

**Measures for the Administration of Overseas Investment of Enterprises,
December 26, 2017**

企业境外投资管理办法

Order of the National Development and Reform Commission (No. 11)

The Measures for the Administration of Overseas Investment of Enterprises, as deliberated and adopted at the Director's Executive Meeting of the National Development and Reform Commission, are hereby issued, and shall come into force on March 1, 2018.

Chapter I General Provisions

Article 1

For the purposes of enhancing the general guidance of overseas investment, optimizing the comprehensive services for overseas investment, improving the regulation of the whole process of overseas investment, promoting the sustained and sound development of overseas investment, and maintaining the national interests and national security of China, these Measures are developed in accordance with the Administrative Licensing Law of the People's Republic of China, the Decision of the State Council on Reforming the Investment System, the Decision of the State Council on Establishing Administrative Licensing for Administrative Approval Items Required to Be Retained, and other laws and regulations.

Article 2

For the purposes of these Measures, "overseas investment" means the investment activities where an enterprise in the territory of the People's Republic of China (hereinafter referred to as the "investor"), directly or through an overseas enterprise controlled by it, acquires overseas any ownership, right of control, right of business management, or other relevant rights and interests, by contributing assets or rights and interests, providing financing or security, or any other means. As mentioned in the preceding paragraph, "investment activities" mainly includes without limitation the following circumstances:

- (1) Acquiring the ownership of, the right to use, and other rights and interests in land overseas.
- (2) Acquiring a concession to prospect or exploit and other rights and interests in overseas natural resources.
- (3) Acquiring the ownership of, the right of business management of, and other rights and interests in overseas infrastructure.

- (4) Acquiring the ownership of, the right of business management of, and other rights and interests in any overseas enterprise or asset.
- (5) New construction, reconstruction, or expansion of overseas fixed assets.
- (6) Forming a new overseas enterprise or increasing investment in an existing overseas enterprise.
- (7) Forming a new or acquiring a non-controlling stake in an overseas equity investment fund.
- (8) Controlling an overseas enterprise or asset by an agreement, a trust, or any other means. For the purposes of these Measures, "enterprise" means a non-financial or financial enterprise of any type. For the purposes of these Measures, "control" means the direct or indirect holding of more than half of the voting rights of an enterprise or the capability of dominating the operation, finance, personnel, technology, and other major matters of the enterprise though not holding more than half of the voting rights.

Article 3

An investor shall have autonomy in making overseas investment according to the law, and independently make decisions and assume risks.

Article 4

An investor shall, in overseas investment, undergo the formalities for the confirmation or recordation, among others, of an overseas investment project (hereinafter referred to as the "project"), report the relevant information, and cooperate in supervisory inspection.

Article 5

An investor shall, in overseas investment, neither violate the laws and regulations of China nor threaten or damage the national interests and national security of China.

Article 6

The National Development and Reform Commission (hereinafter referred to as the "NDRC") shall, within the extent of its duties as specified by the State Council, fulfill its duties as the overseas investment administrative department, and as needed for maintaining the national interests and national security of China, conduct general guidance of, provide comprehensive services for, and regulate the whole process of overseas investment.

Article 7

The NDRC shall establish an overseas investment management and service network system (hereinafter referred to as the "network system"). An investor may undergo the confirmation and recordation formalities and report the relevant information through the network system; and in a matter involving any national secret or unsuitable for the use of the network system, an investor may separately submit hard-copy materials. The NDRC shall issue a guide to the operations on the network system.

Chapter II Overseas Investment Guidance and Services

Article 8

An investor may consult the NDRC on overseas investment policies and for relevant information, and report concerns and problems and submit opinions and recommendations on overseas investment to the NDRC.

Article 9

Within the extent of its duties as specified by the State Council, the NDRC shall, in conjunction with the relevant departments, develop and improve special plans and industry policies in the relevant fields as needed for the national economic and social development to provide general guidance for investors to make overseas investment.

Article 10

Within the extent of its duties as specified by the State Council, the NDRC shall, in conjunction with the relevant departments, enhance the analysis of international investment situations, and release information on overseas investment, such as data and status, to provide investors with information services.

