

Notice of the Ministry of Commerce on Soliciting Public Opinions on the Foreign Investment Law of the People's Republic of China (Draft for Comments)

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With a view to enforcing the requirements laid down at the Third and the Fourth Plenary Sessions of the 18th Central Committee of the CPC, pursuant to the Legislative Planning of the Standing Committee of the Twelfth National People's Congress and the 2014 Legislative Work Plan of the State Council, the Ministry of Commerce ("MOFCOM") has launched the revision of the Law on Sino- foreign Equity Joint Ventures, the Law on Foreign-invested Enterprises and the Law on Sino- foreign Contractual Joint Ventures, and formed the Foreign Investment Law of the People's Republic of China (Draft for Comments).

The MOFCOM is of the opinion that the Foreign Investment Law shall position itself as a law that serves to deepen institutional reform, expand liberalization, promote foreign investment and regulate foreign investment management. With the aim of unifying laws and regulations on domestic and foreign investment and innovating the legal system applicable to foreign investment, the Draft for Comments meets the requirements on building a new system of open economy and opening up to external parties at a higher level, adopts the management model of pre-entry national treatment plus negative list, establishes a management regime of "limited licensing plus comprehensive reporting", improves the foreign investment national security review system, strengthens interim and ex post regulation, and enhances investment promotion and protection, in a bid to create a stable, transparent and predictable legal environment for foreign investors to invest in Mainland China.

The Draft for Comments is hereby promulgated for extensively soliciting the opinions of the society at large. The public may put forward comments through the following channels:

1. Log onto MOFCOM's website (<http://www.mofcom.gov.cn>), and submit comments by clicking on the Foreign Investment Law of the People's Republic of China (Draft for Comments) under the column of "solicitation of opinions";
2. E-mail comments to investmentlaw@mofcom.gov.cn;
3. Fax comments to 010-65198905; or
4. Send comments by post to: Department of Treaty and Law of the MOFCOM at No. 2 Dong Chang'an Avenue, Beijing Zip code: 100731.

Please indicate the words "public comments on the Foreign Investment Law" on email subject lines, fax first pages and envelopes.

The deadline for providing feedback is February 17, 2015.

Appendices:

1. Foreign Investment Law of the People's Republic of China (Draft for Comments)
2. Notes on the Foreign Investment Law of the People's Republic of China (Draft for Comments)

Ministry of Commerce

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

Chapter 1: General Provisions

Chapter 2: Foreign Investors and Foreign Investment

Chapter 3: Market Entry Management

Chapter 4: National Security Review

Chapter 5: Information Reporting

Chapter 6: Investment Promotion

Chapter 7: Investment Protection

Chapter 8: Coordination and Handling of Complaints

Chapter 9: Supervision and Inspection

Chapter 10: Legal Liabilities

Chapter 11: Supplementary Provisions

Chapter 1: General Provisions

Article 1 [Legislative intent]

This Law is formulated with a view to expanding liberalization, 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.

Article 2 (Scope of application)

This Law shall apply to investments made in Mainland China by foreign investors.

Article 3 [Investment protection]

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

Article 4 [Compliance with domestic laws]

Foreign investors and foreign-invested enterprises shall comply with Chinese laws, and shall not undermine China's national security and public interests.

When making investment and engaging in business activities, foreign investors and foreign-invested enterprises shall abide by social ethics and business ethics, uphold honesty and trustworthiness, accept public oversight, and assume social responsibilities.

Article 5 [Foreign investment management regime]

The State adopts a unified foreign investment management regime.

Article 6 [National treatment]

Foreign investors shall enjoy national treatment when investing in Mainland China, unless otherwise prescribed by the catalogue of special management measures for foreign investment (hereinafter referred to as the "Catalogue of Special Management Measures") formulated pursuant to Article 23 [Procedures for catalogue formulation] herein.

Article 7 [Investment promotion]

The State shall formulate and adopt foreign investment promotion policies suitable for the socialist market economy, promote investment facilitation, and establish and improve a market system that is unified, open, competitive and orderly.

Article 8 [Principle of openness and transparency]

The State shall manage the investment in Mainland China by foreign investors in an open and transparent manner.

Article 9 [Competent foreign investment departments]

The competent foreign investment department of the State Council shall be in charge of foreign investment management and promotion work at the national level in accordance with this Law.

Competent foreign investment departments of local people's governments at and above the county level shall be in charge of foreign investment management and promotion work within their respective jurisdictions according to statutory authority.

Article 10 [Investment treaties]

The State shall, according to the principle of equality and mutual benefit, promote and develop investment with other countries and regions, and conclude bilateral, multilateral and regional investment treaties, conventions and agreements.

Chapter 2: Foreign Investors and Foreign Investment

Article 11 [Foreign investors]

For the purpose of this Law, foreign investors shall refer to the following parties that invest in Mainland China:

- (1) Natural persons who do not hold Chinese nationality;
- (2) Enterprises established pursuant to the laws of other countries or regions;
- (3) Governments of other countries or regions and their subordinate departments or agencies; and
- (4) International organizations.

Domestic enterprises controlled by any of the parties prescribed under the preceding Paragraph shall be deemed as foreign investors.

Article 12 [Chinese investors]

For the purpose of this Law, Chinese investors shall refer to the following parties:

- (1) Natural persons of Chinese nationality;
- (2) The Chinese Government and its subordinate departments or agencies; and
- (3) Domestic enterprises controlled by any of the parties under the preceding two items.

Article 13 [Domestic enterprises]

For the purpose of this Law, domestic enterprises shall refer to enterprises established in Mainland China pursuant to Chinese laws.

Article 14 [Foreign-invested enterprises]

For the purpose of this Law, foreign-invested enterprises shall refer to enterprises established in Mainland China pursuant to Chinese laws that are solely or partially invested by foreign investors.

Article 15 [Foreign investment]

For the purpose of this Law, foreign investment shall refer to any of the following investment activities directly or indirectly carried out by a foreign investor:

- (1) To establish a domestic enterprise;
- (2) To acquire the shares, equities, property shares, voting rights or other similar rights and interests of a domestic enterprise;
- (3) To provide financing of one year or longer for a domestic enterprise in which the foreign investor holds any of the rights and interests as prescribed by the preceding Item;
- (4) To obtain concession rights for natural resources exploration or exploitation in the Mainland or other areas subject to China's resource jurisdiction, or to obtain concession rights for infrastructure construction or operations;
- (5) To obtain the right to use domestic land, the ownership of domestic properties and other domestic real estate rights; or
- (6) To control a domestic enterprise or hold the rights and interests of a domestic enterprise through contracts, trusts and other means.

Overseas transactions that result in the transfer of the actual control over a domestic enterprise to a foreign investor shall be deemed as investment in Mainland China by the foreign investor.

Article 16 [Real estate rights]

Where a foreign investor obtains the right to use domestic land, the ownership of domestic properties and other domestic real estate rights, relevant laws and regulations, as well as the provisions of Chapter 4 [National Security Review] and Chapter 5 [Information Reporting] herein shall apply.

Article 17 [Non-profit organizations]

Where a foreign investor sets up a non-profit organization or obtains the rights and interests of a non-profit organization in Mainland China, relevant laws and regulations, as well as the provisions of Chapter 4 [National Security Review] and Chapter 5 [Information Reporting] herein shall apply.

Article 18 [Control]

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

- (1) Where the party directly or indirectly holds 50% or more of the shares, equity, property shares, voting rights or other similar rights and interests of the enterprise;
- (2) Where the party falls under any of the following circumstances despite directly or indirectly holding

less than 50% of the shares, equity, property shares, voting rights or other similar rights and interests of the enterprise:

1. The party is entitled to directly or indirectly appoint at least half of the members of the board of directors or a similar decision-making body of the enterprise;
 2. The party has the ability to ensure that its nominated persons can obtain at least half of the seats on the board of directors or a similar decision-making body of the enterprise; or
 3. The voting rights to which the party is entitled are sufficient to exert a material impact on the resolutions of the shareholders' meeting, the general meeting, the board of directors or other decision-making bodies of the enterprise. or
- (3) Where the party is able to exert a decisive influence on the operations, finance, personnel, technology, etc. of the enterprise through contracts, trust or other means.

