

<p>FDI Guide</p> <p>People’s Republic of China</p>
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Foreword: A specific chapter is dedicated to the new Regulation (EU) 2019/452 of 19 March 2019 creating a framework for the screening of foreign direct investment (FDI) into the European Union through a combination of: (1) mandatory information by the Member State receiving a filing under its FDI regime of all other Member States and the European Commission; and (2) the possibility for the latter to make comments or issue opinions to the former.

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1.	Principle	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Regime by exception</p> <ul style="list-style-type: none"> • In principle, the People’s Republic of China (PRC) encourages foreign investors to invest within the territory of the PRC according to Article 3 of the Foreign Investment Law of the People’s Republic of China (the ‘PRC Foreign Investment Law’). Article 4 of the PRC Foreign Investment Law further provides that the national treatment is applied to foreign investors and their investments subject to exceptions stipulated in the Special Administrative Measures (Negative List) for Foreign Investment Access (Edition 2021) (the ‘Negative List 2021’), that is, foreign investors shall not invest in any field prohibited by the Negative List 2021 (eg, investments in the fishing of aquatic products in the sea and inland waters under the jurisdiction of the PRC; investments in the wholesale and retail of tobacco, cigarettes, re-dried tobacco leaves and other tobacco products; investments in companies engaged in the production and operation (including introduction) of radio and television programmes) and shall only be admitted to invest in any restricted field (eg, investments in the printing of publications, the construction and operation of nuclear power plants, and basic telecommunications services) on the condition that the prescribed investment requirements (eg, shares held by foreign investors shall not exceed a certain proportion, the legal representative shall be a PRC national or the number of PRC management personnel shall account for a certain proportion) under the Negative List 2021 have been duly satisfied. • In addition, pursuant to Article 35 of the PRC Foreign Investment Law, the PRC has implemented a screening procedure for foreign investment that affects or is likely to affect national security. Foreign investment falling within the screening scope can only be carried out in the PRC after passing the security screening. However, not all foreign investment is definitely subject to the security review. The relevant parties shall assess whether or not their investment falls within the scope of the security review (consultation with the authority is allowed) and are expected to make a declaration to the Office of Mechanism (as defined below) proactively in principle. Normally, the security screening procedures are not initiated if the said parties confirm that their proposed investment does not fall within the scope and do not make a declaration. But the Office of Mechanism also has the right to actively initiate the security screening procedures if it considers that foreign investment potentially or apparently has an impact on national security.

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2.	<p>Legal regime</p> <p>Authority(ies) in charge</p>	<p>Describe source(s).</p> <p>Name of authority in charge of applying the FDI rules (Minister/Agency/...).</p>	<p>General access regime: foreign investment information reporting system</p> <p>Basically, case-by-case approval is not required in the PRC for the admission of foreign investment. Instead, the PRC has established a foreign investment information report system that requires foreign investors or foreign-incorporated enterprises to submit their investment information to the Ministry of Commerce (MOC) through the Enterprise Registration System and Enterprise Credit Information Publicity System (Article 34 of the PRC Foreign Investment Law). The MOC, in the ordinary course of events, monitors foreign investment by leveraging such reported information. Meanwhile, the information reported to the MOC is shared with other authorities, for example, the Administration of Market Regulations (AMR), National Development and Reform Commission (NDRC) and State Administration of Foreign Exchange (SAFE), which cooperate with the MOC and monitor foreign investment activity from different perspectives.</p> <p>Exceptions to access under the Negative List 2021</p> <p>As mentioned above, the PRC generally opens the door to foreign investment subject to certain special areas restricted or prohibited by the Negative List 2021. Where foreign investment in the PRC does not comply with the provisions of the Negative List 2021, the relevant PRC authorities (especially the AMR) will not proceed with the grant of licences, company registration procedures or other relevant matters for the proposed investments.</p> <p>Security screening regime</p> <p>As mentioned above, a security screening procedure for foreign investment may be initiated for the reason of national security. According to Article 3 of the Measures for the Security Review of Foreign Investments (the ‘Security Review Measures’), the office of the foreign investment security review working mechanism (the ‘Office of Working Mechanism’) led by the NDRC and MOC is responsible for organising, coordinating and guiding the security review of foreign investment.</p> <p>Registration/filing with the AMR</p> <p>In general, registration with the AMR is triggered by foreign investment. For example, establishment registration is required to be performed for foreign investment by way of establishing a foreign-invested enterprise within the territory of the PRC. The change of company form, company name, legal representatives and increase or decrease of registered capital may result from foreign investment, for example, by way of share acquisition. In this case, change registration with the AMR is required. For the change of directors, amendments of articles of association and so on resulting from such an investment, change filing procedures shall be conducted. However, please note that registration/filing with the AMR is not conducted in the name of the foreign investor but in the name of the legal entity within the territory of the PRC involved in the said foreign investment.</p>

