

China Law Update

Posted at 5:12 PM on December 2, 2009 by Sheppard Mullin

The Administrative Measures for the Establishment of Partnership Enterprises in China by Foreign Enterprises or Individuals Will Take Effect On March 1, 2010

On November 25, 2009, China's State Council issued the long-awaited Administrative Measures for the Establishment of Partnership Enterprises in China by Foreign Enterprises or Individuals (the "FIP Measures"). The FIP Measures will take effect on March 1, 2010.

Major Points

The FIP Measures permit foreign individuals and enterprises to establish a partnership with either foreign investors or Chinese individuals or enterprises. The FIP Measures also apply to individuals and enterprises from Hong Kong, Macau and Taiwan. According to the Q&A session held by the Legislative Affairs Office of the State Council, foreign investors are also allowed to join an existing partnership as new partners. In addition, a partnership with both Chinese and Foreign partners can continue its business when all the foreign partners withdraw from the partnership.

The FIP Measures are silent regarding minimum contribution from foreign investors, and allows them to make their partner contributions in either freely-convertible foreign currencies or in Yuan.

It is worth noting that, partners can assign an agent or representative to register the partnership at the local administrative department for industry and commerce, if they agree to do so unanimously. Approval from the commerce department, a must-have to set up other forms of foreign invested enterprises, is not required for partnership according to the FIP Measures. However, aside from the documents required by Measures of the People's Republic of China for the Registration of Partnership Enterprises, a written proof of compliance with foreign investment policies is required at the time of registration. Foreign individuals and enterprises should refer to the Foreign Investment Guidance Catalog before registering the partnership. If the partnership business is the kind of business subject to government approval, such approval should be obtained by the partnership.

FIP Measures leave open the hot issues regarding investment funds in the form of partnership. According to the FIP Measures, partnerships whose core business is investment will be subject to other relevant regulations, if any. This issue may be resolved by the Provisional Measures for the

Management of Equity Investment Funds proposed, and currently being drafted by the National Development and Reform Commission.

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