



New Investment Tool: Foreign Invested Partnership

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18 year of experience in China

- Advisory on Law and Tax
 - Unternehmensberatung
 - Tax advisory and compliance
 - Accounting and bookkeeping
 - Payroll services
 - Audit
- 200 consultants
- 16 offices
- 2000 clients



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Partnerships – it happens naturally



PARTNERSHIP

"You give me half the fish, and I'll tell my mom to let you live."



History/Legislation

- Big changes in March 2010:

First time that there is a legal framework for foreign invested partnerships

- New legal framework:
 - Administrative Measures for Foreign Enterprises and Individuals to Establish Partnership Enterprises in China (FIP Measures)
 - Issued by State Council Order (2009) No. 567
 - Took effect March 1st, 2010
 - Also apply to enterprises and individuals from Hong Kong, Macau, and Taiwan
 - Administrative Regulations on Registration of Foreign-Invested Partnership Enterprises (FIP Registration Regulations)
 - Outlined by SAIC Circular [2010] No. 47
 - Provide detailed guidelines how FIPs are to be structured and registered



Content of the FIP Regulations

- Everything you need...
 - Set-up procedure
 - Procedure for amendments and changes
 - Procedure for closing FIP
 - Areas of possible operations for FIP



PRC's goals

Attraction of advanced technology in order to develop as a high tech and modern service industry:

- Attract “advanced technologies and management expertise [...] to boost the development of the modern service society”
- Focal point: technical scientific research and development
- Target “individuals, academics, research scientist or wealthy investors”
- Even smaller financial, but intellectually worthy participants with future vision on financial and academic information, products or patents

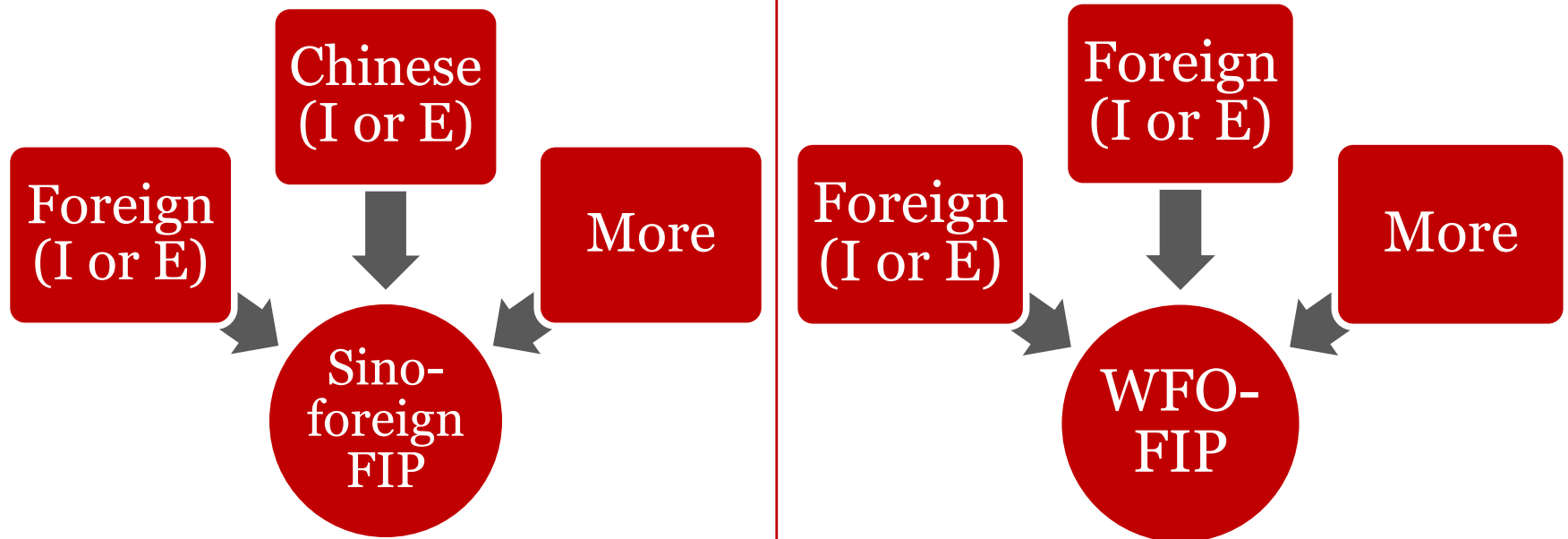


Investor incentives

- Easier access to Chinese market:
 - New investment alternative (“3rd road to China”)
 - Attractive tax treatment
 - More flexibility
 - Management structure
 - Capital contributions
 - Dividend distribution



FIP models – first time that foreign can participate in partnerships in China





G-FIPs and L-FIPs

- General FIPs
 - At least two partners
 - Each partner is authorized to conduct business on behalf of G-FIP
 - Every partner bears joint and several liability of partnership debt
 - All partners may appoint partners that are authorized to conduct business on behalf of G-FIP
- Limited FIPs
 - 2-50 partners
 - At least one General Partner

Limited Partner

- Limited partners bear liability according to capital contributions
- Limited partners are not authorized to conduct business on behalf of L-FIP (“**Silent Shareholder**”)

General Partner

- **Every general partner bears joint and several liability of partnership debt**
- Every General partner conduct business on behalf of L-FIP



Not allowed to be partner of FIPs

Don't look for these partners...

