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FINANCIAL ADVISION SERVICES
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STRATEGIC AND COMMERCIAL INTELLIGENCE

SOLUTION FOR SETTING UP A BUSINESS

Practical implementation of a decision to set up in France depends on the investor's strategy and the degree of independence that the French operations are to have from the parent company. Each option creates specific obligations with regard to tax and company law. Temporary solutions cannot be used for too long, or the administration will deem them to be permanent arrangements.

1.Short-term solutions

A foreign company that wants to prospect for business in France and promote its products can start by having a single employee or by opening a liaison office.

1.1.Liaison offices: locations that do not engage in commercial activity

A foreign company may recruit or second an employee in France to represent it through a local liaison or representative office. Liaison offices may conduct only noncommercial operations, such as prospecting, advertising, providing information, storing merchandise, or other operations of a preparatory or auxiliary nature. Such offices are not separate legal entities. They may draw up purchase orders, but the parent company must issue invoices and sign any contracts.

Liaison offices are not permanent establishments with respect to tax laws. They are not subject to corporate income tax or VAT, but must pay certain local taxes and payroll taxes. Liaison offices can only be a temporary solution. If they become lasting arrangements, the tax authorities or the courts may deem them to be permanent establishments.

1.2.Sales representatives

Sales representatives may either be employees of foreign companies or traveling sales representatives (VRP).

Traveling sales representatives are sales intermediaries employed by one or more companies to call on their customers in the representative's sales territory. These representatives work independently, calling on prospects to offer goods and services. Their primary tasks are making sales calls, taking orders and submitting them to their employers.

Their sales activities are taxed in France and require that the representatives be empowered to sign contracts on the employer's behalf.

1.3.Sales agents

Foreign companies may also use the services of a sales agent, i.e. a selfemployed individual or a company that acts on their behalf.

Agents are responsible for negotiating and in some cases signing contracts for sales, purchases, leases and provision of services on behalf of their principals. They may work for one or more companies, and are paid in part or in full by commissions on completed transactions.

Smaller companies often prefer to use sales agents as a flexible and inexpensive means of introducing their products to foreign markets.

2.Long-term solutions

Companies can set up a branch or a subsidiary to conduct manufacturing or sales operations in France through a permanent principal or secondary establishment.

2.1.Branches - The simplest solution

Branches are the preferred form for foreign companies' first locations in France. Branches are headed by a legal representative and operate like agencies that report to headquarters, with no official restrictions on their decision-making powers. They may conduct all the operations of an industrial or commercial company, but are not separate legal entities. If they encounter financial problems, the parent company bears unlimited joint liability for their debts .

Branches are permanent establishments with regard to tax laws and must pay corporate income tax and VAT. Subsequent conversion of a branch into a separately incorporated subsidiary is possible, but must comply with rules governing the sale and transfer of business and is subject to tax.

2.2.Subsidiaries – Companies incorporated under French law (2)

Subsidiaries are new companies incorporated under French law and separate legal entities.

They offer several advantages.

- Segregation of subsidiaries' andparent companies' assets means that foreign companies do not bear unlimited liability for the debts of their French structures. On the other hand, parent companies' profits cannot be offset against subsidiaries' losses.
- Subsidiaries are entitled to renewable "commercial leases".
- Subsidiaries may apply for government assistance when starting up or expanding.
- Subsidiaries can enter agreements on sales and technical royalties, commissions, management fees, etc.

The basic preliminary steps for setting up a subsidiary are:

- Seeking public or private sector financing (loans, venture capital, business angels, innovation mutual funds, etc.)
- Seeking business premises and the domiciliation of the company's headquarters through a domiciliation agreement, a commercial lease, or a real estate purchase
- Appointing the company's corporate officers
- Gathering the company's capital
- Opening a bank account in France and depositing the new company's initial capital reserve
- Having capital contributions in kind appraised by an official appraiser
- Drawing up the articles of incorporation and signing them (in front of a notary if the company owns real estate)
- Registering the articles of incorporation with the tax office for the headquarters location (no fee for this formality)
- Obtaining long-term visas and business permits for non-EU directors
- Publishing notification of the new company's inception in a legal gazette

The company becomes a separate legal entity when it is entered in the company register (Registre du Commerce et des Sociétés). The founders are personally liable for their legal commitments during the inception phase, which are then assumed retroactively by the newly incorporated company.

The subsidiary must pay all applicable taxes. Assistance from specialized legal counsel is recommended when setting up a subsidiary. Bar associations can provide lists of lawyers in France.

- (1). For more information: French association of sales agents: www.apac.asso.fr
- (2). For more information: France national bar association: www.cnb.avocat.fr

