

# China Law Update

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## **SAIC and Ministry of Public Security Issue Stricter Rules for Foreign Representative Offices**

*By Jennifer Ding*

China's State Administration for Industry and Commerce ("SAIC") and Ministry of Public Security issued a joint *Notice on Further Administration of Registration of Foreign Companies' Resident Representative Offices* (the "Notice") on January 4, 2010, in light of increased problems with foreign representative offices providing counterfeit registration materials and violating rules regulating their business operations in China. The Notice heightens the scrutiny over registration procedures, personnel structure, and operations of foreign representative offices, which the issuing administrations claim will enhance the enforcement of current regulations and help maintain economic and market order. There is no direct requirement in such Notice that the new restrictions established will be applied to foreign representative offices of certain professional-services firms (including law firms) and liaison offices of foreign-invested enterprises. A summary of changes outlined by the Notice is as follows:

### **Additional Requirements for Registration and Renewal**

In order to register a representative office in China, a foreign company must provide an apostilled certificate of incorporation from its jurisdiction of incorporation indicating that it has been in existence for at least 2 years. This certificate must be notarized, certified by the appropriate national or regional government authorities of the company's country of incorporation, and authenticated by the Chinese embassy or consulate with competent jurisdiction in such country. Documents describing the company's financing structure and capital capabilities, as well as evidence of the company's creditworthiness, must also be submitted.

In order to renew a registration certificate, a foreign representative office must provide documentation demonstrating its permission to continue business operations as granted by the relevant authority overseeing its jurisdiction of incorporation. It must also provide a new apostilled certificate of incorporation each time it renews its registration certificate.

Unlike previously, where a registration certificate could be valid for up to 3 years depending on local regulations governing each representative office in question, the Notice now uniformly limits the validity of a registration certificate to 1 year for all foreign representative offices. For certificates that have been issued and have passed the 1 year mark, holders must go to the local

SAIC branch for a renewed certificate.

### **Limit on the Number of Representatives**

The number of representatives a foreign company can appoint in its Chinese representative office must be in accordance to the number that its type of business requires. Although this definition is unclear, the Notice states that generally, the number cannot exceed 4 individuals, including the chief representative. Existing offices that have more than 4 individuals currently can only decrease that number and are not permitted to add more foreign representatives.

### **Field Checks on Operations**

Local SAIC branches will now conduct field checks on foreign representative offices within 3 months after they have obtained registration certificates. If a foreign representative office is found to have provided fake registration materials or changed its address without updating the change on its registered documents, it will be punished immediately by rules that apply to each respective violation. Representative offices that are found engaging in direct operations and collecting fees will be treated as illegal operation without registration and punished accordingly (including fines, termination of China visa and even criminal liabilities).

### **Conclusion**

As the SAIC collaborates more closely with the Ministry of Public Security to regulate the activities of foreign representative offices, foreign companies must be conscientious about official procedures for registering their foreign representative offices, renewing their registration certificates in a timely manner, and conducting operations according to Chinese law. Further, the compliance and legal department of such foreign representative offices need to be fully aware of the possible time consuming issue of the said renewal procedure, since the notarization and authentication procedures mentioned above may take more than 3 weeks in extreme cases.

An electronic version of the official Notice can be found [here](#).

For more information, please contact:

[Todd Bissett](#)

Managing Partner

Sheppard Mullin Shanghai Office

[tbissett@sheppardmullin.com](mailto:tbissett@sheppardmullin.com)