

## **Setting up a Representative Office in China**

Many firms choose to set up a representative office in order to gain experience and gain a better understanding of the size and potential of the China market. They use the representative office to lay out their long-term goals and oversee their other business operations or JV's in China.

The mission of the representative office is to act as a liaison between the home office and trade organizations or related industries in China. Representative offices often engage in market research and establish contacts with prospective customers and partners. It is important to remember that the representative office is not a separate legal entity. Rather, it is an extension of its parent company.

A representative office may only engage in non-profit making activities. Accordingly, the representative office may engage in any of the following functions: conducting research and providing data and promotion materials to potential clients and partners; conducting research and surveying for its parent company in the local market; liaising with local and foreign contacts in China on behalf of its parent company; acting as a coordinator for the parent company's activities in China; making travel arrangements for parent company representatives and potential Chinese clients; and other non-profit making business activities.

That being said, a representative office is restricted from engaging in the following activities: directly engaging in any business for profit (*i.e.*, it may not receive fees for services it provides); signing contracts or deals on behalf of the parent company<sup>1</sup>; representing any firm other than its parent company; collecting money or invoicing organizations/individuals within China for services or products; buying property or importing production equipment.

### **The Application Process**

Where the parent is engaged in trading or manufacturing operations, the application for the establishment of the representative office should be submitted to the Ministry of Commerce (MOFCOM) or its local bureau at the provincial or municipal level. In some specialized industries (*e.g.*, banking, insurance, legal, accounting, airline, media, etc.) the parent company has to apply for approval from the relevant Chinese government authority with jurisdiction over that industry. All applications for the establishment of a representative office must be submitted through a designated Chinese agent (often known as a Foreign Enterprise Services Company or "FESCO") in the locality where the proposed representative office is to be established. This local agent must be authorized by MOFCOM to handle representative office applications.

The Chinese agent must submit the following documentation on behalf of the foreign investor: an application letter signed by the Chairman of the Board or the General

Manager<sup>2</sup>; head office incorporation documents<sup>3</sup>; an original bank reference letter attesting to the company's financial standing; a letter appointing the chief representative to the representative office as well as the chief representative's resume showing his/her work experience and educational/professional qualifications, copies of his/her identification, passport and photos; and a copy of the lease agreement for the representative office's premises from an approved unit (e.g., a hotel or commercial building, etc.). If the application is approved, an approval permit is normally issued to the representative office within one month after submission of the application. Having obtained the approval permit from MOFCOM, the foreign investor must apply to the provincial State Administration for Industry and Commerce (SAIC) for a business registration certificate, as well as complete other post-registration formalities<sup>4</sup>, within a specified period of time (e.g., usually 30 days).

The registration of a representative office is required in order to lawfully employ Chinese nationals, to open a bank account, to import office equipment without an import license, to import personal effects duty-free, to display signs with the company name, to obtain direct telecommunication lines, or to use business cards that identify the company's presence in China. Additionally, the company's representative would be unable to obtain a multiple entry visa or legally rent an apartment without a commercial domicile registration booklet. This booklet is obtainable only after the registration of the representative office is complete.

According to the SAIC, foreign representatives must register a representative office within six months of establishing a business presence in China. Those who have not obtained approval or have not gone through the procedures for registration shall not be permitted to undertake business operations for the home office.

The failure to comply with these registration requirements shall result in the imposition of a 10,000 RMB fine, and in serious cases may result in the involved party being prohibited from engaging in further business activity in China. The SAIC enforces the above regulations through random checks and through informants in related Chinese companies.

### **Conclusion**

There are numerous benefits related to the establishment of a representative office. Oftentimes, the only service the office serves is to present an image to prospective Chinese customers and partners. The location and furnishings of a representative office cannot be overlooked as the prospective Chinese partner/company, often unable to visit the home office of a foreign company, is only able to judge the viability of a company based on their operations in China. Furthermore, the establishment of a representative office is an effective tool for demonstrating to the Chinese partner/customer their long-

term commitment to the China market.

<sup>1</sup> A representative office may, however, negotiate contracts that are later signed in the name of the home office located outside China.

<sup>2</sup> The application letter should contain, in part, the following: a description of the company's history, business and scope; the names of the Chairman of the Board, the General Manager and directors; the names of its major trading partners in China; its business volume; the proposed name of the representative office; the purpose for setting up the representative office and the scope of its activities; the duration of the office and its chief representative.

<sup>3</sup> Head office incorporation documents include certified copies of the company's business registration certificate, the certificate of incorporation, the memoranda and articles of association, etc.

<sup>4</sup> Other post registration formalities include: registering with the tax bureau; opening a bank account; completing a residence application with the with the local Public Security Bureau; applying to the Customs Administration for permission to import office equipment and daily necessities for use by the representative office and its personnel; appointing a FESCO to recruit local Chinese employees; etc.