

# China Law Update

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## **Beijing Encourages Foreign Investment In Private Equity Fund Management Companies**

After Shanghai allowed foreign private equity and venture capital funds to incorporate in Shanghai in August 2008, Beijing recently became another pioneer in giving legal status to foreign investment funds. On December 20, 2009, Beijing Municipality released a circular entitled *Interim Measures on Establishing Foreign Invested Equity Investment Fund Management Enterprises* (the "Measures"). The Measures are effective as of January 1, 2010, for a trial period of three years.

### **Main Points**

According to the Measures, foreign investors are allowed to establish wholly foreign-owned equity investment fund management companies, or, alternatively, to establish joint ventures with local companies in the Zhongguancun Innovative Model Zone.

The Measures set the following requirements that shall be met in order to set up a foreign invested equity investment fund management enterprise ("FIEIFME"):

- (1) A FIEIFME must be established in the form of limited liability corporation, and is allowed to use "fund management" in its name. In addition, a FIEIFME may be established as a partnership or other non-corporation forms where national policy permits.
- (2) A FIEIFME must have registered capital of no less than 2 million US dollars, which should be contributed by the investors pursuant to Chinese laws and regulations.
- (3) A FIEIFME must have at least two senior managers with at least two years' experience in this industry or related industries, good personal credit record, no record of wrongdoing in the past five years, and no ongoing economic litigations.

Existing foreign-invested enterprises that meet the above criteria and have no record of wrongdoing in the past five years and no ongoing economic litigations can convert to become a FIEIFME.

As stated in the Measures, the scope of business of FIEIFMEs is limited to "non-security equity investment fund managing and consulting with authorization from other equity investment funds."

FIEIFMEs that are registered in Beijing, and equity investment funds established by those FIEIFMEs are entitled to the beneficial treatments offered by the *Circular On Promoting Development Of The Equity Investment Fund Industry*, issued by Beijing Municipality.

The Measures also apply to individuals and enterprises from Hong Kong, Macau and Taiwan.

### **Conclusion**

Since the Chinese central government has no nationwide rules regarding the legal status of foreign-invested equity investment funds, many foreign investment funds have to do business in China through representative offices or by providing consulting services. The central government has given special permissions to major cities such as Beijing, Tianjing and Shanghai to give legal status to foreign investment funds, and the government will learn from local experience in regulating such funds. However, foreign exchange issues of FIEIFMEs are still left unregulated, when this issue of cash flow in and out of China is of the highest importance. How the Chinese government controls and regulates foreign exchange of FIEIFMEs will deeply affect the market.

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