

Foreign Invested Partnership

- An Alternative Investment Vehicle in China?

Foreign Invested Enterprise (FIEs) models such as WFOEs, representative offices and Joint Ventures are all well known investment vehicles in China and foreign entities have been able to operate here through these for a number of years. In this issue of the NCO Newsletter we will take a look at an alternative investment vehicle in China, the Foreign Invested Partnership (FIP), and what it means for foreign businesses.



The measurements regarding FIPs have existed since March 1, 2010, whereas earlier this alternative legal structure was only available to domestic individuals and entities. Although Tianjin, Beijing and Shanghai all implemented local practices in the absence of a



New Partner

New NCO-partner in Finland: Fortune Falls

As of April 2011, NCO has entered into co-operation with Fortune Falls of Helsinki, Finland. The co-operation includes that Fortune Falls will represent NCO in Finland in terms of sales and marketing of NCO's services to Finnish clients. The benefit to clients in Finland is better information about services and even stronger support in the early stages of planning and implementing their investment in China and/or Hong Kong, as well as in the financial management and control of their existing subsidiaries in China.

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national legal framework after the amendment of the Partnership Law which came into effect on June 1, 2007.

What is a FIP?

There are three different kinds of partnerships foreign entities can engage in:

- Limited Liability Partnership (LLP) – only limited liability partners have limited liability.
- General Partnership (GP) – no limited liability.
- Limited Partnership (LP) – limited liability can arise due to the intent or culpable negligence of other partners.

The participants in a FIP can be solely foreign investors or a foreign investor together with Chinese individuals, legal persons or other entities. There must be at least two investors to form a FIP where one of them is foreign, however, a foreign investor may also join an existing domestic partnership by acquiring an interest in the partnership or by making new contributions to it.

How does it differ from other FIEs?

A FIP differs from other FIEs in several important ways:

- Approval from the Ministry of Commerce (MOC) is not necessary for establishment of FIPs contrary to establishment of other FIEs, only in cases where investment is considered 'restricted' by the Foreign Investment Guidance Catalogue will the MOC be directly involved in the decision making.
- There are no minimum requirements or deadline to contribution of partnership capital which means that potential partners can freely agree on the capital contribution in the partnership.

China – Finland Double Tax Treaty

In May 2010, China and Finland signed a new double tax treaty in Beijing both broadening and enhancing the co-operation on taxes between the two countries.

Most notably, the new treaty lowers the maximum rate of withholding tax on dividends received from the current 10 % to 5 % if the receiving company holds at least 25 % of the capital in the company paying the dividends, which has benefitted Finnish companies having subsidiaries in China and vice versa.

In addition, the treaty can also affect Finnish companies when receiving income from China and Finnish parent companies selling shares in Chinese subsidiaries in a negative way as the taxing right of China on some capital gains has been increased.

Although the new treaty has only been fully implemented from January 1, 2011 it will increasingly affect Finnish companies operating in China as well as Chinese companies with operations in Finland. Until now, we have mainly noticed a positive impact on our clients operations in China through a lowered withholding tax on dividends received.

- In-kind contributions such as services, IP rights, goods etc. are also considered valid capital contribution to an FIP. In addition, general partners may also contribute capital in the form of labor services.
- Exempt from corporate income tax on partnership enterprise level.
- Increased flexibility for management structure.
- Improved flexibility on distribution of dividends.

The moving of the authority for approval from the MOC to the State Administration for Industry and Commerce (SAIC) local branches for FIPS has significantly increased the speed of the establishment in the procedural stage. The SAIC local branch shall make a decision on whether to issue a license to the foreign partnership within 20 days from the date it has accepted the complete application. In theory it can be issued on the spot.

It is up to the participating partners to decide on the management structure and distribution of dividends as this may be specified in the partnership agreement and need not correspond with capital contributions.

It should be noted that general industry restrictions categorizing industries as 'prohibited', 'restricted' and 'encouraged' under the Catalogue for the Guidance of Foreign Investment Industries also apply to FIPs.

