



HAN KUN LAW OFFICES

# Legal Commentary



CHINA PRACTICE • GLOBAL VISION

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## Private Equity Law

### Tianjin Issued Supplementary Notice on Equity Investment Enterprises Registration and Record Filing

Evan ZHANG | Chu LIU

The Development and Reform Commission of Tianjin Municipality, together with the Bureau of Financial Affairs, Administration of Commerce and Industry, Commission of Commerce and Bureau of Public Finance of Tianjin Municipality, jointly promulgated the *Supplementary Notice to the Measures for the Administration of the Equity Investment Enterprises and Equity Investment Management Institutions in Tianjin* (Jin Fa Gai Cai Jin [2012] No. 146, “**Notice 146**”) on March 5, 2012. Notice 146 is a supplement to *the Measures for the Administration on the Equity Investment Enterprises and Equity Investment Management Institutions in Tianjin* (Jin Fa Gai Cai Jin [2011] No. 675, “**Notice 675**”) issued by the same authorities. It is also the first local implementing rule after the promulgation by National Development and Reform Commission of the *Notice on the Promotion of the Standardized Development of the Equity Investment Enterprises* (Fa Gai Ban Cai Jing [2011] No. 2864, “**Notice 2864**”).

Notice 146 has elaborated on the record-filing of and regulation on the Existing Equity Investment Enterprises and Equity Investment Management Institutions (as defined below) and clarified the sanctions against those Existing Equity Investment Enterprises and Equity Investment Management Institutions that fail to satisfy the record filing requirements. Notice 146 further strengthens regulation on equity investment enterprises and equity investment management institutions registered in Tianjin, which will exert further impact on the registration and record-filing process of equity investment enterprises and equity investment management institutions in Tianjin.

Salient points of Notice 146 are:

## **Further clarification on the record-filing of Existing Equity Investment Enterprises and Equity Investment Management Institutions**

### **1. What are “Existing Equity Investment Enterprises and Equity Investment Management Institutions”?**

Notice 146 defines “Existing Equity Enterprises and Equity Investment Management Institutions” as equity investment enterprises and equity investment management institutions registered with Tianjin Administration of Industry and Commerce prior to September 1, 2011, which have the wording of “equity” or “fund” in their names, or have the wording of “engaging in investment in private enterprises, and non publicly issued stocks of listed enterprises, and related consulting services” in the business scope of equity investment enterprises, or “entrusted management of equity investment funds, engaging in investment and financing management and related consulting services” in the business scope of equity investment management institutions.

### **2. What are the mandatory requirements for the record-filing of the “Existing Equity Investment Enterprises and Equity Investment Management Institutions”?**

According to Notice 146, the Existing Equity Investment Enterprises, if fitting into one of the following three scenarios, may apply for record filing despite the requirements set forth in the Notice 675 (their respective management institutions shall apply for record filing simultaneously):

- 1) For those Existing Equity Investment Enterprises with paid-in capital above 20,000,000 RMB before March 5, 2012 (the date Notice 146 is promulgated), each investor thereof is obligated to invest at least 1,000,000 RMB into the equity investment enterprises (general partner excluded), which is lower than the minimum amount of 2,000,000 RMB for each individual investor and 10,000,000 RMB for each institutional investor respectively in Notice 675.
- 2) For those Existing Equity Investment Enterprises that have invested in target companies prior to March 5, 2012 (the date Notice 146 is promulgated), yet without over 20,000,000 RMB of paid-in capital, each investor thereof is obligated to invest at least 1,000,000 RMB into the equity investment enterprises (general partner excluded), which is also lower than the requirement in Notice 675. And there is even no requirement of minimum 20,000,000 RMB paid-in capital.
- 3) For other Existing Equity Investment Enterprises and Equity Investment Management Institutions, the mandatory requirement is the same as what is set forth in Notice 675, in other words, a total subscribed capital of more than 100,000,000 RMB with each individual investor subscribing at least 10,000,000 RMB and each institutional investor subscribing at least 2,000,000 RMB.

In addition, Notice 146 also provides that the equity investment enterprises established by the Existing Equity Investment Institutions with the sole purpose of investment into one single target company (“Special Purpose Vehicle” or “SPV”) shall also apply for record filing together with the Existing Equity Investment Enterprises. Notice 146 requires the Existing Equity Investment Enterprises to undertake the relevant legal liability for the SPV’s investment and financing activities and the SPV to be supervised by the same custodial bank serving the Existing Equity Investment Enterprises, which shall be documented and filed together with the Existing Equity Investment Enterprises.

3. How should Existing Equity Investment Management Institutions which do not establish or manage any equity investment enterprises apply for record-filing?

Notice 146 provides that Existing Equity Investment Management Institutions which have not yet established or been managing any equity investment enterprises shall submit the following documents to the local registry within 2 months from March 5, 2012, in other words, prior to May 5, 2012 : (i) the resumes and the photocopies of identification documents of at least 3 senior management personnel; (ii) the contact information of the persons in charge and contact persons; and (iii) the signed Undertaking Letter for Fundraising in Compliance with the Applicable Laws and Regulations and the signed Risk Alerts as appended to Notice 675.

