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Establishing Enterprises for Equity Investment Purposes in Shanghai

By David Yu and Ming Zhang

The *Circular on Matters Regarding Registration of Enterprises for Equity Investment Purposes in Shanghai* (the "Circular") was jointly promulgated on 11 August 2008 by Shanghai Financial Services Office, Shanghai Administration of Industry and Commerce, Shanghai State Taxation Bureau and Shanghai Local Taxation Bureau and the provisions in respect of the establishment of enterprises for equity investment purposes in Shanghai are set forth therein.

To Encourage Enterprises for Equity Investment Purposes in Shanghai

The Circular requires the relevant financial services, industry and commerce, taxation authorities in Shanghai to make joint efforts to lead to a market environment that is favourable to congregation of enterprises for equity investment purposes and healthy development thereof on an orderly basis and encourages various persons both at home and abroad that meet the requirements to participate in the development of enterprises for equity investment purposes in Shanghai.

Requirements for Establishing Enterprises for Equity Investment Purposes in Shanghai

➢ Persons Qualified for Establishing Enterprises for Equity Investment Purposes

According to the Circular, domestic natural persons, legal persons and other institutions, and foreign and non-PRC natural persons, legal persons and other institutions complying with law and administrative regulations are qualified to be the investors of enterprises for equity investment purposes and enterprises equity investment management.

➢ Forms of Enterprises for Equity Investment Purposes

According to the Circular, enterprises engaged in equity investment and equity investment management in Shanghai should be incorporated in the form of companies or partnerships.

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- Capital Requirements for Enterprises for Equity Investment Purposes

(1) Requirements on Capitals and Numbers of Shareholders (or Partners) of Enterprises for Equity Investment Purposes

The registered capital of an enterprise for equity investment purposes, regardless of its formation of incorporation, should be no less than RMB 100,000,000 and should be contributed in cash only. Any single natural person's (partner's) capital contribution shall be no less than RMB 5,000,000.

If an enterprise for equity investment purposes is incorporated in the form of a limited liability company or partnership, the number of shareholders or partners shall be no more than 50. If it is incorporated in the form of a non-listed company limited by shares, the number of shareholders shall be no more than 200.

(2) Capital Requirements for Enterprises for Equity Investment Management

The registered capital of an enterprise for equity investment management incorporated in the form of a company limited by shares should be no less than RMB 5,000,000. If it is incorporated in the form of a limited liability company, the registered capital should be no less than RMB 1,000,000.

In order to encourage the development of enterprises for equity investment purposes in Shanghai, we can see from the Circular that it is relatively open and loose in respect of the natures, forms and investors of such enterprises. Domestic and foreign investors qualified under laws and regulations can establish enterprises for equity investment purposes in various forms. At the same time, given the high risks in the equity investment sector, the Circular imposes high requirements for the registered capitals of such enterprises.

We have noticed that there is only "complying with laws and regulations" for the foreign investors without any other specific restrictions. It is believed that the Circular leaves room for the breakthrough in foreign investment in enterprises for equity investment purposes. Will this mean that a breakthrough will happen to foreign investment in this sector in Shanghai? It still needs further observation.

It is noteworthy that in accordance with the *Notice of the General Affairs Department of the State Administration of Foreign Exchange on the Relevant Operating Issues concerning the Improvement of the Administration of Payment and Settlement of Foreign Exchange Capital of Foreign-invested Enterprises (No. 142 [2008] of the State Administration of Foreign Exchange)*(the "Notice") issued on August 29th, 2008, "the capital in foreign currency of a foreign-invested enterprise shall be converted into RMB only for the usages within the business scope as approved by the examination and approval authority, and shall not be used for a domestic equity investment unless it is otherwise provided.". Pursuant to the Notice, foreign-invested enterprises, exclusive of foreign-invested holding companies, are prohibited from converting capital in foreign currency into RMB for equity investment purpose. Accordingly, foreign investors can hardly make local equity investments by setting up a foreign-invested enterprise for equity investment purpose.

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