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A PRC Licensed Law Firm

Briefing Paper

Foreign Legal Services

By **Edward E. Lehman**, Managing Director (Beijing), and **Matthew Mahre** (Beijing)

Introduction:

If China wishes to achieve its goal of becoming a long-lasting and sustainable economic superpower it must attract and support high-value service industries such as, commercial and investment banks, and consulting and real estate companies. High-value service industries such as these, rely heavily on legal services. All economies that support high-value service industries allow foreign law firms to practice international and local law relatively freely. However, China has imposed a broad range of restrictions that impede foreign firms from operating in China.

Limited Scope of Practice:

The main issue facing international law firms who wish to operate in China is the inability to hire qualified PRC lawyers with valid PRC law licenses. Current regulations require a PRC citizen to surrender their license prior to working for a foreign firm. Lehman, Lee & Xu advocates a complete removal of this restriction. Removal would open the job market for Chinese law students and lawyers. It would also enhance the services offered to clients and benefit Chinese companies who wish to globalize.

Appearance before Government Agencies

A second major restriction placed on foreign firms is that they are currently banned from participating in meetings between their clients and government departments. This restriction limits foreign companies' ability to understand the proceedings and their context and deprives them of adequate legal counsel in critical meetings. No other leading economy imposes such a restriction. A removal of this restriction would allow clients a full range of legal service.

Representative Office Registration

Foreign law firms also face discriminatory regulatory schemes when attempting to open new offices in China. Foreign law firms face much higher scrutiny in regulatory approval processes than domestic firms. When establishing a new office a foreign firm must prove to the State Council a need for the office. This need is based on the social and economic developmental conditions of the location and the need for legal services there. Furthermore, a foreign law firm may only open one office every three years. These restrictions impair foreign firms' ability to serve their clients in China and limit the services available to interior provinces.

Taxation Schemes

A final burden placed on foreign firms is a double taxation on income. A foreign firm is first taxed on its enterprise income. In addition to the enterprise income tax, each individual employee is taxed on their personal income. Domestic firms, however, are exempt from the enterprise income tax. Furthermore, tax rates for domestic firms are often much lower than their foreign counterparts.

Lehman, Lee and Xu's *Briefing Paper Series* aims to provide readers with summaries of various China-related legal issues, designed to answer the questions most commonly asked by our clients.

For more information on the topics discussed in this briefing paper, please contact our Labor and Employment team.

Lehman, Lee and Xu's Labor and Employment team has experience and expertise in advising Chinese and international clients on all employment issues in China.

For further information or enquiries, please contact mail@lehmanlaw.com