

## **New Regulations on Foreign Representative Office in China**

The State Council of PRC issued the Regulations on Administration of Registration of Resident Representative Offices of Foreign Enterprises (the "New Regulations") on November 19<sup>th</sup>, 2010 and the New Regulations will take effect on March 1<sup>st</sup>, 2011.

The New Regulations make some changes mainly in the following respects:

1. The New Regulations specify the operational activities which the representative office (the "Rep Office") can engage in:
  - a. The market survey, exhibition and promotional activities in relation to the foreign enterprise's products or services;
  - b. The liaison activities in relation to the product sales, service provision, domestic sourcing and investment of the foreign enterprise.
2. The New Regulations require two new requirements for the establishment registration:
  - a. The legalized certificate of the foreign enterprise's domicile;
  - b. The legalized certificate of the foreign enterprise's business operation for more than two years;
  - c. The Article of Association or organization agreement of the foreign enterprise.
3. Both the Measures on the Administration of the Rep Office (issued in 1983, the "Old Regulations") and the Circular on Further Strengthening the Registration Administration of the Rep Office (issued in January of 2010, the "Circular") stipulated one year's resident period (duration) in the Registration Certificate of the Rep Office. However, the New Regulations only stipulate that the duration of the Rep Office can not exceed that of the foreign enterprise. Though the Old Regulations is abolished, the Circular which established one year's duration and the extension of the Rep Office is still applicable. Therefore, whether one year's duration of the Rep Office will be applied in practice needs to be further clarified by the authorities in future.

The New Regulations indicate that the administration of the Rep Office is becoming stricter than before, both in respect of the establishment and the practical operation. In other words, the cost of establishing and operating a Rep Office will be increased accordingly. Besides, during the year 2010, various regulations have also been issued in order to strengthen the supervision and management of the Rep Office. It seems to be a clear trend that the role of a Rep Office is being limited in China. Foreign investors who want to enter into China market by setting up a Rep Office or have engaged in the activities via a Rep Office in China may consider restructuring their business into other alternatives such as a Wholly Foreign-Owned Enterprises ("WFOE").