漢坤律師事務所
HAN KUN LAW OFFICES

Newsletter

China Practice

Global Vision

1st Edition of 2011

Insights & Ideas

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Comparative Analysis of Local Rules Regarding Formation of Private Equity and Venture Capital Funds and Management Companies in China (Author: Yong Wang; Ping Zhang; Chuqi Zhang; Shaokai Wang))

Against the backdrop of a huge amount of domestic liquidity from both state-owned and non-state-owned enterprises, the launch of the long-awaited Growth Enterprise Market in Shenzhen at the end of 2009 and the continued growth of private equity investment activity in China, China is expected to witness an upsurge in private equity and venture capital activity. In addition to establishing domestic and foreign-invested venture capital investment enterprises ("VCIEs") and venture capital management enterprises ("VCMEs"), fund sponsors may also form domestic and foreign-invested equity investment fund enterprises ("EIFEs") and equity investment management enterprises ("EIMEs") in several of China's major cities, including Beijing, Shanghai, Shenzhen, Tianjin and Chongqing, pursuant to local rules and incentive policies for the formation of EIFEs and EIMEs. This Han Kun Private Equity Commentary discusses national and local rules regarding and incentives for the formation of VCIEs, VCMEs, EIFEs and EIMEs from a comparative perspective.

Venture Capital Enterprises

Forms of Private Fund. Foreign fund companies may form FIVCIEs and FIVCMEs pursuant to the *Administrative Regulations on Foreign-Invested Venture Capital Investment Enterprises*. VCIEs refer only to enterprises that make equity investments in unlisted high or new technology enterprises (hereinafter "**investee enterprise**") and provide corresponding venture capital management services for the purpose of achieving capital gains. VCIEs and VCMEs may be established either in corporate form or non-legal-person form. The non-legal-person form mainly refers to sino-foreign contractual joint venture, not limited partnership. It was not until 2006 when the *Partnership Law of People's Republic of China* was revamped that limited partnership enterprises came into being, and the regulations on the formation of foreign-invested partnerships (FIPs) did not come out until March 1, 2010.

Formation Requirements. The minimum capital requirement for a non-legal person FIVCIE is US$10 million, and each investor of the FIVCIE should subscribe for a minimum of US$5 million. In addition to capital requirements, an FIVCIE is required to have a "requisite investor" with venture capital as its main line of business, which, similar to the general partner of a limited partnership, will assume joint and several liability for the debt of the FIVCIE. A requisite investor that is a foreign investor is required to have cumulative asset under management of no less than US$100 million in the past three (3) years, at least US$50 million of which shall have been used for venture capital investments. A requisite investor that is a Chinese investor is required to have cumulative asset under management of no less than RMB100 million in the past three (3) years, at least RMB50 million of which shall have been used for venture capital investments.

Filing Requirements. A VCIE may apply to file with the National Development and Reform Commission ("NDRC") and thereby become eligible for certain tax incentives and for investment by the Social Security Fund if its paid-in capital is no less than RMB30 million, or the first installment of its paid-in capital is no less than RMB10 million and all of its investors undertake to pay the unpaid registered capital within five (5) years of the registration so that the aggregate paid-in capital reaches RMB30 million.

Formation of EIFEs and EIMEs

Permissible Entity Forms. The State Council explicitly expressed its encouragement to actively grow China's equity investment fund industry in its Several Opinions of the State Council on Promoting the Development of Small and Medium Sized Enterprises in 2009. [1] Although so far there is no national regulation on equity investment funds, many municipalities, such as Beijing, Shanghai, Tianjin, Shenzhen and Chongqing, have already promulgated local rules to regulate and promote the formation of equity investment funds. In the aforesaid five cities, EIFEs and EIMEs may be established either in partnership or in corporate form. Since March 2010, foreign fund sponsors may also set up RMB funds as FIPs pursuant to the FIP Registration Rules issued by the State Administration of Industry and Commerce (the "FIP Rules"). Carlyle and the Shanghai-based Fosun Group were the first to take advantage of the new FIP Rules to jointly establish a US$100 million equivalent RMB fund in Shanghai in the form of a foreign-invested general partnership.

Capital Requirements. The five cities set different minimum capital requirements for EIFEs and EIMEs. Both Shanghai and Shenzhen require RMB100 million for EIFEs and at least RMB 5 million for each shareholder/partner. In addition, Shenzhen requires the first installment of paid-in capital to be at least RMB50 million. While the Beijing municipal rules are silent on the minimum capital requirement, EIFEs formed in Haidian District are required to have a registered capital of at least RMB100 million. Of the five cities, Tianjin appears to have the lowest capital requirement for an EIFE, which is set at RMB10 million for EIFEs in corporate form, and there is no minimum capital requirement for partnership funds. The capital requirements for EIMEs are the highest in Haidian District of Beijing (RMB10 million for an EIME of any type), the second highest in Shenzhen (RMB10 million for companies limited by shares, or CLBSs, and RMB5 million for limited liability companies, or LLCs), and the third in Shanghai and Tianjin (RMB5 million for

[1] *Several Opinions of the State Council on Promoting the Development of Small and Medium Sized Enterprises,* II(7)

CLBSs and RMB1 million for LLCs)[1], The capital requirements are lowest in Chongqing, which is set at RMB1 million for EIMEs in either corporate or partnership form.

Name Requirements. The name requirements in the five cities are also somewhat different. In Beijing and Shenzhen, the fund names are allowed to contain "fund" ("基金") or "investment fund" ("投资基金"). In Shanghai and Chongqing, the fund names are allowed to contain "equity investment" ("股权投资") without reference to "fund." In Tianjin, the fund names are allowed to contain "equity investment funds" ("股权投资基金") and "equity investment fund management" ("股权投资基金管理").

Foreign-invested Fund Management Enterprises

It is important to note that the local rules in all five cities, including the minimum capital requirements set forth above, generally apply to both purely domestic and foreign-invested EIFEs and EIMEs. However, Beijing and Shanghai have also issued a different set of trial rules for the formation of foreign-invested EIMEs in Zhongguancun District and Pudong District, respectively, both of which require a significantly higher minimum registered capital of US$2 million for foreign-invested EIMEs. One significant distinction between the two sets of trial rules on foreign-invested EIMEs is that, under the Pudong trial rules, at least one shareholder of the foreign-invested EIME (or an affiliate thereof) is required to be engaged in equity investment or equity investment management business, whereas such a requirement does not exist in the Zhongguancun trial rules. Another distinction between the Pudong and Zhongguancun trial rules is that the cooperation joint venture form is available in Pudong but not in Beijing. While technically the Pudong trial rules on foreign-invested EIME were set to expire on June 30, 2010, it is our understanding that the trial rules will be extended for another year through June 30, 2011. Based on our informal discussion with relevant regulators in Tianjin, while there is not an express separate capital requirement for

foreign-invested EIMEs, there is a soft requirement in practice that they have a minimum registered capital of US$1 million, although Tianjin appears to be willing to be quite flexible and may approve the formation of foreign-invested EIMEs with a registered capital as low as US$100,000 - US$150,000.

Tax Treatment of Partners in Partnership Funds

In China, partnerships are tax pass-through entities and the partners pay taxes on income allocated to them on an annual basis. According to Circular 159 of the State Taxation Administration issued in December 2008 and older tax regulations on sole proprietorships and partnership enterprises referenced therein, partners (limited partners and general partners) who are natural persons shall pay progressive income tax ranging from 5% to 35%, subject to certain deductions. The relevant tax rules in four of the five cities, however, provide differentiated tax treatment of partners depending on their status as limited partner (“LP”) or general partner (“GP”), which represents a deviation from Circular 159. In Shanghai and Shenzhen, individual GPs, who are executive partners, shall pay progressive income tax ranging from 5% to 35% on income from the fund, subject to certain deductions, and individual LPs, who are non-executive partners, shall pay tax at a flat 20% rate on interest and dividend income from the fund (it is not clear if gain on the disposition of LP interests is also included).

