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Tianjin Issues Pilot Measures for Foreign-invested Equity Investment Enterprises

By David Yu, Nicholas Lou and Kevin Huang

Following Shanghai, Beijing and Chongqing's issuance of local rules governing foreign-invested equity investment enterprises respectively, on 14 October 2011, the Tianjin Municipal Development and Reform Commission, Tianjin People's Government Financial Affairs Office, Tianjin Municipal Commission of Commerce ("**MOFCOM Tianjin**") and Tianjin Administration for Industry and Commerce jointly promulgated *the Interim Measures for Pilot Projects of Foreign-invested Equity Investment Enterprises and their Management Institutions in Tianjin* (the "**Tianjin Pilot Measures**", Jin Fa Gai Cai Jin[2011] No.1206) and the *Implementation Rules for the Interim Measures for Pilot Projects of Foreign-invested Equity Investment Enterprises and their Management Institutions in Tianjin* (the "**Tianjin Implementation Rules**", Jin Fa Gai Cai Jin[2011] No.1207), according to which Tianjin will launch its own pilot project for foreign-invested equity investment management institutions and foreign-invested equity investment enterprises. The Tianjin Pilot Measures was scheduled to enter into effect as of its issuance date, and the Tianjin Implementation Rules thirty days later. As such, following the other three municipalities, the pilot rules regarding foreign-invested equity investment enterprises have finally launched in Tianjin.

Conditions and Requirements for Incorporation

The Tianjin Pilot Measures stipulates the conditions and requirements for the foreign-invested equity investment enterprises (the "**Pilot FIEIEs**") and foreign-invested equity investment management institutions (the "**Pilot FIEIMIs**", collectively with the Pilot FIEIEs as "**Pilot Enterprises**") to apply to participate in the pilot project, which are summarized as below:

➢ Pilot FIEIMIs

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Tianjin Issued Pilot Measures for Foreign-invested Equity Investment Enterprises

We have previously introduced the *Implementation Measures for Pilot Projects of Foreign-invested Equity Investment Enterprises in Shanghai* (“**Shanghai Pilot Measures**”) (Please refer to *Shanghai Issued Pilot Measures for Foreign-invested Equity Investment Enterprises* in our newsletter of January, 2011). Stepping up on such basis, we illustrate below the specific provisions with regard to FIEIMIs by comparing the key provisions in the Shanghai Pilot Measures and the Tianjin Pilot Measures:

