

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

Notice of the General Office of the State Council on Launching the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors

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<p>各省、自治区、直辖市人民政府，国务院各部委、各直属机构：</p>	<p>To the people's governments of all provinces, autonomous regions and municipalities directly under the Central Government and all the departments of and the organizations directly under the State Council,</p>
<p>近年来，随着经济全球化的深入发展和我国对外开放的进一步扩大，外国投资者以并购方式进行的投资逐步增多，促进了我国利用外资方式多样化，在优化资源配置、推动技术进步、提高企业管理水平等方面发挥了积极作用。</p> <p>为引导外国投资者并购境内企业有序发展，维护国家安全，经国务院同意，现就建立外国投资者并购境内企业安全审查(以下简称并购安全审查)制度有关</p>	<p>In the midst of the development of economic globalization and further implementation of China's opening up policy, China has seen gradual increase in the numbers of mergers and acquisitions (M&amp;As) of domestic enterprises by foreign investors, which has played an active role in promoting the diversification of foreign capital utilization in China, optimizing resource allocation, promoting technological advancement, and enhancing enterprise management capability. In order to guide the orderly development of foreign investors' M&amp;As of domestic enterprises, and protect the national security, subject to the approval of the State Council, we hereby announce the relevant matters regarding the launching of security review system for M&amp;As of domestic enterprises by foreign investors (hereinafter referred to as "M&amp;A security review") as follows:</p>

<p>事项通知如下：</p>	
<p>一、 并购安全审查范围</p> <p>（一） 并购安全审查的范围为：外国投资者并购境内军工及军工配套企业，重点、敏感军事设施周边企业，以及关系国防安全的其他单位；外国投资者并购境内关系国家安全的重要农产品、重要能源和资源、重要基础设施、重要运输服务、关键技术、重大装备制造等企业，且实际控制权可能被外国投资者取得。</p>	<p>1. Scope of M&amp;A security review</p> <p>(1) Scope of M&amp;A security review covers: foreign investors' M&amp;As of military industrial enterprises or military industry related supporting enterprises, enterprises located near key and sensitive military facilities, and other entities relating to national defense; foreign investors' M&amp;As of key domestic enterprises in areas such as agriculture, energy and resources, infrastructure, transport, technology, assembly manufacturing, etc., whereby the foreign investors might acquire the actual controlling right thereof.</p>
<p>（二） 外国投资者并购境内企业，是指下列情形：</p>	<p>(2) M&amp;As of domestic enterprises by foreign investors shall refer to the following circumstances:</p>
<p>1. 外国投资者购买境内非外商投资企业的股权或认购境内非外商投资企业增资，使该境内企业变更设立为外商投资企业。</p>	<p>(a) A foreign investor's purchase of the equity of a non-foreign-invested enterprise in China, or subscription of the capital increase of a non-foreign-invested enterprise in China, thereby transforming said enterprise into a foreign-invested enterprise;</p> <p>(b) A foreign investor's purchase of the equity held by Chinese shareholders in a foreign-invested enterprise in China, or subscription of the capital increase of a foreign-invested enterprise in China;</p> <p>(c) A foreign investor establishes a foreign-invested</p>

<p>2 外国投资者购买境内外商投资企业中方股东的股权，或认购境内外商投资企业增资。</p> <p>3 外国投资者设立外商投资企业，并通过该外商投资企业协议购买境内企业资产并且运营该资产，或通过该外商投资企业购买境内企业股权。</p> <p>4 外国投资者直接购买境内企业资产，并以该资产投资设立外商投资企业运营该资产。</p>	<p>enterprise, purchases by agreement the assets of a domestic enterprise through said foreign-invested enterprise, and operates such purchased assets, or purchases the equity of a domestic enterprise through the said foreign-invested enterprise; or</p> <p>(d) A foreign investor directly purchases the assets of a domestic enterprise and uses the purchased assets to invest and establish a foreign-invested enterprise for operation of such assets.</p>
<p>(三) 外国投资者取得实际控制权，是指外国投资者通过并购成为境内企业的控股股东或实际控制人。包括下列情形：</p> <p>1 外国投资者及其控股母公司、控股子公司在并购后持有的股份总额在</p>	<p>(3) A foreign investor acquiring the actual controlling right shall mean that the foreign investor becomes the controlling shareholder or actual controller of the concerned domestic enterprise through the M&amp;A, which shall include the following circumstances:</p> <p>(a) A foreign investor or its parent company or subsidiary holds a 50% stake or more in the target company after the M&amp;A;</p> <p>(b) More than one foreign investor holds an aggregate of 50% stake or more in the target company after the M&amp;A;</p> <p>(c) A foreign investor holds less than 50% stake in the target company after the M&amp;A, but the voting rights actually enjoyed by the foreign investor is sufficient to exert major impact on the resolution of the shareholders' meeting, general meeting of shareholders, or the board of directors; or</p>

