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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.

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