

Regulations on Administration of Foreign Law Firms' Representative Offices in China -- china.org.cn

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Chapter I General Provisions

Article 1 These Regulations are formulated in accordance with the Law of the People's Republic of China on Lawyers for the purposes of regulating the establishment of representative offices in China by foreign law firms and legal service activities thereof.

Article 2 These Regulations are applicable to the establishment of representative offices in China (hereinafter referred to as "representative offices") by foreign law firms and the legal service activities they conduct.

Article 3 Representative offices and their representatives shall, when conducting legal service activities, abide by the laws, regulations and rules of China, scrupulously observe the professional ethics and practice discipline of Chinese lawyers, and shall not endanger the State security, social and public interests in China.

Article 4 Representative offices and their representatives, when conducting legal service activities in accordance with the provisions of these Regulations, are protected by Chinese law.

Article 5 Foreign law firms assume civil liability for the legal service activities conducted by their representative offices and representatives within the territory of China.

Chapter II Establishment, Change, and Registration Cancellation of Representative Offices

Article 6 The establishment of a representative office in China and the posting of representatives thereto by a foreign law firm shall be permitted by the judicial administration department of the State Council.

No foreign law firms, other organizations or individuals may conduct legal service activities within the territory of China as a consulting firm or under other names.

Article 7 A foreign law firm applying to establish a representative office in China and post representatives thereto shall meet the following requirements:

(1) it has been in practice lawfully in its home country and never has been punished for a violation of lawyers' professional ethics or practice discipline;

(2) the representatives of the representative office are practitioner lawyers who are members of the bar or law society of the country where they obtain the qualifications to practice, have practiced for not less than two years outside of China, and have never been punished for a criminal offense or a violation of lawyers' professional ethics or practice discipline. The chief representative of the representative office has practiced for not less than three years outside of China and is a partner or equivalent of the said firm.

(3) there is an actual need to establish a representative office in China to conduct legal service business.

Article 8 A foreign law firm applying to establish a representative office in China shall produce the following documents to the judicial administration department of the people's government of the province, autonomous region or municipality directly under the Central Government where the proposed representative office is to be located:

(1) an application signed by the principal responsible person of the said foreign law firm for establishing the representative office in China and posting representatives thereto. The name of the proposed representative office shall be "Representative Office of _____(name of the said law firm translated into Chinese) in _____(name of the Chinese city where the proposed representative office is to be located)";

(2) documents certifying that the said law firm has been lawfully established in its home country;

(3) the partnership agreement or the articles of association of the said law firm, and a list of its responsible persons and partners;

(4) the power of attorney issued by the said law firm to the representatives of the proposed representative office, and a written statement confirming that the chief representative is a partner of the said law firm or equivalent;

(5) certificates of the qualifications to practice of each representative of the proposed representative office, and documents certifying that the chief representative has practiced law for not less than three years outside of China and the other representatives for not less than two years.

(6) documents from the bar or law society of the said law firm's home country certifying that the representatives of the proposed representative office are their members;

(7) documents from the lawyer administration department of the said law firm's home country certifying that the said law firm and the representatives of the proposed representative office have never been punished for a criminal offense or a violation of lawyers' professional ethics or practice discipline.

The documents listed in the preceding paragraph shall be notarized by a notary institution or a notary in the applicant's home country, authenticated by the competent foreign affairs organ of the applicant's home country or an organ authorized by it, and

authenticated by the Chinese Embassy or Consulate in such country.

The documents submitted by the foreign law firm shall have three copies, and a corresponding Chinese translation shall be attached to those in a foreign language.

Article 9 The judicial administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall, within three months from the date of receiving the application documents, finish the examination of them, and submit their examination opinions and such application documents to the judicial administration department of the State Council for reexamination. The judicial administration department of the State Council shall make a decision within six months; if the establishment of the proposed representative office is permitted, a license to practice shall be issued thereto and certificates to practice to its representatives; if permission is not granted, the applicant shall be informed of the reasons in writing.

Article 10 Before conducting the legal service activities provided for in these Regulations, representative offices and their representatives shall, on the basis of their licenses to practice and certificates to practice, register with the judicial administration department of the people's government of the provinces, autonomous regions and municipalities directly under the Central Government where such representative offices are located. Representative offices and their representatives shall register annually.

