

foreign exchange rules of foreign invested partnership enterprises clarified

Description

China has actually enacted its regulation on foreign invested partnership enterprises back in 2009, effective as from March 1st, 2010. Foreign invested partnership enterprises are regarded as a new instrument for small foreign investors esp foreign individuals to benefit from Chinese booming economy. Back then, I wrote an article introducing the new regulation and investment vehicle (click [Newsletter-Foreign Investment-FIPE_Issue 1_100227](#) for more).

Ever since then many foreign investors flooded to inquire about how they could take advantage of this new investment vehicle, but due to the ambiguity on how foreign partners contribute their foreign-currency denominated funds, foreign investors are most disappointed. I have also separately written about the foreign exchange issues surrounding foreign invested partnership enterprises (click [here](#) for more).

On November 19, 2012, China unveiled its detailed rules (“**Decree 58**”) on the administration of foreign exchange issues of a foreign invested partnership enterprise, setting out concrete provisions and procedures on handling all aspects of foreign exchange matters. The following are a few noteworthy points summarized thereunder.

I. Foreign Exchange Registration

In the same manners as in the case of normal foreign invested enterprises/companies, a FIPE shall need to effect its foreign exchange registration with local foreign exchange authority within thirty days following the issue of its business license by local industry and commerce bureau.

The most important item of documents to be submitted to forex authority for registration is a sheet bearing the basic information of the FIPE obtained from local industry and commerce bureau including who are the partners, how much each partner has subscribed to the FIPE.

Accordingly, in the case of change of any of these information on the sheet, the FIPE shall then report such changes to forex authority and make corresponding changes.

II. Foreign Exchange Bank Account

A FIPE will then open its forex bank account with a bank after it effects the aforementioned foreign exchange registration. It is provided that this forex bank account shall be administered in the same manners as the capital forex bank account of other foreign invested enterprises. In other words, for current account foreign exchange transactions, banks can directly deal with forex funds upon reasonably verifying the transaction documents and consistency with forex usages, but for capital account foreign exchange transactions, the account owners shall firstly file forex registration with forex authority before receiving forex fund, and payment of such forex funds shall be subject to more complex scrutiny by banks.

In short, the contribution, receipt and payment of foreign exchange funds in the case of foreign invested partnership enterprises is in essence deemed as capital account foreign exchange transactions. Obviously, China still maintains tight control over foreign exchange capital flows across its borders.

III. Foreign Partner Capital Contribution Certification

Unlike other foreign investment vehicles in China, a foreign investor or partner in a foreign invested partnership enterprises can contribute its share of capital at any time as necessitated by the business operation of the partnership. (by contrast, other foreign invested companies shall have to contribute the registered capital within prescribed timelines as set out their articles of associations). Due to this uncertainty, Decree 58 requires that when a foreign partner contributes its share of capital, the partnership enterprise shall go to local forex authority to get a certification on the contribution by the foreign partner.

Only after obtaining the capital contribution certification from forex authority can the partnership enterprise make use of the capital contributed by the foreign partners.

The repatriation of profits derived from partnership by foreign partners shall only be done after the capital contribution certification for the partner is duly effected.

IV. Equity Investment Fund Partnership not Covered by Decree 58

As many foreign investors are looking into and waiting for the chance of setting up their equity investment funds organized in the form of partnership enterprise, they are disappointed by the Decree 58 as it specifically provides that rules regarding equity investment funds shall be separately formulated in the future.

Together with the provision that a FIPE's forex bank account shall be administered in the same manners as the capital forex bank account of other foreign invested enterprises, it is still impossible for a FIPE to convert its forex capital for purpose of equity investment in other companies.

If you want to know more about this topic, please contact the author of this blog.

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