

商务部就《中华人民共和国外国投资法（草案征求意见稿）》公开征求意见

Public Comments Sought on the Foreign Investment Law of the People's Republic of China (Draft for Comment) by the Ministry of Commerce

发文日期： 2015-01-19

Promulgation date: 2015-01-19

地域： 全国

Effective region: NATIONAL

颁布机关： 商务部

Promulgator: Ministry of Commerce

时效性： 征求意见稿或草案

Effectiveness: Draft for comments or Draft

生效日期： 0000-00-00

Effective date: 0000-00-00

所属分类： 外资企业（公司法->外资企业），外商投资（投资法->外商投资）

Category: Foreign Investment Enterprise (Company Law->Foreign Investment Enterprise) , Foreign Investment (Investment Law->Foreign Investment)

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2015年1月19日

January 19, 2015

为贯彻落实党的十八大三中、四中全会精神，根据《十二届全国人大常委会立法规划》和《国务院2014年立法工作计划》，商务部启动了《中外合资经营企业法》、《外资企业法》、《中外合作经营企业法》的修改工作，形成了《中华人民共和国外国投资法（草案征求意见稿）》。

In order to implement and execute the spirit of the Third and Fourth Plenary Sessions of the 18th Central Committee of the Communist Party of China and subject to the Legislation Programme of the Standing Committee of the 12th National People's Congress and the 2014 Legislation Plan of the State Council, the Ministry of Commerce has amended the Law on Sino-foreign Equity Joint Ventures, the Law on Wholly Foreign-owned Enterprises and the Law on Sino-foreign Cooperative Joint Ventures to work out the Foreign Investment Law of the People's Republic of China (hereinafter referred to as the "Foreign Investment Law") (Draft for Comment).

我们认为，《外国投资法》应定位为一部深化体制改革的法，扩大对外开放的法，促进外商投资的法，规范外资管理的法。草案征求意见稿适应构建开放型经济新体制和实施高水平对外开放的要求，以统一内外资法律法规和创新外国投资法律制度

In our opinion, the Foreign Investment Law should be a law that deepens structural reform, makes opening to the outside wider, facilitates foreign investment and regulates foreign investment administration. In response to the requirements for building a new open economic system and implementing high-level opening-up, the Draft for Comment aims at unitizing laws and regulations on domestic and foreign investment and innovating the foreign investment

为目标，实行准入前国民待遇加负面清单的管理模式，确立“有限许可加全面报告”的管理制度，完善外资国家安全审查制度，加强事中事后监管，加强投资促进和保护，为外国投资者来华投资创造稳定、透明和可预期的法律环境。

laws system, adopts the management mode of pre-access national treatment plus negative list, establishes a management system characterized by "limited permission and comprehensive reporting", improves the national security review system for foreign investment, strengthens the interim and ex post regulation, and reinforces the investment promotion and protection, so as to create a more stable, transparent and foreseeable legal environment for foreign investment in China.

为广泛听取社会各界意见，现将草案征求意见稿向社会公布。公众可通过以下途径提出意见：

The Draft for Comment is hereby published to the public for comments from all sectors of society. Public comments may be sent via the following channels:

1. 登陆商务部网站（网址：<http://www.mofcom.gov.cn>）进入“征求意见”点击“《中华人民共和国外国投资法（草案征求意见稿）》征求意见”提出意见；

1. visiting the website of the Ministry of Commerce (website: <http://www.mofcom.gov.cn>), entering the "Comments Solicitation" and clicking the "Comments Sought on the Foreign Investment Law of the People's Republic of China (Draft for Comment)" to provide comments;

2. 电子邮件，邮箱：investmentlaw@mofcom.gov.cn；

2. emailing comments to the address: investmentlaw@mofcom.gov.cn;

3. 传真，010-65198905；

3. faxing comments to: 010-65198905; or

4. 信函，通讯地址：北京市东长安街2号商务部条约法律司，邮编：100731。

4. mailing comments to the address: the Department of Treaty and Law of the Ministry of Commerce, No.2 Dong Chang'an Avenue, Beijing Municipality, zip code: 100731.

请在电子邮件主题、传真首页和信封上注明“外国投资法公开征求意见”。

Please indicate the words "public comments on the Foreign Investment Law" in the subject of the email or on the first page of the fax or on the envelope.

意见反馈截止日期为2015年2月17日。

The deadline for sending comments is February 17, 2015.

中华人民共和国外国投资法（草案征求意见稿）

Foreign Investment Law of the People's Republic of China (Draft for Comment)

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Complaints
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第一章 总则

Chapter I General Provisions

第一条 【立法目的】

为扩大对外开放，促进和规范外国投资，保护外国投资者合法权益，维护国家安全和社会公共利益，促进社会主义市场经济健康发展，制定本法。

Article 1 [Legislative Purpose]

The Foreign Investment Law of the People's Republic of China (Draft for Comment) (hereinafter referred to as the "Law") is formulated with a view to opening to the outside wider, promoting and regulating foreign investment, protecting the legitimate rights and interests of foreign investors, safeguarding national security and public interests, and facilitating the healthy development of the socialist market economy.

第二条 【适用范围】

外国投资者在中国境内投资适用本法。

Article 2 [Scope of Application]

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

第三条 【投资保护】

国家依法保护外国投资者、外国投资企业的合法权益。

Article 3 [Investment Protection]

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

第四条 【遵守国内法】

外国投资者、外国投资企业应当遵守中国法律，不得损害国家和社会公共利益。

外国投资者、外国投资企业进行投资、从事经营活动，应当遵守社会公德、商业道德，诚实守信，接受社会监督，承担社会责任。

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.

When engaging in investment or business activities, foreign investors and foreign-invested enterprises shall comply with social morals and business ethics, act in good faith, accept supervision from society and undertake social responsibilities.

第五条 【外资管理制度】

国家实行统一的外国投资管理制度。

Article 5 [Administrative System for Foreign Investment]

The State adopts a unified administrative system for foreign investment.

第六条 【国民待遇】

外国投资者在中国境内投资享有国民待遇，但根据本法第二十三条【目录制定程序】所制定的外国投资特别管理措施目录（以下简称特别管理措施目录）另有规定的除外。

Article 6 [National Treatment]

Foreign investors making investments within the territory of China are entitled to the national treatment, unless otherwise specified in the Catalogue of Special Administrative Measures for Foreign Investments (hereinafter referred to as the "Catalogue of Special Administrative Measures") which is formulated in accordance with Article 23 [Catalogue Formulation Procedures] hereof.

第七条 【投资促进】

国家制定和实施与社会主义市场经济相适应的外国投资促进政策，推动投资便利化，建立健全统一开放、竞争有序的市场体系。

Article 7 [Investment Promotion]

The State formulates and implements foreign investment promotion policies suitable for the socialist market economy, to promote the investment facilitation, and establish a sound market system that is uniform but open, orderly and competitive.

第八条 【公开透明原则】

国家对外国投资者在中国境内投资的管理，应遵循公开、透明的原则。

Article 8 [Principles of Openness and Transparency]

The State shall observe the principles of openness and transparency in the administration of investment within the territory of China by foreign investors.

第九条 【外国投资主管部门】

国务院外国投资主管部门依照本法主管全国外国投资管理 and 促进工作。

县级以上地方各级人民政府外国投资主管部门依法定权限负责本辖区的外国投资管理和促进工作。

Article 9 [Competent Authorities of Foreign Investment]

The competent authority of foreign investment under the State Council shall take charge of the administration and promotion of foreign investment nationwide in accordance herewith.

The competent authorities of foreign investment of local people's governments at or above the county level shall be responsible for the administration and promotion of foreign investment within their respective administrative regions in accordance with the statutory authority.

第十条 【投资条约】

国家根据平等互利的原则，促进和发展同其他国家和地区的投资，缔结多双边、区域投资条约、公约、协定。

Article 10 [Investment Treaties]

Based on the principle of equality and mutual benefit, the State concludes multilateral, bilateral, or regional investment treaties, conventions or agreements to promote and develop investment with other countries and regions.

第二章 外国投资者和外国投资

Chapter II Foreign Investors and Foreign Investment

第十一条 【外国投资者】

Article 11 [Foreign Investors]

本法所称的外国投资者，是指在中国境内投资的以下主体：

（一）不具有中国国籍的自然人；

（二）依据其他国家或者地区法律设立的企业；

（三）其他国家或者地区政府及其所属部门或机构；

（四）国际组织。

受前款规定的主体控制的境内企业，视同外国投资者。

For the purpose of the Law, "foreign investors" refer to the following subjects making investments within the territory of China:

1. natural persons without Chinese nationality;

2. enterprises incorporated under the laws of countries or regions other than China;

3. the governments of countries or regions other than China and the departments or agencies thereunder; and

4. international organizations.

Domestic enterprises under the control of the subjects as mentioned in the preceding paragraph are deemed foreign investors.

第十二条 【中国投资者】

本法所称的中国投资者，是指以下主体：

（一）具有中国国籍的自然人；

（二）中国政府及其所属部门或机构；

（三）受前两项主体控制的境内企业。

Article 12 [Chinese Investors]

For the purpose of the Law, "Chinese investors" refer to the following subjects:

1. natural persons with Chinese nationality;

2. the Chinese government and the departments or agencies thereunder; and

3. domestic enterprises under the control of the subjects as mentioned in the preceding two items.

第十三条 【境内企业】

本法所称的境内企业，是指依据中国法律在中国境内设立的企业。

Article 13 [Domestic Enterprises]

For the purpose of the Law, "domestic enterprises" refer to the enterprises incorporated within the territory of China under Chinese laws.

第十四条 【外国投资企业】

本法所称的外国投资企业，是指全部或者部分由外国投资者投资、依据中国法律在中国境内设立的企业。

Article 14 [Foreign-invested Enterprises]

For the purpose of the Law, "foreign-invested enterprises" refer to enterprises wholly or partly invested in by foreign investors, and incorporated within the territory of China under Chinese laws.

第十五条 【外国投资】

本法所称的外国投资，是指外国投资者直接或者间接从事的如下投资活动：

（一）设立境内企业；

（二）取得境内企业的股份、股权、财产份额、表决权或者其他类似权益；

（三）向其持有前项所称权

Article 15 [Foreign Investment]

For the purpose of the Law, "foreign investment" refers to the following investment activities carried out directly or indirectly by foreign investors:

1. establishing a domestic enterprise;

2. acquiring the shares, equities, share of properties, voting rights or other similar interests of a domestic enterprise;

3. providing any domestic enterprises in which

益的境内企业提供一年期以上融资；

（四）取得境内或其他属于中国资源管辖领域自然资源勘探、开发的特许权，或者取得基础设施建设、运营的特许权；

（五）取得境内土地使用权、房屋所有权等不动产权利；

（六）通过合同、信托等方式控制境内企业或者持有境内企业权益。

境外交易导致境内企业的实际控制权向外国投资者转移的，视同外国投资者在中国境内投资。

foreign investors hold the interests as mentioned in the preceding item with financing for not less than one year;

4. acquiring the concessions to explore or exploit natural resources within the territory or jurisdiction of China, or acquiring the concessions to construct or operate the infrastructure;

5. acquiring the rights to immovable property including the right to use domestic land and house ownership; or

6. controlling any domestic enterprise or holding interests in any domestic enterprise by contract, trust or other means.

Any transaction outside China that leads to the transfer of the actual control of any domestic enterprise to a foreign investor shall be deemed investment within the territory of China by the foreign investor.

第十六条 【不动产权利】

外国投资者取得中国境内土地使用权、房屋所有权等不动产权利的，适用有关法律法規的规定，同时还应遵守本法第四章

【国家安全审查】、第五章【信息报告】的规定。

Article 16 [Rights to Immovable Property]

Where a foreign investor acquires land use rights, home ownership or other rights to immovable property within the territory of China, the provisions of the relevant laws and regulations shall apply, and the provisions of Chapter IV [National Security Review] and Chapter V [Information Reporting] hereof shall also be complied with.

第十七条 【非营利组织】

外国投资者在中国境内设立非营利组织或取得非营利组织权益的，适用有关法律法規的规定，同时还应遵守本法第四章

【国家安全审查】、第五章【信息报告】的规定。

Article 17 [Non-profit Organizations]

Where a foreign investor establishes a non-profit organization or acquires an interest in a non-profit organization within the territory of China, the provisions of the relevant laws and regulations shall apply, and the provisions of Chapter IV [National Security Review] and Chapter V [Information Reporting] hereof shall also be complied with.

第十八条 【控制】

本法所称的控制，就某一企业而言，是指符合以下条件之一的情形：

（一）直接或者间接持有该企业百分之五十以上的股份、股权、财产份额、表决权或者其他类似权益的。

Article 18 [Control]

For the purpose of the Law, "control" refers to the circumstance that any of the following conditions is met with respect to an enterprise:

1. holding, directly or indirectly, not less than 50% of shares, equities, share of properties, voting rights or other similar rights of the enterprise;

2. holding, directly or indirectly, less than 50% of

(二) 直接或者间接持有该企业的股份、股权、财产份额、表决权或者其他类似权益虽不足百分之五十，但具有以下情形之一的：

1. 有权直接或者间接任命该企业董事会或类似决策机构半数以上成员；

2. 有能力确保其提名人员取得该企业董事会或类似决策机构半数以上席位；

3. 所享有的表决权足以对股东会、股东大会或者董事会等决策机构的决议产生重大影响。

(三) 通过合同、信托等方式能够对该企业的经营、财务、人事或技术等施加决定性影响的。

shares, equities, share of properties, voting rights or other similar rights of the enterprise, but falling under any of the following circumstances:

(1) having the right to directly or indirectly appoint not less than half of the members of the board of directors or other similar decision-making body of the enterprise;

(2) having the ability to ensure that its nominees occupy not less than half of the seats on the board of directors or other similar decision-making body of the enterprise; or

(3) holding voting rights sufficient to impose significant impacts on any resolution of the board of shareholders, at the general meeting of shareholders, or of the board of directors or other decision-making body of the enterprise.

3. imposing decisive impacts on the operation, finance, personnel or technology of the enterprise by contract, trust, or other means.

第十九条 【实际控制人】

本法所称的实际控制人，是指直接或者间接控制外国投资者或者外国投资企业的自然人或者企业。

Article 19 [Actual Controllers]

For the purpose of the Law, "actual controllers" refer to natural persons or enterprises that directly or indirectly control any foreign investor or foreign-invested enterprise.

第三章 准入管理

Chapter III Access Administration

第一节 一般规定

Section 1 General Provisions

第二十条 【外资准入制度】

国家实行统一的外国投资准入制度，对禁止或限制外国投资的领域依据特别管理措施目录实施管理。

Article 20 [Access System for Foreign Investment]

The State adopts a unified access system for foreign investment, and subject to the Catalogue of Special Administrative Measures, implements the management of the sectors where foreign investments are prohibited or restricted.

第二十一条 【外资准入主管部门】

外国投资主管部门会同有关部门对外国投资实施准入管理。

Article 21 [Competent Authority of Foreign Investment Access]

The competent authorities of foreign investment shall, in concert with the relevant departments, implement the administration of foreign investment access.

第二十二条 【特别管理措施目录】

Article 22 [Catalogue of Special Administrative Measures]

对外国投资者及其投资给予低于中国投资者及其投资的待遇或施加其他限制的，须以法律、行政法规或国务院决定的形式予以规定，并纳入特别管理措施目录。

If foreign investors and their investment are granted treatment lower than that granted to Chinese investors and their investment, or are subject to other restrictions, such treatment or restriction shall be provided for by laws, administrative regulations or decisions of the State Council, and be incorporated in the Catalogue of Special Administrative Measures.

第二十三条 【目录制定程序】

特别管理措施目录由国务院统一制定并发布。

国务院外国投资主管部门会同有关部门，根据国家缔结的多双边、区域投资条约、公约、协定和有关外国投资的法律、行政法规、国务院决定，提出制定或调整特别管理措施目录的建议，提交国务院审议。

Article 23 [Catalogue Formulation Procedures]

The Catalogue of Special Administrative Measures shall be uniformly formulated and promulgated by the State Council.

The competent authority of foreign investment under the State Council shall, in concert with the relevant departments, propose suggestions on formulating or adjusting the Catalogue of Special Administrative Measures in accordance with multilateral, bilateral, and regional treaties, conventions and agreements signed by the State as well as the relevant laws, administrative regulations and decisions of the State Council on foreign investment, and submit such suggestions to the State Council for deliberation.

