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## **Rules on Establishing Partnerships By Foreign Enterprises or Individuals**

**By Su Bo and Hu Shenglin**

 On 25 November 2009, the Administrative Rules on Establishing Partnerships by Foreign Enterprises or Individuals within China's Territory ("Partnerships Rules") were promulgated by the State Council of the PRC. Further on 29 January 2010, the Administrative Rules on Registration of Partnerships by Foreign Investors ("Registration Rules") was promulgated by the State Administration for Industry and Commerce of the PRC. Both of the rules will come into effect on 1 March 2010. The main content of the Partnerships Rules and the Registration Rules are as follows:

### **1. Forms of the partnerships established by foreign enterprises or individuals**

According to the Partnerships Rules, there are three forms of partnerships established by foreign enterprises or individuals:

- a. Two or more foreign enterprises or individuals establish partnerships in China and the partners are foreign ones;
- b. Foreign enterprises or individuals and domestic enterprises or individuals or other entities jointly establish partnerships in China; and
- c. Foreign enterprises or individuals become the partner of a partnership solely established by domestic enterprises or individuals or other entities, through joining in or acquiring the property share of the partnership.

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The Registration Rules further specifies that the Registration Rules also applies to establishment of partnerships by investment companies or venture capital enterprises established by foreign investors in the PRC, which expands the forms of the partnerships established by foreign investors compared to the Partnerships Rules.

## 2. Procedure

Compared to the procedure of establishing partnerships solely invested by domestic enterprises or individuals, an additional statement of compliance with foreign investment policy of the PRC shall be submitted to establish partnerships by foreign enterprises or individuals. However the prior approval for foreign investment by the PRC government authority in charge is not needed, so as to make it easier and more efficient to establish partnerships by foreign enterprises or individuals.

That is different from establishing a Sino-foreign joint venture or wholly foreign-owned enterprises in accordance with the Law on Chinese Foreign Equity Joint Venture, the Law on Chinese Foreign Contractual Joint Venture and the Law on Foreign Capital Enterprise. However, in accordance with the Registration Rules, as for the industries restricted to invest in and requiring no prior approval listed in the Guidance Catalogue of Industries for Foreign Investment, or other industries involving the relevant authorities, the registration authorities shall seek opinions from the relevant authorities prior to granting the registration.

## 3. Special provision on partnerships with investment as its principal business

There is a lack of understanding and practical experience on risks of partnerships with investment as its principal business (such as PE or VC) and whether stricter supervising measures shall be adopted. The Partnerships Rules provides that (otherwise provided by the government authorities), such provisions shall prevail as written for the operation of partnerships established by foreign enterprises or individuals with investment as its principal business.



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There are two special provisions in the Registration Rules regarding the partnerships with investment as its principal business:

- a. The administration for industry and commerce at provincial level and of municipalities directly under the Central Government or cities at sub-provincial level are responsible for the registration of partnerships established by foreign investors with investment as its principal business;
- b. The investment to be made by the said partnerships within the PRC shall abide by the relevant laws, regulations and rules regarding foreign investment of the PRC.

#### **4. The Relationship with existing law on partnerships**

The Partnerships Rules is the supplementary and special regulation on partnerships in China. Those partnerships established by foreign enterprises or individuals shall also comply with other laws and regulations, such as the Law on Partnerships of the PRC and Registration and Administration Rules of Partnerships.



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