Foreign Investment Law of the People’s Republic of China

(Draft for Comments)

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Chapter 1 General Provisions

Article 1【Legislative Purpose】

The Law is formulated for the purposes of expanding opening-up, promoting and regulating foreign investments, protecting the legitimate rights and interests of foreign investors, safeguarding national security and public interests, and accelerating the sound development of socialist market economy.

Article 2【Scope of Application】

The Law applies to investments within the territory of China made by foreign investors.

Article 3【Investment Protection】

The State protects the legitimate rights and interests of foreign investors and foreign-invested enterprises in accordance with law.

Article 4【Compliance with Chinese Laws】

Foreign investors and foreign-invested enterprises shall comply with Chinese laws, and shall not impair the national security and public interests.

Foreign investors and foreign-invested enterprises shall observe social morality and business ethics, act in good faith and credibility, accept the supervision by the public, and undertake social responsibilities in their investments and business activities.

Article 5【Administrative System for Foreign Investments】

The State adopts a unified administrative system for foreign investments.

Article 6【National Treatment】

Foreign investors are entitled to national treatment when making investments within the territory of China, unless otherwise provided in the Catalogue of Special Administrative Measures for Foreign Investments (hereinafter referred to as Catalogue of Special Administrative Measures) formulated in accordance with Article 23【Catalogue Formulation Procedures】hereof.

Article 7【Investment Promotion】

The State promotes and implements foreign investment promotion policies suitable for the socialist market economy to propel investment facilitation and to establish a sound market system featured with unification, opening up and orderly competition.

Article 8【Principles of Openness and Transparency】

The State shall follow the principles of openness and transparency in its administration of investments within the territory of China made by foreign investors.
Article 9 [Foreign Investment Regulatory Authorities]

The foreign investment regulatory authorities under the State Council shall be in charge of the administration and promotion of foreign investments at the national level in accordance with the Law.

The foreign investment regulatory authorities under local people's governments at or above the county level shall be in charge of the administration and promotion of foreign investments within their respective jurisdictions under their statutory authority.

Article 10 [Investment Treaties]

The State shall, under the principles of equality and mutual benefit, promote and develop mutual investments with other countries and regions, and conclude multilateral, bilateral or regional investment treaties, conventions and agreements.

Chapter 2 Foreign Investor and Foreign Investment

Article 11 [Foreign Investments]

For the purpose of the Law, the term "foreign investors" refers to the following parties who make investments within the territory of China:

1. Natural persons without Chinese nationality;
2. Enterprises incorporated in accordance with laws of other countries or regions;
3. Governments of other countries or regions and their subordinate departments or agencies; and
4. International organizations.

Domestic enterprises controlled by the parties prescribed in the preceding paragraph shall be deemed as foreign investors.

Article 12 [Chinese Investors]

For the purpose of the Law, the term "Chinese investors" refers to the following bodies:

1. Natural persons with Chinese nationality;
2. The Chinese government and its affiliated departments or offices; and
3. Domestic enterprises controlled by any of the aforesaid two bodies;

Article 13 [Domestic Enterprises]

For the purpose of the present Law, the term "domestic enterprises" refers to enterprises incorporated within the territory of China in accordance with Chinese laws.

Article 14 [Foreign-invested Enterprises]
For the purpose of the Law, the term "foreign-invested enterprises" refers to enterprises wholly or partly invested by foreign investors and incorporated within the territory of China in accordance with Chinese laws.

Article 14 【Foreign Investment】

For the purpose of the Law, the term "foreign investment" refers to any of the following investment activities conducted, directly or indirectly, by foreign investors:

1. To establish a domestic enterprise;

2. To acquire shares, equity, shares in property, voting rights or other similar interests and rights of a domestic enterprise;

3. To provide financing with a term of one year or longer to a domestic enterprise in which any of the equities prescribed in the preceding paragraph is held by the foreign investors;

4. To obtain the franchise for exploration and development of natural resources within the territory or jurisdiction of China, or obtain the franchise for infrastructure construction or operation;

5. To acquire real estate rights such as the right to use the land within the territory of China or the title to any houses; and

6. To control domestic enterprises or hold equity in domestic enterprises by agreements, trust or other ways.

Overseas transactions resulting in the transfer of actual control over a domestic enterprise to a foreign investor shall be deemed as investments within the territory of China made by the foreign investor.

Article 16 【Real Estate Rights】

Foreign investors who acquire land use right, title to houses or other real estate rights within the territory of China are subject to the provisions of applicable laws and regulations, and shall comply with the provisions of Chapter 4 【State Security Review】 and Chapter 5 【Information Report】 hereof.

Article 17 【Non-profit Organizations】

Foreign investors who establish non-profit organizations or acquire equities in non-profit organizations are subject to the provisions of applicable laws and regulations, and shall comply with the provisions of Chapter 4 【State Security Review】 and Chapter 5 【Information Report】 hereof.

Article 18 【Control】

For the purpose of the Law, a party shall have the "control" over an enterprise under any of the following circumstances:

1. Where the party holds, directly or indirectly, 50% or more of shares, equity, shares in property, voting rights or other similar rights and interests in the enterprise;

2. Where the party holds, directly or indirectly, less than 50% of shares, equity, shares in property, voting rights or other similar rights and interests, but any of the following conditions are satisfied:
(1) The party is entitled to, directly or indirectly, appoint at least half of the members in the board of directors or a similar decision-making body of the enterprise;

(2) The party is capable to ensure that its nominated persons can occupy at least half of the seats in the board of directors or a similar decision-making body of the enterprise; and

(3) The voting rights to which the party is entitled to are sufficient to exert a significant impact on the resolutions of the shareholders’ meeting, the general meeting of shareholders, board of directors or other decision-making body of the enterprise.

3. Where the party is capable to exert a decisive impact on the enterprise’s management, finance, human resources or technologies by contracts, trust or other ways.

Article 19 【Actual Controllers】

For the purpose of the Law, the term "actual controllers" refers to natural persons or enterprises that directly or indirectly control foreign investors or foreign-invested enterprises.

Chapter 3 Market Entry Administration
Section 1 General Provisions

Article 20 【Foreign Investment Entry】

The State adopts a unified foreign investment entry system, and regulates industries in the foreign investment is prohibited or restricted pursuant to the Catalogue of Special Administrative Measures.

Article 21 【Authorities in Charge of Foreign Investment Entry】

The authorities in charge of foreign investment shall regulate foreign investment entry, in conjunction with other authorities concerned.

Article 22 【Catalogue of Special Administrative Measures】

Where foreign investors and their investments are to be granted a treatment less favorable than that granted to Chinese investors and their investments, or are to be subject to additional restrictions, such treatment or restrictions shall be provided in the form of laws, administrative regulations or decisions of the State Council, and shall be included into the Catalogue of Special Administrative Measures.

Article 23 【Procedures for Catalogue Formulation】

The Catalogue of Special Administrative Measures shall be formulated and promulgated by the State Council in a unified manner.

The foreign investment regulatory authorities under the State Council shall, in conjunction with other authorities concerned, propose to formulate or adjust the Catalogue of Special Administrative Measures in accordance with the multilateral, bilateral or regional investment treaties, conventions and agreements concluded by the State, the administrative regulations and decisions of the State Council, and submit the same to the State Council for deliberation.

Article 24 【Classification of Catalogue】
The Catalogue of Special Administrative Measures shall be classified into two categories: Catalogue of the Prohibited Investment and Catalogue of the Restricted Investment.

The Catalogue of the Restricted Investment shall list in details the restrictions on foreign investment.

Article 25 【Catalogue of the Prohibited Investment】

Foreign investors may not invest in the fields specified in the Catalogue of the Prohibited Investment.

Where a foreign investor directly or indirectly holds shares, equity, shares in property, voting rights or other rights and interests in a domestic enterprise, the said domestic enterprise may not invest in the fields specified in the Catalogue of the Prohibited Investment, unless otherwise provided by the State Council.

Article 26 【Catalogue of the Restricted Investment】

The Catalogue of the Restricted Investment includes the following circumstances:

1. The investment with an amount exceeding the threshold stipulated by the State Council; and

2. The fields restricted for foreign investments.

Where the circumstances as listed in the Catalogue of the Restricted Investment is involved in the foreign investment, the conditions provided in the Catalogue of the Restricted Investment shall be met, and a foreign investment entry permit shall be applied from the foreign investment regulatory authorities in accordance with the Law.

Section 2 Entry Permission

Article 27 【Application for Foreign Investment Entry Permit】

For any investment provided in Item 1, Paragraph 1 of Article 26 of the Law, an application for an entry permit shall be filed with the foreign investment regulatory authorities under the State Council.

For any investment provided in Item 2, Paragraph 1 of Article 26 of the Law, an application for an entry permit shall be filed with the foreign investment regulatory authorities under the State Council or the foreign investment regulatory authorities under the people's government of a province, autonomous region or municipality directly under the central government. The specific authorization scopes on granting entry permission shall be provided by the State Council.