第二十四条 【目录分类】

特别管理措施目录分为禁止实施目录和限制实施目录。

限制实施目录应详细列明对外国投资的限制条件。

Article 24 [Classification of Catalogue]

The Catalogue of Special Administrative Measures is classified into the Catalogue of Prohibitions and the Catalogue of Restrictions.

The Catalogue of Restrictions shall specify in detail the restrictive conditions for foreign investments.

第二十五条 【禁止实施目录】

外国投资者不得投资禁止实施目录列明的领域。

外国投资者直接或者间接持有境内企业的股份、股权、财产份额或者其他权益、表决权，该境内企业不得投资禁止实施目录中列明的领域，国务院另有规定的除外。

Article 25 [Catalogue of Prohibitions]

Foreign investors are not allowed to invest in any sector set out in the Catalogue of Prohibitions.

Where any foreign investor directly or indirectly holds shares, equities, properties or other interests or voting rights in any domestic company, such domestic company is not allowed to invest in any sector set out in the Catalogue of Prohibitions, unless otherwise specified by the State Council.

第二十六条 【限制实施目录】

限制实施目录包括以下情形：

Article 26 [Catalogue of Restrictions]

The Catalogue of Restrictions involves the following circumstances:

1. investment with an amount above the standards

(一) 超过国务院规定的金额标准的投资;

(二) 限制实施外国投资的领域。

外国投资涉及限制实施目录所列情形的, 应符合限制实施目录规定的条件, 并依照本法向外国投资主管部门申请外国投资准入许可。

未在限制实施目录中列明的, 无需申请准入许可。

第二节 准入许可

第二十七条 【外资准入许可申请】

实施本法第二十六条【限制实施目录】第一款第(一)项规定的投资, 应向国务院外国投资主管部门申请准入许可。

实施本法第二十六条【限制实施目录】第一款第(二)项规定的投资, 应向国务院外国投资主管部门或省、自治区、直辖市人民政府外国投资主管部门申请准入许可。具体许可权限划分, 由国务院规定。

第二十八条 【投资数额的累积计算】

外国投资者在两年内针对同一投资事项多次实施投资, 其投资金额累积达到限制实施目录中规定的标准的, 应当依照本法申请准入许可。

第二十九条 【融资计入投资数额】

外国投资者向其持有权益的

prescribed by the State Council; and
2. sectors where foreign investment is restricted.

For any foreign investment involved in any circumstance set out in the Catalogue of Restrictions, the conditions provided for in the Catalogue of Restrictions shall be met, and an application for the foreign investment access permission shall be filed with the competent authority in accordance herewith. An application for access permission is not required if the foreign investment is not involved in any circumstance set out in the Catalogue of Restrictions.

Section 2 Access Permission

Article 27 [Application for Foreign Investment Access Permission]

For any investment set out in Item 1, Paragraph 1 of Article 26 [Catalogue of Restrictions] hereof, an application shall be filed for access permission with the competent authority of foreign investment under the State Council.

For any investment set out in Item 2, Paragraph 1 of Article 26 [Catalogue of Restrictions] hereof, an application shall be filed for access permission with the competent authority of foreign investment under the State Council, or the competent authority of foreign investment under the people's government of the relevant province, autonomous region or municipality directly under the Central Government. The specific division of permissions shall be subject to the provisions of the State Council.

Article 28 [Calculation of Investment Amount on an Accumulative Basis]

Where any foreign investor has invested in the same investment matter several times within two years to the extent that the accumulative investment amount reaches the standards as set out in the Catalogue of Restrictions, an application for access permission shall be filed in accordance herewith.

Article 29 [Inclusion of Financing in the Investment Amount]

Where any foreign investor directly or indirectly provides any domestic enterprise in which such

境内企业直接或间接提供一年以上融资的，应将融资数额纳入投资数额加以计算。

investor holds interests with financing for not less than one year, the amount of financing shall be incorporated in the investment amount for calculation.

第三十条 【准入许可申请材料】

外国投资者依据本法第二十七条【外资准入许可申请】向外国投资主管部门提出准入许可申请时，应提交以下材料：

（一）申请书，包括：

1. 外国投资者及其实际控制人的情况；

2. 外国投资基本信息，包括投资金额、投资领域、投资区域、投资方式、出资比例和方式等；

3. 符合特别管理措施要求的说明；

4. 外国投资对能源资源、技术创新、就业、环境保护、安全生产、区域发展、资本项目管理、行业发展的影响；

5. 对是否触发国家安全审查和反垄断审查的说明；

6. 需申领前置性行业许可的，提交行业主管部门颁发的许可证件；

7. 涉及外国投资企业的设立或变更的，提交该外国投资企业的组织形式、治理结构等信息；

8. 通知和送达方式。

（二）与申请书内容有关的文件和证明材料；

（三）外国投资者及其实际控制人的陈述、声明及对申请材料真实性、完整性的承诺。

外国投资主管部门可要求外国投资者补充提交与前款规定内容相关的材料。

Article 30 [Application Materials for Access Permission]

Foreign investors shall, when filing the application for access permission with the competent authorities of foreign investment in accordance with Article 27 [Application for Foreign Investment Access Permission] hereof, submit the following materials:

1. the application, including:

(1) information of the foreign investor and the actual controller thereof;

(2) basic information of the foreign investment, including the investment amount, investment sector, region of investment, investment method, and ratio and form of contribution;

(3) statement on the compliance with special administrative measures;

(4) impacts of the foreign investment on energy resources, technological innovation, employment, environmental protection, work safety, regional development, capital project management and development of the industry;

(5) statement on whether the national security review and anti-monopoly review will be triggered;

(6) the licence issued by the competent authority of industry if an application for ex ante industrial licensing is required;

(7) information of the foreign-invested enterprise in respect of organizational form and governance structure if the incorporation or change of such foreign-invested enterprise is involved; and

(8) methods of notification and service.

2. documents and supporting materials relating to the content of the application; and

3. representations and declarations of the foreign investor and the actual controller thereof, and the commitments to the authenticity and integrity of the application materials.

The competent authorities of foreign investment may require foreign investors to submit supplementary

materials relating to the content as set out in the preceding paragraph.

第三十一条 【受理】

申请材料齐全并符合法定形式的，外国投资主管部门应当受理准入许可申请，并向申请人出具受理回执。

申请材料不齐全或不符合法定形式的，应当场或者在5个工作日内一次告知申请人需要补正的全部内容，逾期不告知的，自收到申请材料之日起即为受理。

Article 31 [Acceptance]

Where the application materials submitted are complete and comply with the legal form, the competent authority of foreign investment shall accept the application for access permission and issue the receipt for acceptance to the applicant.

Where the application materials submitted are incomplete or fail to comply with the legal form, the competent authority of foreign investment shall inform the applicant of all the content to be supplemented and corrected on a one-off basis on the spot or within five working days; otherwise, the application will be considered to be accepted as of the date of receipt of the application materials.

第三十二条 【审查因素】

外国投资主管部门应从以下方面对外国投资进行准入审查：

- （一）对国家安全的影响；
- （二）是否符合特别管理措施目录规定的条件；
- （三）对能源资源、技术创新、就业、环境保护、安全生产、区域发展、资本项目管理、竞争、社会公共利益等的影响；
- （四）对于行业发展的实际影响与控制力；
- （五）国际条约义务；
- （六）外国投资者及其实际控制人的情况；
- （七）国务院规定的其他因素。

Article 32 [Factors for Review]

The competent authorities of foreign investment shall conduct an access review of foreign investment in the respects as follows:

1. the impacts on national security;
2. whether the conditions specified in the Catalogue of Special Administrative Measures are met;
3. the impacts on energy resources, technological innovation, employment, environmental protection, work safety, regional development, capital project management, competition and public interests;
4. the actual impacts on and control over the development of the industry;
5. obligations under international treaties;
6. the information of the foreign investor and the actual controller thereof; and
7. other factors stipulated by the State Council.

第三十三条 【准入许可和行业许可的关系】

外国投资涉及需申领前置性行业许可的领域的，外国投资主管部门在审查决定中说明行业许可获得情况。

外国投资涉及需申领非前置

Article 33 [Relationship between Access Permission and Industrial Licensing]

In the event that the foreign investment involves any sector where the application for ex ante industrial licensing is required, the competent authority of foreign investment shall describe whether the industrial licence is obtained in the review decision.

In the event that the foreign investment involves any

性行业许可的领域的，外国投资主管部门应在审查时征求相关行业主管部门意见。行业主管部门出具审查意见书，外国投资主管部门在审查决定中说明行业主管部门的审查意见。

sector where the application for licensing other than prior industrial licensing is required, the competent authority of foreign investment shall solicit the opinion of the competent authority of the relevant industry in the course of review. The competent authority of the relevant industry shall issue a review opinion, and the competent authority of foreign investment shall describe the review opinion issued by the competent authority of the relevant industry in the review decision.

第三十四条 【准入许可和安审的衔接】

外国投资主管部门在进行准入审查时，发现外国投资事项危害或可能危害国家安全的，应暂停准入审查程序，并书面告知申请人提交国家安全审查申请；进行准入审查的省、自治区、直辖市人民政府外国投资主管部门应将有关情况报告国务院外国投资主管部门。除非申请人撤回准入许可申请，外国投资者应当按照本法第四章【国家安全审查】提交国家安全审查申请。

Article 34 [Transition between Access Permission and Security Review]

When conducting the access review, where the competent authority of foreign investment finds that the foreign investment matter endangers or may endanger national security, it shall suspend the procedures for access review, and inform the applicant in writing of submission of the application for the national security review; the competent authority of foreign investment under the people's government of a province, autonomous region or municipality directly under the Central Government, which conducts the access review, shall report the relevant situation to the competent authority of foreign investment under the State Council. The foreign investors shall submit the application for the national security review in accordance with Chapter IV [National Security Review] hereof, unless the applicants concerned withdraw the application for access permission.

第三十五条 【审查期限】

外国投资主管部门应在受理准入许可申请之日起 30 个工作日内完成审查。情况复杂的可延长 30 个工作日。

发生本法第三十四条【准入许可和安审的衔接】规定的情形并进入国家安全审查程序的，进行国家安全审查的期限不计入前款所列的审查期限。

Article 35 [Review Period]

The competent authority of foreign investment shall accomplish the review within 30 working days from the day on which the application for access permission is accepted. The review period may be extended for another 30 working days if the application involves any complex circumstance. Upon the occurrence of the circumstance stipulated in Article 34 [Transition between Access Permission and Security Review] hereof, which initiates the national security review, the period for national security review shall not be included in the review period stipulated in the preceding paragraph.

第三十六条 【审查决定】

外国投资主管部门依法对外国投资事项作出批准、附加条件批准或不予批准的书面决定，并通知申请人；作出附加条件批准或不予批准决定的，应当说明理由。

第三十七条 【附加条件的类型】

外国投资主管部门作出审查决定时可附加以下一项或几项条件：

- (一) 资产或业务剥离；
- (二) 持股比例限制；
- (三) 经营期限要求；
- (四) 投资区域限制；
- (五) 当地用工比例或数量

要求；

(六) 国务院规定的其他条件。

外国投资主管部门附加以上一项或多项条件的，应在审查决定中列明。

第三十八条 【征求意见】

外国投资主管部门进行准入审查时，可征求相关部门、地方和其他利害关系人意见。

第三十九条 【征求社会公众意见】

外国投资主管部门进行准入审查时，认为申请事项可能对社会公共利益造成重大影响的，可通过召开论证会、举行公开听证等方式征求社会公众意见。

第四十条 【申辩机会】

外国投资主管部门进行准入审查，拟作出附加条件批准或者不予批准决定的，应给予外国投

Article 36 [Review Decision]

The competent authority of foreign investment shall make a written decision on approval, conditional approval or disapproval of a foreign investment matter in accordance with the law, and shall notify the applicant of such decision; and reasons shall be given for the decision on conditional approval or disapproval.

Article 37 [Type of Additional Conditions]

The competent authority of foreign investment may impose one or more of the following conditions when making the review decision:

1. asset or business stripping;
2. restriction on the shareholding ratio;
3. requirements for the term of operation;
4. restriction on the region of investment;
5. requirements on the percentage or number of local people employed; and
6. other conditions stipulated by the State Council.

Where the competent authority of foreign investment imposes one or more conditions, it shall set out such conditions in the review decision.

Article 38 [Solicitation of Comments]

In the course of the access review, the competent authority of foreign investment may solicit comments from the relevant departments, local authorities or other interested parties.

Article 39 [Solicitation of Public Comments]

If the competent authority of foreign investment believes that the matter under application is likely to cause a significant impact on social benefits in the course of access review, it may solicit public comments by holding a discussion meeting or a public hearing or by other means.

Article 40 [Defence Opportunity]

Where the competent authority of foreign investment intends to grant a decision on conditional approval or disapproval, it shall give the foreign investor

资者申辩的机会。

第四十一条 【批准决定时效】

外国投资者自批准决定作出之日起1年内未实施投资行为的，应向作出批准决定的外国投资主管部门说明情况。外国投资主管部门认为有必要的，外国投资者应重新提出准入许可申请。

第四十二条 【办理手续】

外国投资依照本法须经准入许可的，外国投资者应在获得准入许可后办理登记、外汇、税务等手续。

外国投资依照本法无需申请准入许可的，外国投资者可依据相关法律法规办理登记、外汇、税务等手续。

第四十三条 【许可决定的公开】

外国投资主管部门应向社会公布外国投资准入许可决定，但依法不予公开的除外。

第四十四条 【遵守附加条件的报告】

外国投资依照本法获得附加条件准入许可的，外国投资者或外国投资企业在依据本法第五章【信息报告】第四节【定期报告】提交年度报告时应同时说明上一年度遵守附加条件开展经营的有关情况。

第四十五条 【实际控制情形下视为内资】

concerned an opportunity to defend itself.

Article 41 [Validity Period of the Decision on Approval]

If any foreign investor fails to make any investment within one year from the day on which the decision on approval is granted, such investor shall provide an explanation to the competent authority of foreign investment granting the said decision on approval. The foreign investor shall re-submit the application for access permission, where the competent authority of foreign investment deems necessary.

Article 42 [Formalities]

For the foreign investment subject to access permission in accordance herewith, foreign investors shall go through the formalities for registration, foreign exchange, tax and other matters after obtaining the access permission.

For a foreign investment for which no application for access permission is required in accordance herewith, foreign investors may go through the formalities for registration, foreign exchange, tax and other matters in accordance with the relevant laws and regulations.

Article 43 [Disclosure of Decision regarding Permission]

The competent authorities of foreign investment shall disclose decisions regarding foreign investment access permission to society, except for those that shall not be made public in accordance with the law.

Article 44 [Report on the Compliance with Additional Conditions]

For a foreign investment which is granted conditional access permission in accordance herewith, foreign investors or foreign-invested enterprises shall, in addition to the submission of the annual reports in accordance with Section 4 [Regular Report] of Chapter V [Information Reporting] hereof, state the relevant information on the operation carried out in compliance with the additional conditions in the previous year.

Article 45 [Identification as Domestic Investment under the Circumstance of Actual Control]

本法第十一条【外国投资者】第一款第（二）项所规定的外国投资者，受中国投资者控制的，其在中国境内从事限制实施目录范围内的投资，在申请准入许可时，可提交书面证明材料，申请将其投资视作中国投资者的投资。

外国投资主管部门在进行准入许可审查时，应对外国投资者依据前款规定提出的申请进行审查，作出是否视作中国投资者的投资的审查意见，并在准入许可决定中予以说明。

第四十六条 【外资准入审查指南】

国务院外国投资主管部门应编制和公布外国投资准入审查指南。

第四十七条 【咨询】

外国投资者及其利害关系人可就外国投资准入许可的范围和程序向本法第二十七条【外资准入许可申请】规定的外国投资主管部门提出咨询。

外国投资主管部门应在接到咨询申请后 10 个工作日内作出答复。

第四章 国家安全审查

第四十八条 【安全审查制度】

为确保国家安全，规范和促进外国投资，国家建立统一的外国投资国家安全审查制度，对任何危害或可能危害国家安全的外国投资进行审查。

第四十九条 【安审联席会

Where the foreign investors as stipulated in Item 2, Paragraph 1 of Article 11 [Foreign Investors], who are under the control of Chinese investors, engage in any investment as set out in the Catalogue of Restrictions in China, they may, when applying for access permission, submit documentary evidence to apply for identifying their investment as an investment by Chinese investors.

The competent authorities of foreign investment shall review the application filed by the foreign investors in accordance with the provisions of the preceding paragraph when conducting the access permission review, and shall grant the review opinion on whether the said investment is identified as investment by Chinese investors, which shall be stated in the decision regarding the access permission.

