

CHINA

BEITEN BURKHARDT

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## Foreign-invested partnerships in China: an update



By Tracy Liu

As we reported in the March edition of *Asian-Counsel*, a new structure for foreign investment – the foreign-invested partnership (FIP) – was officially launched in China on 1 March 2010, with local media reporting the registration of China’s first FIP in Kunshan, Jiangsu.

This new form of foreign-invested enterprise is regulated by the *Administrative Measures on the Establishment of Partnership Enterprises in China by Foreign Enterprises or Foreign Individuals* (the FIP Measures) and the *Regulations for the Administration of Foreign-invested Partnership Enterprises* (the FIP Registration Regulations), both effective as of 1 March 2010.

### Stringent industry restrictions

The FIP Registration Regulations proscribe FIPs in “prohibited” industrial categories, as described by the Catalogue for Guidance of Foreign Investment in Industry (Foreign Investment Catalogue), and categories where there is a (upper) limit on foreign ownership.

It appears, therefore, that FIPs are subject to more stringent industry restrictions than other types of foreign-invested enterprises.

### Streamlined establishment process

The new regulations indicate that the Ministry of Commerce (MOFCOM) or its local counterpart will play a small role in the FIP regulatory environment. The FIP Measures provide that the establishment, modification, liquidation and deregistration of an FIP that is “in compliance with China’s industrial policies for foreign investment” require only registration with the local counterpart of the Administration for Industry and Commerce (AIC). MOFCOM approval is not required.

Under the FIP Registration Regulations, when investors seek to establish an FIP that falls under a “restricted” category which

sets out restricted activities and sectors for all foreign invested enterprises (as provided in the Foreign Investment Catalogue), or that involves a project overseen by a government authority, the AIC must seek a written opinion from the relevant government authority within five days after accepting the application.

### Flexibility for capital contributions

Unlike other types of foreign investment enterprises, FIPs are not subject to any minimum capitalisation requirements. The FIP Registration Regulations allow foreign investors to invest in the FIP with their legitimate Renminbi income derived from China, subject to State Administration of Foreign Exchange approval. The FIP Registration Regulations further allow foreign investors, as the general partners in the FIP, to make capital contributions in the form of services.

### Remaining ambiguities

The *PRC Partnership Enterprise Law* obliges partners to pay their respective income taxes according to the relevant taxation provisions. However, existing laws and regulations do not address the taxation of a foreign limited partner’s interest in an FIP.

It remains unclear how a foreign-invested venture capital enterprise organised in the form of a non-legal person and subject to MOFCOM approval differs from a partnership, and whether a foreign-

invested venture capital enterprise may now be restructured as an FIP. Similarly, the regulations do not provide guidance on the formation of foreign-invested RMB funds in the form of partnerships, an issue of significant market interest.

The new regulations indicate that the Ministry of Commerce (MOFCOM) or its local counterpart will play a small role in the FIP regulatory environment

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