- Publicly-listed enterprises
- SOEs
- Government-sponsored public welfare institutions
- Other social institutions involved in public welfare

No difference as to whether enterprises are foreign or Chinese.



Registration authorization Easy and Fast

- Apart from ROs, FIPs are the only entity to register with provincial or local branches of SAIC only without prior approval by MOFCOM
- FIPs go directly to Registration authority (SAIC) for establishment, any subsequent changes, and termination
 - MOFCOM will only be notified by registration authority
 - MOFCOM approval needed when business scope is defined as restricted by Foreign Investment Industrial Guidance Catalogue
 - FIP registration regulations stipulates, rules, laws and ordinances by State Council may require FIPs to be preapproved by MOFCOM
- Foreign enterprises or individuals may assign agent to register with (local) SAIC
- FIP shall inform about subsequent changes in FIP partnership structure



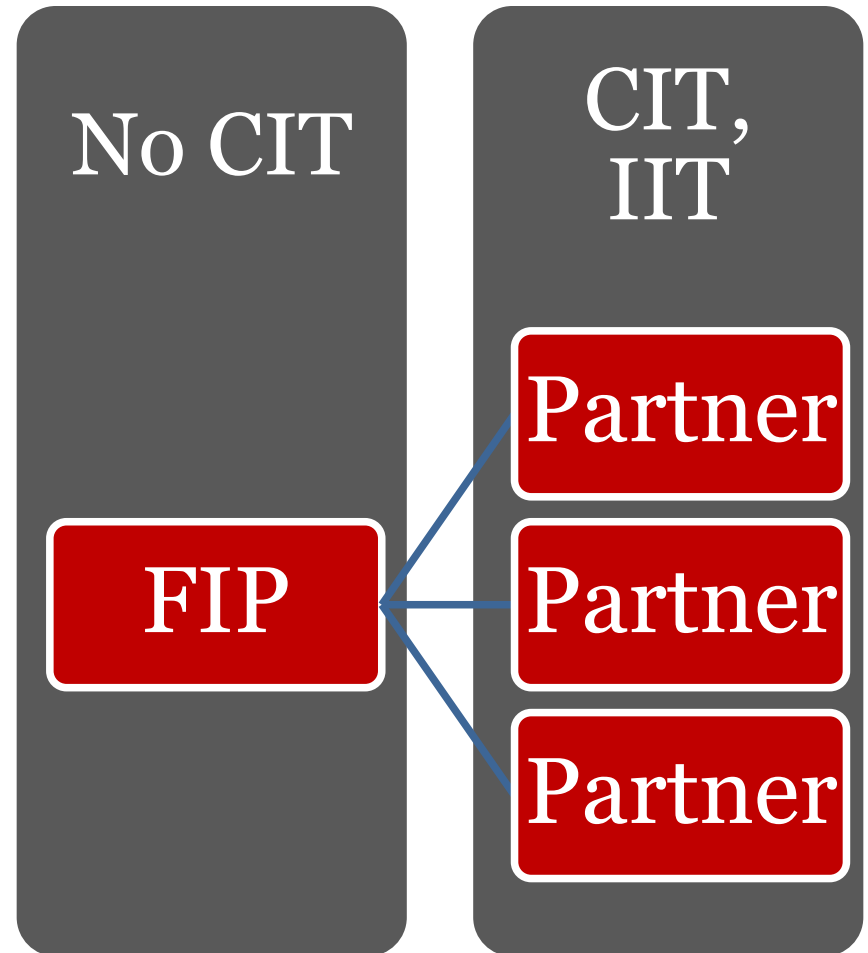
Registered Capital

- No minimum has been set (yet...)
- Capital contribution in form of:
 - Cash (legally obtained RMB or foreign currencies)
 - Services/labor
 - Technology know-how
 - Land use rights
 - IP rights
 - No ceiling for the amount of non-cash contribution



Taxes

- Taxes are not mentioned in FIP Measures
- FIPs subject to Partnership Enterprise Law, etc.
 - Partnerships are exempted from CIT
- Enterprise partners themselves are subject to 25% CIT
- Individual partners IIT on income between 5 and 35%;
- Limited individual partners: tax rate 20% on interests and dividends





Comparison most significant

	FIP	Other FIEs
Capital Contributions	• No specifications on minimum or maximum • No time frame • Any currency • Cash and in-kinds (GP) • Distribution of dividends	• Min: RMB 30,000 • Within 2 years • Only foreign currency • Cash and few in-kind
Registration	No MOFCOM approval required (exceptions)	MOFCOM approval required
Tax	Business Tax, partners file separate tax returns	CIT
VC/PE	No specifications, future regulations by Chinese government will prevail	Indirect investment in CPE, direct investment in CEs (incl. FIVCE)



