

Regulations for Merger with and Acquisition of Domestic Enterprises by Foreign Investors in China

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Catalogue

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Chapter I General Principles

Article 1 These Provisions are formulated in accordance with the laws and administrative regulations concerning foreign-invested enterprises, Company Law and other relevant laws and administrative regulations in order to promote and standardize foreign investors' investment in China, introduce foreign advanced technology and management experience, enhance the level of utilizing foreign investment, realize reasonable allocation of resources, ensure employment, safeguard fair competition and national economic security.

Article 2 "Merger with and acquisition of domestic enterprises by foreign investors" in terms of these Regulations means a foreign investor purchases the stock right of a shareholder of a non-foreign-invested enterprise in China (domestic company) or capital increase of a domestic company so as to convert and re-establish a domestic company as a foreign-invested enterprise (equity merger and acquisition); or, a foreign investor establishes a foreign-invested enterprise and purchases and operates the assets of a domestic enterprise by the agreement of that enterprise, or, a foreign investor purchases the assets of a domestic enterprise by agreement and uses this asset investment to establish a foreign-invested enterprise and operate the assets (Asset Merger and Acquisition)

Article 3 Foreign investors' merger with and acquisition of domestic enterprises shall comply with the laws, administrative regulations and rules of China and follow the principles of fairness and reasonableness, consideration for equal value and good faith, shall not result in excessive concentration, exclusion or restriction of competition, and shall not interfere with social economic order or harm social public interests.

Article 4 Foreign investors' merger with and acquisition of domestic enterprises shall comply with the requirements stipulated by laws, administrative regulations and rules of China, and policies concerning industry, land and environment.

According to the Guiding Catalogue of Foreign Invested Industry, to an industry that is not allowed to be operated by a sole foreign investor, its merger and acquisition shall not result in foreign investor holding the enterprise's entire equity. To an industry that needs Chinese party to have the holdings or have relative

holdings, and the Chinese party shall maintain its holdings or relative holdings in the enterprise after the enterprise in that industry is merged and acquired. To an industry that is forbidden to be operated by a sole foreign investor, the foreign investor shall not merge with or acquire any enterprise in that industry. The business range of the original invested enterprise of the merged or acquired domestic enterprise shall accord with the requirements of the policy concerning foreign-invested industry. Whichever does not meet the requirements shall be readjusted.

Article 5 A foreign investor's merger with or acquisition of domestic enterprises involving the transference of state owned equity and management of state owned equity of listed companies shall abide by corresponding regulations concerning the management of state owned assets.

Article 6 A foreign investor establishes a foreign-invested enterprise by merging or acquiring a domestic enterprise shall be approved by the examination and approval organ in accordance with the provisions of these Regulations and register for changes or establish a registration to the registration management authority,

Article 7 The persons concerned of all parties concerning foreign investor's merger with and acquisition of domestic enterprises shall pay tax and accept the supervision of taxation authority in accordance with Taxation Law of China.

Article 8 The persons concerned of all parties concerning foreign investor's merger with and acquisition of domestic enterprises shall abide by the laws and administrative regulations of China concerning the administration of foreign exchange, go through the formalities of foreign exchange examination and approval, registration, record and changes in time to foreign exchange authority.

Chapter II Basic Rules

Article 9 If the ratio of financial contribution of a foreign investor in the registered capital of the foreign-invested enterprise established after the merger and acquisition (M&A) is more than 25 percent, this enterprise shall enjoy the treatment of a foreign-invested enterprise.

If the ratio of financial contribution of the foreign investor in the registered capital of the foreign-invested enterprise established after merger and acquisition is less than 25%, this enterprise shall not enjoy the treatment of a foreign-invested enterprise except for separate provisions stipulated by laws and administrative regulations. Its Borrowing external debts shall be handled according to relevant provisions relating to domestic non-foreign-invested enterprises' borrowing external debts. The examination and approval organ shall issue to it the Approval Certificate of Foreign-invested Enterprises with annotations "ratio of foreign investment less than 25%" (Approval Certificate). The registration administration authority and foreign exchange administration authority shall issue separately to it the Business License for foreign-invested enterprises with annotations "ratio of foreign investment less than 25%" and Foreign Exchange Registration Card.

If domestic companies, enterprises or natural persons merge or acquire the domestic companies that have something to do with them in the name of the companies legally established or controlled by them in foreign countries, the established foreign-invested enterprises shall not enjoy the treatment of foreign-invested enterprises except that if the company in foreign countries offers to buy the capital increase of domestic companies, or increase capital to the enterprises established by this company in foreign country after merger, the sum of capital increase takes more than 25 per cent of the enterprise's registered capital. To the foreign-invested enterprise established according to the way as prescribed in this section, except for the actual

controller, the foreign investor provide funds more than 25 per cent of the enterprise's registered capital, it may enjoy the treatment of foreign-invested enterprises.

