

Add distribution to your current business scope

Description

We were recently approached by a foreign invested manufacturing company asking about how they can legally engage in exporting goods manufactured by other manufacturers in China and importing goods from outside China and sell them to corporate clients in China. In his terms, whether he needed to change the company into a “trading” company.

However, this is not only about trading, but about distribution also.

In China, a foreign invested company doing trading business does not necessarily mean it can do distribution also. This distinction between trading and distribution originates from the legal documents China signed when entering the WTO.

According to Article 5 (Right to Trade) of the Protocol on the Accession of the People’s Republic of China, “Such right to trade shall be the right to export and import goods”, and “All such goods shall be accorded national treatment under Article III of the GATT 1994, especially paragraph 4 thereof, in respect of their internal sale, offering for sale, purchase, transportation, distribution or use, including their direct access to end-users”. From this, it is interpreted that to trade is to export and import only, which does not mean the trader can distribute goods within China.

To fulfill WTO commitments, China Ministry of Commerce has enacted a special regulation for foreign investment in the commerce sector, entitled “Administrative Measures for Foreign Investment in Commerce” (the “Measures”). The term of “commerce” as used in the Measures mainly refers to the distribution activities, including (1) commission agency, (2) wholesale, (3) retail, and (4) franchising. In some related regulations issued by MOFCOM, these Measures are often directly referred to as “distribution rules” for foreign investors.

Foreign invested enterprises currently are entitled to import only those products that are used or consumed by their own businesses and are not permitted to import goods for purpose of resale in China. Instead, these foreign invested enterprises can only sell and distribute their own manufactured products within China. For multinational corporations, the parent company always wants to have their products manufactured outside China sold in China, and it had been demanded by foreign investor community that China open the commerce sector so that multinational corporations can fully integrate their China business unit with their global operation.

With the Measures coming into effect, foreign invested companies are now able to add distribution of non-self-made products to their business scope. Change of business scope of foreign invested companies shall be subject to the approval by the foreign investment department, and shall be registered with company registry authority.

In particular, this distribution right is especially appealing to foreign invested enterprises registered and operated in those bonded areas that are generally barred from distributing products outside the bonded areas. With the business scope changed to cover distribution, these enterprises can now sell

products directly to customers in China but outside the bonded areas, and with such change effected, these enterprises can set up branched in places outside the bonded areas.

For more information regarding foreign investment the commerce sector, please contact the author, Jason Tian.

Date Created

November 2011

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