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China Alert

New Regulation concerning the Administration on Registration of Representative Offices of Foreign Enterprises in China (Decree 584)

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On 19 November 2010, the State Council of the PRC issued Decree 584 to tighten the administration on registration of Representative Offices ("ROs") of Foreign Enterprises in China which will be effective from 1 March 2011. The existing administrative measures for ROs issued in 1983 will be repealed simultaneously.

Since China adopted the open door policy in late 1970s, China has become one of the biggest emerging markets in the world. On 30 October 1980, the Chinese government issued provisional rules allowing foreign companies to set up ROs in China to conduct liaison activities. Over the past 20 years, ROs have made great contribution to imports and exports of China as well as the growth of China economy.

The important points of Decree 584 are summarized briefly as follows :

Permitted activities of an RO

Decree 584 reiterates that an RO is not allowed to conduct profit-making activities.

Under Decree 584, an RO is permitted to conduct the following activities:

- 1) Market research, exhibition and promotion activities related to the foreign enterprise's products or services;
- 2) Liaison activities in connection with the foreign enterprise's businesses (i.e. product sales, services, procurements from China and investment in China);

Approvals should be obtained by an RO if it conducts activities which are required to be approved according to the relevant laws, administrative regulations or rules of the State Council.

Requirements for registration

An application for establishing an RO should include the following documents :

- 1) Application letter;
- 2) Incorporation documents and the Articles of Association of the foreign enterprise with a proof of having operational history of not less than 2 years;
- 3) A letter of good credit standing issued by a financial institution that has business dealings with the foreign enterprise;
- 4) A tenancy agreement or a valid certificate showing that the foreign enterprise will have a proper office for use by the RO to be set up in China;
- 5) Other supporting documents including appointment letters of the representatives and their curriculums.

Annual reporting requirements

An RO is required to file an annual report with the registration authorities within the period from March 1 to June 30 of each year. The report should include a summary of its legal compliance, business operations, the audited income and expenses statement and other relevant supporting documents.

Restrictions on appointment of a representative

A foreign enterprise can only appoint one chief representative of an RO and one to three representatives according to its business needs.

Decree 584 imposes additional restrictions on the appointment of a representative. A person is not allowed to act as a representative of an RO under the following circumstances:

- 1) If he / she has criminal record due to damages made to China's national security or public interests; or
- 2) If he / she had been a representative of an RO, the registration certificate of which was revoked or cancelled due to damages made to China's national security or public interests. This restriction is valid for 5 years only after the revocation or cancellation.

Harsh penalty for non-compliance

Penalties ranging from RMB50,000 to RMB200,000 would be imposed on the party that carries out RO's activities without proper registration.

For an RO violating the requirements under Decree No. 584 due to engaging in profit-making activities, penalties can range from RMB50,000 to RMB500,000. The RO's registration certificate could also be revoked for serious cases.

If an RO files a fraudulent report for the purpose of concealing facts, penalties can range from RMB20,000 to RMB200,000. The RO's registration certificate could also be revoked for serious cases.

Our comments and suggestions

As an RO is not a separate legal person in China, a foreign enterprise could be exposed to the liabilities of its RO. Foreign enterprises should therefore be cautious about the activities of their ROs in China.

As can be seen from Decree 584, Chinese authorities have tightened their administration and control over ROs by imposing more restrictions on registration, changes of registration and de-registration. Foreign enterprises and their ROs should therefore comply with the requirements laid down in the Decree in order to reduce operational risks in China.

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