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## Recent changes affecting representative offices in China

Brief Overview	New rules issued in January 2010 impose restrictions and additional requirements on the establishment and operation of representative offices in China which may impact on the way foreign companies structure and use representative offices.
	People's Republic of China
Applicable Law	18 March 2010
Reviewed	18 March 2010

Submitted January 2010, the People's Republic of China (PRC) State Administration of Industry and Commerce (SAIC) and the Ministry of Public Security (MPS) jointly issued the "Notice on Further Strengthening the Administration of Foreign Enterprise Representative Office Registration" (the Notice) which came into force with immediate effect.

### Background

The Notice indicates that its purpose is to increase regulation and scrutiny of representative offices of foreign companies, as a response to abuse of the current regulatory regime and illegal practices by representative offices. These include the submission of non authentic documents for registration purposes, failure to report changes of address and other registered changes to the SAIC and, most significantly, engaging in direct business activities. Representative offices are not permitted to engage in profit making activities and are limited to conducting market research, technological exchange, promoting their offshore parent companies and generally facilitating market entry to China for their parent companies.

The key changes introduced by the Notice are set out below.

#### [New minimum criteria for setting up a representative office](#)

A new minimum threshold now applies before a foreign company can establish a representative office in China. The overseas head office must have been established for at least two years before it can set up a representative office. This will impact on how foreign companies structure the establishment of representative offices and will restrict the ability to set up a new offshore company to "hold" the representative office.

#### [Validity period of the registration certificate reduced from three years to one year](#)

Going forward, representative offices generally will be required to renew their registration certificate every year. Previously this was only required every three years. This will create an additional administrative burden and also cost, not least because on such renewal representative offices must produce notarised and legalised documents evidencing the existence of their overseas head office. That said, it appears that SAIC will honour the relevant period in existing registration certificates issued prior to the new Notice through to their expiry. Only then will the annual requirement apply.

#### [Limit on number of foreign staff](#)

Foreign staff of representative offices must be registered as "representatives". Perhaps the most significant change under the Notice is that representative offices will now be limited to a maximum of four representatives (including the chief representative). Existing representative offices that currently have more than four foreign staff will not be required to reduce their number, but going forward will not be able to replace representatives that leave the representative office, unless they can comply with the maximum threshold of four.

This restriction may impact heavily on the ability of foreign companies to staff their representative offices with personnel with the required experience and qualifications. In particular, they will need to consider which existing personnel are the most appropriate to take a role with the representative office.

#### [Stricter scrutiny and possible penalties](#)

The Notice provides that the local branches or counterparts of SAIC should conduct an on site inspection of newly established representative offices within three months of establishment. In particular, these authorities will check whether representative offices

are engaging in direct business operations or other activities outside their permitted scope. Failure to comply with the requirements may result in fines, ongoing supervision or scrutiny, or in serious circumstances, closure of the representative office.

## Conclusion

Establishing a representative office traditionally has been a relatively quick and inexpensive way for foreign companies to gain a presence in China, promote themselves and explore additional investment opportunities. There is no capital requirement and, aside from registration with the local branch of SAIC, no separate approval process, as is the case with legal entities. The new rules indicate an intention to tighten the existing regulatory regime, with increased scrutiny on compliance. Foreign companies will need to consider the implications of this for the structuring and establishment of new representative offices, as well as the ongoing operations of any existing representative offices they have.

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