
**NATIONAL DEVELOPMENT AND REFORM COMMISSION OF
THE PEOPLE'S REPUBLIC OF CHINA MINISTRY OF COMMERCE
OF THE PEOPLE'S REPUBLIC OF CHINA**

Order No. 37

Measures for the Security Review of Foreign Investment

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(incl. former State Development Planning Commission)

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Measures for the Security Review of Foreign Investment have been deliberated and adopted at the 13th Commission Meeting of the National Development and Reform Commission on November 27, 2020, and approved by the State Council. They are hereby promulgated and shall come into effect on January 18, 2021.

He Lifeng, Minister, National Development and Reform Commission

Zhong Shan, Minister, Ministry of Commerce

December 19, 2020

Measures for the Security Review of Foreign Investment

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 other relevant laws, for the purpose of adapting to the needs of promoting the formation of a new, all-round opening-up pattern, and effectively preventing and mitigating national security risks while actively promoting foreign investment.

Article 2

Security reviews shall be conducted on foreign investment that affects or may affect national security in accordance with the provisions of these Measures.

For the purposes of these Measures, "foreign investment" 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. Foreign investors, either alone or jointly with other investors, invest in new projects or establish enterprises within the territory;
2. Foreign investors acquire equity or assets of domestic enterprises through merger and acquisition;
3. Foreign investors make investments within the territory through other means.

Article 3

The State establishes a working mechanism for the security review of foreign investment (hereinafter referred to as the working mechanism), responsible for organizing, coordinating, and guiding the security review of foreign investment.

The office of the working mechanism is established within the National Development and Reform Commission, led by the National Development and Reform Commission and the Ministry of Commerce, undertaking the day-to-day work of the security review of foreign investment.

Article 4

For foreign investment falling within the following scope, the foreign investor or relevant domestic parties (hereinafter collectively referred to as the

parties) shall, before implementing the investment, proactively declare to the office of the working mechanism:

1. Investment in areas related to national defense security such as military industry and military industry support, and investment in areas surrounding military facilities and military industry facilities;
2. Investment in important areas related to national security, such as 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, and obtaining de facto control of the invested enterprise.

The term "obtaining de facto control of the invested enterprise" in item 2 of the preceding paragraph includes the following circumstances:

1. The foreign investor holds more than 50% of the equity in the enterprise;
2. The foreign investor holds less than 50% of the equity in the enterprise, but the voting rights it enjoys can significantly influence the resolutions of the board of directors, shareholders' meeting, or general meeting of shareholders;
3. Other circumstances that result in the foreign investor being able to significantly influence the enterprise's business decisions, personnel, finance, technology, etc.

For foreign investment falling within the scope stipulated in paragraph 1 of this Article (hereinafter referred to as the declaration scope), the office of the working mechanism has the right to require the parties to make a declaration.

Article 5

Before declaring foreign investment to the office of the working mechanism, the parties may consult with the office of the working mechanism on relevant issues.

Article 6

When declaring foreign investment to the office of the working mechanism, the parties shall submit the following materials:

1. Declaration;
2. Investment plan;

3. Explanation of whether the foreign investment affects national security;
4. Other materials stipulated by the office of the working mechanism.

The declaration shall specify the foreign investor's name, domicile, business scope, basic information of the investment, and other matters stipulated by the office of the working mechanism.

The office of the working mechanism may, as needed for its work, entrust the relevant departments of the people's governments of provinces, autonomous regions, and municipalities directly under the Central Government to receive and forward the materials stipulated in paragraph 1 of this Article.

Article 7

The office of the working mechanism shall, within 15 working days from the date of receiving 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, decide whether a security review is required for the declared foreign investment and notify the parties in writing. Before the office of the working mechanism makes a decision, the parties shall not implement the investment.

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

Article 8

The security review of foreign investment is divided into general review and special review. If the office of the working mechanism decides to conduct a security review of the declared foreign investment, the general review shall be completed within 30 working days from the date of the decision. During the review period, the parties shall not implement the investment.

After the general review, if the declared foreign investment is considered not to affect national security, the office of the working mechanism shall make a decision to pass the security review; if it is considered to affect or may affect national security, the office of the working mechanism shall make a decision to initiate a special review. The decisions made by the office of the working mechanism shall be notified to the parties in writing.

