

NEW REGULATIONS FOR REPRESENTATIVE OFFICES

Many foreign companies have no legal status in China but still maintain representative offices (ROs). An RO allows a company to have a presence in China, but an RO is not supposed to engage in any for-profit activities. There has been some abuse of this system by some companies that did not want to go through the process of applying for permits to do business. Instead of obtaining permits, those companies conducted business in violation of their limited authority as ROs. To crack down on those violators, China issued new regulations governing ROs. The regulations tighten the rules for the establishment and operation of an RO by stating the activities that an RO may engage in. In addition, the regulations now have more teeth due to the increased fines for violations. The regulations are effective March 1, 2011.

1. Establishment of an RO. In order to establish an RO, a company must file these documents: (a) its certificate of domicile and certificate of legal operation for more than two years; and (b) its articles of association or other organizational agreement. The requirement of a certificate of legal operation is directed at companies that form a new Hong Kong holding company and then immediately set up an RO in China.

The company must also announce the establishment or change of the RO to the public via media designated by the state authorities. The manner of the announcement and the definition of “designated media” have not been promulgated by the state authorities.

2. Permitted Activities. An RO may engage in:

(a) market investigations, displays, and publicity activities related to the company’s products or services; and

(b) liaison activities related to the company’s sales, services, domestic procurement, or domestic investments.

An RO may not engage in any for-profit activities, unless permitted by treaties or agreements with China.

If an RO violates the regulations, the authorities may seize the illegal gains as well as any equipment, materials, products, and other property used to engage in the for-profit activities. In addition, the authorities can levy fines of approximately \$7,500 to \$75,000. The authorities can also revoke the RO’s Registration Certificate.

3. No Tax Exemption. An RO will no longer be permitted to apply for a tax exemption. In the past, an RO occasionally was granted a tax exemption. An RO will now be taxed at 15% of its profit.

4. Representatives. A company may appoint one chief representative and up to 3 other representatives. A person may not be a representative if (a) there are national security concerns;

(b) the person was a representative of an RO which had its permit revoked in the previous five years; or (c) there are other circumstances deemed relevant by the State Administration for Industry and Commerce (SAIC).

5. Annual Report. An RO must file an annual report between March 1 and June 30. The annual report must include the status of the company, the business activities of the RO, and financial statements prepared by an accounting firm.