



The State Council released regulations to strengthen the administration of Representative Offices (ROs) of Foreign Enterprise

The State Council released the Regulations on the Administration of Registration of Resident Representative Offices of Foreign Enterprises (the "Regulations") on November 19, 2010 to tighten the regulation on Representative Office ("RO") registrations (Order of the State Council No. 584) effective March 1, 2011, which is aimed to replace the prevailing Measures for the Administration of Registration of Resident Representative Offices of Foreign Enterprises that were approved by the State Council on March 5, 1983.

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The Regulations provides detailed regulation measures on the set-up/termination formalities and operations of ROs.

Circular Highlight:

- Emphasize that ROs cannot engage in any profitable activities

According to The Regulations, ROs may engage in the following activities in connection with the business of the foreign enterprises:

1. market investigation, display, publicity activities in connection with the products or services of foreign enterprises; and
2. liaison activities in connection with the products sales, services provision, domestic procurement and domestic investment of foreign enterprises.

The Regulations specifically states that ROs cannot engage in any profitable activities if not otherwise prescribed by international conventions or agreements concluded or participated in by China. Violation against the Regulations would lead to an administrative penalties of more than RMB50,000 but no more than RMB 500,000, and relevant gains and tools, equipment, raw materials, products (commodities) and other property that are specially used for engaging in profitable activities would be confiscated. In serious cases, the Registration Certificate would be revoked.

- Prescribe annual reporting obligations on ROs

The ROs shall provide an annual report to the registration authorities (i.e., the in-charge Administration of Industry and Commerce) between March 1 and June 30. The content of this annual report shall include the status of legal incorporating and existing of the foreign company, the introduction of the business operation of the RO, as well as the information on the expenses and receipt and payment audited by a PRC CPA firm, etc.

- Provide specific administrative measures that competent authorities might take during the administration procedures

When investigating the activities of the ROs that are suspected of in violation of the Regulations, the registration authorities may legally exercise the following duties and responsibilities:

1. To investigate and understand the situation from relevant entities and individuals;
2. To consult, copy, seal up and/or detain the contracts, documents, account books and other materials in connection with the activities in violation of the laws;
3. To seal up or detain the tools, equipment, raw materials, products (commodities) and/or other property that are specially used for engagement in illegal activities; and

4. To inspect the accounts and the accounting vouchers, account books and statements of account in connection with the savings of the ROs that engage in illegal activities.
- Other provisions
 - The Regulations prescribes new provision on the registration of RO and operations terms that the foreign enterprises shall provide the domicile certificate and the certificate of legal incorporating for more than two years as well as the Articles of Association or Organization Agreement along with other application documents in the establishment process.
 - New provision on the qualification of Chief Representative and Representative. Under any of the following circumstances, persons may not be appointed as Chief Representative or Representatives of the RO:
 1. who are sentenced due to being detrimental to the national security or social public benefits of the People's Republic of China;
 2. who are Chief Representatives or Representatives of the ROs that are legally revoked, or cancelled or ordered to close by relevant departments due to committing any breach activity that will be detrimental to national security or social public benefits of China and there are less than five years as of the date of such revocation, cancellation or order;
 3. Other circumstances prescribed by the State Administration of Industry and Commerce

New provision on the disclosure requirements that the registration authorities shall record the registration matters of the ROs in the registrars which is available to or copied by the general public. Meanwhile, the foreign enterprises shall make public announcement on the establishment or registration alterations of the ROs on the public media designated by the Registration Authorities.

The Regulations indicate that the government authorities will put more emphasis on the administration of ROs, which shall be taken into consideration for multinational enterprises who have ROs in China or contemplate to setting up ROs in China.

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