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PRACTICAL IMPLICATIONS OF NOTICE ON REPRESENTATIVE OFFICES

Introduction

On 4 January 2010, the State Administration for Industry and Commerce (**SAIC**) and the Ministry of Public Security promulgated the *Notice on Further Strengthening the Administration of the Registration of Foreign Companies' Permanent Representative Offices*.

As its name suggests, the notice subjects the establishment and operation of foreign company representative offices to more stringent inspection and supervision. It also limits the number of representatives permitted within each office. "Foreign companies" are defined in the notice as the parent companies of multinationals which have set up entities in China.

Key Provisions

1. **Enhanced Examination of Representative Office Registration Materials**

The local bureaus of the SAIC (**AICs**) are required to apply its notarization and certification requirements for foreign legal documents strictly when they examine representative office registration application materials.

Specifically, the documents in question must be notarized by a notary public certified by the PRC Ministry of Justice. However, foreign companies from Hong Kong, Macao and Taiwan should continue to follow the requirements for representative office registration materials in place before the notice was issued.

When a representative office applies to renew its registration certificate, it must provide a certificate of good standing issued by the competent authority of the foreign company's home jurisdiction.

2. **Uniform Term of Validity for Registration Certificates**

The notice limits the valid term of all representative office registration certificates to 1 year (as opposed to either 1 or 3 years under previous law, depending on where the office was located).

3. Upper Limit on the Number of Representatives within Each Representative Office

The number of representatives appointed for a particular office must be proportionate to its volume of activity. In general, a representative office should have no more than 4 representatives, including its chief representative. The notice also provides that existing representative offices with over 4 representatives are not permitted to appoint any more. In practice, if the local AIC discovers that a representative office has exceeded the above limit, it will require the office to reduce the number of its representatives to 4. This is usually done when the AIC affects a change in the office's registration certificate.

4. Strengthening Inspections and Penalizing Violations

The local AIC will conduct an annual, on-site inspection of each representative office within 3 months after the office is issued with a (new) registration certificate. Representative offices that are found to have engaged in commercial operations may be subject to administrative fines. In addition, offices that have relocated without updating their registered addresses or have been operating with expired registration certificates will be subject to greater overall scrutiny by the AICs.

5. Enhancing the Cooperation Between Administrative Departments

The AICs and local branches of the Ministry of Public Security (*i.e.*, the public security bureaus or **PSBs**) are exhorted in the notice to increase their cooperation. As part of this, the AICs must periodically pass on to the exit-entry administration departments of the PSBs the registered details of all representative offices within their respective jurisdictions, as well as details of any legal violations those offices have committed.

If a representative office is suspected of fraud or other illegal activities, the competent AIC must refer the case to the local PSB. Similarly, if a PSB discovers that a representative office is registered under a false address, operating at a location other than its registered address, or has failed to undergo annual inspections, the PSB must notify the relevant AIC, so that it can investigate and take further action.

Conclusion

The notice does not apply to liaison or branch offices of foreign companies, or to representative offices set up by law firms. This is because law firms fall under the jurisdiction of the Bureau of Justice, not the SAIC. However, it does apply to representative offices set up by foreign securities companies – even though such offices are under the jurisdiction of the China Securities and Regulatory Commission,

and are governed by specific rules issued by the CSRC in 1999.

Foreign companies that operate representative offices in China should be mindful of the increased scrutiny introduced by the notice, as it not only enhances the SAIC's administrative supervision, but also reinforces the principle that such offices may not undertake commercial business activities, and should not be disproportionately staffed. Indeed, the stated purpose of the notice is to address the increasing number of cases where foreign representative offices are registered through fake documents or undertake business activities illegally.

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