Article 9

If the office of the working mechanism decides to initiate a special review of the declared foreign investment, it shall, after the review, make a decision according to the following provisions and notify the parties in writing:

1. If the declared foreign investment does not affect national security, a decision to pass the security review shall be made;
2. If the declared foreign investment affects national security, a decision to prohibit the investment shall be made; if the impact on national security can be eliminated by imposing additional conditions, and the parties undertake in writing to accept the additional conditions, a conditional decision to pass the security review may be made, listing the additional conditions 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 extension of the review period shall be notified to the parties in writing. During the review period, the parties shall not implement the investment.

Article 10

During the security review of the declared foreign investment by the office of the working mechanism, the office may require the parties to supplement relevant materials and inquire about relevant circumstances from the parties. The parties shall cooperate accordingly.

The time taken by the parties to supplement materials is not included in the review period.

Article 11

During the security review of the declared foreign investment by the office of the working mechanism, the parties may modify the investment plan or withdraw the investment.

If the parties modify the investment plan, the review period shall be recalculated from the date the office of the working mechanism receives the modified investment plan; if the parties withdraw the investment, the office of the working mechanism shall terminate the review.

Article 12

If the office of the working mechanism makes a decision to pass the security review for the declared

foreign investment, the parties may implement the investment; if a decision to prohibit the investment is made, the parties shall not implement the investment. If already implemented, they shall, within a specified time limit, dispose of the equity or assets and take other necessary measures to restore the state before the investment was made and eliminate the impact on national security; if a conditional decision to pass the security review is made, the parties shall implement the investment in accordance with the additional conditions.

Article 13

Decisions on the security review of foreign investment shall be supervised and implemented by the office of the working mechanism jointly with relevant departments and local people's governments; for foreign investment conditionally passing the security review, methods like requiring the submission of relevant supporting documents and on-site inspections may be used to verify the implementation of the additional conditions.

Article 14

After the office of the working mechanism makes a decision that a security review is not required or passes the security review for the declared foreign investment, if the parties change the investment plan, affecting or potentially affecting national security, they shall re-declare to the office of the working mechanism in accordance with the provisions of these Measures.

Article 15

Relevant authorities, enterprises, social organizations, the public, etc., who believe that foreign investment affects or may affect national security, may propose to the office of the working mechanism to conduct a security review.

Article 16

For foreign investment falling within the declaration scope, if the parties implement the investment without declaring it in accordance with the provisions of these Measures, the office of the working mechanism shall order them to declare within a specified time limit; if they refuse to declare, they shall be ordered to dispose of the equity or assets and take other necessary measures within a specified time limit to restore the state before the investment was made and eliminate the impact on national security.

Article 17

If the parties provide false materials to the office of the working mechanism or conceal relevant information, the office of the working mechanism shall order them to make corrections; if they obtain approval of the security review by providing false materials or concealing relevant information, the relevant decision shall be revoked; if the investment has been implemented, they shall be ordered to dispose of the equity or assets and take other necessary measures within a specified time limit to restore the state before the investment was made and eliminate the impact on national security.

Article 18

For foreign investment conditionally passing the security review, if the parties fail to implement the investment according to the additional conditions, the office of the working mechanism shall order them to make corrections; if they refuse to make corrections, they shall be ordered to dispose of the equity or assets and take other necessary measures within a specified time limit to restore the state before the investment was made and eliminate the impact on national security.

Article 19

If the parties have the circumstances specified in Articles 16, 17, and 18 of these Measures, such information shall be recorded as negative credit information and included in the relevant national credit information system, and joint disciplinary actions shall be implemented in accordance with relevant national regulations.

Article 20

If state personnel, in the work of security review of foreign investment, abuse their power, neglect their duties, engage in malpractice for personal gain, divulge state secrets or business secrets they become aware of, they shall be given sanctions according to law; if a crime is constituted, criminal liability shall be pursued according to law.

Article 21

Investment activities by investors from the Hong Kong Special Administrative Region, the Macao Special Administrative Region, and the Taiwan region, which affect or may affect national security, shall be implemented with reference to the provisions of these Measures.

Article 22

Specific measures for the application of these Measures to foreign investors purchasing stocks of domestic enterprises through stock exchanges or other securities trading venues approved by the State Council, which affect or may affect national security, shall be formulated by the securities regulatory authority of the State Council jointly with the office of the working mechanism.

Article 23

These Measures shall come into effect 30 days after the date of promulgation.



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