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Setting up Wholly Foreign Owned Enterprise in Shanghai

1. Characteristics of a WFOE

Wholly Foreign Owned Enterprise (WFOE), is a limited liability company, the establishment of which is governed both by the Company Law of PRC and Foreign Investment Law of the PRC.

A WFOE can engage itself in approved business activities and issue tax invoices on its own. It is a corporation and a tax resident. All shareholders of WFOE should not be Chinese nationals.

2. Name of a WFOE

The name of the WFOE is governed by "Regulations on the Management of name of Enterprises". Since WFOE is a limited liability company, its name should be in the form of "Name of City + Name of the Enterprise +Industry+ Company Limited ". Accordingly, a company registered in Shanghai will normally bear a name like: Kaizen Consulting (Shanghai) Limited.

There are certain restrictions on the use of company names

- (1) It must be in Chinese;
- (2) Arabic numerals, foreign characters or alphabets are not allowed;
- (3) It should not have content that contradicts national policies, damages social ethics, religions and culture;
- (4) It should not have content which damages fair competition and misleads the public;
- (5) Unless special approval is obtained, it should not contain the following restricted words: China, Chinese, National, State. "International" is a restricted word unless it is used to designate the industry in which the company is operating, e.g. ABC International Trading Company Limited.

Name of a WFOE must be approved by the government before registration.

3. Business Address

A separate business address located in commercial buildings or locations is required as the official address. One address could be used by one company only.

4. Legal Representative

Legal representative is the only representative of the company in Shanghai, appointed by the shareholder(s). Local representative is not required. Normally, if the legal representative does not intend to stay and work in Shanghai for over 90 days (within a year), no work visa is needed. In case that the legal representative is a foreigner and intends to stay in China for over 90 days in a year, work visa is needed.

5. Capital and Shareholders

A minimum of one shareholder, either a corporation or a natural person, who must not be Chinese national, is required. Capital must be of private nature, public offering of capital is not allowed.

China adopts a registered capital system. All registered capital must be paid up in cash, physical assets or intangible assets. If injection of capital is not in the form of cash, valuation by a local "valuation professional" is needed, according to the regulations relating to the particular industry.

"Capital" includes not only registered capital but also promissory loans from the investor, parent company or financial institutions.

If capital is not injected according to the schedule as stipulated by the relevant regulations, business license and certificate may be withdrawn.

6. Director(s)

A minimum of one director. The director could only be an individual and can be of any nationality. A board of directors is not always required. For a small company, the general manager or legal representative is the CEO of the company and shall be treated as having the power of the directors of the company.

There is no residential requirement for the directors.

7. Documents required for application

The applicant should complete "Form for Establishing Wholly Owned Foreign Enterprise" and submit together with the following documents:

- (1) Name of the company to be registered
- (2) Particulars of the shareholder
- (3) Legalised identification documents of the shareholder
- (4) The list of legal representative, director(s), supervisor, financial controller
- (5) Organization chart and beneficial owner
- (6) Amount of investment/registered capital
- (7) Tenancy agreement
- (8) Scope of business

Upon issuance of the Business License, the applicant is required to complete post-registration procedures, including:

- (1) Record Filing with MOFCOM
- (2) Carving of company stamps
- (3) Registration with foreign exchange administration
- (4) Opening of bank accounts
- (5) Registration with the customs (for trading companies)
- (6) Application for work visa (for foreign staffs)

8. Time Required

It normally takes less than 30 days from receiving instructions and full particulars and necessary documents from the applicant to issue the Business License. Thereafter, the Post-registration procedures take less than 30 days.

9. Compliance Requirements of a WFOE in Shanghai

After a FICE is officially registered in Shanghai, it is required to comply with various monthly, quarterly and annually filing and reporting requirements. These filing requirements include monthly tax filing, filing of annual audit report, which has to be issued and signed off by a local CPA firm, filing of annual tax reporting to the State Administration of Tax Bureau and filing of annual report to the business licensing bureau etc. In any case if any of these annual compliances are not handled in a timely manner, the FICE may subject to penalties or at the risk of getting their license suspended or cancelled by the AIC.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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