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			<p>Permit in special industries</p> <p>Pursuant to Article 35 of the Implementation Regulations for the Foreign Investment Law of the People’s Republic of China (the ‘Implementation Regulations’), a foreign investor investing in an industry or field requiring special permit(s) shall apply for such a permit at the relevant competent authorities pursuant to applicable laws.</p> <p>Permits in special industries are divided into pre-AMR permits (ie, an entity shall apply for an operating permit prior to application for a business licence with the AMR) and post-AMR permits (ie, an entity is allowed to apply for the permit after application for a business licence with the AMR and actually operate in such industries). A pre-AMR permit mainly applies to industries relating to safety, health and public interests, such as a permit for operating with hazardous chemicals, permit for operating express delivery, permit for the establishment of a security company, permit for the establishment of a publisher, permit for the production of civil explosives, and permit for the production and sale of tobacco, whereas a post-AMR permit mainly exists in industries that are easier to regulate, such as a permit for a food operation and permit for human resources services.</p> <p>Please note that the aforementioned rules for permits in special industries apply to both foreign investment and PRC-domestic investment identically.</p> <p>Foreign exchange registration with banks</p> <p>Foreign exchange matters are closely related to foreign investment. Entities are now not required to conduct foreign-investment-related foreign exchange registration directly with the SAFE. Instead, the power of foreign exchange registration has been delegated to banks by the SAFE. An entity may need to conduct, for example, registration for basic information in respect of the establishment of new enterprises, the merger and acquisition of domestic enterprises, the opening of foreign exchange deposit accounts and the receipt of domestic reinvestments.</p> <p>Please note that registration with a bank in respect of foreign exchange is much more practice orientated.</p>
3.	<p>Transactions that may be subject to FDI</p> <ul style="list-style-type: none"> • Type • Materiality thresholds • Rights of evocation 	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if FDI regime is triggered only beyond a certain threshold</p>	<p>Any investment activity, directly or indirectly, carried out by foreign natural persons, enterprises or other organisations within the territory of the PRC, including the following circumstances, may be subject to FDI rules:</p> <ol style="list-style-type: none"> 1. a foreign investor establishes a foreign-invested enterprise within the territory of the PRC, either individually or jointly with any other investor;

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		and, if so, describe such a threshold.	<ol style="list-style-type: none"> 2. a foreign investor acquires shares, equity, property shares or any other similar rights and interests of an enterprise within the territory of the PRC; 3. a foreign investor invests in any new project within the territory of the PRC, either individually or jointly with any other investor; and 4. a foreign investor invests in any other way stipulated under laws, administrative regulations or provisions of the State Council.
		<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are shares transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p>	<p>As mentioned above, the indirect acquisition of assets or shares in the PRC are also deemed to be foreign investment and governed by the PRC Foreign Investment Law and thus shall be subject to the relevant legal regime mentioned herein, such as the Negative List 2021. However, the adoption of rules may differ slightly, for example, in terms of enterprise registration, information reporting, permits and licences, and foreign exchange regulation, under different investment structures.</p> <p>Yes, intra-group share transfers should be covered if they fall within the aforementioned scope.</p> <p>Yes, greenfield investments (items 1 and 3 in the above response to question 3) are covered by the relevant FDI regime mentioned herein.</p>
		Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.	<p>PRC authorities are entitled to monitor transactions that are carried out in the PRC and require the relevant rules be complied with. For example, the MOC may initiate inspections on a foreign investor or foreign-invested enterprise if it identifies that the said foreign investor or entity has failed to report investment information in accordance with applicable laws, or reports untruthful information, or refuses to cooperate in supervision and inspection conducted by authorities.</p> <p>Also, in the event that any foreign investment falling within the scope of security screening rules failed to be declared by interested parties, the Office of Working Mechanism has the right to order the relevant party to make a declaration within a prescribed time limit.</p>
4.	Sectors falling under the FDI scope	Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the	<p>Sectors restricted or prohibited under the Negative List 2021</p> <p>Special regulation measures are imposed by the Negative List 2021 on 12 economic sectors:</p> <ul style="list-style-type: none"> • agriculture, forestry, animal husbandry and fishery;