In Tianjin, both individual LPs and individual GPs (with respect to their capital interests rather than profit interests in the fund) shall pay tax at a flat 20% rate on interest or dividend income or income from the disposition of their interests in the fund. In Beijing, both individual LPs and individual GPs, whether executive partners or not, pay tax at a flat 20% rate on all fund-related income (presumably including interest or dividend income or income from the disposition of interests in the fund), which represents the most radical deviation from Circular 159. In Chongqing, non-executive individual LPs pay personal income tax at a flat 20% rate on all equity investment gains they receive from the limited partnership. While it can be argued that since individual income tax revenues belong to local governments as opposed to the central government, local governments have the authority to lower such tax in order to promote local private equity investment management business, the legality of such local rules is questionable because it involves the change of the type of the applicable tax rate (i.e., from a progressive rate of 5% to 25% to a flat 20% rate) rather than just lowering the tax rate. Besides, in Chongqing, it is also provided that with respect to the operational income and other income of the equity investment related enterprises established in the form of limited liability company or joint stock company, if such investment conforms to the Western Development policy, a lower tax rate of 15% will be adopted.

Formation Rewards and Incentives for VCIEs

Only VCIEs that satisfy relevant requirements and are filed with the competent registration authority for VCIEs (i.e., development and reform commission) are eligible to receive incentives described below. The capital requirements for VCIEs are: (1) the paid-in capital of a VCIE shall be no less than RMB30 million, or the first installment of paid-in capital is no less than RMB10 million and all the investors undertake to pay the unpaid registered capital within five (5) years of the registration so that the aggregate paid-in capital reaches RMB30 million; (2) the contribution of any single investor shall be no less than RMB1 million.

Currently, incentive policies for VCIEs mainly include investment from government guiding fund of funds, risk subsidies and tax incentives. Different cities have adopted somewhat different incentives. What follows is a comparison of the incentives of four major cities, Beijing, Shanghai, Shenzhen and Tianjin (there are currently no explicit incentives for VCIEs formed in Chongqing). Please note that, with respect to the eligibility requirements for incentives, only the measurable requirements and not soft requirements (such as solid management team and good reputation) are listed in the chart below.

	Beijing (Zhongguancun)	**Shanghai (Pudong New District)**	**Shenzhen**	**Tianjin Economic-Technological Development Area (TEDA)**
Government FOF for Venture Capital	**1. Eligibility Requirements:** (1) The paid-in capital is no less than RMB50 million, and all investors contribute in the form of currency; (2) Having at least 3 successful exits of investments in small or medium-sized enterprises, i.e., the average annual rate of return for the equity interest is no less than 20%, or the gain from the equity transfer is at least 20% over the original investment. [2]	**1. Eligibility Requirements**[4] (1) The asset under management ("AUM") of any newly formed investee VCIE shall be no less than RMB200 million in principle (the AUM of any newly formed investee VICE focused on seed-stage investments shall be no less than RMB100 million in principle), and all contributions must be paid up within 3 years, the first installment of which shall be no less than 30% of its subscribed contribution, and all investors shall make their contributions in the form of currency. (2) The investee VCIE shall have filed with and	Shenzhen provides governmental subsidies to VCIEs: **1. Eligibility Requirements**[6]**:** (1) The investee VCIE shall be formed in Shenzhen and have passed the filing inspection by the VCIE filing authority. (2) The investee VCIE shall invest in early stage enterprises with indigineous innovation. (3) The enterprise has completed the modification	**1. Eligibility Requirements** (1) The VCIE shall be formed in Binhai New District and mainly invest in Binhai New District.[8] (2) The investee VCIE shall mainly invest in new technological areas, such as information technology, biological technology and modern pharmacy, new material, modern manufacturing, alternative energy, and environmental protection.[9] **2. Scale of Government FOF and Contribution Limits** (1) Government FOF in Tianjian is established in corporate form, with a registered capital of RMB200 million contributed by Binhai New District Administrative Committee and National Development Bank.

2 *Interim Measures of Beijing on Implementation of Fund of Venture Capital Funds for Small and Medium Sized Enterprise*, Article 8
3 *Interim Measures of Beijing on Implementation of Fund of Venture Capital Funds for Small and Medium Sized Enterprise,* Article 10 and 11
4 *Interim Measures of Shanghai for Administrations of Fund of Venture Capital Funds*, Chapter IV
5 *Interim Measures of Shanghai for Administrations of Fund of Venture Capital Funds,* Article 7
6 *Shenzhen Guidelines for Venture Capital Enterprises Support Scheme,* Article 4
7 *Shenzhen Guidelines for Venture Capital Enterprises Support Scheme,* Article 5
8 *Interim Measures of Tianjin Binhai New Area for Administration of Fund of Venture Capital Funds,* Article 8
9 *Interim Measures of Tianjin Binhai New Area for Administration of Fund of Venture Capital Funds,* Article 9

	Beijing (Zhongguancun)	Shanghai (Pudong New District)	Shenzhen	Tianjin Economic-Technological Development Area (TEDA)
	2. Limitations on Government FOF's Investment (1) The investment by Government FOF to the VCIE shall not exceed 30% of the total paid-in capital to the VCIE, and Government FOF cannot be the largest shareholder. (2) The duration of the investee VCIE shall not exceed 10 years.[3]	subjected itself to the supervision by VCIE filing authority. (3) The investee VCIE shall focus on investing in seed-stage enterprises or early to mid stage enterprises in industries supported or encouraged by government, and have a specific investment area of focus. (4) The investee VCIE shall make investment in Shanghai on a preferred basis. **2. Limitations on Govnerment FOF's Investment[5]** (1) Government FOF may not be the largest shareholder in the investee VCIE.	registration with administrations for industry and commerce, and its contribution has been fully paid in. The duration of all contributions shall be no less than 2 years. **2. Governmental Subsidy[7]:** (1). Governmental subsidy from the municipal technology and research fund equal to 15% of the actual investment by the VCIE. (2). In case it is the first time for the investee VCIE to receive investment, the percentage of subsidy may be increased to 20%. The amount of subsidy shall not exceed RMB500,000 each	The duration of the Government FOF is 15 years. [10] (2) The investment principle of FOF is that it shall not be the controlling shareholder in order to ensure the indepdence of the decisionmaking and operation of the investee VCIE and its commercial operation through a properly designed shareholding structure. [11] (3) Generally, the duration of the investee VCIE shall be no more than 10 years. [12]

[10] *Interim Measures of Tianjin Binhai New Area for Administration of Fund of Venture Capital Funds,* Article 4
[11] *Interim Measures of Tianjin Binhai New Area for Administration of Fund of Venture Capital Funds,* Article 6
[12] *Interim Measures of Tianjin Binhai New Area for Administration of Fund of Venture Capital Funds,* Article 10

