



26 May 2010

Shanghai Pudong new area - new policy: establishment of a Sino-foreign EJV and CJV by a domestic natural person

What has happened?

On 13 April 2010, The Shanghai Pudong New Area People's Government issued the Tentative Measures On Setting Up A Sino-foreign Equity Joint Venture ("EJV") and Cooperative Joint Venture ("CJV") In Pudong New Area ("Tentative Measures"). The Tentative Measures have been introduced to allow domestic natural persons to establish EJVs and CJVs in the Pudong New Area. The Tentative Measures came into effect on 1 May 2010 for a trial period of 2 years.

Why the change?

The Chinese laws on joint ventures, which were initially issued in 1979 and 1988 respectively, do not allow domestic natural persons to set up EJVs or CJVs with foreign companies or individuals. Such restrictions do not conform to the principle of "national treatment" and so have been seen as being an obstacle to domestic individuals hoping to cooperate with foreign entities and/or individuals. As the Chinese people are becoming more prosperous, pressure has increased to abolish the existing restriction.

The usual way to circumvent the restrictions is for a Chinese natural person to set up a limited liability company (normally a one-person company), and to use the new company as a vehicle to partner foreign parties. However this route is very inconvenient and the issue of the "invisible investor" has led to many disputes between contracting parties.

Foreign investors have encountered difficulties when trying to partner with a Chinese citizen they trust. There has been rapid growth in the need for cooperation between individuals from SMEs and foreign individuals in high-tech and creative industries. As the officials from Pudong New Area said, "We have changed because such change is required".

What is the impact?

Under the Tentative Measures a domestic natural person who wants set up Sino-foreign EJVs or CJVs must hold a Resident's Identification Card. The domestic natural person should also have full civil capacity and adhere to other requirements relating to being a shareholder.

The areas of investments are limited to those falling within the categories of "Encouraged" and "Permitted" under the Foreign Investments Industry Guidance Catalogue, which means investments in "Restricted" areas are not allowed.

Disclaimer

This information is for guidance purposes only and should not be regarded as a substitute for taking legal advice.

Data protection and privacy statement

Details about how we use and store your information can be found on our website - http://www.eversheds.com/uk/Home/Footer/Terms_and_Conditions/index.page?#briefings

The investment or cooperation condition offered by a domestic natural person can be in the form of cash, in kind, intellectual property right or other non-monetary assets which can be verified and transferred according to law.

A EJV or CJV incorporated by a domestic natural person in the Pudong New Area should be approved and registered by the Bureau of Commerce of the Pudong New Area, Shanghai and the Administration for Industry and Commerce of the Pudong New Area, Shanghai.

Further influence

The development and opening up of the Pudong New Area of Shanghai was announced by the State Council on 18 April 1990. As a special area with special policy support from the central government, foreign investments in the Pudong New Area used to enjoy favourable tax treatment. However, since the implementation of the Unified Enterprise Income Tax applicable to domestic companies and foreign companies from 1 January 2008, Pudong New Area has been losing its competitive advantage to other areas in Shanghai and cities outside of Shanghai.

The issuance of the Tentative Measures was widely regarded as a measure to enhance the Pudong New Area's competitive strength. Notably, the timing of the release coincides with the 20th anniversary of the opening up of the Pudong New Area, and the release of the opinions by the State Administration for Industry and Commerce on further improving the work for serving foreign invested enterprises.

The Pudong New Area has the privilege of being a "xianshixianxing" (policy pioneering area). Some of the interim measures initiated and implemented in the Pudong New Area, such as the making of capital contributions in instalments have subsequently been adopted within national laws. It is expected that the Tentative Measures will follow suit and be rolled out nationwide should the pilot in the Pudong New Area be successful.

For further information, please contact Peter Corne or Melinda Xie.

Peter Corne
Managing Partner, Eversheds China

Tel: +86 21 6137 1001
petercorne@eversheds.com

Melinda Xie
Associate, Eversheds Shanghai

Tel: +86 21 6137 1003
melindaxie@eversheds.com

© Eversheds LLP, 2010

Eversheds LLP is a foreign law firm registered with the Ministry of Justice of the People's Republic of China. Under current Chinese regulations, we are allowed to provide information concerning the effects of the Chinese legal environment, but, like all international law firms with offices in the PRC, we are not authorised to issue opinions, determinations, or certifications in respect of, the application of PRC law. We work in cooperation with a number of Chinese law firms. Should you require a legal opinion in respect of any Chinese law matter, we would be happy to assist you in obtaining one from a Chinese firm.

Disclaimer

This information is for guidance purposes only and should not be regarded as a substitute for taking legal advice.

Data protection and privacy statement

Details about how we use and store your information can be found on our website -
http://www.eversheds.com/uk/Home/Footer/Terms_and_Conditions/index.page?#briefings