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		<p>authority may apply (or not) in evaluating whether FDI rules should apply.</p> <p>Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold of investment by foreign interests or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?</p>	<ul style="list-style-type: none"> • mining; • manufacturing; • power, heat, gas, and water production and supply; • wholesale and retail; • transportation, warehousing and postal services; • information transmission, software and information technology services; • leasing and business services; • scientific research and technical services; • education; • health and social work; and • culture, sports and entertainment. <p>Detailed rules are applied to each of the 31 subcategories of the above 12 sectors where foreign investment into certain subcategories (eg, investments in the wholesale and retail of tobacco; compulsory education institutions and religious education institutions; and the exploration, mining and beneficiation of tombarthite, radioactive minerals and tungsten) is prohibited, and foreign investment into other subcategories can be admissible on the condition that special investment requirements (eg, the PRC party shall maintain controlling rights in the construction and operation of nuclear power plants and civil airports, and investments in domestic aquatic transport companies) are satisfied.</p> <p>Sectors subject to security screening procedures</p> <p>In addition, pursuant to Article 4 of the Security Review Measures, foreign investors or the relevant parties in the PRC shall make a declaration to the Office of Working Mechanism prior to the implementation of the investments to following sectors:</p> <ul style="list-style-type: none"> • military industry, military-supporting industry or other fields relating to national defence and security, or investments in areas surrounding military facilities and military industry facilities; and • investments while obtaining the controlling rights in the invested enterprises in important agricultural products, important energy and resources, important equipment manufacturing, important infrastructure, important transport services, important cultural products and services,

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			important information technology and internet products and services, important financial services, key technologies and other important fields relating to national security.
5.	Qualified investors	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>Generally, as mentioned above, any foreign natural persons, enterprises or other organisations directly or indirectly engaged in investment activities within the territory of the PRC may be subject to the FDI regime under PRC law.</p> <p>Additional requirements may be imposed on foreign investors in certain special industries, such as banking, insurance, education and medicine. For example, the shareholder of a proposed wholly foreign-funded bank or Sino-foreign joint venture bank shall satisfy additional requirements, such as possessing the ability to continually make profits; enjoying a good reputation with no record of material violation of law or regulation; and having experience in international finance activities and being equipped with an effective anti-money laundering system. Another example is that the investor of a proposed foreign-invested insurance company in the PRC shall satisfy additional requirements, such as meeting the criteria of solvency as specified by the country or region to which the investor belongs; having total assets of no less than USD 5bn by the end of the preceding year prior to the application for establishment; and being equipped with an effective insurance monitoring system and being monitored by the authorities of the country or region to which the investor belongs.</p>
6.	Procedure 6.1 Before or post-closing filing		<p>Foreign investment information reporting</p> <p>As mentioned above, case-by-case approval is not required in the PRC for the admission of foreign investment. The reporting of foreign investment information is conducted by way of submitting initial reports, change reports, deregistration reports and annual reports through the Enterprise Registration System and Enterprise Credit Information Publicity System. In the event that a foreign investor acquires a PRC-domestic enterprise, the initial report shall be submitted at the time of filing the change registration for the target enterprise (generally occurs after the closing of the transaction); in the event that the change of information arose from foreign investment that does not involve the filing of establishment or change registration of the entity, the change report shall be submitted within 20 business days from the occurrence of the change (generally occurs after the closing of the transaction). Therefore, the reporting of foreign investment information is a post-closing requirement.</p> <p>Security screening</p> <p>Pursuant to Article 4 of the Security Review Measures, if a planned investment falls within the scope of security screening rules (see 4 above), foreign investors or the relevant parties in the PRC shall make a declaration to the Office of Working Mechanism <i>prior to the implementation of the investment</i>.</p>

