

Partnerships: A New Form of Investment for Foreign Enterprises and Individuals

November 25, 2009

Measures for the Administration on the Establishment of Partnership Business by Foreign Enterprises or Individuals in China (the "Measures") have been adopted on August 19, 2009, and are hereby promulgated, which shall come into effect as of March 1, 2010.

Currently, foreign investors start business in China primarily in the form of Equity Joint Ventures, Cooperative Joint Ventures, Wholly Foreign Owned Enterprises ("WFOE") and Representative Office. However, the Measures initiate a new structure - foreign invested partnerships ("FIP") for foreign investors to invest and operate in China.

The Measures indicate that FIPs shall be governed by the *Partnership Enterprise Law*, issued as a general rule over partnership enterprises in 2007, and shall be limited by the *Foreign Investment Industry Catalogue*.

The features of the new structure reflected in the Measures are as follows:

1. Regarding the form of partnership, investor may act as a general partner or limited partner of a limited partnership;
2. Regarding the registration authorities, an application for a FIP's establishment shall be directly submitted to the State Administration of Industry and Commerce and its local branch for approval. Ministry of Commerce ("MOFCOM") will only be notified after the registration is completed. Historically, the application for the establishment of the foreign invested company shall be approved by MOFCOM before registration. Definitely, the Measures take a different approach for FIPs.
3. Regarding the registered capital, the Measures are silent on the minimum registered capital, so it is assumed that the capital contribution and changes of capital may be stipulated in the partnership contract;
4. Regarding the liability of the investors, according to the PRC Partnership Law, partners of this form of enterprises shall bear unlimited liabilities to the debts of the enterprises, which is entirely different from the limited liabilities to other foreign invested enterprises and Rep office;
5. Regarding the tax, foreign partnership enterprises are immunized from the corporate income tax. Each partner of a partnership is liable for tax on its share of income of the partnership, regardless of whether such profits are distributed.

The Measures create a new legal form of foreign investment for foreign investors, which provide flexibility and efficiency for them to set up businesses in China. However, the Measures only stipulate the basic rules for FIP's establishment registration, changes registration, dissolution, financial accounting, taxes, foreign exchange, customs, etc., and these rules still remain unclear and need further clarification. Therefore, the implementation of the Measure and other relevant legislation shall be followed closely for the detailed rules, which may address this issue further.