Where such equity investment management institutions set up or are entrusted to manage equity investment enterprises within 2 years from March 5, 2012, they will have their equity investment enterprises apply for record-filing under Notice 675 together with themselves. If they fail to set up or been entrusted to manage equity investment enterprises by then, they shall apply for a change in their names and business scopes.

Those equity investment management institutions set up after September 1, 2011 (in other words, outside the scope of “Existing Equity Investment Management Institutions”) shall submit the relevant documents to the local registry within 2 months after March 5, 2012, and apply for record-filing of themselves and equity investment management enterprises set up by them within 2 years after March 5, 2012. If the record filing process fails to be completed within 2 years, the equity investment management institutions shall change their names and business scopes, or even be deregistered.

4. Where should the application of record-filing be submitted?

Those Existing Equity Investment Enterprises with subscribed capital of more than 500,000,000 RMB, shall apply for record-filing with the National Development and Reform Commission through the Development and Reform Commission of the Tianjin Municipality. Those Existing Equity Investment Enterprises with subscribed capital of less than 500,000,000 RMB, shall apply for record-filing with the Bureau for Development and Record Filing of

Equity/Industry Investment Funds of Tianjin Municipality.(“Bureau for Record Filing of Tianjin Municipality”).

5. What is the time limit for record-filing of the Existing Equity Investment Enterprises and Equity Investment Management Institutions?

According to Notice 146, the Existing Equity Investment Enterprises and Equity Investment Management Institutions shall complete the record filing or rectification prior to September 1, 2013.

6. What are the legal consequences for Existing Equity Investment Enterprises and Equity Investment Management Institutions that fail to make record filing?

According to Notice 146, those equity investment enterprises that have not completed the record filing or rectification within the time limit shall be sanctioned in accordance with relevant provisions.

Pursuant to Notice 675, those equity enterprises or equity investment management institutions that have not applied for record filing in compliance with the applicable laws and regulations shall be publicized and announced on the website of the Development and Reform Commission of Tianjin Municipality for evading the regulation; those equity investment enterprises that do not operate lawfully, or correct the wrongdoing, or can't pass the annual examination by the local Administration of Industry and Commerce, shall be publicized and announced on the website of the Development and Reform Commission of Tianjin Municipality for unlawful operation. The list of those equity investment enterprises and equity investment management institutions that are characterized as evading the regulation or operating against the law will be transferred by the Bureau for Record Filing of Tianjin Municipality to the relevant authorities for further sanctions.

Per our practical experience, those equity investment enterprises or equity investment management institutions that fail to make record filing might probably fail to pass the annual examination by the local Administration of Industry and Commerce, be obligated to deregister their business licenses and then publicized on the websites.

**Strengthening regulation on intermediary institutions**

Notice 146 provides that intermediary institutions that issue false capital verification reports and legal opinions will be blacklisted by the Bureau for Record Filing of Tianjin Municipality, and shall be prohibited from engaging in any registration or record filing work afterwards.

## **Tightening requirements on capital custody and registration**

Notice 146 further requires that after obtaining the name approval and completing capital verification of the first installment of capital contribution, the equity investment enterprises shall provide the Letter of Intent for Custodianship between the equity investment management institutions, executive partners or legal representatives and the custodial banks to the local Administration of Industry and Commerce, without which the equity investment enterprises shall not be registered.

Notice 146 also mandates that those equity investment enterprises and equity investment management institutions with the wording of “fund” in their names shall provide, when registering, the Undertaking Letter for Capital Subscription of the Equity Investment Enterprises and the Legal Opinion issued by a law firm on the legality of all the documents submitted to the local Administration of Industry and Commerce.

We see that Notice 2864 strengthens the regulation on equity investment enterprises; yet some leeway has still be left for those existing equity investment enterprises and equity investment management institutions established before September 1, 2011 (the date of promulgation of Notice 675).

If you have any questions regarding the foregoing, please do not hesitate to contact us.

## **Important Announcement**

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If you have any questions regarding this publication, please contact any of the following Han Kun lawyers:

### **Contact Us**



#### **Beijing Office**

Tel.: +86-10-8525 5500  
Suite 906, Office Tower C1, Oriental Plaza  
No. 1 East Chang An Ave.  
Beijing 100738, P. R. China

#### **Estella CHEN Attorney-at-law**

Tel.: +86-10-8525 5541  
Email: [estella.chen@hankunlaw.com](mailto:estella.chen@hankunlaw.com)

#### **Shanghai Office**

Tel.: +86-21-6080 0909  
Suite 5709, Tower 1, Plaza 66, 1266 Nanjing  
West Road,  
Shanghai 200040, P. R. China

#### **Anita SUN Attorney-at-law**

Tel.: +86-21-6080 0907  
Email: [anita.sun@hankunlaw.com](mailto:anita.sun@hankunlaw.com)

#### **Shenzhen Office**

Tel.: +86-755-3680 6500  
Suite 4709, Excellence Times Plaza, 4068  
Yitian Road, Futian District,  
Shenzhen 518048, P. R. China

#### **Jason WANG Attorney-at-law**

Tel.: +86-755-3680 6518  
Email: [jason.wang@hankunlaw.com](mailto:jason.wang@hankunlaw.com)