Measures for the Security Review of Foreign Investment

Dan Young Business Consultancy — www.danyoungcpa.com

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Chapter I — General Provisions

Article 1 — These Measures are formulated in accordance with the Foreign Investment Law of the People's Republic of China and the Regulation on the Implementation of the Foreign Investment Law of the People's Republic of China, for the purposes of preventing national security risks, promoting high-level opening-up, and regulating foreign investment security review work.

Article 2 — These Measures apply to the security review of foreign investment conducted within the territory of the People's Republic of China (hereinafter referred to as "foreign investment security review").

For the purposes of these Measures, "foreign investment" means investment activities directly or indirectly carried out by foreign investors within the territory of China, including the following circumstances:

(1) A foreign investor establishes a foreign-invested enterprise within the territory of China independently or jointly with any other investor;

(2) A foreign investor acquires equity or shares of an enterprise within the territory of China by means of merger or acquisition;

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(3) A foreign investor invests in a new project within the territory of China independently or jointly with any other investor; or

(4) A foreign investor makes investment through other means as provided for by laws or administrative regulations or as prescribed by the State Council.

Article 3 — The State shall establish a foreign investment security review working mechanism (hereinafter referred to as the "Working Mechanism"), which shall be responsible for organizing, coordinating, and guiding foreign investment security review work.

The Working Mechanism shall be composed of the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM), and the NDRC and MOFCOM shall jointly take the lead in the Working Mechanism, under which an office shall be established. The office of the Working Mechanism shall be located in the NDRC and shall be responsible for routine work of the Working Mechanism, such as accepting applications for foreign investment security review, organizing security reviews, and supervising the implementation of security review decisions.

Article 4 — The Working Mechanism shall adhere to the principles of legality, timeliness, effectiveness, and the balance between development and security, and shall conduct foreign investment security review in an objective, fair, and efficient manner.

Article 5 — When conducting foreign investment security review, the relevant information obtained by the members of the Working Mechanism and the staff of the office of the Working Mechanism shall be kept confidential and shall not be disclosed to the public, except as otherwise provided by laws.

Article 6 — When conducting foreign investment security review, no fee may be collected from the parties concerned.

Chapter II — Review Authorities and Review Scope

Article 7 — The Working Mechanism shall determine the scope of foreign investment subject to security review, and the office of the Working Mechanism shall be responsible for accepting applications for security review.

Article 8 — Foreign investors or relevant parties in China (hereinafter referred to as "parties concerned") shall, prior to implementing any foreign investment falling within the scope of security review, make a declaration to the office of the Working Mechanism.

Where foreign investment falling within the scope of security review is implemented without declaration, the office of the Working Mechanism shall order the parties concerned to make a declaration within a prescribed time limit; where the parties concerned still fail to make a declaration within the prescribed time limit, the office of the Working Mechanism may directly initiate a security review.

Article 9 — The parties concerned may, before making a formal declaration for security review, consult the office of the Working Mechanism on issues relating to the review procedures.

Article 10 — The parties concerned making a declaration for security review shall submit the following materials:

(1) A declaration letter;

(2) An explanation of the investment proposal;

(3) An explanation of the foreign investor's background, including information on the foreign investor, its actual controller, and related parties;

(4) An explanation of the impact of the foreign investment on national security; and

(5) Other materials as required by the office of the Working Mechanism.

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The declaration letter shall contain a statement of truthfulness, and the parties concerned shall be responsible for the authenticity of the materials submitted. Where the materials submitted are incomplete or do not meet the statutory form, the office of the Working Mechanism shall notify the parties concerned to supplement or correct them within five working days of receiving the materials. The parties concerned shall complete the supplementation or correction within the prescribed time limit.

Chapter III — Review Procedures

Article 11 — The office of the Working Mechanism shall, within 15 working days of receiving the materials complying with the provisions of these Measures, make a decision on whether to conduct a security review, and notify the parties concerned in writing.

Article 12 — Where the office of the Working Mechanism decides to conduct a security review, it shall complete the general review within 30 working days of the date of the decision, and notify the parties concerned in writing of the result of the review.