Article 46 [Guidance on Review of Foreign Investment Access]

The competent authority of foreign investment under the State Council shall prepare and publish the guidance on the review of foreign investment access.

Article 47 [Consultation]

Foreign investors and interested parties thereof may seek advice on the scope and procedures for foreign investment access permission from the competent authorities of foreign investment provided for in Article 27 [Application for Foreign Investment Access Permission] hereof.

The competent authorities of foreign investment shall give a reply within ten working days after receiving the application for advice.

Chapter IV National Security Review

Article 48 [Security Review System]

In order to ensure national security and regulate and promote foreign investment, the State shall establish a unified national security review system for foreign investment, to review any foreign investment that endangers or may endanger the national security.

Article 49 [Joint Conference for Security Review]

议】

国务院建立外国投资国家安全审查部际联席会议（以下简称联席会议），承担外国投资国家安全审查的职责。

国务院发展改革部门和国务院外国投资主管部门共同担任联席会议的召集单位，会同外国投资所涉及的相关部门具体实施外国投资国家安全审查。

第五十条 【投资者申请安审】

外国投资危害或可能危害国家安全的，外国投资者可向国务院外国投资主管部门提交国家安全审查申请。

第五十一条 【安审申请材料】

外国投资者向国务院外国投资主管部门提出国家安全审查申请时，应提交以下材料：

（一）申请书，包括：

1. 外国投资者及其实际控制人、高级管理人员情况；
2. 外国投资基本信息，包括投资金额、投资领域、投资区域、投资方式、出资比例和方式、经营计划等；
3. 外国投资危害或可能危害国家安全的说明；
4. 涉及外国投资企业的设立或变更的，提交该外国投资企业的组织形式、治理结构等信息；
5. 通知和送达方式。

（二）与申请书内容有关的文件和证明材料；

（三）外国投资者及其实际

The State Council shall set up an inter-ministerial joint conference for review of foreign investment in terms of national security (hereinafter referred to as the "Joint Conference"), to undertake the responsibility of the national security review of foreign investment.

The development and reform authority under the State Council and the competent authority of foreign investment under the State Council shall jointly act as the convener of the Joint Conference, to carry out the specific national security review of foreign investment, in concert with the relevant departments involved in such foreign investment.

Article 50 [Application Filed by Investor for Security Review]

If the foreign investment endangers or may endanger national security, the foreign investor may submit an application for the national security review to the competent authority of foreign investment under the State Council.

Article 51 [Application Materials for Security Review]

A foreign investor shall submit the following materials to the competent authority of foreign investment under the State Council for the national security review:

1. the application, including:
 - (1) information of the foreign investor and the senior management thereof;
 - (2) basic information concerning the foreign investment, including investment amount, investment sector, region of investment, investment method, ratio and form of contribution, and business plan;
 - (3) statement on the danger or potential danger of the foreign investment to national security;
 - (4) information concerning the foreign-invested enterprise in respect of organizational form and governance structure if the incorporation or change of such foreign-invested enterprise is involved; and
 - (5) methods of notification and service.
2. documents and supporting materials relating to the content of the application;
3. representations and declarations of the foreign investor and the actual controller thereof, and the

控制人的陈述、声明及对申请材料真实性、完整性的承诺。

国务院外国投资主管部门可在国家安全审查过程中要求外国投资者及其他当事人补充提交相关材料。

第五十二条 【预约商谈】

向国务院外国投资主管部门提出安全审查申请之前，外国投资者可就有关程序性问题提出预约商谈的请求，提前沟通有关情况。

第五十三条 【确定是否需要 进行安审】

国务院外国投资主管部门应在收到第五十一条【安审申请材料】规定的申请材料后 15 个工作日内告知申请人有关外国投资事项是否需要进行国家安全审查。

需要进行国家安全审查的，国务院外国投资主管部门在告知申请人后 5 个工作日内提请联席会议进行审查。

第五十四条 【投资者撤回安 审申请】

外国投资者提出国家安全审查申请后，未经国务院外国投资主管部门同意，不得撤回申请。

第五十五条 【依职权启动安 审】

联席会议可依职权决定对危害或可能危害国家安全的外国投资进行国家安全审查。

有关部门、行业协会、同业

commitments to the authenticity and integrity of the application materials; and

The competent authority of foreign investment under the State Council may require the foreign investor and other interested parties to submit the relevant supplementary materials in the course of the national security review.

Article 52 [Discussion Appointment]

Prior to submitting the application for the security review to the competent authority of foreign investment under the State Council, a foreign investor may request a discussion appointment for the relevant procedural questions, to communicate about the relevant situation in advance.

Article 53 [Determining Whether the Security Review Is Required]

The competent authority of foreign investment under the State Council shall, within 15 working days upon the receipt of the application materials as set out in Article 51 [Application Materials for Security Review] hereof, inform the applicant whether the national security review is required for the relevant foreign investment matter.

If the national security review is required, the competent authority of foreign investment under the State Council shall, within five working days after informing the applicant of such review, submit the relevant foreign investment matter to the Joint Conference for review.

Article 54 [Withdrawal of Application for Security Review by the Investor Concerned]

Without the consent of the competent authority of foreign investment under the State Council, the foreign investor concerned shall not withdraw its application for the national security review filed.

Article 55 [Start of Security Review Ex Officio]

The Joint Conference may conduct ex officio the national security review of a foreign investment that endangers or may endanger the national security. Where any party concerned other than the relevant departments, industry associations, peer enterprises, upstream and downstream enterprises and foreign

企业、上下游企业及外国投资者以外的其他当事人认为某一外国投资需要进行国家安全审查的，可向国务院外国投资主管部门提出进行国家安全审查的建议。联席会议认为确有必要进行国家安全审查的，可以决定进行审查。

联席会议作出启动国家安全审查决定的，国务院外国投资主管部门应书面告知外国投资者。

investors believes that the national security review of a foreign investment is necessary for a certain foreign investment, such party concerned may advise the competent authority of foreign investment under the State Council to carry out the national security review. Where the Joint Conference deems that the national security review is necessary, it may decide to carry out such review.

Where the Joint Conference makes the decision on starting the national security review, the competent authority of foreign investment under the State Council shall inform the foreign investor concerned of the said decision in writing.

第五十六条 【再次进行安审】

具有下列情形的，联席会议可依据本法第五十五条【依职权启动安审】对已审查的外国投资再次进行国家安全审查：

（一）外国投资者或其他当事人在审查过程中隐瞒有关情况，提供虚假材料或者进行虚假陈述的；

（二）外国投资者或其他当事人违反了审查决定中所附限制性条件实施投资的。

Article 56 [Security Review Anew]

The Joint Conference may, in accordance with Article 55 [Start of Security Review Ex Officio] hereof, conduct the national security review anew of the foreign investment that has been reviewed before, under any of the following circumstances:

1. any foreign investor or any other party concerned conceals relevant information, or provides any false information or makes any misrepresentation, in the review process; or
- 2 any foreign investor or any other party concerned makes an investment in violation of the restrictive conditions attached to the review decision.

第五十七条 【安审因素】

对外国投资进行国家安全审查应当考虑的因素包括：

（一）对国防安全，包括对国防需要的国内产品生产能力、国内服务提供能力和有关设备设施的影响，对重点、敏感国防设施安全的影响；

（二）对涉及国家安全关键技术研发能力的影响；

（三）对涉及国家安全领域的我国技术领先地位的影响；

（四）对受进出口管制的两用物项和技术扩散的影响；

（五）对我国关键基础设施

Article 57 [Factors for Security Review]

For the national security review of a foreign investment, the following factors shall be considered:

1. impacts on the national defence security including the production capacity of the domestic products, domestic service supply capacity and the relevant equipment and facilities needed for the national defence, and impacts on the security of major and sensitive defence installations;
2. impacts on the research and development capacity for key technologies involving national security;
3. impacts on the technological leadership of China involving the field of national security;
4. impacts on dual-use items and technology diffusion subject to import and export control;
5. impacts on the key infrastructure and key

和关键技术的影响；

（六）对我国信息和网络安全的影响；

（七）对我国在能源、粮食和其他关键资源方面长期需求的影响；

（八）外国投资事项是否受外国政府控制；

（九）对国家经济稳定运行的影响；

（十）对社会公共利益和公共秩序的影响；

（十一）联席会议认为应当考虑的其他因素。

technologies of China;

6. impacts on the information and network security of China;

7. impacts on long-term demands of China for energy, food and other critical resources;

8. whether the foreign investment matter is under the control of a foreign government;

9. impacts on the stable operation of the national economy;

10. impacts on the public interests and public order; and

11. other factors that the Joint Conference deems necessary to be considered.

第五十八条 【安审决定类型】

根据国家安全审查结果，国务院或者联席会议可作出如下决定：

（一）外国投资不危害国家安全的，予以通过；

（二）外国投资危害或者可能危害国家安全、但可通过附加限制性条件消除的，予以附条件通过；

（三）外国投资危害或者可能危害国家安全且无法消除的，不予通过。

Article 58 [Types of Decisions on Security Review]
Based on the results of the national security review, the State Council or the Joint Conference may make any of the following decisions:

1. grant approval where the foreign investment imposes no danger to national security;

2. grant conditional approval where the foreign investment endangers or may endanger national security yet such danger or potential danger may be eliminated by additional restrictive conditions; or

3. refuse to grant approval where the foreign investment endangers or may endanger national security and such danger or potential danger cannot be eliminated.

第五十九条 【配合安审义务】

外国投资者及其他当事人应配合联席会议进行国家安全审查，提供审查需要的信息，接受有关询问或核查。

Article 59 [Obligation to Cooperate in the Security Review]

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

第六十条 【安审阶段】

联席会议进行国家安全审查，分为一般性审查阶段和特别审查阶段。

Article 60 [Stages of Security Review]

The national security review conducted by the Joint Conference includes the stage of general review and the stage of special review.

第六十一条 【一般性审查时限】

一般性审查应在国务院外国投资主管部门依据本法第五十三条【确定是否需要进行安审】提请联席会议进行审查之日或者联席会议依据本法第五十五条【依职权启动安审】决定进行国家安全审查之日起 30 个工作日内完成。

第六十二条 【一般性审查意见】

经过一般性审查后，如联席会议认为外国投资不危害国家安全的，应形成审查意见，并书面通知国务院外国投资主管部门；认为外国投资可能存在危害国家安全风险的，应决定进行特别审查，并书面通知国务院外国投资主管部门。

国务院外国投资主管部门在收到联席会议审查意见后 5 个工作日内书面通知申请人和有关当事人。

第六十三条 【特别审查时限】

特别审查应在依据本法第六十二条【一般性审查意见】规定启动特别审查程序之日起 60 个工作日内完成。

启动特别审查程序后，联席会议应当组织对外国投资的安全评估，并结合评估意见进行审查。

第六十四条 【特别审查意见】

经特别审查后，联席会议认为外国投资不危害国家安全的，

Article 61 [Time Limit of General Review]

The general review shall be completed within 30 working days from the date on which the competent authority of foreign investment under the State Council submits the foreign investment to the Joint Conference for review in accordance with Article 53 [Determining Whether the Security Review Is Required] hereof, or from the date on which the Joint Conference decides to conduct the national security review in accordance with Article 55 [Start of Security Review Ex Officio] hereof.

Article 62 [Opinions on General Review]

After the general review, where the Joint Conference believes that the foreign investment will not endanger national security, it shall form a review opinion and notify the competent authority of foreign investment under the State Council in writing of such opinion; where it believes that the foreign investment may have the risk of endangering national security, it shall decide to conduct the special review and notify the competent authority of foreign investment under the State Council in writing of such decision.

The competent authority of foreign investment under the State Council shall notify the applicant and the parties concerned in writing within five working days upon receipt of the review opinions issued by the Joint Conference.

Article 63 [Time Limit of Special Review]

The special review shall be completed within 60 working days from the date on which the special review process starts in accordance with Article 62 [Opinions on General Review] hereof.

After the special review process starts, the Joint Conference shall organize the security evaluation of the foreign investment and conduct the review based on the evaluation opinion.

Article 64 [Opinions on Special Review]

After the special review, where the Joint Conference believes that the foreign investment will not endanger national security, it shall provide a written review

应提出书面审查意见并书面通知国务院外国投资主管部门；国务院外国投资主管部门在收到联席会议审查意见后5个工作日内书面通知申请人和有关当事人。

在特别审查过程中，联席会议认为外国投资危害或可能危害国家安全的，应提出书面审查意见，报请国务院决定。予以通过的，由国务院外国投资主管部门书面通知申请人和有关当事人；予以否决的，由国务院作出否决决定。

opinion and notify the competent authority of foreign investment under the State Council of such opinion; the competent authority of foreign investment under the State Council shall notify the applicant and the parties concerned in writing of the review opinion issued by the Joint Conference within five working days upon the receipt of such opinion.

During the special review, where the Joint Conference believes that the foreign investment endangers or may endanger national security, it shall submit a written review opinion to the State Council for decision. If the approval is granted, the competent authority of foreign investment under the State Council shall notify the applicant and the parties concerned in writing of such approval; if no approval is granted, the decision on disapproval shall be made by the State Council.

第六十五条 【附加限制性条件】

为避免有关外国投资对国家安全可能产生的危害，申请人可在审查决定作出前向国务院外国投资主管部门提出对有关外国投资附加限制性条件的建议。

联席会议应对该建议的有效性和可行性进行评估。

联席会议可根据评估结果与有关当事人议定附加限制性条件，包括对投资进行必要的调整，以消除对国家可能产生的危害。

Article 65 [Additional Restrictive Conditions]

In order to avoid any potential danger caused by the relevant foreign investment to national security, the applicant may, before the review decision is made, propose suggestions on imposing additional restrictive conditions on the relevant foreign investment to the competent authority of foreign investment under the State Council.

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

The Joint Conference may, based on the assessment result, discuss and determine the additional restrictive conditions with the parties concerned, including the necessary adjustment to the investment to eliminate the potential danger to national security.

第六十六条 【附条件通过】

经过评估并与当事人达成一致，联席会议可作出予以附条件通过的决定，并书面通知国务院外国投资主管部门告知申请人和有关当事人。

Article 66 [Conditional Approval]

Upon the assessment and agreement reached with the parties concerned, the Joint Conference may make the decision on the conditional approval, and notify the competent authority of foreign investment under the State Council in writing to inform the applicant and the parties concerned of such decision.

第六十七条 【附条件的监督执行】

外国投资按照本法获得附加

Article 67 [Supervision of the Execution of Restrictive Conditions]

For a foreign investment that passes the national

限制性条件通过国家安全审查的，外国投资者、外国投资企业在依据本法第五章【信息报告】第四节【定期报告】提交年度报告时应同时说明上一年度遵守限制性条件的有关情况。

国务院外国投资主管部门应当会同有关部门采取适当措施监督限制性条件的执行情况。有关当事人违反限制性条件对国家安全造成危害或者有可能造成危害的，国务院外国投资主管部门可依据本法第五十六条【再次进行安审】规定再次提请国家安全审查。

security review with the conditional approval granted in accordance herewith, the foreign investors or the foreign-invested enterprises shall, in addition to the submission of the annual reports in accordance with Section 4 [Regular Report] of Chapter V [Information Reporting] hereof, state the relevant information concerning compliance with the restrictive conditions in the previous year.

The competent authority of foreign investment under the State Council shall, in concert with the relevant department, take the appropriate measures to supervise the execution of restrictive conditions. If any relevant party concerned violates the restrictive conditions, causing or likely to cause any danger to national security, the competent authority of foreign investment under the State Council may propose an additional national security review in accordance with the provisions of Article 56 [Security Review Anew] hereof.

第六十八条 【安审指南】

国务院外国投资主管部门应编制和公布外国投资国家安全审查指南。

Article 68 [Guidance on Security Review]

The competent authority of foreign investment under the State Council shall prepare and publish guidance on the national security review of foreign investment.

第六十九条 【安审年度报告】

国务院外国投资主管部门应编制和公布外国投资国家安全审查年度报告。

Article 69 [Annual Report on Security Review]

The competent authority of foreign investment under the State Council shall prepare and publish the annual report on the national security review of foreign investment.

第七十条 【安审临时措施】

国家安全审查程序进行中，国务院外国投资主管部门可采取必要的临时措施，以维护国家安全。

Article 70 [Provisional Measures for Security Review]

The competent authority of foreign investment under the State Council may take necessary provisional measures to safeguard national security in the course of the national security review.

