M&A in China

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I. BACKGROUND

1. Introduction

Statistic released by the Ministry of Commerce ("MOFCOM") stated that by the end of 2008, the total amount invested in 2008 was US$ 92.395billion, 23.58 % more than in 2007. China's accession to the World Trade Organisation has unleashed unprecedented foreign investment.

Over the past few years, multinational manufacturers have expanded production within China, aiming to streamline costs, increase profit margins and expand into one of the world's fastest growing consumer markets. The classic route for foreign investors was to establish an equity joint venture, a co-operative joint venture or a wholly foreign owned enterprise.

Instead of launching start-ups, many foreign investors are now considering acquisitions, while traditional joint ventures are increasingly rejected in favour of majority shareholdings, if not full ownership. As well as low labour costs, foreign investors are placing greater emphasis on goodwill, supply of raw materials and the distribution networks, all of which enable them to lift market share more quickly.

However, there have always been legal issues for foreign investors to overcome. China was lack of systematic law on mergers and acquisitions and there were limited provisions in Chinese company law, contract law, administrative regulations and notices to facilitate the establishment of Sino-foreign activities within China.

Now, the legal climate has changed. Certain M&A-related regulations, including the **Provisional Regulations on Reforming State Owned Enterprises with Foreign Investment (effective January 2003)**, the **Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors (effective September 2006)** and the **Provisional Regulations on Transfer of State Ownership of Chinese Enterprises (effective February 2004)**, are all now in place. These rules increase disclosure, transparency and certainty in the M&A regulatory regime and seek to ensure that state assets are not sold or transferred at below what the PRC Government regards as their proper value. They make it possible for mergers and acquisitions to be structured with more certainty. These regulations provide foreign investors with broader opportunities to acquire shares in State-owned enterprises and domestic enterprises and to acquire legal person shares of listed companies. On the other hand, the PRC government strengthens the control of mergers and acquisitions activities in particular, activities in relation to special purpose vehicles.

2. PRC Government Policy

Current PRC government policies indicate strong support for the mergers and acquisitions market. The PRC Government policies enhance the privatisation of the State-owned sector, one of the examples is the recent announcement of the restructuring of State assets of 117 State-owned enterprises totalling RMB 22.7 billion through M&A in Changchun, the capital of northeast China's Jilin province.

3. World Trade Organisation ("WTO")

China's integration into the world economy has already accelerated upon China's entry into WTO. To meet the challenges of being a member country of WTO, China is readjusting its foreign investment policies, shifting the emphasis from traditional joint and cooperative ventures to transnational purchases.

II. COMMON TYPES OF MERGERS AND ACQUISITIONS IN CHINA

1. Direct Equity Acquisition

A foreign investor may directly purchase all or part of the non-listed equity interest of a target company from one or more of the existing investors. Alternatively, the foreign investor can subscribe for increased capital of a target company.

Direct acquisitions are subject to the approval of the Chinese authorities. This type of acquisition tends to be more preferred for PRC State vendors since this type of acquisition will assist them to divest themselves out of the liabilities as well as the assets of the enterprise.

2. Indirect Acquisitions

A foreign investor can acquire or increase control a target company by purchasing some or all of the offshore shares held by the target company's foreign parent(s). However, this type of acquisition is only available if the PRC target company has foreign investors' equity.

As the transaction can be completed entirely offshore, it does not require approval of the PRC authorities. Also, from a PRC regulatory point of view, it is not necessary to obtain consent from any other shareholders of the PRC target company or from the board of directors of the PRC target company.

3. Asset Acquisition

A foreign investor can use a newly established foreign-funded enterprise or an existing foreign-funded enterprise as an acquiring vehicle to purchase directly some or all of the business and assets of a target company. A definite advantage of asset acquisitions is that a foreign investor can select its preferred assets and businesses of the target company. All the existing obligations, liabilities or restrictions of the target company will therefore remain with the target company.

The foreign investor is required to establish a registered office/agent in China in the form of a foreign-funded enterprise to acquire and operate domestic assets. Separate approvals from the PRC authorities are required for a foreign-funded enterprise which is established for the purpose of acquiring the assets of the PRC target company.

4. Acquisition of Corporation with State-owned Interests

Interests in State-owned enterprises in China can be acquired by direct equity acquisition or by the asset acquisition as mentioned above. Certain special regulations govern acquisitions of State-owned interests, in particular the State-owned Enterprise Restructuring Regulations (effective from 1 January 2003) and the Provisional Regulations on Transfer of State ownership of Chinese Enterprises (effective from 1 February 2004), together with the Provisional Regulations on the Merger and Acquisition of Domestic Enterprises (effective from 12 April 2003), are all now in place.

III. LAWS AND REGULATIONS OF MERGERS AND ACQUISITIONS IN CHINA

There are two important regulations governing the acquisition of assets and shares of State-owned enterprises and wider general regulations on mergers and acquisitions by foreign investors in China:

1. Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors ("M&A Rules")

On 8 August 2006, MOFCOM, State Assets Supervision and Administration Commission of the State Council ("SASAC"), the State Administration of Taxation ("SAT"), the State Administration of Industry and Commerce ("SAIC"), the China Securities Regulatory Commission ("CSRC") and the State Administration of Foreign Exchange ("SAFE") jointly issued the M&A Rules, which became effective on 8 September 2006. The M&A Rules regulate all types of mergers and acquisitions involving foreign investment under the supervision of the MOFCOM.

This is one of the most important regulations in relation to mergers and acquisitions by foreign investors in China. The key features of the M&A Rules are:

(A) Scope

Article 2 of the M&A Rules provides that they are applicable to acquisitions of domestic non-foreign-funded PRC enterprises (hereinafter referred to as "domestic company") by foreign investors. They apply to:

(a) Share Acquisitions ("equity-based takeover")

(i) To transform a domestic company into a foreign-funded enterprise by acquiring equities of shareholders in a domestic company by agreement entered into between the domestic company and the foreign investor ; or

(ii) to transform a domestic company into a foreign-funded enterprise by subscribing of additional registered capital in a domestic company by the foreign investor.

(b) Asset Acquisition ("asset-based takeover")

(i) To establish a new foreign-funded enterprise and purchase assets in a domestic company by agreement entered into between the domestic company and the newly established foreign-funded enterprise and to operate the assets in the domestic company through the newly established foreign-funded enterprise; or

(ii) to purchase assets in a domestic company by agreement entered into between the domestic company and the foreign investor and to invest those assets into a newly established foreign-funded enterprise for operating the assets in the domestic company.

MOFCOM takes the view that the M&A Rules shall apply to any target company incorporated as a company under PRC Company Law. Therefore, the M&A Rules apply to limited liability companies and companies limited by shares, including State-owned enterprises incorporated as limited liability companies and companies limited by shares.

(B) Foreign Investors Qualifications

The M&A Rules do not replace any existing foreign investment laws and regulations, in fact, the M&A Rules provide guidance and implementation techniques in mergers and acquisitions. Along with other foreign investment laws and regulations in the PRC, all foreign investments must follow guidelines provided in the Catalogue of Industries for Guiding Foreign Investment ("Industry Catalogue") which delineate the categories of encouraged, permitted, restricted and prohibited industries for foreign investment. An enterprise engaged in an "encouraged" business, for example, development and production of food for baby, elderly and functional food may qualify for local (and generally more lenient) approval processes. The M&A Rules do not serve as an exception to the Industry Catalogue, which means that no acquisitions of either shares or assets are allowed if the target industry falls within the prohibited category and there are different restrictions set upon the acquisition if the target industry falls within the restricted category.

(C) A New Type of Foreign Invested Enterprise

Article 9 of the M&A Rules provides that in the event a foreign investor's contribution falls below 25%, this will be noted as a remark on the approval certificate, business licence and a Foreign Exchange Register Certificate of the foreign-funded enterprise. Such type of foreign-funded enterprise would not be able to take advantage of any preferential treatment available to a foreign-funded enterprise with 25% or more of contribution by the foreign investor.

(D) Asset Assessment

Article 14 of the M&A Rules provides that the acquisition price of the equities to be transferred or the assets to be sold, must be based on an asset assessment given by an asset assessment institution. In order to reflect the government's sensitivity to tax

evasion and prohibit diversion of any capital abroad in any disguised form, the M&A Rules expressly prohibit setting an acquisition price significantly below the assessed value of the equities to be transferred or the assets to be sold. Within these boundaries, existing laws and regulations generally allow the parties to freely negotiate the transfer price. However, transactions involving state-owned equity interests or assets must comply with special regulations on the management of state-owned assets. There are also separate regulations governing the disposal of assets of state-owned interests.

Under the M&A Rules, an asset assessment institution which is lawfully established within the PRC may be used. However what often happens is that a foreign investor will also appoint an international assessment institution to provide a benchmark for the value of the assets and to assist in the negotiations with the domestic asset assessment institution.

(E) Creditors' Rights

Under the M&A Rules, a disposal of shares does not affect the creditors' rights of a domestic enterprise. Article 13 of the M&A Rules provides that for a share-based takeover, the foreign-funded enterprise established after takeover will succeed to all the credits and debts of the domestic company.

For an asset-based takeover, the domestic company shall undertake its former debts and credits. In addition, the domestic company is required to send a notice to its creditors and publish an announcement in a newspaper circulated nationwide not later than 15 days before the foreign investor submits the application documents for approval. The foreign investor, the domestic company, creditors and other parties concerned can enter into separate contractual agreements regarding the disposition of the obligations and creditors' rights of the domestic company provided that these agreements do not impair the interests of any third party or the public interest. These agreements must also be submitted to the approval authorities in the PRC.

(F) Payment of Consideration

Article 16 of the M&A Rules provides that the purchaser must pay the vendor the whole amount of consideration within three (3) months after issuance of the business licence to the newly established foreign-funded enterprise after the equity-based takeover or asset-based takeover. However, an extension may be granted subject to approval, so that 60% is payable within six (6) months after issuance of the business licence, and the remaining balance of the consideration is payable within one year.

In the case of the foreign investor subscribes for the increased capital in an equity-based takeover, at least 20% of the newly increased registered capital shall be paid when the domestic company applies for a business licence for a newly established foreign-funded enterprise. The time to pay the other newly increased registered capital shall be in line with the company law, the laws on foreign investments and the Regulation on the Administration of Company Registration.

(G) Registered Capital Share

According to Article 18 of the M&A Rules, in the case of an equity-based takeover, the registered capital of the newly established foreign-funded enterprise shall be the same as that of the original domestic company. On the other hand, if a foreign investor subscribing for the increased portion of registered capital of the newly established foreign-funded enterprise, the registered capital of the foreign-funded enterprise will be the sum of the registered capital of the domestic company and the newly subscribed capital by the foreign investor. The relative ownership percentages between the foreign investor and the existing shareholders of the domestic company are determined on the basis of the assessed value of the assets of the domestic company.

(H) Ratios Between Registered Capital And Total Investment

Article 19 of the M&A Rules also set out the upper limits of the total investments to the foreign-funded enterprises after takeovers. Unless otherwise stated, the upper limits shall be determined according to the following rates:

(i) if registered capital is US$2.1 million or less, the total amount of investment shall not exceed 10/7 of registered capital;

(ii) if registered capital is more US$2.1 million and less than US$5 million (including US$5 million), the total amount of investment shall not exceed two times of the registered capital;

(iii) if registered capital is more than US$5 million but less than US$12 million (including US$12 million), the total amount of investment shall not exceed 2.5 times of the registered capital; and

(iv) if registered capital is more than US$12 million, the total amount of investment shall not exceed three times of the registered capital.

