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BAO RUI LEGAL

CLIENT ALERT

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PILOT PROGRAM OF FOREIGN-INVESTED EQUITY INVESTMENT ENTERPRISES IN SHANGHAI

上海市启动外商投资股权投资企业试点工作

After a long wait, the Shanghai Financial Services Office, the Shanghai Municipal Commission of Commerce and the Shanghai Administration of Industry & Commerce on 24 December 2010 jointly issued the "**Regulations on the Implementation of the Pilot Program on Foreign Investment in Equity Investment Enterprises**" (hereafter referred to as the "**Regulation**") on foreign investment in Shanghai equity investment companies and related matters.

经过漫长的等待，上海市金融服务办公室、上海市商务委员会及上海市工商行政管理局于2010年12月24日联合颁布了《关于本市开展外商投资股权投资企业试点工作的实施方案》(以下简称“《实施方案》”)，对在上海设立外商投资的股权投资企业的相关事宜作出了规定。

Joint Conference on Foreign Investment in Equity Investment Enterprises

外商投资股权投资企业试点工作联席会议

The Shanghai Municipal People's Government will form a Joint Conference for the Pilot Program of Foreign Investment in Equity Investment Enterprises (hereafter referred to as "**Joint Conference**"). The Joint Conference will be responsible for organizing relevant departments to formulate and implement policies and measures to promote foreign equity investment in Shanghai, as well as coordinating and solving issues related to the pilot program.

上海市人民政府成立外商投资股权投资企业试点工作联席会议（以下简称“联席会议”），负责组织有关部门制定和落实各项政策措施，推进本市外商投资股权投资企业相关试点工作，协调解决试点过程中的有关问题。

This Joint Conference will be convened by the relevant supervising leader of Municipal People's Government, while members of the Joint Conference will include the Municipal Finance Office, the Municipal Commission of Commerce, the Administration of Industry & Commerce, the Municipal Development & Reform Commission, the Municipal Commission of Economy and Informatization, the Science and Technology Commission of Shanghai Municipality, the Municipal Finance Bureau, the Shanghai Local Taxation Bureau, the Municipal Housing Support and Building Administration Bureau, the Legislative Affairs Office of Shanghai Municipal People's Government, the State Administration of Foreign Exchange Shanghai Branch, the Shanghai Banking Regulatory Bureau, the Shanghai Securities Regulatory Bureau, and Shanghai Pudong New Area People's Government.

联席会议由市人民政府分管领导召集，成员单位包括市金融办、市商务委、市工商局、市发展改革委、市经济信息化委、市科委、市财政局、市地税局、市住房保障房屋管理局、市政府法制办、外汇局上海市分局、上海银监局、上海证监局和浦东新区人民政府等。

Policy Orientation

政策导向

The Shanghai Municipality encourages the establishment of Foreign-invested Equity Investment Enterprises (hereafter referred to as “**Equity-Investment FIEs**”) and Foreign-invested Equity Investment Management Companies (hereafter referred to as “**PE Manager FIEs**”) with advanced technology and management experience.

上海市鼓励设立具有先进技术和管理经验的外商投资股权投资企业和外商投资股权投资管理企业。

Conditions for establishing a FIE in Shanghai

在上海市设立外商投资股权投资企业的条件

1. Who can set up Foreign-invested Equity Investment Enterprises?

投资设立外商投资股权投资企业的主体

According to the Regulation, it refers to enterprises invested in by foreign enterprises or foreign individuals.

根据《**实施方案**》规定，外商投资股权投资企业由外国企业或个人参与投资设立。

2. Types of Structure of Foreign-invested Equity Investment Enterprises

外商投资股权投资企业的组织形式

Equity-Investment FIEs may adopt such forms as partnership, while PE Manager FIEs may adopt corporate forms or partnership.

外商投资股权投资企业：可以采用合伙制等组织形式。

外商投资股权投资管理企业：可以采用公司制、合伙制等组织形式。

3. Conditions to the Establishment of Foreign-invested Equity Investment Enterprises

外商投资股权投资企业的设立条件

(1) Requirements for the establishment of PE Manager FIEs

外商投资股权投资管理企业的设立要求

- (a) The Manager shall have at least one investor who, or whose affiliate has a business scope related to equity investment or equity investment management.

至少拥有一个投资者，该投资者或其关联实体的经营范围应当与股权投资或股权投资管理业务相关。

- (b) The business should have at least two qualified senior management personnel.

应当具有至少两名符合条件的高级管理人员。

- (c) The registered capital (or subscribed capital) should be no less than US\$2 million, and shall be contributed in cash only. Twenty percent (20%) of the registered capital (or subscribed capital) shall be paid within three months from the date of issuance of business license, and the remaining balance fully paid within a period of two (2) years.

注册资本（或认缴出资）应不低于 200 万美元，出资方式限于货币形式。注册资本（或认缴出资）应当在营业执照签发之日起三个月内到位 20%以上，余额在二年内全部到位。

- (d) The monetary capital contribution of foreign investors shall be denominated in freely convertible currency or in RMB profits obtained within the territory of China, or with legitimate earnings in RMB due to equity transfers, liquidation or other activities. A PRC investor shall contribute only in RMB.

外国投资者用于出资的货币须为可自由兑换的货币或其在中国境内获得的人民币利润或因转股、清算等活动获得的人民币合法收益，中国投资者以人民币出资。

(2) Requirements for the establishment of Equity-Investment FIEs

外商投资股权投资企业的设立要求

- (a) The registered capital (or subscribed capital) shall not be less than US\$15 million, contributed in cash only; the enterprise partners shall invest in their own names, and the contribution from each partner shall be no less than US\$1 million, excluding the general partner.