The treatment for the Foreign-invested enterprises established after foreign investor's merger with or acquisition of the domestic listed companies shall be handled in accordance with relevant regulations of the state.

Article 10 In terms of these Regulations, the examination and approval organ is the Ministry of Commerce of the People's Republic of China or provincial commercial authority, the registration authority is State Administration for Industry and Commerce or its authorized local administration for industry and commerce, foreign exchange administrative authority is State Administration of Foreign Exchange and its branches. If the foreign-invested enterprises established after merger and acquisition are, according to the provisions of laws, administrative regulations and rules, the foreign-invested enterprises of special type or industry that shall be approved by the Ministry of Commerce, provincial examination and approval organ shall submit the applications to the Ministry of Commerce for approval, the Ministry of Commerce will make the decision whether or not to approve it.

Article 11 The domestic companies. Enterprises or natural persons shall, when they merge or acquire domestic companies having something to do with them in the name of the companies in foreign countries legally established or controlled by them, be submitted to the Ministry of Commerce for approval. The person concerned shall not evade above requirements by domestic investment of the foreign-invested enterprises or by other means.

Article 12 If a foreign investor merges or acquires a domestic enterprise and obtains the actual right to control it, and it involves major industry, has or may have the influence on the state security or caused the transference of the actual right of the domestic enterprise owning famous trademark or having a name of long history, the person concerned shall submit a report on it to the Ministry of Commerce. If a person concerned fails to submit a report, and its merger or acquisition does cause or may cause serious influence on the state economic security, the Ministry of Commerce may, together with corresponding departments, ask the person concerned to stop the deal or transfer corresponding stock ownership, assets or take other effective measures in order to eliminate the influence of the merger or acquisition on the state security.

Article 13 Once a foreign investor annexes stock rights, the foreign invested enterprise established after the annexation shall inherit the creditor's rights and debt of the merged or acquired company. As for the annexation of foreign investor's assets, the domestic enterprise that sold the assets shall bear the original creditor's rights and debt. The foreign investor, merged and acquired enterprise, creditor and other persons concerned may reach an agreement on the treatment of the creditor's rights and debt of the merged and acquired domestic enterprise, but they shall not harm the third party's interests and social public interests. The treatment agreement on the creditor's rights and debt shall be submitted to the examination and approval organ for approval. The domestic enterprise selling its assets shall, at least 15 days before the investor submits the applications to the examination and approval organ, send the notice to the creditor and publish an announcement in a nationwide newspaper at the level of province and higher.

Article 14 The parties concerned relating to an M&A shall take the value of the stock right to be transferred and the assessment result of the assets to be sold that are made by the assets evaluation institution as the basis of determining the transaction price. The parties concerned relating to an M&A may agree on an asset assessment institution lawfully established within China. The international used assessment method shall be

adopted for the asset assessment. It is prohibited to divert any capital abroad in any disguised form by transferring any equities or selling assets at a price which is obviously lower than the assessment result. If a foreign investor's M&A of a domestic enterprise causes the modification of any equity formed by the investments of state-owned assets or transference of the property right of state-owned assets, it shall satisfy the relevant provisions of the administration of state-owned assets.

Article 15 The parties concerned relating to a M&A shall make clear whether or not there is a connected relationship between the parties concerned. If two parties belong to a same actual controller, the parties concerned shall disclose their actual controller to the examination and approval organ and make an explanation about whether the purpose of M&A and the assessment result accord with the sound value of the market. The parties concerned shall not evade the aforesaid requirements by trust, holding shares on behalf of others, or other means.

Article 16 A foreign investor shall, to establish a foreign-invested enterprise by merging and acquiring a domestic enterprise, pay all the considerations to the shareholders who transfer the equities or to the domestic enterprise which sells the assets within 3 months from the date of issuing the business license to the foreign-invested enterprise. If it needs to extend the time limit due to any case under special circumstances, the foreign investor shall, upon the approval of the examination and approval organ, pay 60 per cent or more of the whole consideration within 6 months as of the date of issuing the business license to the foreign-invested enterprise, and pay off the consideration within one year, and distribute the earnings according to the proportion of the actually contributed investments.

Where a foreign investor offers to buy the capital increase of a domestic company, the shareholders of the limited liability company and the domestic joint stock limited company established by the way of initiation shall pay no less than 20% of the newly registered capital when the company applies for a business license for foreign-invested enterprise. The time to pay the rest financial contribution shall be in line with the provisions of the Company Law, the laws relating to foreign investments and the Regulations on the Administration of Company Registration. Provided there are any other provisions stipulated by any other laws or administrative regulations, such provisions shall prevail. Where a limited-liability company issues new stocks for increasing the registered capital, the shareholders shall offer to buy new stocks in accordance with the relevant provisions relating to the share payment for establishing a limited-liability company.