Article 11

Within the extent of its duties as specified by the State Council, the NDRC shall, in conjunction with the relevant departments, participate in the development of international investment rules, establish and improve investment cooperation mechanisms, strengthen policy exchange and coordination, and promote the creation of a fair business environment in the relevant countries and regions for Chinese enterprises to make investment.

Article 12

The NDRC shall, within the extent of its duties as specified by the State Council, promote the building of the system and capability of protecting the safety of overseas interests, guide investors in preventing and responding to major risks, and maintain the lawful rights and interests of Chinese enterprises.

Section 1 Scope of Confirmation or Recordation

Article 13

Sensitive projects conducted by investors directly or through overseas enterprises controlled by them shall be subject to confirmation management. The confirmation authority is the NDRC. For the purposes of these Measures, "sensitive project" means:

- (1) a project involving a sensitive country or region; or
- (2) a project involving a sensitive industry.

For the purposes of these Measures, "sensitive country or region" means:

- (1) a country or region without diplomatic relations with China;
- (2) a country or region in war or civil disturbance;
- (3) a country or region in which enterprises are restricted from investment under any international treaty or agreement, among others, concluded or acceded to by China; or
- (4) any other sensitive country or region.

For the purposes of these Measures, "sensitive industry" means:

- (1) research, production or maintenance of arms;
- (2) exploitation or utilization of cross-border water resources;
- (3) news media; or
- (4) any other industry in which enterprises are restricted from investment according to China's laws, regulations and relevant macro-economic control policy. The NDRC shall publish a catalog of sensitive industries.

Article 14

Non-sensitive projects directly conducted by investors, namely, non-sensitive projects involving investors' direct contribution of assets or rights and interests or provision of financing or security, shall be subject to recordation management.

Among the projects subject to recordation management, if the investor is an enterprise managed by the Central Government (including financial enterprises managed by the Central Government and enterprises directly managed by the State Council or the agencies of the State Council), the recordation authority is the NDRC; if the investor is a local enterprise, and the amount of Chinese investment is not less than USD 300 million, the recordation authority is the NDRC; and if the investor is a local enterprise,

and the amount of Chinese investment is less than USD 300 million, the recordation authority is the development and reform department of the provincial government at the place of registration of the investor.

For the purposes of these Measures, "non-sensitive project" means a project neither involving any sensitive country or region nor involving any sensitive industry.

For the purposes of these Measures, "amount of Chinese investment" means the aggregate of currency, securities, physical property, technology, intellectual property rights, equities, creditor's rights, and other assets, rights, and interests invested in and financing and security provided for a project by an investor or investors directly and through overseas enterprises controlled by it or them.

For the purposes of these Measures, "development and reform department of the provincial government" means the development and reform department of the people's government of a province, an autonomous region, a municipality directly under the Central Government, or a city under separate state planning or the development and reform department of the Xinjiang Production and Construction Corps.

Article 15

An investor may consult the confirmation or recordation authority on whether a project to be conducted is subject to confirmation or recordation, and the latter shall inform the investor in a timely manner.

Article 16

Where a project is jointly conducted by two or more investors, the investor with larger or largest investment shall file a confirmation or recordation application after obtaining the written consent of the other investor or investors. If each investor makes the same amount of investment, one of the investors shall file a confirmation or recordation application after they reach an agreement through consultation.

Article 17

Where the front-end costs (including without limitation a performance bond, charges for a letter of guarantee, intermediary service fees, and resource prospecting fees) are relatively large, an investor may file a confirmation or recordation application regarding the front-end costs in accordance with Article 13 and Article 14 of these Measures, *mutatis mutandis*. The front-end costs of a project shall, upon confirmation or recordation, be included in the amount of Chinese investment in the project.

Section 2 Confirmation Procedures and Periods

Article 18

For a project subject to confirmation management, the investor shall submit a project application report, with relevant documents attached, to the confirmation authority through the network system. If the investor is an enterprise managed by the Central Government, the group company or head office of it shall submit the same to the confirmation authority; or if the investor is a local enterprise, it shall directly submit the same to the confirmation authority.

