Your alternative business presence in China: representative office and branch

Description

While the establishment of foreign invested enterprises seems to be the mainstream option for most foreign investors to make business presence in China, there are actually two other options for that purpose, namely, the representative office and enterprise branch.

1. Representative Office

Dated back to year of 1980, the State Council of China promulgated the Interim Provisions Concerning the Administration of the Representative Office of Foreign Enterprises and later on, a series of regulations have been made in that regard, including local rules as in Shanghai.

A representative office is not regarded as an independent legal person at Chinese law, and therefore its capacity for business activities is substantially restricted. Generally speaking, a representative office is not allowed to engage in any direct business operation which will generate revenue or otherwise brings income, and however, it is permitted to conduct liaison, product introduction, market study, technology exchange etc. in relation to the business of its head office. In practice, a representative office is subject to, among others, the following restrictions:

(1) it cannot directly enter into employment contract with its staff; instead, it has to engage a third-party agent (often designated by the local government) to recruit and sign employment contract with its personnel.
(2) it has no other way to finance its own operation except funding from its head office.
(3) it cannot sell or buy or advertise on public media for products of its head office, nor can it issue tax invoices or receive payments.
(4) the submission of application for establishment of the representative office and the leasing by the representative office of office room shall be handled by a third party on its behalf.

In addition, a representative office has a much shorter life span under Chinese laws. Generally, a representative office will be granted a maximum operation period of 3 years, renewable upon expiration thereof. However, a representative office of a foreign financial institution is given a life period of 6 years, also renewable.

It is note worthy that as a result of national reform of the administrative approval systems, for certain types of foreign enterprises, it is no longer required to be approved by the foreign investment department of the government before filing registration with the industry and commerce bureau of the government. Such enterprises include foreign trade merchants, manufacturers, freight forwarding agents, contractors, consultation companies, advertising companies, investment companies, leasing companies, railway transportation companies and other economic and trade organizations. However, as to other industries not included above, it will be advisable to check out whether there are specific rules in effect regarding the representative office therein.

Investors who hold doubt about Chinaâ€™s investment environment or just attempt to set foot in China

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may initially set up a representative office before putting real money into China.

2. Branch

Foreign enterprises in certain industries like mineral exploration, offshore oil engineering, civil engineering, pipeline and housing construction and installation etc. may set up its presence in China in the form of a branch, which, unlike a representative office, can directly engage in business operation for revenue and profits.

A branch is not an independent Chinese legal person and generally viewed as extension of its headquarter and any liabilities incurred by a branch shall be borne by the headquarter.

While a representative office is not required to have capital commitment, a branch is generally required to have a minimum amount of capital in support of its operation.

The setting up of a branch is generally subject to the approval of the relevant governmental body in charge of the involved industry. It also needs to be registered with the industry and commerce bureau and obtains a business license before engaging in business operation.

You need to check out whether there are specific rules in a certain industry governing the establishment of a branch.

This article does not intend to be comprehensive about the subject matters herein and may not be relied upon as formal legal opinions. If you have any further questions in this regard, please let us know. You may contact us at doroto@163.com.

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