

Regulations on the Registration and Administration of Representative Offices

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On 10 November 2010, the State Council issued new regulations relevant to the registration and administration of representative offices of foreign enterprises, namely "Regulations on the Registration and Administration of Resident Representative Offices of Foreign Enterprises".

The new regulations will take effect on 1 March 2011.

The new regulations contain the following:

Definition and Nature of Representative Office

The term “Representative offices of foreign enterprises” stated in the new regulations refers to establishments set up by foreign enterprises within the territory of the People's Republic of China for the purpose of carrying out non-profit-making activities related to the operation of foreign enterprises.

A representative office is not a separate legal entity and is not allowed to engage in direct profit-making business activities. (Article 2)

Scope of Business of Representative Offices

Representative offices may carry out the following activities related to foreign enterprises:

1. Activities to do with market research, exhibition and promotion related to the products and services of the foreign enterprise;
2. Liaison activities related to the sales of products, provision of services, procurement and investment of the foreign enterprises within the territory of the People's Republic of China;
3. Any other activities approved by laws, administrative regulations or by the State Council. (Article 14)

Establishment and Registration of Representative Office:

2. The regulation adds more detailed requirements on the name of the representative office:
 - It should not contain any content prohibited by laws, administrative regulations or by the State Council. (Article 10)
3. Supplementary documentation required to be submitted for the registration of representative offices are detailed:
 - Only a company that has been established for more than two years and which is able to provide the relevant legal business certificate is allowed to set up a representative office in China.
 - Certification of address abroad and the Articles of Association of the mother company (Article 23) must be provided.

4. The overseas mother company must appoint a Chief Representative. The Chief Representative signs registration and application documents on behalf of the mother company, within the scope of written authorization by the mother company. The foreign enterprise may additionally appoint 1 to 3 representatives according to business demand. (Article 11)
5. The registration authority must decide whether to approve a registration application or not within 15 days after acceptance of the application documentation. (Article 24)
6. The foreign enterprise must make public announcement through media appointed by the registration authority for the establishment of representative office. (Article 20)

Qualification for Chief Representative and Representative

The regulation details in what circumstances a person is not acceptable to be appointed as Chief Representative and Representative:

1. If the person has harmed China's security or public interest;
2. If the person was the chief representative or representative of a representative office whose registration was revoked, and if the registration certificate was withdrawn or cancelled in accordance with laws due to illegal activities such as damaging China's security or public interest, and if 5 years have not passed since the registrations was revoked, withdrawn or the office ordered to shut down;
3. Other cases regulated by the State Administration of Industry and Commerce. (Article 12)

Deregistration of Representative Office

1. A foreign enterprise should apply to the registration authority to have its representative office officially deregistered within 60 days after it decides to shut down the representative office, or upon the expiry of the registration, or the mother company terminates its operations or the registration and establishment is revoked or ordered to shut down in accordance with laws. (Article 32)
2. Deregistration of representative office or the registration and establishment is revoked or the registration certificate is withdrawn, shall be publicly announced by the registration authority. (Article 20)

Annual Report of Representative Office

Representative offices are required to submit an annual report to the registration authority during the period from 1 March to 30 June every year. The report should demonstrate the legal existence and continuation of the mother company, report on the business operations of the representative offices and contain the audited statement of receipts and expenditures of the office together with other relevant information and explanations. (Article 6)

Modification of Representative Office

1. For any modification of registered data of the representative office, the mother company is required to notify the approval authorities within 60 days after such change. (Article 27)
2. When the business license is nearing expiration, if the mother company decides to continue with the operation of the representative office, it must apply to renew the registration of the representative office in the 60 days prior to the expiration. (Article 28)

Modification of Representative Office

3. Mother companies should file any change with the registration authority including: authorized signatories, Articles of Association, provisions with respect to the type of organization, registered capital, scope of business contained in the Articles, and representative. Application for the modification should be made within 60 days after such a change occurs. (Article 31)
4. Mother companies are required to make public announcement of any changes to the representative office in the media appointed by the registration authority. (Article 20)

Penalties

The "Regulations on the Registration and Administration of Resident Representative Offices of Foreign Enterprises" clearly sets out guidelines giving power to the registration authority to investigate suspected illegal acts or violations of the regulations and the subsequent imposition of penalties. (Article 21, Chapter 6)