	Beijing (Zhongguancun)	Shanghai (Pudong New District)	Shenzhen	Tianjin Economic-Technological Development Area (TEDA)
			time, and the annual cumulative amount of subsidy granted to any VCIE shall not exceed RMB2 million.	
Risk Subsidies	Following are the measures for administration of venture capital risk subsidies in Zhongguancun National Indigineous Innovation Exmplary Zone **1. Requirements** [13] (1) The enterprise must be recognized as Venture Capital Partner of Zhongguancun (requiring the VCIE or VCME to have a registered capital of no less than RMB100 million or AUM of no less than	Shanghai has established Special Fund for Venture Capital Risk Subsidy, to which VCIEs pay risk reserve funds voluntarily annually. In case of failure in investment, such VCIEs will receive certain compensation. The arrangement is described as follows: (1) VCIEs filed with the competent authority that have passed the annual inspection of the competent authority may pay an amount of no more than 10% of its annual after-tax profits as risk reserve funds voluntarily; or pay an amount of no more than 5% of its registered capital as risk reserve funds.[15]	N/A	TEDA has established a Development Fund for Venture Capital (DCVC) of RMB50 million for co-investments and risk subsidies.[19] **1. Requirements**[20] (1) Having a registered capital of no less than RMB30 million or AUM of no less than RMB100 million. (2) Having successful investment exits or investee enterprises are performing well. (3) Having filed with the competent authority. **2. Amount of Subsidy**[21] (1) With respect to the actual amount VCIEs invest in small or medium-sized technology enterprises, the cumulative amount of subsidy a VCIE may

[13] *Measures of Zhongguancun National Innovation Zone for Administration of Risk Subsidy for Venture Capitals*, Chapter II
[14] *Measures of Zhongguancun National Innovation Zone for Administration of Risk Subsidy for Venture Capitals*, Chapter III
[15] *Measures of Shanghai for Administration of Special Funds for Risk Subsidy for Venture Capital*, Section II(1).
[16] *Measures of Shanghai for Administration of Special Funds for Risk Subsidy for Venture Capital*, Section II(2).
[17] *Measures of Shanghai for Administration of Special Funds for Risk Subsidy for Venture Capital*, Section III
[18] *Measures of Shanghai for Administration of Special Funds for Risk Subsidy for Venture Capital*, Section VIII
[19] *Interim Measures of Tianjin Economic-Technology Development Area on Encouraging Venture Capital,* Article 4
[20] *Interim Measures of Tianjin Economic-Technology Development Area on Encouraging Venture Capital,* Article 7

	Beijing (Zhongguancun)	Shanghai (Pudong New District)	Shenzhen	Tianjin Economic-Technological Development Area (TEDA)
	RMB300 million). (2) If the VCIE invests through a management enterprise, the subsidies will be granted only to the management enterprise. (3) The VCIE shall invest only in unlisted hi-tech enterprises in Zhongguancun, and it should be no more than 5 years from the incorporation of the enterprise to the execution of the investment agreement entered into by the investee enterprise and the VCIE. (4) The investment has been completed, i.e., the investment capital has been paid to the investee enterprise in the Zone and the AIC	(2) The municipal government will pay an amount equal to the risk reserve funds paid by VCIEs, which will come out of the technology budget of the municipal.[16] (3) VCIEs that satisfy certain conditions may receive compensation from the Special Capital for Risk Subsidy for its losses arising out of liquidation due to investment failures or exits of venture capital projects for a loss.[17] (4) VCIEs that become ineligible for filing due to cancellation of filing by the competent filing authority, business closure, liquidation or cessation of venture capital business for other reasons or decide not to pay risk reserve funds to the Special Capital for Risk Subsidy, may withdraw the capital already paid but not used, and automatically lose its eligibility for receiving subsidies from the Special Capital for Risk Subsidy.[18]		apply for with respect to its investment in any investee enterprise shall not exceed RMB1 million.

[21] *Interim Measures of Tianjin Economic-Technology Development Area on Encouraging Venture Capital,* Article 23

	Beijing (Zhongguancun)	Shanghai (Pudong New District)	Shenzhen	Tianjin Economic-Technological Development Area (TEDA)
	modification registration has been completed. **2. Amount of Subsidy**[14] (1) The subsidy is granted in the form of currency for VCIE's actual investment in investee enterprises. The amount of subsidy is 10% of the actual investment in an investee enterprise, and any single subsidy may not exceed RMB1 million. (2) The cumulative amount of subsidy a VCIE may apply with respect to its investment in any investee enterprise shall not exceed RMB1 million. (3) The subsidy granted to one VCIE shall not exceed RMB 3 million every year.			

	Beijing (Zhongguancun)	**Shanghai (Pudong New District)**	**Shenzhen**	**Tianjin Economic-Technological Development Area (TEDA)**
Rewards	N/A	N/A	N/A	Applicalbe in TEDA only: (1) If the cumulative amount of the tax paid by the invested small or medium-sized technology enterprises reaches RMB2 million in 3 years after filing, the VCIE will be rewarded RMB 200,000. [22] (2) If the invested small or medium-sized technology enterprises in the development zone successfully completes an initial public offering, the VCIE will be rewarded RMB1 million for each listed investee enterprise.[23]
Tax Incentives	Where a VCIE invests in an unlisted small or medium-sized high & new tech enterprise by means of equity investment and holds the investment for a period of at least 2 years (24 months), and satisfies the following conditions, the income tax payable by such enterprise may be offset by 70% of the amount of investment in the small or medium-sized high & new tech enterprise in the current year when its ownership of the equity has reached 2 years; where the amount of investment is insufficient to offset its income tax in the current year, it may be carried forward to the following tax years: (1). The business scope of the enterprise conforms to the provisions of the Interim Measures for Administration of Venture Capital Investment Enterprises ("Interim Measures") and its registration in administrations for industry and commerce is professional VCIE with legal person status such as a venture capital investment company limited or a venture capital investment company limited by shares; (2). The enterprise has submitted a record-filing in accordance with the requirements and procedures as set forth in the Interim Measures; and the investment of the enterprise is consistent with relevant provisions of the Interim Measures as verified by annual inspection of the competent record-filing authority; (3). The small and medium-sized high & new tech enterprises in which the VCIEs invest shall have no more than 500 employees, annual sales of no more than RMB200 million and total assets of no more than RMB200			

[22] *Interim Measures of Tianjin Economic-Technology Development Area on Encouraging Venture Capital,* Article 32
[23] *Interim Measures of Tianjin Economic-Technology Development Area on Encouraging Venture Capital,* Article 33

	Beijing (Zhongguancun)	Shanghai (Pudong New District)	Shenzhen	Tianjin Economic-Technological Development Area (TEDA)
	million in addition to being recognized as a high & new tech enterprise in accordance with the provisions of the Circular on Printing and Distributing the Administrative Measures on Determining High & New Tech Enterprises (Guo Ke Fa Huo [2008] No. 172) promulgated by the Ministry of Science and Technology, the Ministry of Finance and the State Administration of Taxation and the Circular on Printing and Circulating the Guideline of the Management Work Over Determining High & New Tech Enterprises (Guo Ke Fa Huo [2008] No. 362).			
	N/A	N/A	N/A	**Special Tax Incentives** (1) Within 5 years from the year the VCIE is certified, TEDA will refund 50% of the portion of business tax and enterprise income tax payable by VCIEs to TEDA.[24] (2) Within 5 years from the VCIE is certified, with respect to the portion of income tax on individual partners' gains from production and operation of the VCIE partnership in excess of 20%, TEDA will waive 100% of the portion retained by TEDA.[25]

Rewards and Incentives for EIFEs and EIMEs

Beijing, Shanghai, Shenzhen, Tianjin and Chongqing have promulgated various incentive policies and reward systems for locally formed EIFEs and EIMEs as set forth in the chart below. Please note that the adoption of further implementing rules may be required for some of these policies to be fully implemented.

