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### Administrative Measures on Foreign Invested Partnership Enterprises

By Jason Tian

Order of the State Council (No. 567)

The *Administrative Measures on Foreign Entities or Individuals Establishing Partnership Enterprises in China* has been passed at the No. 77 executive meeting of the State Council on August 19<sup>th</sup>, 2009, and is hereby promulgated, effective as from March 1<sup>st</sup>, 2010.

Premier Wen Jiabao

November 25<sup>th</sup>, 2009

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In this issue of “**Foreign Direct Investment**”, we translate the new regulation, effective as from March 1<sup>st</sup>, 2010, in relation to foreign invested partnership enterprises, a new investment instrument for foreign investors, institutional or individual, in addition to the long-existing Sino-equity joint venture, Sino-foreign contractual joint venture and wholly foreign owned enterprises.

If you are interested and want to know more about this subject, please contact us via email or phone.

Article 1 These Measures are formulated in accordance with the *Law of the People’s Republic of China on Partnership Enterprises* (hereinafter “**Partnership Law**”) in order to standardize the conducts of establishing partnership enterprises in China by foreign entities or individuals, to facilitate the investments in China by foreign entities or individuals in the form of partnership enterprises, and to expand Sino-foreign economic cooperation and technology exchanges.

Article 2 “Partnership enterprises invested in China by foreign entities or individuals” (hereinafter, “**Foreign Invested Partnership Enterprises**”, or “**FIPE**”) under these Measures refers to the partnership enterprises established in China by two or more foreign enterprises or individuals, and by foreign companies or individuals together with Chinese natural persons, legal persons and other organizations.

Article 3 The establishment of Foreign Invested Partnership Enterprises shall be in accordance with rules set out in the *Partnership Law* and other relevant legislations and shall be in compliance with related industrial policies regarding foreign investments.

The legitimate interests of foreign entities or individuals establishing partnership enterprises in China shall be protected under laws.

The state encourages foreign entities or individuals having advanced technologies and managerial expertise to set up partnership enterprises in China so as to boost the development of modern service and other industries.

Article 4 Currencies used by foreign entities or individuals as capital contribution shall be those freely convertible foreign currencies or legally acquired Chinese currencies.

Article 5 Where a Foreign Invested Partnership Enterprise is established, all partners shall designate a

representative or jointly appoint an agent to apply for the registration of the establishment with the local industrial and commerce departments (hereinafter, “**Registration Department**”) authorized by the State Administration of Industries and Commerce.



Upon application for registration of establishment, those documents as provided in *Administrative Measures of the People’s Republic of China on the Registration of Partnership Enterprises* together with a

statement explicating compliance with industrial policies regarding foreign investment shall be submitted to the Registration Department.

The Registration Department shall at the same time of registering the establishment notify the department of commerce at its own level of the related registration information.

Article 6 Where a change arises in respect of any of the registered items of a Foreign Invested Partnership Enterprise, the FIPE shall apply to the Registration Department to register such changes.

Article 7 Where a FIPE is dissolved, its liquidation shall be carried out pursuant to the *Partnership Law*. The liquidators shall, in accordance with related laws, effect the deregistration formalities with the Registration Department within 15 days following the completion of the liquidation thereof.

Article 8 Where all foreign partners of a FIPE withdraw from the partnership and the partnership enterprise continues its life, the partnership enterprise shall in accordance with related laws apply to register such change with the Registration Department.

Article 9 Upon registration of changes or deregistration in regard of a FIPE, the Registration Department shall at the same time thereof notify the same to the department of commerce at its own level.

Article 10 Matters relating to the registration and administration of FIPES not provided herein shall be handled in accordance with *Administrative Measures of the People’s Republic of China on the Registration of Partnership Enterprises* and other state regulations.

Article 11 The financial and accounting, taxation, foreign exchange, customs and cross-border travel and other matters in relation to foreign entities or individuals setting up partnership enterprises shall be dealt with in accordance with related laws, administrative regulations and other state rules.

