

## China

### Foreign Investment Security Review Measures (2020)

*Unofficial translation*

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# Foreign Investment Security Review Measures

(Announced by the National Development and Reform Commission and the Ministry of Commerce Order No. 37 on December 19, 2020, effective January 18, 2021)

## Article 1

These Measures are formulated in accordance with the Foreign Investment Law of the People's Republic of China, the National Security Law of the People's Republic of China, and relevant laws in order to meet the needs of promoting a new pattern of comprehensive opening up, and to effectively prevent and resolve national security risks while actively promoting foreign investment.

## Article 2

Foreign investment that affects or may affect national security shall be subject to security review in accordance with the provisions of these Measures.

Foreign investment as mentioned in these Measures refers to investment activities conducted directly or indirectly by foreign investors within the territory of the People's Republic of China (hereinafter referred to as the territory), including the following circumstances:

- (1) A foreign investor, alone or jointly with other investors, invests in a new project or establishes an enterprise within the territory of China;
- (2) A foreign investor acquires the equity or assets of a domestic enterprise through mergers and acquisitions;
- (3) Foreign investors investing in China through other means.

## Article 3

The State shall establish a working mechanism for foreign investment security review (hereinafter referred to as the Working Mechanism) to be responsible for organizing, coordinating and guiding the foreign investment security review work. The working mechanism office is located in the National Development and Reform Commission, and is led by the National Development and Reform Commission and the Ministry of Commerce. It is responsible for the daily work of foreign investment security review.

## Article 4

Foreign investors or relevant domestic parties (hereinafter referred to as parties) shall proactively report to the Working Mechanism Office before implementing foreign investment within the following scopes:

- (1) Investing in military industry, military industry supporting industries and other fields related to national defense security, as well as investing in areas surrounding military facilities and military industry facilities;
- (2) Investing in important agricultural products, important energy and resources, major equipment manufacturing, important infrastructure, important transportation services, important cultural products and services, important information technology and Internet products and services, important financial services, key technologies and other important areas related to national security, and obtaining actual control over the invested enterprises.

The acquisition of actual control over the invested enterprise referred to in the second item of the preceding paragraph includes the following circumstances:

- (1) Foreign investors hold more than 50% of the shares of the enterprise;
- (2) The foreign investor holds less than 50% of the enterprise's equity, but the voting rights it enjoys can have a significant impact on the resolutions of the board of directors, shareholders' meeting or general meeting of shareholders;
- (3) Other circumstances that enable foreign investors to have a significant impact on the business decisions, personnel, finance, technology, etc. of the enterprise.

The Working Mechanism Office has the right to require the parties to declare foreign investment within the scope specified in the first paragraph of this Article (hereinafter referred to as the declaration

scope).

#### **Article 5**

Before reporting foreign investment to the Working Mechanism Office, the parties may consult the Working Mechanism Office on relevant issues.

#### **Article 6**

When a party reports foreign investment to the Working Mechanism Office, it shall submit the following materials:

- (1) Application form;
- (2) Investment plan;
- (3) A statement on whether the foreign investment affects national security;
- (4) Other materials required by the Working Mechanism Office.

The application form shall state the name, address, business scope, basic information of the investment and other matters specified by the working mechanism office of the foreign investor.

The working mechanism office may, according to work needs, entrust relevant departments of the provincial, autonomous regional, or municipal people's governments to collect and forward the materials specified in the first paragraph of this article.

#### **Article 7**

The Working Mechanism Office shall make a decision on whether a security review is required for the foreign investment application within 15 working days from the date of receipt of the materials submitted by the parties or forwarded by the relevant departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government that comply with the provisions of Article 6 of these Measures, and notify the parties in writing. Before the Working Mechanism Office makes a decision, the parties shall not implement the investment.

If the working mechanism office decides that a security review is not necessary, the parties may implement the investment.

#### **Article 8**

Foreign investment security review is divided into general review and special review. If the working mechanism office decides to conduct a security review on the reported foreign investment, it shall complete the general review within 30 working days from the date of the decision. During the review period, the parties shall not implement investment.

If, after general review, it is considered that the reported foreign investment does not affect national security, the working mechanism office shall make a decision to approve the security review; if it is considered that it affects or may affect national security, the working mechanism office shall make a decision to initiate a special review. The decision made by the working mechanism office shall be notified to the parties in writing.

