Provisions on the Administration of Foreign-Invested Partnership Enterprises

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Chapter I — General Provisions

Article 1

These Provisions are formulated in accordance with the Partnership Enterprise Law of the People's Republic of China (hereinafter the "Partnership Enterprise Law"), for the purpose of regulating the establishment and administration of foreign-invested partnership enterprises, protecting the lawful rights and interests of foreign-invested partnership enterprises and their partners, facilitating foreign investment, and promoting economic development.

Article 2

For the purposes of these Provisions, a "foreign-invested partnership enterprise" means a general partnership enterprise or a limited partnership enterprise established within the territory of China by two or

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more foreign enterprises or individuals, or by foreign enterprises or individuals jointly with Chinese natural persons, legal persons, or other organizations. The establishment of a foreign-invested partnership enterprise shall comply with the state's industrial policies on foreign investment. Foreign-invested partnership enterprises shall not be established in industries in which foreign investment is prohibited by the state.

Article 3

The establishment, change, registration, operation, and dissolution of foreign-invested partnership enterprises shall be governed by the Partnership Enterprise Law, these Provisions, and other applicable laws and administrative regulations. Where matters are not covered by the Partnership Enterprise Law or these Provisions, the relevant laws and administrative regulations on foreign-invested enterprises shall apply.

Article 4

The State Administration for Market Regulation (SAMR) and its local counterparts shall be responsible for the registration and administration of foreign-invested partnership enterprises. The commerce authorities shall, in accordance with their statutory duties, be responsible for the administration and services related to foreign-invested partnership enterprises.

Article 5

The state shall protect the lawful rights and interests of foreign-invested partnership enterprises and their partners. Foreign-invested partnership enterprises shall abide by Chinese laws and administrative regulations, shall not harm the public interest of China, and shall fulfill their social responsibilities in accordance with the law.

Chapter II — Establishment and Registration

Article 6

To establish a foreign-invested partnership enterprise, an application for establishment registration shall be submitted to the market regulation authority with the following documents:

(1) an application form signed by all partners;

(2) the partnership agreement signed by all partners;

(3) identification documents of all partners — for foreign partners, valid identification documents or business registration certificates, notarized and authenticated in accordance with the law;

(4) capital contribution certificates of all partners;

(5) proof of the enterprise's domicile or principal place of business;

(6) other documents required by laws and administrative regulations.

Article 7

A foreign-invested partnership enterprise shall have a written partnership agreement. The partnership agreement shall contain the following:

(1) the name and principal place of business of the partnership enterprise;

(2) the purpose and business scope of the partnership;

(3) the names or titles and domiciles of the partners;

(4) the method, amount, and time limit for capital contributions by the partners;

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(5) the method for distributing profits and sharing losses;

(6) the management and operation of the partnership affairs;

(7) the admission and withdrawal of partners;

(8) dispute resolution methods;

(9) the dissolution and liquidation of the partnership enterprise; and

(10) liability for breach of the partnership agreement.

Article 8

The business scope of a foreign-invested partnership enterprise shall comply with the state's provisions on the administration of foreign investment access. Where the business scope involves special trade administration measures (Negative List) for foreign investment access, the relevant approval or filing procedures shall be completed in accordance with the law before establishment registration.

Article 9

The market regulation authority shall examine the application for establishment registration. If the application meets the statutory conditions, registration shall be approved and a business license issued. The date of issuance of the business license shall be the date of establishment of the foreign-invested partnership enterprise.

Article 10

A foreign enterprise or individual that intends to serve as the general partner of a foreign-invested partnership enterprise shall have full civil capacity. A foreign enterprise serving as a general partner shall have independent civil liability status under the laws of the country or region where it is established.

Article 11

Foreign partners may make capital contributions in cash, in kind, with intellectual property rights, with land use rights, or with other property rights. Where capital contributions are made in kind, with intellectual property rights, with land use rights, or with other property rights, the value of the contributions shall be assessed in accordance with the law. Foreign partners may not make capital contributions with labor services.