[24] *Interim Measures of Tianjin Economic-Technology Development Area on Encouraging Venture Capital,* Article 30
[25] *Interim Measures of Tianjin Economic-Technology Development Area on Encouraging Venture Capital,* Article 31

Type	Beijing[2]	Shanghai	Shenzhen	Tia	Chongqing
Formation Rewards for Fund	Applicable to enterprises that are formed in or moved to Haidian District after January 1st, 2007 only: (1) RMB 500,000 if the registered capital more than RMB 100 million but less than RMB 500 millon and make the first investment in enterprieses registerd with Haidian administrations for industry and commerce and tax authority. (2) RMB 800,000 if the registered capital reaches RMB 500 millon and the first investment is made in an enterpriese registerd with Haidian administrations for industry and commerce and tax authority. (3) In case the first investment is made in a district other than Haidian, an subsidy	Corporate form fund incorporated in Pudong District only: (1) RMB 5 million if the registered capital reaches RMB 500 million; (2) RMB 10 million if the registered capital reaches RMB 1.5 billion; (3) RMB 15 million if the registered capital reaches 3 billion. [27]	Corporate form fund only, and the fund shall not move away from Shenzhen within 5 years (effective through December 31, 2011): (1) RMB 5 million if the registered capital reaches RMB 500 million; (2) RMB 10 million if the registered capital reaches RMB 1.5 billion; (3) RMB 15 million if the registered capital reaches 3 billion. [28]	N/A	N/A

[26] *Measures on Supporting the Development of Equity Investment Enterprises in Haidian District,* Article 9
[27] Shanghai: *Opinions and Implementation Measures on Promoting the Development of Equity Investment Enterprises and Equity Investment Management Enterprises in Pudong New District,* Article 3
[28] Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section IV(1)

Type	Beijing[2]	Shanghai	Shenzhen	Tia	Chongqing
	amounting to 70% of the aforesaid reward amount shall be granted. In case the EIFE subsequently invests in an enterprise in Haidian, it may apply for the remaining 30% of the aforesaid rewards amount.[26]				
Formation Rewards for Management Enterprises	(1) For management enterprises filed with Beijing Municipal Bureau of Financial Work with a registered capital no less than RMB 30 million: RMB 8 million if the cumulative paid-in capital under management reaches RMB 500 million; RMB 10 million if the cumulative paid-in capital under management reaches or exceeds RMB 1 billion.[29] (2) EIMEs registered or moved into Haidian Distrct after January 1, 2007 can also be rewarded as described above.[30]	For Partnership fund in Pudong District, the cash reward will be granted to its management enterprise only: RMB 5 million if the fund's annual actual raised capital reaches RMB 1 billion; RMB 10 million if the fund's raised capital reaches 3 billion; RMB 15 million if the fund's annual actual raised capital reaches 5 billion. The reward can be further raised if the fund	For Partnership fund, the cash reward will be granted to its management enterprise only, and the fund shall not move away from Shenzhen within 5 years (effective through December 31, 2011): RMB 5 million if the annual actual raised capital reaches RMB 1 billion; RMB 10 million if the annual raised capital reaches RMB 3 billion; RMB 15 million if the annual actual raised capital reaches RMB 5 billion. [32]	N/A	N/A

[29] Beijing: *Opinions on Promoting the Development of Equity Investment Funds,* Article 9&10; *Implementation Rules on Promoting the Development of Financial Industry in the Capital,* VII
[30] *Measures on Supporting the Development of Equity Investment Enterprises in Haidian District,* Article 9 & 12
[31] Shanghai: *Opinions and Implementation Measures on Promoting the Development of Equity Investment Enterprises and Equity Investment Management*

Type	Beijing[2]	Shanghai	Shenzhen	Tia	Chongqing
		significantly contributes to Pudong finance industry. [31]			
Tax Incentives for Fund	N/A	N/A	Full refund of the local retained part of the paid enterprise income tax in the first 2 years and half refund in following 3 years.[33]	N/A	(1) Full refund of the business tax for the first and second year by the financial department, and 50% refund from the 3rd year to the 5th year (2) Full refund of the local retained part of the paid enterprise income tax, and half refund in the following 3 years. (3) For EIFEs that have difficulties paying taxes for newly bought or built offices, waiver of deed tax and property tax for 3 years. [34]
Tax Incentives for	(1) For corporate PE management company	N/A	(1) Full refund of the local retained part of	For management	(1) Full refund of the business tax

Enterprises in Pudong New District, Article 3

[32] Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section IV(1)

[33] Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section IV(3)

[34] Chongqing: *Opinions of People's Government of Chongqing on Encouraging the Development of Equity Investment Related Enterprises*, Section II

Type	Beijing[2]	Shanghai	Shenzhen	Tia	Chongqing
Management Enterprises/GP	managing a fund with more than RMB 500 million paid-in capital, full refund of the district/county local retained part of its paid enterprise income tax in the first 2 years and half refund in the next 3 years;[35] (2) Business tax exemption for the GP in partnership funds if it contributes intangible assets or real properties, participations in the profit allocation and jointly assume investment risks and upon the transfer of its equity in the fund.[36]		the paid enterprise income tax in the first 2 years and half refund in the next 3 years;[37] (2) Full refund of the local retained part of the paid business tax in the first 2 years and half refund in the next 3 years;[38] (3) Business tax exemption for the GP in partnership funds if it contributes intangible assets or real properties, participations in the profit allocation and jointly assume investment risks and upon the transfer of its equity in the fund.[39]	companies filed with Tianjin NDRC: (1) Full refund of the local retained part of the paid enterprise income tax in the first 2 years and half refund in the next 3years; (2) Full refund of the local retained part of the paid business tax in the first 2 years and half refund in the next 3 years; (3) The office purchase or construction will be exempt from real estate tax for 3 years and from deed tax.[40]	for the first and second year by the financial department, and 50% refund from the 3rd year to the 5th year; (2) Full refund of the local retained part of the paid enterprise income tax, and half refund in the following 3 years. [41]

[35] Beijing: *Opinions on Promoting the Development of Equity Investment Funds,* Article 9&10
[36] Beijing: *Opinions on Promoting the Development of Equity Investment Funds,* Article 6
[37] Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section IV(2)
[38] Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section IV(3)
[39] Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section III(4)
[40] Tianjin: *Measures on Promoting the Development of Equity Investment Funds,* VIII
[41] Chongqing: *Opinions of People's Government of Chongqing on Encouraging the Development of Equity Investment Related Enterprises*, Section II

Type	Beijing[2]	Shanghai	Shenzhen	Tia	Chongqing
Office Subsidy	For corporate PE management company managing a fund with more than RMB 500 million paid-in capital (Jinrong Jie, Xicheng District, Beijing CBD and Chaoyang District only): (1) A lump-sum subsidy of RMB 1,000/m^2 with a 5-year transfer lock-up upon an office purchase; (2) A lease subsidy of 50%, 30% and 10% of the fund's office rental in first 3 years, respectively[42] Applicable in Haidian District only: For EIFEs and headquarter EIMEs, a lease subsidy of 50%, 30 and 20% of the fund's office rental in the first 3 years, respectively.	Pudong District only: (1) A subsidy of 1.5% of the purchase price if purchasing an office in Lujiazui or Zhangjiang; (2) A subsidy of RMB 500/m^2/year for office lease in Lujiazui or Zhangjiang.[43]	(1) A subsidy of 1.5% of the purchase price up to RMB 5 million with a 10-year transfer lock-up upon office purchase in Shenzhen; (2) A subsidy of 30% of the market rental for 3 years up to RMB 1 million for office lease in Shenzhen.[44]	(1) A lump-sum subsidy of RMB 1,000/m^2 up to RMB 5 million with a 10-year transfer lock-up upon office purchase in Tianjin; (2) A subsidy of 30% of the lower of the actual office rental and the market rental for 3 years up to 1,000m^2 and RMB 1 million for office lease in Tianjin.[45]	(1) A lump sum subsidy of RMB 1000/m2 within a 5 year lease lock-up upon office purchased or established in the central commercial district, core financial district or northern new district. The office can not be leased to any third party if such subsidy is granted, (2) A subsidy of 30% of the market rental for 3 years for office lease in Chongqing. (the specific subsidy standard shall be calculated based on the average rental in the same area.)