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			<p>Registration/filing with the AMR</p> <p>PRC law does not expressly provide the exact time when the establishment registration with the AMR shall be conducted, whereas the change registration/filing is allowed to be performed within 30 business days from the date when the resolution or decision on the change was made or certain statutory facts/reasons for the change occurred.</p> <p>Considering the buffer given by legislation, the time of registration/filing with the AMR depends much more on the agreement of the parties in a transaction in practice; that is, it can be a condition precedent to the closing (which is more common practice) or a post-closing covenant.</p>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	<p>Security screening</p> <p><i>It is mandatory</i> for foreign investors or the relevant parties in the PRC to make a declaration to the Office of Working Mechanism prior to the implementation of foreign investment that falls within the scope of industries that affect or may affect national security as set out in 4 above. Therefore, the declaration of security screening for such obligators should be <i>a closing condition precedent to the completion of the transaction.</i></p> <p>Registration/filing with the AMR</p> <p>If the registration/filing with the AMR is triggered by foreign investment (eg, in the event of investment by way of establishing a foreign-invested company or directly acquiring shares of a company within the territory of the PRC), the foreign-invested company or the target in the PRC (not foreign investors themselves) needs to perform the registration/filing procedures, but <i>it can be optional</i> to perform such a process before closing or after closing subject to applicable laws and the agreement of the parties.</p>
8.	6.3 In the case of post-closing, what are the powers of the authority?		<p>Foreign investment information reporting</p> <p>As mentioned above, the reporting of investment information could be a post-closing requirement.</p> <p>In the event that a foreign investor fails to perform its reporting obligations, the MOC has the right to: (1) order the foreign investor to provide supplementary materials or make corrections; (2) impose a fine ranging from RMB 100,000 to RMB 500,000 on the foreign investor if the latter fails to provide supplementary materials or make corrections upon being notified by the MOC; (3) record the failure of compliance as an adverse credit record against the foreign investor in the national credit information system, announce the non-compliance to the public, and share it with other authorities, such as the AMR, SAFE, customs authority and tax authority.</p>

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			<p>Registration/filing with the AMR</p> <p>As mentioned above, registration/filing with the AMR could either be a pre-closing or post-closing requirement. Failure to conduct the relevant registration/filing with the AMR may hinder the operation of the obligators' business in the name of a legally incorporated and validly existing entity and incur corresponding administrative penalties as set forth in 20 below, or even criminal penalties.</p>
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	<p>Foreign investment information reporting</p> <p>Not applicable.</p> <p>Security screening</p> <p>Foreign investors shall assess in advance whether the investment falls within the scope as set forth in 4 above and thus may be subject to a security review. In the case of any uncertainty, foreign investors may first consult with the Office of Working Mechanism prior to the declaration. In the event that foreign investors believe that the foreign investment shall follow the security screening procedures, the said investor shall make the declaration to the Office of Working Mechanism. The application documents required and the response timeline for the declaration are set forth as follows:</p> <p>Application and supporting documents</p> <p>The declaration materials submitted to the Office of the Working Mechanism should consist of:</p> <ol style="list-style-type: none"> 1. a declaration letter that shall specify the name, address, scope of business of the foreign investors, basic information about the investment and other matters stipulated by the Office of Working Mechanism; 2. an investment plan; 3. a statement on whether the proposed foreign investment will have impacts on national security; and 4. other materials as required by the Office of Working Mechanism. <p>Response timeframe</p> <p>The Office of Working Mechanism shall, within <i>15 business days</i> from the date of receipt of the declaration materials, respond with written notice to the application party on whether the declared foreign investment is subject to a security screening. The parties concerned are not allowed to make the investment prior to the decision being made by the Office of Working Mechanism.</p>

