

N2FOCUS

A Publication of The Vernon Law Group, PLLC, the Franchise & Distribution Law Group www.vernonlawgroup.com

Beijing Bar-B-Q

Texan spurs growth by opening restaurant in China

If you're a born-and-bred Texan with roots in the Lone Star State and a passion for Bar-B-Q, it doesn't seem that far-fetched to have a hankerin' to open a restaurant.

But in Beijing, China?

That's what Tim Hilbert did. As the owner of China's first Texas Bar-B-Q joint, Hilbert is in the forefront of investment in the People's Republic of China.

Hilbert's story is the first of many that will be told in the near future of Americans taking advantage of new rules and new opportunities in China.

Already the United States has made China its No. 3 trading partner behind Canada and Mexico. It even ranks ahead of India, according to figures from the U.S. Department of Commerce. But it also is opening up to entrepreneurs and businesses in the hospitality and franchise industry.

Hilbert's story is instructive for others considering taking the leap into this new land of opportunity.



Photo courtesy of Tim Hilbert

'I developed a fondness for food, wine and dining.'

Tim Hilbert,
founder of Tim's Texas Bar-B-Q joint in Beijing, China

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Vernon Law Group brings China N2FOCUS

It seems as if each day's news includes a story on developments in China that cry out: "We're open for business."

No question, when it comes to franchising and business opportunities, China is hot.

With that in mind, we have chosen to focus our attention on the Far East.

Every article in this issue is dedicated to China. We think you'll be interested in our cover story on a Texan who two-stepped his way to Beijing, where he opened a Texas Bar-B-Q joint.



Mark Methenitis

Methenitis is on his game with Law of the Game, and **John Vernon** is betting you will be interested in his article on legalized gambling in China.

So, grab your passport and come along for the ride as The Vernon Law Group brings China N2Focus.



The Vernon Law Group, PLLC
Attorneys & Counselors

What's inside this issue?

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Rolling the dice

Legislation that legalizes gambling in China opens the door for a boom in tourism and significant jump in revenues. In his article on the topic, John Vernon says, 'Watch out, Vegas.'

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Gaming Law

The Chinese government is cracking down on extended gaming by its youth. Mark Methenitis takes on this topic in this installment of Law of the Game. Check it out in this issue of N2Focus.

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Hilbert imports taste of Texas to China

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VLG: How about a quick rundown of your bio?

HILBERT: I'm a Texan. I grew up in Texas, attended college here and graduated with an accounting degree. I spent 10 years around the state working in the oil-and-gas business. Then I switched to the IT business, working for The Continuum/Computer Sciences Corporation (CSC). I spent six years based in Austin, five years in Sydney Australia, three years in Singapore and three in Beijing. I served on the board of directors for three publicly-listed companies in Hong Kong, Singapore and Kuala Lumpur as vice president of finance and held other operational roles for the Asia region of CSC.

VLG: How did you get into the restaurant business?

HILBERT: I always liked cooking. While based in Australia, I developed a fondness for food, wine and dining in the Australian sense of the word - typically 3-5 eclectic courses, copious amounts of nice wines, coffee, etc. Later, after living in China, I realized the Chinese food that Americans are typically exposed to falls way short in quality, and variety of the diverse food readily available in China.

Coming from South Texas, I like spicy foods and decided that an authentic, Sichuan-style restaurant based in San Antonio, perhaps on the River Walk, would probably be a great success.

After 25 years behind a desk and living in airports and hotels, I decided that my calling resided outside of an office, so I started plan-

ning the Sichuan restaurant. I quickly came to my senses that a Texan, with no prior restaurant experience, was ill equipped to start such a restaurant in San Antonio, so the idea quickly morphed into doing Texas Bar-B-Q in Beijing.

My first store began as a partnership with another American who had over 15 years restaurant experience in Beijing. I've now opened up my second store, which features Tex-Mex, Cajun and other Southern favorites.

VLG: Why Beijing and not elsewhere?

HILBERT: Shanghai has more money and is more oriented towards Western ideas and tastes, than perhaps Beijing; Hong Kong, even more so. However, I had lived in Beijing and was familiar with the geography, demographics, markets and people patterns. Weighing the potential benefits of higher revenues in Shanghai versus familiarity and perceived lower risk of entry in Beijing, I chose to stay in Beijing.

VLG: From the inception of the idea to the actual opening of your Tim's Texas Bar-B-Q in China, what were some of the most difficult legal challenges that you encountered?

HILBERT: I used a local law firm to set up my Wholly Foreign-Owned Entity (WFOE), but that didn't completely pave the way. The documentation, and more importantly, authentication of documents, was by far the most frustrating.

Since I was establishing an individually-owned WFOE, I had to provide certified personal records. Certification was a nightmare. In China, with centralized government departments, it is much easier to get authenticated documents about



Photos courtesy of Tim Hilbert

Thanks to Tim Hilbert, Beijing now offers a little taste of Texas.

your own financial or legal records than it is in the United States.