(I) Application, Examination and Approval Procedures

For both an equity-based takeover and asset-based takeover, a foreign investor shall submit the following documents in accordance with the laws, regulations and rules on the establishment of a foreign-funded enterprise to the to the authorities for approval:

(i) shareholders' resolutions of the domestic company for passing the equity-based takeover or a resolution of the person or authority who is entitled to the right of the assets of the domestic company for the consent of the sale of assets;

(ii) an application for the establishment of the foreign-funded enterprise;

(iii) an contract and the articles of association of the foreign-funded enterprise to

be established after takeover;

(iv) an agreement on the foreign investor's acquisition of equities of shareholders of the domestic company or on the foreign investor's subscription of the capital increase of the domestic company or an asset agreement signed by the foreign-funded enterprise to be established or the foreign investor and the domestic company;

(v) for equity-based takeover, the previous year financial audit report of the domestic company;

(vi) the notarised and certified documents of the identity, registration and credit standing of the foreign investor;

(vii) for asset-based takeover, the notice of the takeover and the announcement to the creditors of the domestic company and the statement of non-rejections raised by the creditors in respect of the takeover;

(viii) for equity-based takeover, the duplicates of the business licence of the domestic company; and for asset-based takeover, the articles of association and duplicates of the business licence of the domestic company;

(ix) the proposal of the arrangement of employees in the domestic company; and

(x) the documents as referred in Articles 13, 14 and 15 of the M&A Rules.

If the business scope, scale, land-use right of a foreign-funded enterprise established after takeover are subject to the licence of the relevant government departments, the relevant licencing documents shall be submitted along with the documents as listed above.

The decision for approval or disapproval of the takeover shall be made within 30 days after the approval authority receives the whole set of documents as required.

(J) Anti-Competition

Article 51 of the M&A Rules set out an anti-competition framework relating to foreign investment.

If any of the following situations is present in a proposed acquisition of a domestic company, the foreign investor should file a report with the MOFCOM and SAIC:

(i) turnover of any party to the takeover in the China market exceeds RMB 1.5 billion in the current year;

(ii) the foreign investor has cumulatively acquired more than 10 domestic enterprises in related industries;

(iii) the China market share of any party to the takeover has reached 20%; or

(iv) The takeover will result in the China market share of any party reaching 25%.

The aforesaid party includes the connected enterprise of the foreign investor.

If a transaction does not involve any of the above four sets of circumstances, it may still be subject to anti-competition review. If MOFCOM or SAIC believes that a transaction may result in excessive market concentration, harm to legitimate competition or damage to consumer interests, they have the discretion to call hearings involving relevant departments, institutions, enterprises and other interested parties, and may disapprove the transaction on the basis of such hearings.

(K) Equity-payment-based Merger and Acquisition

The PRC government regulates a new type of merger and acquisition that shall be done by an overseas listed company or a Special-purpose Vehicle ("SPV"). The "equity-payment-based takeover of a domestic enterprise by a foreign investor" means that the shareholders of an overseas company purchase the equities or the increased capital of a domestic company by paying the equities of the overseas company it holds, or that an overseas company purchases the equities or the increased capital of a domestic company by paying its increased shares.

a. According to Article 29 of the M&A Rules, the equities of the domestic and overseas company involved in the equity-based takeover of a domestic company by a foreign investor shall meet the following conditions:

   (i) the shares are lawfully held by the shareholders and may be transferred in accordance with the law;

   (ii) there is no dispute over their ownership, they are not held in pledge and they are not subject to any other limit of right;

   (iii) the equities of an overseas company shall be listed publicly in an overseas lawful securities exchange market (excluding the over-counter exchange market); and

   (iv) the transaction price of the equities of the overseas company in the recent 1 year remains stable.

   The Items (iii) and (iv) are inapplicable to SPVs.

b. According to Article 39 of the M&A Rules, SPV refers to an overseas company which a domestic company or natural person directly or indirectly controls for the purpose of making its actual domestic company equities get listed abroad.

   According to Article 41 of the M&A Rules, the domestic company with its equities listed abroad shall satisfy the following conditions:

   (i) its property right is clear. There is no dispute or potential dispute over its property right;

(ii) it has a complete business system and a good sustainable operation capacity;

(iii) it has a sound corporate governance structure and internal management system; and

(iv) the company and its main shareholders have no record of serious violation of any law or regulation in recent 3 years.

According to Article 44 and Article 32 of the M&A Rules, where a SPV intends to take over a domestic company by equities, the domestic company shall apply for the approval by the MOFCOM and submit not only the documents as required in Chapter III of the M&A Rules, but also the following documents:

(i) A statement of the changes of equities and important changes of assets of the domestic company within the recent 1 year;

(ii) A takeover consultant's report;

(iii) The business opening certifications or identity certification documents of the relevant domestic and overseas companies and their shareholders;

(iv) Descriptions about the equities held by the shareholders of the overseas company, and the name list of the shareholders who hold 5 % or more of the equities of the overseas company;

(v) The articles of association of the overseas company and a description about the guaranties it provides to outsiders; and

(vi) The recent annual financial statements upon audit and a report on the stock dealings of the overseas company in the recent half year.

(vii) The approval documents and certificate for the investor to run an enterprise abroad at the time of establishment of the special-purpose company;

(viii) The foreign exchange register form for the overseas investments of the special-purpose company;

(ix) The identity certification documents or the business opening certification and articles of association of the final controller of the special-purpose company;

(x) The business plan on the overseas listing of the special-purpose company; and

(xi) The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

And if the parties concerned makes an overseas company, which holds the equities of a special-purpose company, serve as a subject to get listed abroad, the domestic company shall, apart from the aforesaid documents, submit the following documents:

(i) The business opening certification and the articles of association of the overseas company; and

(ii) The arrangement of the special-purpose company and the overseas company for the transaction of the equities of the domestic company taken over, as well as the detailed descriptions of the method to convert the equities to money.

According to Article 45 of the M&A Rules, the approval certificate issued by the MOFCOM for the SPV's merger and acquisition only extends 1 year, which means that the SPV shall complete the listing overseas within one year; otherwise, the domestic entity's equity structure will resume to the state prior to the equity-based takeover. Therefore, since the implementation of this new M&A Rules, seldom red-chip listings were successful.

2. The Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors (the "Strategic Investment Measures")

The new M & A rule regulates the strategic purchase of the listed equity. Following this rule, the MOFCOM, CSRC, SAT, SAIC, and SAFE on 31 December 2005 jointly released the Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors and the Strategic Investment Measures became effective on 31 January 2006.

(A) Strategic Investor Qualification

An investor shall satisfy following qualification for making strategic investment:

(i) It is a foreign legal person or other organization that is established and operated according to law, with sound finance, good credit standing, and mature management experiences;

(ii) Its total overseas paid-in capital shall be no less than USD 100 million or the total overseas paid-in capital under its management shall be no less than USD 500 million; or the total overseas paid-in capital of its overseas parent company is no less than USD 100 million or the total overseas paid-in capital under the management of its parent company shall be no less than USD 500 million;

(iii) It has sound governance structure and sound internal control system, and criterions for management acts; and

(iv) It (including its parent company) has no records of grave penalties by any regulatory institution both home and abroad within the past three years.

And when making strategic investment, an investor shall also comply with the following requirements:

(i) The A share stock of a listed company is obtained by way of transfer under an agreement or directional issuance of new shares by the listed company or by any other means as prescribed by any state law or regulation;

(ii) The investment may be made by stages, the proportion of shares obtained by it after completing initial investment shall be no lower than 10% of the shares having been issued by the company, unless there are special provisions in a special industry or it is approved by the competent departments;

(iii) The A share stock of a listed company obtained by the investor shall not be transferred within 3 years;

(iv) For the industry for which there are clear provisions by any law or regulation on the proportion of shares held by a foreign investor, the proportion of shares of the aforesaid industries held by an investor shall comply with the relevant provisions; for any fields to which foreign investment is prohibited by any law or regulation, the investor shall not make investment in any listed company in the aforesaid field; and

(v) In case any state-owned shareholder of a listed company is involved, it shall comply with the relevant provisions on state-owned assets administration.

(B) Procedures and Documents

The investor may make strategic investment by way of directional issuance of a listed company or transfer under an agreement.

In the case of the strategic investment is made by way of directional issuance of a listed company, it shall be handled in light of the following procedures:

(i) The board of directors of the listed company adopts the resolutions on directional issuance of new shares to investors and amendments of the draft of the articles of association of the company;

(ii) The shareholders' meeting of the listed company adopts the resolutions on directional issuance of new shares to investors and amendments of the articles of association of the company;

(iii) The listed company enters into a directional issuance contract with the investor;

(iv) The listed company submits the relevant application documents to the MOFCOM in accordance with Article 12 of the Strategic Investment Measures, if there is any special provision, it shall be followed;

(v) After obtaining the approval letter in principle from the MOFCOM for the strategic investment in the listed company by an investor, the listed company shall submit the application documents for directional issuance to CSRC, and CSRC shall grant approval according to law; and

(vi) After completing the directional issuance, the listed company shall obtain the certificate of approval for foreign-funded enterprises from the MOFCOM, and proceed with the alteration in registration at the Administrative Department of Industry and Commerce upon receipt of the certificate of approval.

However, in the case of any strategic investment is made by way of transfer under an agreement, it shall be handled in light of the following procedures:

(i) The board of directors of a listed company adopts the resolutions on the strategic investment of an investor by way of transfer under an agreement;

(ii) The shareholders' meeting of a listed company adopts the resolutions on the strategic investment of an investor by way of transfer under an agreement;

(iii) The transferor enters into a share transfer agreement with the investor;

(iv) The investor submits the relevant application documents to the MOFCOM in accordance with Article 12 of the Strategic Investment Measures, if there is any special provision, it shall be followed;

(v) If an investor takes stake in a listed company, he/she shall proceed with the procedures for confirmation of share transfer at the Securities Exchange upon the approval of the aforesaid application. An investor shall also proceed with account transfer registration at the Securities Depository and Clearing institution. The documentation as aforementioned shall be sent to CSRC for filing; and

(vi) After the completion of the transfer under an agreement, the listed company shall obtain the certificate of approval for foreign-funded enterprises from the MOFCOM, and proceed with alteration in registration at the Administrative Department of Industry and Commerce upon the receipt of certificate of approval.

(vii) In case an investor intends to actually control a listed company by way of transfer under an agreement, it shall, after obtaining the approval in light of the procedures of items (i) through (iv) abovementioned, submit the report on the acquisition of a listed company and the relevant documents to the CSRC, and comply with the formalities for confirmation of the share transfer at the Stock Exchange after the CSRC has made examination and has no dissent, then apply for registration and transfer at the Securities Depository and Clearing institution. After completing the aforesaid formalities, the investor shall proceed with the procedure set out in item (vi) abovementioned.

A listed company or investor shall also submit the following documents to the MOFCOM:

(i) Application Letter for Strategic Investment;

(ii) Strategic Investment Scheme;

(iii) Directional issuance contract or share transfer agreement;

(iv) Opinions of a recommendation institution (in case of a directional issuance) or legal opinions;

(v) The letter of commitment for holding shares incessantly by the investor;

(vi) Statements of the investor on its having no records of grave punishment by any regulatory institution both home and abroad within three years, and statements on whether it has any other record of non-grave penalties;

(vii) The registration certificate of the investor that has been notarized and certified according to law, and the identity certificate of the legal representative (or the authorized representative);

(viii) The statements of assets and liabilities of the investor in recent three years, which have been audited by a certified accountant;

(ix) The documents to be submitted as prescribed in the aforesaid items (1), (2), (3), (5), and (6) shall be signed by the legal representative of the investor or its authorized representative, if the documents are signed by the authorized representative, the power of attorney signed by the legal representative and the corresponding notarized or certified documents shall be submitted; and

(x) Other documents as prescribed by the MOFCOM.