Article 19 [Actual controller]

For the purpose of this Law, actual controllers shall refer to natural persons or enterprises that directly or indirectly control foreign investors or foreign-invested enterprises.

Chapter 3: Market Entry Management

Section 1: General Provisions

Article 20 [Foreign investment market entry regime]

The State shall adopt a unified foreign investment market entry regime, and manage fields in which foreign investment is prohibited or restricted pursuant to the Catalogue of Special Management Measures.

Article 21 [Departments in charge of foreign investment market entry]

Competent foreign investment departments shall manage the market entry of foreign investment in conjunction with other relevant departments.

Article 22 [Catalogue of Special Management Measures]

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

Article 23 [Procedures for catalogue formulation]

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

The competent foreign investment department of the State Council shall, in conjunction with other relevant departments and pursuant to the bilateral, multilateral and regional investment treaties, conventions and agreements concluded by the State, as well as relevant laws, administrative regulations and decisions of the State Council on foreign investment, raise suggestions on formulating or adjusting the Catalogue of Special Management Measures, and submit the same to the State Council for deliberation.

Article 24 [Catalogue division]

The Catalogue of Special Management Measures shall be divided into a list of prohibited investment

and a list of restricted investment.

The list of restricted investment shall detail the restrictions on foreign investment.

Article 25 [List of prohibited investment]

Foreign investors are not allowed to invest in the fields specified in the list of prohibited investment.

Where a foreign investor directly or indirectly holds the shares, equity, property shares or other rights and interests, or voting rights of a domestic enterprise, the domestic enterprise shall not invest in the fields specified in the list of prohibited investment, unless otherwise prescribed by the State Council.

Article 26 [List of restricted investment]

The list of restricted investment shall include the following scenarios:

- (1) Investments exceeding the relevant monetary thresholds prescribed by the State Council; and
- (2) Fields in which foreign investment is restricted.

A foreign investor who falls under any of the scenarios included in the list of restricted investment shall satisfy the conditions prescribed in the list of restricted investment, and apply for market entry licensing of foreign investment to the relevant competent foreign investment department in accordance with this Law.

Foreign investors are not required to apply for market entry licensing for investments not specified in the list of restricted investment.

Section 2: Market Entry Licensing

Article 27 [Applying for foreign investment market entry licensing]

A foreign investor that intends to make investment under Item (1) of Paragraph 1 of Article 26 [List of restricted investment] herein shall apply for market entry licensing to the competent foreign investment department of the State Council.

A foreign investor that intends to make investment under Item (2) of Paragraph 1 of Article 26 [List of restricted investment] herein shall apply for market entry licensing to the competent foreign investment department of the State Council or the competent foreign investment department of the people's government of the relevant province, autonomous region or municipality directly under the Central Government. Specific division of the licensing authority shall be prescribed by the State Council.

Article 28 [Cumulative calculation of the investment amount]

A foreign investor shall apply for market entry licensing in accordance with this Law if it repeatedly invests in the same investment within two years and the cumulative amount of investment reaches the threshold prescribed in the list of restricted investment.

Article 29 [Including the amount of financing in the amount of investment]

Where a foreign investor directly or indirectly provides financing of one year or longer for a domestic enterprise in which it holds rights and interests, the amount of financing provided shall be included in the amount of investment for calculation.

Article 30 [Application materials for market entry licensing]

A foreign investor shall submit the following materials when applying for market entry licensing to the relevant competent foreign investment department in accordance with Article 27 [Applying for foreign

investment market entry licensing] herein:

(1) A written application, covering:

1. The profiles of the foreign investor and the actual controller thereof;
2. Basic information on the proposed foreign investment, including the amount, fields and geographical areas of the investment, investment methods, percentages and methods of capital contribution, etc.;
3. Statements that the proposed foreign investment meets the requirements of special management measures;
4. The impact of the proposed foreign investment on energy resources, technological innovation, employment, environmental protection, work safety, regional development, capital account management and industry development;
5. Statements on whether the proposed foreign investment triggers national security review and anti-monopoly review;
6. Licensing certificates issued by competent industry departments, applicable where prior industry licensing is required;
7. Information on the organizational form, governance structure, etc. of a foreign-invested enterprise, applicable where the establishment or change of the foreign-invested enterprise is involved; and
8. Ways of notification and service.

(2) Documents and supporting materials related to the contents of the written application; and

(3) Statements and declarations of the foreign investor and the actual controller thereof, and their undertakings that the application materials are true and complete.

The competent foreign investment department may require the foreign investor to make supplementary submissions of materials related to the contents prescribed in the preceding Paragraph.

Article 31 [Application acceptance]

Where the application materials submitted by an applicant are complete and in the statutory form, the relevant competent foreign investment department shall accept the market entry licensing application, and issue an acknowledgement of application acceptance to the applicant.

Where the application materials are incomplete or are not in the statutory form, the competent foreign investment department shall inform the applicant, on the spot or within five working days, of all the materials to be supplemented/corrected at one time, failing which, the said department shall be deemed to have accepted the application from the date of receipt of the application materials.

Article 32 [Factors subject to review]

A competent foreign investment department shall conduct market entry review of the proposed foreign investment by a foreign investor from the following perspectives:

- (1) Its impact on national security;
- (2) Whether it satisfies the conditions specified in the Catalogue of Special Management Measures;
- (3) Its impact on energy resources, technological innovation, employment, environmental protection, work safety, regional development, capital account management, competition, public interests, etc.;

- (4) Its actual impact on, and control of, industry development;
- (5) International treaty obligations;
- (6) The profiles of the foreign investor and the actual controller thereof; and
- (7) Other factors prescribed by the State Council.

Article 33 [Relationship between market entry licensing and industry licensing]

Where a proposed foreign investment involves fields subject to prior industry licensing, the relevant competent foreign investment department shall state the situations concerning the approval of industry licensing in its review decision.

Where a proposed foreign investment involves fields subject to non-prior industry licensing, the relevant competent foreign investment department shall consult relevant competent industry departments at the time of review. The competent industry departments shall issue written review opinions, and the competent foreign investment department shall state the review opinions of the former in its review decision.

Article 34 [Connection between market entry licensing and national security review]

Where a competent foreign investment department finds that matters of foreign investment endanger or may endanger national security during market entry licensing, it shall suspend the market entry review process and notify the relevant applicant in writing to submit an application for national security review. The competent foreign investment department of the people's government of the relevant province, autonomous region or municipality directly under the Central Government that conducts market entry review shall report relevant information to the competent foreign investment department of the State Council. Unless the applicant withdraws its application for market entry licensing, the foreign investor concerned shall submit an application for national security review pursuant to Chapter 4 [National Security Review] herein.

Article 35 [Review period]

A competent foreign investment department shall complete review within 30 working days upon the date of acceptance of an application for market entry licensing. The review period may be extended by 30 working days under complicated circumstances.

Where the procedures for national security review are activated under the circumstances prescribed by Article 34 [Connection between market entry licensing and national security review] herein, the period for national security review shall not be included in the review period prescribed in the preceding Paragraph.

Article 36 [Review decision]

A competent foreign investment department shall, pursuant to the law, make a written decision on approval, conditional approval or non-approval of foreign investment matters, and notify the applicant concerned of the said decision. The said department shall explain relevant reasons if it makes a decision on conditional approval or non-approval.