I ultimately solved the problems by flying back to the USA and trekking across Texas, obtaining notarized copies of my personal financial records. The process was expensive and time-consuming.

My passport was another required document, and the U.S. certification process by the U.S. Embassy located in Beijing was not accepted. Instead, all the documents had to be certified by an overseas Chinese embassy.

VLG: Any missteps along the way?

HILBERT: My first restaurant ended in a failed partnership. I will reopen it in its original form, but as sole owner. It has been a disappointing and unfortunate hiccup, but there seems to be a host of failed or dissolved partnerships in the restaurant industry in China.

VLG: What are some of the most important lessons you have learned?

HILBERT: Two lessons: No. 1 – It is an absolute necessity to fully understand all personal dynamics (business vision, family commitments, etc.) and the resulting implications

of partnership business structures. No. 2 – Land ownership/title documentation or corresponding certifications from the landlord are required for licensing and permitting process. Poor, unclear and fraudulent land title is commonplace in China and is a frequent barrier to obtaining proper licensing and inspection. Local companies don't have the same documentation requirements. They are able to freely operate in desirable locations.

VLG: As a businessman in China, what do you think is the most rewarding about the whole experience of bringing a little of Texas to China?

HILBERT: My service staff has enjoyed learning a new style of service and interacting with Western customers. Local people seem to like the food. All my customers love the decorations and music. Most importantly, this is the first time when I have been my own boss, able to set my own agenda and execute my visions. I have enjoyed it.

Gambling in China poised for boom

By John M. Vernon

Founder/The Vernon Law Group

Legalized gambling in Asia is poised to create huge revenues and huge booms in tourism, which in turn means major development for the hospitality industry.

The great success seen in Macau has caused the rest of Asia to re-think what was once an anti-legalized gambling attitude. Moreover, the increase in middle-class residents has allowed more local disposable income, which has continued to fuel the gambling economy.

Macau, which is the other Special Administrative Region of China besides Hong Kong, recently overtook Las Vegas as the No.1 gambling economy in the world, but it is a change that has taken a number of years. Since the laws changed in 2002 to allow foreign entrepreneurs to open casinos, the Macau market has boomed.

Macau's gaming statute relies on a series of concessions and sub-concessions to gaming providers, which are supervised by the Gaming Inspection and Coordination Bureau.

Macau casino operators face a steep tax rate of up to 40% to operate, but the volume of revenue has clearly been enough to prevent the tax from deterring casino operators.

The remainder of China still makes gambling illegal, with recent crackdowns on internet gambling, similar to sentiment in the United States. However, the legislation seems to stand in stark contrast to the history of gambling in China, leaving some to refer to gambling as China's national pastime.

While open or legalized gambling in the majority of China seems unlikely, it is possible that an area like Hong Kong may be granted Macau-like casino rights, but if the rest of the region continues to embrace gambling, the regulations



China goes "all in" for gambling.

in China might change in time.

This new proliferation of legalized gambling means that hotel franchise counsel might need to seek expert assistance as more franchisors could become interested in owning properties with gambling on premises.

Much like the Caribbean, hotel chains that do not traditionally enter into the gaming arena may see current or future opportunities in Asia and decide to pursue the additional revenue gaming has to offer. However, like franchise or international trade law, gaming will continue to be a highly specialized, regulation heavy area where mistakes are not a luxury the client can afford.

Recognized as one of the nation's top franchise attorneys, John M. Vernon has written and lectured on franchising and distribution at conferences



around the world. He has helped U.S. companies expand into new international markets and has guided foreign companies to successful footholds in the United States and Mexico. Vernon's articles have appeared in numerous newspapers, journals and publications. He recently was named to Franchise Times' prestigious "Best of the Best: Legal Eagles" list. John is also an adjunct professor at SMU Law School teaching courses in franchising and distribution law.

LAW OF THE GAME

Gamers beware

Government crackdown on extended gaming in China raises some key issues

By Mark Methenitis

Associate Attorney/The Vernon Law Group

The official Chinese government crackdown on extended gaming sessions by teenage players has begun.

Under the Chinese regulation, users under 18 are allowed to play online as long as they wish. However, after three hours of play, any points earned, for example, experience points in RPGs (Role-Playing Games), are cut in half. After 5 hours of play, no points are earned at all.

How is this system enforced? Game companies are required to integrate a uniform Chinese ID into their system. It would be the equivalent of a game company requiring your driver's license number to register to play. The game company can then know your age and, if necessary, limit you.

Of course, there is always the potential for fraud, such as a kid using a parent's ID number. A company called The9, which is also the Chinese provider for the popular MMORPG World of Warcraft, says it will soon have a tool available that allows parents to see if their IDs are being used. While this is certainly a measure to ensure more security, it seems as if the system will never likely be perfect, short of requiring biometrics or something similarly difficult to circumvent.