Article 28 【Calculation of Investment Amount on a Accumulated Basis】

A foreign investor shall apply for an entry permit in accordance with this Law if it repeatedly invests in the same investment project within two years, and the accumulative amount of the investment reaches the threshold prescribed in the Catalogue of the Restricted Investment.

Article 29 【Amount of Financing Included in Investment Amount】

Where a foreign investor directly or indirectly provides financing with a term one year or longer to a domestic enterprise in which the foreign investor holds the equity, the amount of financing shall be included into the investment amount.
Article 30 【Materials Required for Application for Entry Permit】

A foreign investor shall submit the following materials when applying for an entry permit with the foreign investment regulatory authorities in accordance with Article 27 【Application for Foreign Investment Entry Permit】 hereof:

1. A written application letter, covering:

   (1) Profiles of the foreign investor and its actual controller;

   (2) Basic information on the foreign investment, including the investment amount, investment field, investment region, form of investment, percentage and form of capital contribution, etc.;

   (3) Description on compliance with the requirements of the special administrative measures;

   (4) Impacts of the investment on energy resources, technical innovation, employment, environment protection, production safety, regional development, administration of capital accounts and industrial development;

   (5) Description on whether state security review and anti-monopoly review will be triggered;

   (6) Relevant licenses issued by the industry regulatory authorities if ex ante industry licensing is required;

   (7) Information on the form of organization, governance structure of a foreign-invested enterprise where the establishment or change of the foreign-invested enterprise is involved; and

   (8) Notification and the ways of service.

2. Documents and supporting materials relating to the information contained in the written application letter; and

3. Statements and declarations made by the foreign investor and the actual controller thereof, and their commitments on the authenticity and completeness of the application materials.

Foreign investment regulatory authorities may require a foreign investor to supplement other materials relating to the contents provided in the preceding paragraphs.

Article 31 【Application Acceptance】

The foreign investment regulatory authorities shall accept an application for entry permit and issue an acknowledgement of application acceptance to the applicant if the application materials are complete and in the statutory form.

If the application materials are incomplete or are not in the statutory form, the foreign investment regulatory authorities shall inform the applicant on the spot or within five working days of all the materials to be supplemented or corrected at one time. If no such notification within the due time limit was given to the applicant, the application shall be deemed to be accepted from the date when the application materials were received by the foreign investment regulatory authorities.

Article 32 【Factors to be Reviewed】

Foreign investment regulatory authorities shall conduct entry review in terms of the following aspects:
1. Impact on the state security;

2. Whether the conditions provided in the Catalogue of Special Administrative Measures are satisfied;

3. Impacts on energy resources, technical innovation, employment, environmental protection, production safety, regional development, administration of capital accounts, competition, public interests, etc.;

4. Actual impact on and control over the industrial development;

5. Obligations under international treaties;

6. Profiles of the foreign investor concerned and the actual controller thereof; and

7. Other factors provided by the State Council.

Article 33【Interplay between Entry Permit and Industry Licensing】

Where the foreign investment involves a field for which an application for ex ante industry licensing is required, foreign investment regulatory authorities shall state the feasibility of obtaining the industry licensing in its review decision.

Where the foreign investment involves a field for which an application for non-ex ante industry licensing is required, foreign investment regulatory authorities shall, when conducting the review, consult and seek opinions from the regulatory authorities in charge of the industries concerned. The regulatory authorities in charge of the industries concerned shall issue written opinions on the review, and foreign investment regulatory authorities shall state such opinions in its review decision.

Article 34【Transition between Entry Permission and Security Review】

The foreign investment regulatory authorities shall suspend the review process and notify in writing the applicant concerned to submit an application for state security review if the foreign investment concerned is discovered to endanger or might endanger the state security during the entry review, the foreign investment regulatory authorities under the people's government of a province, autonomous regions or municipality directly under the central government which is conducting the entry review shall report relevant information to the foreign investment regulatory authorities under the State Council. The foreign investor concerned shall submit an application for the state security review under Article 4【State Security Review】of the Law, unless the applicant withdraws its application for entry permit.

Article 35【Review Period】

Foreign investment regulatory authorities shall complete the review of an application for market entry permit within 30 business days from acceptance of the application. For a complicated application, the review period may be extended by 30 business days.

In the case of the circumstances provided in Article 34【Transition between Market Entry Permission and Security Review】of this Law and national security review procedures have been launched, the period for national security review will not be calculated into the review period prescribed in the preceding paragraph.

Article 36【Review Decision】
For foreign investment matters, foreign investment regulatory authorities shall make written decisions on approval, conditionally approval or disapproval in accordance with the law, and shall notify the applicants of such decisions; reasons shall be provided for any decision on conditionally approval or disapproval.

Article 37【Types of Additional Conditions】

Foreign investment regulatory authorities may attach to review decisions with one or more conditions as follows:

1. Divestiture of assets or business;
2. Restriction on shareholding ratio;
3. Requirement on operation period;
4. Restriction on investment regions;
5. Requirements on the proportion or amount of local employees; and
6. Other requirements provided by the State Council.

When imposing the aforesaid one or more conditions, foreign investment regulatory authorities shall identify such condition(s) in the review.

Article 38【Soliciting Opinions】

When reviewing application for market entry permit, foreign investment regulatory authorities may solicit opinions from relevant authorities, local governments and other interested parties.

Article 39【Soliciting Public Opinions】

When reviewing application for market entry permit, foreign investment regulatory authorities may solicit opinions from the public by holding a discussing meeting, public hearing or other ways when matters of such application might have significant impact on public interests.

Article 40【Opportunity for Defense】

If foreign investment regulatory authorities propose to conditionally approve or disapprove of an application, such foreign investment regulatory authorities shall give foreign investor an opportunity to defend itself.

Article 41【Valid Period for an Approval Decision】

If foreign investors fail to conduct investment within one year from the date of approval, they shall explain to the foreign investment regulatory authorities who rendered such approval decision, and, if such foreign investment regulatory authorities decides an reapplication is necessary, foreign investors shall reapply for market entry permit.

Article 42【Formalities】

If, according to this Law, foreign investments are subject to market entry permit, foreign investors shall carry out formalities of registration, foreign exchange, taxation, etc. after obtaining market entry permit.
If a market entry permit is not required for a foreign investment, the foreign investor may carry out formalities of registration, foreign exchange, taxation, etc. in accordance with relevant laws or regulations.

Article 43【 Disclosure of Approval Decisions 】

Foreign investment regulatory authorities shall disclose their approval decisions on market entry permit for foreign investments, unless otherwise prescribed by the law.

Article 44【 Report on the Compliance with Additional Conditions 】

If foreign investments are conditionally approved of market entry permit in accordance with this Law, foreign investor or foreign-invested enterprise shall, when submitting the annual report in accordance with Section 4【 Regular Report 】of Chapter 5【 Information Report 】of this Law, simultaneously describe its business operation in compliance with the restrictive conditions of the preceding year.

Article 45【 Actual Control by Chinese Investors is Deemed as Domestic Investment 】

If a foreign investor (as provided in Item (2), Paragraph 1 of Article 11【 Foreign Investors 】of this Law) is controlled by a Chinese investor, the foreign investor may, when applying for market entry permit for its investment within the scope of the Catalogue of the Restricted within the territory of China, submit written supporting materials to apply for having its investment deemed as the investment made by the Chinese investor.

Foreign investment regulatory authorities shall, when conducting market entry permit review, review the application filed by the foreign investor in accordance with the provisions in the preceding paragraph, render the review opinions on whether or not deeming the foreign investment as the investment made by the Chinese investor, and explain such review opinions in the approval decision on market entry permit.

Article 46【 Guidelines to Foreign Investment Market Entry Review 】

The foreign investment regulatory authorities under the State Council shall develop and publish the guidelines for foreign investment market entry review.

Article 47【 Inquiry 】

Foreign investors and their interested parties may inquire the scope and procedures of foreign investment market entry permit of the foreign investment regulatory authorities provided in Article 27【 Application for Foreign Investment Market Entry Permit 】of this Law.

The foreign investment regulatory authorities shall reply within 10 business days after receipt of inquiry applications.

Chapter 4 National Security Review

Article 48【 Security Review System 】

To ensure the national security, and regulate and promote foreign investments, the State establishes a unified national security system for foreign investments, so as to review any foreign investment that endangers or might endanger the national security.

Article 49【 Joint Conference for National Security Review 】
The State establishes an inter-ministerial joint conference system for national security review for foreign investments (the "Joint Conference"), which undertakes the duty of national security review for foreign investments.

The reform and development authorities of the State Council and the foreign investment regulatory authorities of the State Council jointly act as the conveners of the Joint Conference, and specifically conduct the national security review for foreign investments together with relevant authorities involving in foreign investments.

Article 50 【Investors Applying for National Security Review】

For any foreign investment that endangers or might endanger the national security, foreign investors may apply to foreign investment regulatory authorities of the State Council for national security review.