The judicial administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall handle the registration applications within two days from the date of receiving them.

Article 11 A representative office shall, in accordance with relevant laws and administrative regulations, go through formalities of taxation, banking and foreign exchange, etc.

Article 12 A foreign law firm which needs to change the name of its representative office, or reduce its representatives shall in advance submit an application signed by its principle responsible person and other relevant documents to the judicial administration department of the people's government of the province, autonomous region or municipality directly under the Central Government where the said office is located. Such changes or reduction shall be subject to the examination and approval of the judicial administration department of the State Council, and the certificates to practice of those who do not serve as representatives any longer shall be withdrawn.

In the case of merger, division or posting of new representatives, a representative office shall go through the permission formalities in accordance with the provisions of these Regulations for the establishment of a representative office.

Article 13 Where a representative of a representative office falls into one of the following circumstances, the judicial administration department of the State Council shall revoke the permission to practice granted to him and withdraw his certificate to practice, and the judicial administration department of the people's government of the province, autonomous region or municipality directly under the Central Government shall cancel his registration to practice accordingly:

- (1) his license to practice in his home country has become void;
- (2) being disqualified as a representative by the foreign law firm he belongs to;
- (3) his certificate to practice or the license to practice of the representative office he belongs to is revoked according to law.

Article 14 Where a representative office falls into one of the following circumstances, the judicial administration department of the State Council shall revoke the permission to practice granted to it and withdraw its license to practice; and the judicial administration department of the people's government of the province, autonomous region and municipality directly under the Central Government shall cancel its registration to practice accordingly:

- (1) the foreign law firm it affiliates to has been dissolved or the registration of which has been canceled;
- (2) the foreign law firm it affiliates to applies to cancel its registration;
- (3) it does not meet the requirements set forth in Article 7 of these Regulations any longer;
- (4) its license to practice is revoked according to law.

The representative offices whose registration is cancelled in accordance with the preceding paragraph shall be liquidated according to law, and before the repayment of their liabilities, their property shall not be transferred out of the territory of China.

Chapter III Business Scope and Practice Rules

Article 15 A representative office and its representatives may only conduct the following activities that does not encompass Chinese legal affairs:

- (1) to provide clients with the consultancy on the legislation of the country where the lawyers of the law firm are permitted to engage in lawyer's professional work, and on international conventions and international practices;
- (2) to handle, when entrusted by clients or Chinese law firms, legal affairs of the country where the lawyers of the law firm are permitted to engage in lawyer's professional work;
- (3) to entrust, on behalf of foreign clients, Chinese law firms to deal with the Chinese legal affairs;

(4) to enter into contracts to maintain long-term entrustment relations with Chinese law firms for legal affairs;

(5) to provide information on the impact of the Chinese legal environment.

Representative offices may directly instruct lawyers in the entrusted Chinese law firms, as agreed between both parties.

A representative office and its representatives shall not conduct any legal service activities or other for-profit activities other than those set forth in the first paragraph and the second paragraph of this Article.

Article 16 A representative office shall not employ Chinese practitioner lawyers; its support staff employed shall not provide legal services to clients.

Article 17 A representative office and its representatives shall not commit any of the following acts in their practice:

(1) to provide false evidence, conceal facts, intimidate or induce another with promise of gain to provide false evidence or conceal facts, or obstruct the opposing party's lawful obtaining of evidence;

(2) to accept money or other things of value from parties by using the advantage of providing legal services;

(3) to divulge commercial secrets or private matters of parties.

Article 18 A representative of a representative office shall not be concurrently a full-time or part-time representative in two or more representative offices.

Article 19 Representatives of a representative office shall be resident in China for not less than 6 months each year, if the said representatives fail to do so, they will not be registered in the following year.

Article 20 A representative office may charge its clients fees when conducting legal services provided for in these Regulations. The fees collected must be settled within the territory of China.

Chapter IV Supervision and Administration

Article 21 The judicial administration department of the State Council and the judicial administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government, in accordance with their duties, are responsible for the supervision and administration of representative offices and their representatives.

