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Beijing's newly Issued Measures on Foreign Invested Equity Investment Fund Management Enterprises

● Inside the News

On January 4, 2010, Beijing Municipal Financial Bureau, Beijing Municipal Commission of Commerce, Beijing Administration for Commerce and Industry and Beijing Municipal Commission of Development and Reform jointly promulgated the *Interim Measures on Establishment of Foreign Invested Equity Investment Fund Management Enterprises in Beijing* (the “**Interim Measures**”), which took effect as of January 1, 2010. The Interim Measures will have a trial implementation within the Zhongguancun National Innovation Model Park for a period of 3 years starting from January 1, 2010. In comparison with Shanghai and Tianjin, the promulgation of the Interim Measures, to some extent, places Beijing in a more advantageous position in attracting offshore equity investment entities, such as venture capital (VC) and private equity (PE) funds, to invest in its jurisdiction.

The most eye-catching aspects of the Interim Measures are addressed below.

First, to the extent permitted by national policies, the Interim Measures offers foreign equity investment capitals a new investment vehicle by allowing them to establish partnership foreign invested equity investment fund management enterprises (the “EIFMEs”) in Beijing.

Pursuant to the Interim Measures, foreign investors may establish EIFMEs in Beijing in the form of partnerships or other non-corporate entities provided that the national policy so permits. The *Administrative Measures on Establishment of Partnerships within the Territory of China by Foreign Enterprises or Individuals*, promulgated on November 25, 2009 and coming into force as

of March 1, 2010 (the “**Administrative Measures**”), provides to foreign investors a new alternative structure to invest in China, i.e. setting up a foreign-invested partnership. However, the Administrative Measures is somehow reluctant to allow foreign investors to establish partnership enterprises primarily engaging in investment business by setting forth an open clause stipulating that “if the state has otherwise provisions regulating partnership enterprises established within China by foreign enterprises or individuals primarily engaging in investment business, those provisions of the state shall prevail”. Likewise, the Interim Measures sets forth a precondition to such new investment model, i.e., being permitted by the national policy. As such, it seems that neither the Administrative Measures nor the Interim Measures officially approves the establishment of partnership foreign invested EIFMEs. Even so, the promulgation of the Interim Measures indicates a greater effort taken by Beijing in attracting foreign equity investment capitals in comparison with Shanghai and Tianjin who did not mention such new investment vehicle in their respective measures on equity investment funds.

Second, besides the same policy supports as provided to domestic EIFMEs, foreign invested EIFMEs may enjoy additional financial support if qualified under the Interim Measures.

The Interim Measures provides that, “Foreign invested EIFMEs and equity investment funds initiated or set up by such EIFMEs which are registered with Beijing AIC and Beijing Tax Bureau shall be given policy supports in accordance with the *Opinions on Encouraging Development of Equity Investment Funds Industry*”; “Foreign invested EIFMEs which are in compliance with the national and Beijing municipal industry policies, equipped with a generally acknowledged excellent management team and in compliance with the supporting directions of equity investment development funds in Beijing may be given financial supports by Beijing Equity Investment Development Fund.” However, Shanghai and Tianjin do not provide such financial supports to foreign invested EIFMEs in their measures on PE funds.

In addition, pursuant to the Interim Measures, newly set-up foreign invested EIFMEs shall meet the following requirements: 1) it shall be established in the form of a limited liability company and may use the words “fund management” in its corporate name; 2) its registered capital shall be no less than USD 2 million and the investors shall make the capital contributions in accordance with the relevant PRC law; 3) it shall have more than 2 senior officers who have more than two (2) years experiences with respect to equity investment fund management operation or related business and have no record of violation or been involved in any pending economic disputes during the recent five (5) years and have reputable personal credit records. In respect of foreign invested EIFMEs transformed from foreign-invested enterprises, in addition to satisfying the aforesaid three requirements, they shall have no record of violation or been involved in any pending economic disputes during the recent five (5) years.

Should you have any questions regarding the above, please feel free to contact us. Thank you!

Important Announcement

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