Article 51 【Application Materials for National Security Review】

When filing an application with the foreign investment regulatory authorities under the State Council for national security review, the foreign investor concerned shall submit the following materials:

1. Written application, including
   (1) Information about the foreign investor and its actual controller and senior executives;
   (2) Basic information about the foreign investment, including the investment amount, investment field, investment area, form of investment, ratio and mode of contribution and business plan, etc.;
   (3) Description that the foreign investment endangers or potentially endangers the national security;
   (4) Information about the form of organization and governance structure, etc. of foreign-invested enterprise in the case of the establishment or change thereof.
   (5) Notification and mode of service.

2. Documents and supporting materials relating to the information contained in the written application; and

3. Statements and declarations made by the foreign investor and his/its actual controller as well as their commitments to the truthfulness and completeness of the application materials.

The foreign investment regulatory authorities under the State Council may require the foreign investor or other parties concerned to supplement relevant materials.

Article 52 【Discussion Appointment】

Prior to file an application with the foreign investment regulatory authorities under the State Council for security review, the foreign investor concerned may request to make an appointment for discussion in respect of procedural matters, so as to communicate in advance on relevant information.

Article 53 【Determining Whether National Security Review is Required】

The foreign investment regulatory authorities under the State Council shall, within 15 working days after the date when the application materials provided in Article 51 【Application Materials for National Security Review】 of the
present Law are received, notify the applicant concerned of whether the national security review is required for the foreign investment.

If the national security review is required, the foreign investment regulatory authorities under the State Council shall, within 5 working days from the date when the applicant is notified, refer the foreign investment to the Joint Conference for such review.

Article 54  【Withdrawal of an Application by the Foreign Investor Concerned】

After filing an application for national security review, the foreign investor concerned may not withdraw the application without the consent from the foreign investment regulatory authorities under the State Council.

Article 55  【Ex Officio Launch of a National Security Review】

The Joint Conference may, decide on ex officio a national security review of any foreign investment that endangers or might endanger the national security.

In the case that the authorities concerned, trade associations, enterprises in the same industry, upstream or downstream firms and the parties concerned other than a foreign investor believe that the national security review is required for the investment to be made by the foreign investor, they may propose such review to the foreign investment regulatory authorities under the State Council. If the Joint Conference believes that such review is necessary, it may decide to conduct such review.

When the Joint Conference render a decision to launch a national security review, the foreign investment regulatory authorities under the State Council shall notify in writing the foreign investor thereof.

Article 56  【National Security Review Anew】

Under any of the following circumstances, the Joint Conference may, in accordance with Article 55  【Ex Officio Launch of a National Security Review】 of the present Law, conduct national security review anew for a foreign investment that has been reviewed before:

1. The foreign investor or other parties concerned have concealed relevant information, provided false materials or had false statements during the review; and

2. The foreign investor or other parties concerned have violated the restrictive conditions attached to the review decision in the investment.

Article 57  【Factors to be Reviewed for National Security】

When conducting a national security review for a foreign investment, the following factors shall be taken into account:

1. The impact on the national security, including the domestic production capacity for the products required by national defense, domestic service delivery capacity and relevant equipment and facilities, and the impact on the security of key or sensitive national defense facilities;

2. The impact on the R & D capability for key technologies involving the national security;

3. The impact on Chinese leading position in the technologies involving the national security;
4. The impact on the dual-purpose items and technology diffusion that are subject to export/import control;

5. The impact on China's key infrastructures and key menologies;

6. The impact on the security of information and network;

7. The impact on China's long-term demands for energy, grains and other key resources;

8. Whether the foreign investment is controlled by a foreign government;

9. The impact on the national economy stable running;

10. The impact on the public and public order; and

11. Any other factor that the Joint Conference believes necessary to be considered.

Article 58【Types of Decisions on National Security Review】

The State Council or the Joint Conference may, based on the result of a national security review, render any of the following decisions:

1. Approval for a foreign investment that does not endanger the national security;

2. Conditional approval for a foreign investment that endangers or might endanger the national security, but such danger can be removed by imposing restrictive conditions; and

3. Disapproval for a foreign investment that endangers or might endanger the national security, and such danger cannot be removed by imposing restrictive conditions.

Article 59【Obligation to Cooperate in the National Security Review】

Foreign investors and other parties concerned shall cooperate with the Joint Conference in the national security review by providing information required by the review and accepting relevant inquiry or check.

Article 60【Security Review Phases】

The national security review conducted by the Joint Conference undergoes two phases: general review phase and special review phase.

Article 61【General Review Period】

The general review shall be completed within 30 working days from the date when the foreign investment regulatory authorities propose the Joint Conference to have a review in accordance with Article 53【Determining Whether National Security Review is Required】of the present Law or from the date when the Joint Conference decides to conduct the national security review in accordance with Article 55【Ex Officio Launch of a National Security Review】of the present Law.

Article 62【Opinions on General Review】
Upon the general review, if the Joint Conference believes that the foreign investment under the review does not endanger the national security, it shall form review opinions and notify in writing the foreign investment regulatory authorities thereof; otherwise it shall decide to conduct a special review, and notify in writing the foreign investment regulatory authorities thereof.

The foreign investment regulatory authorities thereof shall, within 5 working days after receiving the review opinions of the Joint Conference, notify in writing the applicant and the parties concerned.

Article 63【Special Review Period】

The special review shall be completed within 60 working days from the date when the special review procedures are launched in accordance with Article 62【Opinions on General Review】 of the present Law.

The Joint Conference shall, after launching the special review procedures, organize the security assessment on the foreign investment under the review, and review such investment in light of the assessment opinions.

Article 64【Opinions on Special Review】

In the case that the Joint Conference, after the special review, believes that the foreign investment does not endanger the national security, it shall issue written review opinions and notify in writing the foreign investment regulatory authorities under the State Council thereof; such authorities shall, within 5 working days after receiving the review opinions of the Joint Conference, notify in writing the applicant and the parties concerned.

During the special review, if the Joint Conference believes that the foreign investment endangers or might endanger the national security, it shall issue written review opinions and report the case to the State Council for a decision, in case the foreign investment passes the review, the foreign investment regulatory authorities under the State Council shall notify in writing the applicant and the parties concerned; otherwise the State Council shall render a disapproval decision.

Article 65【Restrictive Conditions】To avoid the possible danger of a foreign investment to the national security, the applicant concerned may, prior to the review decision is rendered, propose restrictive conditions for the foreign investment to the foreign investment regulatory authorities under the State Council.

The Joint Conference shall assess the effectiveness and feasibility of such proposal.

The Joint Conference may make necessary adjustment to the foreign investment based on the assessment result and restrictive conditions agreed upon with the parties concerned, so as to remove the possible danger thereof the foreign investment to the national security.

Article 66【Conditional Approval】Upon the assessment and agreement with the parties concerned, the Joint Conference may render a decision on conditional approval, and notify in writing the foreign investment regulatory authorities under the State Council to have the applicant and the parties concerned informed thereof.

Article 67【Supervision over Implementation of Restrictive Conditions】

For a foreign investment that passes under restrictive conditions the national security review in accordance with the present Law, the foreign investor and foreign-invested enterprise concerned shall, when submitting the annual report in accordance with Section 4【Regular Report】 , Chapter 5【Information Reporting】 of the present Law, simultaneously describe the information about the compliance with the restrictive conditions last year.
The foreign investment regulatory authorities under the State Council shall, in conjunction with the authorities concerned, take appropriate measures to supervise the implementation of the restrictive conditions. For the party concerned that violates the restrictive conditions, which endangers or might endanger the national security, the foreign investment regulatory authorities under the State Council may propose anew the national security review in accordance with Article 56 【Security Review Anew】 of the present Law.

Article 68 【Guide to Security Review】

The foreign investment regulatory authorities under the State Council shall develop and release the guide to the national security review of foreign investments.

Article 69 【Annual Report on Security Review】

The foreign investment regulatory authorities under the State Council shall develop and release the annual report on the national security review of foreign investments.

Article 70 【Provisional Measures for Security Review】

During the ongoing of a national security review, the foreign investment regulatory authorities under the State Council may take necessary provisional measures for the national security.

Article 71 【Compulsory Measures for Security Review】

In the case that a foreign investment has caused or might cause serious dangers to the national security, as determined by the national security review, the foreign investment regulatory authorities under the State Council shall order the party concerned not to make or terminate the foreign investment, or to take effective measures such as transfer of relevant equity or assets, so as to remove or avoid the danger caused by the foreign investment to the national security.

The foreign investment regulatory authorities under the State Council may, in conjunction with the authorities concerned, take necessary measures to remove or avoid the danger caused by the foreign investment to the national security.

Article 72 【Legal Liability to be Undertaken】

In the case that a foreign investor makes investments without applying for the national security review, the foreign investor shall undertake the losses caused to its investments due to the measures taken by the foreign investment regulatory authorities under the State Council in accordance with Article 70 【Provisional Measures for Security Review】 and Article 71 【Compulsory Measures for Security Review】 of the present Law.

Article 73 【Administrative Reconsideration and Litigation Exemption】

No administrative reconsideration and litigation may be lodged against any decision on the national security review rendered in accordance with the present Chapter.

Article 74 【Security Review System for Foreign Investments in Financial Sectors】 The security review system for foreign investments in financial sectors shall be separately formulated by State Council.