Where a foreign investor carries out an M&A, it shall stipulate the time limit for financial contribution in the contract and articles of the foreign-invested enterprise to be established. Where the foreign investor establishes a foreign-invested enterprise, and through the agreement of this enterprise purchases the assets of a domestic enterprise and operates such assets, it shall pay the contribution of the consideration of the asset within the time limit for the payment of consideration as stipulated in Paragraph 1 of the present Article. The remaining financial contribution shall satisfy the corresponding provisions relating to the capital contribution for establishing a foreign-invested enterprise.

Where a foreign investor establishes a foreign-invested enterprise by merging and acquiring a domestic enterprise, if the proportion of its contribution is less than 25 per cent of the enterprise's registered capital and if it provides funds in cash, it shall pay up it within 3 months from the day when a business license is issued to the foreign-invested enterprise; if it provides funds in kind or industrial property, it shall pay up it within 6 months from the day when a business license is issued to the foreign-invested enterprise.

Article 17 The means of the consideration payment shall accord with the provisions of relevant laws and administrative regulations of the state. If a foreign investor uses the RMB assets it lawfully owns as a means of payment, it shall obtain the approval of the foreign exchange administrations. If a foreign investor uses the shares which are at its disposition as a means of payment, it shall handle it according to Chapter IV of these Regulations.

Article 18 After a foreign investor purchases the equities of a domestic company by agreement, and the domestic company has been converted into a foreign-invested enterprise, the registered capital of this foreign-invested enterprise shall be the registered capital of the original domestic company, and the proportion of the foreign investor's contribution shall be the proportion of its purchased equities in the original registered capital.

Where a foreign investor offers to buy the capital increase of a domestic limited-liability company, the registered capital of the foreign-invested enterprise established after the M & A shall be the sum of the amount of the registered capital and the capital increase of the former domestic company. The foreign investor and other former shareholders of the merged and acquired domestic company shall, on the basis of the assets evaluation of the domestic company, determine their respective proportion of capital contributions in the foreign-invested enterprise.

Where a foreign investor offers to buy the capital increase of a domestic limited-liability company, the registered capital shall be determined under the Company Law.

Article 19 As for M&A of the equity by a foreign investor, the foreign-invested enterprise established after the M & A shall determine the upper limits of the total investments according to the following rates except for any other provisions stipulated by the state:

- (1) If the registered capital is less than US\$ 2.1 million, the total investments shall not exceed 10/7 of the registered capital;
- (2) If the registered capital is more than US\$ 2.1 million to US\$ 5 million, the total investments shall not exceed two times the registered capital;
- (3) If the registered capital is more than US\$ 5 million to US\$ 12 million, the total investments shall not exceed 2.5 times the registered capital; and
- (4) If the registered capital is more than US\$ 12 million, the total investments shall not exceed 3 times the registered capital.

Article 20 For a foreign investor's M&A of assets, the investor shall, according to the transaction price for purchasing the assets and the actual production and operation scale, determine the total investments of the foreign-invested enterprise to be established. The proportion between the registered capital and total investments of the foreign-invested enterprise to be established shall conform to the relevant provisions.

Chapter III Examination, Approval and Registration

Article 21 If a foreign investor merges and acquires equity, the investor shall, according to the total investments of the foreign-invested enterprise established after the M&A, the type of the enterprise and the industry it engages in, and in accordance with the provisions of laws, administrative regulations and rules relating to the establishment of foreign-invested enterprises, submit following documents to the examination and approval organ with corresponding authority:

- (1) A resolution of the shareholders of the merged domestic limited-liability company on unanimous agreement with the foreign investor's merger with and acquisition of the equity or the resolution of the merged and acquired domestic limited-liability company at the shareholders' conference on agreement with the foreign investor's merger with and acquisition of the equity.
- (2) An application of the merged domestic company for converting into a foreign-invested enterprise;
- (3) An contract and the articles of the foreign-invested enterprise established after M&A;
- (4) An agreement on the foreign investor's acquisition of the shareholders' equities of the domestic company or the foreign investor's purchase of the capital increase of the domestic company;
- (5) The financial audit report of the merged domestic company in the previous financial year;
- (6) The investor's identity, registration and credit certification that have been notarized and certified according to law;
- (7) The descriptions about the enterprises invested by the merged domestic enterprise;

- (8) The (duplicates) of the business licenses of the merged domestic company and its invested enterprises;
 - (9) The plan for the settlement of the employees of the merged domestic enterprise;
 - (10) The documents to be submitted as required by Articles 13, 14 and 15 of these Regulations.
- If the business scope, scale, right of using a land of the foreign-invested enterprise established after M & A are subject to the license of other corresponding governmental departments, the relevant license shall be submitted along with the foresaid documents.