The MOFCOM shall give approval letter in principle within 30 days after the receipt of all the aforesaid documents, and the valid period of the approval letter in principle shall be 180 days.

3. Interim Provisions on Restructuring State Owned Enterprises with Foreign Investment ("SOE Restructuring Provisions")

The SOE Restructuring Provisions were issued jointly by the State Economic and Trade Commission, the Ministry of Finance, SAIC and SAFE and became effective on 1 January 2003.

(A) Applicability and Scope

With reference to Article 3 of the SOE Restructuring Provisions, there are five methods of restructuring State Owned Enterprise ("SOE") using foreign capital:

(i) foreign investors may restructure a SOE into a foreign-funded enterprise by acquiring all or part of the State interest in a SOE;

(ii) foreign investors may restructure a SOE or a company-based enterprise consisting of state-owned shares ("state-owned company") into a Foreign-funded enterprise by acquiring all or part of the shares in a SOE;

(iii) foreign investors may acquire from domestic creditors, debt owed to them by

the SOE and restructure such enterprise into a foreign-funded enterprise;

(iv) foreign investors may acquire all or the majority of the assets of a SOE or a state-owned company and subsequently establish a foreign-funded enterprise jointly with that SOE and state-owned company separately from the assets purchased from that SOE and state-owned company; and

(v) foreign investors may subscribe for increased registered capital including new/additional shares of a SOE or a state-owned company, and subsequently convert such enterprise into a foreign-funded enterprise.

(B) Foreign Investor Qualifications

Foreign investors wishing to take part in the restructuring of a SOE must meet the following criteria:

(i) having the management qualifications and technical skills required by the restructured enterprise;

(ii) having good business credit standing and management skills; and

(iii) having good financial standing and economic strengths;

As is often the case with foreign investor qualifications set out in PRC legislation, these qualifications are highly subjective, and it is unclear from the SOE Restructuring Provisions how or by whom such conditions will be defined.

(C) Required Reorganisation Plan

A reorganization plan, which is in many respects similar to the "feasibility study report" required for all foreign-funded enterprises, must be submitted by the reorganising party of the SOE, highlighting information about the foreign investor, its financial status, its business scope and equity structure, and plan for settlement of staff. In addition, it appears from the SOE Restructuring Provisions that, in permitting foreign investment in the restructuring of SOEs, one of the State's requirements is the introduction of sound corporate governance into the target SOE. Article 5 of the SOE Restructuring Provisions specifically requires foreign investors to provide plans to improve the enterprise's corporate governance structure and promote sustained growth of the SOE. Such a restructuring plan must also include measures for strengthening corporate management and a plan of investment, and provide for the introduction and development of new products and technology. The submission of a reorganisation plan is a new requirement for foreign investors.

(D) Employee Protection

The SOE Restructuring Provisions specifically impose requirements for ensuring the welfare of SOE employees and require the SOE being reorganized to first seek the opinions of the employees' congress of the SOE. Also, in the event that a controlling interest in the SOE will pass to the foreign investor upon acquisition, or

if all or the main business assets of the SOE will be sold to the foreign investor, the reorganising party of the SOE must formulate a plan for settling the staff and such plan is subject to the approval of the employees' congress of the SOE.

While these specific employee protection requirements are new to foreign investors, the absorption of, and responsibility for, the staff of their Chinese partners is not. However, the effect of these new requirements may be that SOEs will have more leverage in negotiations with foreign investors over the number of employees to be absorbed by a foreign-funded enterprise after completion of an acquisition.

The reality is that personnel are the key to a successful transaction. Consultation with staff is often beneficial in any event in China to allay unrest. Otherwise, this will delay the process considerably. In many cases, management are the key to a successful acquisition. They have access to information about the business necessary to carry out a due diligence process. Their support in agreeing the terms of the transaction and obtaining local government support can be crucial. The reality is that foreign investors buying SOEs in most cases need to agree incentive packages with existing management regarding their retention and remuneration after the acquisition to achieve a successful transaction. Having management on side can be one of the main means of reducing acquisition risk by ensuring a higher level of knowledge and transparency regarding the business operations before acquisition.

(E) Approvals and Procedures

The approval thresholds and procedures under the SOE Restructuring Provisions mirror in many respects existing foreign investment rules. According to Article 9, the reorganisation plan must be submitted to the State Economic and Trade Commission for examination (Commissions and departments under the State Council undergone a systematic reform during 2003 and a new commission, SASAC, was established to overtake the function of state assets supervision under the previous State Economic and Trade Commission.). Therefore, the relevant reorganisation plan should be submitted to SASAC for approval at present. The same US$30 million threshold used in establishing a foreign-funded enterprise is used for determining the level of approval required under the SOE Restructuring Provisions.

Upon receipt of an official reply from the SASAC regarding the reorganisation plan, an acquisition agreement entered into by the reorganising party of the SOE and the foreign investor must be submitted for approval in accordance with the provisions of the Circular on Issuing the Provisional Regulations on the Enterprises' State Owned Assets and Financial Administration (No. 325, 2001, Caiqi) issued by the Ministry of Finance. Several documents are required to be submitted along with the acquisition agreement:

(i) the registration certificate of state owned property rights;

(ii) information of the ratification or record filing of the auditing and assets evaluation reports of the reorganising party;

(iii) a staff and worker settlement program;

(iv) an agreement for settling claims and debts;

(v) a restructuring plan;

(vi) resolutions of the reorganizing party and the SOE; and

(vii) the opinions or resolution of the congress of the staff and workers of the SOE.

Upon receipt of approval of the reorganising plan and the acquisition agreement, the reorganising party or the SOE must then proceed with the examination and approval procedures for foreign-funded enterprises in accordance with the relevant foreign-funded enterprises rules and the PRC Company Law. While it is not explicitly stated in the SOE Restructuring Provisions, MOFCOM has confirmed its jurisdiction over this examination and approval for the establishment of foreign-funded enterprises, and as such it will be the final authority for approval.

Upon completion of these approval procedures, registration procedures must be followed in accordance with the Industry Catalogue and other applicable laws, and foreign investors must pay for the acquisitions in freely convertible currency from abroad. However, similar to other acquisitions in China by foreign investors, foreign investors may use their RMB profits derived from their existing operations in China to purchase their interests.

4. Interim Measures for the Management of the Transfer of the State-owned Property Right of Enterprises ("Measures on Property Transfer")

SASAC has issued Measures on Property Transfer in relation to the sale of any state-owned interests, effective from 1 February 2004. These are the latest issue of regulations and provide for certain procedural and other formalities regarding the transfer of state owned assets.

(A) Approval Procedures and Documents

The documents which need to be submitted to the SASAC in relation to any transfer of State-owned assets for approval are as follows:

(i) relevant resolutions relating to the transfer of State-owned assets;

(ii) proposal on transfer of State-owned assets (normally including basic information of the target company, contents of announcement of the transfer, proposal on the treatment of revenues resulting from the transfer, etc.);

(xi) State-owned Assets Registration Certificate of the vendor and the target company;

(xii) legal opinion from a PRC lawyer;

(xiii) documents related to the basic requirements of the purchaser; and

(xiv) any other documents requested by the relevant approval authorities.

(B) Procedures on Transfer of State-owned Assets

The Measures on Property Transfer set forth certain procedures for transferring State-owned assets. Although the Measures on Property Transfer do not only relate to acquisitions by foreign investors, some of the procedural requirements for transferring State-owned assets set out therein are very important in the context of acquisitions of SOEs or any assets with State-owned interests by foreign investors. The following are the highlights of the more important procedures in the Measures on Property Transfer:

(i) adequate research on the feasibility on transfer of State-owned assets to be carried out in accordance with any internal regulations;

(ii) obtain the approval or decision to transfer the state-owned property rights;

(iii) a domestic asset appraisal should be conducted and the result shall form the basis of the consideration of the transfer. In the event that during the course of the transaction the consideration is lower than 90% of the asset appraisal, the transaction shall be suspended until approval from the relevant approving authorities is obtained;

(iv) the vendor of State-owned assets shall announce the transfer in the press and the website of the assets and disclose the details of the transfer in order to induce potential purchasers of such assets. The vendor can set out certain criteria for inviting potential purchasers such as financial situation, goodwill and management capability;

(v) in the event that there are two or more potential purchasers interested in the relevant State-owned assets, the vendor shall discuss with the relevant authorities and shall according to the situation of the target company organize auctions or bids to determine the purchaser;

(vi) generally, the consideration shall be paid in a one-off payment. However, the payment can be by instalments. The first tranche of the payment must be at least 30% of the total consideration and shall be made within five days from the effective date of the sale and purchase agreement. The purchaser must provide a legally binding guarantee for the outstanding consideration and pay interest to the vendor in accordance with the lending rate at that time. All the remaining consideration has to be paid within one year.

The Measures on Property Transfer include complicated procedures and formalities for transferring State-owned assets by the government.

Translations (for reference only) of the M&A Rules, the SOE Restructuring Provisions and the Provisional Regulations on Transfer are included in the Schedule hereto.

Schedule 1

Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors

(*NB: This is not a definitive translation*)

(The Interim Provisions on the Takeover of Domestic Enterprises by Foreign Investors, which amended and adopted at the 7th executive meeting of the Ministry of Commerce of the People's Republic of China, are hereby promulgated and shall come into force as of September 8, 2006.)

Chapter I General Provisions

Article 1 For the purposes of promoting and regulating foreign investors' investments in China, absorbing advanced technologies and management experiences from abroad, improving the level of utilizing foreign investments, realizing the reasonable allocation of resources, ensuring employment, as well as maintaining fair competition and state economic security, these provisions are formulated in accordance with the laws and administrative regulations on foreign-funded enterprises, the Company Law and other relevant laws and administrative regulations.

Article 2 The phrase "takeover of a domestic enterprise by a foreign investor" as mentioned in the present provisions means that the foreign investor purchases by agreement the equities of the shareholders of a domestic non-foreign-funded enterprise (hereinafter referred to as "domestic company") or subscribes to the increased capital of a domestic company, and thus changes the domestic company into a foreign-funded enterprise (hereinafter referred to as "share right takeover"); or, a foreign investor establishes a foreign-funded enterprise, and through which it purchases by agreement the assets of a domestic enterprise and operates its assets, or, a foreign investor purchases by agreement the assets of a domestic enterprise, and then invest such assets to establish a foreign-funded enterprise and operate the assets (hereinafter referred to as "asset takeover").

Article 3 To take over a domestic enterprise, a foreign investor shall abide by the laws, administrative regulations, and rules of China, comply with the principles of fairness, reasonableness, making compensation for equal value, as well as good faith, and shall not cause excessive centralization, exclude or limit competition, or disturb the social economic order, or damage the public benefits, or result in any loss to the state-owned assets.

Article 4 To take over a domestic enterprise, a foreign investor shall satisfy the requirements of the laws, administrative regulations, and rules of China concerning the qualifications of investors, and shall comply with the policies on the industry, land, environmental protection, etc.

For the industries where solely foreign-owned operation is not permitted by the "Catalog of Industries for the Guidance of Foreign Investment", the takeover shall

not lead to the consequence of a foreign investor's holding all the equity rights of the enterprise; for the industries where it is required for a Chinese party to control or relatively control the shares, the Chinese party shall, after an enterprise in such industries is taken over, still control or relatively control the shares of the enterprise; for the industries where foreign investors are prohibited from operation, no foreign investor shall take over any enterprise in such industries.

The business scope of any enterprise invested by the domestic enterprise prior to the takeover shall meet the requirements in the industrial policies on foreign investments. If it does not, adjustment shall be made.

