

CHINA

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Registration of Foreign-Invested Partnership Enterprises



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A new form of foreign investment – the foreign-invested partnership (FIP) – has become a reality in China since the *Measures for the Administration of the Establishment of Partnerships in China by Foreign Enterprises or Individuals* (FIP Measures) and the *Administration Provisions on Registration of Foreign-Invested Partnership Enterprises* (Registration Provisions) came into effect on 1 March 2010. The Registration Provisions, the first promulgated implementing rules of the FIP Measures issued by the State Administration of Industry and Commerce (SAIC), provide clear instructions on the registration of FIPs.

Types of FIPs

Pursuant to the Registration Provisions, the types of FIPs are the same as those for domestic partnerships: the (foreign-invested) general partnership (including special general partnership); and the limited liability partnership. The type of FIP must be clearly indicated in its business license.

Establishment upon registration

The Registration Provisions identify the registration requirements for an FIP. Although an approval process is no longer required, FIPs are still subject to the same restrictions on the scope of business that apply to all foreign investors. Therefore, the FIP may not engage in an industry that is categorised as “prohibited”, that is restricted to Sino-foreign equity or cooperative joint ventures (JVs), that only allows JVs controlled by the Chinese party, or that is subject to a foreign investment ratio that is otherwise limited under the Foreign Investment Guidance Catalogue. In regular cases, upon submission of all the required documents, the competent Administration for Industry and Commerce (AIC) should where possible register the FIP on the same day or, if not, within 20 days.

Capitalisation

The capitalisation of FIPs is more flexible than the other forms of foreign direct investment. Both the FIP Measures and the Registration

Provisions remain silent on the minimum partnership capital and the contribution timeframe. In addition to using foreign exchange or legally acquired RMB as stipulated in the FIP Measures, the Registration Provisions further permit contribution in kind by both domestic and foreign investors and explicitly provide that foreign general partners may contribute in the form of labour. It thus appears that in this area, foreign and Chinese investors receive the same legal treatment. The Registration Provisions also provide guidelines on certain practical aspects of making RMB contributions.

Investment FIPs

The first foreign-invested equity investment partnership enterprise was established in Shanghai on 3 March 2010, marking a great breakthrough in the Chinese PE industry. The FIP Measures do not state clearly the setting-up procedures of FIPs that mainly engage in the investment business, but the Registration Provisions provide the following general terms that apply to an Investment FIP:

- the competent registration authority is the provincial-level AIC;
- its investment activities are subject to national laws, rules and regulations applicable to foreign investment; and
- an investment project that requires project approval is subject to the relevant legal provisions.

Conclusion

The FIP Measures only lay down general principles governing FIPs. We expect that other authorities will soon follow the SAIC in issuing other implementing rules that address practical issues concerning their structure and operation. With distinctive features such as streamlined official formalities and flexible internal management, and as a prevalent vehicle for onshore equity fund, FIPs would certainly be an easier and more desirable option for certain foreign investments in China.

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