There is value of limiting a child's play time, but the role of acting as the limiter will, in the United States at least, hopefully remain with the parents. There is no reason to appoint the government as a pseudo-parent for issues such as these that are so easily manageable by the parents themselves.

Online, it's important to talk a good game

Here's a glossary of some common gamer terms:

- RPG** – Role-Playing Games
- MMORPG** – Massive Multi-Player Online RPG
- FPS** – First Person Shooter
- NPC** – Non-Player Character
- EXP** – Experience Points
- Mii** – Nintendo's avatar system for the Wii console
- Dashboard** – The user interface outside game on Microsoft's Xbox 360 console
- PSN** – PlayStation Network; Sony's online system for the PlayStation 3 and PlayStation Portable systems
- XBL** – Xbox Live; Microsoft's online system for the Xbox 360 and Xbox consoles
- DS** – The Nintendo DS, a handheld system with two screens. The lower screen is touch sensitive.

Software companies, however, might see a benefit to incorporating a similar time-restriction system that the parent can enforce in countries like the United States.

The bottom line is that no technology can ever truly take the place of good parenting. Children can inevitably find ways around most technological or other barriers, but they can't get around a responsible, concerned and observant parent.

Mark Methenitis is an Associate at The Vernon Law Group. Mark represents



clients in matters involving the gaming and entertainment industry. To read more of Mark's thoughts on the industry, visit his

blog at www.vernonlawgroup.com

China rule

U.S. hopes to find 'right balance' in creating dual-use export control

With its new "China rule," the U.S. Department of Commerce believes it might finally have struck the "right balance" with China to create a dual-use export control.

The United States has long sought to encourage China's political and economic integration with the world, while at the same time keeping close tabs and tight controls on U.S. exports and the uncertainty of unwittingly supporting a rapid build-up of the Chinese military. With the Commerce Department's latest guidelines, the United States has taken a significant step in achieving the right balance it has been seeking.

On June 19, 2007, the *Federal Register* published the Commerce Department's updated China regulations, collectively known as the "China rule."

As stated by Mario Mancuso, the U.S. Under Secretary of Industry and Security, the China rule creates the "right balance" and a "model of future cooperation."

The Commerce Department's Bureau for Industry and Security (BIS) intends the China rule to encourage trade with legitimate civil

end-users in the People's Republic of China, while further tightening controls on exports that could assist the Chinese with their military modernization efforts.

Three main issues have been included in the China rule. First, it imposes additional licensing requirements for exports destined for a military end-use in China; second, it creates the Validated End-User program (VEU); and third, it revises the existing End-User Statement requirements by improving the threshold from the value of \$5,000 to \$50,000.

Let's take a look at the potential effects of the VEU and the threshold increase for End-User Statement issues, which are closely related to our clients' business operation.

Validated End-User Program

Based on the China rule, the BIS removed individual license requirements for certain authorized customers in China. Under the "Validated End-User" (VEU) program, certain "trusted customers" in China with a track record of responsible civilian use of U.S.-controlled technology will be able to

receive certain items without individual export licenses. This arrangement should actually and significantly lower the administrative and regulatory burden of exporting to these "trusted" customers.

Currently the VEU program applies only to Chinese companies, with the expectation that it will be extended to companies in India and other countries in the future.

The Commerce Department expects to publish an initial list of approved Validated End-Users as early as July. Sectors likely to benefit from VEU include electronics, semiconductor equipment, and chemicals.

BIS anticipates that a number of Chinese companies that must currently apply for individual licenses to import many items will seek VEU status to eliminate the burdens associated with repeatedly applying for multiple individual licenses.

Based on the China rule, either Chinese companies or exporters on behalf of intended import Chinese companies may apply for VEU status.

End-User Statements

The China Rule expanded the range of items for which U.S. exporters must acquire End-User Statements ("EUSs") from the Chinese Ministry of Commerce ("MOFCOM"). However, the

China rule also addresses industry concern about additional administrative burdens relating to end-use certificates by raising the dollar threshold for obtaining an end-use certificate to \$50,000 (from \$5,000). It is important to note that the value limitation does not apply to the transfers of particularly sensitive items or technology to China, in which case, the exporters or re-exporters shall still need to obtain an EUS.

For the United States, the China rule does two very important things: No. 1 - The rule encourages China's further economic integration with the world trading community by facilitating high-tech exports to companies in China that have a record of using them in a way considered responsible by the United States. No. 2 - The rule hedges against China's military modernization by placing controls on specific technologies, particularly sensitive dual-use technologies that are intended for use in Chinese weapons systems.

In the end, the new regulations provide new opportunities and new challenges for those wishing to trade with China. Those who take advantage of the new regulations to their fullest could see great benefits in cost savings in the near future.

Article compiled by The Vernon Law Group staff.