

MEASURES FOR SECURITY REVIEW OF FOREIGN INVESTMENTS

(Adopted at the 13th Commission Affairs Meeting of the National Development and Reform Commission on November 27, 2020. Issued by the National Development and Reform Commission and the Ministry of Commerce on December 19, 2020. Effective from January 18, 2021.)

Article 1. These Measures have been 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 related laws, in order to meet the needs of promoting the creation of a new structure for fully opening up to the outside world and effectively to resolve and eliminate national security risks while actively promoting Foreign Investment.

Article 2. Foreign Investments that would or could affect national security shall be subject to security review pursuant to these Measures.

For the purposes of these Measures, the term "'Foreign Investment" means investment activities directly or indirectly conducted in the People's Republic of China (the "PRC") by foreign investors and includes the following:

- (1) investments in newly constructed projects made in the PRC, or the establishment of enterprises in the PRC, by foreign investors, whether independently or jointly with other investors;
- (2) acquisitions by foreign investors of equity rights in, or assets of, enterprises in China by means of merger or acquisition;
- (3) investments made in the PRC by foreign investors through other means.

Article 3. The state shall establish the operational mechanism for security review of Foreign Investments (the "Operational Mechanism"), which shall be responsible for organizing, coordinating and guiding security reviews of Foreign Investments.

The office of the Operational Mechanism shall be set up under the National Development and Reform Commission and be headed by the National Development and Reform Commission and the Ministry of Commerce. It shall undertake the day-to-day work in respect of security reviews of Foreign Investments.

Article 4. Before Foreign Investment is made in any of the following sectors, the foreign investor or the relevant party in the PRC (collectively, the "Party") shall proactively declare the investment to the office of the Operational Mechanism:

- (1) investment in sectors with a bearing on national defense and security, such as the arms industry and sectors that supply the arms industry, and investments in locations in the periphery of military facilities or arms industry facilities;
- (2) investment in important agricultural products, important energy sources, important resources, manufacture of major equipment, important infrastructure facilities, important transportation services, important cultural products and services, important information technology and Internet products and services, important financial services, key technologies and other important sectors, to the extent that the foregoing have a bearing on national security and that actual control of the investee enterprise is acquired.

For the purposes of the preceding paragraph, the phrase "actual control of the investee enterprise is acquired" includes the following situations:

- (1) the foreign investor's equity interest in the enterprise is not less than 50%;

- (2) the foreign investor's equity interest in the enterprise is less than 50% but its voting rights enable it to exercise major influence over the resolutions of the board of directors, shareholders' meeting or shareholders' general meeting;
- (3) other circumstances that enable the foreign investor to exercise major influence over the business decision making, human resources, finances, technology, etc. of the enterprise.

The office of the Operational Mechanism has the right to require Parties to declare Foreign Investments that fall within the scope specified in the first paragraph hereof (the "Declaration Scope").

Article 5. Before declaring a Foreign Investment to the office of the Operational Mechanism, the Party may consult the said office on relevant issues.

Article 6. When declaring a Foreign Investment to the office of the Operational Mechanism, the Party shall submit the following documentation:

- (1) declaration;
- (2) investment proposal;
- (3) explanation as to whether the Foreign Investment will affect national security;
- (4) other documents required by the office of the Operational Mechanism.

The declaration shall specify the name, domicile and business scope of the foreign investor, basic details of the investment and such other items as the office of the Operational Mechanism may require.

The office of the Operational Mechanism may entrust the relevant departments of the People's Governments of the provinces, autonomous regions and municipalities directly under the central government with collecting and forwarding the documentation specified in the first paragraph hereof, as the office's work may require.

Article 7. The office of the Operational Mechanism shall decide whether there is a need to conduct a security review of a Foreign Investment declared, and notify the Party in writing, within 15 working days from the date on which the documentation complying with Article 6 hereof is received from the Party or from the relevant department of the People's Government of the province, autonomous region or municipality directly under the central government that forwarded it. The Party may not make the investment until the office of the Operational Mechanism has made a decision.

If the office of the Operational Mechanism decides that there is no need for a security review, the Party may make the investment.

Article 8. Foreign Investment security reviews are divided into ordinary reviews and special reviews. If the office of the Operational Mechanism decides to conduct a security review of a Foreign Investment declared, it shall complete the ordinary review within 30 working days from the date of the decision. The Party may not make the investment pending the review.

If, following ordinary review, the office of the Operational Mechanism believes that the Foreign Investment declared will not affect national security, it shall decide that the security review has been passed. If it believes that the Foreign Investment declared will or could affect national security, it shall decide to launch a special review. The office of the Operational Mechanism shall notify the Party in writing of its decision.