Article 12 Where foreign companies or individuals join as partners in those partnership enterprises established by Chinese natural persons, legal persons or other organizations, such joining shall be in accordance with provisions herein and shall be registered with the Registration Department.

Article 13 Where the establishment of a FIPE involves investment projects that shall require government approval, the FIPE shall obtain approval for such investment projects in accordance with state rules.

Article 14 Where the state otherwise promulgates rules governing foreign invested partnership

enterprises primarily engaged in investment activities, such rules shall be observed.

Article 15 Entities or individuals from Hong Kong Special Administrative Region, Macau Special Administrative Region and Taiwan setting up partnership enterprises in mainland shall also be regulated under these Measures.

Article 16 These Measures shall come into force from March 1<sup>st</sup>, 2010.

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## Advantages of Foreign Invested Partnership Enterprises

Compared with other forms/options of foreign investment, there are several new features that you need to know about FIPes:

1. **No approval required for the establishment of FIPE.** You can directly apply to the company registration agency (the Industry and Commerce Department of governments) for the creation of FIPE without having to obtain the approval certificates applicable to foreign invested enterprises/companies.
2. **More flexible methods of capital contribution.** Unlike the normal foreign invested companies whose foreign shareholders cannot use RMB cash as capital contribution except for only a few occasions (such as RMB dividends, proceeds of equity transfer or liquidation), partners of FIPE can use any lawfully acquired RMB cash as capital contribution. Your labor service can also be used as a kind of capital so long as other partners agree thereon.
3. **No minimum registered capital requirement.** Unlike normal foreign invested companies, there is no statutory requirement on capitalization of FIPes.
4. **No statutory governance structures.** The operation of a FIPE is largely based on partners' contract in terms of decision making and business execution. You don't have to set up a board of directors or supervisors.
5. **Non-dual taxation.** Partnership enterprises do not pay enterprise income tax. Partners pay personal income tax only against all their earnings from the FIPes.
6. **You can also be shielded by limited liability doctrine.** You can also choose to be a limited partner in a limited partnership enterprise, enjoying the protection of limited liability, as available to shareholders of limited liability companies.

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江苏省徐州市人，毕业于华东政法大学研究生院，获硕士学位。曾先后在英国高伟绅律师行上海代表处任高级法律翻译，并在北京市中伦金通律师事务所上海分所担任专职律师。现执业于中银律师事务所上海分所。

**服务范围:**

- (1) **房地产投资和收购:** 房屋和土地之买卖和租赁、房地产投资（大型商业、居住物业之项目收购，尽职调查、交易结构设计等）、商业地产经营、物业管理、劳动等；
- (2) **外商投资领域:** 外商投资企业设立、增资和变更、公司治理结构（即股东、董事、经理等职权分配等）、股权转让和并购、外汇管理、外债等资本项目等；
- (3) **法律顾问:** 担任各类企业常年法律顾问，合同起草和审查、协助企业建立劳动、合同管理、公司治理、对外投资等规范和制度建设，对企业经营进行事先法律风险防范，促进企业依法经营等。

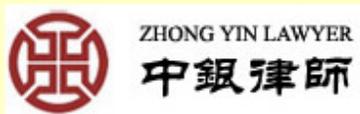
**About Mr. Tian and his services:**

**Mr. Tian** graduated from the renowned law school, East China University of Political Science and Law in Shanghai, and before joining Zhong Yin Law Firm, he served as senior translator at Clifford Chance LLP and as an attorney-at-law at Zhonglun Law Firm. His **legal services** cover FDI, M&A, real estate businesses (investment, sale, acquisition, purchase, leasing and property management of both residential, commercial and industrial properties), corporate governance of FIEs etc. and other general legal businesses such as employment, cross-border marriage etc.

如果您对上述内容有任何疑问，请致电、致信给我们！

If you have any questions about the above written contents, please do not hesitate to contact us!

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