

Updates of Regulations on Registration of Representative Offices of Foreign Enterprises

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The State Council recently promulgated the Regulations on Administration of Registration of Representative Offices of Foreign Enterprises (the “Regulations”). The Regulations shall take effect from March 1, 2011, and the Measures on Administration of Registration of Representative Offices of Foreign Enterprises (the “Measures”) promulgated by the State Administration of Industry and Commerce (“SAIC”) on March 15, 1998 upon approval by the State Counsel will be annulled.

Compared with the Measures, the Regulations makes the following noteworthy changes:

First, the Regulations explicitly states that representative offices established by foreign enterprises in the PRC (“ROs”) shall not engage in profitable businesses, unless international treaties or agreements that China has concluded or acceded to provide otherwise. A RO is allowed to carry out the following activities: (1) market survey, exhibition and publicity activities related to the products and services of its parent foreign enterprise; (2) liaison activities in connection with sales of products, provision of services, domestic procurements and onshore investments of its parent foreign enterprise.

Second, the Regulations prolongs the resident term of ROs. The Measures provides that the validity term of a RO’s registration certificate shall be one (1) year, and the RO shall, three (3) months prior to expiration, apply for extension and obtain a new registration certificate upon approval by the registration authority. Nevertheless, the Regulations is silent on the validity term of a RO’s registration certificate, but stipulates that the resident term of a RO shall not exceed the term of its parent foreign enterprise.

Third, different from the Measures, the Regulations specifies the circumstances under which a RO shall apply for nullification registration: (1) the RO is revoked by its parent foreign enterprise; (2) the resident term of the RO has expired and the RO ceases to carry out business activities; (3) its parent foreign enterprise is terminated; (4) the RO is revoked or ordered to shut down in accordance with law.

Fourth, under the Measures, foreign enterprises and other economic organizations shall obtain the approval of the approval authority before filing applications to SAIC’s provincial-level counterparts for registration of ROs. Nonetheless, pursuant to the Regulations, to establish ROs, foreign

enterprises merely need to submit prescribed documents and materials to SAIC or its local counterparts, unless approval is required under laws, administrative regulations or regulations of the State Council.

Fifth, the Measures requires ROs to go through nullification registration formalities before the registration authority in case of expiration, early termination of business activities, or parent enterprises declared bankrupt. However, according to Articles 32 and 33 of the Regulations, only foreign enterprises may handle nullification registrations of their ROs.