Article 5 If the takeover of a domestic enterprise by a foreign investor involves the transfer of state-owned property rights of the enterprise and management of state-owned property rights of listed companies, the relevant provisions on the management of state-owned assets shall be followed.

Article 6 Where a foreign investor intends to establish a foreign-funded enterprise by merging a domestic enterprise, it shall, in accordance with these Provisions, be subject to the approval of the examination and approval organ and modify the registration or go through the establishment registration in the registration administrative organ.

If the enterprise to be taken over is a domestic listed company, it shall, pursuant to the Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors, go through the relevant formalities in the securities regulatory institution of the State Council.

Article 7 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall pay taxes under Chinese tax laws and accept the supervision of the tax organs.

Article 8 All parties concerned to the takeover of a domestic enterprise by a foreign investor shall abide by the laws and administrative regulations of China on the administration of foreign exchange. They shall timely go through the approval, register, archival filing and modification formalities in the foreign exchange control organs.

Chapter II Basic System

Article 9 For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments exceeds 25% of the registered capital of this enterprise, this enterprise shall be entitled to enjoy the treatments to foreign-funded enterprises.

For a foreign-funded enterprise established after takeover by a foreign investor, if the foreign investor's proportion of investments is less than 25% of the registered capital of this enterprise, this enterprise shall not enjoy the treatments to foreign-funded enterprises unless it is otherwise provided for by any law or administrative regulation. It shall follow the relevant provisions on borrowing foreign loans by non-foreign-funded enterprises when it borrows foreign loans. The

examination and approval organ shall issue to it a Foreign-funded Enterprise Approval Certificate (hereinafter referred to as the Approval Certificate") with the remark "The proportion of foreign investments is less than 25%". The registration administrative organ and the foreign exchange control organ shall respectively issue to it a Foreign-funded Enterprise Business License and a Foreign Exchange Register Certificate with the remark "The proportion of foreign investments is less than 25%".

Where a domestic company, enterprise or natural person takes over a domestic affiliated company in the name of an overseas company it lawfully established or controls, the foreign-funded enterprise so established shall not enjoy the treatments to foreign-funded enterprises, except that this overseas company subscribes to the increased capital of the domestic company or that it increases the capital of the enterprise established after takeover and the proportion of the capital increase exceeds 25% of the registered capital of the enterprise so established. For a foreign-funded enterprise established in either of the forms as mentioned in this paragraph, if the proportion of investments made by a foreign investor, who is not its actual controller, exceeds the 25% of its registered capital, it shall be entitled to enjoy the treatments to foreign-funded enterprises.

The treatments to a foreign-funded enterprise which is established after a foreign investor takes over a domestic listed company shall be governed by the relevant provisions of the state.

Article 10 The term "examination and approval organ" as mentioned in these Provisions refers to the Ministry of Commerce of the People's Republic of China (hereinafter referred to as the MOFCOM) or the provincial commerce administrative departments (hereinafter referred to as the provincial examination and approval organs"). The term "registration administrative organ" refers to the State Administration for Industry and Commerce (hereinafter referred to as the SAIC) or its authorized local administrations for industry and commerce. The term "foreign exchange control organ" refers to the State Administration of Foreign Exchange (hereinafter referred to as the SAFE) or its branches.

Under the provisions of laws, administrative regulations, and rules, if a foreign-funded enterprise established after takeover falls within any special category or sector of foreign-funded enterprises which are subject to the examination and approval of the Ministry of Commerce (hereinafter referred to as the MOFCOM), the provincial examination and approval organ shall forward the application materials to the MOFCOM for examination and approval. The MOFCOM shall make a decision of approval or disapproval in pursuance of law.

Article 11 Where a domestic company, enterprise or natural person intends to take over its domestic affiliated company in the name of a company which it lawfully established or controls, it shall be subject to the examination and approval of the MOFCOM.

The parties concerned shall not dodge the aforesaid requirements by making investments within China through the foreign-funded enterprise, or by other ways.

Article 12 Where a foreign investor intends to obtain the actual controlling

power of a domestic enterprise it plans to take over, and if any important industry is concerned, or if it has an impact on or may have an impact on the national economic security, or it will lead to the transfer of the actual controlling power of a domestic enterprise which holds a famous trademark or China Time-honored Brand, the parties concerned shall file an application with the MOFCOM.

If the parties concerned fail to do so, but its takeover has had or may have a serious impact on the national economic security, the MOFCOM may, jointly with the relevant departments, demand the parties concerned to terminate the transaction or transfer the relevant equities / assets or take other effective measures to eliminate the takeover's impact on the national economic security.

Article 13 For an equity-based takeover by a foreign investor, the foreign-funded enterprise established after takeover shall succeed to the credits and debts of the domestic company it takes over.

For an asset-based takeover by a foreign investor, the domestic enterprise which sells its assets shall undertake its former credits and debts.

The foreign investor, the domestic enterprise to be taken over, the creditors and other parties concerned may enter into a separate agreement on the disposal of the credits and debts of the domestic enterprise to be taken over, provided that this agreement shall not impair the interests of any third party or public interests. An agreement on the disposal of credits and debts shall be submitted to the examination and approval organ.

A domestic enterprise to sell assets shall, not later than 15 days before the investor submits the application documents to the examination and approval organ, send a notice to the creditors and shall publish an announcement on a provincial newspaper or above, which is circulated nationwide.

Article 14 The parties to a takeover shall determine the transaction price on the basis of the assessment result of the equities to be transferred or of the assets to be sold, which is given by an asset assessment institution. The parties to a takeover may agree on an asset assessment institution lawfully established within China. A common international 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.

The takeover of a domestic enterprise by a foreign investor, which may cause the modification of any equity formed by investments to state-owned assets or transfer of the property right of state-owned assets, shall satisfy the relevant provisions on the management of state-owned assets.

Article 15 The parties to a takeover shall state whether there is a connected relationship between the parties to the takeover. If both parties belong to a same actual controller, the parties shall disclose their actual controller to the examination and approval organ and make an explanation about whether the purpose of takeover and the assessment result conform to the fair value of the market. The parties shall

not dodge the aforesaid requirements by trust, holding shares on behalf of others, or by other means.

Article 16 To establish a foreign-funded enterprise by taking over a domestic enterprise, a foreign investor shall, within 3 months from the date of issuance of business license to the foreign-funded enterprise, pay all the considerations to the shareholders who transfer the equities or to the domestic enterprise which sells the assets. In the case of any particular circumstance under which it is necessary to extend the time limit, the foreign investor shall, upon the approval of the examination and approval organ, pay 60% or more of the consideration within 6 months as of the date of issuance of the business license to the foreign-funded enterprise, and pay off the balance of consideration within one year, and distribute the proceeds according to the proportion of investments it has actually contributed.

Where a domestic company subscribes to the increased capital of a domestic company, the shareholders of the limited liability company or of the domestic joint stock limited company established by way of promotion shall pay at least 20% of the newly increased registered capital when the company applies for a business license for foreign-funded enterprise. The time to pay the other newly increased registered capital shall be in line with the Company Law, the laws on foreign investments and the Regulation on the Administration of Company Registration. If it is provided for in any other law or administrative regulation, such law or administrative regulation shall prevail. Where a joint stock limited company increase the registered capital by issuing new stocks, the shareholders shall subscribe to the new stocks in accordance with the relevant provisions on the payment for shares in the establishment of a joint stock limited company.

Where a foreign investor carries out an asset takeover, it shall stipulate the time limit for contribution of investments in the contract and articles of association of the foreign-funded enterprise to be established. Where the foreign investor establishes a foreign-funded enterprise, and through which purchases the assets of a domestic enterprise and operates such assets, it shall contribute the investments equivalent to the consideration of the assets within the time limit for payment of consideration as provided for in Paragraph 1 of the present Article. As for the remaining investments, the time limit for contribution shall satisfy the relevant provisions on the capital contribution for the establishment of foreign-funded enterprise.

Where a foreign investor establishes a foreign-funded enterprise by merging a domestic enterprise, if its investment proportion is less than 25 % of the registered capital of the enterprise and if it plans to make investments in cash, it shall make full contribution within 3 months from the day when a business license is issued to the foreign-funded enterprise; if it plans to make investments in kind or industrial property, it shall make full contribution within 6 months from the day when a business license is issued to the foreign-funded enterprise.

Article 17 The means of payment for the consideration shall conform to the relevant laws and administrative regulations of the state. If the foreign investor uses the Renminbi assets it lawfully owns as a means of payment, it shall obtain the approval of the department of foreign exchange control. If the foreign investor uses the shares over which it has the right of disposition, it shall comply with Article 4 of

these Provisions.

Article 18 After a foreign investor purchases the equities of a domestic company by agreement, and the domestic company has been modified into a foreign-funded enterprise, the foreign-funded enterprise's registered capital shall be the registered capital of the original domestic company, and the proportion of investments contributed by the foreign investor shall be the proportion of the purchased equities in the original registered capital.

Where a foreign investor subscribes to the capital increase of a domestic limited liability company, the registered capital of a foreign-funded enterprise established after the takeover shall be the summation of the registered capital of the former domestic company and the amount of capital increase. As to the foreign investor and other shareholders of the former domestic company it takes over, their respective proportion of capital contributions to the foreign-funded enterprise shall be determined on the basis of the assessment of the assets of the domestic company.

Where a foreign investor subscribes the capital increase of a domestic joint stock limited company, the registered capital shall be determined under the Company Law.

Article 19 For an equity-based takeover by a foreign investor, the upper limits on the total investments to the foreign-funded enterprise after takeover shall be determined according to the following rates, unless the state provides otherwise:

(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 not less than US$ 2.1 million but not more than US$ 5 million, the total investments shall not exceed two times the registered capital;

(3) If the registered capital is not less than US$ 5 million but not more than 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 an asset-based takeover, the foreign investor shall, according to the transaction price for the purchased assets and the actual production and operation scale, determine the total investments to the foreign-funded enterprise to be established. The proportion between the registered capital and total investments of the foreign-funded enterprise to be established shall conform to the relevant provisions.

Chapter III Examination, Approval and Registration

Article 21 For an equity-based takeover, a foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded

enterprises:

(1) A resolution of the shareholders of the domestic limited liability company or of the domestic joint stock limited company on the full consent to the equity-based takeover or asset-based takeover by the foreign investor;

(2)An application for the establishment of the foreign-funded enterprise;

(3)An contract and the articles of association of the foreign-funded enterprise to be established after takeover;

(4) An agreement on the foreign investor's acquisition of equities of shareholders of the domestic company or on the foreign investor's subscription of the capital increase of domestic companies;

(5) The previous-year financial audit report of the domestic company taken over;

(6)The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;

(7)The descriptions about the enterprises invested by the domestic enterprise taken over;

(8) The (duplicates) of the business licenses of the domestic company taken over and enterprises it invests in;

(9) The proposal on the settlement of employees domestic enterprise taken over;

(10) The documents to be submitted as required by Articles 13 through 15 of the present provisions.