Article 37 [Types of additional conditions attached]

A competent foreign investment department may attach one or more of the following conditions to a review decision:

- (1) Disinvestment of assets or business;
- (2) Limits on the percentages of shareholding;

- (3) Requirements on the operating period;
- (4) Restrictions on investment regions;
- (5) Requirements on the percentage or number of local employment; and/or
- (6) Other conditions prescribed by the State Council.

The competent foreign investment department shall list one or more of the aforesaid conditions in its review decision if such conditions are to be attached.

Article 38 [Soliciting opinions]

When conducting market entry review, a competent foreign investment department may consult relevant departments, regions and other stakeholders.

Article 39 [Soliciting public opinions]

When conducting market entry review, a competent foreign investment department may solicit public opinions by holding panel discussions or public hearings and by other means if it is of the opinion that the matters under application may have a significant impact on public interests.

Article 40 [Opportunity for self-defense]

Where a competent foreign investment department intends to make a decision on conditional approval or non-approval during market entry review, it shall give the foreign investor concerned the opportunity to defend its position.

Article 41 [Validity period of an approval decision]

A foreign investor that fails to make the relevant investment within one year from the date of the approval decision shall explain relevant situations to the competent foreign investment department that has made the approval decision. Where the competent foreign investment department deems it necessary, the foreign investor shall submit a new application for market entry licensing.

Article 42 [Handling formalities]

Where a proposed foreign investment is subject to market entry licensing in accordance with this Law, the foreign investor concerned shall go through the procedures for registration, foreign exchange administration, taxation, etc. after obtaining market entry licensing.

Where a proposed foreign investment is not subject to market entry licensing in accordance with this Law, the foreign investor concerned may go through the procedures for registration, foreign exchange administration, taxation, etc. in accordance with relevant laws and regulations.

Article 43 [Disclosure of licensing decisions]

A competent foreign investment department shall make public its market entry licensing decisions on foreign investment, unless such decisions shall not be disclosed in accordance with the law.

Article 44 [Reports on compliance with the additional conditions attached]

Where market entry licensing is granted to a foreign investment with additional conditions attached in accordance with this Law, the relevant foreign investor or foreign-invested enterprise shall, at the same time of submitting an annual report pursuant to Section 4 [Periodic Reports] of Chapter 5 [Information Reporting] herein, explain the situations on conducting business operations in the preceding year in compliance with the additional conditions attached.

Article 45 [Deeming investment as domestic investment under the circumstance of actual control]

Where a foreign investor prescribed by Item (2) of Paragraph 1 of Article 11 [Foreign investors] herein is controlled by a Chinese investor, the foreign investor may, when applying for market entry licensing for its investment in Mainland China that is included in the scope of the list of restricted investment, submit written supporting materials to apply for having its investment deemed as investment by the Chinese investor.

The relevant competent foreign investment department shall, when conducting market entry licensing review, review the application submitted by the foreign investor in accordance with the preceding Paragraph, issue review opinions on whether to deem the investment as investment by the Chinese investor, and explain the same in its market entry licensing decision.

Article 46 [Guidelines for market entry review of foreign investment]

The competent foreign investment department of the State Council shall prepare and publish the guidelines for market entry review of foreign investment.

Article 47 [Inquiry]

A foreign investor and its interested parties may make inquiries on the scope and procedures of foreign investment market entry licensing to a competent foreign investment department prescribed by Article 27 [Applying for foreign investment market entry licensing] herein.

The competent foreign investment department shall reply within ten working days upon receipt of the inquiry application.

Chapter 4: National Security Review

Article 48 [National security review system]

With a view to ensuring national security, and regulating and promoting foreign investment, the State shall establish a unified foreign investment national security review system to review any foreign investment that endangers or may endanger national security.

Article 49 [Joint conference for national security review]

The State Council shall establish an inter-ministerial joint conference for foreign investment national security review (hereinafter referred to as the "Joint Conference") to assume the responsibilities for national security review of foreign investment.

The development and reform department of the State Council and the competent foreign investment department of the State Council shall serve as co-conveners of the Joint Conference, and shall work together with relevant departments involved in foreign investment to conduct specific national security review of foreign investment.

Article 50 [Applying for national security review by investors]

Where a proposed foreign investment endangers or may endanger national security, the foreign investor concerned may submit an application to the competent foreign investment department of the State Council for national security review.

Article 51 [Application materials for national security review]

A foreign investor shall submit the following materials when applying for national security review to the competent foreign investment department of the State Council:

(1) A written application, covering:

1. The profiles of the foreign investor and the actual controller and senior management personnel thereof;
2. Basic information on the proposed foreign investment, including the amount, fields and geographical areas of the investment, investment methods, percentages and methods of capital contribution, business plans, etc.;
3. Statements that the proposed foreign investment endangers or may endanger national security;
4. Information on the organizational form, governance structure, etc. of a foreign-invested enterprise, applicable where the establishment or change of the foreign-invested enterprise is involved; and
5. Ways of notification and service.

(2) Documents and supporting materials related to the contents of the written application; and

(3) Statements and declarations of the foreign investor and the actual controller thereof, and their undertakings that the application materials are true and complete.

The competent foreign investment department of the State Council may require the foreign investor and other parties concerned to submit relevant supplementary materials during the process of national security review.

Article 52 [Making appointments for discussion]

Prior to applying for national security review to the competent foreign investment department of the State Council, a foreign investor may request to make an appointment to discuss relevant procedural issues and communicate relevant situations in advance.

Article 53 [Determining whether national security review is needed]

The competent foreign investment department of the State Council shall, within 15 working days upon receipt of the application materials prescribed by Article 51 [Application materials for national security review] herein, inform the applicant concerned of whether national security review is needed for relevant matters of foreign investment.

Where national security review is necessary, the competent foreign investment department of the State Council shall request the Joint Conference to conduct review within five working days upon informing the applicant of relevant situations.

Article 54 [Withdrawing national security review applications by investors]

After submitting an application for national security review, a foreign investor shall not withdraw the said application without the consent of the competent foreign investment department of the State Council.

Article 55 [Commencing national security review ex officio]

The Joint Conference may decide, ex officio, to conduct national security review of foreign investment that endangers or may endanger national security.

Where relevant departments, industry associations, enterprises in the same industry, upstream and downstream enterprises and parties concerned other than the relevant foreign investor itself are of the opinion that national security review is needed for a certain foreign investment, they may raise suggestions on national security review to the competent foreign investment department of the State Council. The Joint Conference may decide to conduct national security review if it deems such review as genuinely necessary.

Where the Joint Conference decides to commence national security review, the competent foreign investment department of the State Council shall inform the foreign investor concerned in writing.

Article 56 [Conducting another round of national security review]

Under any of the following circumstances, the Joint Conference may, pursuant to Article 55 [Commencing national security review ex officio] herein, conduct another round of national security review of a foreign investment that has already been reviewed:

- (1) Where the relevant foreign investor or other parties concerned have concealed relevant situations, provided false materials or made false statements during the original review; or
- (2) Where the relevant foreign investor or other parties concerned have made the investment in breach of the restrictive conditions attached to the original review decision.

Article 57 [Factors subject to national security review]

Factors that shall be considered during the national security review of a proposed foreign investment include:

- (1) Its impact on national defense security, including the impact on the capacity for producing domestic products and providing domestic services needed for national defense, the impact on relevant equipment and facilities needed for national defense, and the impact on the safety of key and sensitive national defense installations;
- (2) Its impact on the research and development ("R&D") capacity of key technologies involving national security;
- (3) Its impact on China's technological leadership in fields involving national security;
- (4) Its impact on the proliferation of dual-use items and technologies subject to import and export control;
- (5) Its impact on China's critical infrastructure and key technologies;
- (6) Its impact on China's information and network security;
- (7) Its impact on China's long-term demand in terms of energy, grains and other critical resources;
- (8) Whether matters of the proposed foreign investment are controlled by a foreign government;
- (9) Its impact on the stable operation of the national economy;
- (10) Its impact on public interests and the public order; and
- (11) Other factors necessary to be considered in the opinion of the Joint Conference.