<p>50%以上。</p> <p>2☐数个外国投资者在并购后持有的股份总额合计在 50%以上。</p> <p>3☐外国投资者在并购后所持有的股份总额不足 50% ,但依其持有的股份所享有的表决权已足以对股东会或股东大会、董事会的决议产生重大影响。</p> <p>4☐其他导致境内企业的经营决策、财务、人事、技术等实际控制权转移给外国投资者的情形。</p>	<p>(d) Other circumstances that may result in the actual controlling right in business decision-making, financial affairs, human resources, technologies, etc., being transitioned to the foreign investor.</p>
<p>二、并购安全审查内容</p>	<p>2. Content of M&amp;A security review</p>
<p>(一) 并购交易对国防安全，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。</p> <p>(二) 并购交易对国家经济稳定运行的影响。</p>	<p>(1) Impact of the M&amp;A transactions on the national security, including the domestic product manufacturing capacity, domestic service provision capacity, and relevant equipment and facilities needed for the national security;</p> <p>(2) Impact of the M&amp;A transactions on the stable operation of national economy;</p> <p>(3) Impact of the M&amp;A transactions on the basic living of the people; and</p> <p>(4) Impact of the M&amp;A transactions on the R&amp;D capacity for key technologies related to the national security.</p>

<p>(三) 并购交易对社会基本生活秩序的影响。</p> <p>(四) 并购交易对涉及国家安全关键技术研发能力的影响。</p>	
<p>三、并购安全审查工作机制</p> <p>(一) 建立外国投资者并购境内企业安全审查部际联席会议(以下简称联席会议)制度,具体承担并购安全审查工作。</p> <p>(二) 联席会议在国务院领导下,由发展改革委、商务部牵头,根据外资并购所涉及的行业和领域,会同相关部门开展并购安全审查。</p> <p>(三) 联席会议的主要职责是:分析外国投资者并购境内企业对国家安全的影</p>	<p>3. M&amp;A security review work mechanism</p> <p>(1) A system of ministerial panel for the security review of M&amp;As of domestic enterprises by foreign investors (hereinafter referred to as "Ministerial Panel") shall be established to be responsible for the specific M&amp;A security review work ;</p> <p>(2) The Ministerial Panel shall be under the leadership of the State Council, while the National Development and Reform Commission and the Ministry of Commerce shall take the lead in carrying out M&amp;A security review in conjunction with other relevant departments according to the industries and fields involved in the foreign M&amp;A; and</p> <p>(3) The main duties and responsibilities of the Ministerial Panel shall include: analyzing the impact of the M&amp;A of domestic enterprises by foreign investors on the national security; studying and coordinating the major issues involved in the security review of foreign investors' M&amp;As of domestic enterprises; carrying out security review regarding the foreign investors' M&amp;As of domestic enterprises if so required and making decisions.</p>

<p>投资者并购境内企业安全审查工作中的重大问题；</p> <p>对需要进行安全审查的外国投资者并购境内企业交易进行安全审查并作出决定。</p>	
<p>四、并购安全审查程序</p> <p>(一) 外国投资者并购境内企业，应按照本通知规定，由投资者向商务部提出申请。对属于安全审查范围内的并购交易，商务部应在 5 个工作日内提请联席会议进行审查。</p> <p>(二) 外国投资者并购境内企业，国务院有关部门、全国性行业协会、同业企业及上下游企业认为需要进行并购安全审查的，可以通过商务部提出进行并购安全审查的建议。联席会议认为确有必</p>	<p>4. Procedures of M&amp;A security review</p> <p>(1) With regard to a foreign investor's M&amp;A of a domestic enterprise, the investor shall file an application with the Ministry of Commerce in accordance with this Notice. If the M&amp;A falls under the scope of security review, the Ministry of Commerce shall file a request for M&amp;A security review with the Ministerial Panel within five working days;</p> <p>(2) With regard to a foreign investor's M&amp;A of a domestic enterprise, if the relevant departments under the State Council, national industrial associations, enterprises in the same trade, and other enterprises on the upstream and downstream sides believe it necessary to conduct the M&amp;A security review, they may make proposals through the Ministry of Commerce on conducting the M&amp;A security review. The Ministerial Panel may decide to conduct the review if it deems it necessary;</p> <p>(3) With respect to M&amp;A transactions submitted by the Ministry of Commerce for M&amp;A security review, the Ministerial Panel shall first conduct general review, and implement the special review if the transactions fail the general review. The parties to the transactions shall cooperate with the Ministerial Panel in the review process, provide materials and information required for the security review work, and accept relevant inquiries; The general review shall be carried out by means of written opinion solicitation. Upon the receipt of the application for M&amp;A security review filed by the Ministry of Commerce, the Ministerial Panel shall seek opinions in writing from the relevant departments within five working days. The relevant departments shall, upon the receipt of the opinion solicitation letter, present written</p>

要进行并购安全审查的，  
可以决定进行审查。

(三) 联席会议对商务部提请安全审查的并购交易，首先进行一般性审查，对未能通过一般性审查的，进行特别审查。并购交易当事人应配合联席会议的安全审查工作，提供安全审查需要的材料、信息，接受有关询问。

一般性审查采取书面征求意见的方式进行。联席会议收到商务部提请安全审查的并购交易申请后，在 5 个工作日内，书面征求有关部门的意见。有关部门在收到书面征求意见函后，应在 20 个工作日内提出书面意见。如有关部门均认为并购交易不影响国家安全，则不再进行特

opinions within 20 working days. If the relevant departments reach a consensus that the concerned M&A transactions will not have any impact on national security and the special review is unnecessary, the Ministerial Panel shall issue review opinions within five working days upon the receipt of all the written opinions, and inform the Ministry of Commerce of the same in writing.