If the business scope, scale, obtainment of land use right of a foreign-funded enterprise established after takeover are subject to the license of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Article 22 An equity purchase agreement, or domestic company capital increase agreement shall be governed by Chinese law and shall contain the following contents:

(1)The status of each party to the agreement, including The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;

(2)The proportion of price of the equities purchased or capital increase subscribed;

(3)The time period of the agreement, and the method of execution thereof;

(4)The rights and obligations of each party to the agreement;

(5)The liabilities for breach of contract, and settlement of disputes; and

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

Article 23 For an asset-based takeover, the foreign investor shall, pursuant to the total investments of the foreign-funded enterprise to be established after the takeover, the type of the enterprise and the industry it engages in, submit the following documents to the competent examination and approval organ in accordance with the laws, administrative regulations, and rules on the establishment of foreign-funded enterprises:

(1)A resolution of the property right holders or power authority of the domestic enterprise on the consent to the sale of assets;

(2)An application for the establishment of a foreign-funded enterprise;

(3)A contract and the articles of association of the foreign-funded enterprise to be established;

(4)An asset purchase agreement signed by the foreign-funded enterprise to be established and the domestic enterprise, or by the foreign investor and the domestic enterprise;

(5)The articles of association and the business license (duplicate) of the domestic enterprise it has taken over;

(6)The notice of the domestic enterprise taken over, certifications of the creditors announced, and statement about whether the creditors have raised any objections;

(7))The certification documents for the identity, registration and credit standing of the investor that have been notarized and certified according to law;

(8)The proposal on the settlement of employees of the domestic enterprise that is taken over; and

(9)The documents as required by Articles 13 through 15 if these Provisions.

If the business scope, scale, obtainment of land use right of a foreign-funded enterprise establishment after takeover involve licensing of the relevant government departments, the relevant licensing documents shall be submitted along with the documents as listed in the preceding Paragraph.

Where a foreign investor purchases the assets of a domestic enterprise by agreement and invests such assets in establishing a foreign-funded enterprise, it shall not, prior to the establishment of the foreign-funded enterprise, carry out any business activities with such assets.

Article 24 The agreement on the purchase of assets shall be governed by Chinese law and shall contain the following main contents:

(1) The status of each party to the agreement, including the name and domicile of each party, the name, position and nationality of each legal representative;

(2)A list of the assets to be purchased and the price thereof;

(3)The time period and method for the execution of the agreement;

(4) The rights and obligations of each party to the agreement;

(5) 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 intends to establish a foreign-funded enterprise by taking over a domestic enterprise, unless it is otherwise provided for in these Provisions, the examination and approval organ shall, within 30 days after the examination and approval organ receives the complete set of documents as required, it shall make a decision of approval or disapproval. If it decides to make a decision of approval, the examination and approval organ shall issue to the foreign investor an approval certificate.

For a foreign investor which intends to purchase the equities of a domestic company by agreement, if the examination and approval organ makes a decision of approval, it shall simultaneously send a copy of the relevant approval documents to the foreign exchange control departments of the places where the equity transferor and the domestic company are located, respectively. The foreign exchange control department of the place where the equity transferor is located shall handle the foreign exchange registration for equity-transfer-based foreign investments, which indicates that the consideration to the foreign investor's equity takeover has been fully paid.

Article 26 For an asset-based takeover, the foreign investor shall, within 30 days after it receives the approval document, apply to the registration administrative organ for establishment registration so as to fetch a foreign-funded enterprise business license.

For an equity-based takeover by a foreign investor, the domestic company taken over shall apply to the original registration administrative organ for modifying its registration in accordance with these Provisions. If the original registration administrative organ has registration jurisdiction, it shall, within 10 days after it receives the application documents, transfer these application documents to the competent registration administrative organ and simultaneously accompany them by the registration files of the domestic company. When the domestic company taken over applies for modifying the registration, it shall submit the following documents and shall be responsible for their genuineness and validity:

(1)An application for modifying registration;

(2)An agreement on the purchase of equities of the domestic company or on the subscription of increased capital of a domestic company by a foreign investor;

(3)The post-revision articles of association or revisions to the original articles of association, and the foreign-funded enterprise contract which shall be submitted in pursuance of law;

(4)The foreign-funded enterprise approval document;

(5)The certification for the qualifications of the foreign investor as the subject, or the identity certification of the foreign investor as a natural person;

(6) The post-revision name list of the members of the board of directors, the documents which state the name and domicile of the newly increased directors, and the documents on the appointment of the newly increased directors;

(7)Other relevant documents and certificates as required by the State Administration for Industry and Commerce.

The investor shall, within 30 days after it receives a foreign-funded enterprise business license, go through the registration formalities in the tax, customs, land administration and foreign exchange administration departments.

Chapter IV Equity-payment-based Takeover of Domestic Companies by Foreign Investors

Section 1 Conditions for Equity-payment-based Takeover

Article 27 The term "equity-payment-based takeover of a domestic enterprise by a foreign investor" means that the shareholders of an overseas company purchase the equities of a domestic company by paying the equities of the overseas company it holds, or that an overseas company purchases the increased capital of a domestic company by paying its increased shares.

Article 28 The term "overseas company" as mentioned in this Chapter shall be a lawfully established company, there is a sound system of company law in its registration place, and the company and its management level have no record of punishment by the regulatory institution within recent 3 years. Except for special-purpose companies as mentioned in Section 3 of this Chapter, an overseas company shall be a listed company and there shall be a sound securities dealing system in the place where it gets listed.

Article 29 The equities of the domestic and overseas companies involved in the equity-based takeover of a domestic company by a foreign investor shall meet the following conditions:

(1)They are lawfully held by the shareholders and may be transferred in accordance with the law;

(2)There is no dispute over their ownership, they are not held in pledge and they are not subject to any other limit of right;

(3)The equities of an overseas company shall be listed publicly in an overseas lawful securities exchange market (excluding the over-counter exchange market); and

(4)The transaction price of the equities of the overseas company in the recent 1 year remains stable.

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

Article 30 For an equity-based takeover of a domestic company by a foreign investor, the overseas company or its shareholders shall hire an intermediary institution registered within China to serve as a consultant (hereinafter referred to as the "takeover consultant"). The takeover consultant shall make duteous investigations to the genuineness of the takeover application documents, the financial status of the overseas company as well as whether the takeover meets the requirements of Articles 14, 28 and 29 of these Provisions, shall make a takeover consultant report and shall put forward express professional opinions on each of the aforesaid items.

Article 31 A takeover consultant shall satisfy the following conditions:

(1)Having a good reputation and having relevant practicing experiences;

(2)Having 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, as well as the financial status of the overseas company.

Section 2 Application Documents and Procedures

Article 32 An equity-based takeover of a domestic company by a foreign investor shall be subject to the examination and approval of the MOFCOM. The domestic company shall not only submit the documents as required in Chapter III of these Provisions, but also the following documents:

(1)A statement of the changes of equities and important changes of assets of the domestic company within the recent 1 year;

(2)A takeover consultant's report;

(3)The business opening certifications or identity certification documents of the relevant domestic and overseas companies and their shareholders;

(4)Descriptions about the equities held by the shareholders of the overseas company, and the name list of the shareholders who hold 5 % or more of the equities of the overseas company;

(5)The articles of association of the overseas company and a description about the guaranties it provides to outsiders; and

(6)The recent annual financial statements upon audit and a report on the stock dealings of the overseas company in the recent half year.

Article 33 The MOFCOM shall, within 30 days after it receives a complete set of documents, examine a takeover application. If the relevant requirements are satisfied, it shall issue to the applicant an approval document, which is given the remark that "For the equity-based takeover of a domestic company by a foreign investor, it will be valid for 6 months as of the date of issuance of a business license."

Article 34 The overseas company shall, within 30 days after it receives an aforesaid approval document, it shall modify the registration in the registration administrative organ and the foreign exchange control organ. The registration administrative organ and the foreign exchange control organ shall respectively issue to it a foreign-funded enterprise business license and a foreign exchange register certificate which are giventhe remark that "To be valid for 8 months as of the date of issuance".

When a domestic company goes through the registration modification formalities in the registration administrative organ, it shall, in advance, submit an equity change application, the revised articles of association, the equity transfer agreement and other documents signed by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 35 Within 6 months as of the date of issuance of a business license, the domestic company and its shareholders shall, in regard to the matters relating to the overseas company's equities it plans to hold, apply to the MOFCOM and the foreign exchange control organ for going through the formalities for the examination, approval and registration of investments to run an enterprise abroad .

The parties concerned shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also a foreign-funded enterprise approval certificate with the said remark and a foreign-funded enterprise business license with the said remark. After the MOFCOM examines and approves the overseas company's equities to be held by the domestic company or its shareholders, it shall issue to the applicant a Chinese enterprise overseas investment approval certificate and replace the foreign-funded enterprise approval certificate with a remark by one with no remark.

After a domestic company obtains a foreign-funded enterprise approval certificate without a remark, it shall, within 30 days, apply to the registration administrative organ and the foreign exchange control organ, for replacing the foreign-funded enterprise business license and the foreign exchange register certificate with a remark by new ones with no remark.

Article 36 With 6 months as of the date of issuance of a business license, if the domestic and overseas companies fail to finish the equity modification formalities, the approval certificate with a remark and the Chinese enterprise overseas investment approval certificate shall be invalidated automatically. The registration

administrative organ shall, according to the equity modification registration application documents submitted by the domestic company in advance, examine and approve the modification registration and shall make the equity structure of the domestic company resume to the state prior to the takeover of equities.

In the case of failure to acquire the shares increased by a domestic company, before the registration administrative organ examines and approves the modification registration under the preceding Paragraph, the domestic company shall, pursuant to the Company Law, reduce the registered capital correspondingly and publish an announcement on a newspaper.

If the domestic company fails to go through the relevant registration formalities according to the preceding Paragraph, the registration administrative organ shall punish it in accordance with the Regulation on the Administration of Company Registration.

Article 37 After a domestic company obtains a foreign-funded enterprise approval certificate with a remark and a foreign exchange register certificate with a remark, it shall not distribute its profits to its shareholders, nor provide a guaranty to any connected company, nor make any payment to any outsider for the capital items such as the equity transfer, capital decrease or liquidation.

Article 38 A domestic company or its shareholders may, upon the strength of approval document with no remark and the business license with no remark issued by the MOFCOM and the registration administrative organ, go through the tax modification registration in the tax organ.

Section 3 Special Provisions on Special-purpose Companies

Article 39 The term "special-purpose company" refers to an overseas company which a domestic company or natural person directly or indirectly controls for the purpose of making its actual domestic company equities get listed abroad.

The provisions of this Section shall apply to a special-purpose company, which, for the purpose of getting listed abroad, its shareholders or the special-purpose company purchase (purchases) the equities of the shareholders of a domestic company or the share increase of a domestic company by paying with the equities of the special-purpose company it holds or by paying with the share-increase of the special-purpose company.

If the parties concerned makes an overseas company, which holds any equities of a special-purpose company, serve as a subject to get listed abroad, this overseas company shall satisfy the relevant requirements for the special-purpose company as described in this Section.

Article 40 The transaction for the overseas listing of a special-purpose company shall be subject to approval of the securities regulatory institution of the State Council.

The country or region where the special-purpose company gets listed shall have

sound legal and regulatory systems, and securities regulatory institution of this country or region shall have signed a memorandum of cooperation and understanding with the securities regulatory institution of the State Council of China and keep an effective cooperation in the regulatory work.

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

(1)Its property right is clear. There is no dispute or potential dispute over its property right;

(2)It has a complete business system and a good sustainable operation capacity;

(3)It has 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 regulation.

Article 42 To set up a special-purpose company abroad, an overseas company shall apply to the MOFCOM for going through the examination and approval formalities. When doing so, the domestic company shall not only submit to the MOFCOM the documents as required in the Provisions on the Examination and Approval of Investment to Run Enterprises Abroad, but also the following documents:

(1)The identity certification documents on the final controller of the special-purpose company;

(2)The business plan on the overseas listing of the special-purpose company; and

(3)The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

After the party who establishes or controls a special-purpose company obtains approval document for Chinese enterprise to make overseas investment, it shall apply to the foreign exchange control organ of the place where it is located for going through the formalities for the register of overseas investments.

Article 43 The total value of the stocks of a special-purpose company listed abroad shall not be lower than the value of the equities of the domestic company upon the assessment of the relevant asset assessment institution.