Article 19

A project application report shall include the following:

- (1) Information on the investor.
- (2) Project information, including without limitation the project name, investment destination, main content and size of the project, and amount of Chinese investment
- (3) An analysis of the impacts of the project on the national interests and national security of China
- (4) The investor's statement on the authenticity of the project. The NDRC shall publish a model text of a project application report and a list of the required documents attached thereto (hereinafter referred to as the "attachments").

Article 20

An investor may prepare a project application report independently, or at its discretion, authorize an intermediary service provider with relevant experience and capability to prepare the report.

Article 21

The confirmation authority shall accept a project application report and its attachments that are complete and in the statutory formats. Where a project application report or its attachments are incomplete or not in the statutory formats, the confirmation authority shall, within five working days of receipt of the project application report, notify the investor of all necessary supplements and corrections at one time. If the investor is not notified within the period, the project application report and its attachments shall be deemed accepted upon receipt of the project application report. Whether accepting a project application report or not, the confirmation authority shall notify the investor through the network system. If an investor needs an acknowledgement of acceptance or rejection, the investor may print it out through the network system itself or require the confirmation authority to issue it.

Article 22

Where a project involves the duty of a relevant department, the confirmation authority shall consult the relevant department, which shall, within seven working days, issue a written opinion after review. If the relevant department fails to provide such a written opinion within the period, it shall be deemed to have consented.

Article 23

The confirmation authority shall, if necessary, authorize a consulting institution to conduct assessment within four working days after accepting a project application report. Unless the project is complicated, the period of assessment shall not exceed 30 working days. If the project is complicated, with the approval of the confirmation authority, the period of assessment may be extended by not more than 60 working days. The confirmation authority shall notify the investor of the time necessary for the consulting institution to conduct assessment. The consulting institution accepting the authorization shall produce an assessment report within the prescribed period, and be responsible for the conclusion of the assessment. The assessment costs shall be assumed by the confirmation authority, and the consulting institution and its employees may not collect any fees from the investor.

Article 24

The confirmation authority may, in consideration of the opinions of relevant entities and the opinions in the assessment report, among others, recommend adjustment to the relevant content of a project application report by an investor, or require an investor to further clarify or supplement the relevant information or materials.

Article 25

The confirmation authority shall, within 20 working days of accepting a project application report, make a decision on whether to grant confirmation. If the project is complicated or it is necessary to consult a relevant entity, with the approval of the person in charge of the confirmation authority, the period of confirmation may be extended by not more than ten working days, and the investor shall be notified of the reason for the extension. The period of confirmation as provided for in the preceding paragraph includes the time for consulting relevant entities but excludes the time for assessment by the consulting institution.

Article 26

The confirmation authority shall confirm a project if:

- (1) it does not violate the laws and regulations of China;
- (2) it does not violate the relevant development plans, macro-economic control policies, industry policies, and opening-up policies of China;

(3) it does not violate the international treaties and agreements concluded or acceded to by China; and

(4) it does not threaten or damage the national interests and national security of China.

Article 27

The confirmation authority shall confirm a project meeting the conditions for confirmation, and issue a written confirmation document to the investor. If a project does not meet the conditions for confirmation, the confirmation authority shall issue a notice of non-confirmation in writing, and explain the reason for non-confirmation.

Article 28

Where a project violates a relevant law or regulation, violates the relevant plan or policy, violates a relevant international treaty or agreement, or threatens or damages the national interests and national security of China, the confirmation authority may directly make a decision not to grant confirmation without undergoing the procedures for consultation and authorized assessment, among others.

Section 3 Recordation Procedures and Periods

Article 29

For a project subject to recordation management, the investor shall submit a project recordation form, with relevant documents attached, to the recordation authority through the network system. If the investor is an enterprise managed by the Central Government, the group company or head office of it shall submit the same to the recordation authority; and if the investor is a local enterprise, it shall directly submit the same to the recordation authority. The NDRC shall publish the standard text of the project recordation form and a list of attachments.

Article 30

The recordation authority shall accept a project recordation form and its attachments that are complete and in the statutory formats. Where a project recordation form or its attachments are incomplete or not in the statutory formats, or a project is not subject to recordation or is not in the administrative power of the recordation authority, the recordation authority shall, within five working days of receipt of the project recordation form, fully notify the investor at one time. If the investor is not notified within the period, the project recordation form and its attachments shall be deemed accepted upon receipt of the project recordation form. Whether accepting a project recordation form or not, the recordation authority shall notify the investor through the network system. If an investor needs an acknowledgement of acceptance or rejection, the investor may print it out through the network system itself or require the recordation authority to issue it.

