

Client Case Study (China)

Mid-Cap – High Tech

- Industry: High tech, photography
- Revenue: USD 100-200 million
- Ownership: Privately Held
- Headquarters: USA, NY
- Global offices: 20 worldwide
- Global staff: 201-500 employees
- Presence: Americas, Europe, Asia
- DSA client date: 2016 to present

Background

Founded in 2009 and headquartered in New York, USA, our client privately held and is the fastest growing micro online media agency in the world. With customers from over 192 countries, our client support a creative content marketplace in 20 languages allowing everyone to buy and sell high-quality stock photos, vector images, and videos.

Chinese customers' use of their online marketplace and tools, had gradually become one our client's largest global customer markets. Our client had therefore decided to expand their business into Asia and to set up operations in Shanghai in order to both develop the China market on the ground, and provide strong support and online performance to the Chinese market.

Client issues & challenges

Our client initially sought to identify the most efficient entry market strategy and optimal overall corporate structure, together with professional advice on operational, funding, tax, legal and compliance considerations. However, our client's intended business activities are tightly regulated by the Ministry of Industry and Information Technology ("MIIT") and the Administration of Industry of Commerce ("AIC") in China. This meant that a number of pre-entry decisions would be required in order to both navigate a complex regulatory framework, and select and implement a business model that would best serve their strategy, which is how we began to assist and support this client.

At the time, specific intended online and offline business activities, while more open in some other markets, were restricted for Foreign invested enterprises in China. Other intended activities required specialization licenses to be applied for and issued, which sometimes can be difficult for clients to obtain.

Our client's core business model is its online web platform. Access to their site within China had previously been blocked, and this needed to be addressed, by ensuring proper Internet Content Provider ("ICP") filing with MIIT.

To avoid perceived IP protection risks of hosting their servers in China, our client decided to retain its hosting in the USA, with some technical assistance provided by the HQ to support China operations. Under this structure, HQ needed to license the technology to Chinese subsidiary and receive payments for the technical support and royalties. This meant that it was required to put in place an efficient and compliant process for outbound payments from China. Since the transactions were going to occur between related parties, transfer pricing regulations require to ensure that the pricing under the agreement applies to arm's length principle.

Lastly, as a tech start up, our client was planning to bring a small team focusing on the market development and customers support. To manage the team, the client was looking for an integrated solution for outsourcing of HR, financial and legal compliance support,

Solutions and outcomes

Dezan Shira & Associates (DSA) provided legal and financial advisory services for the client's industry, researching the latest regulations and licensing requirements. DSA also liaised with officials from MIIT and AIC to seek their opinion on the success of the application since the sector is new and regulatory environment constantly changes in relation to the participation of foreign businesses. After a number of discussions with the officers, DSA legal team received a positive

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feedback that the proposed business model can operate with ICP filing rather than entering restricted area of Value Added Telecommunication licensing.

After the client's plans were enacted, DSA assisted with advisory and execution assistance throughout the stages of incorporation the legal entity, including guidance on the key considerations on the corporate governance, funding, holding structure, business scope, and internal controls. This enabled client to put in place straightforward structure.

Further, DSA legal and tax teams helped to put in place an efficient structure for outbound payment including drafting the intercompany cross border agreement in English and Chinese, and register it with local authorities to support transactional and licensing flows between their HQ and Chinese subsidiary. We also assisted with tax advisory and a benchmark study to define the fair market price under the intercompany transactions according to transfer pricing regulations. Our client successfully process monthly payments to the HQ.

After beginning operations, our accounting and HR team guided the process of initial set up in compliance with China GAAP, helping to fill the gap between western and Chinese operating practices. Moving forward, our teams continue to support with overall accounting, banking and tax compliance, HR administration and payroll, which enables our client to focus mainly on the business activities and market development without additional burden of ongoing compliance.

Outcomes for the Client

- Client defined efficient business model for China operations;
- In the process of incorporation all required licenses and registrations were obtained including ICP filing;
- Benchmark Study supporting group transfer pricing policy was completed;
- Client put in place cross border intercompany licensing agreement in compliance with PRC regulations; and
- Initial set up on the financial and HR operations and ongoing maintenance Monthly and Annual compliance and transparency for China operations;

Dezan Shira Services

- Strategic Legal Advisory
- Legal Incorporation Service
- Tax Advisory
- TP Advisory
- Corporate Accounting
- Regular Compliance Review
- Payroll and HR Administration

Involved Specialists and Advisors

- Manager, Legal Service Advisory, E. China
- Sr. Associate, Legal Services, E.China
- Sr. Associate, Tax Advisory, E. China
- Manager, TP Advisory, North China
- Manager, Corporate Accounting, E. China
- Sr. Manager, Corporate Accounting, E. China
- Asst. Manager, Corporate Accounting, E. China