Article 44 Where a special-purpose company intends to take over a domestic company by equities, the domestic company shall not only submit to the MOFCOM the documents as required in Article 32 of these Provisions, but also the following documents:

(1)The approval documents and certificate for the investor to run an enterprise abroad at the time of establishment of the special-purpose company;

(2)The foreign exchange register form for the overseas investments of the special-purpose company;

(3) The identity certification documents on the final controller of the special-purpose company, or the business opening certification or articles of association of the special-purpose company;

(4)The business plan on the overseas listing of the special-purpose company; and

(5)The assessment report made by the takeover consultant on the price of the stocks to be issued by the special-purpose company to get listed abroad in the future.

If the parties concerned makes an overseas company, which holds the equities of a special-purpose company, serve as a subject to get listed abroad, the domestic company shall, apart from the aforesaid documents, submit the following documents:

(1)The business opening certification and the articles of association of the overseas company; and

(2)The arrangement of the special-purpose company and the overseas company for the transaction of the equities of the domestic company taken over, as well as the detailed descriptions of the method to convert the equities to money.

Article 45 If the MOFOCOM approves the documents as required in Article 44 of these Provisions upon preliminary examination, it shall issue a letter of in-principle approval. The domestic company shall, upon the strength of the letter of in-principle approval, submit to the securities regulatory institution of the State Council the application documents for getting listed. The securities regulatory institution of the State Council shall make a decision of approval or disapproval within 20 working days.

After the domestic company obtains an approval, it shall apply to the MOFCOM for an approval certificate. The MOFCOM shall issue to it an approval certificate with the remark "For holding equities of overseas special-purpose company, it shall be valid for 1 year as of the issuance of a business license".

If the takeover causes the change of equities of the special-purpose company, the domestic company or natural person holding the equities of the special-purpose company shall, upon the strength of the foreign-funded enterprise approval certificate with a remark, apply to the MOFCOM for going through the formalities for the examination and approval of the change of the overseas investment to run an enterprise abroad and shall apply to the local foreign exchange control organ for modifying the foreign exchange register of overseas investments.

Article 46 The domestic company shall, within 30 days after it receives an approval document with a remark, apply to the registration administrative organ and the foreign exchange control organ for modifying the registration. The registration administrative organ and the foreign exchange control organ shall respectively issue to a foreign-funded enterprise business license and a foreign exchange register

certificate with a remark “To be valid for 14 months as of the date of issuance”.

When the domestic company handles the modification registration in the registration administrative organ, it shall, in advance, submit the equity change application, the revised articles of association, the equity transfer agreement and other documents signed by the legal representative of the domestic company, which are aimed to resume the structure of equities.

Article 47 The domestic company shall, within 30 days after the special-purpose company or its connected overseas company realizes the overseas listing, report to the MOFOCOM about the information about the overseas listing and its plan on the transfer-back of the raised funds and apply for a unremarked foreign-funded enterprise approval certificate. At the same time, it shall, within 30 days after the realization of overseas listing, report to the securities regulatory institution of the State Council the information about the overseas listing and provide it with the relevant documents for archival purposes. It shall also submit to the foreign exchange control organ its plan on the transfer-back of the raised funds and execute this plan under the supervision of the foreign exchange control organ. It shall, within 30 days after it receives an unremarked approval certificate, apply to the registration administrative organ and foreign exchange control organ for replaying its foreign-funded enterprise business license and foreign exchange register certificate with a remark by a new unremarked one.

If the domestic company fails to report to the MOFCOM within the aforesaid time limit, its approval certificate with a remark shall be invalidated automatically, its equities structure will resume to the state prior to the equity-based takeover and it shall go through the formalities for modifying the registration in accordance with Article 36 of these Provisions.

Article 48 The funds of a special-purpose company raised from overseas listing shall, according to the transfer-back plan submitted to the foreign exchange control organ for archival purposes, be transferred back into China according to the existing foreign exchange control provisions. The raised funds may be transferred back into China by:

(1)providing commercial loans to the domestic company;

(2)setting up a new foreign-funded enterprise within China; and

(3)taking over a domestic enterprise.

To transfer back the funds of a special-purpose company raised overseas under the aforesaid circumstances, the relevant parties shall abide by the laws and administrative regulations on the administration of foreign investments and on foreign debts. If, as a consequence of the transfer-back of the funds a special-purpose company raised overseas, the domestic company or natural person who holds more equities of the special-purpose company or the net assets of the special-purpose company increase, the parties concerned shall faithfully disclose the relevant information and apply for examination and approval. After it finishes the examination and approval formalities, it shall go through the formalities for

modifying the foreign exchange register of foreign investments and the register of overseas investments.

The profit, bonus and capital change income in a foreign currency obtained by the domestic company or natural person from the special-purpose company shall be transferred back to China within 6 months after the date of obtainment. The profit or dividends may enter into the foreign exchange account for current items or may be converted into RMB. The capital change income in a foreign currency may, upon the examination and approval of the foreign exchange control organ, be deposited in a special capital account opened for it 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 an unremarked approval certificate, the approval certificate with a remark shall be invalidated automatically. The domestic company shall go through the formalities for modifying the registration.

Article 50 After the special-purpose company has realized the overseas listing and the domestic company has obtained an approval certificate and a business license with no remark, if the relevant party concerned continues to take over this domestic company by paying its equities, the provisions of Sections 1 and 2 of this Chapter shall apply to this case.

Chapter V Antitrust Review

Article 51 If the takeover of a domestic company by a foreign investor is under any of the following circumstances, the investor shall report the relevant information to the MOFCOM and the State Administration for Industry and Commerce (hereinafter referred to as the SAIC):

(1)The current-year business volume of any party to the takeover in the Chinese market exceeds RMB 1.5 billion yuan;

(2)The foreign investor has accumulatively taken over more than 10 enterprises in the domestic relevant industries;

(3)The market share of any party to the takeover has reached 20% in China; and

(4)The takeover leads to the fact that the market share of the party to the takeover has reached 25% in China.

When the foreign investor fails to meet the conditions as mentioned in the preceding Paragraph, but upon request of a domestic enterprise of competitive relationship, a relevant functional department or industrial association, the MOFCOM or the SAIC believes that the takeover by the foreign investor involves a huge market share, or that there are other major factors which seriously impact market competition, it may also demand the foreign investor to prepare a report.

The aforesaid merging party includes the connected enterprises of the foreign investor.

Article 52 If the takeover of a domestic company by a foreign investor is under any of the circumstances as mentioned in Article 51 and if the MOFCOM and the SAIC believe that it may lead to excessive concentration, hamper fair competition or impair the interests of the consumer, they shall, within 90 days as of the receipt of all the documents as required, either solely convene through negotiation or jointly convene the relevant departments, institutions, enterprises and other interested parties and hold a hearing, and shall make a decision of approval or disapproval in accordance with the law.

Article 53 Where an overseas takeover is under any of the following circumstances, the parties to the takeover shall, before announcing the takeover proposal or when submitting the said proposal to the competent authority in the country of its locality, submit the takeover proposal to the MOFCOM and the SAIC. The MOFCOM and the SAIC shall examine whether it will lead to excessive centralization in the domestic market, hinder domestic fair competition, or damage the domestic consumers' benefits, and shall make a decision on whether approve the proposal or not:

(1) The overseas party to the takeover owns more than RMB 3 billion Yuan of assets inside the territory of China;

(2)The business volume of the overseas party to the takeover in the Chinese market is more than RMB 1.5 billion yuan in the current year;

(3) The market share of the overseas party to the takeover and its connected enterprises in China has reached 20%;

(4) The market share of the overseas party to the takeover and its connected enterprises in China has reached 25% due to the overseas takeover; or

(5) Due to the overseas takeover, there will be more than 15 foreign-funded enterprises in the relevant domestic industries with direct or indirect shares of the foreign-funded enterprises.

Article 54 Where a takeover is under any of the following circumstances, the parties to the takeover may apply to the MOFCOM and the SAIC for exemption of examination:

(1)The takeover may improve the conditions for fair competition in the market;

(2) A loss-making enterprise is taken over and the employment is ensured;

(3) The takeover helps the absorption of advanced technologies and management personnel and is able to improve the enterprise's international competitiveness; or

(4) The takeover may improve the environment.

Chapter VI Supplementary Provisions

Article 55 Where an investment company established by a foreign investor

within China intends to take over a domestic enterprise, it shall be governed by these Provisions.

Where a foreign investor intends to purchase the equities of a foreign-funded enterprise within China or to subscribe to the increased capital of a foreign-funded enterprise within China, it shall be governed by the existing laws and administrative regulations on foreign-funded enterprises as well as the relevant provisions on changes of equities of investors of foreign-funded enterprise; if any matter is not covered by the aforesaid laws, administrative regulations or provisions, it shall be governed by these Provisions.

Where a foreign investor intends to combine with or take over a domestic enterprise through a foreign-funded enterprise established by it within China, it shall be governed by the relevant provisions on the combination and split-up of foreign-funded enterprises and the relevant provisions on domestic investments of foreign-funded enterprise; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Where a foreign investor takes over a domestic limited liability company, if it transforms it into a joint stock limited company, or if the domestic company is a joint stock limited company, it shall be governed by the relevant provisions on the establishment of a joint stock limited company; if any matter is not covered by the aforesaid provisions, it shall be governed by these Provisions.

Article 56 For the submission of documents, an applicant or declarer shall classify the documents into different categories under these Provisions and accompany them with a list of documents. 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, upon approval, continue to be a Chinese investor of the foreign-funded enterprise established after modification.

Article 58 If a natural-person shareholder of a domestic company changes his nationality, the enterprise nature of the company will remain unchanged.

Article 59 The functionaries of the government organs shall be duteous, shall perform their duties in pursuance of the law, shall not seek any improper benefit by taking the advantage of their positions, and shall keep confidential the commercial secrets they have access to.

Article 60 Where an investor from Hong Kong Special Administrative Region, Macao Special Administrative Region or Taiwan Region intends to take over a domestic enterprise of any other region, it shall be governed by these Provisions.