第七十一条 【安审强制措施】

经过国家安全审查认定外国投资对国家安全已经造成或可能造成重大危害的，国务院外国投资主管部门应责令当事人不得实

Article 71 [Mandatory Measures for the Security Review]

Where the foreign investment has caused or may cause any major danger to national security as affirmed by the national security review, the competent authority of foreign investment under the State Council shall order that the parties concerned

施或者终止外国投资，或采取转让相关股权、资产或其他有效措施，消除或者避免外国投资对国家安全的危害。

国务院外国投资主管部门可会同有关部门采取必要措施，消除或者避免外国投资对国家安全的危害。

第七十二条 【法律责任承担】

外国投资者未申请国家安全审查而实施投资，国务院外国投资主管部门依据本法第七十条【安审临时措施】、第七十一条【安审强制措施】采取措施给已实施投资造成损失的，由外国投资者承担。

第七十三条 【行政复议和诉讼的豁免】

对于依据本章作出的国家安全审查决定，不得提起行政复议和行政诉讼。

第七十四条 【外国投资金融领域安全审查制度】

外国投资者投资金融领域的国家安全审查制度，由国务院另行规定。

第五章 信息报告

第一节 一般规定

第七十五条 【信息报告制度】

国家建立和完善外国投资信息报告制度，及时、准确、全面掌握全国外国投资情况和外国投资企业运营状况，为制定和完善外国投资法律法规及政策、促进

shall not make or shall terminate the foreign investment, or shall assign the relevant equities or assets or take other effective measures to eliminate or avoid the danger caused by foreign investment to national security.

The competent authority of foreign investment under the State Council may, in concert with the relevant departments, take necessary measures to eliminate or avoid the danger caused by foreign investment to national security.

Article 72 [Assumption of Legal Liability]

Where a foreign investor makes an investment without application for the national security review, if the measures taken by the competent authority of foreign investment under the State Council, in accordance with Article 70 [Provisional Measures for Security Review] and Article 71 [Mandatory Measures for Security Review] hereof, result in any loss to the investment made, such loss shall be borne by the foreign investor.

Article 73 [Exemption of Administrative Reconsideration and Litigation]

No administrative reconsideration or litigation shall be filed against the national security review decision made in accordance with the present Chapter.

Article 74 [Security Review System for Foreign Investment into the Financial Sector]

The national security review system for investment by foreign investors in the financial sector shall be otherwise provided for by the State Council.

Chapter V Information Reporting

Section 1 General Provisions

Article 75 [Information Reporting System]

The State shall establish and improve the foreign investment information reporting system, grasp the nationwide foreign investment situation and the operating status of foreign-invested enterprises in a timely, accurate and comprehensive manner, and provide the basis for formulating and improving foreign investment laws, regulations and policies, and

和引导外国投资提供依据。

promoting and guiding foreign investment.

第七十六条 【信息报告管理】

国务院外国投资主管部门建立外国投资信息报告系统，制定信息报告管理制度，负责全国外国投资信息的汇总、分析、发布和对外交流工作。

Article 76 [Information Reporting Management]
The competent authority of foreign investment under the State Council shall establish a foreign investment information reporting system, develop an information reporting management system, and take charge of the summarization, analysis, release and external exchange of the foreign investment information nationwide.

第七十七条 【外国投资分析报告】

国务院外国投资主管部门编写并发布年度外国投资分析报告，包括外国投资的行业分析、经济效益、社会影响以及政策建议等内容。

Article 77 [Foreign Investment Analysis Report]
The competent authority of foreign investment under the State Council shall prepare and publish an annual analysis report on foreign investment, including industry analysis, economic benefits, social impacts, policy advice and other content relating to foreign investment.

第七十八条 【信息报告主体】

外国投资者、外国投资企业应当依据本法履行信息报告义务。

Article 78 [Subject of Information Reporting]
Foreign investors and foreign-invested enterprises shall perform the information reporting obligation in accordance herewith.

第七十九条 【信息报告途径】

外国投资者、外国投资企业通过外国投资信息报告系统向外国投资主管部门报告信息。

Article 79 [Information Reporting Channels]
Foreign investors and foreign-invested enterprises shall report information to the competent authorities of foreign investment through the foreign investment information reporting system.

第八十条 【如实报告】

外国投资者、外国投资企业应当依照本法真实、准确、完整地提供信息，不得有虚假记载、误导性陈述或重大遗漏。

Article 80 [Reporting in Good Faith]
Foreign investors and foreign-invested enterprises shall, in accordance herewith, provide authentic, accurate and complete information, and shall not make any false record, misleading statement or major omission.

第八十一条 【组合投资报告】

外国投资者购买境内上市公司股票，应按《证券法》和国务院证券监督管理机构的相关规定履行报告、公告及其他法定义务。

Article 81 [Portfolio Investment Reporting]
Foreign investors purchasing the stocks of domestic listed companies shall perform their reporting, announcement and other statutory obligations in accordance with the relevant provisions of the Securities Law and the securities regulatory authority of the State Council.

外国投资者购买境内上市公司股票 10%以上，或者不足 10%但导致境内上市公司控制权发生变更的，应当依照本章规定履行报告义务。

外国投资者购买境内上市公司股票不足 10%且未导致境内上市公司控制权发生变更的，应当依照本法第九十三条【年度报告内容-组合投资】履行报告义务。

Where a foreign investor purchases not less than 10% of the stocks of a domestic listed company, or less than 10% but such purchase leads to a change in the control of the domestic listed company, such foreign investor shall perform its reporting obligation in accordance with the provisions of the present Chapter.

Where a foreign investor purchases less than 10% of the stocks of a domestic listed company and such purchase does not lead to a change in the control of the domestic listed company, such foreign investor shall perform its reporting obligation in accordance with Article 93 [Content of Annual Report - Portfolio Investment] hereof.

第八十二条 【报告信息公示】

国务院外国投资主管部门可通过外国投资信息报告系统向社会公示外国投资者、外国投资企业提供的信息。

Article 82 [Announcement on Reporting Information]

The competent authority of foreign investment under the State Council may announce the information provided by foreign investors and foreign-invested enterprises to society through the foreign investment information reporting system.

第八十三条 【报告信息查询】

公民、法人或者其他组织可依法向外国投资主管部门申请查询外国投资信息。

Article 83 [Reporting Information Inquiry]

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

第八十四条 【信息公示的例外】

外国投资信息涉及外国投资者、外国投资企业的商业秘密、个人隐私的，不予公开，法律、行政法规另有规定的除外。

Article 84 [Exception to Information Announcement]

Foreign investment information involving the trade secrets or personal privacies of foreign investors and foreign-invested enterprises shall not be disclosed, unless otherwise specified by the laws and administrative regulations.

第二节 外国投资事项报告

Section 2 Reporting on Foreign Investment Matters

第八十五条 【信息报告时间】

外国投资者或外国投资企业应在投资实施前或投资实施之日起 30 日内依照本节规定提交信息报告。

Article 85 [Information Reporting Time]

Foreign investors or foreign-invested enterprises shall submit the information reports before the investment is made or within 30 days from the date on which the investment is made in accordance with the provisions of the present Section.

法律法规对实施外国投资有登记要求的，以完成相应登记之日为投资实施之日；没有登记要求的，以投资交易完成之日为投资实施之日。

Where registration is required for making foreign investment by laws and regulations, the date of making the investment shall be the date on which the corresponding registration is completed; where there is no requirement of registration, the date of making the investment shall be the date on which the relevant investment transaction is completed.

第八十六条 【实际投资变化报告】

外国投资者在投资实施前提交信息报告，实际投资情况发生变化的，应在投资实施之日起 30 日内报告变化情况。

Article 86 [Reporting on Changes in Actual Investment]

Foreign investors shall submit information reports before making the investment, and where there is any change in the actual investment, they shall report such change within 30 days from the date of making the investment.

第八十七条 【信息报告内容】

外国投资者在中国境内投资涉及外国投资企业的设立或变更的，外国投资企业应报告以下信息：

（一）外国投资者基本信息，包括名称、住所、注册地、实际控制人、组织形式、主营业务、联系人及联系方式；

（二）外国投资基本信息，包括投资金额、投资来源地、投资领域、投资区域、投资时间、投资方式、出资比例和方式，获得相关行政许可或备案的情况；

（三）外国投资企业基本信息，包括名称、住所、组织机构代码、注册地、股权结构、投资金额、注册资本、实际控制人、组织形式、经营范围、联系人及联系方式；

外国投资者在中国境内投资不涉及外国投资企业的设立或变更的，仅需报告前款（一）和（二）项内容。

外国投资主管部门可要求外国投资者或外国投资企业补充提

Article 87 [Content of Information Reporting]

For investment in China by foreign investors involving the incorporation or change of any foreign-invested enterprise, the foreign-invested enterprise shall report the following information:

1. basic information of foreign investors, including names, addresses, places of registration, actual controllers, organizational forms, primary business lines, contact persons and contact information;
2. basic information of foreign investment, including the investment amount, investment source, investment sector, investment time, investment method, the ratio and form of contribution, and the information on the acquisition of the relevant administrative licence or filing; and
3. basic information of the foreign-invested enterprise, including the name, address, organization code, place of registration, equity structure, investment amount, registered capital, actual controller, organizational form, business scope, contact persons and contact information.

For investment in China by foreign investors involving no incorporation or change of any foreign-invested enterprise, only the content set out in Items 1 and 2 of the preceding paragraph is required for reporting. The competent authorities of foreign investment may require foreign investors or foreign-invested enterprises to submit supplementary materials relating to the information set out in the preceding

交与前两款规定信息相关的材料。

two paragraphs.

第八十八条 【准入许可情况的报告】

外国投资需按照本法规定获得准入许可的，应在获得准入许可后 30 日内履行报告义务。除按照本法第八十七条【信息报告内容】报告有关信息外，还应报告获得准入许可的有关情况。

Article 88 [Reporting on the Access permission]
For foreign investment required to be granted access permission in accordance with the provisions hereof, the reporting obligation shall be performed within 30 days upon acquisition of the access permission. In addition to reporting on the relevant information in accordance with Article 87 [Content of Information Reporting] hereof, the relevant information on the acquisition of access permission shall also be reported.

第三节 外国投资事项变更报告

Section 3 Reporting on Changes in Foreign Investment Matters

第八十九条 【变更报告内容】

外国投资事项发生变更的，外国投资者或外国投资企业应在变更事项发生后 30 日内提交变更报告。

Article 89 [Reporting Content of Changes]
Where there are changes in foreign investment matters, the foreign investors or foreign-invested enterprises shall submit the reports on changes within 30 days upon the occurrence of such changes. For the purpose of the preceding paragraph, changes include:

前款所称变更包括：

（一）外国投资者的名称、住所、注册地、实际控制人、组织形式、主营业务、联系人及联系方式发生变更；

1. changes in names, addresses, places of registration, actual controllers, organizational forms, primary business lines, contact persons and contact information of the foreign investors;

（二）外国投资者的身份因发生合并、分立、破产、解散、撤销、吊销、注销或改变国籍、死亡而发生变更；

2. changes in the identity of foreign investors due to the occurrence of merger, separation, bankruptcy, dissolution, revocation, suspension, cancellation or change of nationality or death;

（三）外国投资的投资金额、投资来源地、投资领域、投资区域、投资时间、投资方式、出资比例和方式，获得相关行政许可或备案的情况发生变更；

3. changes in the investment amount, investment source, investment sector, region of investment, investment time, investment method, the ratio and form of contribution, and the information on acquisition of the relevant administrative licence or filing of foreign investment;

（四）外国投资权益被转让、出租、抵押或质押；

4. assignment, lease, mortgage or pledge of the interests in the foreign investment;

（五）外国投资企业的名称、住所、组织机构代码、注册地、股权结构、投资金额、注册资本、实际控制人、组织形式、

5. changes in names, addresses, organization codes, places of registration, equity structures, investment amounts, registered capital, actual controllers, organizational forms, business scopes, contact persons and contact information of foreign-invested

经营范围、联系人及联系方式发生变更；

(六) 外国投资企业的身份因发生合并、分立、破产、解散、撤销、吊销、注销而发生变更；

外国投资主管部门可要求外国投资者或外国投资企业补充提交与前款规定信息相关的材料。

第九十条 【触发新的准入许可】

发生本法第八十九条【变更报告内容】规定的变更情形，触发新的外国投资准入许可的，外国投资者应依照本法申请准入许可。

第九十一条 【违反准入许可条件】

发生本法第八十九条【变更报告内容】规定的变更情形，可能违反外国投资准入许可所附条件的，外国投资者在提交变更报告时应同时予以说明，并提出解决方案。作出准入许可的外国投资主管部门可视情形开展调查，必要时可要求采取补救措施或依照本法重新申请准入许可。

第四节 定期报告

第九十二条 【年度报告内容】

外国投资者在中国境内投资涉及外国投资企业的设立或变更的，外国投资企业应在每年4月30日前提交上一年度的信息报告，包括以下内容：

(一) 外国投资者基本信息，包括名称、住所、注册地、

enterprises; and

6. changes in the identity of foreign-invested enterprises due to the occurrence of merger, separation, bankruptcy, dissolution, revocation, suspension or cancellation.

The competent authorities of foreign investment may require foreign investors or foreign-invested enterprises to submit supplementary materials relating to the information set out in the preceding paragraph.

Article 90 [Triggering of New Access Permission]

Where any change set out in Article 89 [Reporting Content of Changes] hereof occurs, which triggers new foreign investment access permission, a foreign investor shall apply for access permission in accordance herewith.

Article 91 [Violation of Conditions for Access permission]

Where any change set out in Article 89 [Reporting Content of Changes] hereof occurs, which may violate the conditions attached to the foreign investment access permission, a foreign investor shall state such violations when submitting the report on changes, and propose solutions. The competent authority of foreign investment granting access permission may conduct the investigation as the case may be, and may require the foreign investor to take remedial measures or re-apply for access permission in accordance herewith.

Section 4 Regular Report

Article 92 [Content of Annual Report]

For investment in China by foreign investors involving the incorporation or change of any foreign-invested enterprise, the foreign-invested enterprise shall submit the information report for the previous year prior to 30 April of each year, which includes the following content:

1. basic information of foreign investors, including names, addresses, places of registration, actual controllers, organizational forms, primary business

实际控制人、组织形式、主营业务、联系人及联系方式；

(二) 外国投资基本信息，包括投资金额、投资来源地、投资领域、投资区域、投资时间、投资方式、出资比例和方式，获得相关行政许可或备案的情况；

(三) 外国投资企业基本信息，包括名称、住所、组织机构代码、注册地、股权结构、投资金额、注册资本、实际控制人、组织形式、经营范围、联系人及联系方式；

(四) 上一年度外国投资企业经营状况信息，包括行业领域、主要产品或服务、进出口、用工情况、纳税、研发等；

(五) 上一年度外国投资企业财务会计信息，包括资产、负债、所有者权益、收入、费用、利润等；

(六) 上一年度外国投资企业与外国投资者及其关联方开展的投资和进出口贸易情况等；

(七) 上一年度外国投资企业在境内外涉及的重大诉讼、行政复议、行政或刑事处罚以及依照本法第八章【投诉协调处理】提起的投诉等有关情况；

外国投资者在中国境内投资不涉及外国投资企业的设立或变更的，应在每年4月30日前提交年度报告，内容包括前款第

(一)、(二)项规定的信息以及上一年度投资资产的交易和投资收益情况。

外国投资主管部门可要求外国投资者或外国投资企业补充提交与前两款规定信息相关的材料。

lines, contact persons and contact information;

2. basic information of foreign investment, including the investment amount, investment source, investment sector, region of investment, investment time, investment method, the ratio and form of contribution, and information on the acquisition of the relevant administrative licence or filing;

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

4. information on the business conditions of the foreign-invested enterprise for the previous year, including industry sector, main products or services, import and export, employment situation, tax payment, and research and development;

5. the financial and accounting information of the foreign-invested enterprises for the previous year, including assets, liabilities, owner's equities, revenue, expenses and profits;

6. information on the investment and import and export trade conducted by and between the foreign-invested enterprise and foreign investors as well as their related parties for the previous year; and

7. the relevant information on significant litigation, administrative reconsideration, administrative or criminal penalty within and outside China involving the foreign-invested enterprise and the complaints filed in accordance with Chapter VIII [Coordination in Handling of Complaints] hereof for the previous year.