Article 22 An equity purchase agreement, or capital increase agreement of the domestic company shall apply to Chinese law and contain the following contents:

- (1) The status of each party reaching the agreement, including the appellation (name) location, name, occupation and nationality of each legal representative;
- (2) The proportion of price of the purchased equities or subscribed capital increase;
- (3) The term and method of execution of the agreement;
- (4) The rights and obligations of each party reaching the agreement;
- (5) The liabilities for breach of contract, and settlement of disputes; and
- (6) The time and place for conclusion of the agreement.

Article 23 For an M&A based on assets, the foreign investor shall, according to the total investments of the foreign-invested enterprise to be established, the type of the enterprise and the industry it engages in, and in accordance with the provisions of the laws, administrative regulations and rules relating to the establishment of foreign-invested enterprises, submit the following documents to the examination and approval organ with corresponding authority:

- (1) A resolution of the property right holders or power mechanism of the domestic enterprise on agreeing with the sale of assets;
- (2) An application for the establishment of a foreign-invested enterprise;
- (3) A contract and the articles of the foreign-invested enterprise to be established;
- (4) An asset purchase agreement signed by the foreign-invested enterprise to be established and the domestic enterprise, or by the foreign investor and the domestic enterprise;
- (5) The articles and business license (duplicate) of the merged and acquired domestic enterprise;
- (6) The notice of the merged and acquired domestic enterprise, certifications of the announced creditors, and statement about whether the creditors have raised any objections;
- (7)) The investor's identity, or certificate of opening a business, and relevant credit certificates that have been notarized and certified according to law;
- (8) The plan on the settlement of employees of the merged and acquired domestic enterprise; and
- (9) The documents as prescribed in Articles 13, 14 and 15 of these Regulations.

If the assets purchased and operated in accordance with previous paragraph involves in the license of other corresponding governmental departments, the relevant licenses shall be submitted along with the preceding documents.

Where a foreign investor purchases the assets of a domestic enterprise by agreement and invests such assets in establishing a foreign-invested enterprise, it shall not, prior to the establishment of the foreign-invested enterprise, use such assets to do any business.

Article 24 The assets purchase agreement shall apply to Chinese law and contain the following main contents:

- (1) The status of each party reaching the agreement, including the appellation (name), and location, and the name, occupation and nationality of each legal representative;
- (2) The term and method for the execution of the agreement;
- (3) The rights and obligations of each part reaching the agreements;
- (4) The liabilities for breach of contract, and settlement of disputes;

(6) The time and place for the conclusion of the agreement.

Article 25 Where a foreign investor establishes a foreign-invested enterprise by taking over a domestic enterprise, provided there are any other provisions in these Regulations, the examination and approval organ shall, within 30 days after receipt of all documents as stipulated to be submitted, make a decision of approval or disapproval. If it decides to make a decision of approval, an approval certificate shall be issued by the examination and approval organ.

Where a foreign investor purchases the equities of a domestic company by agreement, and the examination and approval organ makes a decision of approval, the investor shall simultaneously send a copy of the approval documents separately to the party that transfers the equities, the foreign exchange administrations in the area where the domestic company is located. The foreign exchange administrations in the area where the party that transfers the equities is located shall handle the registration for foreign funds and foreign exchange based on equity-transfer and foreign exchange collection and issue corresponding certificates, which is an effective document proving that the consideration for equity M&A paid by the foreign investor has been in place.

Article 26 Where a foreign investor merges and acquires assets, the investor shall, within 30 days after receipt of the approval certificate, apply to the registration administrations for registration and get the business license for foreign-invested enterprises.

Where a foreign investor merges and acquires equities, the merged and acquired domestic company shall, in accordance with these Regulations, apply to the original registration administration for modifying its registration and get the business license for foreign-invested enterprises. If the original registration administration has no authority for registration, it shall, within 10 days after receipt of the application documents, transfer these application documents to the registration administration with authority and simultaneously enclosed the registration files of the domestic company. When applying for registration modification, the merged and acquired domestic company shall submit the following documents and be responsible for their authenticity and effectiveness:

- (1) An application for registration modification;
- (2) An agreement on the foreign investor's purchase of equities of the domestic company or subscription of capital increase of a domestic company ;
- (3) The revised regulations of the company or the amendment of the original regulations, and the contract of the foreign-invested enterprise which shall be submitted in accordance with law;
- (4) The approval certificate for foreign-invested enterprises;
- (5) The certification for the foreign investor's subject qualification or the identity of natural person;
- (6) The revised name list of the members of the board of directors, the documents with the name and domicile of the new directors, and the appoint documents for the new directors;
- (7) Other relevant documents and certificates as stipulated by the State Administration for Industry and Commerce.