Article 58 [Types of national security review decisions]

According to the results of national security review of a proposed foreign investment, the State Council or the Joint Conference may make any of the following decisions:

- (1) The proposed foreign investment shall be approved if it does not endanger national security;
- (2) The proposed foreign investment shall be conditionally approved if it endangers or may endanger national security, but such danger can be eliminated by attaching additional restrictive conditions; or
- (3) The proposed foreign investment shall not be approved if it endangers or may endanger national security, and such danger cannot be eliminated.

Article 59 [Obligations to cooperate with national security review]

A foreign investor and other parties concerned shall cooperate with the Joint Conference during national security review, provide information needed for the review, and accept relevant inquiries or verification.

Article 60 [Stages of national security review]

National security review conducted by the Joint Conference shall be divided into the stage of general review and the stage of special review.

Article 61 [Period for general review]

General review shall be completed within 30 working days upon the date when the competent foreign investment department of the State Council requests the Joint Conference to conduct review pursuant to Article 53 [Determining whether national security review is needed] herein or upon the date when the Joint Conference decides to conduct national security review pursuant to Article 55 [Commencing national security review ex officio] herein.

Article 62 [General review opinions]

After general review, if the Joint Conference is of the opinion that a proposed foreign investment is not detrimental to national security, it shall form review opinions and notify the competent foreign investment department of the State Council in writing; and, if the Joint Conference is of the opinion that the proposed foreign investment may run the risks of endangering national security, it shall decide to conduct special review, and notify the competent foreign investment department of the State Council in writing.

The competent foreign investment department of the State Council shall notify the relevant applicant and parties concerned in writing within five working days upon receipt of the review opinions from the Joint Conference.

Article 63 [Period for special review]

Special review shall be completed within 60 working days upon the date of activation of the special review procedures under Article 62 [General review opinions] herein.

Once the special review procedures are activated, the Joint Conference shall organize security assessment of a proposed foreign investment, and conduct review in light of assessment opinions.

Article 64 [Special review opinions]

After special review, if the Joint Conference is of the opinion that a proposed foreign investment is not detrimental to national security, it shall issue written review opinions and notify the competent foreign investment department of the State Council in writing, and the latter shall notify the relevant applicant and parties concerned in writing within five working days upon receipt of the review opinions from the Joint Conference.

During special review, if the Joint Conference is of the opinion that the proposed foreign investment endangers or may endanger national security, it shall issue written review opinions and submit the same to the State Council for decision. Where the proposed foreign investment is approved, the competent foreign investment department of the State Council shall notify the relevant applicant and parties concerned in writing; and, where the proposed foreign investment is vetoed, the State Council shall make the veto decision.

Article 65 [Attaching additional restrictive conditions]

To avoid the danger that a proposed foreign investment may have on national security, the applicant

concerned may raise suggestions to the competent foreign investment department of the State Council on attaching additional restrictive conditions to the proposed foreign investment before a review decision is made.

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

The Joint Conference may negotiate and agree with the parties concerned on the additional restrictive conditions to be attached based on evaluation results, including necessary adjustments to the proposed investment, so as to eliminate the possible danger to national security.

Article 66 [Conditional approval]

After conducting evaluation and reaching agreements with the parties concerned, the Joint Conference may make a decision to conditionally approve a proposed foreign investment, and shall notify the competent foreign investment department of the State Council in writing to inform the relevant applicant and parties concerned.

Article 67 [Supervision over the compliance with additional conditions attached]

Where a foreign investment passes national security review with additional restrictive conditions attached in accordance with this Law, the relevant foreign investor or foreign-invested enterprise shall, at the same time of submitting an annual report pursuant to Section 4 [Periodic Reports] of Chapter 5 [Information Reporting] herein, explain its compliance with the additional restrictive conditions attached in the preceding year.

The competent foreign investment department of the State Council shall, in conjunction with relevant departments, take appropriate measures to supervise the implementation of restrictive conditions. Where a party concerned breaches restrictive conditions, and causes or may cause harm to national security, the competent foreign investment department of the State Council may request for another round of national security review pursuant to Article 56 [Conducting another round of national security review] herein.

Article 68 [Guidelines for national security review]

The competent foreign investment department of the State Council shall prepare and publish the guidelines for national security review of foreign investment.

Article 69 [Annual reports on national security review]

The competent foreign investment department of the State Council shall prepare and publish annual reports on national security review of foreign investment.

Article 70 [Interim measures for national security review]

During national security review, the competent foreign investment department of the State Council may take necessary interim measures to safeguard national security.

Article 71 [Compulsory measures for national security review]

Where it is found after national security review that a foreign investment has caused or may cause significant harm to national security, the competent foreign investment department of the State Council shall order the parties concerned to refrain from making the foreign investment or to terminate the foreign investment, or to transfer relevant equities or assets, or to take other effective measures to eliminate or avoid the danger of the foreign investment on national security.

The competent foreign investment department of the State Council may take necessary measures in conjunction with relevant departments to eliminate or avoid the danger of foreign investment on national

security.

Article 72 [Assumption of legal liabilities]

Where a foreign investor makes investment without applying for national security review, the losses to the investment caused by the measures taken by the competent foreign investment department of the State Council in accordance with Article 70 [Interim measures for national security review] or Article 71 [Compulsory measures for national security review] herein shall be borne by the foreign investor.

Article 73 [Exemption from administrative reconsideration and litigation]

No administrative reconsideration application and administrative lawsuit may be filed against national security review decisions made in accordance with this Chapter.

Article 74 [Security review system for foreign investment in the financial sector]

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

Chapter 5: Information Reporting

Section 1: General Provisions

Article 75 [Information reporting regime]

The State shall establish and improve the foreign investment information reporting regime, so as to have a timely, accurate and complete grasp of the situations of foreign investment and the operating conditions of foreign-invested enterprises nationwide, and provide bases for formulating and fine-tuning foreign investment laws, regulations and policies, and promoting and guiding foreign investment.

Article 76 [Information reporting management]

The competent foreign investment department of the State Council shall establish a foreign investment information reporting system, develop information reporting management systems, and be responsible for the summarization, analysis, publication and external exchange of foreign investment information at the national level.

Article 77 [Foreign investment analysis reports]

The competent foreign investment department of the State Council shall prepare and publish annual foreign investment analysis reports covering industry analysis, economic benefits, social impact, policy recommendations, etc. concerning foreign investment.

Article 78 [Parties subject to information reporting]

Foreign investors and foreign-invested enterprises shall fulfill information reporting obligations in accordance with this Law.

Article 79 [Information reporting channels]

Foreign investors and foreign-invested enterprises shall report information to competent foreign investment departments via the foreign investment information reporting system.

Article 80 [Truthful reporting]

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

Article 81 [Reports on portfolio investments]

A foreign investor that purchases the shares of a domestically-listed company shall fulfill reporting, announcement and other statutory obligations pursuant to the Securities Law and relevant provisions of the securities regulatory authority of the State Council.

A foreign investor that purchases 10% or more of the shares of a domestically-listed company, or that causes changes to the control of a domestically-listed company despite only purchasing less than 10% of its shares shall fulfill reporting obligations in accordance with this Chapter.

A foreign investor that purchases less than 10% of the shares of a domestically-listed company and that does not cause changes to the control thereof shall fulfill reporting obligations in accordance with Article 93 [Contents of annual reports – portfolio investments] herein.

Article 82 [Public disclosure of reported information]

The competent foreign investment department of the State Council may, via the foreign investment information reporting system, make public the information provided by foreign investors and foreign-invested enterprises.