Chapter 5 Information Reporting

Sector 1 General Provisions
Article 75【Information Reporting System】

The State establishes a sound foreign investment information reporting system, so as to entry to the nationwide foreign investment status and operation conditions of foreign-invested enterprises in a timely, accurate and comprehensive manner, and provide basis for formulating and improving laws, regulations and policies governing foreign investments, promoting and guiding foreign investments.

Article 76【Information Reporting Management】

Foreign investment regulatory authorities of the State Council shall establish the foreign investment information reporting system, formulate the information reporting management system, and take charge of the summarization, analysis, release and external exchange of foreign investment information nationwide.

Article 77【Foreign Investment Analysis Reports】

Foreign investment regulatory authorities of the State Council shall prepare and publish the annual foreign investment analysis reports, including the industrial analysis, economic benefits, social influence and policy suggestions on foreign investments.

Article 78【Information Reporting Entities】

Foreign investors and foreign-invested enterprises shall perform the information reporting obligations in accordance with the law.

Article 79【Information Reporting Routes】

Foreign investors and foreign-invested enterprises shall report information to foreign investment regulatory authorities through the foreign investment information reporting system.

Article 80【Truthful Reporting】

Foreign investors and foreign-invested enterprises shall provide information in a truthful, accurate and complete manner in accordance with this Law, and the information provided may not contain false records, misleading statements or major omissions.

Article 81【Portfolio Investment Reporting】

In the event of purchasing the shares of domestically listed companies, foreign investors shall, in accordance with the Securities Law and the relevant provisions of the securities regulatory authorities of the State Council, perform the reporting, announcement and other statutory obligations.

In the event of purchasing more than 10% of the shares of domestically listed companies, or less than 10% but causing the change of the controlling power of domestically listed companies, foreign investors shall perform reporting obligations in accordance with this Chapter.

In the event of purchasing less than 10% of the shares of a domestically listed company and not causing the change of the controlling power of the domestically listed company, the relevant foreign investor shall perform the reporting obligations in accordance with Article 93 herein.

Article 82【Reporting Information Disclosure】
Foreign investment regulatory authorities of the State Council may publicly disclose the information provided by foreign investors and foreign-invested enterprises through the foreign investment information system.

Article 83 【Reporting Information Inquiry】

Citizens, legal persons or other organizations may apply to foreign investment regulatory authorities for inquiry of foreign investment information in accordance with the law.

Article 84 【Exceptions in Information Disclosure】

The foreign investment information that involves business secrets or personal privacy of foreign investors or foreign-invested enterprises will not be disclosed, unless otherwise stipulated by laws or administrative regulations.

Section 2 Reporting of Foreign Investment Items

Article 85 【Information Reporting Time】

Foreign investors or foreign-invested enterprises shall, before the implementation of their investments or within 30 days from the date of the implementation of their investments, provide an information report in accordance with this Section.

Where there are registration requirements on the implementation of foreign investment in laws or regulations, the date when the corresponding registration is completed shall be deemed as the date when the investment is implemented; and where there are no registration requirements, the date when the investment transaction is completed shall be deemed as the date when the investment is implemented.

Article 86 【Reporting of Actual Investment Changes】

Foreign investors shall submit an information report before the implementation of their investments, and in the event of any change of their actual investments, report the change within 30 days from the date when their investments are implemented.

Article 87 【Content of Information Reports】

Where the investment made by a foreign investor in China involves the establishment or change of a foreign-invested enterprise, the foreign-invested enterprise shall report the following information:

1. The basic information of the foreign investor, including the name, domicile, registration place, actual controller, organizational structure, main business, contact persons and contact details;

2. The basic information of the foreign investment, including the investment amount, investment sources, investment fields, investment regions, investment time, investment methods, ratio and ways of contributions, and the relevant administrative license obtained or record-filing, and

3. The basic information of the foreign-invested enterprise, including the name, domicile, organizational code, registration place, equity structure, investment amount, registered capital, actual controller, organizational structure, business scope, contact persons and contact details.

Where the foreign investment made by the foreign investment in China does not involve the establishment or change of a foreign-invested enterprise, the information as set out in Item 1 and Item 2 of the preceding paragraph shall be reported.
Foreign investment regulatory authorities may require the foreign investor or foreign-invested enterprise to submit supplementary materials relating to the information as specified in the preceding two paragraphs.

Article 88 【Report on Entry Permit】

Where foreign investors need to obtain an entry permit in accordance with this Law, they shall perform the reporting obligations within 30 days after obtaining the entry permit. In addition to reporting the information as specified in Article 87 herein, foreign investors shall also report the information on their obtaining of the entry permit.

Section 3 Report of Change to Foreign Investment Items

Article 89 【Content of the Report of Changes】

In the event of any changes to foreign investment items, the relevant foreign investor or a foreign-invested enterprise shall submit a report of such changes within 30 days from the occurrence of changes.

The changes as mentioned in the preceding paragraph include:

1. Change of the name, domicile, registration place, actual controller, organizational structure, main business, contract persons or contact details of the foreign investor;

2. Change of the identification of the foreign investor due to merger, division, bankruptcy, dissolution, cancellation, revocation or change of nationality, or death;

3. Change of the investment amount, investment sources, investment fields, investment regions, investment time, investment methods, ratio and ways of contributions, the relevant administrative license obtained or record-filing of foreign investment;

4. Transfer, leasing, mortgage or pledge of foreign investment interests;

5. Change of the name, domicile, organizational code, registration place, equity structure, investment amount, registered capital, actual controller, organizational structure, business scope, contact persons and contact details of the foreign-invested enterprise; and

6. Change of the identification of the foreign-invested enterprise due to merger, division, bankruptcy, dissolution, cancellation, revocation or registration;

Foreign investment regulatory authorities may require foreign investors or foreign-invested enterprises to submit supplementary materials relating to the information as specified in the preceding paragraph.

Article 90 【Triggering of New Entry Permit】

In case of occurrence of any changes as specified in Article 89 herein, which triggers the new foreign investment entry permit, foreign investors shall apply for the entry permit in accordance with this Law.

Article 91 【Violations of Entry Permit Conditions】

In case of occurrence of any changes as specified in Article 89 herein, which may violate the conditions for foreign investment entry permit, foreign investors shall explain the details and propose solutions at the time of submitting the report of changes. Foreign investment regulatory authorities that issue the entry permit may carry out investigation in light of specific circumstances, and when necessary, require foreign investors to adopt remedial measures or re-apply for the entry permit in accordance with this Law.
Article 92 【Content of Annual Reports】

Where the investment made by a foreign investor involves the establishment or change of a foreign-invested enterprise, the foreign-invested enterprise shall, prior to April 30 each year, submit an information report for the previous year, and the information report shall include:

1. The basic information of the foreign investor, including the name, domicile, registration place, actual controller, organizational structure, main business, contact persons and contact details;

2. The basic information of the foreign investment, including the investment amount, investment sources, investment fields, investment regions, investment time, investment methods, ratio and ways of contributions, and the relevant administrative license obtained or record-filing;

3. The basic information of the foreign-invested enterprise, including the name, domicile, organizational code, registration place, equity structure, investment amount, registered capital, actual controller, organizational structure, business scope, contact persons and contact details;

4. The information on business conditions of the foreign-invested enterprise for the previous year, including the industry sectors, main products or services, import and export, employment, tax payments, R&D, etc.;

5. Financial accounting information of the foreign-invested enterprise for the previous year, including assets, liabilities, owners' equity, revenue, expenses, profit, etc.;

6. The investment and import and export trade carried out between the foreign-invested enterprise and the foreign investor and his/her affiliated parties in the previous year; and

7. Major lawsuits, administrative reconsideration, or administrative or criminal penalties involved in China and complaints raised according to Chapter 8 herein by the foreign-invested enterprise in the previous year.

Where the investment made in China by a foreign investor does not involve the establishment or change of a foreign-invested enterprise, the foreign-invested enterprise shall submit an annual report before April 30 each year, and the report shall include the information as specified in Item 1 and Item 2 of the preceding paragraph and the transactions and return of investment assets in the previous year.

Foreign investment regulatory authorities may require the foreign investor or foreign-invested enterprise to submit supplementary materials relating to the information as specified in the preceding two paragraphs.

Article 93 【Content of Annual Reports – Portfolio Investment】

Where a foreign investor purchases less than 10% of the shares of a domestically listed company and does not cause the change of the controlling power of the domestically listed company, the foreign investor shall, prior to April 30 each year, submit an annual report which contains the following information:

1. The name, domicile, registration place, actual controller, organizational structure, main business, contract persons or contact details of the foreign investor;

2. The name, stock code and business scope of the listed company; and

3. Stock trading in the previous year.
Article 94 【Quarterly Reports of Key Foreign-invested Enterprises】

As for a foreign-invested enterprise controlled by a foreign investor, if its total assets, sales or operating revenue exceeds RMB 10 billion or the number of its subsidiaries exceeds 10, the foreign-invested enterprise shall report the information on its business conditions and its financial accounting information on a quarterly basis within 30 days after the end of each quarter.

