

China Law Update

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Draft Foreign-Invested Partnership Regulations - A Move to A National Framework for FIPs

Approval of the Draft Foreign-Invested Partnership ("FIP") Regulations

On August 19, 2009, China's State Council approved, subject to further clarifying amendments, the Administrative Measures for the Establishment of Partnership Enterprises in China by Foreign Enterprises or Individuals (Draft) (the "Draft FIP Regulations"). The Drafted FIP Regulations have been returned to the Ministry of Commerce for further refinement.

Since the PRC Partnership Enterprises Law taking effect in June 2009 only provides for partnership among PRC legal persons, local governments such as Tianjin, Shanghai and Beijing adopted their own local rules and structures to promote formation of RMB-denominated funds where foreign fund managers might participate. The Draft FIP Regulations indicate a move to a national framework for foreign-invested partnerships by the PRC.

Major Points

The current Draft allows a foreign investor to directly form a PRC Limited Liability Partnership ("LLP") as a General Partner ("GP"), or to directly invest in a PRC LLP as a Limited Partner ("LP").

Under the Draft FIP Regulations, both foreign individuals and enterprises may set up a partnership with either foreign investors or Chinese individuals or enterprises. The Draft FIP Regulations are silent regarding minimum contribution by foreign investors, but requires them, with exceptions, to make their partner contributions in freely-convertible foreign currencies.

It is worth notice that the National Development and Reform Commission has proposed to regulate private equity funds and is drafting the Provisional Measures for the Management of Equity Investment Funds (the "EIF Regulations"). The EIF regulations may regulate foreign private equity funds where foreign investors are general or limited partners.

Moreover, FIPs are not relieved from the industry restrictions to which other foreign-invested entities are subject, according to the Draft FIP Regulations. FIPs should refer to the Foreign Investment Guidance Catalog. The Draft FIP Regulations provide that if national policy would permit foreign investment in an industry only in the form of, Sino-foreign equity or cooperative

joint venture, or, joint venture where the Chinese party would retain control, a foreign investor would not be allowed to bypass such restriction by investing through an FIP.

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