Article 12

The name of a foreign-invested partnership enterprise shall comply with the provisions on enterprise name registration administration and shall indicate that it is a partnership enterprise. The enterprise name may use the English language but shall include the corresponding Chinese translation.

Article 13

A foreign-invested partnership enterprise shall have a principal place of business within the territory of China. The principal place of business shall be the legal domicile of the enterprise. Where a foreign-invested partnership enterprise establishes a branch, it shall apply for branch registration with the market regulation authority at the location of the branch.

Article 14

Where a foreign-invested partnership enterprise enters into a special industry or business field, it shall obtain the required administrative license or approval in accordance with the law before applying for establishment registration or before carrying out the relevant business activities.

Chapter III — Capital Contributions

Article 15

Foreign partners shall make capital contributions in accordance with the partnership agreement. The capital contributions shall be paid in full within the time limit specified in the partnership agreement. The total amount of capital contributions and the time period for payment of capital contributions shall be specified in the partnership agreement.

Article 16

Capital contributions made by foreign partners in cash shall be remitted into the account of the foreign-invested partnership enterprise in accordance with the state's foreign exchange control regulations. Capital contributions in a foreign currency shall be converted into Renminbi at the exchange rate on the date of payment or at an exchange rate agreed upon by the partners.

Article 17

Where a foreign partner makes a capital contribution in kind, with intellectual property rights, or with other property rights, the contributed assets shall be property that can be legally transferred and that does not contravene the state's provisions on foreign investment access. The value of the contributed assets shall be assessed by a statutory asset appraisal institution.

Article 18

Foreign partners shall bear liability for the authenticity, legality, and validity of their capital contributions. Where false capital contributions are made, the foreign partner shall bear legal liability in accordance with the law, and the other partners shall have joint and several liability if they are aware of or should have been aware of the false capital contributions.

Article 19

After a foreign-invested partnership enterprise is established, if any partner fails to make the capital contribution in full or on time as stipulated in the partnership agreement, the other partners may demand that the defaulting partner fulfill the obligation or may remove the defaulting partner from the partnership in accordance with the partnership agreement.

Chapter IV — Enterprise Management

Article 20

The partners may manage and operate the partnership affairs in accordance with the partnership agreement. The partners may entrust one or more partners with the management of the partnership affairs, and the other partners shall cease to manage the partnership affairs. A limited partner may not manage the partnership affairs or represent the partnership enterprise externally.

Article 21

A foreign-invested partnership enterprise shall establish a financial and accounting system in accordance with the law and shall prepare financial and accounting reports. The financial and accounting reports shall be prepared in accordance with the Accounting Law of the People's Republic of China and the accounting standards for enterprises. The accounting books and records shall be kept within the territory of China.

Article 22

A foreign-invested partnership enterprise shall pay taxes in accordance with the state's tax laws and regulations. The enterprise itself is generally not subject to enterprise income tax; instead, the partners shall pay income tax on their respective shares of the enterprise's profits in accordance with the law. The specific tax treatment shall be determined in accordance with the relevant provisions of the state on partnership enterprise taxation.

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Article 23

A foreign-invested partnership enterprise shall employ employees in accordance with the law and enter into labour contracts with them. The enterprise shall pay social insurance premiums for its employees and ensure their lawful rights and interests. Where the enterprise employs foreign employees, the relevant provisions on the administration of the employment of foreigners in China shall apply.

Article 24

The profits and losses of a foreign-invested partnership enterprise shall be distributed and borne by the partners in accordance with the provisions of the partnership agreement. Where the partnership agreement does not provide for or does not clearly provide for the distribution of profits and allocation of losses, the matter shall be determined by the partners through consultation. If no agreement can be reached, the profits shall be distributed and the losses borne by the partners in proportion to their paid-in capital contributions. However, the partnership agreement may not provide that all profits are distributed to some partners or that all losses are borne by some partners.