The investor shall, within 30 days after receipt of the business license for foreign-invested enterprises, go through the registration formalities in the taxation, customs, land administration and foreign exchange administration authorities.

Chapter IV Foreign Investors' M&A of Domestic Companies Based on the Payment of Equities

Section 1 Requirements for Equity M&A

Article 27 "Foreign Investors' M&A of Domestic Companies Based on the Payment of Equities" in terms of these Regulations means that the shareholders of an overseas company purchase the equities or increased shares of a domestic company by paying its equities or the increased shares.

Article 28 "Overseas company" in terms of this Chapter shall be established lawfully and there is a perfect system of company law in its registration place, and the company and its management level have no record

of punishment made by the supervision administration in recent 3 years. Except for the companies with special-purpose as mentioned in Section 3 of this Chapter, an overseas company shall be a listed company and there shall be a perfect system for dealing in securities in the place where it gets listed.

Article 29 The equities of a domestic company involving in a foreign investor's M&A of equities shall meet the following conditions:

- (1) Lawfully held by the shareholders and may be transferred in accordance with the law;
- (2) No dispute over their ownership, no hypothecation and any other restrictions on rights;
- (3) The equities of an overseas company shall be listed publicly in an overseas open and lawful securities exchange market (excluding the over-counter exchange market); and
- (4) The transaction price of the equities of the overseas company in recent one year remains stable.

The Items (3) and (4) of the preceding Paragraph is inapplicable to the companies with special-purpose as mentioned in Section 3 of this Chapter.

Article 30 Where a foreign investor merges and acquires a domestic company based on the equities, the domestic company or its shareholders shall engage an intermediary institution registered within China to serve as a consultant (hereinafter referred to as the "M&A consultant"). The M&A consultant shall make due investigations on the genuineness of the application documents for M&A, the financial status of the overseas company and whether the M&A meets the requirements of Articles 14, 28 and 29 of these Regulations, and provide a M&A consultant report and put forward clear-cut professional comments on each of the aforesaid items.

Article 31 A M&A consultant shall satisfy the following requirements:

- (1) Having a good reputation and corresponding experiences;
- (2) No record of serious violation of any law or regulation; and
- (3) Being capable of investigating and analyzing the legal systems of the registration place of the overseas company and the place where the overseas company is get listed, and the financial status of the overseas company.

Section 2 Application Documents and Procedures

Article 32 An equity M&A of a domestic company by a foreign investor shall be submitted to the Ministry of Commerce for the examination and approval. The domestic company shall not only submit the documents as required in Chapter III of these Regulations but also the following documents:

- (1) A statement of the equity changes and major assets changes of the domestic company in recent one year;
- (2) A M&A consultant's report;
- (3) The business opening certifications or identity certification of the domestic and overseas companies involved and their shareholders;
- (4) Descriptions about the equities held by the shareholders of the overseas company, and the name list of the shareholders holding 5 % or more of the equities of the overseas company;
- (5) The Regulations of the overseas company and a description about external guaranties; and
- (6) The financial paper audited in the past annual year and a report on the stock dealings in the past half year of the overseas company.

Article 33 The Ministry of Commerce shall, within 30 days after receipt of all submitted documents as stipulated, examine the application for M&A. If the application meet the requirements, an approval certificate shall be issued, on which the remark that "A foreign investor's equity M&A of a domestic company" shall be given, and the business license shall be valid for 6 months as of the day when it is issued."

Article 34 A domestic company shall, within 30 days after receiving the foresaid certificate, it shall go through the formalities for changes in the registration administration and the foreign exchange administration. The registration administration and the foreign exchange administration shall respectively issue to it a business license for foreign-invested enterprises and a foreign exchange registration card with annotations that "Valid for 8 months as of the date of issuance".

When a domestic company goes through the formalities for registration modification in the registration administration, it shall, in advance, submit an application for equity conversion, amendment of the company's regulation, agreement of equity transference and other documents signed by the legal representative of the domestic company for the purposes of resuming the equity structure.

Article 35 Within 6 months as of the date of issuance of a business license, the domestic company or its shareholders shall, in regard to the matters relating to holding the equities of the overseas company, apply to the Ministry of Commerce and the foreign exchange administrations for going through the formalities of the examination, approval and registration for investing in an enterprise abroad .

Besides the documents as stipulated in the Rules on the Examination and Approval of Investing in Enterprises Abroad, the parties concerned shall submit to the Ministry of Commerce the approval certificate for foreign-invested enterprises with the said annotation and a the business license for foreign-invested enterprises with the said annotation. After the examination and approval of the overseas company's equities held by the domestic company or its shareholders, the Ministry of Commerce shall issue the approval certificate of Chinese enterprise investment overseas and replace the approval certificate of foreign-invested enterprises with no annotation by a one with annotation.