Article 31

The recordation authority shall, within seven working days of accepting a project recordation form, issue a notice of recordation to the investor. Where the recordation authority discovers that a project violates a relevant law or regulation, violates the relevant plan or policy, violates a relevant international treaty or agreement, or threatens or damages the national interests and national security of China, it shall, within seven working days of accepting the project recordation form, issue a notice of non-recordation in writing to the investor, and explain the reason for non-recordation.

Section 4 Validity, Modification and Extension of Confirmation or Recordation

Article 32

For a project subject to confirmation or recordation management, the investor shall obtain a project confirmation document or recordation notice before implementing the project. For the purposes of these Measures, "before implementing the project" means obtaining the same before the investor or an overseas enterprise controlled by it invests assets or rights and interests (except front-end costs of the project already undergoing confirmation or recordation in accordance with Article 17 of these Measures) in or provides financing or security for the project.

Article 33

Where, for a project subject to confirmation or recordation management, the investor fails to obtain a valid confirmation document or recordation notice, the foreign exchange administration, Customs, and other relevant departments shall, according to the law, refuse to handle relevant formalities, and financial enterprises shall, according to the law, refuse to handle relevant settlement of capital and financing business.

Article 34

Where a project granted confirmation or recordation falls under any of the following circumstances, the investor shall, before the relevant circumstance occurs, apply for modification to the authority issuing the project confirmation document or recordation notice.

- (1) An increase or decrease in the number of investors.
- (2) A major change of the place of investment.
- (3) A major change of the main content and size of the project.
- (4) A change of the amount of Chinese investment by 20% or more of the original amount granted confirmation or recordation or by USD 100 million or more.

- (5) Any other circumstance requiring a major adjustment of the relevant content of the project confirmation document or recordation notice. The confirmation authority shall, within 20 working days of accepting a modification application, make a decision in writing on whether to allow the modification of confirmation. The recordation authority shall, within seven working days of accepting a modification application, make a decision in writing on whether to allow the modification of recordation.

Article 35

A confirmation document or recordation notice shall be valid for two years. Where it is necessary to extend the validity period, the investor shall, 30 working days before the expiry of the validity period, apply to the authority issuing the confirmation document or recordation notice for extension of the validity period. The confirmation authority shall, within 20 working days of accepting an extension application, make a decision in writing on whether to allow the extension of the validity period of the confirmation document. The recordation authority shall, within seven working days of accepting an extension application, make a decision in writing on whether to allow the extension of the validity period of the recordation notice.

Article 36

Confirmation or recordation authorities shall perform their duties according to the law, conduct confirmation and recordation in strict accordance with the prescribed power, procedures, periods, and other requirements, improve administrative efficiency, and provide quality services.

Article 37

A relevant interested person shall have the right to apply for administrative reconsideration or files an administrative lawsuit according to the law against a confirmation or recordation action taken by the confirmation or recordation authority.

Article 38

The confirmation or recordation of a project not meeting the conditions as specified in these Measures or any confirmation or recordation granted in violation of the power or procedures as specified in these Measures shall be revoked according to the law.

Article 39

Confirmation or recordation authorities shall disclose information on confirmation or recordation in accordance with the Regulation on the Public Disclosure of Government Information.

Chapter IV Regulation of Overseas Investment

Article 40

The NDRC and the development and reform departments of provincial governments shall, according to the laws, regulations, and policies regarding overseas investment and based on the division of labor in Articles 13 and 14 of these Measures, establish a collaborative regulation mechanism jointly with the relevant government departments at the same level, conduct supervisory inspection of overseas investment by online monitoring, interview, inquiries by letter, random inspection and verification, and other means, and dispose of violations of laws and regulations.

Article 41

Investors are encouraged to innovate in the modes of overseas investment, adhere to the principle of operation in good faith, abstain from acts of unfair competition, protect the lawful rights and interests of their employees, respect local public order and good morals, fulfill necessary social responsibilities, pay attention to environmental protection, and build a good image of Chinese investors.

