

China Update

April 9, 2010



New Rules for Foreign-Invested Partnerships in China

The Administrative Rules on the Registration of Foreign-Invested Partnership Enterprises (the "Registration Rules") issued by the State Administration for Industry and Commerce became effective on March 1, 2010. They are the implementing rules for the Administrative Measures on the Establishment of Partnership Enterprises by Foreign Enterprises or Individuals (the "Measures") promulgated by the State Council, effective also on March 1, 2010.

The Measures and the Registration Rules created the foreign-invested partnership ("FIP"), a new form of foreign-invested enterprises ("FIE"). FIPs are only required to be registered with the local Administration for Industry and Commerce ("AIC"), and for any FIP whose principal business is investment, registration of the FIP should take place at the provincial-level AICs.

Furthermore, capital contributions may be made to the FIPs in foreign currency and in the form of in-kind contribution, including intellectual property rights, land use rights or other property rights. Foreign general partners are even permitted to contribute capital in the form of labor services.

Although the provisions concerning the registration and capital contributions suggest a more relaxed regime for the FIPs, other provisions impose stricter restrictions on FIPs. Like all FIEs, FIPs may not be established in the prohibited category under the Catalog Guiding Foreign Investment in Industry. However, FIPs are not even permitted to be established for projects where foreign investment is permitted only in the form of joint ventures or joint ventures where the Chinese party is required to retain control. The range of industrial sectors in which foreign investors may set up FIPs is severely limited and the advantages of FIPs over other forms of FIEs are greatly diminished.

The Measures and the Registration Rules are both vague on certain key issues, such as how downstream investments made by FIPs will be treated, but we are hopeful clarification would be forthcoming. Nevertheless, the promulgation of these regulations shows that China is keen to promote the establishment of FIPs to encourage the formation of private equity funds in China.

Written by: Jeanette Chan, partner
Bianca Ip, senior paralegal

BEIJING

Unit 3601, Fortune Plaza Office
Tower A
No. 7 Dong Sanhuan Zhonglu
Chao Yang District, Beijing 100020
People's Republic of China
+86 10 5828 6300

HONG KONG

Hong Kong Club Building, 12th Floor
3A Chater Road, Central
Hong Kong
+852 2846 0300

TOKYO

Fukoku Seimei Building, 2nd Floor
2-2 Uchisaiwaicho 2-chome
Chiyoda-ku, Tokyo 100-0011
Japan
+81 3 3597-8101

©2010 Paul, Weiss, Rifkind, Wharton & Garrison LLP.
In some jurisdictions, this brochure may be considered
attorney advertising. Past representations are no
guarantee of future outcomes.

China Update

* * *

This article is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this article should be directed to any member of the Paul, Weiss China Practice Group, including:

Jeanette K. Chan	jchan@paulweiss.com	(852) 2846-0388/ (8610) 5828-6388
Jack Lange	jlange@paulweiss.com	(852) 2846-0333
Greg Liu	gliu@paulweiss.com	(8610) 5828-6302
Hans-Günther Herrmann	hherrmann@paulweiss.com	(852) 2846-0331
Corinna Yu	cyu@paulweiss.com	(852) 2846-0383