Article 9. If the office of the Operational Mechanism decides to launch a special review of a Foreign Investment declared, it shall, upon conclusion of the review, make a decision as specified below and inform the Party in writing:

- (1) if the Foreign Investment declared will not affect national security, the office of the Operational Mechanism shall decide that the security review has been passed;
- (2) if the Foreign Investment declared will affect national security, it shall decide to prohibit the investment; if the attachment of conditions would eliminate the effect on national security and the Party undertakes in writing to accept the attached conditions, the office of the Operational Mechanism may decide that the security review has been passed conditionally, in which case the attached conditions shall be specified in the decision.

Special reviews shall be completed within 60 working days from their launch date. The review period may be extended in special circumstances. The Party shall be given written notice of any extension of the review period. The Party may not make the investment pending the review.

Article 10. During security review of a Foreign Investment declared, the office of the Operational Mechanism may request the Party to supplement relevant documentation or to provide relevant details. The Party shall cooperate with such requests.

The time used by the Party to submit supplementary documentation shall not count toward the review period.

Article 11. While a Foreign Investment declared is undergoing security review by the office of the Operational Mechanism, the Party may modify the investment proposal or cancel the investment.

If the Party modifies the investment proposal, the review period shall be counted anew from the date on which the modified proposal is received by the office of the Operational Mechanism. If the Party cancels the investment, the office of the Operational Mechanism shall terminate the review.

Article 12. If the office of the Operational Mechanism decides that the security review of a declared Foreign Investment has been passed, the Party may make the investment. If the office of the Operational Mechanism decides to prohibit the investment, the Party shall not make the investment. If the prohibited investment has already been made at the time of prohibition, a time limit shall be imposed for disposal of the equity interest or the assets and the taking of any other steps necessary to reinstate the *status quo ante* the investment and eliminate the effect on national security. If the office of the Operational Mechanism decides that the security review has been passed conditionally, the Party shall make the investment in accordance with the attached conditions.

Article 13. The execution of the decisions made upon security review of Foreign Investments shall be subject to supervision by the office of the Operational Mechanism in conjunction with the relevant departments and local People's Governments. In the case of a Foreign Investment that passed the security review conditionally, the fulfillment of the attached conditions may be verified by means such as requiring the provision of relevant supporting documentation, on-site inspection, etc.

Article 14. If, after the office of the Operational Mechanism has decided that a declared Foreign Investment does not require security review or after the security review has been passed, the Party modifies the investment proposal such that national security will or could be affected, a new declaration shall be made to the office of the Operational Mechanism as required by these Measures.

Article 15. If a relevant authority, enterprise, association, member of the public, etc. believes that national security is or could be affected by a Foreign Investment, such entity or individual may propose to the office of the Operational Mechanism that it conduct a security review.

Article 16. If a Party to a Foreign Investment within the Declaration Scope makes the investment without having made a declaration pursuant to these Measures, the office of the Operational Mechanism shall order the

Party to make the declaration within a specified time limit. If the Party refuses to make the declaration, the Party shall be ordered to dispose of the equity interest or the assets and to take any other steps necessary to reinstate the *status quo ante* the investment and eliminate the effect on national security, within a specified time limit.

Article 17. If a Party provides the office of the Operational Mechanism with false documentation or withholds relevant information, the office of the Operational Mechanism shall order the Party to rectify the situation. If the provision of false documentation or withholding of relevant information caused the Foreign Investment to fraudulently pass the security review, the relevant decision shall be revoked. If the investment has been made, a time limit shall be imposed for disposal of the equity interest or the assets and the taking of any other steps necessary to reinstate the *status quo ante* the investment and eliminate the effect on national security.

Article 18. If the Party to a Foreign Investment that passed the security review conditionally does not make the investment in accordance with the attached conditions, the office of the Operational Mechanism shall order the Party to rectify the situation. If the Party refuses to rectify the situation, it shall be ordered to dispose of the equity interest or the assets and to take any other steps necessary to reinstate the *status quo ante* the investment and eliminate the effect on national security, within a specified time limit.

Article 19. If a Party conducts itself as mentioned in Article 16, 17 or 18 hereof, a negative credit record of such Party shall be entered in the relevant credit information system of the state and the Party shall be subjected to joint penalties in accordance with relevant national regulations.

Article 20. If, while conducting a Foreign Investment security review, working personnel of a state agency abuse their powers of office, commit dereliction of duty, practice graft, divulge state secrets, or disclose trade secrets that have come to their knowledge, they shall be disciplined according to law. If their conduct constitutes a criminal offense, their criminal liability shall be pursued according to law.

Article 21. Investments by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan shall be handled with reference to these Measures, if they will or could affect national security.

Article 22. The State Council's securities regulatory authority, in conjunction with the office of the Operational Mechanism, shall formulate specific measures for the application of these Measures to foreign investors that purchase shares in a PRC enterprise through a stock exchange or another stock trading venue approved by the State Council, where such purchase will or could affect national security.

Article 23. These Measures shall be implemented 30 days from the date of issuance.