For investment in China by foreign investors involving no incorporation or change of any foreign-invested enterprise, the foreign investors shall submit the annual information reports prior to 30 April of each year, which include the information set out in Items 1 and 2 of the preceding paragraph and the information on investment asset transactions and the returns on investment for the previous year.

The competent authority of foreign investment may require foreign investors or foreign-invested enterprises to submit supplementary materials relating to the information as set out in the preceding

two paragraphs.

第九十三条 【年度报告内容-组合投资】

外国投资者购买境内上市公司股票不足 10%且未导致境内上市公司控制权发生变更的，购买境内上市公司股票的外国投资者应在每年 4 月 30 日前提交包括以下信息的年度报告：

（一）外国投资者的名称、住所、注册地、实际控制人、组织形式、主营业务、联系人及联系方式；

（二）上市公司的名称、股票代码、经营范围；

（三）上一年度股票交易情况。

Article 93 [Content of Annual Report - Portfolio Investment]

Where a foreign investor purchases less than 10% of the stocks of any domestic listed company and such purchase does not lead to a change in the control of the domestic listed company, such foreign investor shall submit annual reports including the following information prior to 30 April of each year:

1. the name, address, place of registration, actual controller, organizational form, primary business lines, contact persons and contact information of the foreign investor;
2. the name, stock code and business scope of the listed company; and
3. the information on stock transactions for the previous year.

第九十四条 【重点外国投资企业的季度报告】

由外国投资者控制的外国投资企业，其资产总额、销售额或营业收入超过 100 亿元人民币，或其子公司数量超过 10 家的，应在每季度结束后 30 日内报告季度经营状况信息和财务会计信息。

Article 94 [Quarterly Reports of Key Foreign-invested Enterprises]

Foreign-invested enterprises controlled by foreign investors, with total assets, sales volume or operating income above CNY10 billion, or above 10 subsidiaries, shall report the quarterly information on operating conditions and the financial and accounting information within 30 days after each quarter ends.

第九十五条 【整合报告】

外国投资企业应当整合其直接或间接控制的境内企业的相关信息后一并报告。

Article 95 [Consolidation of Reports]

Foreign-invested enterprises shall consolidate the relevant information of the domestic enterprises under their control directly or indirectly and compile reports on a consolidated basis.

第五节 外国投资统计

Section 5 Foreign Investment Analysis

第九十六条 【外国投资统计】

国务院外国投资主管部门依据《统计法》和国家有关规定，建立健全外国投资统计调查制度和统计标准，组织、协调和管理全国范围内的外国投资统计调查工作，结合外国投资者、外国投

Article 96 [Foreign Investment Analysis]

The competent authority of foreign investment under the State Council shall, in accordance with the Statistics Law and the relevant state provisions, establish and improve the statistical survey system and statistical standards for foreign investment, organize, coordinate and manage the statistical survey work nationwide in respect of foreign

资企业信息报告内容，开展统计分析，发布统计数据，并做好档案管理、数据信息共享和对外交流工作。

第九十七条 【统计报告】

国务院外国投资主管部门对外国投资者、外国投资企业提交信息报告的相关内容进行汇总、归纳，编写并发布外国投资统计报告。

第九十八条 【提供信息义务】

国务院外国投资主管部门开展外国投资统计工作时，可依法要求有关地方、部门提供相关信息和数据，有关地方、部门应当予以配合。

第九十九条 【统计数据共享】

国务院外国投资主管部门应当依法向相关部门提供外国投资统计数据。

第六章 投资促进

第一百条 【投资促进机制】

国家制定外国投资发展战略，建立和完善外国投资促进机制，引导外国投资与我国国民经济和社会发展相适应，提升利用外国投资的质量和水平。

第一百〇一条 【投资促进政策】国家依法制定财政、税收、金融、人才、产业、培训、研发等方面的政策措施，促进外国投资。

investment, and in combination with the content of information reports of foreign investors and foreign-invested enterprises, carry out statistical analysis, publish statistical data, and do the work of file management, data sharing and foreign exchange well.

Article 97 [Statistical Report]

The competent authority of foreign investment under the State Council shall summarize and generalize the relevant content of the information reports submitted by foreign investors and foreign-invested enterprises, and prepare and publish foreign investment analysis reports.

Article 98 [Obligation to Provide Information]

When carrying out foreign investment statistical work, the competent authority of foreign investment under the State Council may require the relevant local governments and departments to provide the relevant information and data in accordance with the law, and the relevant local governments and departments shall provide assistance.

Article 99 [Statistical Data Sharing]

The competent authority of foreign investment under the State Council shall provide foreign investment statistical data to the relevant departments in accordance with the law.

Chapter VI Investment Promotion

Article 100 [Investment Promotion Mechanism]

The State formulates foreign investment development strategies, establishes and improves the foreign investment promotion mechanism, guides foreign investment to be commensurate with China's national economic and social development, and improves the quality and level of foreign investment utilization.

Article 101 [Investment Promotion Policies]

The State establishes policies and measures in such aspects as finance, tax, banking, talents, industry, training, and research and development in accordance with the law so as to promote foreign investment.

第一百〇二条 【行业区域政策】

国家根据国内经济社会发展和产业转移形势需要，促进外国投资者在国家鼓励的行业领域，以及特殊经济区域、民族自治地方和经济不发达地区投资，举办产品、服务或者技术先进的外国投资企业。

Article 102 [Industrial and Regional Policies]

According to the domestic economic and social development and the needs of the industrial transfer situation, the State promotes foreign investors' investment in the industries and fields encouraged by the State, and special economic zones, minority autonomous areas and economically underdeveloped areas, and their foundation of foreign-invested enterprises providing advanced products, services or technologies.

第一百〇三条 【投资促进服务】

国家建立外国投资公共服务体系，向外国投资者和其他社会公众提供与外国投资相关的法律法规、政策措施、投资项目和信息等方面的投资促进服务。

Article 103 [Investment Promotion Services]

The State shall establish a public service system for foreign investment, and provides foreign investors and other social public with investment promotion services in terms of laws and regulations, policies and measures, investment projects, and information related to foreign investment.

第一百〇四条 【投资促进秩序】

国家推动建立合理规范的投资促进秩序。

不得以损害国家安全、社会公共利益、公众生命健康、生态环境、劳动者权益等方式鼓励外国投资。

Article 104 [Investment Promotion Order]

The State promotes the establishment of the reasonable and normative investment promotion order.

No foreign investment shall be encouraged at the cost of harming national security, public interests, public life and health, ecological environment, labourers' rights and interests or otherwise.

第一百〇五条 【国际投资促进机构】

国家支持国际投资促进机构组织开展外国投资促进活动。国际投资促进机构在国务院外国投资主管部门指导下履行以下职责：

- (一) 实施国家关于外国投资的战略规划和政策措施；
- (二) 建立并实施全国投资环境评价体系；
- (三) 建立全国性外国投资公共信息、项目与咨询服务平台；
- (四) 开展全国性投资促进

Article 105 [International Investment Promotion Organizations]

The State supports international investment promotion organizations in carrying out foreign investment promotion activities. International investment promotion organizations shall perform the following duties under the guidance of the competent authority of foreign investment under the State Council:

1. implementation of the national strategic planning and policies and measures on foreign investment;
2. establishment and implementation of the national investment environment evaluation systems;
3. establishment of a national platform for public information, projects and consulting services with respect to foreign investment;

活动和投资促进培训工作；

（五）设立海外投资促进代表机构；

（六）与其他国家或地区的投资促进机构、国际投资促进组织开展交流与合作；

（七）接受和协调处理外国投资者投诉，协助维护外国投资者和外国投资企业的合法权益。

4. carrying out of national investment promotion activities and provision of investment promotion training;

5. establishment of representative offices for overseas investment promotion;

6. development of exchange and cooperation with investment promotion organizations and international investment promotion organizations in other countries or regions; and

7. accepting and coordinating the handling of complaints from foreign investors, and helping to safeguard the legitimate rights and interests of foreign investors and foreign-invested enterprises.

第一百〇六条 【国际投资交流平台】

国际投资促进机构举办建立国际投资交流平台，推动和促进跨国投资。

Article 106 [International Investment Exchange Platform]

International investment promotion organizations organize and establish an international investment exchange platform to promote and facilitate transnational investment.

第一百〇七条 【投资信息网站和数据库】

国际投资促进机构建立和完善国际投资促进网站和国际投资项目数据库。

Article 107 [Investment Information Websites and Database]

International investment promotion organizations establish and improve international investment promotion websites and the international investment project database.

第一百〇八条 【地方投资促进】

国家鼓励各地方建立和完善国际投资促进工作机制，设立专门的投资促进机构。

Article 108 [Local Investment Promotion]

The State encourages all localities to establish and improve international investment promotion mechanisms, and set up special investment promotion organizations.

第一百〇九条 【特殊经济区域】

国务院可以设立特殊经济区域，促进外国投资，扩大对外开放。

Article 109 [Special Economic Zones]

The State Council may set up special economic zones to promote foreign investment, and expand the opening up.

第一百一十条 【特殊经济区域管理】

国务院外国投资主管部门及相关主管部门根据各自职责对特殊经济区域进行指导、服务和管

Article 110 [Administration over Special Economic Zones]

The competent authority of foreign investment under the State Council and the relevant competent authorities provide guidance, services and

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management for the special economic zones as per their respective duties.

第七章 投资保护

Chapter VII Investment Protection

第一百一十一条 【征收】

除特殊情况外，国家对外国投资不实行征收。

国家根据社会公共利益需要对外国投资实行征收的，应依照法定程序进行，并依法给予补偿。

Article 111 [Expropriation]

Except under special circumstances, foreign investment is not subject to expropriation by the State.

Where foreign investment is subject to expropriation by the State for the need of social interests, such expropriation shall be carried out in accordance with statutory procedures and compensation shall be provided in accordance with the law.

第一百一十二条 【征用】

因抢险、救灾等紧急需要，依照法律规定的权限和程序，可以征用外国投资者、外国投资企业在中国境内的不动产或者动产。

征用外国投资者、外国投资企业在中国境内的不动产或者动产的，应当依法支付合理的使用费。被征用的不动产或者动产使用后，应当返还被征用人。被征用的不动产或者动产损毁、灭失的，应当依法予以补偿。

Article 112 [Requisition]

For the urgent need of emergency and disaster relief, within the limits of power and in accordance with the procedures provided by the law, immovables or movables within the territory of China owned by foreign investors and foreign-invested enterprises may be requisitioned.

For the requisition of immovables or movables within the territory of China owned by foreign investors and foreign-invested enterprises, reasonable use fees shall be paid in accordance with the law. Immovables or movables requisitioned shall be returned to the owners after use. Where the immovables or movables requisitioned are damaged or lost, compensation shall be provided in accordance with the law.

第一百一十三条 【国家赔偿】

国家机关及其工作人员违法行使职权给外国投资者、外国投资企业造成损失的，外国投资者、外国投资企业有权依法要求赔偿。

Article 113 [State Compensation]

Where State organs and their functionaries illegally exercise their functions and powers, causing damage to foreign investors and foreign-invested enterprises, such foreign investors and foreign-invested enterprises are entitled to claim for compensation in accordance with the law.

第一百一十四条 【转移】

除法律、行政法规另有规定外，国家允许外国投资者的出资、利润、资产处置所得、依法获得的补偿或赔偿等合法财产自由转入或转出。

Article 114 [Transfer]

Unless otherwise provided by laws and administrative regulations, the State allows free transfer into or out of China of such lawful property of foreign investors as investments, profits, incomes from the disposal of assets and compensation lawfully acquired.

第一百一十五条 【透明度】

国家依法及时公布与外国投资有关的法律法规和司法判决。

外国投资者、外国投资企业可依法参与法律法规制定程序，并发表评论意见。

Article 115 [Transparency]

The State promptly publishes the laws and regulations and judicial judgments relating to foreign investment in accordance with the law.

Foreign investors and foreign-invested enterprises may participate in the formulation procedures for laws and regulations in accordance with the law and voice their comments and opinions.

第一百一十六条 【知识产权保护】

国家依法保护外国投资者、外国投资企业的知识产权。

Article 116 [Intellectual Property Protection]

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

第一百一十七条 【商协会】

外国投资者、外国投资企业可依法成立和自愿参加商会、协会，在法律法规和组织章程规定范围内开展相关活动，维护自身权益。

Article 117 [Chambers of Commerce and Associations]

Foreign investors and foreign-invested enterprises may establish, in accordance with the law and voluntarily in conjunction with chambers of commerce and associations, carry out the relevant activities within the scope specified by laws, regulations and articles of association and protect their own rights and interests.

第一百一十八条 【纠纷解决】

外国投资者在中国境内投资和经营活动中产生纠纷的，可依照相关法律法规通过协商、调解、投诉、复议、仲裁或者诉讼等方式解决。

Article 118 [Dispute Settlement]

Disputes arising from the investing and operating activities within the territory of China by foreign investors may be settled through negotiation, mediation, complaint, reconsideration, arbitration, litigation or otherwise in accordance with the relevant laws and regulations.

第八章 投诉协调处理

Chapter VIII Coordination in the Handling of Complaints

第一百一十九条 【投诉协调处理机制】

国家建立外国投资投诉协调处理机制，负责外国投资者、外国投资企业与行政机关之间投资争议的协调和处理。

Article 119 [Mechanism for Coordination in the Handling of Complaints]

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

第一百二十条 【投诉协调处理中心职责】

Article 120 [Duties of the Centre for Coordination in the Handling of Complaints]

国际投资促进机构设立全国外国投资投诉协调处理中心，协调处理在全国范围内影响重大的外国投资投诉事项，履行以下职责：

（一）受理、转送外国投资投诉事项；

（二）与有关地方、部门协调处理外国投资投诉事项；

（三）督促、检查外国投资投诉事项处理方案的落实情况；

（四）根据外国投资投诉事项具体情况，向有关地方、部门提出完善政策和改进工作的建议；

（五）研究分析外国投资投诉情况，向国务院外国投资主管部门提交报告。

International investment promotion organizations have established a national center for the coordination of handling foreign investment complaints to coordinate the handling of foreign investment complaints which have major impacts nationwide, and perform the following duties:

1. receiving and forwarding foreign investment complaints;
2. coordinating with the relevant local governments and departments in the handling of foreign investment complaints;
3. urging or inspecting the implementation of handling schemes for foreign investment complaints;
4. putting forward suggestions about improvements to policies and the work to the relevant local governments and departments according to the specific situation of foreign investment complaints; and
5. researching and analyzing foreign investment complaints and submitting a report to the competent authority of foreign investment under the State Council.

第一百二十一条 【请求协助】

根据外国投资投诉协调处理工作需要，全国外国投资投诉协调处理中心可要求有关地方、部门说明情况、提供材料并提供其他必要的协助。

Article 121 [Request for Assistance]

According to the needs of coordination in the handling of foreign investment complaints, the national center for coordination in the handling of foreign investment complaints may require the relevant local governments and departments to explain the situation and provide materials and other necessary assistance.

第一百二十二条 【协调处理建议】

全国外国投资投诉协调处理中心根据本法第一百二十条【投诉协调处理中心职责】向有关地方、部门提出建议的，有关地方和部门应当予以处理并及时反馈处理情况。

Article 122 [Suggestions for Coordination in Handling]

Where the national center for coordination in the handling of foreign investment complaints proposes suggestions to the relevant local governments and departments in accordance with Article 120 [Duties of the Centre for Coordination in the Handling of Complaints] hereof, the relevant local governments and departments shall accept such suggestions and provide timely feedback on the handling situation.

第一百二十三条 【投诉协调处理机构】

Article 123 [Institutions for Coordination in the Handling of Complaints]

县级以上地方各级人民政府根据需要设立外国投资投诉协调处理机构，在本辖区内受理并协调处理外国投资者、外国投资企业在投资争议中针对行政机关的投诉，并负责办理全国外国投资投诉协调处理中心转交的投诉事项。

Local people's governments at and above the county level shall establish institutions for coordination in the handling of foreign investment complaints according to the needs to accept, and coordinate the handling, within their respective jurisdictions, of complaints made against administrative organs by foreign investors and foreign-invested enterprises in investment disputes and to take charge of handling complaints forwarded by the national center for coordination in the handling of foreign investment complaints.

第一百二十四条 【投诉协调处理原则】

外国投资投诉协调处理机构遵循公平、公正、合法的原则，依据本法及相关法律法规的规定协调处理投诉。

Article 124 [Principles for Coordination in the Handling of Complaints]

Institutions for coordination in the handling of foreign investment complaints shall, in compliance with the principles of fairness, justness and legality and in accordance with the provisions of the Law and the relevant laws and regulations, coordinate the handling of complaints.