42 *Implementation Rules on Promoting the Development of Financial Industry in the Capital,* Section8&9
43 Shanghai: *Opinions and Implementation Measures on Promoting the Development of Equity Investment Enterprises and Equity Investment Management Enterprises in Pudong New District,* Article 6
44 Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section IV
45 Tianjin: *Measures on Promoting the Development of Equity Investment Funds,* VIII(4)

Type	Beijing	Shanghai	Shenzhen	Tianjin	Chongqing
Local Investment Rewards	N/A	Pudong District only: Cash reward of 50% of Pudong local retained tax from the fund's investment in portfolio companies organized in Pudong and engaged in an encouraged industry.[46]	Cash reward of up to RMB 3 million from local tax revenues derived from investments in and disposition of portfolio companies or projects in Shenzhen.[47]	Cash reward of 60% of local retained tax revenues derived from investments in and disposition of portfolio companies or projects in Tianjin.[48]	N/A
Rewards to Individuals	For corporate PE management company managing a fund with more than RMB 500 million paid-in capital: Cash refund up to RMB 300,000 from the local retained individual income tax revenue to senior officers who have been in employ by the finance enterprise for more than 2 years, which may be used for purchasing a residential property, an automobile and	Pudong District only: (1) For corporate fund and management companies, a 40% individual income tax refund to chairperson and vice chairperson of the board, general manager and deputy general manager and a 20% individual income tax refund to investment managers and core members of project management team; (2) RMB 200,000 housing subsidy for chairperson and vice chairperson of the board, general manager and deputy	Senior offices, satisfying certain conditions and verified by the human resources and insurance authotirites, can benefit from talents introduction policies, get rewards and help with the settlement of their spouse, education of their children and medical insurances.	Cash refund of local retained individual income tax to senior officers who have been in employ by the finance enterprise for more than 2 years, which may be used for the first-time purchase of a residential property, automobile or professional training in Tianjin for up to 5 years.[51]	Full refund of the local retained part of the paid individual income tax to senior offices for the first 3 years, and half refund for the following 2 years, to encourage and support their further education and training, purchase of real estate or so.

[46] Shanghai: *Opinions and Implementation Measures on Promoting the Development of Equity Investment Enterprises and Equity Investment Management Enterprises in Pudong New District,* Article 5
[47] Shenzhen: *Several Rules on Promoting the Development of Equity Investment Funds,* Section IV(4)
[48] Tianjin: *Measures on Promoting the Development of Equity Investment Funds,* VIII(6)

Type	Beijing	Shanghai	Shenzhen	Tianjin	Chongqing
	professional training in Beijing[49]	general managers if the registered capital of corporate fund reaches RMB 500 million or if the assets under management of management company reaches RMB 1 billion.[50]			

Endnotes:

[1] The Beijing rules do not expressly impose any minimum capital requirement for EIFEs or EIMEs but do require an actual paid-in capital of RMB500 million in order for an EIFE to become eligible for various tax incentives and rewards in Beijing. In addition, based on our informal discussion with Beijing Bureau of Financial Work, in practice, the registration of EIMEs with Beijing Bureau of Financial Work, which is a pre-condition for becoming eligible for the various incentive policies in Beijing, requires the EIME to have a minimum registered capital of RMB30 million.

[2] For enterprises to apply for incentives of Haidian District, some conditions should be satisfied in the first place. For EIFEs, following are the conditions on their scope of business and registered capital: invest in unlisted enterprises only and the amount of its investment in each enterprise shall not exceed 20% of the investee enterprise's total capital; the registered capital of the EIFE shall be no less than RMB 100 million or equivalent foreign currency; the first installment of no less than 20% of its registered capital shall be paid in before registration, and the balance shall be paid up within 5 year from the issuance of its business license; in case of foreign-invested EIFEs invested by foreign investors, the first installment of contribution shall be no less than 15% of their respective subscribed contribution, and must be paid up within 3 months from the issuance of the business license, with the balance paid up within 3 years from the issuance of the business license. For EIMEs, following are the conditions on their scope of business and registered capital: invest in unlisted enterprises only and the amount of its investment in each enterprise shall not exceed 20% of the investee enterprise's total capital; the registered capital of the EIFE shall be no less than RMB10 million or equivalent foreign currency; the first installment of its contribution must be paid in before registration and its paid-in capital shall be no less than 20% of its registered capital, and the balance shall be paid up within 2 year from the issuance of its business license; in case of foreign-invested EIMEs, the first installment of no less than 15% of their respective subscribed contribution shall be paid up within 3 months from the issuance of the business license, with the balance paid up within 3 years from the issuance of the business license.

[49] *Implementation Rules on Promoting the Development of Financial Industry in the Capital,* Section 6
[50] Shanghai: *Opinions and Implementation Measures on Promoting the Development of Equity Investment Enterprises and Equity Investment Management Enterprises in Pudong New District,* Article 4
[51] Tianjin: *Measures on Promoting the Development of Equity Investment Funds,* VIII(5)

Legal Updates

1. Brief of the Regulation on Expropriation and Compensation of Real Properties on State-owned Land (Author: Hong LI)

On January 21, 2011, the State Council issued the *Regulation on Expropriation and Compensation of Real Properties on State-owned Land* (the "**New Expropriation Regulation**") which became effective since its enactment. *The Regulation on Expropriation of Real Properties at Urban Area* which was enacted by the State Council on June 13, 2001 shall be repealed simultaneously.

Corresponding to the PRC Property Law, the New Expropriation Regulation embodies the principle that the expropriation shall be for public interest. In respect of the concrete system, the New Expropriation Regulation adopts certain new measures to protect the public interest and the legitimate interests of the expropriated parties, such as: (1) the expropriating party shall be the municipal or county-level government rather than the real estate enterprises; (2) the compensation shall be accomplished before the expropriation; and (3) conducting the expropriation through invalid ways is prohibited.

The Application Scope of the New Expropriation Regulation

According to the New Expropriation Regulation, it only applies to "the expropriation and compensation in connection with the real properties on state-owned land". Thus, the expropriation of the real properties on collectively-owned land is not subject to the New Expropriation Regulation.

The Basic Principles for Expropriation and Compensation

According to the New Expropriation Regulation, if the cause of expropriation is for public interest, the decision of such expropriation shall be made by the municipal or county-level government. The New Expropriation Regulation defines the concept of "public interest" by enumeration which includes: national defense and diplomacy; infrastructure project sponsored by the government; public utilities sponsored by the government; affordable housing project sponsored by the government; renovation project in connection with aged urban areas sponsored by the government; and other public interest situations.

The compensation for expropriated parties made by the municipal or county-level government shall include: (1) the compensation for the value of the expropriated properties; (2) the compensation for the relocation and temporary settlement; and (3) the compensation for the loss arising from the suspension of production and operation.

The Executive Authority to Conduct Expropriation and Compensation

According to the New Expropriation Regulation, the municipal or country-level government shall be respectively responsible for the expropriation and compensation of the real properties within its administrative area. Real estate enterprises are not allowed to participate in the expropriation activities. In addition, the municipal or county-level government may authorize relevant entities to implement the expropriation works however such entities shall not be profit-pursuing in nature.

