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Provisions for the Acquisition of Domestic Enterprises by Foreign Investors (Revised)

关于外国投资者并购境内企业的规定（修正）

Issued By	The Ministry of Commerce
Subject	Investment, M&A, Company Law
Promulgated on	22th June, 2009
Effective from	22th June, 2009
Source	http://www.mofcom.gov.cn

On 22th June 2009, the Ministry of Commerce released the “Provisions for the Acquisition of Domestic Enterprises by Foreign Investors (Revised)” (hereafter referred as “Provisions”). It is formulated to promote and regulate the overseas investment in China and introduce advanced technology and management expertise.

Compared with the previous version of the Provisions, the different acquisition options are clearly explained. Foreign investors can realize the investment through either an equity acquisition or an asset acquisition. “An equity acquisition” means a foreign investor purchases the equity of a shareholder in a domestic company or subscribes to a domestic company’s capital increasing. For “an asset acquisition”, a foreign investor establishes a foreign-invested enterprise and purchases the assets of a domestic company through the foreign-invested enterprise and operates such assets for business, or a foreign investor purchases the assets of a domestic company and uses such assets as in-kind contribution for a new established foreign-invested enterprise.

According to the “Foreign Investment Industrial Guidance Catalogue”, an acquisition may not result in the foreign investor owning all the equities in an enterprise in an industry, which a foreign investor is not permitted to operate by a way of a wholly foreign-owned enterprise. After acquisition, the Chinese party shall have a controlling interest or a relative controlling interest in an enterprise in an industry which the Chinese party is required to have a controlling or relative controlling interest. The foreign investors shall not acquire such enterprise in an industry which is closed to them.

The enterprise shall be treated as a foreign invested enterprise, if the foreign investors contribute to more than 25% of the total registered capital after an acquisition. If the percentage is less than 25%, such enterprise shall not be eligible for treatment as a foreign-invested enterprise, unless otherwise specified in laws or administrative regulations.

It also stipulates the new reporting system according to the Anti-monopoly law. Whereas the acquisition of a domestic company by a foreign investor reaches a reporting threshold specified by the State Council pursuant to the Anti-Monopoly Law, the foreign investors shall report to the Ministry of Commerce in advance. If it fails to do so, the transaction may not be carried out.

Pudong New Area of Shanghai Municipality, Trial Measures for the Establishment of Foreign-invested Equity Investment Management Enterprises

上海市浦东新区设立外商投资股权投资管理企业试行办法

Issued By	Pudong New Area of Shanghai Municipality
Subject	Company Law
Promulgated on	2th June, 2009
Effective from	2th June, 2009
Source	http://www.pudong.gov.cn

The Pudong New Area People's Government issued the "Trial Measure for Establishment of Foreign-invested Equity Investment Management Enterprises", which became effective on the date of issuance until June 30th 2010. These Trial Measures are formulated pursuant to the "Circular on Matters such as the Business Registration of Equity Investment Enterprises in Shanghai" in order to attract foreign investment and encourage the establishment by foreign investors of foreign-invested equity investment management enterprises in Pudong New Area.

The term "foreign-invested equity investment management enterprise" means an enterprise established in Pudong New Area in the form of a sino-foreign co-operative joint venture or wholly foreign-owned enterprise by a foreign company, or other economic organization or individual that upon appointment by an equity investment enterprise, engages in equity investment management as its main business.

The Trial Measures stipulate the qualification of the foreign-invested equity investment management enterprise. The following requirements shall be met cumulatively:

- I. The foreign-invested equity investment management enterprise shall have at least one investor (shareholder). The scope of business of this investor shall cover equity investment or equity investment management business.

II. The foreign-invested equity investment management enterprise shall employ at least two qualified senior managers, who at the time of establishment have:

- i. at least two years professional experience in the equity investment or equity investment; and
- ii. at least two years experience at senior management position.

III. The foreign-invested equity investment management enterprise shall be established in the form of a limited liability company with no less than US \$2 million registered capital. At least 20% of the registered capital shall be paid in three months from the date of issuance of the business license. The rest shall be paid in within 2 years.

The foreign-invested equity investment management enterprise shall be named as “equity investment management”. The business scope shall be described as “engagement in investment management and related consulting service business, conducting upon the appointment of an equity investment enterprise”.

Letters on Policy Issues in Self-Examination for Taxation in 2009

关于**2009**年度税收自查有关政策问题的函

Issued By	The State of Administration of Taxation
Subject	Tax, Finance and Accounting
Promulgated on	15th September, 2009
Effective from	15th September, 2009
Source	http://www.chinatax.gov.cn

On 15th September, the Department of Tax Administration for Large Corporation under the State Administration of Taxation released the Letter on Policy Issues on Self-Examination for Taxation in 2009. Such letter serves as the answer for the practical taxation questions received from the state taxation authorities and local taxation authorities. The letter clearly and detailed defines the issues in applying the procedures for levying of enterprise income tax, individual income tax, value-added tax, consumption tax, business tax and stamp duty. For instance:

- I. When the taxpayer takes loans for overseas investments, such expense shall be included in the relevant investment cost and it cannot be considered as operational cost for the pre-taxation deduction.
- II. A foreign insurance company without branches in China, which has received business income for the subjects in China, shall pay tax on such income.
- III. Bad debts arising from unpaid loans given by financial institutions may be converted into equity of the company, which has taken the loan, subject to the approval of State-owned Assets Supervision and Administration Commission of the State Council. The financial institutions shall rebook the amount deducted from the loan loss reserve. Under such situation, the pre-tax deduction is not allowed.
- IV. The commercial insurance expenses paid by an enterprise for its investors or employees shall not be deducted before taxation. The life insurance premium paid by the enterprises for the employees engaged in special professions according to the laws and other deductible commercial insurance expenses stipulated by the finance departments and taxation departments are considered as exceptions.
- V. The allowance paid by enterprises to retiring staff is not pre-tax deductible. On such allowance individual income tax shall be levied.
- VI. The expenses on economic compensation and living allowance issued by enterprises for the termination of labor relations shall not be applied to pre-tax deduction.

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