Article 25

When conducting liquidation, a foreign-invested partnership enterprise shall first pay liquidation expenses, employee wages, social insurance premiums, and statutory compensation, then pay the taxes owed, and then settle the enterprise's debts. Any remaining property shall be distributed in accordance with the provisions of the partnership agreement or the Partnership Enterprise Law.

Chapter V — Change, Dissolution, and Liquidation

Article 26

In the event of a change in the registered particulars of a foreign-invested partnership enterprise, including a change in partners, capital contributions, business scope, or the principal place of business, the enterprise shall apply for change registration with the market regulation authority within the prescribed time limit.

Article 27

A foreign-invested partnership enterprise shall be dissolved in any of the following circumstances:

(1) the expiration of the business term specified in the partnership agreement and the partners decide not to extend the term;

(2) the occurrence of the cause of dissolution specified in the partnership agreement;

(3) the partners unanimously resolve to dissolve the enterprise;

(4) the number of partners falls short of the statutory requirement for a period of 30 days;

(5) the business objective stipulated in the partnership agreement has been achieved or cannot be achieved;

(6) the business license is revoked or the enterprise is ordered to close down or be revoked in accordance with the law; or

(7) other reasons for dissolution as provided by laws and administrative regulations.

Article 28

Upon dissolution, a foreign-invested partnership enterprise shall establish a liquidation group and carry out liquidation in accordance with the law. The liquidation group shall be composed of all partners or may be composed of one or more partners designated by all partners, or a third party appointed by all partners.

Article 29

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During the liquidation period, the foreign-invested partnership enterprise shall continue to exist, but may not carry out business activities unrelated to the liquidation. Before all liquidation matters are completed, partners and the liquidation group may not distribute the enterprise's property.

Article 30

After the liquidation is completed, the liquidation group shall prepare a liquidation report. Upon confirmation by all partners, the liquidation report shall be submitted to the market regulation authority, which shall cancel the enterprise registration and publicly announce the cancellation. After the enterprise is cancelled, the general partners shall continue to bear unlimited joint and several liability for the debts of the enterprise incurred during the period of their partnership.

Chapter VI — Legal Liability

Article 31

Where a foreign-invested partnership enterprise carries out business activities without obtaining a business license, or is established through fraudulent means, the market regulation authority shall impose penalties in accordance with the Partnership Enterprise Law and the relevant provisions on enterprise registration administration.

Article 32

Where a foreign-invested partnership enterprise operates beyond its approved business scope, or engages in prohibited industries, the market regulation authority or the competent industry authority shall order it to cease the relevant business activities and may impose penalties in accordance with the law.

Article 33

Where a foreign-invested partnership enterprise fails to apply for change registration as required, conceals material facts in its registration, or otherwise violates the registration administration provisions, the market regulation authority shall order it to make corrections and may impose a fine in accordance with the law. Where the circumstances are serious, the business license may be revoked.

Article 34

Where a partner of a foreign-invested partnership enterprise, in violation of the provisions of the Partnership Enterprise Law or these Provisions, engages in business operations competing with the partnership enterprise, conducts transactions with the partnership enterprise without authorization, disposes of the enterprise's property without authorization, or otherwise harms the interests of the enterprise, they shall bear civil liability for compensation in accordance with the law.

Article 35

Where any state functionary, in the course of the administration of foreign-invested partnership enterprises, abuses their power, neglects their duties, or engages in malpractice for personal gain, sanctions shall be imposed in accordance with the law. Where a crime is constituted, criminal liability shall be pursued according to law.

Chapter VII — Supplementary Provisions

Article 36

The establishment of foreign-invested partnership enterprises in China by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region shall be governed, mutatis mutandis, by these Provisions.

Article 37

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The State Administration for Market Regulation shall be responsible for the interpretation of matters relating to enterprise registration under these Provisions.

Article 38

These Provisions shall come into force on March 1, 2010.

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