After a domestic company obtains the approval certificate of foreign-invested enterprise without annotation, it shall, within 30 days, apply to the registration administration and the foreign exchange administration for replacing the business license of foreign-invested enterprise and the foreign exchange registration card without annotation by a one with annotation.

Article 36 Within 6 months as of the date of issuance of a business license, if the domestic and overseas companies fail to go through the formalities of equity modification, the approval certificate with annotation and approval certificate of Chinese enterprise overseas investment shall be invalid automatically. The registration administration shall, according to the application documents for registration of equity modification submitted by the domestic company in advance, examine and approve the modification registration and resume the equity structure of the domestic company to the status before the equity M&A.

If a domestic company fails to increase shares, before the registration administration examines and approves the modification registration according to the preceding Paragraph, the domestic company shall, in accordance with the provisions of the Company Law, reduce the registered capital correspondingly and make an announcement in a newspaper.

If a domestic company fails to go through the corresponding registration formalities according to the preceding Paragraph, it shall be punished by the registration administration in accordance with relevant provisions of the Regulations on the Administration of Company Registration.

Article 37 Before obtaining the approval certificate of foreign-invested enterprise and a foreign exchange registration certificate without annotation, it shall not distribute its profits to its shareholders, provide a guarantee to any connected company, pay the capital items such as the equity transfer, capital decrease or liquidation.

Article 38 A domestic company or its shareholders shall go through the tax modification registration in the taxation administration by the approval document and business license without annotation issued by the Ministry of Commerce and the registration administration.

Section 3 Special provisions for the company with special purpose

Article 39 "The company with special-purpose" in terms of these Regulations refers to an overseas company directly or indirectly controlled by a domestic company or a natural person for the purpose of making the equities of its actual owned domestic company to be listed abroad.

The provisions of this Section shall apply to the company with special purpose that purchases the equities of the shareholders of a domestic company or the additionally issued shares of a domestic company by paying its equities or its additionally issued shares in order to be listed abroad.

If the parties concerned makes an overseas company holding the equities of a the company with special purpose as a subject to get listed abroad, this overseas company shall satisfy corresponding requirements for the company with special purpose as prescribed in this Section.

Article 40 The listing transaction abroad of the company with special-purpose shall be approved by the securities regulatory administration of the State Council.

The country or region where the company with special purpose shall have perfect laws and supervision system and the securities supervision administration of this country or region shall have signed a memorandum of understanding for supervision cooperation with the securities supervision administration of the State Council and keep an effective supervision cooperation.

Article 41 A domestic company with its equities listed abroad as mentioned in this Section shall satisfy the following requirements:

- (1) Its property right is clear. No dispute or potential dispute over its property right;
- (2) Having a complete business system and good sustainable operation capacity;
- (3) Having a sound corporate governance structure and internal management system; and
- (4) The company and its main shareholders have no record of serious violation of any law or regulations in recent three years.

Article 42 Where a domestic company set up a company with special purpose abroad, it shall apply to the Ministry of Commerce for going through the examination and approval formalities. When going through such formalities, the domestic company shall, besides the documents as required in the Rules on the Examination and Approval of Investing in Enterprises Abroad, submit the following documents simultaneously:

- (1) The identity of the final controller of the company with special purpose;
- (2) The business plan on the overseas listing of the company with special purpose; and
- (3) The assessment report made by the M&A consultant on the issuing price of the stock to be listed abroad in the future.

After obtaining the approval document of the investment abroad for Chinese enterprise, the person who establishes or controls the company shall apply to the foreign exchange administration in the area where the company is located for going through the formalities relating to the registration of foreign exchange for overseas investments.

Article 43 The total value of issuing the stocks listed abroad of the company with special purpose shall not be lower than the value of the equities M&A of the domestic company assessed by the relevant asset assessment institution.

Article 44 Where a company with special purpose merges and acquires a domestic company by equities, the domestic company shall, besides the documents as required in Article 32 of these Regulations, submit to the Ministry of Commerce the following documents:

- (1) The approval documents and certificate for the investment in an enterprise abroad when the company with special purpose is established;

- (2) Registration Form of foreign exchange for the investments abroad of the company with special purpose;
- (3) The identity or the business opening certification or regulations of the final controller of the company with special purpose;
- (4) The business plan on listing abroad of the company with special purpose; and
- (5) The assessment report made by the M&A consultant on the issuing price of the stock to be listed abroad in the future.

If the overseas company holding the equities of the company with special purpose serves as a subject to be listed abroad, the domestic company shall also submit the following documents:

- (1) The business opening certification and the regulations of the overseas company; and
- (2) The detailed descriptions by the company with special purposes and the overseas company to the equities transaction arrangement and the discount method.