Article 42

Where an investor conducts a high-value non-sensitive project through an overseas enterprise controlled by it, the investor shall, before implementing the project, submit a high-value non-sensitive project reporting form through the network system, and notify the NDRC of the relevant information. Where the content of the high-value non-sensitive project reporting form submitted by an investor is incomplete, the NDRC shall, within five working days of receipt of it, notify the investor of all necessary supplements and corrections at one time. If the investor is not notified within the period, the content of it shall be deemed complete. The NDRC shall publish the standard text of the high-value non-sensitive project reporting form. For the purposes of these Measures, "high-value non-sensitive project" means a non-sensitive project in which the amount of Chinese investment is USD 300 million or more.

Article 43

Where any major casualty involving personnel sent overseas, major loss of overseas assets, damage to the diplomatic relations between China and relevant country, or other major adverse condition occurs in the process of overseas investment, the investor shall, within five working days of the occurrence of the relevant condition, submit a major adverse condition reporting form through the network system. The NDRC shall publish the standard text of the major adverse condition reporting form.

Article 44

For a project subject to confirmation or recordation management, the investor shall, within 20 working days of the completion of the project, submit a project completion

reporting form through the network system. The NDRC shall publish the standard text of the project completion reporting form. NDRC shall publish the standard text of the project completion reporting form. As mentioned in the preceding paragraph, "project completion" means the completion of construction of works, delivery of equities or assets as the subject matter of investment, or completion of payment of the amount of Chinese investment, among others, in a project.

Article 45

The NDRC or the development and reform department of a provincial government may issue a major event inquiry letter to the investor regarding a major event in the process of overseas investment. The investor shall submit a written report according to the event and time requirements as specified in the major event inquiry letter. The NDRC or the development and reform department of a provincial government may, as it deems necessary, publish the major event inquiry letters and the written reports submitted by investors.

Article 46

Where an investor needs an acknowledgement after submitting a relevant reporting form or written report in accordance with Article 42, 43, 44, or Article 45 of these Measures, it may print out an acknowledgement of successful submission itself through the network system.

Article 47

The NDRC or the development and reform department of a provincial government may, according to the operation and risk status of economy and society at home and abroad to its knowledge, issue risk alerts to investors and stakeholders for their reference.

Article 48

An investor shall be responsible for the authenticity, lawfulness, and integrity of the materials submitted by it through the network system or submitted by it offline, which shall not contain false or misleading representations or any major omissions.

Article 49

The relevant departments and entities and the overseas embassies and consulates of China, among others, may, if discovering any violations of these Measures by enterprises, notify the confirmation or recordation authorities. A citizen, a legal person, or any other organization which discovers any enterprise's violation of these Measures may report the facts of violation to the confirmation or recordation authority. The NDRC shall maintain records of violations of laws and regulations in overseas investment, publish and update enterprises' violations of these Measures and corresponding punitive measures, include the relevant information in the national credit information

sharing platform, the National Enterprise Credit Information Publicity System, and the "Credit China" website, among others, for publication, and impose joint punishment on violators in conjunction with the relevant departments and entities.

Chapter V Legal Liability

Article 50

Where any staff member of the NDRC commits any of the following violations, he or she shall be ordered to take corrective action during a specified period, and the relevant persons liable shall be held administratively liable in accordance with the law; and if the violation is criminally punishable, the offender shall be held criminally liable in accordance with the law:

- (1) Abusing power, neglecting duty, practicing favoritism, making falsehood, or soliciting or accepting bribes.
- (2) Conducting confirmation or recordation of a project in violation of the procedures or conditions as specified in these Measures.
- (3) Otherwise violating these Measures.

Article 51

Where an investor applies for confirmation or recordation by means which as splitting a project in bad faith, concealing relevant information, or providing false materials, the confirmation or recordation authority shall reject the application or refuse to grant confirmation or recordation, and issue a warning to the investor and principal persons liable.

