

CHINA
Paul Weiss



PHILIPPINES
SyCip Salazar Hernandez
& Gatmaitan

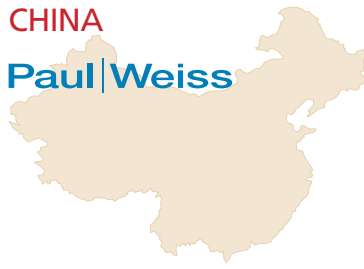


SINGAPORE
Loo & Partners



Each month, *ALB* draws on its panel of country editors to bring readers up to date with regulatory developments across the region

CHINA
Paul Weiss



Foreign-Invested Partnership – An Opportunity for Private Equity Funds in China?

Since the issuance of the Partnership Enterprise Law in 2007, the long-awaited implementing regulations on foreign-invested partnerships were finally promulgated on November 25, 2009 and will become effective on March 1, 2010. Pursuant to the Administrative Measures on the Establishment of Partnership Enterprises by Foreign Enterprises or Individuals (the “Measures”), foreign investors will be able to create limited and unlimited partnerships in China either with other foreign investors or with Chinese investors. Moreover, foreign investors can also join an existing domestic partnership by making new contributions to such partnership or acquiring the existing interests of the partnership from the partners.

The Measures break new ground in another respect as well: apart from representative offices, foreign-invested partnerships will be the only foreign-invested entity that can be established without prior approval by the Ministry of Commerce (the “MOFCOM”) or its local counterparts. The representative or agent of the partners can directly apply to the administration bureau of industry and commerce (the “AIC”) for registration. In addition to the documents required for the registration of all partnerships, the partners applying to register a foreign-invested partnership must also submit an explanation of its compliance with foreign investment industrial policies. If regulatory approval is required for the proposed business of the partnership, this approval must be obtained before AIC registration.

However, it remains unclear whether foreign-invested private equity funds may be established under the Measures. According to the official announcement of the Measures made by the State Council,

the relevant ministries still have different views on the regulatory approach to foreign investments in private equity funds in China. The Measures only provide that special rules on foreign-invested partnerships mainly conducting investment business shall be complied with. This provision may be simply a placeholder for future regulations or a reference to the Administrative Provisions on Foreign-Invested Venture Capital Enterprises, which provide a form of non-legal person venture capital fund similar to a partnership.

According to the Tentative Measures on the Establishment of Foreign-Invested Equity Investment Fund Management Enterprises in Beijing recently issued by the Beijing government, foreign investors may establish equity investment fund management enterprises in the form of a partnership, provided that such is permitted under the state policies. We are hopeful that further developments and clarification will be in place before the Measures come into effect on March 1, 2010.

Written by
Jeanette Chan, partner
Sue Yang, associate
Paul, Weiss, Rifkind,
Wharton & Garrison

Unit 3601, Fortune Plaza Office Tower A
No. 7 Dong Sanhuan Zhonglu
Chao Yang District, Beijing 100020
PRC
Email: jchan@paulweiss.com
Ph: (8610) 5828-6300 or
(852) 2846-0300