Article 83 [Inquiry of reported information]

Citizens, legal persons or other organizations may apply to competent foreign investment departments for inquiring about foreign investment information pursuant to the law.

Article 84 [Exception to information disclosure]

Foreign investment information that involves the trade secrets or personal privacy of foreign investors and foreign-invested enterprises shall not be disclosed, unless otherwise prescribed by laws and administrative regulations.

Section 2: Reporting of Foreign Investment Matters

Article 85 [Time of information reporting]

A foreign investor or foreign-invested enterprise shall submit information reports in accordance with this Section prior to the investment or within 30 days of the investment.

Where a foreign investment is subject to registration pursuant to laws and regulations, the date of completion of the appropriate registration shall be the date of investment. Where a foreign investment is not subject to any registration requirements, the date of completion of the investment transaction shall be the date of investment.

Article 86 [Reports on changes in actual investment]

Where a foreign investor submits information reports prior to the investment, and the actual investment situations subsequently undergo changes, the foreign investor shall report such changes within 30 days from the date of investment.

Article 87 [Contents subject to information reporting]

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

(1) The profile of the foreign investor, including its name, domicile, place of registration, actual controller, organizational form, core business, contact persons and contact details;

(2) Basic information on the foreign investment, including the amount, fields and geographical areas of the investment, places of investment sources, investment time and methods, percentages and methods of capital contribution, and information on obtaining relevant administrative licensing or record-filing; and

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

Where the investment in Mainland China by a foreign investor does not involve the establishment or change of a foreign-invested enterprise, only contents prescribed by Item (1) and Item (2) of the preceding Paragraph need to be reported.

The relevant competent foreign investment department may require the foreign investor or the foreign-invested enterprise to make supplementary submissions of materials related to the information prescribed in the preceding two paragraphs.

Article 88 [Reporting on market entry licensing]

Where a foreign investment is subject to market entry licensing in accordance with this Law, the relevant foreign investor shall fulfill reporting obligations within 30 days after obtaining the market entry licensing. In addition to reporting relevant information in accordance with Article 87 [Contents subject to information reporting] herein, the foreign investor shall also report situations on obtaining the market entry licensing.

Section 3: Reporting of Changes in Foreign Investment Matters

Article 89 [Changes subject to reporting]

In the event of changes to foreign investment matters, a foreign investor or foreign-invested enterprise shall submit reports on such changes within 30 days after the occurrence of the changes.

For the purpose of the preceding Paragraph, changes shall include:

(1) Changes of the name, domicile, place of registration, actual controller, organizational form, core business, contact persons and contact details of the foreign investor;

(2) Changes of the identity of the foreign investor due to merger, division, bankruptcy, dissolution, cancellation, revocation, deregistration or change of nationality, or death;

(3) Changes of the amount, fields or geographical areas of the foreign investment, places of investment sources, investment time or methods, percentages or methods of capital contribution, or information on obtaining relevant administrative licensing or record-filing of the foreign investment;

(4) Where the rights and interests of foreign investment are transferred, leased, mortgaged or pledged;

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

(6) Changes of the status of the foreign-invested enterprise due to merger, division, bankruptcy, dissolution, cancellation, revocation or deregistration.

The relevant competent foreign investment department may require the foreign investor or the foreign-invested enterprise to make supplementary submissions of materials related to the information prescribed in the preceding Paragraph.

Article 90 [Triggering new market entry licensing requirements]

Where a foreign investor experiences any of the changes prescribed by Article 89 [Changes subject to reporting] herein, which triggers new market entry licensing requirements on foreign investment, the foreign investor shall apply for market entry licensing in accordance with this Law.

Article 91 [Breaching conditions for market entry licensing]

Where a foreign investor experiences any of the changes prescribed by Article 89 [Changes subject to reporting] herein, which may result in violation of the conditions attached to market entry licensing of its foreign investment, the foreign investor shall provide explanations at the same time of submitting the report on changes, and propose solutions. The competent foreign investment department that grants the market entry licensing may conduct investigation depending on actual circumstances, and may, where necessary, require the foreign investor to take remedial measures or re-apply for market entry licensing pursuant to this Law.

Section 4: Periodic Reports

Article 92 [Contents of an annual report]

Where the investment in Mainland China by a foreign investor involves the establishment or change of a foreign-invested enterprise, the foreign-invested enterprise shall, by April 30 each year, submit its information report of the preceding year which shall cover the following aspects:

- (1) The profile of the foreign investor, including its name, domicile, place of registration, actual controller, organizational form, core business, contact persons and contact details;
- (2) Basic information on the foreign investment, including the amount, fields and geographical areas of the investment, places of investment sources, investment time and methods, percentages and methods of capital contribution, and information on obtaining relevant administrative licensing or record-filing;
- (3) The profile of the foreign-invested enterprise, including its name, domicile, organizational code, place of registration, equity structure, amount of investment, registered capital, actual controller, organizational form, business scope, contact persons and contact details;
- (4) Information on the business conditions of the foreign-invested enterprise in the preceding year, including industry fields, main products or services, import and export, employment situations, tax payment, R&D, etc.;
- (5) Financial and accounting information of the foreign-invested enterprise in the preceding year, including assets, liabilities, owner's equity, revenue, expenses, profits, etc.;
- (6) Information on investment, import and export trade, etc. between the foreign-invested enterprise and the foreign investor and its affiliated parties in the preceding year; and
- (7) Material litigation, administrative reconsideration, and administrative or criminal punishments involving the foreign-invested enterprise in the preceding year both at home and abroad, and complaints lodged by the foreign-invested enterprise in accordance with Chapter 8 [Coordination and handling of complaints] herein.

Where the investment in Mainland China by a foreign investor does not involve the establishment or change of a foreign-invested enterprise, the foreign investor shall, by April 30 each year, submit an annual report which shall cover the information specified in Item (1) and Item (2) of the preceding Paragraph, as well as the transactions and investment returns on investment assets in the preceding year.

The relevant competent foreign investment department may require the foreign investor or the foreign-invested enterprise to make supplementary submissions of materials related to the information prescribed in the preceding two paragraphs.

Article 93 [Contents of annual reports – portfolio investments]

A foreign investor that purchases less than 10% of the shares of a domestically-listed company and that does not cause changes to the control thereof shall, by April 30 each year, submit an annual report that contains the following information:

- (1) The name, domicile, place of registration, actual controller, organizational form, core business, contact persons and contact details of the foreign investor;
- (2) The name, ticker and business scope of the domestically-listed company; and
- (3) Information on stock trading in the preceding year.

Article 94 [Quarterly reporting by key foreign-invested enterprises]

Where a foreign-invested enterprise controlled by a foreign investor has total assets, sales revenue or operating revenue exceeding RMB 10 billion, or has over ten subsidiaries, the foreign-invested enterprise shall, within 30 days following the end of each quarter, report its quarterly operating conditions and financial and accounting information.

Article 95 [Integrated reporting]

A foreign-invested enterprise shall submit reports after integrating relevant information on the domestic enterprises directly or indirectly controlled thereby.

Section 5: Foreign Investment Statistics Work

Article 96 [Foreign investment statistics work]

The competent foreign investment department of the State Council shall, pursuant to the Statistics Law and relevant provisions of the State, establish and improve a foreign investment statistical survey system and statistical standards, organize, coordinate and manage foreign investment statistical survey work nationwide, conduct statistical analysis in light of the information reported by foreign investors and foreign-invested enterprises, publish statistical data, and properly carry out archives management, data and information sharing and exchange with external parties.

Article 97 [Statistical reports]

The competent foreign investment department of the State Council shall collate and summarize relevant contents contained in the information reports submitted by foreign investors and foreign-invested enterprises, and prepare and publish foreign investment statistical reports.