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			<p>Registration/filing with the AMR</p> <p>Not applicable.</p>
10.	<p>6.5 Timing of various steps</p> <p>(i) Filing</p>	How much lead time is required?	<p>Foreign investment information reporting</p> <p>Not applicable as the procedure is deemed as completed once the investment information has been duly submitted through the system.</p> <p>Security screening</p> <p>For investments required to pass the security review:</p> <ul style="list-style-type: none"> • <i>De jure</i>, the Office of Working Mechanism has a maximum period of <i>15 business days</i> to determine whether or not a declared investment shall be subject to the security review, <i>30 business days</i> to determine whether or not to accept the investment should the general screening procedures be followed, and another <i>60 business days</i> (can be extended under special circumstances without specifying the maximum period) to determine whether or not to accept the investment should the special screening procedures be followed. • <i>In practice</i>, given the possibility that the Office of Working Mechanism may request additional information during the process and extended time may be adopted, the review may take longer and the time required is quite discretionary. <p>Registration/filing with the AMR</p> <p>Please refer to 6.1 above.</p>
	(i) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	<p>Foreign investment information reporting</p> <p>A timeframe for the review is not applicable as the MOC does not make any ‘approve nor not’ decision but instead exercises its power to monitor and supervise thereunder. PRC law stipulates that the MOC shall, upon discovery of any information that is not declared, wrongly declared or omitted during information reporting, notify the foreign investor or foreign investment enterprises within 20 business days to provide supplementary materials or make corrections.</p>

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			<p>Security screening</p> <p>For foreign investment falling within the scope of the security review, it may be subject to general security review procedures and, in addition to the former, special review procedures.</p> <p>General review procedures</p> <p>The general review shall be completed within <i>30 business days</i> from the date on which the Office of Working Mechanism determines to perform a security review on the said foreign investment. Upon completion, the Office of Working Mechanism shall make a decision that the declared foreign investment has passed the security screening if it considers the foreign investment declared will not affect national security; otherwise, if the Office of Working Mechanism considers the declared foreign investment will or may have an impact on national security, it shall make a decision on initiating the special review (Article 8 of the Security Review Measures). The timeline set forth hereby is mandatory and should be strictly followed.</p>
			<p>Special review</p> <p>The special review shall be completed within <i>60 business days</i> from the date on which it has been initiated (Article 9 of the Security Review Measures). Such a review period can be extended under special circumstances without specifying the maximum period thereunder. Therefore, the timeline for the special review has relatively more flexibility and more discretion for the authorities. Upon completion of the screening, the Office of Working Mechanism may decide that the declared investment:</p> <ul style="list-style-type: none"> • has not been allowed if the investment will affect national security; • has passed the security review if the investment will not affect national security; and • has passed the security review with conditions if the impact on national security by the investment can be eliminated through the imposition of such conditions. <p>Registration/filing with the AMR</p> <p>In practice, the timeframe for processing the registration or record filing may vary for different local branches of the AMR and different matters. Such procedures are normally completed within 7–15 business days.</p>

