



HAN KUN LAW OFFICES

Legal Update



CHINA PRACTICE • GLOBAL VISION

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Long-awaited Foreign-Invested Partnership Regulations Issued

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On 25 November 2009, the State Council of the People's Republic of China (the "**State Council**") issued the long-awaited *Measures for the Administration of Partnerships Established within the Territory of China by Foreign Enterprises or Individuals* (Order of the State Council No.567) (the "**Measures**"), which shall go into effect as of March 1, 2010. The most significant implication of the Measures is that it provides to foreign investors a new alternative structure to invest in China, i.e. setting up a foreign-invested partnership.

Legislative Background

The Measures is an affiliated administrative regulation for the *Law of the People's Republic of China on Partnerships* (revised in 2006, the "**Partnership Law**"). The official Q&A press release issued by the Legislative Affairs Office of the State Council on December 2, 2009 explaining the Measures states: "establishing partnerships by foreign enterprises within China is different from setting up the three types of foreign-funded enterprises currently available in China, and thus could not directly apply the relevant laws and regulations on the three types of foreign-funded enterprise."

Under current PRC laws and regulations on foreign investment, a foreign investor may choose one of the following four different types of enterprises for its business in China: Sino-foreign equity joint ventures, Sino-foreign cooperative joint ventures, wholly foreign-owned enterprise and foreign-invested stock company. The Measures offers foreign enterprises and individuals a new investment alternative by allowing them to set up a foreign-invested partnership ("**FIP**") within China.

Formation of FIP

Under the Measures, a FIP may be established by: (1) two or more foreign enterprises or individuals; (2) both foreign enterprises or individuals and Chinese natural persons or legal persons or any other organization; or (3) having a foreign enterprise or individual becoming a partner of a existing partnership established by Chinese natural person or legal person or any other organization by contributing to or accepting property shares of the same .

Formation Registration of FIP

Under the Measures, where establishing a FIP, a representative or agent commonly designated by all partners may directly file an application with the registration authority, and no prior approval from the commerce bureau is required, provided that the registration authority should timely inform the commerce bureau at the same level of the relevant registration information, if the formation of the FIP is approved.

The Measures provides that where establishing a FIP, the investors should comply with the Partnership Law and other relevant laws and regulations, and abide by existing and effective foreign investment industry policies (mainly set forth in the Foreign Investment Industry Catalogue) of PRC. Where any pre-approval by other government authorities is required, the foreign investors should obtain such approval before filing a registration application. Furthermore, where a FIP involves in any special investment projects that are subject to special approval by competent governments, the FIP should conduct corresponding pre-approval procedures of investment projects under relevant national regulations.

Change and Cancellation of FIP

Under the Measures, where any registration information changes or dissolution occurs, a FIP should file an application to the registration authority for alteration registration or cancellation registration. Meanwhile, the competent registration authority should inform the commerce bureau at the same level of the registration or cancellation.

Special Provisions on FIP mainly engaging in investment business

Article 14 of the Measures provides that: “the establishment of a FIP mainly engaging in investment business shall be subject to other regulations, if any.”

Before further special legislation on foreign-invested partnership fund is issued, a foreign investor may establish a FIP mainly engaging in investment business in accordance with the Measures and the Partnership Law. However, the Measure does not specify whether a foreign-invested partnership fund is subject to the Foreign Investment Industry Catalogue when reinvesting in industries falling under the prohibited or restricted sector.

The official Q&A press release explaining the Measures indicates that the government is lacking practical experience in dealing with FIPs mainly engaging in investment business, such as VC and PE. They are unclear whether there is any risk and whether it is necessary to adopt stricter measures to manage this sector. To be prudent, the Measures provide an open clause, i.e. Article 14.

Currently, the competent authorities, such as the registration authorities, the commerce bureaus and foreign exchange authorities, who take charge of specific regulatory work of FIPs, have not yet expressed their opinions on or formulated any detailed rules in respect of the Measures. We will monitor the further rules to be issued by various regulatory authorities in this regard and update you from time to time.

Important Announcement

This Legal Update has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

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