Article 22 A representative office shall, before March 31 of each year, submit to the judicial administration department of the peoples' government of the province, autonomous region or municipality directly under the Central Government where it is located for annual examination a copy of its license to practice and its representatives' certificates to practice, and the following materials of the previous year:

- (1) information on their performance of legal services, including the legal affairs entrusted to Chinese law firms;
- (2) its annual financial statement audited by an accounting firm, and documents certifying that its accounts have been settled within the territory of China and taxes have been paid according to law.
- (3) information on the change of its representatives and the employment of Chinese support staff;
- (4) information on the residence of its representatives in the territory of China.
- (5) information on the registration of itself and its representatives.
- (6) other information on the performance of the duties provided for in these Regulations.

The judicial administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall, after finishing the annual examination of the representative offices that are located in their respective administrative regions, submit their examination opinions to the judicial administration department of the State Council for the record.

Article 23 The judicial administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government shall, when collecting fees in registering representative offices and their representatives or collecting fees in conducting annual examination of representative offices according to law, strictly follow the same standards for Chinese law firms and practitioner lawyers which are verified and determined by the pricing administration department of the State Council. All fees collected shall be turned over to the State Treasury.

Where the judicial administration departments of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government impose administrative punishment of fines according to law, the fine decisions and collection of such fines shall be separated in accordance with the provisions of relevant laws and administrative regulations. All fines collected and illegal income confiscated shall be turned over to the State Treasury.

Chapter V Legal Liability

Article 24 Any representative office or representative who endangers China's State security, public security or administration of public order, shall be investigated for criminal liability according to the provisions of the Criminal Law on crimes of endangering State security, crimes of endangering public security or crimes of obstructing the administration of public order, and the license to practice of the representative office or the certificate to practice of the representative shall be revoked by the judicial administration department of the State Council. If the case is not serious enough for criminal punishment, administrative penalties for public security shall be imposed according to law, and the license to practice of the representative office or the certificate to practice of the representative shall be revoked by the judicial administration department of the State Council.

Article 25 Any representative office or representative who, in violation of Article 15 of these Regulations, illegally conducts legal service activities or other for-profit activities shall be ordered to suspend its/his business within a specified time limit by the judicial administration department of the people's government of the province, autonomous region or municipality directly under the Central Government. If the circumstances are serious, the judicial administration department of the State Council shall revoke the license to practice of the representative office or the certificate to practice of the representative.

The judicial administration department of the people's government of the province, autonomous region and municipality directly under the Central Government shall confiscate the illegal income of the representative office or the representative who commits the acts set forth in the preceding paragraph, and impose a fine of not less than 50,000 yuan but not more than 200,000 yuan respectively on the chief representative and other representatives directly responsible.

Article 26 Where a representative office falls under one of the following circumstances, the judicial administration department of the people's government of the province, autonomous region and the municipality directly under the Central Government shall give it a warning and order it to make corrections within a specified time limit; if the circumstances are serious, the judicial administration department of the people's government of the province, autonomous region and the municipality directly under the Central Government shall order a suspension of its business within a specified time limit; if the representative office fails to make corrections within the specified time limit, the judicial administration department of the State Council shall revoke its license to practice:

- (1) employing Chinese practitioner lawyers, or its employed support staff conducts legal services activities;
- (2) failing to settle the fees that it collects for legal services within the territory of China;
- (3) failing to submit relevant materials for annual examination on time, or failing to pass the annual examination.

If the representative office commits the acts set forth in item (2) of the preceding paragraph, the judicial administration department of the people's government of the province, autonomous region and the municipality directly under the Central Government shall impose on it a fine of not less than one time but not more than three times the money that should have been settled in the territory of China.

Article 27 Where a representative office or a representative falls under one of the following circumstances, the judicial administration department of the people's government of the province, autonomous region and the municipality directly under the Central Government give it/him a warning, confiscate its/his illegal income, and concurrently impose a fine of not less than 20,000 yuan but not more than 100,000 yuan:

(1) concurrently serving as a full-time or part-time representative in two or more representative offices;

(2) divulging commercial secrets or private matters of parties;

(3) accepting money or other things of value from parties by using the advantage of providing legal services.