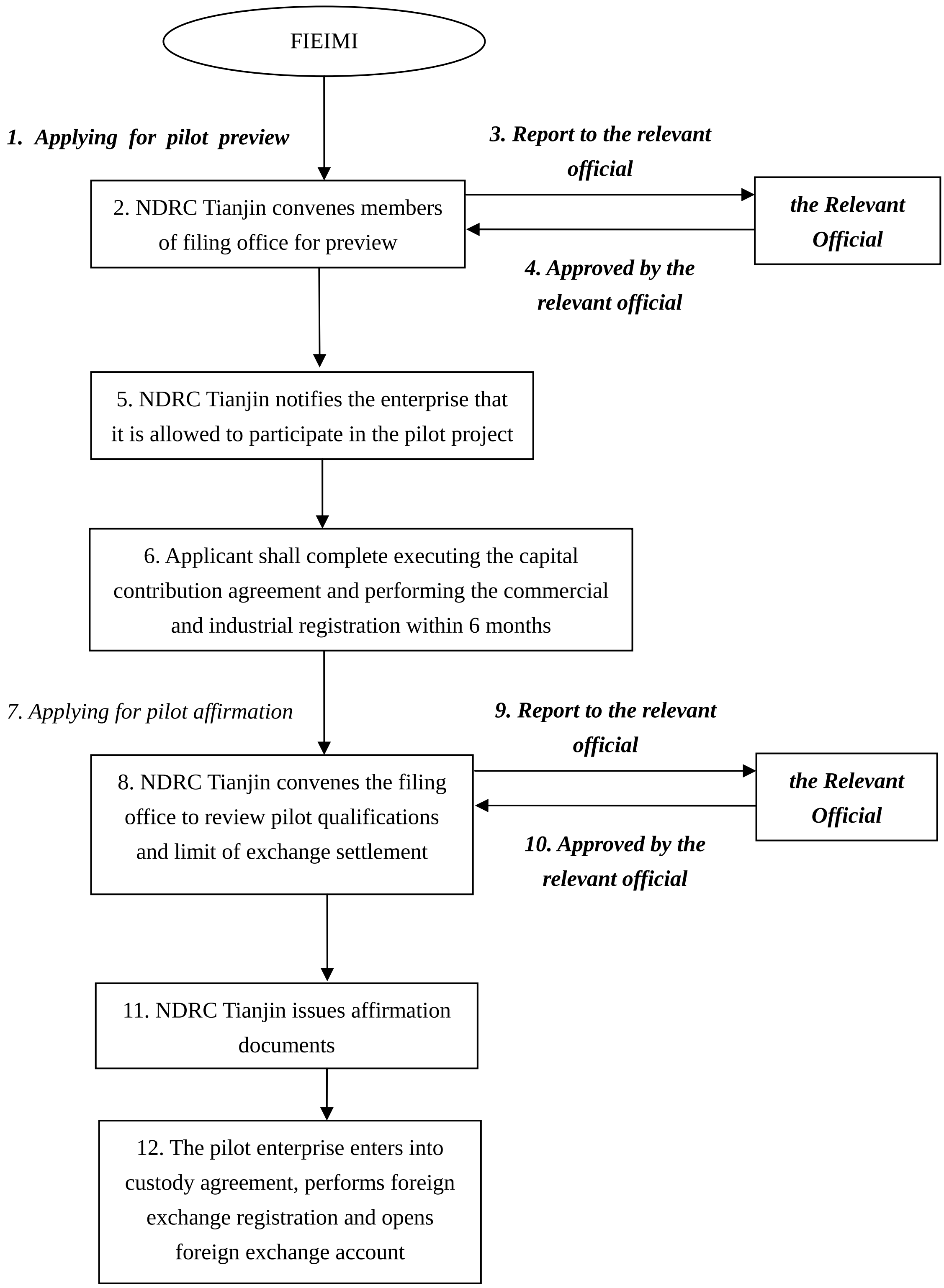
<table>
<tr><th>Regulations / Items</th><th>Shanghai Pilot Measures</th><th>Tianjin Pilot Measures</th></tr>
<tr><td>Name of Enterprise</td><td>the words “equity investment fund management” are required.</td><td>no specific stipulations</td></tr>
<tr><td>Form of Enterprise</td><td>company or partnership</td><td>company or limited partnership</td></tr>
<tr><td>Minimum Registered Capital (or Subscribed Capital) and Payment Requirements</td><td>no less than USD 2 million, the initial 20% shall be paid-up within 3 months from the SAIC’s issuance of the business license and the remaining amount shall be paid-up within 2 years. Capital contribution shall be made in currency only.</td><td>The actual paid-in (contributed) capital shall be no less than RMB 10 million or the equivalent foreign currency.</td></tr>
<tr><td>Permitted Businesses (description of the business scope)</td><td>businesses allowed to engage in include:
➢ incorporating equity investment enterprises by means of promotion;
➢ being entrusted to manage the investment business of equity investment enterprises and provide relevant services;
➢ equity investment consulting;
➢ other businesses permitted by the approval or registration authorities</td><td>the following businesses shall be provided in the articles of association or the partnership agreement:
➢ incorporating equity investment enterprises by means of promotion;
➢ being entrusted to manage the assets of equity investment enterprises;
➢ providing management services for the enterprises that the equity investment enterprises invest in;
➢ equity investment consulting;
➢ other recognized businesses related to equity investment</td></tr>
<tr><td rowspan="2">Qualification Requirements for Senior Management</td><td colspan="2">having at least two officers who shall have the following qualifications simultaneously:
➢ have more than five years’ experience in equity investment or equity investment management;
➢ have more than two years’ working experience of senior management;
➢ experienced in PRC-related equity investments or have working experience in PRC financial institutions;
➢ have no record of violation of regulations in the most recent five years or pending lawsuits regarding economic disputes, and have good personal credit records.</td></tr>
<tr><td></td><td>A considerable part of the officers of the equity investment management institutions shall be PRC citizens or residents holding PRC passports.</td></tr>
<tr><td>Investment Requirements</td><td></td><td>must undertake that the equity investment enterprises incorporated by promotion or to be managed will mainly invest in Tianjin’s strategic emerging industries</td></tr>
</table>

