



HAN KUN LAW OFFICES

Legal Commentary



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Private Equity Law

Shanghai Issued Amended Version of Notice on AIC Registration for Equity Investment Enterprises

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On May 3, 2011, the Financial Service Office, Administration of Industry and Commerce, Administration of Finance and Local Taxation Bureau of Shanghai, a city that has been at the forefront of private equity in China recently, jointly issued *Notice on Industrial and Commercial Registration for Equity Investment Enterprises in Shanghai (amended)* (the “**New Notice**”). The New Notice, which came into effect on June 3, 2011 and will remain effective through June 2, 2016, made certain changes to the *Notice on Industrial and Commercial Registration for Equity Investment Enterprises in Shanghai* (the “**Previous Notice**”) jointly issued by the same government authorities in 2008 as outlined below:

1. Equity Investment Enterprises and Equity Investment Management Enterprises Invested by Trust Companies

The New Notice imposes new requirements on the registration of equity investment enterprises and equity investment management enterprises (the “**EIEs/EIMEs**”) invested by trust companies with the administration of industry and commerce (“**AIC**”) and provides that for those enterprises that make equity contributions with trust assets, the nature of such capital should be expressly specified in the registration documents to ensure the risk isolation function of trust assets and enhance the independency and transparency of trust assets. In addition, the New Notice expressly brings EIEs/EIMEs invested by trust companies that are primarily engaged in the secondary securities investments within its purview.

2. Certain Rules for Enterprise Registration Loosened

Firstly, the New Notice expanded the permissible names and description of business scope of

EIEs/EIMEs under the Previous Notice to include “equity investment *fund*” and “equity investment *fund* management” in addition to “equity investment” and “equity investment management”. The reference to “fund” has critical importance in China as an entity that is called a “fund” is supposed to be specially regulated in China. Several ministry-level departments such as China Securities Regulatory Commission and National Development and Reform Commission as well as local authorities have been trying to claim jurisdiction over private equity funds.

Secondly, according to the New Notice, for those enterprises that satisfy certain conditions, their trade names incorporated in their enterprise names will be allowed to be suffixed with Fund I, Fund II, Fund III, etc. to allow the firms to build the brand name and intangible assets in their trade names.

3. Addition of Rules concerning AIC Registration of Foreign-invested EIEs

The New Notice clarifies the basis of implementation for the AIC registration of foreign-invested EIEs and provides that such registration shall be conducted pursuant to the *Implementation Measures for the Launch of a Pilot Foreign-invested Equity Investment Enterprises Project in Shanghai* (please refer to *Han Kun Private Equity Commentary on Summary of Recent Regulation Interpretation Seminar on Qualified Foreign Limited Partner Pilot Program in Shanghai* dated April 28, 2011 for details).

4. Adjustment of Tax Policies Applicable to Partnerships

According to the Previous Notice, different tax rates are applicable to general partners and limited partners who are individuals. The income of individual general partners is deemed operating income of individual industrial and commercial households subject to progressive tax rates ranging from 5% to 35% whereas income of individual limited partners is deemed investment income subject to a tax rate of 20%. Such distinction of individual income tax treatment between general partners and limited partners is suspected by many to be in conflict with Circular No. 159 issued by the State Administration of Taxation in 2008, which does not impose different tax rates on individual general partners and limited partners. The New Notice removed such conflicting provision and instead provides that the manufacturing, operating and other income of partnership enterprises shall be allocated to its partners, who shall then pay their own income tax on their shares of such allocated income, consistent with Circular No. 159.

If you have any questions regarding the foregoing, please feel free to contact us.

Important Announcement

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