Article 28 Where a representative office whose registration is cancelled transfers its property out of the territory of China before repaying its liabilities, the judicial administration department of the people's government of the province, autonomous region and municipality directly under the Central Government shall order a retransfer of the property transferred out of the territory of China for the repayment of liabilities. If such transfer seriously infringes upon other persons' interests, the chief representative of the representative office and other persons directly responsible for such transfer shall be investigated for criminal liability for the crime of concealing property according to the provisions of the Criminal Law. If the case is not serious enough for criminal punishment, the judicial administration department of the people's government of the province, autonomous region and municipality directly under the Central Government shall impose a fine of not less than 50,000 yuan but not more than 300,000 yuan on the representative office, and a fine of not less than 20,000 yuan but not more than 100,000 yuan respectively on the chief representative and other persons directly responsible for such transfer.

Article 29 Where a representative of a representative office provides false evidence, conceals facts or intimidates or induces another with promise of gain to provide false evidence or conceal facts, he shall be investigated for criminal liability for the crime of obstructing testimony in accordance with the provisions of the Criminal Law, and his certificate to practice shall be revoked by the judicial administration department of the State Council.

Article 30 Where a foreign law firm, a foreign lawyer or any other foreign organization or individual conducts legal service activities within the territory of China without permission, or where a representative office or a representative whose permission to practice has been revoked continues to conduct legal service activities within the territory

of China, the judicial administration department of the people's government of the province, autonomous region and municipality directly under the Central Government shall ban such activities, confiscate the illegal income, and impose a fine of not less than 50,000 yuan but not more than 300,000 yuan concurrently.

Article 31 Where the license to practice of a representative office is revoked according to law, the foreign law firm that the said office is affiliated to will not be permitted to apply to establish its representative office in China for five years; where the certificate to practice of a representative of a representative office is revoked according to law, he will not be permitted to serve as a representative of any representative office in China for five years.

Where a representative of a representative office is imposed a criminal punishment for endangering the State security, public security or administration of public order in China, the foreign law firm that his representative office affiliates to will not be permitted to apply to establish its representative office again and the said representative will not be permitted to serve as a representative of any representative office in China for life.

Article 32 Where a judicial administration department staff member commits one of the following acts, an administrative sanction of demerit recording, grave demerit recording or demotion shall be imposed on the person in charge and other persons directly responsible according to law:

(1) failing to examine or reexamine the certifying documents on proposed representative offices and their representatives in accordance with the requirements provided for in these Regulations;

(2) failing to conduct registration or annual examination for representative offices in accordance with the provisions of these Regulations;

(3) failing to collect fees in accordance with the fee items and fee standards set forth by the State.

Article 33 If a judicial administration department staff member commits one of the following acts, an administrative sanction of demotion, dismissal from the post or discharge from public employment shall be imposed on the person in charge and other persons directly responsible:

(1) issuing license to practice or certificate to practice to proposed representative offices or its representatives which do not meet the requirements provided for in these Regulations;

(2) using advantage of the office to accept money or property, or to seek personal gain;

(3) in violation of the provisions of these Regulations, failing to revoke the permission to practice granted to representative offices or representatives, withdraw their license to practice or certificate to practice, or cancel their registration where such revocation or cancellation shall be done;

- (4) failing to issue a receipt for the lawfully collected fines or failing to truthfully fill in the amount of the fines;
- (5) violating the system for separation of the fine decision respecting and collection of fines or failing to turn over to the State Treasury the fees and fines collected and the illegal income confiscated as provided for;
- (6) failing to promptly investigate and deal with the violations of these Regulations by representative offices or their representatives ;
- (7) other acts of not strictly enforcing laws or abusing powers which cause serious consequences.

Those who commit one of the acts set forth in the preceding paragraph which cause a heavy loss to public property or the interests of the State and people shall be investigated for criminal liability for the crime of abuse of power, negligence of duty or acceptance of bribes in accordance with the provisions of the Criminal Law.

Chapter VI Supplementary Provisions

Article 34 Measures for administration of the representative offices established in Chinese mainland by law firms in the separate customs territories shall be separately formulated by the judicial administration department of the State Council in accordance with the principles of these Regulations.

Article 35 These Regulations shall be effective as of January 1, 2002. Representative offices of foreign law firms and their representatives which have been approved to operate and practice on a trial basis by the judicial administration department of the State Council shall, within 90 days from effective date of these Regulations, apply anew to handle examination and approval formalities.

(State Council)