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

关于外国投资者并购境内企业的规定

第一章　总则

第一条　为了促进和规范外国投资者来华投资，引进国外的先进技术和管理经验，提高利用外资的水平，实现资源的合理配置，保证就业、维护公平竞争和国家经济安全，依据外商投资企业的法律、行政法规及《公司法》和其他相关法律、行政法规，制定本规定。

第二条　本规定所称外国投资者并购境内企业，系指外国投资者购买境内非外商投资企业（以下称“境内公司”）股东的股权或认购境内公司增资，使该境内公司变更设立为外商投资企业（以下称“股权并购”）；或者，外国投资者设立外商投资企业，并通过该企业协议购买境内企业资产且运营该资产，或，外国投资者协议购买境内企业资产，并以该资产投资设立外商投资企业运营该资产（以下称“资产并购”）。

第三条　外国投资者并购境内企业应遵守中国的法律、行政法规和规章，遵循公平合理、等价有偿、诚实信用的原则，不得造成过度集中、排除或限制竞争，不得扰乱社会经济秩序和损害社会公共利益，不得导致国有资产流失。

第四条　外国投资者并购境内企业，应符合中国法律、行政法规和规章对投资者资格的要求及产业、土地、环保等政策。

依照《外商投资产业指导目录》不允许外国投资者独资经营的产业，并购不得导致外国投资者持有企业的全部股权；需由中方控股或相对控股的产业，该产业的企业被并购后，仍应由中方在企业中占控股或相对控股地位；禁止外国投资者经营的产业，外国投资者不得并购从事该产业的企业。

被并购境内企业原有所投资企业的经营范围应符合有关外商投资产业政策的要求；不符合要求的，应进行调整。

第五条　外国投资者并购境内企业涉及企业国有产权转让和上市公司国有股权管理事宜的，应当遵守国有资产管理的相关规定。

第六条　外国投资者并购境内企业设立外商投资企业，应依照本规定经审批机关批准，向登记管理机关办理变更登记或设立登记。

如果被并购企业为境内上市公司，还应根据《外国投资者对上市公司战略投资管理办法》，向国务院证券监督管理机构办理相关手续。

第七条　外国投资者并购境内企业所涉及的各方当事人应当按照中国税法规定纳税，接受税务机关的监督。

第八条　外国投资者并购境内企业所涉及的各方当事人应遵守中国有关外汇管理的法律和行政法规，及时向外汇管理机关办理各项外汇核准、登记、备案及变更手续。

第二章　基本制度

第九条　外国投资者在并购后所设外商投资企业注册资本中的出资比例高于25%的，该企业享受外商投资企业待遇。

外国投资者在并购后所设外商投资企业注册资本中的出资比例低于25%的，除法律和行政法规另有规定外，该企业不享受外商投资企业待遇，其举借外债按照境内非外商投资企业举借外债的有关规定办理。审批机关向其颁发加注“外资比例低于25%”字样的外商投资企业批准证书（以下称“批准证书”）。登记管理机关、外汇管理机关分别向其颁发加注“外资比例低于25%”字样的外商投资企业营业执照和外汇登记证。

境内公司、企业或自然人以其在境外合法设立或控制的公司名义并购与其有关联关系的境内公司，所设立的外商投资企业不享受外商投资企业待遇，但该境外公司认购境内公司增资，或者该境外公司向并购后所设企业增资，增资额占所设企业注册资本比例达到25%以上的除外。根据该款所述方式设立的外商投资企业，其实际控制人以外的外国投资者在企业注册资本中的出资比例高于25%的，享受外商投资企业待遇。

外国投资者并购境内上市公司后所设外商投资企业的待遇，按照国家有关规定办理。

第十条　本规定所称的审批机关为中华人民共和国商务部或省级商务主管部门（以下称“省级审批机关”），登记管理机关为中华人民共和国国家工商行政管理总局或其授权的地方工商行政管理局，外汇管理机关为中华人民共和国国家外汇管理局或其分支机构。

并购后所设外商投资企业，根据法律、行政法规和规章的规定，属于应由商务部审批的特定类型或行业的外商投资企业的，省级审批机关应将申请文件转报商务部审批，商务部依法决定批准或不批准。

第十一条　境内公司、企业或自然人以其在境外合法设立或控制的公司名义并购与其有关联关系的境内的公司，应报商务部审批。

当事人不得以外商投资企业境内投资或其他方式规避前述要求。

第十二条　外国投资者并购境内企业并取得实际控制权，涉及重点行业、存在影响或可能影响国家经济安全因素或者导致拥有驰名商标或中华老字号的境内企业实际控制权转移的，当事人应就此向商务部进行申报。

当事人未予申报，但其并购行为对国家经济安全造成或可能造成重大影响的，商务部可以会同相关部门要求当事人终止交易或采取转让相关股权、资产或其他有效措施，以消除并购行为对国家经济安全的影响。

第十三条　外国投资者股权并购的，并购后所设外商投资企业承继被并购境内公司的债权和债务。

外国投资者资产并购的，出售资产的境内企业承担其原有的债权和债务。

外国投资者、被并购境内企业、债权人及其他当事人可以对被并购境内企业的债权债务的处置另行达成协议，但是该协议不得损害第三人利益和社会公共利益。债权债务的处置协议应报送审批机关。

出售资产的境内企业应当在投资者向审批机关报送申请文件之前至少 15 日，向债权人发出通知书，并在全国发行的省级以上报纸上发布公告。

第十四条　并购当事人应以资产评估机构对拟转让的股权价值或拟出售资产的评估结果作为确定交易价格的依据。并购当事人可以约定在中国境内依法设立的资产评估机构。资产评估应采用国际通行的评估方法。禁止以明显低于评估结果的价格转让股权或出售资产，变相向境外转移资本。

外国投资者并购境内企业，导致以国有资产投资形成的股权变更或国有资产产权转移时，应当符合国有资产管理的有关规定。

第十五条　并购当事人应对并购各方是否存在关联关系进行说明，如果有两方属于同一个实际控制人，则当事人应向审批机关披露其实际控制人，并就并购目的和评估结果是否符合市场公允价值进行解释。当事人不得以信托、代持或其他方式规避前述要求。

第十六条　外国投资者并购境内企业设立外商投资企业，外国投资者应自外商投资企业营业执照颁发之日起 3 个月内向转让股权的股东，或出售资产的境内企业支付全部对价。对特殊情况需要延长者，经审批机关批准后，应自外商投资企业营业执照颁发之日起 6 个月内支付全部对价的 60%以上，1 年内付清全部对价，并按实际缴付的出资比例分配收益。

外国投资者认购境内公司增资，有限责任公司和以发起方式设立的境内股份有限公司的股东应当在公司申请外商投资企业营业执照时缴付不低于 20%的新增注册资本，其余部分的出资时间应符合《公司法》、有关外商投资的法律和《公司登记管理条例》的规定。其他法律和行政法规另有规定的，从其规定。

股份有限公司为增加注册资本发行新股时，股东认购新股，依照设立股份有限公司缴纳股款的有关规定执行。

外国投资者资产并购的，投资者应在拟设立的外商投资企业合同、章程中规定出资期限。设立外商投资企业，并通过该企业协议购买境内企业资产且运营该资产的，对与资产对价等额部分的出资，投资者应在本条第一款规定的对价支付期限内缴付；其余部分的出资应符合设立外商投资企业出资的相关规定。

外国投资者并购境内企业设立外商投资企业，如果外国投资者出资比例低于企业注册资本25%的，投资者以现金出资的，应自外商投资企业营业执照颁发之日起3个月内缴清；投资者以实物、工业产权等出资的，应自外商投资企业营业执照颁发之日起6个月内缴清。

第十七条　作为并购对价的支付手段，应符合国家有关法律和行政法规的规定。外国投资者以其合法拥有的人民币资产作为支付手段的，应经外汇管理机关核准。外国投资者以其拥有处置权的股权作为支付手段的，按照本规定第四章办理。

第十八条　外国投资者协议购买境内公司股东的股权，境内公司变更设立为外商投资企业后，该外商投资企业的注册资本为原境内公司注册资本，外国投资者的出资比例为其所购买股权在原注册资本中所占比例。

外国投资者认购境内有限责任公司增资的，并购后所设外商投资企业的注册资本为原境内公司注册资本与增资额之和。外国投资者与被并购境内公司原其他股东，在境内公司资产评估的基础上，确定各自在外商投资企业注册资本中的出资比例。

外国投资者认购境内股份有限公司增资的，按照《公司法》有关规定确定注册资本。

第十九条　外国投资者股权并购的，除国家另有规定外，对并购后所设外商投资企业应按照以下比例确定投资总额的上限：

（一）注册资本在210万美元以下的，投资总额不得超过注册资本的10/7；

（二）注册资本在210万美元以上至500万美元的，投资总额不得超过注册资本的2倍；

（三）注册资本在500万美元以上至1200万美元的，投资总额不得超过注册资本的2.5倍；

（四）注册资本在1200万美元以上的，投资总额不得超过注册资本的3倍。

第二十条　外国投资者资产并购的，应根据购买资产的交易价格和实际生产经营规模确定拟设立的外商投资企业的投资总额。拟设立的外商投资企业的注册资本与投资总额的比例应符合有关规定。

第三章　审批与登记

第二十一条　外国投资者股权并购的，投资者应根据并购后所设外商投资企业的投资总额、企业类型及所从事的行业，依照设立外商投资企业的法律、行政法规和规章的规定，向具有相应审批权限的审批机关报送下列文件：

（一）被并购境内有限责任公司股东一致同意外国投资者股权并购的决议，或被并购境内股份有限公司同意外国投资者股权并购的股东大会决议；

（二） 被并购境内公司依法变更设立为外商投资企业的申请书；

（三） 并购后所设外商投资企业的合同、章程；

（四） 外国投资者购买境内公司股东股权或认购境内公司增资的协议；

（五） 被并购境内公司上一财务年度的财务审计报告；

（六） 经公证和依法认证的投资者的身份证明文件或注册登记证明及资信证明文件；

（七） 被并购境内公司所投资企业的情况说明；

（八） 被并购境内公司及其所投资企业的营业执照（副本）；

（九） 被并购境内公司职工安置计划；

（十） 本规定第十三条、第十四条、第十五条要求报送的文件。

并购后所设外商投资企业的经营范围、规模、土地使用权的取得等，涉及其他相关政府部门许可的，有关的许可文件应一并报送。

第二十二条　股权购买协议、境内公司增资协议应适用中国法律，并包括以下主要内容：

（一） 协议各方的状况，包括名称（姓名），住所，法定代表人姓名、职务、国籍等；

（二） 购买股权或认购增资的份额和价款；

（三） 协议的履行期限、履行方式；

（四） 协议各方的权利、义务；

（五） 违约责任、争议解决；

（六） 协议签署的时间、地点。

第二十三条　外国投资者资产并购的，投资者应根据拟设立的外商投资企业的投资总额、企业类型及所从事的行业，依照设立外商投资企业的法律、行政法规和规章的规定，向具有相应审批权限的审批机关报送下列文件：

（一） 境内企业产权持有人或权力机构同意出售资产的决议；

（二） 外商投资企业设立申请书；

（三） 拟设立的外商投资企业的合同、章程；

（四） 拟设立的外商投资企业与境内企业签署的资产购买协议，或外国投资者与境内企业签署的资产购买协议；

（五） 被并购境内企业的章程、营业执照（副本）；

（六） 被并购境内企业通知、公告债权人的证明以及债权人是否提出异议的说明；

（七）经公证和依法认证的投资者的身份证明文件或开业证明、有关资信证明文件；

（八） 被并购境内企业职工安置计划；

（九） 本规定第十三条、第十四条、第十五条要求报送的文件。

依照前款的规定购买并运营境内企业的资产，涉及其他相关政府部门许可的，有关的许可文件应一并报送。

外国投资者协议购买境内企业资产并以该资产投资设立外商投资企业的，在外商投资企业成立之前，不得以该资产开展经营活动。

第二十四条　资产购买协议应适用中国法律，并包括以下主要内容：

（一）协议各方的状况，包括名称（姓名），住所，法定代表人姓名、职务、国籍等；

（二）拟购买资产的清单、价格；

（三）协议的履行期限、履行方式；

（四）协议各方的权利、义务；

（五）违约责任、争议解决；

（六）协议签署的时间、地点。

第二十五条　外国投资者并购境内企业设立外商投资企业，除本规定另有规定外，审批机关应自收到规定报送的全部文件之日起 30 日内，依法决定批准或不批准。决定批准的，由审批机关颁发批准证书。

外国投资者协议购买境内公司股东股权，审批机关决定批准的，应同时将有关批准文件分别抄送股权转让方、境内公司所在地外汇管理机关。股权转让方所在地外汇管理机关为其办理转股收汇外资外汇登记并出具相关证明，转股收汇外资外汇登记证明是证明外方已缴付的股权收购对价已到位的有效文件。

第二十六条　外国投资者资产并购的，投资者应自收到批准证书之日起 30 日内，向登记管理机关申请办理设立登记，领取外商投资企业营业执照。

外国投资者股权并购的，被并购境内公司应依照本规定向原登记管理机关申请变更登记，领取外商投资企业营业执照。原登记管理机关没有登记管辖权的，应自收到申请文件之日起 10 日内转送有管辖权的登记管理机关办理，同时附送该境内公司的登记档案。被并购境内公司在申请变更登记时，应提交以下文件，并对其真实性和有效性负责：

