

Zhong Yin Law Firm, Shanghai Office, Suite H, 21/F, World Plaza, No.855, South Pudong Road, Shanghai, 200120, China
Jason Tian, attorney-at-law, www.zhongyinlawyer.com, E-mail: doroto@163.com, MP:+86-13816548421

Forex Issues on Foreign Invested Partnership Enterprise in China

By Jason Tian

Since China cabinet issued the *Administrative Measures on Foreign Entities or Individuals Establishing Partnership Enterprises in China* (the “**Measures**”), it has stirred up waves of interests

among foreign investors. We have translated the Measures into English language and listed the advantages of this new investment vehicle (you can click [here](#) for a copy of the Measures).

I have been approached by a number of inquirers who have read the translated Measures, asking questions about setting up a FIPE in China. However, so far, due to a number of reasons to be discussed below, this plausibly promising investment vehicle does not work at large in practice.

I. Foreign currency cannot be converted into RMB

This has been the No. 1 problem that largely makes a FIPE unworkable for most foreign investors. Though, China’s State Administration of Industry and Commerce (the “**SAIC**”) has issued, prior to the effectiveness of the Measures, the *Administrative Provisions on Registration of Foreign Invested Partnership Enterprises* (the “**Provisions**”), which has paved the way for legally creating a FIPE. But foreigners find that their invested money denominated in foreign currencies cannot be converted into RMB and that the FIPE cannot even open a foreign exchange bank account, simply because there are no related rules handed down from China State Administration of Foreign Exchange (the “**SAFE**”). This will dampen the hearts of most investors who seek to employ this investment vehicle.

Our inquiry into SAFE’s Shanghai headquarter got a reply that local SAFE offices do not handle foreign exchange matters relating to foreign invested partnership enterprises.

For sake of cultivating and fostering local private equity investment industry, local governments in Beijing, Shanghai and Tianjin have attempted to make breakthrough for the current deadlock situation by introducing local rules. Shanghai has initiated to allow FIPes whose foreign investors are approved as qualified foreign investors to convert certain-quota foreign exchange into RMB and use such RMB proceeds to make private equity investment. Also foreign invested investment management companies upon being approved may convert part of its foreign exchange denominated registered capital into RMB and use this RMB to further set up RMB-denominated PE fund.

However Shanghai’s initiative is tailored to help foreign invested PE funds that are structured as limited partnership enterprise and therefore not available for other FIPes.

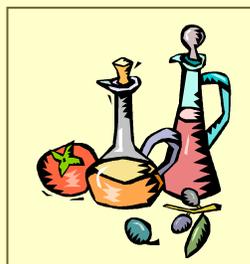
INSIDE THIS ISSUE

In this issue, we discuss the feasibility of utilizing a foreign invested partnership enterprise as an alternative to structure your investment in China. A FIPE has been hailed for its birth as it offers a new form of foreign investment in China, esp for small investors.

However, even though there is no barrier now for setting up a FIPE, there are some other issues that prevent a FIPE to be fully operational and effective.

II Capital Contribution in RMB

As capital contribution in foreign exchange faces the conversion issue said above, alternatively, foreign investors may consider using RMB to set up a FIPE. Under the Measures, it is provided that foreign investors may use their lawfully obtained RMB money to contribute capital into the FIPE.



A caption is a sentence describing a picture or graphic.

What is “lawfully obtained RMB money”? It is initially gestimated that foreigners may be allowed to use their RMB money received in the form of salaries or service remuneration and other legal proceeds earned or otherwise obtained in China.

The Provisions cast dim lights on that answer by providing that, where foreign partners want to make capital contribution in RMB money, they shall submit certification issued by local SAFE offices certifying that the RMB money to be contributed is profits received from within China or such RMB money is otherwise lawfully gained. The wording is still too vague. It is still not clear whether foreigners can use their salaries received for their work rendered in China to set up a FIPE.

It is our opinion that in addition to RMB money resulting from profits of other investment activities in China, other RMB-denominated proceeds deprived from liquidation of existing foreign invested enterprises and from transfer of equity interests in other foreign invested enterprises should also be allowed to be used for capital contribution into FIPES.

Latest development indicated in a notice issued earlier this year by China Ministry of Commerce signaled that RMB money obtained by foreign investors as a result of cross-border trade settlement and other RMB money lawfully obtained by foreign investors outside China will be allowed to be used for capital contribution in making investment in China.

Even though, before detailed rules regarding foreign exchange matters of FIPES are issued, FIPES may not be a practical instrument for making investment in China.

田杰 律师

Jason Tian
Attorney-at-law

电话(Tel):
(86) 13816548421
(86-21) 68871787

传真(Fax):
(86-21) 68869532
(86-21) 50383762

电子邮件(E-Mail):
tianjie@zhongyinlawyer.com;
doroto@163.com

We're on the Web!
我们的网址:

www.zhongyinlawyer.com
www.sinobizlaw.com
www.doroto.com

田律师简介

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（包括外商投资合伙企业）设立、增资和变更、公司治理结构、股权转让和并购，以及技术、商标许可/转让；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或项目法律顾问，合同起草和审查、协助企业建立劳动、合同管理、公司治理、改制重组、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。

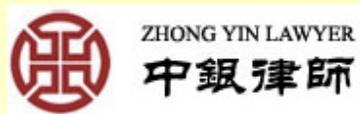
About Mr. Tian and his services:

Mr. Tian graduated from the renowned law school of East China University of Political Science and Law in Shanghai, and before joining Zhong Yin Law Firm, he has worked at Clifford Chance LLP, Shanghai Office and at Zhonglun Law Firm. His legal services cover, *in particular*, **foreign invested real estate businesses** (investment, sale, acquisition, purchase, leasing and property management of both residential, retail, commercial and industrial properties) as well as general FDI, corporate laws and licensing and transfer of trademark/technology, and other general legal businesses such as employment, contract, tort 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 contents herein, please do not hesitate to contact us!

中银律师事务所上海分所
上海市浦东南路 855 号世界
广场 21 层 H 座，邮编：
200120



ZHONG YIN LAWYERS
Suite H, 21/F, World
Plaza, No.855, South
Pudong Road, Shanghai,
200120, China