Article 95 【Integrated Reports】

A foreign-invested enterprise shall integrate the information relating to the domestic enterprises directly or indirectly controlled thereby and report the same in a unified manner.

Section 5 Foreign Investment Statistics

Article 96 【Foreign Investment Statistics】

Foreign investment regulatory authorities of the State Council shall, in accordance with the Statistics Law and the relevant regulations of the State, establish and improve the statistical investigation system and statistical standards for foreign investment, and organize, coordinate and manage the statistical investigation of foreign investments nationwide. In addition, foreign investment regulatory authorities shall, based on the information reports of foreign investors or foreign-invested enterprises, carry out statistical analysis, release statistical data, and shall manage archives, share data and information, conduct external exchange in a sound manner.

Article 97 【Statistical Reports】

Foreign investment regulatory authorities of the State Council shall summarize the relevant contents in the information reports submitted by foreign investors and foreign-invested enterprises, and prepare and publish foreign investment statistical reports.

Article 98 【Information Provision Obligations】

When carrying out the foreign investment statistical work, foreign investment regulatory authorities of the State Council may require the related localities or departments to provide relevant information and data in accordance with the law, and the related localities or departments shall cooperate in this regard.

Article 99 【Sharing of Statistical Data】

Foreign investment regulatory authorities of the State Council shall provide relevant departments with foreign investment statistical data in accordance with the law.

Chapter 6 Investment Promotion

Article 100 【Investment Promotion Mechanism】

The State will formulate the foreign investment development strategy, establish and improve the foreign investment promotion mechanism, guide foreign investments to be commensurate with the national economy and social development, and enhance the quality and raise the quality and level in utilization of foreign investments.

Article 101 【Investment Promotion Policies】
The State will formulate the policy measures in terms of finance, taxation, financing, talents, industry, trainings and R&D in accordance with the law so as to promote foreign investments.

Article 102  【Industrial and Regional Policies】

The State will, in light of domestic economic and social development and the situation of industrial transfer, facilitate foreign investors to invest in the State-encouraged industries, special economic zones, minority autonomous regions and underdeveloped regions, and establish foreign-invested enterprises featuring advanced products, services or technologies.

Article 103  【Investment Promotion Services】

The State will establish a public service system for foreign investments, and provide foreign investors and the general public with investment promotion services in terms of foreign investment-related laws, regulations, policy measures, projects and information.

Article 104  【Investment Promotion Order】

The State will promote the establishment of a reasonable and standardized investment promotion order.

Foreign investments shall not be encouraged at the expense of damaging national security, public interests, public health, ecological environment or rights and interests of laborers.

Article 105  【International Investment Promotion Institutions】

The State supports international investment promotion institutions to organize and conduct foreign investment promotion activities. International investment promotion institutions shall, under the guidance of foreign investment regulatory authorities of the State Council, perform the following duties and obligations:

1. Carry out the State's strategic plans and policy measures regarding foreign investments;

2. Establish and implement a nationwide investment environment assessment system;

3. Establish a nationwide platform for public information, projects and consulting services of foreign investments;

4. Conduct nationwide investment promotion activities and investment promotion trainings;

5. Establish oversea representative offices for investment promotion;

6. Conduct exchanges and cooperation with investment promotion institutions and international investment promotion organizations from other countries or regions; and

7. Accept, coordinate and handle the complaints from foreign investors, and assist in protecting the legal rights and interests of foreign investors and foreign-invested enterprises.

Article 106  【International Investment Exchange Platform】

International investment promotion institutions shall establish international investment exchange platforms to promote and facilitate cross-border investments.

Article 107  【Investment Information Website and Database】
International investment promotion institutions shall establish and perfect international investment promotion websites and international investment project database.

Article 108 【Local Investment Promotion】

The State encourages all local governments to establish and improve the working mechanism of international investment promotion, and set up special investment promotion institutions.

Article 109 【Special Economic Zones】

The State Council may set up special economic zones to promote foreign investments and further open up.

Article 110 【Administration of Special Economic Zones】

Foreign investment regulatory authorities of the State Council and other regulatory authorities shall, in accordance with their respective duties, conduct guidance to, and services and administrations for special economic zones.

Chapter 7 Investment Protection

Article 111 【Expropriation】

Except under special circumstances, the State will not expropriate foreign investments.

In the event of expropriating foreign investments for the needs of public interests, the expropriation shall proceed in accordance with the statutory procedure and compensations shall be made according to the law.

Article 112 【Requisition】

In order to meet such urgent needs as rescuing or providing disaster relief, foreign investors’ or foreign-invested enterprises’ immovable property or movable property in China may be requisitioned within the limits of power and in compliance with the procedures prescribed by the law.

In the event of requisitioning foreign investors’ or foreign-invested enterprises’ immovable property or movable property in China, the State shall make a reasonable payment in accordance with the law. After the requisitioned immovable property or movable property has been used, they shall be returned to the parties from whom such immovable property or movable property was requisitioned, and if such requisitioned immovable property or movable property was damaged or lost, compensations shall be made in accordance with the law.

Article 113 【State Compensation】

Where State organs or their functionaries illegally exercise their functions and powers and therefore cause damages to foreign investors or foreign-invested enterprises, such foreign investors or foreign-invested enterprises are entitled to claim for compensations in accordance with the law.

Article 114 【Transfer】

Unless otherwise prescribed by laws or administrative regulations, the State will allow free inbound or outbound transfer of the legal property of foreign investors such as capital contributions, profits, incomes from asset disposal, or compensations or indemnities acquired according to the law.
Article 115【Transparency】

The State will timely publish foreign investment-related laws, regulations and judicial decisions in accordance with the law.

Foreign investors and foreign-invested enterprises may participate in the formulation process of laws and regulations and make comments in accordance with the law.

Article 116【Intellectual Property Protection】

The State protects the intellectual property of foreign investors and foreign-invested enterprises in accordance with the law.

Article 117【Commerce Chambers and Industry Associations】

Foreign investors and foreign-invested enterprises may lawfully establish commerce chambers or industry associations pursuant to the law, voluntarily join such commerce chambers or industry associations, conduct relevant activities within the scope prescribed by laws, regulations and their articles of association, and protect their own rights and interests.

Article 118【Dispute Resolution】

The disputes arising from investment or operation activities of foreign investors in China may be resolved through negotiation, mediation, lodging complaint, applying for reconsideration, arbitration or litigation in accordance with relevant laws or regulations.

Chapter 8 Coordination and Handling of Complaints

Article 119【Mechanism for Coordination and Handling of Complaints】

The State will establish a mechanism for coordination and handling of foreign investment complaints, which is responsible for coordination and handling of investment complaints between foreign investors or foreign-invested enterprises and administrative organs.

Article 120【Duties of the Center of Coordination and Handling of Complaints】

International investment promotion institutions will establish a center to coordinate and handle foreign investment complaints with a major impact nationwide, and perform the following duties:

1. Accept and/or forward foreign investment complaints;

2. Coordinate with relevant local governments or authorities in handling of foreign investment complaints;

3. Urge and/or inspect the implementation of the solutions for foreign investment complaints;

4. Provide suggestions to relevant local governments or authorities to improve their policies or work in accordance with the specific circumstances of foreign investment complaints; and

5. Study and analyze foreign investment complaints, and submit a report thereon to foreign investment regulatory authorities of the State Council.
Article 121 【Request for Assistance】

According to the needs of coordination and handling of foreign investment complaints, the national center for coordination and handling of foreign investment complaints may request relevant local governments or authorities to explain the circumstances, and provide documents and other necessary assistance.

Article 122 【Coordination and Handling Suggestions】

Where the national center of coordination and handling of foreign investment complaints gives suggestions to relevant local governments or authorities in accordance with Article 120 herein, the relevant local governments or authorities shall deal with such suggestions and provide timely feedbacks.

Article 123 【Institutions for Coordination and Handling of Complaints】

Local people's governments at or above the country level will, in accordance with actual needs, establish the institutions for coordination and handling of foreign investment complaints, accept and coordinate in handling the complaints within their respective jurisdictions which are lodged against administrative organs by foreign investors or foreign-invested enterprises regarding investment disputes, and take charge of handling the complaints forwarded by the national center of coordination and handling of foreign investment complaints.

Article 124 【Principles for Coordination and handling of Complaints】

The institutions for coordination and handling of foreign investment complaints shall follow the principles of fairness, equity and lawfulness and comply with this law and other relevant laws and regulations when coordinating and handling complaints.

Article 125 【Truthful Complaints】

Foreign investors and foreign-invested enterprises shall truthfully state the circumstances, provide the corresponding evidence, and cooperate with the institutions on coordination and handling of foreign investment complaints to conduct the relevant work.

Chapter 9 Supervision and Inspection

Article 126 【Supervision and Inspection】

Foreign investment regulatory authorities shall strengthen the supervision and inspection of compliance with this Law by foreign investors and foreign-invested enterprises.

Other administrative authorities in charge of industry and commerce, taxation, foreign exchange and audit shall perform their functions of supervision and inspection in accordance with the law.