Article 45 If the Ministry of Commerce approves the documents as required in Article 44 of these Regulations after preliminary examination, it shall issue a letter of principle approval letter. The domestic company shall, by the principle approval letter, submit the documents for listing application to the securities supervision administration of the State Council. The securities supervision administration of the State Council shall make a decision on approval or disapproval within 20 working days.

After the domestic company obtains the approval, it shall apply for the approval certificate to the Ministry of Commerce. The Ministry of Commerce shall issue to it an approval certificate with the annotation "Equities holding by the overseas company with special purpose, and valid for 1 year as of the issuance of a business license".

If the M&A causes the change of equities of company with special purpose, the domestic company or natural person holding the equities of the company with special purpose shall, by approval certificate for foreign-invested enterprises with annotation, apply to the Ministry of Commerce for going through the examination and approval formalities for the changes of the investment in an enterprise abroad on corresponding items.

Article 46 The domestic company shall, within 30 days after receipt of the approval certificate with annotation, apply for the modification registration to the registration administration and the foreign exchange administration for modifying the registration. The registration administration and the foreign exchange administration shall respectively issue business license and foreign exchange registration card for foreign-invested enterprises with annotation "Be valid for 14 months as of the date of issuance".

When the domestic company handles the modification registration in the registration administration, it shall, in advance, submit the equity change application, the amendment of the company's regulations, the equity transfer agreement and other documents signed by the legal representative of the domestic company for the purposes of resuming the equities structure.

Article 47 The domestic company shall, within 30 days after the company with special purpose or its connected overseas company realizes the overseas listing, report to the Ministry of Commerce the information about the overseas listing and its plan on the repatriation of financial income, and apply for a the replacement of an approval certificate for foreign-invested enterprises with annotation. At the same time, the domestic company shall, within 30 days after the realization of overseas listing, report to the securities supervision administration of the State Council the information about the overseas listing and provide with corresponding documents for the record. It shall also submit its plan on repatriation of financial income to the foreign exchange administration and execute this plan under the supervision of the foreign exchange administration. It shall, within 30 days after receiving the approval certificate without annotation, apply for the replacement of the business license and foreign exchange registration card to the registration administration and foreign exchange administration with annotation.

If the domestic company fails to report to the Ministry of Commerce within the aforesaid time limit, the approval certificate of the domestic company with annotation shall be invalid automatically, its equities

structure will resume to the state before the equity M&A, and it shall go through the formalities for modifying the registration in accordance with Article 36 of these Regulations.

Article 48 The financial income from overseas listing of the company with special purpose shall, according to the repatriation plan submitted to the foreign exchange administration for the record, be repatriated according to current regulations for administration of foreign exchange. The financial income may be repatriated by following means:

- (1) providing commercial loans to the domestic company;
- (2) setting up a new foreign-invested enterprise within the territory of China; and
- (3) M & A of a domestic enterprise.

To repatriate the financial income of a company with special purpose under the aforesaid circumstances, the person concerned shall abide by the laws and administrative regulations of China on the administration of foreign investments and foreign debts. If the repatriation of the overseas financial income of a company with special purpose causes the domestic company and natural person to hold more equities of the company with special purpose or increase the net assets of the company with special purpose, the persons concerned shall disclose the relevant information and report for approval according to the fact, and go through corresponding formalities for the registration of foreign exchange of foreign investments and registration modification of overseas investments .

The foreign exchange income from profit, bonus and capital change obtained by the domestic company or natural person from the company with special purpose shall be repatriated within 6 months after the date of obtainment. The profit or bonus may enter into current account for foreign exchange or be converted into RMB. The foreign exchange income from capital change may, with the examination and approval of the foreign exchange administration, be deposited in the special capital account or be converted into RMB.

Article 49 Within 1 year after the date of issuance of a business license, if the domestic company fails to obtain the approval certificate without annotation, the approval certificate with annotation shall be invalid automatically, and modification registration shall be handled in accordance with Article 36 of these Regulations.

Article 50 After the company with special purpose realizes the overseas listing and the domestic company obtains the approval certificate and business license without annotation, if the person concerned continues to M&A this domestic company by paying its equities, it shall apply to the provisions of Sections 1 and 2 of this Chapter.

Chapter V Anti-monopolization Examination

Article 51 If a foreign investor merges and acquires a domestic company under any of the following circumstances, the investor shall report the information involved to the Ministry of Commerce and the State Administration for Industry and Commerce:

- (1) The business volume of any party of the M&A in Chinese market in current year exceeds RMB 1.5 billion yuan;
- (2) Merging and acquiring more than 10 enterprises in the domestic connective industries within 1 year;
- (3) The market share of any party relating to the M&A has reached 20% in Chinese market; and
- (4) The M&A leads to the fact that the market share of the party to the M&A has reached 25% in China.

