China Law Update

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New Rules on the Litigation of Cases Involving Foreign Investment Enterprises

In a new effort to bring clarity to regulations on the trial of cases involving Foreign Investment Enterprises (FIEs) in China, the Supreme People's Court, the country's highest court, implemented on August 16, 2010 *Provisions on Issues Concerning Trial of Cases Relating to Foreign Investment Enterprises (I)* (the "Provisions"). The Provisions deal mainly with cases involving such FIEs as contractual joint ventures, equity joint ventures and wholly foreign owned enterprises. The most important of the Provisions concern the following:

Contract Approval

The Provisions provide that a contract entered into in the course of setting up or altering the status of an FIE be valid and enforceable only upon necessary government approval. Without this approval, such a contract will be treated by a court as invalid, except for the contract provisions on the parties' obligation to apply and receive approval, which shall be valid and enforceable. In addition, when an approved, thus valid, contract has supplementary provisions, these supplementary provisions do not need government approval to be valid, if they do not constitute "significant and substantial modifications" to the contract.

Capital Contribution

In cases where capital contribution to an FIE involves transfer of property title, the Provisions provide that insofar as the contributing party has delivered the property to the FIE and has also completed registration of the title change within the time limit as required by the court, that party shall be deemed as having fulfilled its obligation of capital contribution and, accordingly, the court will dismiss any claim otherwise. If the registration of title change that has not been completed in the required time causes losses or damages to the FIE, the FIE and/or the other shareholder are entitled to remedy pursuant to the Provisions.

Equity Transfer

In the event of a share transfer, if the transferring shareholder or the FIE fails to secure government approval for the share transfer agreement following its execution, under the Provisions, the transferee, upon proper notice to the transferor or the FIE, has a right to rescind the agreement and is, moreover, allowed to make the FIE a third-party defendant in a suit against the transferor if the transferee should bring such a suit. The Provisions also require that any share transfer to a third party be approved by all the non-participating shareholders who must be offered rights of first refusal; violation of such rights will entitle the non-participating shareholder to have the share transfer agreement in question declared void and unenforceable by a court.

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