Article 127 【Launch of Supervision and Inspection】

Under any of the following circumstances, foreign investment regulatory authorities may launch supervision and inspection towards foreign investors and foreign-invested enterprises:

1. Conducting sampling inspections;

2. Conducting inspections upon reports from whistleblowers;
3. Conducting inspections according to the suggestions and information of relevant authorities or judicial organs; and

4. Other inspections launched according to their functions and powers.

Article 128 【Sampling Inspections】

Sampling inspections are divided into non-orientation sampling inspections and orientation sampling inspections.

Non-orientation sampling inspections means the inspected parties and items are randomly determined by foreign investment regulatory authorities; while orientation sampling inspections means the inspected parties are determined by foreign investment regulatory authorities in accordance with the type, business scale, industry, geographical regions and other specific conditions of foreign investment.

Article 129 【Reports】

In case of discovering suspected violation of this Law, any entity or individual shall have the right to report such violation to foreign investment regulatory authorities.

The whistleblowers may require foreign investment regulatory authorities to keep them confidential.

Article 130 【Verification of Facts in Reports】

The whistleblowers shall provide their basic information, the basic information of the parties being reported against, and the relevant facts and evidence suspected of violating this Law.

Article 131 【Aspects Subject to Inspection】

The inspection shall cover the following aspects:

1. Whether the investments are made in the fields as listed in the Catalogue of the Prohibited;

2. Whether the investments are made in the fields as listed in the Catalogue of the Restricted without approval;

3. Whether the conditions attached to the market entry permit decision are complied with;

4. Whether the restrictive conditions attached to the national security review decision are complied with;

5. Whether information reporting obligations are performed;

6. Whether the decision on administrative penalty made by foreign investment regulatory authorities is complied with;

7. Whether there are any acts which endanger national security or public interests; and

8. Whether there are other violations of this Law.

Article 132 【Inspection Methods】
In conducting the inspection work, foreign investment regulatory authorities may adopt the methods such as network monitoring, questionnaire or on-site inspection.

Article 133【On-site Inspection】

When foreign investment regulatory authorities conduct on-site inspection, the number of inspecting personnel shall not be less than two, and they shall produce their credentials when inspecting. The inspecting personnel shall complete the On-site Inspection Record, truthfully record the inspection details, and ask the inspected enterprises or personnel to sign or affix their official seal on the On-site Inspection Record. Where the signature or official seal cannot be obtained, the inspecting personnel shall indicate the reasons, and may, when necessary, invite the relevant personnel to act as witnesses.

Article 134【Professional Conclusions】

According to the inspection needs, foreign investment regulatory authorities may authorize accounting firms, tax firms, law firms and other professional agencies to provide capital verification, audit, authentication, consultancy or other professional services.

Foreign investment regulatory authorities may adopt the inspection or verification results provided by other government authorities.

Article 135【Cooperating with Inspection】

During the process of inspection, foreign investment regulatory authorities may check the relevant materials in accordance with the law or require the inspected parties to provide relevant materials, and the inspected parties shall truthfully provide such materials.

Article 136【Inspection Disciplines】

When conducting inspection, foreign investment regulatory authorities may not hinder the normal production and operation courses of the inspected parties, accept the money or services provided by the inspected parties, or seek other illegal gains.

Article 137【Inspection Handling】

Where it is found during the process of inspection that the inspected party may have violated this Law, foreign investment regulatory authorities shall conduct investigation in accordance with the law, and if such violation has been confirmed after investigation, the penalty shall be imposed in accordance with provisions of Legal Liability prescribed by Chapter 10 herein.

Article 138【Information Sharing】

Foreign investment regulatory authorities and other relevant administrative authorities shall share the information of foreign investment administration.

Article 139【Local Inspections】

Foreign investment regulatory authorities of the State Council shall be responsible for guiding the supervision and inspection of foreign investments nationwide, and conduct or organize local foreign investment regulatory authorities to conduct the inspection work according to actual needs.
Foreign investment regulatory authorities of people's governments at or above the county level shall be responsible for organizing or conducting the foreign investment inspection work within their respective jurisdictions.

Article 140 【Guidance and Supervision of Local Inspections】

Foreign investment regulatory authorities at the upper level shall strengthen the guidance and supervision of the inspection work conducted by foreign investment regulatory authorities at the lower level, and correct the relevant illegal activities in a timely manner.

Article 141 【Integrity Files】

Foreign investment regulatory authorities of the State Council will establish a foreign investment integrity file system.

The information recorded in the foreign investment integrity file system shall include the information that is formed in the establishment, registration, production and operation, and other activities of foreign investors or foreign-invested enterprises, and the information that are obtained by foreign investment regulatory authorities or other administrative authorities during supervision or inspection which reflect the integrity status of foreign investors or foreign-invested enterprises.

The specific measures for administration of the foreign investment integrity file system shall be separately formulated by the State Council.

Article 142 【Disclosure of Integrity Information】

Foreign investment regulatory authorities may disclose the integrity information of relevant foreign investors and foreign-invested enterprises in accordance with the law.

The public may apply for inquiry of the integrity information of foreign investors and foreign-invested enterprises.

The integrity information disclosed in accordance with the preceding two paragraphs or disclosed to other parties may not contain the business secrets or personal privacy of foreign investors or foreign-invested enterprises, unless otherwise stipulated by laws or administrative regulations.

Article 143 【Correction of Integrity Information】

Foreign investors and foreign-invested enterprises may check their own integrity information in the foreign investment integrity file system. If they believe the relevant information recorded is incomplete or wrong, they may produce the relevant credentials and apply for correction. If the relevant information is verified to be incomplete or wrong, the correction will be made.

Chapter 10 Legal liability

Article 144 【Investments in the Fields as Listed the Catalogue of the Prohibited】

Where a foreign investor invests in a field as listed in the Catalogue of the Prohibited, foreign investment regulatory authorities of the people's government of the province, autonomous region or centrally-administered municipality where the investment is made shall order to cease the investment, require the foreign investor to dispose of his/her equity or other assets within a prescribed time limit, confiscate his/her illegal gains, and impose a fine of more than RMB 100,000 but less than RMB 1 million or less than 10% of the illegal investment amount.
Article 145【Violation of Provisions on Market Entry Permit】

Where a foreign investor invests in a field as listed in the Catalogue of the Restricted without approval, foreign investment regulatory authorities of the people's government of the province, autonomous region or centrally-administered municipality whereat the investment is made shall order to cease the investment, require the foreign investor to dispose of his/her equity or other assets within a prescribed time limit, confiscate his/her illegal gains, and impose a fine of more than RMB 100,000 but less than RMB 1 million or less than 10% of the illegal investment amount.

Where a foreign investor violates the conditions attached to the foreign investment market entry permit, the foreign investment regulatory authorities that have made the permit decision shall order the foreign investor to make corrections within the prescribed time limit, and impose a fine of more than RMB 50,000 but less than RMB 500,000 or less than 5% of the investment amount; and if the foreign investor fails to make corrections within the prescribed time limit or the violation is substantial, foreign investment regulatory authorities may revoke the market entry permit.

Article 146【Violation of Provisions on National Security Review】

Where a foreign investor falls under either of the following circumstances, foreign investment regulatory authorities of the State Council may order the foreign investor to make corrections within the prescribed time limit, impose a fine of more than 100,000 yuan but less than 1 million yuan or less than 10% of the illegal investment amount, and re-activate national security review in accordance with Article 56 herein:

1. Concealing the relevant information, providing false materials or make false statements in the process of national security review; or

2. Violating the restricted conditions attached with the national security review decision.

Article 147【Administrative Legal Liability in Violation of Information Reporting Obligations】

Where a foreign investor or a foreign-invested enterprise, in violation of this Law, fails to duly perform or evades the performance of information reporting obligations, or conceals true information or provides misleading or false information at the time of information reporting, the foreign investment regulatory authorities of the people's government of the province, autonomous region or centrally-administered municipality in the place where the investment is made shall order the foreign investor or foreign-invested enterprise to make corrections with the prescribed time limit; and if the foreign investor or foreign-invested enterprise fails to make corrections with the prescribed time limit, or if the circumstance is serious, a fine of more than 50,000 yuan but less than 500,000 yuan or less than 5% of the investment amount shall be imposed.

Article 148【Criminal Legal Liability in Violation of Information Reporting Obligations】

Where a foreign investor or a foreign-invested enterprise, in violation of this Law, evades the performance of information reporting obligations, or conceals true information or provides misleading or false information at the time of information reporting, and if the circumstances are especially serious, a fine shall be imposed on the foreign investor or foreign-invested enterprise, and the person-in-charge directly responsible and other responsible personnel shall be sentenced to fixed-term imprisonment of not more than one year or criminal detention.

Article 149【Legal Liability in Avoidance Behaviors】

Where a foreign investor or a foreign-invested enterprise evades the provisions of this Law by means of shareholding on behalf, trust, multilevel reinvestment, leasing, contracting, financing arrangement, contract control or overseas transaction, and makes investment in a field as listed in the Catalogue of the Prohibited, makes
investment in a field as listed in the Catalogue of the Restricted without approval or violating the information reporting obligations as specified herein, the penalty shall be imposed in accordance with the Article 144, Article 145, Article 147 or Article 148 herein.