If certain departments believe that the concerned M&A transactions may impact the national security, the Ministerial Panel shall initiate the special review procedures within five working days upon the receipt of the relevant written opinions. After the special review procedures are initiated, the Ministerial Panel shall organize security assessment on said M&A transactions and review the same by taking into account the assessment opinions. If a consensus is reached after the review, the Ministerial Panel shall present review opinions. In the event of major divergence of views, the Ministerial Panel shall report the circumstances to the State Council for a decision. The Ministerial Panel shall complete the special review or report to the State Council for a decision within 60 working days after the special review procedures are initiated. The Ministry of Commerce shall be notified of the review opinions in writing by the Ministerial Panel;

(4) During the M&A security review, the applicant may apply with the Ministry of Commerce for modification of the transaction plan or cancellation of the transaction;

(5) The Ministry of Commerce shall notify the applicant of the M&A security review opinions; and

(6) If a foreign investor's M&A of a domestic enterprise has exerted, or is likely to exert, major impact on the national security, the Ministerial Panel shall require the Ministry of Commerce, in conjunction with other relevant departments, to terminate the transaction, or take other effective measures such as transfer of relevant equity or assets, so as to eliminate the influence of the said M&A on the national security.

别审查，由联席会议在收到全部书面意见后 5 个工作日内提出审查意见，并书面通知商务部。

如有部门认为并购交易可能对国家安全造成影响，联席会议应在收到书面意见后 5 个工作日内启动特别审查程序。启动特别审查程序后，联席会议组织对并购交易的安全评估，并结合评估意见对并购交易进行审查，意见基本一致的，由联席会议提出审查意见；存在重大分歧的，由联席会议报请国务院决定。联席会议自启动特别审查程序之日起 60 个工作日内完成特别审查，或报请国务院决定。审查意见由联席会议书面通知商务部。



<p>( 四 ) 在并购安全审查过程中，申请人可向商务部申请修改交易方案或撤销并购交易。</p> <p>( 五 ) 并购安全审查意见由商务部书面通知申请人。</p> <p>( 六 ) 外国投资者并购境内企业行为对国家安全已经造成或可能造成重大影响的，联席会议应要求商务部会同有关部门终止当事人的交易，或采取转让相关股权、资产或其他有效措施，消除该并购行为对国家安全的影响。</p>	
<p>五、其他规定</p> <p>( 一 ) 有关部门和单位要树立全局观念，增强责任意识，保守国家秘密和商业秘密，提高工作效率，在扩大对外开放和提高利</p>	<p>5. Other provisions</p> <p>(1) The relevant departments and entities shall bear in mind the overall interests, enhance their sense of responsibility, keep the national secrets and trade secrets, and improve their work efficiency, so as to promote the sound development of foreign capital M&amp;As and effectively safeguard the national security in the midst of the further opening up the market to the outside world and improvement of the capability in foreign capital utilization,;</p> <p>(2) Where a foreign investor's M&amp;A of a domestic enterprises involves new investment in fixed assets, the</p>

用外资水平的同时，推动  
外资并购健康发展，切实  
维护国家安全。

(二) 外国投资者并购  
境内企业涉及新增固定资  
产投资的，按国家固定资  
产投资管理规定办理项目  
核准。

(三) 外国投资者并购  
境内企业涉及国有产权变  
更的，按国家国有资产管  
理的有关规定办理。

(四) 外国投资者并购  
境内金融机构的安全审查  
另行规定。

(五) 香港特别行政区、  
澳门特别行政区、台湾地  
区的投资者进行并购，参  
照本通知的规定执行。

(六) 并购安全审查制  
度自本通知发布之日起 30  
日后实施。

transaction shall be subject to project verification and approval in accordance with the relevant provisions of the State on fixed asset investment management;

(3) Where a foreign investor's M&A of a domestic enterprises involves the change of State-owned equity, the relevant provisions of the State on State-owned asset management shall apply;

(4) The security review for foreign investors' M&A of domestic financial institutions shall be separately provided;

(5) With regard to M&As by investors from the Hong Kong Special Administrative Region, the Macau Special Administrative Region or Taiwan Region, this Notice shall apply as a reference; and

(6) The M&A security review system shall become effective 30 days from the date of promulgation of this Notice.

国务院办公厅

二〇一一年二月三日

General Office of the State Council  
February 3, 2011