By specifying that the responsible party for the expropriation and compensation shall be the government rather than the real estate enterprise, the New Expropriation Regulation tries to solve the interest conflict and establish a cushion between the real estate enterprise and the expropriated parties.

The Plan for Expropriation and Compensation of Real Properties

According to the New Expropriation Regulation, draft plan for the expropriation and compensation shall be submitted to the municipal or county-level government by the governmental department responsible for expropriation. The municipal or county-level government shall make public announcement of the draft plan and seek public opinion.

It shall be noted that for renovation project in connection with aged urban areas, where a majority of the expropriated parties hold that the plan for expropriation and compensation is not in compliance with the New Expropriation Regulation, the municipal or county-level government shall hold a public hearing for the expropriated parties and the representatives of the public. The draft plan shall be revised according to the results of such public hearing.

Determination of the Value of the Expropriated Properties

The New Expropriation Regulation has adopted more market-oriented approach regarding the way of determining the value of expropriated real properties. According to the New Expropriation Regulation, the ascertained value of the expropriated properties shall not be lower than the then market value of similar-situated properties as of the date of public announcement of the expropriation decision. The value of expropriated properties shall be determined by qualified real estate appraisal agencies. Also, the expropriated parties have the right to choose a qualified real estate appraisal agency through negotiation. If no such agency can be determined through negotiation, a simple majority vote or random choice as well as other methods could be adopted.

By specifying that the ascertained value of the expropriated properties shall not be lower than the then market value of similar-situated properties and the expropriated parties shall have the right to choose a real estate appraisal agency, the New Expropriation Regulation effectively ensures that the expropriated parties could protect their interest during the process of expropriation and compensation.

Compensation Agreement and Compensation Decision

According to the New Expropriation Regulation, the compensation agreements shall be entered into between the governmental department responsible for expropriation and compensation and the expropriated parties. If one party thereto does not perform its obligations, the other party thereto could file a lawsuit according to the relevant laws and regulations.

Where such a compensation agreement cannot be reached within the time limit specified in the plan of expropriation and compensation or where the property owners are not clear, the governmental department responsible for the expropriation shall report to the municipal or county-level government which may make the compensation decisions according to the draft compensation plan and then make public announcement of such decision. The expropriated parties who do not agree with such decision may file an administrative petition or an administrative lawsuit.

The New Expropriation Regulation grants the right of the municipal or county-level government to unilaterally make the compensation decisions under certain special circumstances. To protect the interest of the expropriated parties, however, the New Expropriation Regulation specifies that the full compensation shall be accomplished before such decision.

Judicial Mandatory Expropriation and Prohibition of Illegal Actions of Expropriation

According to the New Expropriation Regulation, after receiving the compensation from the municipal or county-level government, the expropriated parties shall finish the relocation within the time limit as specified in the compensation agreement or compensation decisions. However, any illegal actions of expropriation, such as cutting off water supply, gas supply, heating supply, threat and coercion, as well as violent or threatening methods are prohibited. In addition, the real estate enterprises are prohibited to participate in the relocation. All these provisions contribute to the protection of the legitimate interest of the expropriated parties.

The New Expropriation Regulations also stipulates new judicial mandatory expropriation procedure. According to this new procedure, where property owners do not file an administrative petition or an administrative lawsuit against the decision of expropriation and meanwhile refuse to relocate within the time limit specified in the expropriation decision, the municipal or county-level government may petition the local court to conduct judicial mandatory expropriation. However, the concrete enforcement ways and the corresponding supervision have not been provided in the New Expropriation Regulation.

Legal Liabilities for Illegal Actions of Expropriation and Illegal Actions Obstructing Expropriation

According to the New Expropriation Regulation, illegal actions of expropriation such as cutting off water supply, gas supply, heating supply, threat and coercion, as well as violent or threatening methods could be subject to civil liabilities for compensation, administrative penalties or criminal liabilities. The personnel in charge or are directly responsible for such illegal actions may also be subject to criminal liabilities or other penalties. Meanwhile, the people who obstruct the expropriation and compensation through violent or threatening ways could also be subject to administrative penalties or criminal liabilities.

2. Beijing Municipality Promulgated Regulations on Zhongguancun National Innovation Demonstration Zone (Author: Jiajia LI; Xiao LING)

The 22nd Meeting of the Standing Committee of the 13th Session of the People's Congress of Beijing Municipality adopted the Regulations on Zhongguancun National Innovation Demonstration Zone ("the **Regulations**") on December 23, 2010, which became effective as of the date of its promulgation and shall repeal the Regulations on Zhongguancun Science and Technology Park adopted at the 23rd Meeting of the Standing Committee of the 11th Session of the People's Congress of Beijing Municipality on December 8, 2000 (the "**Former Regulations**"). Comparing with the Former Regulations, the Regulations not only expand the geographic territory of the Zhongguancun National Innovation Demonstration Zone (the "**Zone**") by providing that the Zone shall include the Haidian Park, Fengtai Park, Changping Park, Electronic Town, Yizhuang Park, Desheng Park, Shijingshan Park, Yonghe Park, Tongzhou Park, Daxing Biomedical Industry Base and other areas designated by the People's Government of Beijing Municipality in accordance with the approval of the State Council (the Central Government of the People's Republic of China), but also provide legal guarantees for the Zone which is to be established as "a science and technology innovation center with worldwide influences" based on the principle of "enhancing the innovation abilities". The main points of the Regulations are summarized as below:

Convenient Policies for Innovation Entities

The Regulations formulate a series of rules to encourage the establishment of the enterprises in the Zone from various aspects including the establishment procedures, the qualification of shareholders, the capital contributions by way of scientific and technologic achievements and the eligibility on capital verification certifications.

It is provided in the Regulations that where any item in the business scope of an enterprise to be established in the Zone is subject to any prerequisite approvals as required by the laws, administrative regulations and decisions of the State Council, the investors may apply for the "set-up registration". The relevant enterprise may obtain an interim business license and a one-year "set-up period". Such enterprise may carry out the activities related to its establishment such as opening bank accounts, leasing and decorating the premises for its operation, purchasing the equipments and recruiting the employees, and shall not carry out any operation activities unrelated to its establishment. Such rules may expedite the establishment of the enterprises and solve the dilemma of mutual restrictions between the prerequisite approvals and registration of establishment that may occur during the establishment of enterprises engaging in the business subject to pre-approval.

The Regulations, following the same way of the Former Regulations, permit the investors to determine the proportion in the registered capital accounted for by intellectual property rights and other types of scientific and technologic achievements that are appraisable transferable through negotiation, subject to the relevant regulations on the state-owned assets supervision in the event of contribution by state-owned assets, which means the investors are on longer limited by the current provisions in the Company Law providing that contribution in currency in the registered capital of a company shall account for at least 30% of the total registered capital. Furthermore, the Regulations expressly permit the capital contribution with equity and creditor's rights of the investors that are appraisable by currency and transferable in accordance with the laws, which entitles more decision-making rights in this regard to the relevant investors.

The Regulations also simplifies the eligibilities on the capital verification certifications for capital contribution and capital increase of the enterprises. It is provided in the Regulations that apart from the capital verification reports issued by the capital verification institutions, the funds deposit receipts issued by the banks (in case of capital contribution or capital increase in currency) and appraisal reports issued by the appraisal institutions (in case of capital contribution with non-monetary properties) shall also be recognized as the eligible capital verification certifications.