- Pilot FIEIEs

Apart from the abovementioned conditions for foreign-invested equity investment management enterprises to participate in the pilot project, the Tianjin Pilot Measures also provides the conditions for foreign-invested equity investment enterprises to participate in the pilot project. See table below for details:

Definition of Pilot FIEIEs	The foreign-invested equity investment enterprises which are approved to launch the pilot project by the Municipal Development and Filing Administrative Office for Industry (Equity) Investment Fund.
Scope of Offshore Investors	The capital of the equity investment enterprises may either be wholly composed of foreign currencies raised from overseas, or jointly composed of both foreign currencies raised from overseas and RMB capitals raised within the PRC.
Scale of Fund	In principle, the fund scale of any single equity investment enterprise shall be no less than RMB 500 million (or equivalent foreign currency). Its equity investment management institution shall subscribe a certain percentage of its capital (but no more than 5%).
Conditions for Management Institutions	The management institutions shall meet the conditions for Pilot FIEIMIs to participate in the pilot project as provided in the Tianjin Pilot Measures.
Qualifications of Offshore Investors	➢ within the previous fiscal year prior to the application, have self-owned assets of no less than USD 500 million or assets under its management of no less than USD 1 billion; ➢ have sound governance structure and internal control system, and have not been imposed penalties by any onshore and offshore judicial authority or relevant regulatory authority in the most recent two years; ➢ primarily composed of offshore sovereign funds, pension funds, endowment funds, charitable funds, fund of funds (FOF), insurance companies, banks, securities companies and other offshore institutional investors approved by the municipal filing office; ➢ each offshore investor at least contributes more than USD 10 million in the Pilot FIEIE; ➢ the foreign investor or its affiliated entity shall have more than five years' experience in relevant investment; ➢ other qualifications required for the pilot project.
Capital Custody	The capital of the Pilot FIEIEs shall be in custody of a qualified commercial bank (head office or branch office) in Tianjin. The custodian bank shall supervise the capital account and the uses of the capital in the account.
Investment Capital	The Pilot FIEIMI may handle foreign exchange settlement with the custodian bank in accordance with the relevant foreign exchange administration regulations, and invest all capital after the settlement to the sponsored equity investment enterprise. Such portion of capital contribution will not affect the original nature of the partnership equity investment enterprise that it invests in. The upper limit of exchange settlement shall be 5% of the amount actually collected by the equity investment enterprise (including the accumulated settlement amount). The exchange settlement funds shall be remitted into the special investment account of the Pilot Enterprise. After collecting both RMB and foreign exchange in the proportions as agreed upon registration, all the capital in such investment account shall be used for investment and paid within 7 working days, otherwise, the Pilot Enterprise will be disqualified from participating in the pilot project.
Filing Management	The Pilot FIEIEs shall submit its business report, capital custody report and annual financial report audited by a registered accountant to the municipal filing office and the relevant authorities within three months after the end of each fiscal year, and shall report the material events in the course of investment operation from the previous quarter to the same authorities at the beginning of each quarter.

According to the relevant provisions of the Tianjin Pilot Measures, the approval procedures for a Pilot FIEIE are as follows:



Restrictions on the Investment Areas and Businesses

The Tianjin Pilot Measures also provides that the following businesses are prohibited from being engaged in:

- investing in areas prohibited by the State;
- trading stocks and corporate bonds on the secondary market, save for the transfer of shares by an enterprise which the FIEIE invests in after such enterprise becomes listed;
- transactions of financial derivatives such as futures;
- **investing directly or indirectly in non-self use real estate;**
- appropriating non-self owned funds to make investments;
- providing loans to or security for other persons; and
- any other activities prohibited by PRC laws, regulations and articles of association (partnership agreement) of the FIEIE.

It is noteworthy that, similar to the Shanghai Pilot Measures, the Tianjin Pilot Measures also expressly provides that the Pilot FIEIEs are prohibited from "investing directly or indirectly in non-self use real estate", meaning a foreign-invested equity investing in real estate funds will be excluded from the pilot project.

Characteristics of the Tianjin Pilot Measures

The Tianjin Pilot Measures and the Tianjin Implementation Rules, though promulgated later than the local rules of Shanghai and Beijing, contain more specific and express provisions and have yielded breakthroughs in the following aspects:

- Affirmation of the Nature of External Investments made by the Pilot Enterprises

  It is stipulated in the Shanghai Pilot Measures that any equity investment by a FIEIE in the PRC shall be subject to the relevant laws, administrative regulations and rules governing foreign investment. However, it is unclear what "subject to the relevant laws, administrative regulations and rules governing foreign investment" is. In this regard, relevant officials from the State Administration for Industry and Commerce once deemed that the investments in question shall be approved or filed in accordance with the procedures and requirements for direct domestic investments made by foreign investors. However, such interpretation has not been expressly confirmed by the competent authorities of the MOFCOM yet.

