

Introduction to the Establishment of Foreign Investment Partnership Enterprises in China

The Administrative Measures and Registration Provisions came into force on 1 March 2010, which have lowered thresholds and simplified the setup process. In addition to Sino-foreign equity joint venture enterprises, Sino-foreign contractual joint venture enterprises and foreign sole proprietorships (collectively "foreign-related enterprises"), foreign investors (including foreign enterprises and individuals) may also invest in China directly by establishing foreign investment partnership enterprises ("FIPes") in China.

The threshold is lower and the procedures are simpler for establishing FIPes than foreign-related enterprises.

Partnership Forms and Investors

FIPes under the Measures refer to general or limited partnerships established in China by foreign enterprises or individuals or by foreign enterprise(s) or individual(s) together with Chinese investor(s). Foreign enterprise(s) or individual(s) may also join existing domestic partnerships, which will be converted into foreign-invested partnerships. There are no special requirements for foreigners to become partners of FIPs established under the Measures.

Based on these rules, foreign investors are allowed to establish wholly foreign-owned FIPs or Sino-foreign FIPs. Foreign investors may also convert a domestic partnership into a FIP through M&A, which will provide a wide access to the China market.

Capital investment

First of all, there is no minimum requirement of registered capital for FIPes. Under the Company Law of the People's Republic of China, foreign-related enterprises in the form of a limited liability company shall comply with the minimum registered capital requirement of

RMB30,000. FIPes are not subject to any minimum registered capital; they are only required to submit a Confirmation of Agreed Consideration signed by all partners or an Assessment Certificate of Consideration issued by a statutory assessment agency in China.

Secondly, partners of a FIPE are not only allowed to pay the capital in kind and contribute by way of intellectual property, land use right and other property rights, but also by way of labour investment. Foreign general partners who wish to do so shall submit evidence of employment permission to the competent industry and commerce department.

Moreover, a Chinese natural person may become a partner of a FIPE, but not establish any Sino-foreign equity joint venture enterprise or Sino-foreign contractual joint venture enterprise as a Chinese shareholder, except for a Chinese natural person who was a shareholder of a company in China before an equity merger or acquisition³. Under the Registration Provisions, a Chinese natural person may establish a FIPE act as a partner.

Approval and registration

To establish a general FIPE, it is not required to obtain approval of the commerce department. To establish a foreign-related enterprise, however, approval of the commerce department (and that of the relevant department if prior approval is required for the project under the law) shall be obtained before registration with the competent industry and commerce department. In accordance with the relevant regulations, establishing a general FIPE does not require the approval of the commerce department; the FIPE is only required to apply for registration to the competent industry and commerce department. Nevertheless, if under any law, administrative rule or State Council provision approval is required for the establishment of FIPE, the relevant approval documents shall also be obtained.

Private Equity ("PE") Investment

The Measures state that FIPes which mainly engage in the investment business shall comply with "other relevant rules", which indicates that China may adopt special rules in the future on foreign-invested PEs which use a FIPE as their investment vehicle. The local governments of Shanghai has issued more detailed pilot rules concerning foreign-invested PEs based on the Measures, which may to some extent resolve the uncertainty at the local level and provide more practical ways for FIPes to engage in the investment business.

In addition, according to recent notice issued on Feb 25, 2011 from MOFCOM, any investment conducted by the FIPes whose main business is equity investment shall be subject to relevant laws and regulations on foreign investment.

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