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11.	(i) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.	<p>Negotiation during the information reporting process</p> <p>As mentioned above, foreign investors or foreign-invested enterprises shall submit investment information through the Enterprise Registration System and Enterprise Credit Information Publicity System directly pursuant to the relevant laws and system guidelines, and generally, there is no need for negotiation and communication with the authorities in such a process. However, if the MOC identifies that any information failed to be declared, was wrongly declared or was omitted, the MOC will notify the foreign investors or foreign-invested enterprises to provide supplementary materials or make corrections.</p> <p>Negotiation during the security screening process</p> <p>If a security review is required for foreign investment, during the security review, the Office of Working Mechanism may make inquiries into the declared foreign investment and ask the parties concerned to supplement the materials. The parties concerned shall cooperate with the inquiries and requirements of the Office of Working Mechanism. Where the impact on national security can be eliminated through the imposition of conditions and the parties concerned make a written commitment to accept such conditions, a decision on conditionally passing the security review may be made. However, it is not usual for the declarer to negotiate the scope and content of the conditions/commitments with the Office of Working Mechanism.</p> <p>Negotiation during registration/filing with the AMR</p> <p>As mentioned above, the practice of each branch of the AMR may vary. Before applying for registration/filing with the AMR, it is important to confirm with the local branch what kinds of application materials are required and the details of the content of each item. Close communication with the branch AMR to obtain more detailed instructions may be of great help and avoid time and expense resulting from supplementing or correcting the application materials.</p>
		Are there any guidelines issued by the authority?	The <i>Foreign Investment Guide of the People's Republic of China</i> issued by the MOC provides a brief introduction of the foreign investment regulation regime in the PRC, as well as the relevant procedures to be followed. In addition, some local AMR branches may issue guidelines regarding registration procedures through their websites or paper guidebook. However, currently, there are no publicly available guidelines that provide insight into how to negotiate with the relevant authorities in any of the aforementioned processes (if applicable).
12.	(i) Filing fees	Is there a filing fee?	Not applicable.

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13.	(ii) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	<p>Information required for foreign investment information reporting</p> <ul style="list-style-type: none"> • Foreign investors submitting an <i>initial report</i> shall submit basic information about the enterprise, the investors and their actual controller(s), transaction information and so on. • Foreign investment enterprises submitting a <i>change report</i> shall submit the information changed, as the case may be, in relation to basic information about the enterprise, the investors and their actual controller(s), transaction information and so on. • Foreign investment enterprises submitting <i>annual reports</i> shall submit basic information about the enterprise, investors and their actual controller(s); information about the business operation, assets and liabilities of the entities; and relevant industry licensing information in the event that special admission measures for foreign investment are involved. <p>Information required for security screening</p> <p>As set out in 9 above, a declaration letter stating the name, address, scope of business of the foreign investor, basic information about the investment and other matters stipulated by the Office of Working Mechanism, an investment plan and a statement on whether the foreign investment will have an impact on national security are required for the security review. In addition, the Office of Working Mechanism may require other materials as it considers necessary.</p> <p>Information required for registration/filing with the AMR</p> <ul style="list-style-type: none"> • The establishment registration generally requires proof of identification and qualification documents; documentary evidence of the domicile, articles of association (if applicable) or partnership agreement (if applicable) of the applicant; and proof of identification and appointment documents of its legal representative, directors, supervisors and senior management. • The change registration/filing requires information about the changed matters to be submitted with supporting documents, for example, the share transfer agreement to evidence the change of shareholders, the shareholders meeting resolution to indicate the change of directors and so on. <p>There are no specified provisions in the above legal regimes that set any identity or nationality limitations on minority passive shareholders.</p>

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14.	(i) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	<p>Foreign investment information reporting</p> <p>A final decision by the MOC is not applicable to this process as information reporting is generally completed upon submission and the MOC does not make a ‘yes or no’ decision.</p> <p>Security screening</p> <p>As set out in 11 above, the Office of Working Mechanism shall issue a decision within the prescribed time periods, either indicating that the declared foreign investment has passed the security review (may be unconditionally or conditionally) or been prohibited from implementation.</p> <p>Registration/filing with the AMR</p> <p>As set out in 11 above, the local AMR will issue a decision within the committed time periods.</p>
15.	Conditionality of approval (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	<p>Conditional admission under the Negative List 2021</p> <p>As mentioned above, the admission in some economic fields is conditionally admissible under the Negative List 2021. The conditions hereof mainly include that the shares held by foreign investors shall not exceed a certain proportion, the legal representative shall be a PRC national, or the number of PRC management personnel shall account for a certain proportion. Such conditions shall be satisfied before the investment is admitted and thus the duration for conditions is not applicable. The relevant administrative authorities supervise and inspect the implementation of the Negative List 2021. Any failure to comply with the Negative List 2021 shall be addressed by the rules set forth in 20 below.</p> <p>Conditional approval of the security review</p> <p>Currently, there is no publicly disclosed precedent in relation to foreign investment that has passed the security review with conditions attached. With reference to precedents in similar fields in the PRC (eg, the review of the concentration of undertakings under the Anti-monopoly Law) and the practice of security review regimes in other jurisdictions, two types of conditions may be imposed under the security screening procedures for the admission of foreign investment:</p> <ul style="list-style-type: none"> • structural conditions: for example, divestiture of core technology, intellectual property, data or key contracts/assets relating to the supply of goods to the PRC Government or key PRC customers; in extreme cases, the divestiture of all or part of the business in the PRC may be required; and • behavioural conditions: for example, restricting access to key technology or data, or transmission of data to regions outside the PRC; appointing a trustee in the PRC to deal with

