

Can we set up our own online platform to sell our own products without obtaining approval?

Description

Many foreign investors are aware of the restrictions imposed by Chinese government on foreign investors investing in Chinese telecom business sector, as is stipulated in the *Administrative Provisions for Foreign Investment in Telecom Enterprises*, which leads to the widely used VIE structures in Chinese internet companies listed on overseas exchanges. Further, in the latest version of Chinese *Category of Industries for Guiding Foreign Investment in China* (2011), "online sale" is designated as a "restricted" business for foreign investors, which oftentimes means difficulty for foreign invested enterprises to be engaged in.

As a result, there is a perception that many foreign investors believe that it is necessary for the foreign invested companies to obtain the so called ICP license from China's Ministry of Industry and Information Technology ("MIIT") for operating such an online sale platform even though the online platform is for self-use purpose only.

However, that is a misperception.

According to the *Administrative Provisions for Foreign Investment in Telecom Enterprises*, restrictions on foreign investment are limited to the basic telecom business and the value-added telecommunication business. According to our inquiry made to MIIT, an online platform (B2C) operated by an enterprise selling their own products is not regarded as basic or value-added telecommunication business, and therefore not subject to those restrictions set out in the said Administrative Provisions.

Meanwhile, it is noteworthy that online B2C websites like Tmall and Alibaba and Amazon are however regarded as engaged in the value-added telecommunication business.

Date Created

August 17, 2012

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