第一百二十五条 【如实投诉】

外国投资者、外国投资企业投诉时应如实反映情况，提供相应证据，并配合外国投资投诉协调处理机构开展工作。

Article 125 [Faithful Complaints]

When making complaints, foreign investors and foreign-invested enterprises shall faithfully reflect the situation, provide the relevant evidence, and cooperate with institutions for coordination of the handling of foreign investment complaints to handle the complaints.

第九章 监督检查

Chapter IX Supervision and Inspection

第一百二十六条 【监督检查】

外国投资主管部门应当加强对外国投资者、外国投资企业是否遵守本法的监督检查。

工商、税务、外汇、审计等其他行政主管部门依法履行监督检查职能。

Article 126 [Supervision and Inspection]

The competent authorities of foreign investment shall strengthen the supervision and inspection regarding whether foreign investors and foreign-invested enterprises abide by the Law.

The industrial and commercial, taxation, foreign exchange, auditing and other competent administrative departments shall perform their powers and functions of supervision and inspection in accordance with the law.

第一百二十七条 【监督检查启动】

外国投资主管部门可依下列情形启动对外国投资者、外国投

Article 127 [Launch of Supervision and Inspection]

The competent authorities of foreign investment may, according to the following circumstances, launch the supervision and inspection of foreign investors and

资企业的监督检查：

- （一）定期抽样检查；
- （二）根据举报进行检查；
- （三）根据有关部门、司法机关的建议和反映的情况进行检查；
- （四）其他依职权启动的检查。

第一百二十八条 【抽样检查】

抽样检查分为不定向抽样检查和定向抽样检查。

不定向抽样检查是指外国投资主管部门随机确定被检查人和被检查事项；定向抽样检查是指外国投资主管部门按照外国投资类型、经营规模、所属行业、地理区域等特定条件随机确定被检查人。

第一百二十九条 【举报】

对于涉嫌违反本法的行为，任何单位和个人均有权向外国投资主管部门举报。

举报人可要求外国投资主管部门予以保密。

第一百三十条 【对举报的核实】

举报人应当提供举报人的基本情况、被举报人的基本情况、涉嫌违反本法的相关事实和证据。

外国投资主管部门认为有必要的，应当进行核实。

第一百三十一条 【检查内容】

检查内容包括：

foreign-invested enterprises:

1. regular sampling inspections;
2. inspections according to reports;
3. inspections according to the suggestions and feedback of the relevant departments and the judicial organs; and
4. other inspections launched ex officio.

Article 128 [Sampling Inspections]

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

Non-directional sampling inspection refers to the random determination of persons and matters under inspection by the competent authorities of foreign investment; directional sampling inspection refers to the random determination of persons under inspection by the competent authorities of foreign investment according to such specific conditions as the type of foreign investment, business size, industry and geographic region.

Article 129 [Whistleblowing]

With regard to behaviour suspected of violating the Law, any entity or individual has the right to report the same to the competent authorities of foreign investment.

Whistleblowers may require the competent authorities of foreign investment to keep their information confidential.

Article 130 [Verification of Facts in Whistleblowing]

Whistleblowers shall provide their basic information as well as basic information of the alleged violators and the relevant facts and evidence for alleged violation of the Law.

Where the competent authorities of foreign investment deem it necessary, the whistleblowing shall be verified.

Article 131 [Content to be Inspected]

Matters to be inspected include:

1. whether investments are made in the fields

(一) 是否在禁止实施目录列明的领域实施投资;

(二) 是否未经许可在限制实施目录列明的领域实施投资;

(三) 是否遵守准入许可决定所附加的条件;

(四) 是否遵守国家安全审查决定所附加的限制性条件;

(五) 是否履行信息报告义务;

(六) 是否履行外国投资主管部门作出的行政处罚决定;

(七) 是否存在危害国家安全和公共利益的行为;

(八) 是否存在其他违反本法的情形。

specified in the Catalogue of Prohibitions;

2. whether investments are made in the fields specified in the Catalogue of Restrictions without permission;

3. whether the conditions attached to the access permission decision are complied with;

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

5. whether the information reporting obligation is performed;

6. whether the administrative penalty decision made by the competent authorities of foreign investment is performed;

7. whether there are acts that endanger national security or public interests; and

8. whether there are other cases in violation of the Law.

第一百三十二条 【检查方式】

外国投资主管部门开展检查工作,可以采取网络监测、问卷调查、实地核查等方式。

Article 132 [Inspection Methods]

The competent authorities of foreign investment may adopt network monitoring, questionnaire survey, on-site verification or otherwise in carrying out the inspection.

第一百三十三条 【实地核查】

外国投资主管部门开展实地核查工作,检查人员不得少于二人,在检查中应当出示证件。检查人员应当填写实地核查记录表,如实记录核查情况,并由被检查企业或者人员签字或者盖章。无法取得签字或者盖章的,检查人员应当注明原因,必要时可邀请有关人员作为见证人。

Article 133 [On-site Verification]

Where the competent authorities of foreign investment carry out on-site verification, there shall be at least two inspectors, who shall present their certificates in the inspection. Inspectors shall fill in the On-site Verification Record, with the verification results faithfully recorded, which shall be signed or sealed by the inspected enterprises or persons. In the absence of the signature or seal, inspectors shall specify the reason and may, if necessary, invite the persons concerned to act as witnesses.

第一百三十四条 【专业结论】

根据检查需要,外国投资主管部门可委托会计师事务所、税务师事务所、律师事务所等专业机构提供验资、审计、鉴证、咨询等专业服务。

Article 134 [Professional Conclusions]

According to the needs of inspection, the competent authorities of foreign investment may entrust accounting firms, certified tax agent firms, law firms and other professional agencies to provide capital verification, audit, authentication, consulting and other professional services.

The competent authorities of foreign investment may

外国投资主管部门可采用其他政府部门作出的检查、核查结果。

adopt the inspection and verification results made by other government departments.

第一百三十五条 【配合检查】

检查时，外国投资主管部门可以依法查阅或者要求被检查人提供有关材料，被检查人应当如实提供。

Article 135 [Cooperation with Inspection]
In the process of inspection, the competent authorities of foreign investment may, in accordance with the law, refer to or request the persons under inspection to provide the relevant materials, which shall be truthfully provided by the latter.

第一百三十六条 【检查纪律】

外国投资主管部门实施检查不得妨碍被检查人正常的生产经营活动，不得接受被检查人提供的财物或服务，不得谋取其他非法利益。

Article 136 [Inspection Disciplines]
The implementation of the inspection by the competent authorities of foreign investment shall not hinder the normal production and operation activities of the persons under inspection, shall not accept property or services provided by the persons under inspection or seek other illegal benefits.

第一百三十七条 【检查处理】

检查中发现被检查人可能存在违反本法行为的，外国投资主管部门可依法开展调查，经调查确认存在违法行为的，根据本法第十章【法律责任】的规定予以处罚。

Article 137 [Inspection Handling]
Where the persons under inspection are found during the process of inspection to have possibly violated the Law, the competent authorities of foreign investment may, in accordance with the law, conduct an investigation. Where a violation is confirmed after the investigation, the persons under inspection shall, in accordance with the provisions of Chapter X [Legal Liability] hereof, be punished.

第一百三十八条 【信息共享】

外国投资主管部门、其他有关行政主管部门应当实现外国投资管理的信息共享。

Article 138 [Information Sharing]
The competent authorities of foreign investment and other relevant administrative departments shall achieve information sharing in foreign investment administration.

第一百三十九条 【地方检查】

国务院外国投资主管部门负责指导全国外国投资监督检查工作，根据需要开展或者组织地方外国投资主管部门开展检查工作。

Article 139 [Inspections by Local Departments]
The competent authority of foreign investment under the State Council is responsible for guiding the supervision and inspection of foreign investment nationwide and, according to the needs, carrying out, or organizing local competent authorities of foreign investment to carry out inspections.

县级以上地方各级人民政府外国投资主管部门负责组织或者

The competent authorities of foreign investment of local people's governments at and above the county level are responsible for organizing or carrying out

开展本辖区的外国投资检查工作。

the foreign investment inspection within their jurisdictions.

第一百四十条 【对地方检查的指导和监督】

上级外国投资主管部门应当加强对下级外国投资主管部门开展检查工作的指导和监督，及时纠正有关违法行为。

Article 140 [Guidance and Supervision of Inspections Made by Local Departments]

The competent authorities of foreign investment at a higher level shall strengthen the guidance and supervision of inspections made by the competent authorities of foreign investment at a lower level and timely correct the relevant violations.

第一百四十一条 【诚信档案】

国务院外国投资主管部门建立外国投资诚信档案系统。

外国投资诚信档案系统记录的信息包括外国投资者、外国投资企业在设立登记、生产经营活动中所形成的信息，以及外国投资主管部门和其他主管部门在监督检查中掌握的反映其诚信状况的信息。

外国投资诚信档案系统管理的具体办法，由国务院另行规定。

Article 141 [Credit Archives]

The competent authority of foreign investment under the State Council shall establish a credit archive system for foreign investment.

Information recorded in the credit archive system for foreign investment includes that formed in the incorporation registration, production and operation and other activities of foreign investors and foreign-invested enterprises as well as that in the possession of the competent authorities of foreign investment and other competent departments during supervision and inspection and reflecting the credit conditions of foreign investors and foreign-invested enterprises. Specific measures for administration of the credit archive system for foreign investment shall be separately formulated by the State Council.

第一百四十二条 【诚信信息的公开】

外国投资主管部门可依法将有关外国投资者、外国投资企业的诚信信息予以公开。

社会公众可以申请查询外国投资者、外国投资企业的诚信信息。

依据前两款公开或者向其他人员披露的诚信信息不得含有外国投资者、外国投资企业的商业秘密、个人隐私，法律、行政法规另有规定的除外。

Article 142 [Publicity of Credit Information]

The competent authorities of foreign investment may, in accordance with the law, publicize the credit information of the relevant foreign investors and foreign-invested enterprises.

The public may apply for disclosure of the credit information of foreign investors and foreign-invested enterprises.

Unless laws and administrative regulations otherwise provide, credit information publicized in accordance with the two preceding paragraphs or disclosed to other persons shall not contain the commercial secrets and personal privacy of foreign investors and foreign-invested enterprises.

第一百四十三条 【诚信信息的修正】

Article 143 [Correction of Credit Information]

Foreign investors and foreign-invested enterprises may inquire to examine their own credit information

外国投资者和外国投资企业可以查询外国投资诚信档案系统中的自身诚信信息，如认为有关信息记录不完整或者有错误的，可以提供相关证明材料并申请修正。经核查属实的，予以修正。

in the credit archive system for foreign investment. If they think that the relevant information recorded is incomplete or erroneous, they may provide the relevant evidential materials and apply for correction. Any incomplete or erroneous information shall be corrected after verification.

第十章 法律责任

Chapter X Legal Liability

第一百四十四条 【在禁止目录内投资】

外国投资者在禁止实施目录列明的领域投资的，投资所在地省、自治区、直辖市人民政府外国投资主管部门应责令停止投资、限期处分股权或其他资产，没收非法所得，并处 10 万元以上、100 万元以下或非法投资额 10% 以下的罚款。

Article 144 [Investments in Fields Specified in the Catalogue of Prohibitions]

Where foreign investors make investments in the fields specified in the Catalogue of Prohibitions, the competent authorities of foreign investment of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government at the place where the investments are made shall order them to stop the implementation of investments, dispose of equity or other assets within a prescribed time limit, confiscate illegal gains, if any, and impose a fine of not less than CNY100,000 but not more than CNY1 million or of not more than 10% of illegal investments.

第一百四十五条 【违反准入许可规定】

外国投资者未经许可在限制实施目录列明的领域投资的，投资所在地省、自治区、直辖市人民政府外国投资主管部门应责令停止投资、限期处分股权或其他资产，没收非法所得，并处 10 万元以上、100 万元以下或非法投资额 10% 以下的罚款。

外国投资者违反外国投资准入许可附加条件的，作出许可决定的外国投资主管部门应责令限期改正，并处 5 万元以上、50 万元以下或投资额 5% 以下的罚款；逾期不改正的，或情节严重的，外国投资主管部门可撤销准入许可。

Article 145 [Violation of Provisions on Access Permission]

Where foreign investors make investments in the fields specified in the Catalogue of Restrictions without authorization, the competent authorities of foreign investment of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government at the place where the investments are made shall order them to stop the investments, dispose of equity or other assets within a prescribed time limit, confiscate illegal gains, if any, and impose a fine of not less than CNY100,000 but not more than CNY1 million or of not more than 10% of illegal investments.

Where foreign investors violate additional conditions for access permission of foreign investment, the competent authorities of foreign investment that make the permission decision shall order them to make corrections within a prescribed time limit and impose a fine of not less than CNY50,000 but not more than CNY500,000 or of not more than 5% of

the investments; if foreign investors fail to make corrections within the prescribed time limit, or the circumstances are serious, the competent authorities of foreign investment may revoke the access permission.

第一百四十六条 【违反国家安全审查规定】

外国投资者有下列情形之一的，国务院外国投资主管部门应责令限期改正，处 10 万元以上、100 万元以下或投资额 10% 以下的罚款，并可依据本法第五十六条【再次进行安审】的规定再次提起国家安全审查：

（一）在国家安全审查过程中隐瞒有关情况，提供虚假材料或进行虚假陈述的；

（二）违反国家安全审查决定中所附限制性条件的。

Article 146 [Violation of Provisions on the National Security Review]

Where foreign investors fall under either of the following circumstances, the competent authority of foreign investment under the State Council shall order them to make corrections within a prescribed time limit, impose a fine of not less than CNY100,000 but not more than CNY1 million or of not more than 10% of the investments, and may, in accordance with the provisions of Article 56 [Additional Security Review] hereof, propose an additional national security review:

1. concealing the relevant situation, providing false information or making false statements in the process of the national security review; and
2. violating restrictive conditions attached to the national security review decision.

第一百四十七条 【违反信息报告义务的行政法律责任】

外国投资者或外国投资企业违反本法规定，未能按期履行或逃避履行信息报告义务，或在进行信息报告时隐瞒真实情况、提供误导性或虚假信息的，投资所在地省、自治区、直辖市人民政府外国投资主管部门应责令限期改正；逾期不改正的，或情节严重的，处 5 万元以上、50 万元以下或投资额 5% 以下的罚款。

Article 147 [Administrative Legal Liability for Violating the Information Reporting Obligation]

Where foreign investors or foreign-invested enterprises, in violation of the provisions hereof, fail to perform on schedule, or evade the performance of, the information reporting obligation, or conceal the truth or provide false or misleading information when information reporting, the competent authorities of foreign investment of the people's governments of provinces, autonomous regions and municipalities directly under the Central Government at the place where the investments are made shall order them to make corrections within a prescribed time limit; if they fail to make corrections within the prescribed time limit, or the circumstances are serious, a fine of not less than CNY50,000 but not more than CNY500,000 or of not more than 5% of the investments shall be imposed.

第一百四十八条 【违反信息报告义务的刑事法律责任】

Article 148 [Criminal Legal Liability for Violating the Information Reporting Obligation]

外国投资者或外国投资企业违反本法规定，逃避履行信息报告义务，或在进行信息报告时隐瞒真实情况、提供误导性或虚假信息，情节特别严重的，对单位判处罚金，对其直接负责的主管人员和其他责任人员，处一年以下有期徒刑或拘役。

Where foreign investors or foreign-invested enterprises, in violation of the provisions hereof, fail to perform on schedule, or evade the performance of, the information reporting obligation, or conceal the truth or provide false or misleading information when information reporting, and if the circumstances are extremely serious, a fine shall be imposed on the foreign investors or foreign-invested enterprises and the directly responsible person-in-charge and other persons liable shall be sentenced to fixed-term imprisonment of not more than one year or criminal detention.

第一百四十九条 【规避行为的法律责任】

外国投资者、外国投资企业以代持、信托、多层次再投资、租赁、承包、融资安排、协议控制、境外交易或其他任何方式规避本法规定，在禁止实施目录列明的领域投资、未经许可在限制实施目录列明的领域投资或违反本法规定的信息报告义务的，分别依照本法第一百四十四条【在禁止目录内投资】、第一百四十五条【违反准入许可规定】、第一百四十七条【违反信息报告义务的行政法律责任】或第一百四十八条【违反信息报告义务的刑事法律责任】进行处罚。

Article 149 [Legal Liability for Circumvention Behaviour]

Where foreign investors and foreign-invested enterprises circumvent the provisions hereof by entrusted holding, trust, multi-level re-investment, leasing, contracting, financing arrangements, protocol control, overseas transaction or otherwise, make investments in fields specified in the Catalogue of Prohibitions, or make investments in fields specified in the Catalogue of Restrictions without authorization or violate the information reporting obligations specified herein, the penalty shall be respectively imposed in accordance with Article 144 of [Investments in Fields Specified in the Catalogue of Prohibitions], Article 145 [Violation of Provisions on Access Permission], Article 147 [Administrative Legal Liability for Violating the Information Reporting Obligation] or Article 148 [Criminal Legal Liability for Violating the Information Reporting Obligation] hereof.