In addition, the Regulations explicitly permit the PRC citizens, in the capacity of natural persons, to act as shareholders of Sino-foreign equity joint venture ("EJV") and Sino-foreign cooperative joint venture ("CJV") in the Zone. Such rule breaks through the limitations on the capacity of Chinese shareholders of EJV or CJV since the current legislations generally do not permit PRC individuals to act as shareholders of any EJV or CJV. The Regulations also provide that the registered capital of the venture capital institutions could be contributed in installment in accordance with the agreements of the investors themselves. The Regulations provide that certain qualified "industry and technology alliance" jointly founded by the enterprises, higher education institutes, research and development institutes and other organizations could apply to be registered as a legal person. Meanwhile, it simplifies the registration procedures for certain civil organizations conducive for innovation. In accordance with the Regulations, the applicants for establishing certain civil organizations conducive for innovation in the Zone such as associations, private non-enterprise units and foundations (except for those subject to pre-approval requirements in accordance with the laws, administrative regulations and the decisions of the State Council) may directly apply for registration before the civil affairs authorities of Beijing Municipality. The aforesaid civil organizations shall have the name of administrative region or "Zhongguancun" as a part of their names, but are entitled to recruit domestic organizations or individuals as members in other administrative regions after the establishment and carry out the activities beyond the territory of Beijing Municipality. The aforesaid rules provide considerable convenience for the growth of innovation entities in the Zone.

Promoting the Research and Development, Transformation of the Scientific and Technologic Achievements and Protection of Intellectual Property Rights

The Regulations provide a series of legal guarantees to promote the research and development of science and technology, the transformation of its achievements, and the protection of intellectual property rights.

The Regulations encourage the establishment of research and development institutions and achievements transformation centers in and out of the PRC by the enterprises in the Zone either by themselves or together with the colleges and scientific research institutions, and also provide that the relevant governmental authorities of Beijing Municipality shall consider the opinions of the enterprises and industry and technology alliance in the Zone during the formulation of the programs, plans and implementation schemes of key scientific and technologic projects. The Regulations also permit the allocation of certain proportion of "indirect costs" in the costs of any national or Beijing key scientific and technologic projects undertaken by the enterprises, colleges and research and development institutions to be used for management, coordination and supervision fees in the implementation of the projects and other relevant costs that are unable to be allocated as "direct costs".

The Regulations request that the relevant governmental authorities shall make best efforts to promote the transformation of scientific and technologic achievements in the Zone, requiring the science and technology authorities subsume the eligible innovative products of the innovation entities in the Zone into the Innovative Products Catalog of Beijing Municipality and recommend such products to be included in the National Innovative Products Catalog. In addition, as to the procurement and certain investment projects using fiscal funds of government authorities at both municipal and district levels, the Regulations require the purchase or use of the innovative products of the innovation entities in the Zone. Meanwhile, the Regulations provide that the Government of Beijing Municipality shall establish a fund specially used for the development of the Zone, and also may make use of the relevant industrial private funds, to support the transformation of scientific and technologic achievements in the Zone.

The Regulations provide that the government authorities shall assist the enterprises, colleges, research and development institutions and the relevant individuals in the Zone to apply for the grant of patent rights, trademark registration rights and copyright registrations through the measures such as subsidies and awards. The Regulations also encourage the establishment of "patent alliance" and "patent pool" by the enterprises to encourage the innovations. The relevant administrations for industry and commerce ("AIC") in Beijing are authorized by the Regulations to protect the well-known trademarks and famous trademarks upon application of relevant enterprises during the enterprise name registration procedures. The Regulations also provide responsibilities for the patent authorities of Beijing Municipality in assisting the enterprises to establish the patent precaution system and the system on overseas emergency aid of the patents.

Measures to Attract the Talents

It is provided in the Regulations that a special talents zone shall be constructed and the governmental authorities shall provide convenient policies to the leading talents and high-level talents in various aspects including without limitation enterprise establishment, project application and Hukou or residence permits application in accordance with the relevant regulations promulgated by the State and Beijing Municipality. The Regulations provide that the title assessment system conducive to the transformation of scientific and technologic achievements and the direct introducing system of talents with outstanding contributions in research and development and achievements transformation shall be established in the Zone. Incentive policies for the research and development personnel and management personnel such as equity contribution by way of service scientific and technologic achievements and option plan are permitted to be used by the colleges, research and development institutions and enterprises in the Zone, and the aforesaid entities are also permitted to explore other incentive systems fit for their respective features and conducive to innovation.

Improving the Science and Technology Financial Services

In consideration of the difficulties in financing of the technology enterprises, especially for those small and medium sized enterprises, the Regulations provide guarantees for more effective science and technology financial services to the enterprises in the Zone in various aspects such as strengthening the functions of the relevant governmental authorities and taking measures to encourage the financial institutions to carry out the relevant businesses.

The Regulations request that the relevant governmental authorities of Beijing Municipality (including the financial authorities) shall improve the enterprises listing joint action mechanism, provide comprehensive coordination and guidance services for the listed enterprises in the Zone encourage the enterprises in the Zone to go for listing and be listed on the share transfer systems of the securities companies. Meanwhile, the Regulations encourage the enterprises to raise funds by various financing methods in order to expand the channels for their direct financing. The Regulations also provide that the relevant governmental authorities shall establish leading venture capitals and funds, and shall encourage the onshore and offshore venture capital entities to make investments in the Zone by means of contribution in several stages, follow-up investment and risk compensations.

The Regulation provide that the mechanism of compensations for credit risks shall be established and various types of financial institutions shall be entitled to such compensation for carrying out the businesses such as intellectual property rights pledge, fiduciary loan, credit insurance, trade financing and industry-chain financing for the enterprises in the Zone. The relevant governmental authorities are requested to provide the financial institutions with certain proportion of subsidies or other types of funding to cover the costs incurred in providing favorable and convenient financial services to the small and medium sized enterprises in the Zone in undertaking key construction projects for the State and local governmental authorities.

Comparing with the Former Regulations, the Regulations have not stipulated on the venture capital investment in details. The reason is that when the Former Regulations were adopted, the then-effective Partnership Law had not adopted the limited partnership mechanism; therefore, the provision of limited partnership by the Former Regulations was quite a breakthrough in this regard. However, the amended Partnership Law has adopted the limited partnership mechanism, and a series of laws and regulations regarding venture capital investment enterprises have been promulgated in recent years (including without limitation the Interim Measures on the Administration of Venture Capital Enterprises promulgated in 2005 and Opinions on Promoting the Development of Equity Investment Funds Industry co-promulgated by several governmental authorities of Beijing Municipality in 2009), therefore the Regulations have not provided many relevant rules in this regard.

Land Use

The Regulations provide certain rules on the land use supervision and methods of grant of land use rights in the Zone to promote the growth of innovation entities. It is provided that the land for construction in the new concentrated construction areas in the Zone shall only be used for the projects of hi-tech industries and strategic emerging industries and the supporting facilities, and the land resources authorities shall establish the evaluation and monitoring system for the economic and intensive land use in the Zone. The Regulation also provide favorable policies for the land use by certain eligible projects by permitting the grant of land use rights by agreement for the land used for the projects of research and development and industrialization of hi-tech industries and strategic emerging industries in the Zone upon approval by the government of Beijing Municipality. Since the current legislations on land use right grant generally require the grant of land use right through bidding, auction and listing, the provisions in the Regulations would provide more efficient methods for the applicants to obtain land used for the aforesaid eligible projects.