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			<p>certain products/services and ensure the conduct of relevant business activities in the PRC; or establishing a relevant compliance audit mechanism.</p> <p>For foreign investment that passes the security review with conditions, the Office of Working Mechanism may verify the implementation of such conditions by way of requiring relevant supporting materials and/or conducting an on-site inspection.</p>
16.	(i) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	<p>Admission restrictions under the Negative List 2021</p> <p>As mentioned in 1 above, although the admission of foreign investment is in principle encouraged in the PRC, the Negative List 2021 has set forth clear restrictions on certain fields, which gives competent authorities relatively little discretion but rather must scrupulously respect the legal framework.</p> <p>PRC laws have expressly provided the Negative List for foreign investment and the conditions for the approval and filing of foreign investment projects within the scope of the Approval List, which shall be granted by competent authorities in strict accordance with laws and regulations.</p>
17.	(i) Risk of veto	Describe a topical case. Statistics	<p>Rejection of admission under the Negative List 2021</p> <p>As mentioned above, the Negative List 2021 provides clear and objective standards for the approval, conditional approval or prohibition of admission thereunder and thus leaves no space for veto by the authorities.</p> <p>Veto under information reporting procedures</p> <p>As mentioned above, the MOC does not make any ‘approve nor not’ decision after information reporting by foreign investors or the foreign-invested enterprise. A veto is not applicable to the process of information reporting.</p> <p>Veto under security screening procedures</p> <p>Currently, there is no publicly disclosed precedent in relation to foreign investment rejected by the Office of Working Mechanism on the grounds of security. Considering that the scenarios of the security review vary on a case-by-case basis, insufficient information on screening standards and the lack of referenceable precedents, we are not in a good position to assess the risk of veto.</p> <p>Veto under registration/filing with the AMR</p> <p><i>De jure</i>, where any application for registration/filing does not meet the requirements of laws and administrative regulations or may endanger national security or social public interests, the AMR will</p>

	Topic	Explanation/Description of what is expected	Republic of China
			not proceed with registration/filing and give reasons. In practice, as long as the foreign investment meets the requirements of the Negative List 2021, passes the security review (if applicable) and obtains the pre-AMR permit (if applicable), and the application materials submitted to the AMR are complete and in line with statutory requirements, the registration/filing will generally not be rejected by the AMR.
18.	Role of other national authorities	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence it may exercise.	As mentioned above, under the information reporting system, information about foreign investment is shared among various PRC administrative authorities (eg, the MOC, AMR, SAFE, NDRC and relevant industry regulators). Such authorities regulate foreign investment from different aspects. The role of each authority thus depends on the specified activities and industries involved.
19.	Sanctions	Describe the type of sanctions that may be imposed by the authority in the case of:	<p>Sanctions under the security review procedures</p> <p>As mentioned in 7 above, in the event that the relevant parties fail to make the declaration, the Office of Working Mechanism is entitled to order the said party to perform the declaration obligations within a prescribed timeline; in the event that such parties refuse to make the declaration, the Office of Working Mechanism has the right to order them to dispose their equity or assets and take other necessary measures within a time limit to reinstate the matter to the status prior to the implementation of the investment and eliminate the impact on national security. In addition, the failure of parties to be in compliance with the aforementioned declaration requirements is recorded as an adverse credit record in the national credit information system and may be subject to joint punishment by the competent authorities.</p>
		<ul style="list-style-type: none"> breach of conditions and/or commitments attached to the approval; and 	<p>For any foreign investment that passes the security review with conditions, if the parties concerned fail to make the investment in accordance with the prescribed conditions, the Office of Working Mechanism shall order them to make a correction; in the event that such parties refuse to make a correction, the Office of Working Mechanism shall order them to dispose of equity or assets and take other necessary measures within a time limit to reinstate the matter to the status prior to the implementation of the investment and eliminate the impact on national security.</p> <p>Sanctions under investment information reporting procedures</p> <p>As mentioned in 8 above, in the event that the foreign investor performs its reporting obligations, the MOC has the right to: (1) order the foreign investor to provide supplementary materials or make corrections; (2) impose a fine ranging from RMB 100,000 to RMB 500,000 on the foreign investor if</p>

