required NNNN and the other shareholders to invest a significant proportion of the capital up front to show their commitment to the project, the board of NNNN and the other shareholders

你能否确认目前土地的所有权归谁? 谁将是卖家? 什么时候土地的区划符合我们的开发, 能保证我们拥有直接开工的权利? 新西兰的投资者在以上事项了结之前不会同意任何土地交割。

3 您是否有理由认为, 同意分期付款, 而不是在三个月内一次付清这个问题不需要继续协商? 这将减少我们的一些顾虑。根据我们的理解, 这是公司引入资金的一种非常恰当的方式。

4 另外, 董事会建议所付的款额和付款的时间间隔, 应与该地区开发的进度同步。我们双方还未就此同意。这一点是 NNNNN 及其投资者投资成功的关键。您对我方董事会的建议是否有不同意见?

5 通过我们在中国的律师了解到, NNNNN 及其投资者只需注入注册资金, 即正好够合资公司初始经营的资金。如果合资公司运行良好, 在未来生意扩大, 届时我们所有股东可通过增加注册资金或贷款给合资公司以确保其正常经营的计划。在合资公司的初始经营可能需要 6 至 12 个月的时候, 你认为有什么必要将巨大的资金压在 xxxx 的帐户上? 我赞成你曾说的, 公司的资本成了合资公司完成项目对政府的信用保证。在我们看来, 在土地未准备好时, 将大笔钱闲置, 不是好的生意经。

6 尽管我们理解你提出的建议, 说 xxxx 市政府要求 NNNNN 和其它股东先期投资高额比例资金以示其对此项目的决心, NNNNN 的股东表达了对在如此短的时间里投入这么大的数目, 而没有投资回报保障所带来的财务风险表示担忧。

have expressed their concern at the financial risk of such a large investment being made with their funds over such a short period of time with no guarantee of return on investment.

7 What certainties can the seller of the land provide NNNN and the other investors in terms of the delivery of their obligations under the Agreement over a similar short time line (i.e. within three months of approval).

8 According to Article 9 of the JVA, the proportion and forms of capital to be contributed by each shareholder are as below:

Omitted

9 At what point in our discussions was it agreed that DDDD's capital contribution could include land as well as cash and we would be interested to learn what proportion you believe DDDDs share should be of land and what proportion should be cash?

10 Even if NNNN and the other investors had agreed to such a contribution by DDDD, how do you propose to value of your contribution of land to be injected as capital.

11 What safe guards should DDDD, NNNN and the other investors take to reduce the risk of the over-valuation of such real estate. I recall you told us before of some figures which you felt would reflect the value of the JV allocated land once it was purchased. These details were reflected on a piece of paper you provided to me in English. Is this just your best estimate or what independent figures or explanations should the JV company obtain to back these up.

12 If there is even a slight risk that the overall development of the larger project might fail, how would we mitigate any risk to the JV company in having our development in the middle of an undeveloped area?

13 Our PRC lawyers noticed that following a review of Article 19 of the JVA that the board of directors for the JV would consist of 5 members, two of which to be appointed by DDDD, the remaining three to be appointed by NNNN, WWW and myself respectively. Can you kindly share with us why you

7 土地卖主在同样短的时间内（即批准后三个月内）为 NNNNN 和其它投资者执行协议中规定的义务方面有多少确定性？

8 根据协议第 9 条，每个股东投资的比率和形式如下：
省略.....

9 我们在商谈中什么时候同意 DDDD 的资金投入可以既包括土地也包括现金？我们很想知道你认为 DDDD 的土地股份和现金股份应各占多少。

10 即使 NNNNN 和其它投资者同意了 DDDD 的出资比例，你建议如何估价你作为资本投入的土地？

11 DDDD、NNNNN 及其它投资者应采取什么防范措施，降低对这种不动产定价过高的风险？我记得你以前曾对我们讲过，你认为一旦买入合资公司配给土地，有些数据可以体现其价值。你给我的一张纸上用英文列着这些细节。这仅仅是你的最好的估算吗？还是合资公司应该获取什么样的独立数据或解释来作为依据？

12 即使整个较大项目开发出现失败的风险很小，我们应怎样降低合资公司在—个不发达地区的中部进行开发的风险？

13 我们在中国的律师审核完合资公司协议第 19 条后注意到，合资公司董事会应有 5 位董事组成，其中两位董事由 DDDD 委派，其余三位董事分别由 NNNNN、WWW 和我委派。恳请你指教，鉴于合资公司协议已有明确规定，5

feel DDDD (while holding only 33% capital share) should control 40% of the voting rights of the board, given your apparent entitlement under the JV Agreement to appoint 2 directors from the total 5?

14 The last sentence of Clause 3 of the Letter of Intent (English text) provides that "...the exchange rate is to be calculated as the official exchange rate on the date of signing this contract..", but the original Chinese text is vague in terms of the date and it is unclear whether it refers to "the date of signing this contract", or that the "...the exchange rate is to be calculated as the official exchange rate on the date of signing this contract..". This "date" is later clarified in Clause 9 of the JVA (in both English and Chinese texts) as the date of signing the JVA and the JV constitution. We believe that exchange rate should not form part any agreement and the funds will transfer at the rate at that time.

15 Would you have any objection if the NNNN shares were transferred into a subsidiary company soon after registration. We have advice that this would be a better method to have this investment sitting outside the main company. NNNN would be the sole shareholder in the subsidiary and for all intense and purposes nothing would be different operationally.

16. There needs to a supply/distribution agreement and licence agreement for use of the MudHouse brand/trademarks, and this should be covered in the JVA.

17. Our PRC lawyers also have some comments to make on including a procedure to stop any party slowing down the JV company's operations. I won't go into these now, but will ask them to discuss those comments with you at our meeting as they will no doubt have other drafting points to cover.

I look forward to receiving your feedback.

Best regards

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名董事中你只有权委派两名董事，你为什么认为 DDDD（尽管只持有 33%的股份）应控制董事会 40%的投票权呢？

14 英文意向书第 3 款的最后一句规定“..... 汇率计算按照本协议签订日的官方外汇牌价”，但中文意向书原文中的日期模棱两可，不清楚这个日期是指本协议签订日期，还是指“汇率计算按照本协议签订日的官方外汇牌价”。此处的“日期”在中英文合资公司协议第 9 款中解释为签订合资公司协议和合资公司章程的日子。我们认为汇率不应成为任何协议的分歧点，而且资金应以当时的汇率转入。

15 如果新西兰 NNNNN 由一个独资子公司认购或持有，你对此有反对意见吗？有人建议说，把这笔投资放在总公司之外是个比较好的办法。新西兰 NNNNN 将是子公司唯一的股东。实际上，在经营方面没有任何区别。

16 为了能使用 NNNNN 的品牌或商标，需要签署一份供应和经销协议以及执照协议，应该把这点列在合资公司协议中。

17 我们在中国的律师还建议加上一条阻止任何一方减缓合资公司经营的程序。在此我就不谈这些事情了，但我会让他们在会上和你商谈这些建议，他们肯定会为会议起草些东西。

期待你的意见。

此致

XXXXX