New opportunities

According to Chinese government officials, FIPs are seen to be essential for China to develop a modern service industry as well as attracting foreign management expertise and advanced technologies. Furthermore, FIPs will also be part of China's

If you have any questions related to the tax treaty or Finnish companies setting up operations in China, please contact:

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ChinaBiz Blog

Wind Turbine OEMs – Trends and Market Shares

2010 has represented great changes in market shares between wind turbine original equipment manufacturers (OEMs) as the significance of the Chinese market continues to increase. Vestas, Sinovel, GE and Goldwind dominated with 12, 11, 10 and 10 % of the global market share respectively.

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Setting Up in China – Business Scope Matters

There are many things to consider when setting up a business in China. One of the

economic transition moving from a low-value manufacturing to a high-value adding innovation driven economy by attracting more foreign investments and provide new job opportunities.



While a FIP can be regarded as a more flexible way of investing in China compared to a WFOE and other FIEs, it is also a mean of providing further co-operation opportunities for foreign and domestic partnerships in China. It is especially small and medium-sized enterprises that can benefit from the lower thresholds and faster establishment procedures as these might not have the required registered capital for establishment of another kind of FIE, but instead can offer in-kind contributions to the partnership. Furthermore, the exemption from corporate income tax and increased flexibility of distribution of dividends also creates more tax planning opportunities which may reduce the investor's tax burden in China.

There still exist barriers for FIPs, both regarding the establishment, as mentioned earlier, but also in the form of uncertainties in the regulations governing them. Its simplification with 16 articles in only one and a half pages has left possible investors with unresolved issues regarding utilization of this investment vehicle. Although the FIP regulations

most basic, and sometimes overlooked, is defining a business scope that will suit the operations intended in China. By being aware of and clearly defining a business scope companies can meet and prevent serious issues from occurring and affecting their China operations.

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Servicing China's Seniors

As China's population is getting older and older the demand for senior services is also increasing. It has traditionally been the duties of the younger family members to take of the elder, however, as many urban families have only one child, an ageing population has become somewhat of a social issue and has started attracting political attention.

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Contact NCO

Enquiries

If you have questions or would like a meeting regarding corporate structure, accounting standards, internal controls or tax reporting systems etc. please feel

represent an important step towards a national-law level framework permitting foreign investors to utilize a PRC partnership structure to form onshore RMB private equity funds, it is still unclear to which extent existing regulations will override the FIP regulations. It is generally recommended to consult with relevant local authorities if the main purpose of the FIP is to invest in other businesses before deciding on establishing the FIP.

It is still somewhat uncertain whether FIPs will prove to become a popular investment vehicle among foreign investors due to the ambiguities still surrounding the regulations. The first FIP was registered in Pudong, Shanghai on March 3, 2010, however, 5 months later there had only been registered a total of 16 FIPs in China according to SAIC.

As in all other cases when considering investing in China, it is crucial to have clearly defined the scope of operations as this will most likely determine what is possible and what is not.

Q&A – FIPs

Q: *Which documents must be submitted when registering a FIP?*

A:

- Application form authorised by all partners
- Partnership agreement executed by all partners
- Incorporation certificates or, for individuals, identity cards of all partners

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Reminder

Changes in laws and regulations regarding ROs have come into effect

As described in the NCO China February Newsletter there has been made some changes in laws and regulations regarding ROs in China to further tighten the establishment, operations and administration of these, which have come into effect from March 1, 2011.

If you have any questions regarding regulations and set up of ROs, please contact:

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- Certificate stating primary business domicile
- Power of attorney executed by all partners for appointing a representative
- A confirmation letter signed by all partners on the committed or paid-in capital contributions by each partner
- A statement executed by all partners concerning the compliance with industry policies for foreign investment
- Credit reference letter issued by the financial institution which has a business relationship with the foreign partner
- Agent appointment letter executed by each foreign partner
- Approval letter, if the business of a FIP is subject to prior approvals or its business scope involves a business that re-quires approvals

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