

China Released New Regulation on Administration of Representative Offices of FIE (November 2010)

On November 19, 2010, The State Council released Regulations on the Administration of Registrations Made by Resident Representative Offices (RO) of Foreign Enterprises which will come into effect on March 1, 2011. These new regulations are formulated in light of strengthening the administration of the representative offices in China.

According to the new regulations, from March 1 to June 30 each year, resident representative offices of foreign enterprises are required to submit an annual report to the registration authority, providing information on lawful existence of foreign enterprises, ongoing business activities of the RO, and its income and expenses audited by its accounting agency. Failure to submit an annual report within the specified timeframe will result in a penalty of RMB10,000 to RMB30,000, while providing false information will be fined with RMB20,000 to RMB200,000. Fraud may also lead to license revocation.

The RO represents the interests of the foreign investor by acting as a liaison office for the parent company. RO can conduct market research, develop partnerships and business channels; however, all business transactions, including issuance of invoices, are managed by the parent company. ROs will have to pay an RMB50,000 to RMB200,000 penalty for profit activity involvement, and RMB10,000 to RMB100,000 for exceeding the activity scope mentioned above.

Changes in Representative Office Regulations (February 2010)

For those with Representative Offices in China, there are a number of recent changes that may affect their operations. In February this year, the State Administration of Industry and Commerce (SAIC) released new regulations regarding the registration of Representative Offices in China. The changes include the following:

- An Overseas company must be at least 2 years old before they qualify to establish a representative office in China.
- The validity of Rep. Offices has now been reduced from 3 years to 1 year. Current Rep. Office licenses will be honored; however, subsequent license renewals will only be for 1 year.
- Notarized and attested incorporation documents will be required for every Rep. Office renewal.
- The Bank Statement of Credibility of the overseas parent company will also need to be notarized and attested along with its incorporation documents.
- Newly formed Rep. Offices will be limited to only 4 foreign representatives including the Chief Representative. The number of local employees hired through dispatching services to work at a Rep. Office appears to not be affected.

Although ostensibly these regulations have been released to 'strengthen' enforcement of Rep. Offices, it appears this is a means for the government to create additional barriers for the establishment of the Rep. Office in order to dilute their appeal.