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Recent Development of the Supervision and Practice Regarding the Filing of Equity Investment Enterprises

By David Yu, Nicholas Lou and Teddy Li

On 31 January 2011, the General Office of the National Development and Reform Commission ("**NDRC**") issued the *Notice on Further Standardizing the Development and Filing Management of Equity Investment Enterprises in Pilot Areas* (Fa Gai Ban Cai Jin [2011] No. 253) ("**Filing Notice**"). In order to better implement the detailed documentary requirements for filing under the Filing Notice, the NDRC has since then further promulgated a series of guidelines regarding documentary requirements for filing of equity investment enterprises.[1] This article serves as a summary of the recent implementation status of filing of equity investment enterprises located in certain pilot areas for filing.

Expansion of the Pilot Areas

According to the Filing Notice, equity investment enterprises from a total of 6 provinces and municipals (Beijing, Tianjin, Shanghai, Jiangsu Province, Zhejiang Province and Hubei Province) ("**Pilot Areas**") are implementing experimental filing management. Moreover, according to the news published on the Chongqing government website on 22 July 2011, Chongqing has been formally included in the Pilot Areas in accordance with the provisions in the *Letter Regarding Relevant Issues on Chongqing Launching Experimental Filing of Equity Investment Enterprises* (Fa Gai Ban Cai Jin [2011] No. 1421), becoming the 7th Pilot Area to launch filing management of equity investment enterprises.[2]

Implementation of the Filing Notice in Certain Pilot Areas

- Shanghai

On 18 July 2011, the *Notice on the Implementation of Filing Management of Equity Investment Enterprises in Shanghai by the Shanghai Development and Reform Commission and the Shanghai Financial Services Office* (Hu Fa Gai Cai Jin [2011] No. 045) ("**Shanghai Filing Notice**") was promulgated and entered

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into effect. According to the Shanghai Filing Notice, the Shanghai Development and Reform Commission ("**SDRC**") and Shanghai Financial Services Office ("**SFSO**") are jointly responsible for the filing management of equity investment enterprises in Shanghai. The SFSO is responsible to accept of filing materials submitted by equity investment enterprises and raise preliminary review opinion, assisted by the governments at district and county levels located at the registered domiciles of the equity investment enterprises in conducting preliminary reviews, whereas the SDRC is responsible to report to the NDRC its opinion on the preliminary reviews of the filing.

The Shanghai Filing Notice confirmed that the filing of equity investment enterprises in Shanghai is to be jointly managed by the SDRC and the SFSO. However, in the *Notice on Printing and Distributing the Measures for the Implementation of the Experimental Work Regarding Foreign Invested Equity Investment Enterprises in Shanghai* promulgated by the SFSO, the Shanghai Municipal Commission of Commerce and the Shanghai Administration for Industry and Commerce, it is confirmed that the SFSO shall be the competent authority for the filing of foreign invested equity investment enterprises. This is a reflection of the prominent function served by the SFSO in the filing management of both domestic and foreign invested equity investment enterprises in Shanghai.

➢ Tianjin

On 11 July 2011, a total of 5 government departments of Tianjin (including the Tianjin Development and Reform Commission) issued the *Notice on Matters Regarding Measures on the Piloting of Filing Management of Foreign Invested Equity Investment Enterprises in Tianjin* ("**Management Measures**"). Set to come into effect on 1 September 2011, the Management Measures will be the second regulation regarding the management and filing of equity investment enterprises in Tianjin.[3] With the *Directions on the Registration and Filing of Equity Fund and Equity Fund Management Enterprises in Tianjin* being implemented currently in Tianjin, the issuance of the Management Measures serves as an adjustment to the current rule in order to comply with the Filing Notice. Important changes were made including but not limited to:

- The Capital Requirement of Equity Investment Enterprises

  According to Section 32 of the Management Measures, the minimum registered (subscribed) capital required shall be RMB 100,000,000. The minimum capital to be subscribed (contributed) by each institutional investor shall be RMB 10,000,000, and by each individual investor, RMB 2,000,000. The initial capital contribution (actual paid-up capital) shall be no less than RMB 2,000,000 for the equity investment management institutions.

- Filing Requirements

  According to Section 44 of the Management Measures, Tianjin Development and Reform Commission ("**TDRC**") shall conduct initial review of the filing of equity investment enterprises with capital size of more than RMB 500,000,000 (or its equivalent in any foreign currency), before forwarding to the NDRC for official filing. Equity investment enterprises with capital size of more than RMB 100,000,000 (or its equivalent in any foreign currency) but less than RMB 500,000,000 (or its equivalent in any foreign currency), as well as thir management institutions shall apply to Tianjin Equity Investment Fund Developing and Filing Management Office ("**Tianjin Filing Office**") for filing.

Equity investment enterprises that do not complete the filing formality as required by the Management Measures will be deemed as "equity investment enterprises or equity investment management institutions that avoid the supervision of filing" and will be disclosed to the public on TDRC's website. Equity investment enterprises that do not operate in accordance with relevant rules and regulations and fail to rectify in due time, or fail their annual inspections and are then de-filed will be deemed as "equity investment enterprises or equity investment management institutions that are managed and operate irregularly" and will also be disclosed to the public on TDRC's website. Moreover, the name list of such equity investment enterprises or equity investment management institutions that "avoid the supervision of filing" or "operate irregularly" will be forwarded to the competent authorities by the Tianjin Filing Office for further actions.

Filing with the NDRC

According to the Filing Notice issued by the NDRC, enterprises shall notify the public on NDRC's website upon completion of filing. However, the latest enterprise filing information disclosed on NDRC's website[4], dated as of 7 July 2011 shows that 9 enterprises (with internationally and domestically well-known private equities such as DT Capital Partners, Sequoia Capitals and Carlyle Group included) have already completed the filing required by the Filing Notice, together with some other 28 equity investment enterprises and equity investment management institutions that had completed the filing before the issuance of the Filing Notice. However, it is to be noted that all these 9 enterprises are registered either in Tianjin or Beijing and the filing of enterprises from other pilot areas after the issuance of the Filing Notice are yet to be observed.

The increasingly strict and improved rules and regulations regarding the supervision and administration of the filing of equity investment enterprises have well demonstrated the determination of China in standardizing the management of equity investment enterprises and equity investment management enterprises. In the near future, equity investment enterprises that avoid the required filing requirements will not only be exposed to the current supervision measures, but also subject to stricter administration penalties and even criminal charges if deemed to be engaged in "illegal fundraising" or other crimes. Thus, the management measures regarding the filing of equity investment enterprises will definitely have a positive effect on the regulation of equity investment market in the long run.

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1 For details of the Guidelines, please refer to the article *National Development and Reform Commission Further Issues Guidance Regarding Documentary Requirements for Filing by Equity Investment Enterprises* issued by David Yu, Nicholas Lou and Teddy Li in March 2011 on the website of Llinks Law Offices: http://www.llinkslaw.com/shangchuan/2011324162925.pdf.

2 Please refer to the website of Chongqing Municipal People's Government: http://www.cq.gov.cn/zwgk/zfxx/333837.htm.

3 For details of the Measures, please refer to the article *An Approach to the Measures for Administration of Tianjin Equity Investment Enterprises and Equity Investment Management Institutions* issued by Charles Qin, Elva Yu and Amanda Liu in August 2011 on the website of Llinks Law Offices: http://www.llinkslaw.com/shangchuan/2011830112907.pdf.

4 Please refer to the website: http://cjs.ndrc.gov.cn/qytzycyjj/gqtzqyba/ybagqtzqy/.