认缴出资应不低于 1500 万美元，出资方式限于货币形式；合伙人应当以自己名义出资，除普通合伙人外，其他每个有限合伙人的出资应不低于 100 万美元。

- (b) The monetary capital contribution of foreign investors shall be denominated in freely convertible currency or in RMB profits obtained within the territory of China, or with legitimate earnings in RMB due to equity transfers, liquidation or other activities. A PRC investor shall contribute only in RMB.

外国投资者用于出资的货币须为可自由兑换的货币或其在中国境内获得的人民币利润或因转股、清算等活动获得的人民币合法收益，中国投资者以人民币出资。

- (c) Equity-Investment FIEs shall appoint qualified banks in China as their custodian of funds (Chinese: 托管银行). These custodian banks shall file the relevant custodian system of rules to the relevant authorities for record-keeping.

外商投资股权投资企业应当委托境内符合条件的银行作为资金托管人。外商投资股权投资企业的托管银行应将相关托管制度报送有关部门备案。

(3) Requirements for the establishment of Pilot Program Foreign-invested Equity Investment Enterprises (hereafter referred to as “Pilot Equity-Investment FIEs”)

外商投资股权投资试点企业的设立要求

- (a) The Pilot Equity-Investment FIEs, earlier mentioned in the Regulation, refers to an Equity-Investment FIE or a PE Manager FIE examined and approved by the Joint Conference. Foreign investors should include primarily offshore sovereign wealth funds, pension funds, endowment funds, charity funds, investment funds of funds (FOF), insurance companies, banks, securities companies, and other foreign institutional investors approved by the Joint Conference. Capital contribution in this Pilot Equity-Investment FIEs will be placed in a special custodian account, where the use of funds will be managed by the custodian bank in accordance with the relevant rules.

外商投资股权投资试点企业特点：《实施方案》所称外商投资股权投资试点企业是经联席会议审定的外商投资股权投资企业和外商投资股权投资管理企业。其境外投资者应主要由境外主权基金、养老基金、捐赠基金、慈善基金、投资基金的基金（FOF）、保险公司、银行、证券公司以及联席会议认可的其他境外机构投资者组成。外商投资股权投资试点企业的出资实行专项资金托管，资金账户及账户内资金使用应由托管银行按规定实施管理。

(b) Requirements of foreign investors investing in the Pilot Equity-Investment FIEs:

申请试点的外商投资股权投资企业中的境外投资者，应具备下列条件：

(i) in the fiscal year prior to the application, the investors must have their own assets of not less than US\$500 million, or have assets under management of not less than US\$1 billion;

在其申请前的上一会计年度，具备自有资产规模不低于五亿美元或者管理资产规模不低于十亿美元；

(ii) the investors must have sound governance structure and internal control system, and for the last two years, not been subject to any penalty from any judicial authorities or regulatory authorities;

有健全的治理结构和完善的内控制度，近二年未受到司法机关和相关监管机构的处罚；

(iii) the investors or its affiliates must have more than five years of relevant investment experience; and

境外投资者或其关联实体应当具有五年以上相关投资经历；及

(iv) other conditions required by the Joint Conference;

联席会议要求的其它条件。

(c) The executive partner or its affiliate applying for the pilot program must have at least a three year good track record of direct or indirect investments in enterprises in China.

申请试点的外商投资股权投资企业和外商投资股权投资管理企业的执行事务合伙人或其关联实体需具备三年以上直接或间接投资于中国境内企业的良好投资经历。

(d) A PE Manager FIE qualified under the pilot program may contribute foreign exchange funds to an equity investment enterprise established by it as promoter. This can be up to 5% of the committed capital, and such portion will not affect the original nature of the equity investment enterprise that it has invested in.

获准试点的外商投资股权投资管理企业可使用外汇资金对其发起设立的股权投资企业出资，金额不超过所募集资金总额度的 5%，该部分出资不影响所投资股权投资企业的原有属性。

(e) Pilot Equity-Investment FIEs, through their Custodian banks, are allowed to use foreign exchange funds to process onshore equity investments. PE Manager FIEs which have opened capital accounts prior to the promulgation of the Regulation shall go through with their opening banks to process their onshore equity investments with foreign exchange funds upon the approval from office of the Joint Conference.

外商投资股权投资试点企业可至托管银行办理外汇资金境内股权投资事宜。《**实施方案**》发布前已经开立资本金帐户的外商投资股权投资管理企业，经联席会议办公室批准后至开户行办理外汇资金境内股权投资事宜。

This Regulation has taken into effect from January 24, 2011.

本《实施方案》已经于 2011 年 1 月 24 日开始施行。

In the area of funds practice, our professional team of lawyers has an integrated professional background. We are familiar with the best practices overseas as well as the practical issues in funds practices in China.

Bao Rui Legal represents large and well-established private equity funds, venture capital funds, industrial funds, as well as sovereign wealth funds. Ordinarily, our work scope include:-

1. advising on the setting up of investment funds (RMB funds or foreign currency funds), in China;
2. advising the corporate governance structure and the setting up of fund management companies or fund advisory companies in China;
3. negotiation, preparation and review of legal documents;
4. structuring investment vehicles, handling and negotiating further equity investment projects or mixed debt and equity investments;
5. advising on exit strategy, buy-outs and IPOs;
6. issuance of legal opinion on legality and enforceability of projects and/or transactions;
7. general advice in relation to projects and/or transactions under Chinese laws.

If you have any query about the information in this publication or you wish to seek more detailed legal advice, please feel free to **contact our funds practice team** via

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