Article 98 [Obligations to provide information]

The competent foreign investment department of the State Council may, during foreign investment statistics work, require relevant regions and departments to provide pertinent information and data pursuant to the law, and the regions and departments concerned shall provide cooperation.

Article 99 [Sharing of statistical data]

The competent foreign investment department of the State Council shall provide foreign investment statistical data for other relevant departments pursuant to the law.

Chapter 6: Investment Promotion

Article 100 [Investment promotion mechanism]

The State shall formulate foreign investment development strategies, and establish and improve the foreign investment promotion mechanism to guide foreign investment to meet the needs of China's national economic and social development, and improve the quality and level of foreign investment utilization.

Article 101 [Investment promotion policies] The State shall formulate policy measures in terms of fiscal management, taxation, finance, human resources, industry, training, R&D and other aspects pursuant to the law to promote foreign investment.

Article 102 [Regional and industry-specific policies]

The State shall, according to domestic economic and social development and the needs of industry transfer, promote foreign investors to invest and establish foreign-invested enterprises with advantages in products, services or technologies in industries encouraged by the State, and special economic zones, ethnic autonomous regions and economically underdeveloped regions.

Article 103 [Investment promotion services]

The State shall establish a public service system for foreign investment to provide foreign investors and other members of the public with investment promotion services in terms of laws and regulations, policy measures, investment projects and information, etc. that are related to foreign investment.

Article 104 [Investment promotion order]

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

It is prohibited to encourage foreign investment by ways that are detrimental to national security, public interests, people's life and health, ecological environment, labor rights and interests, etc.

Article 105 [International investment promotion agency]

The State shall support an international investment promotion agency to organize and carry out activities to promote foreign investment. The international investment promotion agency shall perform the following duties under the guidance of the competent foreign investment department of the State Council:

- (1) To implement the strategic planning and policy measures of the State on foreign investment;
- (2) To establish and implement the national investment environment evaluation system;
- (3) To establish a national foreign investment public information, projects and consulting services platform;
- (4) To carry out national investment promotion activities and investment promotion training;
- (5) To establish overseas representative offices for investment promotion;
- (6) To engage in exchange and cooperation with the investment promotion agencies of other countries or regions and international investment promotion organizations; and
- (7) To accept and coordinate the handling of complaints from foreign investors, and help safeguard the legitimate rights and interests of foreign investors and foreign-invested enterprises.

Article 106 [International investment exchange platform]

The international investment promotion agency shall organize and establish international investment exchange platforms to promote and facilitate cross-border investment.

Article 107 [Investment information websites and databases]

The international investment promotion agency shall set up and improve international investment promotion websites and international investment project databases.

Article 108 [Local investment promotion]

The State encourages all regions to set up and consummate international investment promotion mechanisms, and establish special investment promotion agencies.

Article 109 [Special economic zones]

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

Article 110 [Management of special economic zones]

The competent foreign investment department of the State Council and other relevant competent departments shall guide, serve and manage special economic zones according to their respective responsibilities.

Chapter 7: Investment Protection

Article 111 [Expropriation]

Except under special circumstances, the State shall not expropriate foreign investment.

Where it is necessary to expropriate foreign investment for public interests, the State shall conduct expropriation according to statutory procedures, and make compensation in accordance with the law.

Article 112 [Requisition]

Due to rescue, disaster relief or other urgent needs, the real estate assets or moveable assets of foreign investors and foreign-invested enterprises within Mainland China may be requisitioned in accordance with the authority and procedures prescribed by law.

Where the real estate assets or moveable assets of foreign investors and foreign-invested enterprises within Mainland China are requisitioned, reasonable use fees shall be paid in accordance with the law. The requisitioned real estate assets or movable assets shall be returned to the relevant foreign investors and foreign-invested enterprises after their use. Compensation shall be made in accordance with the law for the damage or loss, if any, of the requisitioned real estate assets or movable assets.

Article 113 [State compensation]

Where State organs and their staff members cause losses to foreign investors or foreign-invested enterprises by exercising authority in violation of the law, the affected foreign investors or foreign-invested enterprises shall be entitled to claim compensation pursuant to the law.

Article 114 [Transfer]

Unless otherwise prescribed by laws and administrative regulations, the State allows the free inflow and outflow of the capital contribution, profits, asset disposal incomes, lawfully-obtained compensations or damages and other lawful assets of foreign investors.

Article 115 [Transparency]

The State shall promptly publish laws, regulations and judicial judgments relating to foreign investment pursuant to the law.

Foreign investors and foreign-invested enterprises may participate in the formulation of laws and regulations, and raise opinions and comments pursuant to the law.

Article 116 [Intellectual property rights protection]

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

Article 117 [Chambers of commerce and industry associations]

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

Article 118 [Dispute resolution]

The disputes, if any, encountered by foreign investors during investment and business activities within Mainland China may be resolved by negotiation, mediation, lodging complaints, applying for reconsideration, arbitration or litigation and other means in accordance with relevant laws and regulations.

Chapter 8: Coordination and Handling of Complaints

Article 119 [Complaint coordination and handling mechanism]

The State shall establish a coordination and handling mechanism for foreign investment complaints which shall be responsible for the coordination and handling of the investment disputes between foreign investors and foreign-invested enterprises on the one hand and administrative organs on the other hand.

Article 120 [Responsibilities of the complaint coordination and handling center]

The international investment promotion agency shall set up a national foreign investment complaint coordination and handling center which shall coordinate and handle foreign investment complaints of significant influence across the country, and perform the following duties:

- (1) To accept and forward foreign investment complaints;
- (2) To coordinate with relevant regions and departments to handle foreign investment complaints;
- (3) To supervise and inspect the implementation of the handling solutions for foreign investment complaints;
- (4) To raise suggestions to relevant regions and departments on fine-tuning policies and improving work according to the specific situations of foreign investment complaints; and
- (5) To study and analyze foreign investment complaints, and submit reports to the competent foreign investment department of the State Council.

Article 121 [Request for assistance]

According to the needs for the coordination and handling of foreign investment complaints, the national foreign investment complaint coordination and handling center may request relevant regions and departments to explain situations, submit materials and provide other necessary assistance.

Article 122 [Coordination and handling suggestions]

Where the national foreign investment complaint coordination and handling center raises suggestions to

relevant regions and departments under Article 120 [Responsibilities of the complaint coordination and handling center] herein, the relevant regions and departments shall deal with relevant situations and provide timely feedback.

Article 123 [Complaint coordination and handling agencies]

Local people's governments at and above the county level shall, according to actual needs, set up foreign investment complaint coordination and handling agencies which shall accept, and coordinate and handle, the complaints lodged by foreign investors and foreign-invested enterprises against administrative organs during investment disputes within their respective jurisdictions, and shall be responsible for handling the complaints forwarded thereto by the national foreign investment complaint coordination and handling center.

Article 124 [Principles for complaint coordination and handling]

Foreign investment complaint coordination and handling agencies shall coordinate and handle complaints by following the principles of fairness, impartiality and legality, and in accordance with this Law and other relevant laws and regulations.

Article 125 [Truthfully lodging complaints]

Foreign investors and foreign-invested enterprises shall truthfully reflect relevant situations and provide corresponding evidence when lodging complaints, and cooperate with foreign investment complaint coordination and handling agencies in their work.

Chapter 9: Supervision and Inspection

Article 126 [Supervision and inspection]

Competent foreign investment departments shall strengthen the supervision and inspection of the compliance of foreign investors and foreign-invested enterprises with this Law.

Other administrative departments in charge of industry and commerce, taxation, foreign exchange, audit, etc. shall perform supervision and inspection functions pursuant to the law.

Article 127 [Launching supervision and inspection]

A competent foreign investment department may launch supervision and inspection of foreign investors and foreign-invested enterprises under any of the following circumstances:

- (1) Regular inspection by spot checks;
- (2) Inspection according to tip-offs;
- (3) Inspection according to the suggestions raised, and situations reported, by relevant departments or judicial organs; or
- (4) Inspection otherwise launched ex officio.