Article 52

Where an investor obtains a project confirmation document or recordation notice by fraud, bribery, or any other illicit means, the confirmation or recordation authority shall revoke the confirmation document or recordation notice, and issue a warning to the investor and principal persons liable; and if it is criminally punishable, the offender shall be held criminally liable in accordance with the law.

Article 53

Where the investor of a project subject to confirmation or recordation management commits any of the following violations, the confirmation or recordation authority shall order it to suspend or cease the implementation of the project and take corrective action during a specified period, and issue a warning to the investor and the relevant persons liable; and if it is criminally punishable, the offender shall be held criminally liable in accordance with the law:

- (1) Implementing the project without obtaining a confirmation document or recordation notice.
- (2) Modifying the project without the consent of the confirmation or recordation authority, if the formalities for modification of confirmation or recordation are required.

Article 54

Where an investor commits any of the following violations, the NDRC or the development and reform department of the provincial government at the place of registration of the investor shall order the investor to take corrective action during a specified period; and, if the circumstances are serious, or no corrective action is taken during the specified period, issue a warning to the investor and the relevant persons liable:

- (1) Failing to report the relevant information as required in Article 42, 43, 44, or 45 of these Measures.
- (2) Violating Article 48 of these Measures.

Article 55

Where, in the process of overseas investment, an investor commits any act of unfair competition or interrupts the order of the overseas investment market, the NDRC or the development and reform department of the provincial government at the place of registration of the investor shall order the investor to suspend or cease the implementation of the project and take corrective action during a specified period, and issuing a warning to the investor and the principal persons liable.

Article 56

Where any overseas investment threatens the national interests and national security of China, the NDRC or the development and reform department of the provincial government at the place of registration of the investor shall order the investor to suspend the implementation of the project and take corrective action during a specified period. Where any overseas investment damages the national interests and national security of China, the NDRC or the development and reform department of the provincial government at the place of registration of the investor shall order the investor to cease the implementation of the project, take corrective action during a specified period and take remedial measures, and issuing a warning to the investor and the relevant persons liable; and if it is criminally punishable, the offender shall be held criminally liable in accordance with the law. Where an investor has submitted a major adverse condition report in accordance with Article 43 of these Measures and voluntarily taken corrective action, it may be subject to mitigated administrative punishment or be exempt from administrative punishment.

Article 57

Where a financial enterprise provides financing or security for a project subject to confirmation or recordation management for which no confirmation document or recordation notice has been obtained, the NDRC shall circulate a notification of the violation of regulations, and consult the relevant financial regulator on punishing the financial enterprise and the relevant persons liable in accordance with laws and regulations.

Chapter VI Supplemental Provisions

Article 58

The development and reform department of each provincial government shall enhance the guidance of, services for, and regulation of the overseas investment made by local enterprises, and may develop specific implementation measures according to these Measures.

Article 59

The NDRC shall guide and supervise the overseas investment administration of the development and reform departments of provincial governments, and fix the problems discovered in a timely manner.

Article 60

Confirmation or recordation authorities and their staff members, as well as entities consulted by confirmation authorities and authorized by confirmation authorities to conduct assessment and their staff members, shall have a legal obligation of keep trade secrets involved in the materials submitted by investors according to these Measures.

Article 61

These Measures shall apply, mutatis mutandis, to overseas investment made by public institutions, social groups, and other non-enterprise organizations

Article 62

These Measures shall apply, mutatis mutandis, to investment made in Hong Kong, Macao, or Taiwan region by an investor directly or through an enterprise controlled by it. These Measures shall apply, mutatis mutandis, to overseas investment made by an investor through an enterprise in Hong Kong, Macao or Taiwan region controlled by it.

Article 63

These Measures shall apply, mutatis mutandis, to overseas investment made by a domestic natural person through an overseas enterprise or an enterprise in Hong Kong, Macao or Taiwan region controlled by him or her. These Measures shall not apply to overseas investment directly made by a domestic natural person. These Measures shall not apply to investment in Hong Kong, Macao or Taiwan region directly made by a domestic natural person.

Article 64

Where any law or administrative regulation provides specifically for the administration of overseas investment, such a law or administrative regulation shall prevail.

Article 65

These Measures shall be subject to interpretation by the NDRC.

Article 66

These Measures shall come into force on March 1, 2018, upon which the Measures for the