Where, upon completion of the general review, the office of the Working Mechanism deems that the foreign investment does not affect national security, it shall notify the parties concerned in writing that the security review has been passed.

Where, upon completion of the general review, the office of the Working Mechanism deems that the foreign investment affects or may affect national security, it shall make a decision to initiate a special review and notify the parties concerned in writing.

Article 13 — Where the office of the Working Mechanism decides to initiate a special review, it shall complete the special review within 60 working days of the date of the decision; and where upon completion of the special review the office deems that the impact of the foreign investment on national security requires further assessment, it may, upon approval of the Working Mechanism, appropriately extend the review period. The period extended shall not exceed 30 working days, and the parties concerned shall be notified in writing.

Article 14 — During the security review process, the office of the Working Mechanism may require the parties concerned to supplement or correct the materials submitted. The parties concerned shall complete the supplementation or correction within the prescribed time limit. The time spent on supplementation or correction shall not be counted toward the review period specified in Articles 11, 12, and 13 of these Measures.

Article 15 — During the security review process, the parties concerned may apply to modify the investment proposal or make undertakings. The office of the Working Mechanism shall assess whether the modified investment proposal or the undertakings made are sufficient to eliminate the impact of the foreign investment on national security and make a decision accordingly.

Article 16 — The office of the Working Mechanism may, according to the needs of the security review, entrust relevant institutions or experts to conduct an assessment, and the time spent on such assessment shall not be counted toward the review period.

Article 17 — Where the parties concerned fail to supplement or correct materials within the prescribed time limit, or where the parties concerned withdraw the declaration before the office of the Working Mechanism makes a decision, the review shall be terminated. Where the parties concerned make a declaration again, the office of the Working Mechanism shall handle the matter anew.

Chapter IV — Decisions on Security Review

Article 18 — Upon completion of the review, the office of the Working Mechanism shall make any of the following decisions and notify the parties concerned in writing:

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(1) Where the foreign investment is found not to affect national security, a decision to pass the security review shall be made, and the parties concerned may implement the investment;

(2) Where the foreign investment is found to affect national security, a decision to prohibit the investment shall be made, and the parties concerned shall not implement the investment; where the investment has already been implemented, the parties concerned shall dispose of the equity or assets within the prescribed time limit and take other necessary measures to eliminate the impact on national security; or

(3) Where the foreign investment is found to affect national security but such impact can be eliminated through the attachment of restrictive conditions, a decision to pass the security review with conditions attached shall be made, and the parties concerned shall implement the investment in accordance with the conditions attached.

Article 19 — The office of the Working Mechanism shall supervise the implementation of restrictive conditions by the parties concerned. Where the parties concerned modify the restrictive conditions, they shall submit an application to the office of the Working Mechanism and may implement the modification only after the office of the Working Mechanism makes a decision of consent.

Chapter V — Supervision, Reporting, and Legal Liability

Article 20 — All relevant government departments, industry associations, trade associations, and the public shall have the right to report to the office of the Working Mechanism any foreign investment that falls within the scope of security review but has not been declared, or any violation of security review decisions or restrictive conditions.

The office of the Working Mechanism shall keep the identity of the reporter confidential and protect the lawful rights and interests of the reporter.

Article 21 — Where parties concerned make a false declaration, the office of the Working Mechanism shall order them to make corrections and may, depending on the circumstances, pursue legal liability in accordance with laws and regulations.

Article 22 — Where parties concerned refuse to implement or violate a security review decision, or fail to implement the restrictive conditions as required, the office of the Working Mechanism shall order them to make corrections within a prescribed time limit and take necessary measures to eliminate the impact on national security. Where the circumstances are serious, the office of the Working Mechanism shall order them to dispose of the equity or assets within the prescribed time limit, and the relevant authorities shall pursue legal liability in accordance with laws and regulations.

Where the parties concerned refuse to make corrections within the prescribed time limit, or where the national security impact cannot be eliminated by other measures, the office of the Working Mechanism shall order the parties concerned to restore the state prior to the investment within the prescribed time limit.

Chapter VI — Supplementary Provisions

Article 23 — These Measures shall take effect 30 days after the date of promulgation.

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