Article 128 [Inspection by spot checks]

Inspection by spot checks shall be divided into non-specific inspection by spot checks and targeted inspection by spot checks.

Non-specific inspection by spot checks shall mean that a competent foreign investment department randomly determines the parties and the matters to be inspected. Targeted inspection by spot checks shall mean that a competent foreign investment department randomly determines the parties to be inspected according to the type, business scale, industry, geographical regions and other specific

conditions of foreign investment.

Article 129 [Lodging tip-offs]

Any entity or individual shall be entitled to lodge tip-offs against alleged violations of this Law to competent foreign investment departments.

Whistleblowers may require competent foreign investment departments to keep confidential their information.

Article 130 [Verification of tip-offs]

A whistleblower shall provide its basic information, the basic information of the party against whom the tip-off is lodged, and relevant facts and evidence of the alleged violations of this Law.

The relevant competent foreign investment department shall conduct verification if it deems verification necessary.

Article 131 [Aspects subject to inspection]

Inspection shall cover the following aspects:

- (1) Whether a foreign investor has invested in a field specified in the list of prohibited investment;
- (2) Whether a foreign investor has invested in a field specified in the list of restricted investment without first obtaining licensing;
- (3) Whether a foreign investor has complied with the additional conditions attached to the relevant market entry licensing decision;
- (4) Whether a foreign investor has complied with the restrictive conditions attached to the relevant national security review decision;
- (5) Whether a foreign investor has performed information reporting obligations;
- (6) Whether a foreign investor has complied with the administrative punishment decision made by the relevant competent foreign investment department;
- (7) Whether a foreign investor has committed any acts detrimental to national security and public interests; and
- (8) Whether a foreign investor has otherwise violated this Law.

Article 132 [Inspection methods]

Competent foreign investment departments may conduct inspection by online monitoring, questionnaire survey, field verification and other means.

Article 133 [Field verification]

When a competent foreign investment department carries out field verification, there shall be at least two inspection officers who shall produce certificates during inspection. The inspection officers shall fill out the field verification sheet, faithfully record verification situations, and have the said sheet signed or sealed by the enterprise or personnel inspected. Where such signatures or seals are unable to be obtained, the inspection officers shall note down the reasons therefor, and may, where necessary, invite relevant persons to serve as witnesses.

Article 134 [Professional conclusions]

According to inspection needs, a competent foreign investment department may entrust accounting firms, tax firms, law firms and other professional institutions to provide capital verification, audit, assurance, consulting and other professional services.

Competent foreign investment departments may adopt the inspection and verification results issued by other government departments.

Article 135 [Cooperating with inspection]

A competent foreign investment department may access, or require the party under inspection to provide, relevant materials pursuant to the law during inspection, and the party under inspection shall truthfully provide relevant materials.

Article 136 [Inspection discipline]

During inspection, competent foreign investment departments may not hinder the normal production and operation activities of the parties under inspection, may not accept valuables or services provided by the parties under inspection, and may not seek for other illegal benefits.

Article 137 [Inspection handling]

Where it is found during inspection that the party under inspection may have violated this Law, the relevant competent foreign investment department may carry out investigation in accordance with the law, and shall mete out punishments pursuant to Chapter 10 [Legal liabilities] herein if illegalities are confirmed upon investigation.

Article 138 [Information sharing]

Competent foreign investment departments and other relevant competent administrative departments shall share information on foreign investment management.

Article 139 [Local inspection]

The competent foreign investment department of the State Council shall be responsible for guiding foreign investment supervision and inspection at the national level, and shall carry out, or organize local competent foreign investment departments to carry out, inspection according to actual needs.

Competent foreign investment departments of local people's governments at and above the county level shall be responsible for organizing or carrying out foreign investment inspection within their respective jurisdictions.

Article 140 [Guidance and supervision of local inspection]

Superior competent foreign investment departments shall strengthen guidance and supervision of subordinate competent foreign investment departments in their inspection work, and promptly correct relevant illegalities.

Article 141 [Integrity files]

The competent foreign investment department of the State Council shall establish a foreign investment integrity file system.

Information recorded in the foreign investment integrity file system shall include information generated during the establishment registration, production and operation, and other activities of foreign investors and foreign-invested enterprises, and information reflecting the integrity of foreign investors and foreign-invested enterprises that is obtained by competent foreign investment departments and other competent departments during supervision and inspection.

Specific measures for management of the foreign investment integrity file system shall be separately prescribed by the State Council.

Article 142 [Disclosure of integrity information]

A competent foreign investment department may, pursuant to the law, make public the integrity information of foreign investors and foreign-invested enterprises.

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

Integrity information made public or disclosed to other parties in accordance with the preceding two paragraphs shall not contain the trade secrets and personal privacy of foreign investors and foreign-invested enterprises, unless otherwise prescribed by laws and administrative regulations.

Article 143 [Modification and correction of integrity information]

Foreign investors and foreign-invested enterprises may inquire about their own integrity information recorded in the foreign investment integrity file system, and may provide relevant supporting materials to apply for modification or correction if they are of the opinion that relevant information records are incomplete or erroneous. Modification and correction shall be made if such incompleteness or errors are verified as true.

Chapter 10: Legal Liabilities

Article 144 [Investing in fields specified in the list of prohibited investment]

Where a foreign investor invests in a field specified in the list of prohibited investment, the competent foreign investment department of the people's government of the province, autonomous region or municipality directly under the Central Government at the place of investment shall order the foreign investor to stop the investment and dispose of equities or other assets within the prescribed time period, confiscate its illegal gains, and concurrently impose on the foreign investor a fine of not less than RMB 100,000 but not more than RMB one million, or a fine of up to 10% of the amount of illegal investment.

Article 145 [Violating provisions on market entry licensing]

Where a foreign investor invests in a field specified in the list of restricted investment without first obtaining licensing, the competent foreign investment department of the people's government of the province, autonomous region or municipality directly under the Central Government at the place of investment shall order the foreign investor to stop the investment and dispose of equities or other assets within the prescribed time period, confiscate its illegal gains, and concurrently impose on the foreign investor a fine of not less than RMB 100,000 but not more than RMB one million, or a fine of up to 10% of the amount of illegal investment.

Where a foreign investor breaches the additional conditions attached to the market entry licensing decision on its foreign investment, the competent foreign investment department that makes the licensing decision shall order the foreign investor to make correction within the prescribed time period, and concurrently impose thereon a fine of not less than RMB 50,000 but not more than RMB 500,000, or a fine of up to 5% of the investment amount. Where the foreign investor fails to correct by the prescribed deadline or falls under grave circumstances, the competent foreign investment department may revoke its market entry licensing.

Article 146 [Violating provisions on national security review]

Where a foreign investor falls under any of the following circumstances, the competent foreign investment department of the State Council shall order the foreign investor to make correction within

the prescribed time period, impose thereon a fine of not less than RMB 100,000 but not more than RMB one million, or a fine of up to 10% of the investment amount, and may request for another round of national security review pursuant to Article 56 [Conducting another round of national security review] herein:

(1) Where the foreign investor conceals relevant situations, provides false materials or makes false statements during national security review; or

(2) Where the foreign investor breaches the restrictive conditions attached to the relevant national security review decision.

Article 147 [Administrative legal liabilities for violating information reporting obligations]

Where a foreign investor or foreign-invested enterprise violates this Law, and fails to perform information reporting obligations as scheduled or evades the performance of such obligations, or conceals true situations or provides false or misleading information during information reporting, the competent foreign investment department of the people's government of the province, autonomous region or municipality directly under the Central Government at the place of investment shall order the foreign investor to make correction within the prescribed time period, and shall impose thereon a fine of not less than RMB 50,000 but not more than RMB 500,000, or a fine of up to 5% of the investment amount if the foreign investor fails to correct by the prescribed deadline or falls under grave circumstances.