Though failing to meet foresaid requirements, but at the request of the domestic enterprise with competition relationship, the relevant functional department or industrial association, the Ministry of Commerce or the State Administration for Industry and Commerce believes that the market share of the foreign investor M&A is huge, or there are other major factors which seriously impact the market competition, it may demand the foreign investor to provide a report.

The aforesaid persons concerned include the enterprises being related to the foreign investor.

Article 52 If the M&A of a domestic company by a foreign investor is under any of the circumstances as prescribed in Article 51 and if the Ministry of Commerce and the State Administration for Industry and Commerce believe that it may lead to excessive concentration, hamper fair competition or harm the consumer's interests, they shall, within 90 days as of the date of receipt of all the submitted documents as stipulated, either jointly or solely convene through negotiation the relevant departments, institutions, enterprises and other interested parties to hold a hearing, and make a decision on approval or disapproval in accordance with the law.

Article 53 If an overseas M&A is under any of the following circumstances, the parties that carry out the M&A shall, before announcing the M&A plan or when submitting it to the competent authority in the country where it is located, submit the M&A plan to the Ministry of Commerce and the State Administration for Industry and Commerce. The Ministry of Commerce and the State Administration for Industry and Commerce shall examine whether it will lead to excessive centralization in the domestic market, hinder domestic fair competition, or harm domestic consumers' benefits, and then make a decision on approval or disapproval:

- (1) The overseas party of the M&A owns assets of more than RMB 3 billion Yuan in the territory of China;
- (2) The business volume of the overseas party of the M&A in the Chinese market is more than RMB 1.5 billion yuan in the current year;
- (3) The market share of the overseas party of the M&A and its connected enterprises in Chinese Market has reached 20%;
- (4) Due to overseas M&A, the market share of the overseas party of the M&A and its connected enterprises in China has reached 25%; or
- (5) Due to overseas M&A, there will be more than 15 foreign-invested enterprises participating directly or indirectly in equities of corresponding domestic industries.

Article 54 Where a M&A is under any of the following circumstances, any party of the M&A may apply for examination exemption to the Ministry of Commerce and the State Administration for Industry and Commerce:

- (1) May improve the conditions for market fair competition;
- (2) Re-organizing losing enterprises and ensure outplacement;
- (3) Introduce advanced technology and qualified management personnel and be able to improve the enterprise's international competitiveness; or
- (4) May improve the environment.

Chapter VI Supplementary Provisions

Article 55 These Regulations is applicable to the case that an investment company established by a foreign investor within China merges and acquires a domestic enterprise.

Where a foreign investor purchases the equities of the shareholder of a foreign-invested enterprise in China or offer to buy the capital increase of a foreign-invested enterprise in China, it shall be applicable to current laws, administrative regulations on foreign-invested enterprises as well as corresponding provisions on equities changes of the investors of foreign-invested enterprise. If any case is not covered by the aforesaid laws, administrative regulations or provisions, it shall be handled according to these Regulations.

Where a foreign investor merges or acquires a domestic enterprise through a foreign-invested enterprise established by it within China, it shall apply to corresponding provisions on the combination and split-up of foreign-invested enterprises and corresponding provisions on domestic investment of foreign-invested enterprise. If any case is not covered by the aforesaid provisions, it shall be handled according to these Regulations.

Where a foreign investor merges and acquires a domestic limited liability company and transforms it into a joint stock limited company, or if the domestic company is a joint stock limited company, it shall be applicable

to the corresponding provisions on the establishment of a joint stock limited company; if any case is not covered by the aforesaid provisions, it shall be applicable to these Regulations.

Article 56 An applicant or declarer shall submit the documents after classifying the documents into different categories and the catalogue is enclosed in accordance with these Regulations.. All documents required to be submitted shall be written in Chinese.

Article 57 A Chinese natural-person shareholder of a domestic company taken over by equities may, after obtaining the approval, continue to be a Chinese investor of the foreign-invested enterprise established after modification.

Article 58 If a natural-person shareholder of a domestic company changes his nationality, the enterprise nature of the company shall not be changed.

Article 59 The staffs of corresponding governmental authorities shall be devoted to their duties, perform their duties in accordance with the law, and shall not seek any improper benefit by taking the advantage of their positions, and shall keep confidential the commercial secrets they have known.

Article 60 Where an investor from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan Region mergers and acquires a enterprise of any other region in China, it shall be handled according to these Regulations.

Article 61 These Regulations shall come into force as of September 8, 2006.

Contact Path To China for more details of merger with and Acquisition of Domestic Enterprises by Foreign Investors in China:

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