第一百五十条 【强制执行措施】

外国投资者、外国投资企业逾期不履行外国投资主管部门作出的行政处罚决定的，外国投资主管部门可以采取以下措施：

（一）到期不缴纳罚款的，每日按罚款数额的万分之五加处罚款；

（二）根据法律规定，将查

Article 150 [Enforcement Measures]

Where foreign investors and foreign-invested enterprises fail to perform the administrative penalty decisions made by the competent authorities of foreign investment within the prescribed time limit, the competent authorities of foreign investment may take the following measures:

1. for those failing to pay the fine within the prescribed time limit, imposing an additional fine of 0.05% of the above fine for each day of delay;
2. putting the property sealed up and detained up for

封、扣押的财物拍卖或者将冻结的存款划拨抵缴罚款；

(三) 申请人民法院强制执行。

第一百五十一条 【吊销证照和刑事法律责任】

外国投资者、外国投资企业违反本法规定，相关行业主管部门可依法吊销许可证件，工商行政管理部门可依法吊销外国投资企业的营业执照；构成犯罪的，依法追究刑事责任。

第一百五十二条 【管理部门工作人员的法律責任】

外国投资主管部门及其他相关管理部门工作人员在履行职责中有徇私舞弊、滥用职权或玩忽职守行为的，依法给予行政处分；构成犯罪的，依法追究刑事责任。

第十一章 附则

第一百五十三条 【生效前存续企业】

本法生效前依法存续的外国投资企业，除本章另有规定外，应适用本法的规定。

第一百五十四条 【生效前存续企业的变更】

本法生效前依法存续的外国投资企业，在本法生效后变更经营事项，属于本法规定应当申请准入许可情形的，应申请准入许可。

auction or transferring the deposit frozen to offset the fine in accordance with the law; and

3. applying to a people's court for enforcement.

Article 151 [Revocation of Certificates and Licences and Criminal Legal Liability]

Where foreign investors and foreign-invested enterprises violate the provisions hereof, the competent authorities of the relevant industries may, in accordance with the law, revoke the licence certificate and the industrial and commercial administrative departments may, in accordance with the law, revoke the business licences of foreign-invested enterprises; if a crime is constituted, criminal liabilities shall be prosecuted in accordance with the law.

Article 152 [Legal Liability of Functionaries of Administrative Departments]

Where functionaries of the competent authorities of foreign investment and other relevant administrative departments engage in malpractices for personal gains, abuse powers and functions or neglect duties in the performance of duties, they shall be imposed administrative sanctions in accordance with the law; if they constitute a crime, criminal liabilities shall be prosecuted in accordance with the law.

Chapter XI Supplementary Provisions

Article 153 [Enterprises Existing before the Entry into Force of the Law]

The provisions hereof shall apply to foreign-invested enterprises existing in accordance with the law before the entry into force of the Law, except as otherwise provided in the present chapter.

Article 154 [Changes to Enterprises Existing before the Entry into Force of the Law]

Where foreign-invested enterprises existing in accordance with the law before the entry into force of the Law make changes to their operating items, which fall into the circumstance under which an application for access permission shall be made in accordance herewith, they shall apply for access

本法生效前依法存续的外国投资企业，在本法生效后新增加投资金额达到限制实施目录中规定的标准的，应当申请准入许可。

第一百五十五条 【原有条件下继续经营】

本法生效前依法存续的外国投资企业，可在原批准的经营围、期限和其他条件下继续经营。

第一百五十六条 【经营期限】

本法生效后，投资各方可自行约定经营期限，但外国投资主管部门依据本法有关规定作出的以经营期限作为准入条件的除外。

本法公布后生效前经营期限届满，投资各方有意继续经营的，本法生效后可向工商行政管理机关办理变更手续。

投资各方自行约定或变更经营期限损害第三方权益的，第三方可依相关法律法规主张权利。

第一百五十七条 【变更企业组织形式和组织机构】

本法生效前依法存续的外国投资企业，在本法生效后三年内应按照《公司法》、《合伙企业法》、《个人独资企业法》等法律法规变更企业组织形式和组织机构，但企业既有经营期限在本

permission.

For foreign-invested enterprises existing in accordance with the law before the entry into force of the Law, where their newly increased investments after the entry into force of the Law reach the standards specified in the Catalogue of Restrictions, they shall apply for access permission.

Article 155 [Going Concern under the Existing Conditions]

Foreign-invested enterprises existing in accordance with the law before the entry into force of the Law may continue as a going concern under the business scope, term of operation and other conditions originally approved.

Article 156 [Term of Operation]

After the entry into force of the Law, investors may agree on the term of operation on their own, except where the competent authorities of foreign investment take the term of operation as access conditions in accordance with the relevant provisions hereof.

Where the term of operation expires after the promulgation but before the entry into force of the Law and investors intend to conduct business on a going concern basis, they may, after the entry into force of the Law, go through the change formalities with the industrial and commercial administrative organs.

Where investors agree on the term of operation on their own or change the term of operation, which harms the rights and interests of a third party, the third party may, in accordance with the relevant laws and regulations, claim its rights.

Article 157 [Changes of Organization Forms and Organizational Structures of Enterprises]

Foreign-invested enterprises existing in accordance with the law before the entry into force of the Law shall, within three years after the entry into force of the Law and in accordance with the Company Law of the People's Republic of China (hereinafter referred to as the "Company Law"), the Partnership Enterprise Law of the People's Republic of China, the Law of the

法生效后三年内届满且拟延长经营期限的，应在企业既有经营期限内进行变更。

依前款规定完成变更之前，继续适用《中外合资经营企业法》、《外资企业法》、《中外合作经营企业法》中关于企业组织形式和组织机构的规定。

People's Republic of China on Sole Proprietorship Enterprises, and other laws and regulations, change their organization forms and organizational structures, but if the existing term of operation of enterprises will expire within three years after the entry into force of the Law and the enterprises intend to extend the term of operation, such changes shall be made within the existing term of operation of the enterprises.

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

第一百五十八条 【协议控制的 处理】

（参见“关于《中华人民共和国外国投资法（草案征求意见稿）》的说明”）

Article 158 [Handling of Protocol Control]
(See the Notes to the Foreign Investment Law of the People's Republic of China (Draft for Comment))

第一百五十九条 【取得外国 国籍】

具有中国国籍的自然人取得外国国籍的，其在中国境内的投资不论发生于本法生效之前或之后，均属于外国投资，应当适用本法的相关规定，国务院另有规定的除外。

Article 159 [Acquisition of Foreign Nationality]
Where a natural person of Chinese nationality has acquired foreign nationality, his investment in China, whether occurring before or after the entry into force of the Law, shall be deemed a foreign investment, which shall be subject to the relevant provisions of the Law, unless otherwise provided by the State Council.

第一百六十条 【取得外国永 久居留权】

具有中国国籍的自然人取得外国永久居留权，有关法律、行政法规对其在中国境内投资的待遇另有规定的，从其规定。

Article 160 [Acquisition of the Right of Permanent Abode in Foreign Countries]
Where a natural person of Chinese nationality has acquired the right of permanent abode in a foreign country and there are separate provisions in the relevant laws and administrative regulations on treatments to his investment within the territory of China, such provisions shall prevail.

第一百六十一条 【取得中国 永久居留权】

Article 161 [Acquisition of the Right of Permanent Abode in China]
Where a natural person of foreign nationality has

具有外国国籍的自然人取得中国永久居留权，有关法律、行政法规对其在中国境内投资的待遇另有规定的，从其规定。

acquired the right of permanent abode in China and there are separate provisions in the relevant laws and administrative regulations on treatments to his investment within the territory of China, such provisions shall prevail.

第一百六十二条 【台湾同胞投资】

台湾同胞投资者在大陆投资的，参照适用本法，但法律、行政法规另有规定的除外。

对台湾同胞投资者在大陆投资的特别待遇，由国务院另行规定。

Article 162 [Investments of Taiwan Compatriots]
The Law applies mutatis mutandis to the investments of Taiwan investors in the mainland, unless laws and administrative regulations otherwise provide. Special treatments to investments of Taiwan investors in the mainland shall be separately formulated by the State Council.

第一百六十三条 【港澳同胞和华侨投资】

港澳同胞投资者和华侨在内地投资的，参照适用本法，但法律、行政法规另有规定的除外。

对港澳同胞投资者和华侨在内地投资的特别待遇，由国务院另行规定。

Article 163 [Investments of Hong Kong and Macao Compatriots and Overseas Chinese]
The Law applies mutatis mutandis to the investments of Hong Kong and Macao investors and overseas Chinese in the mainland, unless laws and administrative regulations otherwise provide. Special treatments for investments of Hong Kong and Macao investors and overseas Chinese in the mainland shall be separately formulated by the State Council.

第一百六十四条 【法律适用】

外国投资者签订的在中国境内履行的投资合同，适用中国法律。

Article 164 [Law Application]
Investment contracts signed and performed within the territory of China by foreign investors shall be governed by the Chinese law.

第一百六十五条 【对应措施】

任何国家或者地区对中国投资者及其投资采取歧视性措施的，国家可以根据实际情况采取相应的措施。

Article 165 [Countermeasures]
Where any country or region takes discriminatory measures against Chinese investors and their investments, the State may take appropriate countermeasures in accordance with the actual situation.

第一百六十六条 【金融领域外国投资】

外国投资者投资银行、证券、保险等金融领域的，由相关金融主管部门依据有关法律、行

Article 166 [Foreign Investment in the Financial Field]
Where foreign investors invest in banking, securities, insurance and other financial fields, the relevant competent financial departments shall, in accordance with the relevant laws and administrative regulations,

政法规实施准入许可和监督检查。

implement access permission and supervision and inspection.

第一百六十七条 【计价货币】

Article 167 [Denomination Currency]

外国投资管理和统计采用人民币作为主要计价货币。

RMB is adopted as the major denomination currency in foreign investment administration and statistics.

第一百六十八条 【是否包括本数】

Article 168 [Whether Including Given Figures]

本法所称“以上”、“以下”、“达到”包括本数，“超过”、“少于”、“不足”不包括本数。

For the purpose of the Law, "not less than", "not more than", "reaches" and "reach" include the given figures while "above", and "less than" do not include the same.

第一百六十九条 【实施办法】

Article 169 [Implementing Measures]

国务院可以依据本法制定实施办法。

The State Council may formulate implementing measures in accordance herewith.

第一百七十条 【生效】

Article 170 [Entry into Force]

本法自20年月日起施行。《中外合资经营企业法》、《外资企业法》和《中外合作经营企业法》同时废止。

The Law shall come into force as of mm/dd/yy. The Law on Sino-foreign Equity Joint Ventures, the Law on Wholly Foreign-owned Enterprises and the Law on Sino-foreign Cooperative Joint Ventures shall be simultaneously repealed.

关于《中华人民共和国外国投资法（草案征求意见稿）》的说明

Notes to the Foreign Investment Law of the People's Republic of China (Draft for Comment)

（2015年1月19日）

(19 January, 2015)

改革开放早期制定的《中外合资经营企业法》、《外资企业法》和《中外合作经营企业法》（以下简称外资三法），奠定了我国利用外资的法律基础，为推动我国改革开放伟大历史进程做出了重大贡献。以外资三法为核心的外资法律体系对于我国积极有效地利用外资、推动国民经济发展发挥了举足轻重的作用。多年来，我国吸收外资稳居世界第二、发展中国家第一的地位。从

The Law on Sino-foreign Equity Joint Ventures, the Law on Wholly Foreign-owned Enterprises and the Law on Sino-foreign Cooperative Joint Ventures (hereinafter referred to as the "Three Foreign Investment Laws") formulated in the early years of China's reform and opening up provide a legal base for China's foreign investment utilization and have made significant contributions to the great historical process of China's reform and opening up. The legal system for foreign investment dominated by the Three Foreign Investment Laws has played a pivotal role in China's active and effective use of foreign investment and promotion of national economic

最初带来资金、技术、管理经验和出口渠道，发展到今天带来现代服务业态、新型经营理念、高端人才，外商投资企业已经成为推动我国经济社会发展的重要力量。

development. Over the years, China has stably ranked second in the world and first in developing countries in terms of absorption of foreign investment. From introduction of capital, technology, management experience and export channels to introduction of modern services, new operation philosophy and high-end talents, foreign-invested enterprises have become an important force to promote the economic and social development of China.

当前，我国全面建成小康社会进入决定性阶段，改革进入攻坚期和深水区，对外开放面临新形势新任务。现行外资三法已经难以适应全面深化改革和进一步扩大开放的需要。一是外资三法确立的逐案审批制管理模式已不能适应构建开放型经济新体制的需要，不利于激发市场活力和转变政府职能；二是外资三法中关于企业组织形式、经营活动等规定和《公司法》等有关法律存在重复甚至冲突；三是外资并购、国家安全审查等重要制度需要纳入外国投资的基础性法律并进一步完善。

At present, China is entering a critical stage in building a moderately prosperous society in all respects and a hard and important stage in its reform. Opening up is also challenged by a new situation and new tasks. The existing Three Foreign Investment Laws can hardly adapt to the needs of comprehensively deepening the reform and further opening up. Firstly, the management mode "case-by-case examination and approval system" established by the Three Foreign Investment Laws is inadaptible to the requirements for construction of a new open economic system, and is not conducive to the activation of the market or transformation of governmental functions; secondly, the provisions of the Three Foreign Investment Laws on enterprise organization forms and operating activities are repeated provisions of, and even conflict with, the Company Law and other relevant laws; and thirdly, important systems on foreign mergers and acquisitions and national security review are required to be included in fundamental laws on foreign investment and are subject to further improvements.

党的十八届三中全会提出“构建开放型经济新体制”，“统一内外资法律法规，保持外资政策稳定、透明、可预期”，“改革涉外投资审批体制”，“探索对外商投资实行准入前国民待遇加负面清单的管理模式”；党的十八届四中全会要求“适应对外开放不断深化，完善涉外法律法规体系，促进构建开

Several concepts were raised at the Third Plenary Session of the 18th Central Committee of the Communist Party of China (hereinafter referred to as the "CPC"), including "constructing a new open economic system", "unitizing laws and regulations on domestic and foreign investments and keeping foreign investment policies stable, transparent, and foreseeable", "reforming the foreign investment examination and approval system" and "exploring the management mode of pre-access national treatment plus negative list for foreign investment", and the

放型经济新体制”。这为我们开展外资三法修改工作指明了方向。为贯彻落实党的十八届三中、四中全会精神，根据《十二届全国人大常委会立法规划》和《国务院 2014 年立法工作计划》，商务部启动了《中外合资经营企业法》、《外资企业法》、《中外合作经营企业法》修改工作，形成了《中华人民共和国外国投资法（草案征求意见稿）》（以下简称《征求意见稿》）。

Fourth Plenary Session of the 18th CPC Central Committee required "adapting to the deepening opening up, improving foreign-related laws and regulations and promoting construction of a new open economic system". All of these give us a direction to amend the Three Foreign Investment Laws. In order to implement and execute the spirit of the Third and Fourth Plenary Sessions of the 18th CPC Central Committee and subject to the Legislation Programme of the Standing Committee of the 12th National People's Congress and the 2014 Legislation Plan of the State Council, the Ministry of Commerce has amended the Law on Sino-foreign Equity Joint Ventures, the Law on Wholly Foreign-owned Enterprises and the Law on Sino-foreign Cooperative Joint Ventures to work out the Foreign Investment Law of the People's Republic of China (Draft for Comment) (hereinafter referred to as the "Draft for Comment").