Article 150 【Compulsory Enforcement Measures】

Where a foreign investor or a foreign-invested enterprise fails to perform the decision on administrative penalty made by foreign investment regulatory authorities within the prescribed time limit, the foreign investment regulatory authorities may take the following measures:

1. To impose an additional fine at the rate of 3% of the amount of the fine per day;

2. In accordance with law, to sell by auction the seized or seized property or things of value or to transfer the frozen deposits to offset the fine; and

3. To apply to a people’s court for compulsory enforcement.

Article 151 【Revocation of Certificates and Licenses and Criminal Legal Liability】

Where a foreign investor or a foreign-invested enterprise violates this Law, the regulatory authorities in the relevant industry may revoke the license certificate in accordance with the law, and the administration for industry and commerce may revoke the business license of the foreign-invested enterprise in accordance with the law; and if a crime is constituted, criminal liability shall be pursued in accordance with the law.

Article 152 【Legal Liability of the Staff in Administrative Authorities】

Where the staff of foreign investment regulatory authorities and other relevant administrative authorities practices frauds for personal gains, abuses their power or commits misconducts in their performance of duties, administrative sanctions shall be imposed in accordance with the law; and if a crime is constituted, criminal liability shall be pursued in accordance with the law.

Chapter 11 Supplementary Provisions

Article 153 【Enterprises that Have Existed before the Effectiveness of this Law】

This Law shall apply to the foreign-invested enterprises that have duly existed before the effectiveness of this Law, unless otherwise stipulated in this Chapter.

Article 154 【Changes to Enterprises that Have Existed before the Effectiveness of this Law】

Where foreign-invested enterprises that have duly existed before the effectiveness of this Law make changes to their operating items after the effectiveness of this Law, and fall under the circumstance as specified herein where the entry permit shall be applied for, the foreign-invested enterprises shall apply for the entry permit.

Article 155 【Continuous Operations under Original Conditions】

The foreign-invested enterprises that have duly existed before the effectiveness of this Law may continue their business operations under the originally approved business scope, time limit and other conditions.

Article 156 【Operating Period】
After this law comes into effect, the investment parties may agree on the operating period on their own, except where foreign investment regulatory authorities take the operating period as entry conditions in accordance with the relevant provisions of this Law.

Where the operating period expires after the promulgation but before the effectiveness of this Law, and the investment parties are willing to continue their operations, they may go through the formalities for change with the administration for industry and commerce after this Law comes into effect.

Where the investment parties agree on the operating period on their own or change the operating period, damaging the interests of a third party, the third party may claim its rights in accordance with relevant laws or regulations.

Article 157【Change of Organizational Forms or Organization Structures of Enterprises】

Within three years after this Law comes into effect, the foreign-invested enterprise that have duly existed before the effectiveness of this Law shall, in accordance with the Corporate Law, the Partnership Enterprise Law, the Law of the People's Republic of China on Sole Proprietorship and other relevant laws and regulations, change their organization forms or organizational structures. However, where the operating period expires within three years after the effectiveness of this Law and the relevant enterprises intend to extend the operating period, they shall make change to the existing operating period.

Before the change is completed in accordance with the preceding paragraph, the provisions on organizational forms and organizational structures of enterprises in the Law on Sino-foreign Equity Joint Ventures, the Law on Wholly Foreign-owned Enterprises and the Law on Sino-foreign Contractual Joint Ventures shall continue to apply.

Article 158【Handling of Contract Control】

(Please refer to the Interpretation to the Foreign Investment Law of the People's Republic of China (Draft for Comments)

Article 159【Acquisition of Foreign Nationalities】

Where a natural person with Chinese nationality acquires foreign nationality, his/her investment in China shall be deemed as foreign investment no matter whether the investment takes place before or after the effectiveness of this Law, and the investment shall be subject to the relevant provisions of this Law, unless otherwise stipulated by the State Council.

Article 160【Acquisition of the Right of Permanent Residence in Foreign Countries】

Where a natural person with Chinese nationality acquires the right of performance residence in a foreign country, and there are separate provisions in relevant laws or administrative regulations on treatments to his/her investment in China, such provisions shall prevail.

Article 161【Acquisition of the Right of Performance Residence in China】

Where a natural person acquires the right of permanent residence in China, and there are separate provisions in relevant laws or administrative regulations on treatments to his/her investment in China, such provisions shall prevail.

Article 162【Investments of Compatriots from Taiwan】

This Law shall apply to the investments made in the Mainland by compatriots from Taiwan as a reference, unless otherwise stipulated by laws or administrative regulations.
The special treatments to the investments made in the Mainland by compatriots from Taiwan shall be formulated separately by the State Council.

Article 163 【Investments of Compatriots from Hong Kong and Macao and Overseas Chinese】

This Law shall apply to the investments made in the Mainland by compatriots from Hong Kong and Macao and overseas Chinese as a reference, unless otherwise stipulated by laws or administrative regulations.

The special treatments to the investments made in the Mainland by compatriots from Hong Kong and Macao and overseas Chinese shall be formulated separately by the State Council.

Article 164 【Application of Laws】

Investments contracts signed and performed in China by foreign investors shall be governed by Chinese laws.

Article 165 【Countermeasures】

Where any country or region takes discriminatory measures against Chinese investors and their investments, the State may, in light of actual conditions, take corresponding countermeasures.

Article 166 【Foreign Investments in the Financial Field】

Where foreign investors invest in banking, securities, insurance and other financial fields, the relevant financial regulatory authorities shall, in accordance with relevant laws or administrative regulations, implement the entry permit and the supervision and inspection.

Article 167 【Denominated Currency】

The RMB-denominated currency shall be mainly used in foreign investment management and statistics.

Article 168 【Whether Including the Numbers themselves】

"More than", "less than" and "up to" as mentioned herein shall include the numbers themselves, while "over", "below" or "under" shall not include the numbers themselves.

Article 169 【Implementing Measures】

The State Council may formulate the implementing measures in accordance with this Law.

Article 170 【Effectiveness】

This Law shall take effect on dd/mm/yy. The Law on Sino-foreign Equity Joint Ventures, the Law on Wholly Foreign-owned Enterprises and the Law on Sino-foreign Contractual Joint Ventures shall be repealed simultaneously.
Explanations on
The Foreign Investment Law of the People’s Republic of China
(Draft for Comments)
(January 19, 2015)

The Law on Sino-foreign Equity Joint Ventures, the Law on Foreign-invested Enterprises and the Law on Sino-foreign Contractual Joint Ventures (hereinafter “Three Laws”) formulated in the early stages of reform and opening up laid the legal basis for exploiting foreign investment in China and made significant contributions in promoting the historical process of reform and opening up in China. The foreign investment legal regime, centering on the Three Laws, has played a key role in exploiting foreign investment effectively and efficiently, and promoting national economic development. Over the years, China has firmly remained the second place in the world and first place among developing countries in terms of attracting foreign capital. From bringing capital, technology, management experiences and export channels at the very beginning, to bringing the modern service models, new operation concepts, high-end talents nowadays, foreign invested enterprises have become the major players in promoting economic and social development of China.

At present, China has entered the key phase for comprehensively building the moderately affluent society, and the reform has entered a crucial period and a deep water stage and there are new situations and new tasks facing the opening up. The current Three Laws failed to meet the requirements of comprehensively deepening the reform and further expanding the opening up. Firstly, the management mode featuring approval on a case-by-case basis as adopted by the Three Laws cannot meet the requirements brought by the construction of an open and new economy system, and are not able to stimulate market dynamics and change government functions. Secondly, the rules related to corporate structure and business activities in the Three Laws overlap or even conflict with the Company Law of the PRC. Thirdly, it’s necessary to include and perfect the important rules such as foreign investment M&A and national security review into the fundamental laws governing foreign investment.

The Third Plenary Session of 18th Central Committee of CPC proposed “the construction of an open and new economy system”, “unification of laws and regulations governing domestic and foreign investment and maintain stableness, transparency and predictability of foreign investment policies”, “reform of foreign investment approval regime”, “exploring the management mode of pre-entry national treatment plus negative list”; The Fourth Plenary Session of 18th Central Committee of CPC required to “adapt to the situation of the deepened reform, improve the legal system governing foreign investment and facilitate the construction of an open and new economy system”. These provide directions for revising the Three Laws. For the purpose of fully implementing the spirit as contained in the two plenary sessions mentioned above and in accordance with the Legislative Plan of the Twelfth Standing Committee of the National People’s Congress.
Unofficial English Translation
For Discussion Only

and the Legislative Plan of the State Council for 2014, the Ministry of Commerce has
initiated to revise The Law on Sino-foreign Equity Joint Ventures, the Law on Foreign-
invested Enterprises and the Law on Sino-foreign Contractual Joint Ventures and has
formulated Explanatory Note regarding Foreign Investment Law of the People’s
Republic of China (Draft for Comments) (hereinafter “Draft Law”).