#### **Article 9**

Where the Working Mechanism Office decides to initiate a special review of a foreign investment application, it shall make a decision in accordance with the following provisions after the review and notify the parties in writing:

- (1) If the reported foreign investment does not affect national security, a decision on passing the security review shall be made;
- (2) If the reported foreign investment affects national security, a decision to prohibit the investment will be made; if the impact on national security can be eliminated by adding additional conditions and the parties have made a written commitment to accept the additional conditions, a decision to pass the security review with conditions may be made and the additional conditions shall be listed in the decision.

The special review shall be completed within 60 working days from the date of initiation; under special circumstances, the review period may be extended. The parties shall be notified in writing of the extension of the review period. During the review period, the parties shall not implement investment.

#### **Article 10**

During the security review of the foreign investment application, the Working Mechanism Office may require the parties to provide additional relevant materials and inquire about relevant circumstances. The parties shall cooperate. The time taken by the parties to provide additional materials shall not be included in the review period.

#### **Article 11**

During the period when the Working Mechanism Office conducts security review of reported foreign investment, the parties may modify their investment plans or cancel their investments. If the party modifies the investment plan, the review period will be recalculated from the date the working mechanism office receives the modified investment plan; if the party cancels the investment, the working mechanism office will terminate the review.

#### **Article 12**

If the Working Mechanism Office makes a decision that a foreign investment application has passed the

If the Working Mechanism Office makes a decision that a foreign investment application has passed the security review, the parties may implement the investment; if a decision is made to prohibit the investment, the parties shall not implement the investment. If the investment has already been implemented, the equity or assets shall be disposed of within a time limit and other necessary measures shall be taken to restore the status quo before the investment was implemented and eliminate the impact on national security; if a decision is made to pass the security review with conditions, the parties shall implement the investment in accordance with the additional conditions.

#### **Article 13**

The decision on foreign investment security review shall be supervised and implemented by the Working Mechanism Office in conjunction with relevant departments and local people's governments; for foreign investment that passes the security review with conditions, the implementation of the additional conditions may be verified by requiring the provision of relevant supporting documents, on-site inspections, etc.

#### **Article 14**

After the Working Mechanism Office decides that a reported foreign investment does not require security review or has passed security review, if the parties change their investment plans and this affects or may affect national security, they shall re-submit the plan to the Working Mechanism Office in accordance with the provisions of these Measures.

#### **Article 15**

If relevant authorities, enterprises, social groups, the general public, etc. believe that foreign investment affects or may affect national security, they may submit a proposal to the working mechanism office to conduct a security review.

#### **Article 16**

If a party implements a foreign investment within the reporting scope without reporting it in accordance with the provisions of these Measures, the Working Mechanism Office shall order it to report it within a time limit; if it refuses to report it, it shall be ordered to dispose of its equity or assets within a time limit and take other necessary measures to restore the status quo before the investment was implemented and eliminate the impact on national security.

#### **Article 17**

If a party provides false materials or conceals relevant information to the working mechanism office, the working mechanism office shall order it to correct the situation; if it provides false materials or conceals relevant information to pass the security review by fraud, the relevant decision shall be revoked; if the investment has been implemented, it shall be ordered to dispose of the equity or assets within a time limit and take other necessary measures to restore the status before the investment was implemented and eliminate the impact on national security.

#### **Article 18**

If the parties to a foreign investment that has passed security review with conditions fail to implement the investment in accordance with the additional conditions, the Working Mechanism Office shall order them to make corrections; if they refuse to make corrections, they shall be ordered to dispose of their equity or assets within a time limit and take other necessary measures to restore the status quo before the investment was implemented and eliminate the impact on national security.

#### **Article 19**

Where a party is in any of the circumstances specified in Articles 16, 17, or 18 of these Measures, their negative credit records shall be included in the relevant national credit information system, and joint punishment shall be implemented in accordance with relevant national regulations.

#### **Article 20**

If a state organ staff member abuses his power, neglects his duties, engages in malpractice for personal gain, or discloses state secrets or commercial secrets known to him during the foreign investment security review work, he shall be punished according to law; if a crime is constituted, he shall be held criminally liable according to law.

#### **Article 21**

Where investments made by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, or Taiwan affect or may affect national security, the provisions of these Measures shall apply.

#### **Article 22**

Where foreign investors purchase stocks of domestic enterprises through a securities exchange or other securities trading venues approved by the State Council and this affects or may affect national security, the specific measures for the application of these Measures shall be formulated by the securities regulatory authority of the State Council in conjunction with the office of the working mechanism.

#### **Article 23**

This Measures shall come into force thirty days after its promulgation.

