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Administrative Measures for Establishment of Partnership Enterprise in PRC by Foreign Enterprises or Individuals Issued by the State Council

By David Yu and Nicholas Lou

On 25 November 2009, Premier Wen Jiabao signed the State Council Order No.567 for the promulgation of the *Administration Measures for Establishment of Partnership Enterprise by Foreign Enterprises or Individuals in the People's Republic of China* (hereinafter "Measures"), which shall come in force on 1 March 2010. The Measures set out general regulatory principles on establishment of partnership enterprise in PRC by foreign enterprises or individuals (hereinafter "Foreign Invested Partnership"), the main contents of which are set forth below.

A New Foreign Investment Enterprise Form

The Issuance of the Measures means that, in addition to Sino-foreign Equity Joint Venture, Sino-foreign Cooperative Joint Venture, and Wholly Foreign Owned Enterprise, foreign enterprises or individuals are now allowed to make investment in the form of Foreign Invested Partnership.

Investment Subjects and Forms

The Measures provide two methods, as indicated below, for foreign enterprises and individuals to establish the Foreign Invested Partnership.

a) Establishing Foreign Invested Partnership in PRC by two or more foreign enterprises or individuals; or

b) Establishing Foreign Invested Partnership in PRC by foreign enterprises or individuals together with any PRC natural person, legal entity or other organization.

Registration of Foreign Invested Partnership

According to the Measures, the partners shall apply for registration to

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the local administration for industry and commerce authorized by State Administration for Industry and Commerce for establishment, change and cancellation of Foreign Invested Partnership. The partners shall also submit application documents required by the *Administration Measures for Registration of Partnership Enterprises in PRC* together with the declaration for complying with the industrial policies in relation to the establishment application. Meanwhile, unlike other types of foreign invested enterprise which shall be approved by MOFCOM the Measures state that, registration information shall be simultaneously notified by the Enterprise Registration Authority to local administration for industry and commerce should the establishment registration be approved; nevertheless the pre-approval by MOFCOM is not required.

Applicable Laws, Regulations and Policies

The Measures provide that Foreign Invested Partnership shall comply with the *Partnership Enterprise Law* and other relevant laws, administrative regulations and rules (including investment approval, financial, accounting, tax, foreign exchange, customs, exit and entry administration), and shall also conform to the industrial policies for foreign investment.

Currency for Capital Contribution

The Measures state that capital contribution by partners may take the form of convertible foreign currency, or RMB legally obtained by the partners.

Investment Business by Foreign Invested Partnership

The Measures do not lay out any provision addressing to the issue as to whether Foreign Invested Partnership is allowed to participate in investment business. Alternatively, it provides where other regulations have provisions on establishment of Foreign Invested Partnership with investment business as its principal business, such regulations shall apply. Since whether general Foreign Invested Partnership can make equity investment in PRC is still subject to a series of procedure issues such as approval and foreign exchange settlement, which are not addressed by the Measures, there is still a need for coordination and confirmation by relevant government authorities, such as State Administration for Industry and Commerce and State Administration of Foreign Exchange.

Given that the Measures set out general principles only, relevant governmental authorities, such as National Development and Reform Commission, Ministry of Commerce, State Administration for Industry and Commerce and State Administration of Foreign Exchange, may issue further regulations or set out restrictions in relation to implementation of the Measures, in particular the Foreign Invested Partnership engaged in equity investment business.

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