Article 148 [Criminal legal liabilities for violating information reporting obligations]

Where a foreign investor or foreign-invested enterprise falls under extraordinarily grave circumstances by evading the performance of information reporting obligations, or by concealing true situations or providing false or misleading information during information reporting in violation of this Law, the entity concerned shall be sentenced to fines, while the person-in-charge subject to direct liabilities and other personnel subject to liabilities shall be sentenced to fixed-term imprisonment of one year or less or criminal detention.

Article 149 [Legal liabilities for circumventing the compliance with this Law]

Where a foreign investor or foreign-invested enterprise circumvents this Law by agency holding, trust, multi-level re-investment, leasing, contracting, financing arrangements, agreement-based control, overseas transactions or any other means, and invests in a field specified in the list of prohibited investment, or invests in a field specified in the list of restricted investment without first obtaining licensing, or violates the information reporting obligations prescribed herein, the foreign investor or foreign-invested enterprise shall be punished respectively in accordance with Article 144 [Investing in fields specified in the list of prohibited investment], Article 145 [Violating provisions on market entry licensing], Article 147 [Administrative legal liabilities for violating information reporting obligations] or Article 148 [Criminal legal liabilities for violating information reporting obligations] herein.

Article 150 [Compulsory enforcement measures]

Where a foreign investor or foreign-invested enterprise fails to perform the administrative punishment decision made by the relevant competent foreign investment department within the prescribed time period, the said department may take the following measures:

(1) Imposing late fines at 5‰ of the amount of fine per day if the foreign investor or foreign-invested enterprise fails to pay the fine by the due date;

(2) Auctioning off the assets sealed off or seized, or transferring the deposits frozen to offset fines pursuant to the law; or

(3) Applying to a competent people's court for compulsory enforcement.

Article 151 [Revoking licenses and criminal legal liabilities]

Where foreign investors or foreign-invested enterprises violate this Law, relevant competent industry departments may revoke their licenses pursuant to the law, and relevant administrations for industry and commerce may revoke the business licenses of the foreign-invested enterprises in accordance with the law; and, where criminal offenses are constituted, the foreign investors or foreign-invested enterprises shall be investigated for criminal liabilities pursuant to the law.

Article 152 [Legal liabilities of the staff members of management departments]

The staff members of competent foreign investment departments and other relevant management departments shall be given administrative sanctions pursuant to the law if they practice favoritism for personal gains, abuse power or neglect duties during the performance of duties, and shall be investigated for criminal liabilities pursuant to the law if criminal offenses are constituted.

Chapter 11: Supplementary Provisions

Article 153 [Enterprises in existence prior to the effective date hereof]

Foreign-invested enterprises that are in lawful existence prior to the effective date hereof shall be governed by this Law, unless otherwise prescribed in this Chapter.

Article 154 [Changes of enterprises in existence prior to the effective date hereof]

Where a foreign-invested enterprise in lawful existence prior to the effective date hereof changes operating matters after this Law comes into effect, the foreign-invested enterprise shall apply for market entry licensing if it falls under any of the circumstances prescribed herein where market entry licensing shall be applied for.

A foreign-invested enterprise in lawful existence prior to the effective date hereof shall apply for market entry licensing if it newly increases the amount of investment after this Law comes into effect and therefore reaches the relevant threshold prescribed in the list of restricted investment.

Article 155 [Continuing operations under original conditions]

A foreign-invested enterprise in lawful existence prior to the effective date hereof may continue its operations under the business scope, operating period and other conditions originally approved.

Article 156 [Operating period]

After this Law comes into effect, the parties to an investment may agree on the operating period at their discretion, except where a competent foreign investment department lists the operating period as a market entry condition in accordance with this Law.

Where the operating period of an investment expires during the period after the promulgation but before the effective date hereof, and the parties to the investment intend to continue operation, they may go through the formalities for change with the relevant administration for industry and commerce after this Law comes into effect.

Where the parties to an investment prejudice the rights and interests of a third party by agreeing on the operating period at their discretion or changing the operating period, the third party may claim its rights pursuant to relevant laws and regulations.

Article 157 [Changing the organizational forms and organizational structures of enterprises]

A foreign-invested enterprise in lawful existence prior to the effective date hereof shall, within three years after this Law comes into effect, change its organizational form and organizational structure

pursuant to the Company Law, the Law on Partnership Enterprises, the Law on Sole Proprietorship Enterprises and other relevant laws and regulations, provided that the said enterprise shall make relevant changes within its current operating period if the current operating period expires within three years after this Law comes into effect and the said enterprise intends to extend its operating period.

Before changes are completed in accordance with the preceding Paragraph, the provisions on the organizational forms and organizational structures of enterprises prescribed by the Law on Sino- foreign Equity Joint Ventures, the Law on Foreign-invested Enterprises and the Law on Sino- foreign Contractual Joint Ventures shall continue to apply.

Article 158 [Handling of agreement-based control]

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

Article 159 [Obtaining foreign citizenship]

Once a natural person of Chinese nationality obtains foreign citizenship, his/her investment in Mainland China shall be foreign investment regardless of whether such investment is made before or after the effective date of this Law, and shall therefore be governed by this Law, unless otherwise stipulated by the State Council.

Article 160 [Obtaining foreign permanent residency]

Where natural persons of Chinese nationality obtain foreign permanent residency, the provisions otherwise prescribed by relevant laws and administrative regulations on the treatment of their investments in Mainland China shall prevail.

Article 161 [Obtaining Mainland permanent residency]

Where natural persons of foreign citizenship obtain Mainland permanent residency, the provisions otherwise prescribed by relevant laws and administrative regulations on the treatment of their investments in Mainland China shall prevail.

Article 162 [Investment by Taiwanese compatriots]

Unless otherwise prescribed by laws and administrative regulations, this Law shall apply, mutatis mutandis, to investments in Mainland China by Taiwanese compatriots.

Special treatment of investments in Mainland China by Taiwanese compatriots shall be separately prescribed by the State Council.

Article 163 [Investment by Hong Kong and Macao compatriots and overseas Chinese]

Unless otherwise prescribed by laws and administrative regulations, this Law shall apply, mutatis mutandis, to investments in Mainland China by Hong Kong and Macao compatriots and overseas Chinese.

Special treatment of investments in Mainland China by Hong Kong and Macao compatriots and overseas Chinese shall be separately prescribed by the State Council.

Article 164 [Application of law]

Investment contracts signed by foreign investors that are to be performed in Mainland China shall be governed by Chinese laws.

Article 165 [Countermeasures]

Where any country or region takes discriminatory measures against Chinese investors and their investments, the State may take appropriate measures in response according to actual situations.

Article 166 [Foreign investment in the financial sector]

Where foreign investors invest in banking, securities, insurance and other financial fields, relevant competent financial departments shall conduct market entry licensing, and supervision and inspection, in accordance with pertinent laws and administrative regulations.

Article 167 [Denominated currency]

Foreign investment management and statistics shall mainly be denominated in RMB.

Article 168 [Whether the given figure is included]

For the purpose of this Law, the expressions of "以上" (literally "more than"), "以下" (literally "less than") and "达到" (literally "reach") shall include the given figure, while the expressions of "超过" (literally "exceed"), "少于" (literally "less than") and "不足" (literally "less than") shall not include the given figure.

Article 169 [Implementing measures]

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

Article 170 [Effective date]

This Law shall come into effect on MM DD, 20XX. The Law on Sino- foreign Equity Joint Ventures, the Law on Foreign-invested Enterprises and the Law on Sino- foreign Contractual Joint Ventures shall be simultaneously repealed.