Advantages

- No preapproval by MOFCOM
- Income tax exemption
- Service and other in-kinds as capital contributions
- No time constraints for capital contributions
- Management structure governed by partnership agreement
- Distribution of dividends
- Transfer of shares could be much easier than with EJV:
without approval of other parties
 - Not necessary approval of the other party required
 - Depending on the FIP Agreement
 - 30-day notice



Disadvantages

- Stricter restrictions than other foreign-invested enterprises
 - FIPs may not invest in projects that:
 - Fall within the “forbidden” category of the Foreign Investment Industrial Guidance Catalogue;
 - Are listed in the catalogue as “limited to equity joint venture”, “limited to cooperative joint venture”, “limited to equity joint venture or cooperative joint venture”, “Chinese party to have shareholding” or “Chinese party to have relative shareholdings”; or
 - Are subject to limits on the proportions of foreign shareholding.
 - Current restrictions for FDI as specified in Foreign Investment Industrial Guidance Catalogue
- Temporary uncertainty on certain issues (customs, foreign exchange, etc.)

Important things to consider

Due Diligence (twice)

1. At establishment phase:
partner DD
2. Annually: FIPs to submit
Report of Annual
Inspection between March
1st and June 30th



Labor contracts

- Foreign general partners
may make contribution in
form of individual labor
 - A limited foreign partner may
not





Required documents for relevant authorities

If **NO** restrictions according to Foreign Investment Industrial Guidance Catalogue:

- Explanation by all partners that states foreign investment industry policies have been complied with
- Statement over negotiated valuation of in-kind contributions by foreign investor, signed by all parties

If restricted according to Foreign Investment Industrial Guidance Catalogue:

- Explanation by all partners that states foreign investment industry policies have been complied with (to MOFCOM)
- Approval letter



Registration documents

1. Application form (information on partners)
2. Prename approval
3. Business certification of the address (lease agreement)
4. Notarized and authenticated qualification certifications of partners (ID card resp. business license)
5. Confirmation letter for subscription of contributions to FIP
6. Credit worthiness (only required if foreign partner is GP)
7. Partnership agreement
8. Statement compliance of business scope with FDI catalogue
9. Authorization for GP to operate
10. For professional service FIP, qualification of partners is needed
11. SAFE certificate for legal acquisition of RMB
12. POA (Power of Attorney) to future FIP's legal rep
13. Pre-approval of restricted industries according to FDI catalogue
14. Other documents required by SAIC



Existing FIPs

- Kunshan Sun City Gardening Center
 - Partners: Chinese natural person & foreign entity
 - Capital: 12m RMB: 75% and 25% resp.
 - Purpose: Retail garden furniture, smallscale landscaping
- Fosun (Fuxing) -Carlyle (Shanghai) Equity Investment Fund
 - Partners: The Carlyle Group & Fosun Group
 - Purpose: RMB PE-fund to invest in high-growth enterprises in China
 - Capital: USD 100m capital
 - SAFE quota
- Chun Lam Packaging Products Factory in Dongguan
 - Partners: two Hong Kong natural persons
 - Capital: HKD 45m
 - Purpose: Production and Sales of Packaging



Investment FIPs I

Article 14 of the FIP Measure states:

- For FIPs with primary purpose of investment, future government regulations will prevail

Foreign investment fund

- FIP measures leave it up to the State Council
- Soon to be published

Foreign private equity fund

- Foreign general partners now able to invest local currencies to fund Chinese enterprises
- Nothing stipulated for foreign limited partners – only general partners can invest
- “Other regulation will more properly govern this space”

The FIP Measures do touch on “investment focused FIPs” which should comply with relevant national regulations



Investment FIPs II

Foreign invested venture capital enterprises

- 2003 law states
 - MOFCOM approval
 - At least USD 10 m capital contributions
- FIP Measures
 - No specifications
 - No MOFCOM approval
- Regulation issued in March 2009 by MOFCOM
 - Foreign invested VCs and VC management companies with registered capital up to USD 10 m are to be approved by (local) SAIC



Skepticism...

- Market watchers maintain significant amount of skepticism as to:
 - MOFCOM giving away control
 - Interpretation and implementation of the measures by various levels of government departments



Targets for FIPs

- Research houses of financial institutions
- Enhanced collaboration between Chinese and foreign enterprises
 - Chinese have the capital now
 - Westerners provide expertise and technology
 - IPR could it be a break? With a partnership scheme they are together in the boat; a palliative to IPR non effectiveness.
 - Even with low financials
- Liability: Sharing core competences like IPR, high-tech technologies
 - WFO-FIP: unlimited liability
 - JV: limited liability (except NLP-CJV)



Publications

Magazines



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Books





Q&A

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**THANK YOU FOR YOUR
ATTENTION!**