Mechanism of Governmental Services and Supervision

The Regulations formulate a series of rules in governmental services and supervision to promote the growth of innovation entities. The Regulations request the relevant governmental authorities improve the supervisory efficiency and service quality by means of simplifying the procedures, shortening the durations and reducing the levels when handling the supervisory or services proceedings for the organizations and individuals in the Zone. The relevant governmental authorities of Beijing Municipality (including but not limited to the human resource and social securities authorities, science and technology authorities, financial authorities and intellectual property rights authorities) are requested to set up platforms for the talent flow and transactions for technologies, capital and equity to optimize the allocation of the relevant resources. Furthermore, it is provided in the Regulations that an enterprise credit system shall be established in the Zone and the use of certain products on the credit assessment such as enterprise credit reports shall be popularized. The governmental authorities are requested to make reference to the enterprise credit reports to determine the credit status of the enterprises in the matters such as governmental procurement, governmental subsidies and investments by the governmental authorities where the fiscal funds are used.

The Regulations also refer to the constructions of the Core Areas of the Zone. In accordance with the Regulations, the government of Beijing Municipality shall designate the territory of the Core Areas in the Zone by taking into consideration the distributions of the innovation resources. The reforms on the administrative examinations and approvals and the reforms on the administrative enforcement systems in accordance with the principles of reducing enforcement levels and designating supervisory powers to lower levels appropriately shall be carried out in the Core Areas. Furthermore, the Regulations provide simplified rules in certain aspects such as legal liabilities to entitle more decision-making powers to the entities in the market, which reflects the transformation of the functions of the governmental authorities.

3. **Brief of the Administrative Measures for Pilot Project of RMB Settlement for Overseas Direct Investment (Author: Ying YANG; Zaiguang LU)**

To facilitate the pilot project of RMB settlement for overseas direct investment, the People's Bank of China (the "**PBOC**") promulgated the *Administrative Measures for Pilot Project of RMB Settlement for Overseas Direct Investment* on January 13, 2011 (the "**Measures**"), which enables domestic institutions within the pilot areas of RMB settlement to conduct overseas investment in RMB directly.

Clarification of Relevant Definitions

The Measures clarify that RMB overseas direct investment refers to the activities of domestic institutions, by using RMB, to acquire the ownership, rights of control, or operation management right of the operating enterprises in whole or in part by establishment, merger and acquisition, or equity participation of the overseas entities. For the purpose of the Measures, domestic institutions refer to the non-financial enterprises registered within the pilot areas of RMB settlement.

Simplification of Relevant Procedures

As provided by the Measures, a domestic institution which has been approved to engage in overseas direct investment through RMB settlement (with the approved amount of RMB to be invested by such domestic institution) may conduct overseas investment in RMB directly. Banks will provide RMB settlement services for such domestic institution after the latter completes relevant registrations with the local branches of the State Administration of Foreign Exchange ("**SAFE**") where the domestic institution is located with the approval certificate or documents issued by the competent administrative authorities in charge of overseas direct investment.

Furthermore, pursuant to the Measures, in the event there are any RMB incomes or expenses resulted from capital increase or decrease, equity transfers, liquidation or other activities of the overseas invested enterprises, the domestic institution may conduct the inward or outward remittance of RMB directly with the bank with the approval documents issued by the competent administrative authorities in charge of overseas direct investment.

Repatriation of RMB Profits

As provided by the Measures, after duly examination of the materials submitted by the domestic institution (including the board resolutions of the overseas invested enterprise with respect to the declaration and distribution of profits), the bank may record such overseas RMB profits directly into the account of the domestic institution, and shall report such information about the repatriation of RMB profits to the RCPMIS system.

Strengthening of Supervision

The Measures emphasize that banks shall seriously perform their obligations of anti-money laundering and counter-terrorism financing in accordance with the *Anti-Money Laundering Law of the People's Republic of China* and the relevant provisions of PBOC when providing RMB settlement services for overseas direct investment. The PBOC, the SAFE and the competent administrative authorities in charge of overseas direct investment shall establish mechanism for information sharing and supervision cooperation, enhance ex-post supervision, strengthen banks' responsibility for authenticity examination, and effectively supervise overseas direct investment activities with RMB funds.

4. Chongqing and Shanghai to Launch Pilot Real Estate Tax Reform (Author: Bing XUE; Jiaxin LIU)

In accordance with the relevant spirit of the 136th executive meeting of the State Council, the governments of Chongqing Municipality and Shanghai Municipality decide to collect Real Estate Tax (the "RET") on some individual residential properties on a pilot basis in Chongqing and Shanghai respectively from January 28, 2011.

Background of the RET Reform

Pursuant to *the Tentative Regulations of the People's Republic of China on Real Estate Tax* (the "Tentative RET Regulations") promulgated by the State Council in 1986, the RET shall be levied in cities, counties, towns, and industrial and mining areas. While at the initiation of the RET, China has not commenced the housing reform and only a few of the residents own individual properties with relatively lower income standard. Thus, under the Tentative RET Regulations, properties owned by individuals for non-business purposes were exempted from RET.

For purpose of further improving the real estate tax regime, reasonably adjusting the income distribution among residents, correctly guiding the residential property consumption and effectively allocating the real estate resources, the State Council recently agreed to implement the pilot reform of the RET.

Highlights of the Chongqing and Shanghai RET Reform Policies

Since January 27, 2011, the local governments and tax authorities of Chongqing and Shanghai issued the relevant circulars on the implementation of the RET reform, namely *the Administrative Measures of Real Estate Tax Pilot Reform on Individual Residential Property in Chongqing*, *the Implementation Rules of Collection and Administration on Real Estate Tax on Individual Residential Property*, *the Public Notice on the Administrative Measures of Real Estate Tax on Individual Residential Properties in Shanghai* and *the Administrative Measures* *of Collection of Real Estate Tax on Individual Residential Property*. All of the aforementioned circulars became effective on January 28, 2011.

The key points of the pilot RET policies are summarized below:

	Chongqing	**Shanghai**
Pilot Scope	Nine main districts of Chongqing	All Administrative districts of Shanghai
Taxable Object	➢ Detached residential properties owned by individuals ➢ Newly purchased high-end residential properties ➢ Second and subsequent ordinary residential properties newly purchased by non-local residents who do not work or own business in Chongqing	➢ <u>Shanghai resident families</u> Newly-purchased second or subsequent residential properties ➢ <u>Non-Shanghai resident families</u> Newly-purchased residential properties
General Rate	0.5%-1.2%	0.6%（0.4% in certain cases）
Taxable Basis	➢ Transaction price ➢ Valuation price may be adopted in the future	➢ Transaction price at the pilot stage ➢ Valuation price may be used as reference
Effective Date	January 28, 2011	January 28, 2011

Important Announcement

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If you have any questions regarding this publication, please contact:

Contact Us

Beijing Office
Tel.: +86-10-8525 5500
Suite 906, Office Tower C1, Oriental Plaza
NO. 1 East Chang An Ave.
Beijing 100738, P. R. China

Wenyu JIN Attorney at-law
Tel.: +86-10-8525 5557
Email: wenyu.jin@hankunlaw.com

Shanghai Office
Tel.: +86-21-6080 0919
Suite 5709, Tower 1, Plaza 66, 1266 Nanjing West Road,
Shanghai 200040, P. R. China

Yinshi CAO Attorney at-law
Tel.: +86-21-6080 0980
Email: yinshi.cao@hankunlaw.com

Shenzhen Office
Tel.: +86-755-3680 6500
Suite 4709, Excellence Times Plaza, 4068 Yitian Road, Futian District,
Shenzhen 518048, P. R. China

Jason WANG Attorney at-law
Tel.: +86-755-3680 6518
Email: jason.wang@hankunlaw.com