1. Guiding Thoughts and Basic Principles

The guiding thoughts for the formulation of the Draft Law is as follows: under the
directorship of the spirit from the 18th CPC National Congress, the Third Plenary Session
of 18th Central Committee of CPC and the Fourth Plenary Session of 18th Central
Committee of CPC, adapt to the need of construction of an open and new economy
system, adhere to the reform direction featuring market-oriented, rule of law and
internationalization, innovate foreign investment administration regime, formulate a basic
law governing foreign investment which is not only compatible with the economic
development and the basic condition of China, but also conforms to the requirement for
the development of internationally recognized rules, and create a more stable, transparent
and predictable environment for foreign investment.

We think that Foreign Investment Law shall be positioned as the law that further deepens
the systematic reform, widens reform and opening up, facilitates foreign investment and
regulates foreign investment administration. For the above purposes, we have adhered to
the following principles during the course of the formulation of the Draft Law:

A. Specify the basic position of the law. Foreign Investment Law positions itself as a
unified and basic law governing the regulation and promotion of foreign investment. The
Foreign Investment Law no longer regulates the organization structure of enterprises.

B. Innovation in terms of foreign investment administration. Cancel the present case-by-
case approval regime of foreign investment and adopt the foreign investment
administrative method featuring pre-entry national treatment and negative list. Decrease
the restrictive measures imposed on foreign investment and lower the foreign investment
entry threshold, and strengthen information report.

C. Improve foreign investment regime. Include and further perfect important regimes
such as foreign investment M&A rules and national security review in the Foreign
Investment Law based on summarizing 30 years’ practice of foreign investment
administration.

D. Change the function of the government. The focus of government function shall be
changed from pre-establishment approval to providing public services and focusing on
post-establishment administration and supervision. Strengthen investment promotion,
protection and supervision while substantially canceling administrative approval.

2. Main Content
The Draft Law consists of 170 articles in 11 chapters, they are general provisions, foreign investor and investment, entry administration, national security review, information reporting, investment promotion, investment protection, compliant and reconciliation handling, supervision and examination, legal liability and supplementary provisions respectively. The main content is as follows:

(1) The definition of foreign investor and investment.
For foreign investors, while the principle of defining foreign investors based on place of registration still applies, the Draft Law has also adopted an “actual control” test. On the one hand, domestic enterprises controlled by foreign investors shall be deemed as foreign investors; on the other hand, if any foreign investors are controlled by Chinese investors, their domestic investment in China can be deemed as investment from Chinese investors. As for the foreign investment, the Draft Law not only covers greenfield investment, but also M&A, medium or long term financing, acquiring concessions of natural resources exploitation and development or infrastructure construction and operation, acquiring real estate rights, and controlling or holding the rights and interests in domestic enterprises by means of contract, trust etc.

(2) Entry Administration
The Draft Law has repealed the case-by-case approval system as defined by the Three Laws, it adopts a foreign investment entry system in compatible with the administration of pre-entry national treatment and negative list. Foreign investment authorities only impose approval requirement for investment set forth in the Special Administration Measures Catalogue, and no longer examines the contract, articles of association but rather examines the foreign investor and its investment activity. Under the negative list administration, most of foreign investment will not need any approval when entering China. Meanwhile foreign investment in China shall fulfill the reporting obligation regardless of whether it belongs to the industries as contained in the Special Administration Measures Catalogue.

(3) National Security Review System
To prevent any damages or potential damages to national security by foreign investment, the Draft Law includes a special chapter to establish the national security review system. To fix problems such as the current national security system is at low level of legal effect hierarchy, or the system thereof is imperfect, based on the Notice of the General Office of the State Council on the Establishment of the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors and by referring to other countries’ practice, the Draft Law further completes the factors subject to and procedures of such national security review, identifies available measures for eliminating potential dangers to national security, and prescribes that national security review is not subject to any administrative appeal or administrative litigation.

(4) Information Reporting System
To timely, accurately and completely understand the situation of foreign investment and the operation of foreign-invested enterprise, the Draft Law prescribes a foreign
investment information reporting system. Foreign investors and foreign-invested enterprises shall be obliged to report their investments and operations to foreign investment authorities, whether or not such investments or operations are within the areas identified by Special Administration Measures Catalogue. The reported information shall be true, accurate and complete, and shall contain any false records, misleading statements or major omissions. The Draft Law has classified information reporting into three types (report of foreign investments, report of changes of foreign investments, regular report), and set corresponding contents and time limits for these types respectively.

(5) Investment Promotion System
A new trend of legislation and policy-making of foreign investment of various countries is to strengthen the functions and duties of government in respect of investment promotion. To establish a complete investment promotion mechanism and improve investment promotion professionalism, the Draft Law regulates investment promotion work from various aspects such as investment promotion policies, investment promotion institutions and special economic zone.

(6) Investment Protection System
To protect the legal rights and interests of foreign investors and their investments, the Draft Law strengthens the protection system for foreign investors and their investments from various aspects such as expropriation, requisition, state compensation, transfer, transparency, and intellectual property protection.

(7) System of Coordination and Handling of Complaints
The Draft Law prescribes a system for coordination and handling of complaints, which strengthens the functions and duties of foreign investment authorities to coordinate and handle disputes between foreign investors or foreign-invested enterprises and administrative organs.

(8) Supervision and Inspection System
The most important change of government duties and functions of this administration is to expand market entry and reduce administrative approval requirements, while promoting the market supervision during the operation of the foreign investment and after the foreign investment enters China. The Draft Law has formulated a complete set of rules on the supervision and inspection system from various aspects such as launch of supervision and inspection, method of inspection, aspects subject to inspection, and result of inspection. Meanwhile, the Draft Law aims at enhancing the self-discipline awareness of foreign investors and foreign-invested enterprises through establishment of integrity file system for foreign investors.

(9) Legal Liability System
The Draft Law has prescribed a legal liability system setting forth provisions on corresponding administrative legal liabilities and criminal legal liabilities if investments are within prohibited fields, within restrictive fields without approval or in violation of
approval conditions, in violation of information reporting obligations, in violation of national security rules, or evading compulsory regulations.

3. Notes on Certain Issues

(1) Arrangements in the Transitional Period
After the Foreign Investment Law takes effect, the Three Laws will be abolished. Since the Foreign Investment Law no longer regulates organizational forms and organizational structures, and the Draft Law prescribes that any foreign-invested enterprises validly existing prior to the effectiveness of this Law shall adjust their organizational forms and organizational structures according to Company Law within 3 years.

(2) Treatment of Hong Kong, Macao, and Taiwan, and Overseas Chinese Investors
Since the reform and opening up, investments by Hong Kong, Macao, and Taiwan, and overseas Chinese investors have made quite important contributions to the rapid development of China's economy. The Draft Law prescribes that investments by Hong Kong, Macao, and Taiwan, and overseas Chinese investors shall be subject to this Law; it is suggested that the State Council makes separate rules on the special treatment for Hong Kong, Macao, and Taiwan, and overseas Chinese investors.

(3) Contractual Control
The issues regarding foreign-invested enterprises obtaining the control of domestic enterprises by signing a series of agreements have been attracting extensive attentions. The Draft Law explicitly regulates the contractual control as a form of foreign investment and investments through contractual control shall be subject to this Law upon effectiveness thereof. With respect to existing investments through contractual control in prohibited or restricted areas that remain to be prohibited or restricted after the Draft Foreign Investment Law comes into effect, there are three proposals as follows:

i. These foreign-invested enterprises would be required to formally report to foreign investment regulatory authorities of the State Council that they are under the actual control of Chinese investors. Following such reporting, such foreign-invested enterprise may retain their contractual control structures and continue their business operations.

ii. These foreign-invested enterprises would be required to apply to foreign investment regulatory authorities of the State Council for recognition that they are under the actual control of Chinese investors. Once such recognition has been granted by foreign investment regulatory authorities of the State Council, these foreign-invested enterprises may retain their contractual control structures and continue their business operations.

iii. These foreign-invested enterprises would be required to apply for market entry permit from foreign investment regulatory authorities of the State Council. Such foreign investment regulatory authorities of the State Council and other relevant PRC regulatory authorities would then review these applications and decide on a
case-by-case basis whether to grant permit, taking into account of various factors, including the actual controlling person(s) of those companies.

We will continue to study this issue and provide suggestions based on widely seeking public opinions.

(4) Interplay Among Market Entry Permit of Foreign Investments, Company Registration with Administration of Industry and Commerce, and Industry Approval

The Draft Law prescribes that where a foreign investor invests in the areas set forth in Special Administration Measures Catalogue, if such area requires prior industry approval foreign investors shall submit such industry approval when applying for market entry permit of foreign investment; if such area requires no prior industry approval, foreign investment regulatory authorities shall solicit opinions from relevant industrial regulatory authorities; foreign investors can apply for company registration with Administration of Industry and Commerce after they are granted with the foreign investment market entry permit. At present, China is reforming its administrative approval and registration system, we will, in line with such reforms, further complete relevant system design for market entry permit of foreign investment, and properly coordinate market entry permit of foreign investments, company registration with Administration of Industry and Commerce, and prior industry approval.