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			<p>the latter fails to provide supplementary materials or make corrections upon being notified by the MOC; and (3) record the failure of compliance as an adverse credit record against the foreign investor in the national credit information system, announce the non-compliance to the public, and share it with other authorities, such as the AMR, SAFE, customs authority and tax authority.</p> <p>Sanctions under registration/filing with the AMR</p> <p>Where any obligator subject to establishment registration with the AMR engages in business activities without performing such a registration of establishment, the local AMR has the right to: (1) order the obligator to make corrections and confiscate its illegal gains; (2) in the case of refusal to make corrections, the obligator shall be subject to a fine ranging from RMB 10,000 to RMB 100,000; and (3) in the case of serious circumstances, the obligator may even be ordered to close down and suspend operation in accordance with the law and be subject to a fine ranging from RMB 100,000 to RMB 500,000.</p> <p>Where any obligator subject to change registration/filing with the AMR fails to go through the formalities for change registration, the local AMR has the right to: (1) order it to make corrections; (2) impose a fine ranging from RMB 10,000 to RMB 100,000 if it refuses to make corrections; and (3) in the case of serious circumstances, revoke its business licence.</p>
		<ul style="list-style-type: none"> investment carried out without prior approval. 	<p>Sanctions for investments carried out without prior clearance</p> <ul style="list-style-type: none"> Where the foreign investor invests in a field with investment prohibited under the Negative List 2021 for foreign investment access, the relevant competent department shall order the said investor to cease the investment activity, to dispose of the shares and assets thereof or to take any other necessary measures within a prescribed time limit, and to restore the state before the investment; the illegal gains, if any, shall be confiscated. Where the investment activity of the foreign investor is in breach of any special administrative measure imposed by the Negative List 2021 on restrictive fields, the relevant competent department shall order the investor to make corrections and take necessary measures to meet the requirements of the aforementioned measure; if the investor fails to do so within the prescribed time limit, the provisions stipulated in the preceding paragraph shall be followed. If the investment activity of the foreign investor is in breach of the provisions stipulated in the Negative List 2021, apart from being punished according to the provisions of the preceding two paragraphs, the foreign investor shall also assume corresponding legal liability according to applicable laws.

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20.	Covid – special regime	Please describe specific rules applicable as a result of the Covid-19 pandemic.	<p>According to the Notice of the National Development and Reform Commission on Further Deepening the Reform regarding Foreign Investment Projects to Respond to Epidemic Situations, the below major arrangements, among others, have been encouraged in order to promote the basic stability of foreign investment in the context of the epidemic:</p> <ul style="list-style-type: none"> • actively assist in the resumption of work and production of foreign investment projects and foreign-invested enterprises; • strengthen the follow-up and reservation work for major foreign investment projects; • properly coordinate with and facilitate major foreign investment projects; • fully implement the Negative List regime for the admission of foreign investment; • facilitate the filing procedures of foreign investment projects; all foreign investment projects subject to filing shall be carried out by way of informative filing management; • simplify approval formalities for foreign investment projects; • optimise the tax exemption confirmation process for imported equipment of encouraged foreign investment projects; • protect the legitimate rights and interests of foreign investment projects; • strengthen communication and interviews with foreign-invested enterprises; • improve interim and ex post monitoring and regulation on foreign investment projects; and • further expand the scope of encouraged foreign investment.

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