



HAN KUN LAW OFFICES

# Legal Commentary



CHINA PRACTICE • GLOBAL VISION

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## FDI

### **An Introduction to the Administration Regulations on the Registration of Permanent Representative Offices of Foreign Enterprises**

On November 19th, 2010, the State Council promulgated *Administration Regulations on the Registration of Permanent Representative Offices of Foreign Enterprises* (hereinafter the “**New Regulation**”), which will come into effect on March 1st, 2011. The New Regulation is another important piece formulated by the State Council regarding the permanent representative offices of foreign enterprises (hereinafter “**Representative Office**”) after the *Notice on Further Strengthening the Administration of Registration of Permanent Representative Offices of Foreign Enterprises* jointly issued by State Administration for Industry and Commerce (SAIC) and Ministry of Public Security in January this year and the *Provisional Measures for Taxation of Permanent Representative Offices of Foreign Enterprises* issued by State Administration of Taxation in February this year. The former *Measures on Registration of Permanent Representative Offices of Foreign Enterprises* (hereinafter “**Former Measure**”) issued by the SAIC and approved by the State Council in 1983 will be annulled on the effective date of the New Regulation. The Former Measure is obviously inconsistent with the current social and economic practices and legal system, and the New Regulation has expressly and clearly provided for the establishment of the Representative Offices and every aspect of their business activities. Following please find more information:

#### **Define the Nature and Business Scope of the Representative Offices**

It is expressly provided in the New Regulation that Representative Office refers to the working body established by foreign enterprises in accordance with Chinese laws and regulations and engaging in non-profit activities related to the business of said foreign enterprises. Representative Office does not have the status of a legal person. Representative Office shall not engage in any profit-making activities unless provided otherwise in international treaties and conventions concluded or participated in by the People’s Republic of China. The New Regulation also stipulates that in case a Representative Office conducts profit-making activities in

violation of the New Regulation, the registration authority may order rectification, confiscate illegal gains, confiscate the tools, equipment, raw materials and products (commodities) used specially for profit-making activities and impose a fine of more than RMB50, 000 but less than RMB500, 000; in cases of gross violation, the registration certificate of the Representative Office may even be revoked.

The New Regulation defines the scope of business activities the Representative Offices may engage in, including market surveys, exhibitions and campaigns related to the products or services of the foreign enterprise; and liaison activities in connection with sales of products, provision of service, domestic procurement and investment of the foreign enterprise. It is especially mentioned in the New Regulation that a Representative Office shall obtain relevant approvals for the business activities specified in the preceding paragraph, if required by laws, administrative regulations or provisions of the State Council.

### **Improve the Registration Administration System**

It is specifically provided in the New Regulation that the SAIC and the local administrations for industry and commerce authorized by the SAIC are the competent authorities in charge of the registration and administration of Representative Offices (hereinafter the “**Registration Authorities**”).

The New Regulation also sets forth the qualifications for the chief representative or representative of the Representative Offices. Pursuant to the New Regulation, a person involved in any of the following situations may not act as the chief representative or representative: a) a person who has records of being imposed with criminal penalties for harming China's national security or public interests; b) a chief representative or representative of a Representative Office of which the establishment registration has been cancelled or the registration certificate has been revoked in accordance with the laws, or which has been ordered to close down by relevant authorities in accordance with the laws, due to involvement in illegal activities such as harming China's national security or public interests, and it has been no more than five years from the date of such deregistration, revocation or order for closing down; c) other circumstances stipulated by the SAIC.

It is worth noticing that, to apply for establishment of a Representative Office, a foreign enterprise shall submit a certificate for good standing evidencing the existence of the foreign enterprise for at least 2 years and a credibility letter issued by a financial institution having business transactions with such foreign enterprise. Moreover, pursuant to the *Notice on Further Strengthening the Administration of Registration of Permanent Representative Offices of Foreign Enterprises* jointly issued by SAIC and Ministry of Public Security in January, 2010, the

afore-mentioned certificate and credibility letter should be notarized and authenticated by the national or local notary public of the state where the foreign enterprise is incorporated and the Chinese embassy or consulate thereof.

The New Regulation has also imposed some specific requirements on modification registration and deregistration of Representative Offices, prescribing that a Representative Office shall apply for modification registration or deregistration within 60 days upon the occurrence of the modification or deregistration events. If any changes occur to the authorized signatories, the form of enterprise organization, the capital (assets), the business scope and the representatives of the foreign enterprise, the foreign enterprise shall file with the Registration Authority within 60 days from the date of occurrence of said changes. Representative Offices which failed to comply with the above requirements may be subject to fines imposed by the Registration Authority and their registration certificates may even be revoked in cases of gross violation. Moreover, the New Regulation requires foreign enterprises to publicize on the designated media about the formation and modification of the Representative Offices.

The New Regulation has also established an annual report system of the Representative Office, providing that a Representative Office should submit annual reports to the Registration Authority between March 1 and June 30 each year, the contents of which should include such information as the status of legal existence of the foreign enterprise, business activities carried out by the Representative Office, and fees, revenues and expenditures audited by accountants etc..

### **The Premises and Duration Period of Representative Office**

A Representative Office is allowed to choose its premises at its own discretion. The premises of the Representative Office shall be chosen by the foreign enterprise at its own discretion. However, based on the need of national security and public interests, relevant authorities may require a Representative Office to adjust its premises and inform the Registration Authority of said adjustment in a timely manner.

A Representative Office is allowed to choose its own duration period at its own discretion within the duration period of the foreign enterprise. The New Regulation does not include any provision stipulating a valid duration period of the registration certificate. Based on the current practices and the relevant provisions in the *Notice on Further Strengthening the Administration of Registration of Permanent Representative Offices of Foreign Enterprises*, the Registration Authority issues a one-year registration certificate to the Representative Office applying for establishment and extension.

### **Specify the Liabilities of Representative Office**

With regard to the possible violations of the New Regulation by Representative Offices, including establishing Representative Offices or engaging in Representative Offices without authorization and registration; engaging in profit-making activities in violation of the New Regulation; or submitting false materials or concealing the truth by other fraudulent means in order to obtain a registration or filing; engaging in business beyond the business scope approved, the New Regulation has set forth the power of the Registration Authority to punish and methods of the punishment. The Registration Authority may order correction, order to cease the activities, impose fines, or annul the registration certificate in case of serious violation. For example, it is provided in the New Regulation that in case a foreign enterprise establishes the Representative Office or conducts business activities of a Representative Office without authorization and registration, the Registration Authority shall order it to stop the activities and impose a fine more than RMB 50,000 but less than RMB 200,000. In case a Representative Office conceals the truth and practices frauds in the annual report, the Registration Authority shall order it to make rectifications and impose on the Representative Office a fine more than RMB 20,000 but less than RMB 200,000; in serious circumstances, the registration certificate shall be revoked.

If you have any questions regarding the foregoing, please feel free to contact us. Thank you!

## **Important Announcement**

This Legal Commentary has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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