New rules for setting up representative office in China

Description

On November 19, 2010, China Cabinet, the State Council, promulgated a new piece of regulation, entitled â€œRegulation on the Administration of Registration of Representative Offices of Foreign Enterprisesâ€•, overhauling and replacing the old rules that have been in operation as from March 15, 1983.

There are a number of notable changes in these new rules.

1. Previously, a representative office (â€œROâ€•) is defined to be an entity which shall only be engaged in non-direct operational activities. It is never clear about the scope of such non-direct operational activities. In practice, it is generally understood that a RO is allowed to conduct business liaison, and preparatory service for its parent.

In the new regulation, a RO is however worded as an entity engaged in non-profit activities in relation to its foreign parent, including (1) market survey, exhibition and publicity in connection with the products or services of its parent, and (2) liaison activities in connection with the product sale, service provision, procurement and investment in China. It is not clear whether the word â€œpublicityâ€• can mean advertisement.

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2. It is now required in the new regulation that ROs, like other companies or enterprises, shall be subject to an annual inspection which is conducted during the period from March 1 to June 30 of every year. To carry out the annual inspection, the RO shall submit an annual report covering the lawful existence, business activities development and audited financial report and so on.

It is the first time that ROs are required to audit its incomes or expenses.

3. Previously, the old rules were not clear about the number of representatives a RO can have. Now the new law has made it clear that a RO shall only have one chief representative and up to three representatives.

In relation thereto, the number of representatives was a requisite item for registration previously and is now no longer required. Instead, the name of the chief representative is now prescribed as a requisite item for registration.

Meanwhile, the limitation on the number of representatives that was set out in a notice jointly issued by SAIC and MPS (Ministry of Public Security) in January of this year is now officially provided in this new regulation. Namely, besides the chief representative, a RO can only have another one to three representatives in total.

4. Location of ROâ€™s office is previously limited to designated buildings. Now it is clearly set forth in this new regulation that a RO can choose its location at its discretion provided however that relevant departments (state security, public security departments etc.) may order the RO to change its office

location as necessitated by national security and public policies.

5. Previously, the maximum life of a RO is not longer than three (3) years as required by old rules. Now it is however provided that the term of a RO shall not be longer than the term of the subsistence of its parent.

6. A new requirement on filing of changes to the parent company is now set forth in the new regulation, which says that changes to the authorized signatory, corporate liability form (limited or unlimited or mixed form), capitalization (asset), business scope and representative on the part of the parent company shall be filed with registration authority within sixty days of such changes.

7. Pecuniary penalties on breach of rules are now increased in multi-folds. For example, a fine of RMB 50,000 to 200,000 may be imposed if a foreign company sets up a RO or is engaged in representative activities without due registration thereof. Where a RO is engaged in profit activities in violation of the new regulation, the registration authority shall order correction thereof and confiscate the illegal proceeds and tools, equipments, raw materials, products and other assets used in such profit activities, and in addition, the registration authority may impose a penalty of RMB 50,000 to 500,000.

There are other changes also. Please note, as an exception, a RO can conduct profit activities in China if any international pacts, treaties to which China is a party so provide.

If you want an English copy of this new regulation, please contact at doroto@163.com.

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