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NEWSLETTER

(Henry Zhuang & Partners)

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NEW REGULATIONS ON FOREIGN-INVESTED PARTNERSHIP

On 25 November 2009, the State Council of the People's Republic of China released the **Administrative Measures for Foreign Enterprises and Individuals to Establish Partnership Enterprises in China** (the "Measures"), which will be implemented as from 1 March 2010.

The Measures have opened the door for foreign entities and individuals to directly set up foreign invested partnerships in China either by foreign investors themselves or by partnering with domestic entities or individuals. In addition to the general partnership, a foreign invested partnership ("FIP") may also be organized as a limited liability partnership.

The Measures allow the foreign investors to make their partner contributions in freely-convertible foreign currencies or Renminbi that has been legally obtained, and there is no requirement on minimum amount of capital or time limit for capital contribution.

Being different from requirement for other forms of foreign investment enterprises, to set up a FIP, the prior approval from the Ministry of Commerce or its local counterparts ("MOFCOM") is not required, partners of a FIP may go directly to the competent enterprise registration authority to register the establishment of FIP, provided that setting up a FIP shall still be subject to the same foreign investment industry restrictions as applicable to other types of foreign investment enterprises.

In China, a FIP is not required to pay income tax; instead, each of its partners shall respectively pay income tax on profits derived from the FIP. In comparison with the aggregate amount of income tax payable by a foreign invested legal entity on the profits and income tax payable by its investors on the dividends, generally, investors of a FIP may pay less income tax. Accordingly, FIP being one of the foreign investment forms, will provide an option for investors in terms of their tax planning.

We noted that the Measures are expected to pave the way for operation of foreign invested venture capital (“VC”) and private equity (“PE”) in form of partnership in China. However, although these Measures have been promulgated and in China there have been some related other laws and regulations, in terms of operation of foreign invested partnership VC and PE, there are still considerable uncertain issues to be clarified. Interested investors may continue to pay attention to the lawmaking developments on this subject.

Upon request, we may provide you with a copy of the new Measures (in Chinese).

Yours faithfully,

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