  On the other hand, the Tianjin Pilot Measures and the Tianjin Implementation Rules contain more express provisions regarding the form of external investments made by the Pilot FIEIEs and the Pilot FIEIMIs. It is expressly stipulated in the Tianjin Implementation Rules that investments in PRC enterprises made by a Pilot FIEIE with capital settled from foreign exchange will be considered and administrated as a foreign investment and shall be, respectively, subject to the approval by the local Development and Reform Commission where the target enterprise is located as well as the examination and approval by the MOFCOM. Therefore, domestic investments made by the Pilot Enterprises shall be handled in accordance with the procedures and requirements for direct domestic investments by foreign investors. Notwithstanding the aforesaid, such provisions are only applicable to Tianjin. If a Pilot FIEIE or Pilot FIEIMI incorporated in Tianjin invests in other provinces or cities in the PRC, it will still be required to coordinate and confirm with the relevant local authorities of such areas.

- Fund Scale of the Pilot Enterprises

According to the Tianjin Pilot Measures, the fund scale of any FIEIE applying to participate in the pilot project shall not be less than RMB 500 million (or equivalent foreign currency) in principle. This local stipulation is similar to that in Beijing, while in Shanghai there is no similar requirement, although in practice it is usually required that the fund scale shall be no less than RMB 100 million (or equivalent foreign currency).

- Management of Exchange Settlement Funds of the Pilot Enterprises

According to the Tianjin Implementation Rules, the exchange settlement funds shall be remitted into the special investment account of the Pilot Enterprise. After collecting both RMB and foreign exchange in the proportions as agreed by the investors upon registration, all the capital in such investment account shall be used for investment and paid within 7 working days, otherwise, the Pilot Enterprise will be disqualified from participating in the pilot project. It means, therefore, the exchange settlement funds of a Pilot Enterprise cannot stay in its special investment account for more than 7 working days. If the exchange settlement funds are not utilized for investments and payments for a long time, the Pilot Enterprise will be disqualified. There are no similar detailed provisions in this respect in the relevant regulations of Shanghai and Beijing.

- Management of the Accounts of the Pilot Enterprises

Apart from those provisions clarifying the policies of exchange settlement, the Tianjin Implementation Rules have also more specific provisions on the Pilot Enterprises' custody accounts, which are not found in the local rules of Beijing and Shanghai. In particular, a Pilot FIEIE shall open a foreign exchange capital account (or special foreign exchange capital account), a special investment account and a special revenue account at the custodian bank respectively. If there is any domestic investor in the Pilot FIEIE, a RMB general settlement account should also be opened. Among the above accounts, the RMB general settlement account shall be used for absorbing investment capital contributed by domestic investors; the foreign exchange capital account (or special foreign exchange capital account) shall be used for absorbing investment capital contributed by foreign investors; the special investment account shall be used for managing the exchange settlement funds of the Pilot FIEIE and using those funds for external investments; and the special revenue account shall be used for collecting all funds acquired from the withdrawal or proceeds made by the Pilot Enterprise's investments. Such provision on account management will play an important role in the management and supervision of the Pilot Enterprises' income and expenses.

- Management of Capital Increase and Decrease of the Pilot Enterprises

According to the Shanghai Pilot Measures, the municipal Administration for Industry and Commerce shall ask for the opinions of the municipal Financial Affairs Office when reviewing the application submitted by a partnership FIEIE or FIEIMI concerning capital increase or decrease. However, there are no provisions as to its specific operations.

In comparison, the Tianjin Implementation Rules lays down more specific provisions in that regard, in which Article 13 reads, when increasing or decreasing the amount of its capital contribution or changing its investors, the Pilot Enterprise shall submit the relevant materials to the Tianjin Municipal Development and Reform Commission which shall then convene the members of the municipal filing office to affirm the application for change of the Pilot Enterprise and re-issue the affirmation documents within 10 working days. The Pilot Enterprise cannot proceed with the formalities for changing its foreign exchange registration or adjusting the account limits until it has obtained such affirmation documents.

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