一、指导思想和基本原则

此次《征求意见稿》起草的指导思想是，以党的十八大和十八届三中、四中全会精神为指导，适应构建开放型经济新体制要求，坚持市场化、法治化、国际化的改革方向，创新外国投资管理体制，制定一部既符合我国经济发展阶段和基本国情、又顺应国际通行规则发展要求的外国投资基础性法律，为外国投资创造更加稳定、透明、可预期的法律环境。

我们认为，《外国投资法》应定位为一部深化体制改革的法，扩大对外开放的法，促进外商投资的法，规范外资管理的法。为实现上述目标，我们在起草中坚持了以下原则：

一是明确法律基本定位。

《外国投资法》定位于统一的管理和促进外国投资的基础性法

I. Guiding Ideology and Basic Principles

The guiding ideology for drafting the Draft for Comment is, guided by the spirit of the 18th CPC National Congress and the Third and Fourth Plenary Sessions of the 18th CPC Central Committee, to meet the requirements for building a new open economic system, adhere to market, legalization and internationalization oriented reforms, innovate the foreign investment administration system and develop a basic law on foreign investment in line with the stage of economic development and basic national conditions of China and in compliance with the development requirements of the prevailing international rules so as to create a more stable, transparent, and foreseeable legal environment for foreign investment.

We believe that the Foreign Investment Law shall be positioned to deepen institutional reform, further open up to the outside world, promote foreign investment and standardize foreign capital administration. To achieve the above goals, we adhere to the following principles in drafting the Draft for Comment:

Firstly, we define the basic legal positioning. The

律，不再将企业的组织形式作为规范对象。

二是创新外资管理模式。取消现行对外商投资的逐案审批体制，采取准入前国民待遇和负面清单的外资管理方式，大幅减少外资限制性措施，放宽外资准入，加强信息报告。

三是完善外资管理制度。总结三十余年外资管理的实践，将外资并购、国家安全审查等重要制度纳入《外国投资法》并进一步完善。

四是切实转变政府职能。从重事前审批向提供公共服务和加强事中事后监管转变，在大幅取消行政审批的同时，加强投资促进与保护、监督检查等制度。

Foreign Investment Law is positioned as a basic law unifying the administration and promotion of foreign investment, and no longer regards organization forms of enterprises as the object of standardization.

Secondly, we innovate the management mode of foreign investment by cancelling the existing case-by-case examination and approval system for foreign investment, adopting the management mode of pre-access national treatment plus negative list, significantly reducing the restrictive measures for foreign investment, relaxing foreign investment access and enhancing information reporting.

Thirdly, we improve the foreign investment administration system by summarizing the practices of foreign investment administration for over thirty years, including foreign investment mergers and acquisitions, national security review and other important systems into the Foreign Investment Law and making further improvements.

Fourthly, we effectively transform governmental functions by transforming from prior examination and approval to the provision of public services and strengthening of interim and ex post regulation, and strengthening investment promotion and protection, supervision and inspection and other systems when substantially cancelling administrative examination and approval.

二、主要内容

《征求意见稿》共 170 条，分为 11 章，分别是总则、外国投资者和外国投资、准入管理、国家安全审查、信息报告、投资促进、投资保护、投诉协调处理、监督检查、法律责任和附则。主要内容如下：

（一）外国投资者和外国投资的定义。

对于外国投资者，《征求意见稿》在依据注册地标准对外国投资者予以定义的同时，引入了“实际控制”的标准。一方面规定，受外国投资者控制的境内企

II. Main Content

There are 170 articles in the Draft for Comment, which is divided into 11 chapters, namely General Provisions, Foreign Investors and Foreign Investment, Access Administration, National Security Review, Information Reporting, Investment Promotion, Investment Protection, Complaint Coordination and Handling, Supervision and Inspection, Legal Liability, and Supplementary Provisions. The main content is as follows:

1. Definitions of foreign investors and foreign investment

For foreign investors, the Draft for Comment also introduces the standard of "actual control" when defining foreign investors according to the standards of the registered place. On one hand, domestic

业视同外国投资者；另一方面规定，外国投资者受中国投资者控制的，其在中国境内的投资可视为中国投资者的投资。

对于外国投资，《征求意见稿》规定不仅包括绿地投资，还包括并购、中长期融资、取得自然资源勘探开发或基础设施建设运营特许权、取得不动产权利以及通过合同、信托等方式控制境内企业或者持有境内企业权益。

（二）准入管理制度

《征求意见稿》废除了外资三法确立的逐案审批制度，设计了与准入前国民待遇加负面清单管理模式相适应的外资准入管理制度。外国投资主管部门仅对特别管理措施目录列明领域内的投资实施准入许可，审查对象也不再是合同、章程，而是外国投资者及其投资行为。在实施负面清单管理模式下，绝大部分的外资进入将不再进行审批。同时规定，外国投资者在中国境内投资，无论是否属于特别管理措施目录列明的领域，均需要履行报告义务。

（三）国家安全审查制度。

为防止外国投资对国家安全造成或者可能造成危害，《征求意见稿》设专章规定了外国投资国家安全审查制度。针对现行国家安全审查制度效力层级低、制度不完善等缺陷，在国务院办公厅《关于建立外国投资者并购境内企业安全审查制度的通知》基础上，充分借鉴有关国家的做法，《征求意见稿》进一步完善了国家安全审查的审查因素、审查程序，明确了为消除国家安全隐患可采取的措施等内容，并规

enterprises controlled by foreign investors are deemed foreign investors; on the other hand, for foreign investors controlled by Chinese investors, their investments within the territory of China may be deemed those of Chinese investors.

The Draft for Comment specifies that foreign investment not only includes investment in green land but also mergers and acquisitions, medium and long-term financing, acquisition of the concessions to explore or exploit natural resources or acquisition of the concessions to construct or operate the infrastructure, acquisition of immovable property rights and control of any domestic enterprise or holding of the interests in any domestic enterprise by way of contract or trust.

2. Access administration system

The Draft for Comment has abolished the case-by-case examination and approval system established by Three Foreign Investment Laws and designed the foreign investment access administration system corresponding to the management mode of pre-access national treatment plus negative list. The competent authorities of foreign investment only implement access permission for investment within the fields specified in the Catalogue of Special Administrative Measures and the objects of review are no longer contracts and articles of association, but foreign investors and their investment behaviour. Under the management mode of negative list, the majority of foreign investment access matters will no longer be subject to examination and approval. It also provides that foreign investors must perform the reporting obligation when investing within the territory of China, whether within the fields specified in the Catalogue of Special Administrative Measures or not.

3. National security review system

To prevent foreign investment from causing or possibly causing harm to national security, the Draft for Comment specially provides for a national security review system for foreign investment in a designated chapter. Aimed at such defects as the low level of the existing national security review system and imperfection of systems, based on the Circular on

定国家安全审查决定不得提起行政复议和行政诉讼。

（四）信息报告制度。

为了及时、准确、全面掌握外国投资情况和外国投资企业运营状况，《征求意见稿》规定了外国投资信息报告制度。外国投资者或外国投资企业对其投资经营行为，无论是否属于特别管理措施目录列明的领域，都要向外国投资主管部门履行信息报告义务。报告信息必须真实、准确、完整，不得有虚假记载、误导性陈述或重大遗漏。《征求意见稿》区分信息报告的三种类别

（外国投资事项报告、外国投资事项变更报告、定期报告），规定了相应的报告内容和时限。

（五）投资促进制度。

强化政府在投资促进方面的职能，是当前世界各国外资立法和政策的一个新趋势。为建立完善的投资促进机制和提高投资促进专业化水平，提升利用外资的质量和水平，《征求意见稿》从投资促进政策、投资促进机构、特殊经济区域等方面对投资促进工作进行了规范。

（六）投资保护制度。

为保护外国投资者及其投资的合法权益，《征求意见稿》从征收、征用、国家赔偿、转移、透明度、知识产权保护等方面，全面加强了对外国投资者及其投资的保护体系。

（七）投诉协调处理制度。

《征求意见稿》规定了投诉协调处理制度，强化了外国投资投诉协调处理机构对外国投资者、外国投资企业与行政机关之间的争议进行协调和处理的工作

Establishing the Security Review System for the Merger and Acquisition of Domestic Enterprises by Foreign Investors of the General Office of the State Council and by fully learning the practices of the relevant countries, the Draft for Comment further improves the review factors and review procedures of the national security review, defines such content as the measures to be taken to eliminate potential national safety hazards and specifies that no administrative reconsideration and administrative litigation shall be instituted against the national security review decision.

4. Information reporting system

In order to timely, accurately and comprehensively grasp information on foreign investment and the operating conditions of foreign-invested enterprises, the Draft for Comment provides for the information reporting system for foreign investment. Foreign investors or foreign-invested enterprises must perform the obligation of reporting information on their investing and operating behaviour to the competent authorities of foreign investment, regardless of whether the investing and operating behaviour falls within the fields specified in the Catalogue of Special Administrative Measures or not. Information reported must be authentic, accurate and complete without any false records, misleading statements or material omissions. The Draft for Comment distinguishes between three categories of information reporting (reporting on foreign investment matters, reporting on changes in foreign investment matters and periodic reports) and specifies the corresponding content to be reported and report timing.

5. Investment promotion system

At present, strengthening governmental functions in facilitating foreign investment is a new trend in foreign investment legislation and policies of countries all over the world. To establish a perfect investment promotion mechanism, improve the professional level of investment facilitation and promote and enhance the quality and level of utilization of foreign investment, the Draft for Comment standardizes the investment facilitation

职能，以及时有效化解外国投资争端。

（八）监督检查制度。

在扩大市场准入、减少行政审批的同时加强事中事后监管，这是新一届政府转变政府职能的“重中之重”。《征求意见稿》从监督检查启动、检查方式、检查内容、检查结果等方面对监督检查制度进行了全面规定。同时，通过建立外国投资者诚信档案制度，增强外国投资者、外国投资企业自律意识。

（九）法律责任制度。

《征求意见稿》规定了法律责任制度，明确了在禁止领域投资、未经许可或者违反许可条件在限制领域投资、违反信息报告义务、违反国家安全审查规定、规避法律强制性规定等情形下应承担的行政法律责任或刑事法律责任。

from investment promotion policies, investment promotion organizations, special economic zones and other aspects.

6. Investment protection system

To protect the legitimate rights and interests of foreign investors and their investment, the Draft for Comment comprehensively strengthens the protection system for foreign investors and their investment from expropriation, requisition, national compensation, transfer, transparency, intellectual property protection and other aspects.

7. System for complaint coordination and handling

The Draft for Comment provides for a system for complaint coordination and handling, strengthening the functions of coordination and handling authorities of foreign investment complaints to coordinate and handle disputes between foreign investors and foreign-invested enterprises, and administrative organs, as well as timely and effectively resolving foreign investment disputes.

8. Supervision and inspection system

Expanding market access and reducing administrative examination and approval, and strengthening interim and ex post regulation at the same time are the "top priority" for transformation of governmental functions of the new government. The Draft for Comment fully provides for the supervision and inspection system from launch of supervision and inspection, ways of inspection, content to be inspected, inspection results and other aspects. At the same time, it enhances the self-discipline consciousness of foreign investors and foreign-invested enterprises through establishing the credit archive system for foreign investors.

9. Legal liability system

The Draft for Comment provides for a legal liability system, defining the administrative liability or criminal liability which shall be undertaken for investment in prohibited fields, investment in restricted fields without permission or in violation of permission conditions, violation of the information reporting obligation, violation of the provisions on the national security review and circumvention of compulsory legal provisions.

三、关于若干问题的说明

(一) 过渡期安排

《外国投资法》生效后，外资三法将予以废止。由于《外国投资法》将不再规范外国投资企业的组织形式和组织机构等问题，《征求意见稿》规定，本法生效前依法存续的外国投资企业，应当在三年内按照《公司法》等法律法规对企业组织形式和组织机构进行调整。

(二) 港澳台侨投资者的待遇

改革开放以来，港澳台同胞和海外侨胞的投资对于推动我国经济的蓬勃发展起到了不可或缺的重要作用。《征求意见稿》规定，港澳台侨投资者投资参照适用本法；关于港澳台侨投资者投资的特别待遇，建议由国务院另行规定。

(三) 协议控制的处理

外国投资企业通过签署一系列协议获得内资企业控制权的问题，受到广泛关注。征求意见稿将协议控制明确规定为外国投资的一种形式，本法生效后，以协议控制方式进行投资的，将适用本法。对于本法生效前既存的以协议控制方式进行的投资，如在本法生效后仍属于禁止或限制外国投资领域，应当如何处理，理论界和实务界有以下几种观点：

1、实施协议控制的外国投资企业，向国务院外国投资主管部门申报其受中国投资者实际控制的，可继续保留协议控制结构，相关主体可继续开展经营活动；

2、实施协议控制的外国投资企业，应当向国务院外国投资主管部门申请认定其受中国投资者

III. Notes to Several Issues

1. Arrangements during the transitional period

After the entry into force of the Foreign Investment Law, the Three Foreign Investment Laws will be abolished. As the Foreign Investment Law no longer standardizes the organization form and organizational structure of foreign-invested enterprises, the Draft for Comment specifies that foreign-invested enterprises existing in accordance with the law before the entry into force of the Law shall, within three years and in accordance with the Company Law and other laws and regulations, adjust the organization form and organizational structure of enterprises.

2. Treatment given to Hong Kong, Macao and Taiwan investors and overseas Chinese

Since the reform and opening up, investment by Hong Kong, Macao and Taiwan compatriots and overseas Chinese has played an indispensable role in promoting the vigorous development of China's economy. The Draft for Comment specifies that the Law applies mutatis mutandis to investment by Hong Kong, Macao and Taiwan investors and overseas Chinese; special treatment for their investment is suggested to be separately provided by the State Council.

3. Handling of protocol control

The issues on the control of domestic enterprises obtained by foreign-invested enterprises by signing a series of protocols have attracted extensive attention. The Draft for Comment clearly defines protocol control as a form of foreign investment. After the entry into force of the Law, the Law shall apply to investment by protocol control. For investment by protocol control and existing before the entry into force of the Law, if such investment still falls within prohibited or restricted foreign investment after the entry into force of the Law, there are opinions as below in the theory cycle and practice cycle on how to deal with such investment:

1. where a foreign-invested enterprise that implements protocol control declares to the competent authority of foreign investment under the State Council its actual control by Chinese investors, it may continue to retain the structure of protocol

实际控制；在国务院外国投资主管部门认定其受中国投资者实际控制后，可继续保留协议控制结构，相关主体可继续开展经营活动；

3、实施协议控制的外国投资企业，应当向国务院外国投资主管部门申请准入许可，国务院外国投资主管部门会同有关部门综合考虑外国投资企业的实际控制人等因素作出决定。

我们将在广泛听取社会公众意见的基础上，就此问题作进一步研究，并提出处理建议。

（四）外资准入许可、工商登记和行业许可的关系。

《征求意见稿》规定，外国投资者在特别管理措施目录列明领域内投资的，如果涉及需要申请前置性行业许可的领域，外国投资者在申请外资准入许可时须提交行业许可证件；不需要申请前置性行业许可的，外国投资主管部门在审查时需要应征求相关行业主管部门的意见；外国投资者获得外资准入许可后办理工商登记。目前，我国正在推进行政审批和登记制度改革，我们将根据改革进程进一步完善外资准入许可的相关制度设计，处理好外资准入许可、工商登记和行业许可的关系。

control and the relevant subjects may continue to carry out operating activities;

2. a foreign-invested enterprise that implements protocol control shall apply to the competent authority of foreign investment under the State Council to determine its actual control by Chinese investors; after the competent authority of foreign investment under the State Council determines its actual control by Chinese investors, it may continue to retain the structure of protocol control and the relevant subjects may continue to carry out operating activities;

3. a foreign-invested enterprise that implements protocol control shall apply to the competent authority of foreign investment under the State Council for access permission and the competent authority of foreign investment under the State Council in concert with the relevant departments will make a decision after comprehensively considering the actual controller of the foreign-invested enterprise and other factors.

We will further study this issue based on intensively listening to public comments and make recommendations for its handling.

4. Relationship between foreign investment access permission, industrial and commercial registration, and industry licensing

The Draft for Comment provides that where a foreign investor invests in a field specified in the Catalogue of Special Administrative Measures, if the investment is involved in a field for which an application for pre-licensing is required, the foreign investor shall submit its industry licence when applying for foreign investment access permission; if the application for pre-licensing is not required, the competent authority of foreign investment shall solicit the opinions of the competent authority of the relevant industry in the course of review; the foreign investor shall handle industrial and commercial registration after obtaining foreign investment access permission. At present, China is advancing the reform of the administrative examination and approval and registration system. We will further improve the design of systems related to foreign investment access permission according to

the reform process so as to deal with the relationship between foreign investment access permission, industrial and commercial registration, and industrial licensing well.