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SAIC Regulation on Foreign-invested Partnerships Registration

● Inside the News

On 29 January 2010, the PRC State Administration for Industry and Commerce (“**SAIC**”) issued the *Regulation on Administration for Registration of Foreign-invested Partnerships* (the “**Regulation**”), so as to implement the *Measures for the Administration of Partnerships Established within the Territory of China by Foreign Enterprises or Individuals* issued by the State Council of the People’s Republic of China (“**State Council**”) on 25 November 2009 (the “**Measures**”) (Order of the State Council No.567, [see previous legal update-Long-awaited Foreign-Invested Partnership Regulations Issued-December 3, 2009](#)). Both the Regulation and the Measures will go into effect as of 1 March 2010. The Regulation consists of nine sections, mainly addressing such issues as the formation, alteration, cancellation, branches registration, and annual verification of foreign-invested partnerships (the “**FIP**”).

In comparison with domestic-funded partnerships, the administration for registration of FIP has its own characteristics:

Formation Restriction

Investors are generally prohibited from establishing FIPs to invest in projects which are listed in the Foreign Investment Industry Catalogue as forbidden sector or marked with “limited to equity joint ventures”, “limited to cooperative joint ventures”, “limited to equity joint ventures and cooperative joint ventures”, “the Chinese party shall hold the majority of shares”, “the Chinese party shall hold the relative majority of shares” and have other restrictions on foreign proportion.

With respect to projects which belong to restricted industries in the Foreign Investment Industry

Catalogue without statutory prior approval or involve other government bodies' duties, the registration authorities should seek written opinions from competent government bodies within 5 days after accepting the registration application, and should make a decision on whether to approve the registration or not within 5 days after receiving written opinions from other competent bodies.

Registration Authorities

Under the Measures, where establishing a FIP, a representative or agent commonly designated by all partners may directly file an application with the registration authority, and no prior approval from the commerce bureau is required. The Regulation reaffirms the aforesaid requirement and provides that the SAIC and its local branches ("**local AIC**") which are authorized by SAIC should be in charge of the administration for registration of FIPs. Upon the formation, alteration and cancellation of a FIP, the registration authorities should timely inform the commerce bureau at the same level of the relevant registration information.

Contribution of Foreign Partners

Where a foreign partner makes capital contribution with the RMB revenues legally gained within the territory of China, it should submit relevant supporting documents, including but not limited to the approval letter for foreign exchange dealings under capital account issued by State Administration of Foreign Exchange ("**SAFE**") with regard to re-investments using domestic RMB profits or other lawful RMB proceeds. Where a foreign general partner makes capital contributions with labor services, it should submit its work permit to the registration authorities and follow procedures as specially set forth in the relevant RPC regulations.

Alteration Registration

Section 3 of the Regulation provides detailed requirements for alteration of FIPs. It stipulates, *inter alia*, that where a FIP changes its executive partner, its type of partnership, name of partner(s), the manner in which liability is borne, capital subscription or paid-in capital, duration of payment, method of contribution and method of appraisal, etc., the signatures of all relevant application documents should be notarized by a statutory Chinese public notary office.

Please note that, even if the partnership agreement does not change any matters which should be registered, the FIP still should file the modified partnership agreement or the resolution for modification of the partnership agreement with the original registration authorities.

Special Provisions on FIP mainly engaging in investment business

The Regulation specifically provides that the local AIC at the provincial level should be in charge of the registration of FIPs mainly engaging in investment business. In addition, where a FIP mainly engaging in investment business re-invests in China, it should comply with the Chinese laws, regulations and rules with regard to foreign investment. Where a foreign investment company or a foreign-invested venture capital enterprise establishes a partnership or joins an existing partnership established by Chinese individuals or legal persons or any other organizations in China, it should refer to the provisions of the Regulation.

Set forth above is a brief introduction to the Regulation. We will continue to update you on further developments in respect of foreign-invested partnerships. If you have any questions regarding the foregoing, please feel free to contact us. Thank you!

Important Announcement

This Legal Update has been prepared for clients and professional associates of Han Kun Law Offices. Whilst every effort has been made to ensure accuracy, no responsibility can be accepted for errors and omissions, however caused. The information contained in this publication should not be relied on as legal advice and should not be regarded as a substitute for detailed advice in individual cases.

If you have any questions regarding this publication, please contact:

Contact Us

Beijing Office

Tel.: +86-10-8525 5500
Suite 906, Office Tower C1 Oriental Plaza
1 East Chang An Ave.
Beijing 100738, P. R. China

Wenyu JIN Attorney-at-law

Tel.: +86-10-8525 5557
Email: wenyu.jin@hankunlaw.com

Shanghai Office

Tel.: +86-21-6080 0919
Suite 5709, Tower 1, Plaza 66, 1266 Nanjing
West Road,
Shanghai 200040, P. R. China

Yinshi CAO Attorney-at-law

Tel.: +86-21-6080 0980
Email: yinshi.cao@hankunlaw.com

Shenzhen Office

Tel.: +86-755-2681 3854
Suite 4715, Diwang Commercial Centre,
Shun Hing Square, 5002 Shennan Dong Lu,
Luohu District, Shenzhen, P. R. China

Jason WANG Attorney-at-law

Tel.: +86-755-2681 3854
Email: jason.wang@hankunlaw.com