（一）变更登记申请书；

（二）外国投资者购买境内公司股东股权或认购境内公司增资的协议；

（三）修改后的公司章程或原章程的修正案和依法需要提交的外商投资企业合同；

（四）外商投资企业批准证书；

（五）外国投资者的主体资格证明或者自然人身份证明；

（六）修改后的董事会名单，记载新增董事姓名、住所的文件和新增董事的任职文件；

（七）国家工商行政管理总局规定的其他有关文件和证件。

投资者自收到外商投资企业营业执照之日起 30 日内，到税务、海关、土地管理和外汇管理等有关部门办理登记手续。

第四章　外国投资者以股权作为支付手段并购境内公司

第一节　以股权并购的条件

第二十七条　本章所称外国投资者以股权作为支付手段并购境内公司，系指境外公司的股东以其持有的境外公司股权，或者境外公司以其增发的股份，作为支付手段，购买境内公司股东的股权或者境内公司增发股份的行为。

第二十八条　本章所称的境外公司应合法设立并且其注册地具有完善的公司法律制度，且公司及其管理层最近3年未受到监管机构的处罚；除本章第三节所规定的特殊目的公司外，境外公司应为上市公司，其上市所在地应具有完善的证券交易制度。

第二十九条　外国投资者以股权并购境内公司所涉及的境内外公司的股权，应符合以下条件：

（一）股东合法持有并依法可以转让；

（二）无所有权争议且没有设定质押及任何其他权利限制；

（三）境外公司的股权应在境外公开合法证券交易市场（柜台交易市场除外）挂牌交易；

（四）境外公司的股权最近1年交易价格稳定。

前款第（三）、（四）项不适用于本章第三节所规定的特殊目的公司。

第三十条　外国投资者以股权并购境内公司，境内公司或其股东应当聘请在中国注册登记的中介机构担任顾问（以下称“并购顾问”）。并购顾问应就并购申请文件的真实性、境外公司的财务状况以及并购是否符合本规定第十四条、第二十八条和第二十九条的要求作尽职调查，并出具并购顾问报告，就前述内容逐项发表明确的专业意见。

第三十一条　并购顾问应符合以下条件：

（一）信誉良好且有相关从业经验；

（二）无重大违法违规记录；

（三）应有调查并分析境外公司注册地和上市所在地法律制度与境外公司财务状况的能力。

第二节　申报文件与程序

第三十二条　外国投资者以股权并购境内公司应报送商务部审批，境内公司除报送本规定第三章所要求的文件外，另须报送以下文件：

（一）境内公司最近1年股权变动和重大资产变动情况的说明；

（二）并购顾问报告；

（三）所涉及的境内外公司及其股东的开业证明或身份证明文件；

（四）境外公司的股东持股情况说明和持有境外公司5%以上股权的股东名录；

（五）境外公司的章程和对外担保的情况说明；

（六）境外公司最近年度经审计的财务报告和最近半年的股票交易情况报告。

第三十三条　商务部自收到规定报送的全部文件之日起30日内对并购申请进行审核，符合条件的，颁发批准证书，并在批准证书上加注“外国投资者以股权并购境内公司，自营业执照颁发之日起6个月内有效”。

第三十四条　境内公司应自收到加注的批准证书之日起30日内，向登记管理机关、外汇管理机关办理变更登记，由登记管理机关、外汇管理机关分别向其颁发加注“自颁发之日起8个月内有效”字样的外商投资企业营业执照和外汇登记证。

境内公司向登记管理机关办理变更登记时，应当预先提交旨在恢复股权结构的境内公司法定代表人签署的股权变更申请书、公司章程修正案、股权转让协议等文件。

第三十五条　自营业执照颁发之日起6个月内，境内公司或其股东应就其持有境外公司股权事项，向商务部、外汇管理机关申请办理境外投资开办企业核准、登记手续。

当事人除向商务部报送《关于境外投资开办企业核准事项的规定》所要求的文件外，另须报送加注的外商投资企业批准证书和加注的外商投资企业营业执照。商务部在核准境内公司或其股东持有境外公司的股权后，颁发中国企业境外投资批准证书，并换发无加注的外商投资企业批准证书。

境内公司取得无加注的外商投资企业批准证书后，应在30日内向登记管理机关、外汇管理机关申请换发无加注的外商投资企业营业执照、外汇登记证。

第三十六条　自营业执照颁发之日起6个月内，如果境内外公司没有完成其股权变更手续，则加注的批准证书和中国企业境外投资批准证书自动失效，登记管理机关根据境内公司预先提交的股权变更登记申请文件核准变更登记，使境内公司股权结构恢复到股权并购之前的状态。

并购境内公司增发股份而未实现的，在登记管理机关根据前款予以核准变更登记之前，境内公司还应当按照《公司法》的规定，减少相应的注册资本并在报纸上公告。

境内公司未按照前款规定办理相应的登记手续的，由登记管理机关按照《公司登记管理条例》的有关规定处理。

第三十七条　境内公司取得无加注的外商投资企业批准证书、外汇登记证之前，不得向股东分配利润或向有关联关系的公司提供担保，不得对外支付转股、减资、清算等资本项目款项。

第三十八条　境内公司或其股东凭商务部和登记管理机关颁发的无加注批准证书和营业执照，到税务机关办理税务变更登记。

第三节　对于特殊目的公司的特别规定

第三十九条　特殊目的公司系指中国境内公司或自然人为实现以其实际拥有的境内公司权益在境外上市而直接或间接控制的境外公司。

特殊目的公司为实现在境外上市，其股东以其所持公司股权，或者特殊目的公司以其增发的股份，作为支付手段，购买境内公司股东的股权或者境内公司增发的股份的，适用本节规定。

当事人以持有特殊目的公司权益的境外公司作为境外上市主体的，该境外公司应符合本节对于特殊目的公司的相关要求。

第四十条　特殊目的公司境外上市交易，应经国务院证券监督管理机构批准。

特殊目的公司境外上市所在国家或者地区应有完善的法律和监管制度，其证券监管机构已与国务院证券监督管理机构签订监管合作谅解备忘录，并保持着有效的监管合作关系。

第四十一条　本节所述的权益在境外上市的境内公司应符合下列条件：

（一）产权明晰，不存在产权争议或潜在产权争议；

（二）有完整的业务体系和良好的持续经营能力；

（三）有健全的公司治理结构和内部管理制度；

（四）公司及其主要股东近 3 年无重大违法违规记录。

第四十二条　境内公司在境外设立特殊目的公司，应向商务部申请办理核准手续。办理核准手续时，境内公司除向商务部报送《关于境外投资开办企业核准事项的规定》要求的文件外，另须报送以下文件：

（一）特殊目的公司最终控制人的身份证明文件；

（二）特殊目的公司境外上市商业计划书；

（三）并购顾问就特殊目的公司未来境外上市的股票发行价格所作的评估报告。

获得中国企业境外投资批准证书后，设立人或控制人应向所在地外汇管理机关申请办理相应的境外投资外汇登记手续。

第四十三条　特殊目的公司境外上市的股票发行价总值，不得低于其所对应的经中国有关资产评估机构评估的被并购境内公司股权的价值。

第四十四条　特殊目的公司以股权并购境内公司的，境内公司除向商务部报送本规定第三十二条所要求的文件外，另须报送以下文件：

（一）设立特殊目的公司时的境外投资开办企业批准文件和证书；

（二）特殊目的公司境外投资外汇登记表；

（三）特殊目的公司最终控制人的身份证明文件或开业证明、章程；

（四）特殊目的公司境外上市商业计划书；

（五）并购顾问就特殊目的公司未来境外上市的股票发行价格所作的评估

报告。

如果以持有特殊目的公司权益的境外公司作为境外上市主体，境内公司还须报送以下文件：

（一）该境外公司的开业证明和章程；

（二）特殊目的公司与该境外公司之间就被并购的境内公司股权所作的交易安排和折价方法的详细说明。

第四十五条　商务部对本规定第四十四条所规定的文件初审同意的，出具原则批复函，境内公司凭该批复函向国务院证券监督管理机构报送申请上市的文件。国务院证券监督管理机构于20个工作日内决定是否核准。

境内公司获得核准后，向商务部申领批准证书。商务部向其颁发加注“境外特殊目的公司持股，自营业执照颁发之日起1年内有效”字样的批准证书。

并购导致特殊目的公司股权等事项变更的，持有特殊目的公司股权的境内公司或自然人，凭加注的外商投资企业批准证书，向商务部就特殊目的公司相关事项办理境外投资开办企业变更核准手续，并向所在地外汇管理机关申请办理境外投资外汇登记变更。

第四十六条　境内公司应自收到加注的批准证书之日起30日内，向登记管理机关、外汇管理机关办理变更登记，由登记管理机关、外汇管理机关分别向其颁发加注“自颁发之日起14个月内有效”字样的外商投资企业营业执照和外汇登记证。

境内公司向登记管理机关办理变更登记时，应当预先提交旨在恢复股权结构的境内公司法定代表人签署的股权变更申请书、公司章程修正案、股权转让协议等文件。

第四十七条　境内公司应自特殊目的公司或与特殊目的公司有关联关系的境外公司完成境外上市之日起30日内，向商务部报告境外上市情况和融资收入调回计划，并申请换发无加注的外商投资企业批准证书。同时，境内公司应自完成境外上市之日起30日内，向国务院证券监督管理机构报告境外上市情况并提供相关的备案文件。境内公司还应向外汇管理机关报送融资收入调回计划，由外汇管理机关监督实施。境内公司取得无加注的批准证书后，应在30日内向登记管理机关、外汇管理机关申请换发无加注的外商投资企业营业执照、外汇登记证。

如果境内公司在前述期限内未向商务部报告，境内公司加注的批准证书自动失效，境内公司股权结构恢复到股权并购之前的状态，并应按本规定第三十六条办理变更登记手续。

第四十八条　特殊目的公司的境外上市融资收入，应按照报送外汇管理机关备案的调回计划，根据现行外汇管理规定调回境内使用。融资收入可采取以下方式调回境内：

（一）向境内公司提供商业贷款；
（二）在境内新设外商投资企业；
（三）并购境内企业。

在上述情形下调回特殊目的公司境外融资收入，应遵守中国有关外商投资及外债管理的法律和行政法规。如果调回特殊目的公司境外融资收入，导致境内公司和自然人增持特殊目的公司权益或特殊目的公司净资产增加，当事人应如实披露并报批，在完成审批手续后办理相应的外资外汇登记和境外投资登记变更。

境内公司及自然人从特殊目的公司获得的利润、红利及资本变动所得外汇收入，应自获得之日起 6 个月内调回境内。利润或红利可以进入经常项目外汇帐户或者结汇。资本变动外汇收入经外汇管理机关核准，可以开立资本项目专用帐户保留，也可经外汇管理机关核准后结汇。

第四十九条　自营业执照颁发之日起 1 年内，如果境内公司不能取得无加注批准证书，则加注的批准证书自动失效，并应按本规定第三十六条办理变更登记手续。

第五十条　特殊目的公司完成境外上市且境内公司取得无加注的批准证书和营业执照后，当事人继续以该公司股份作为支付手段并购境内公司的，适用本章第一节和第二节的规定。

第五章　反垄断审查

第五十一条　外国投资者并购境内企业有下列情形之一的，投资者应就所涉情形向商务部和国家工商行政管理总局报告：
（一）并购一方当事人当年在中国市场营业额超过 15 亿元人民币；
（二）1 年内并购国内关联行业的企业累计超过 10 个；
（三）并购一方当事人在中国的市场占有率已经达到 20%；
（四）并购导致并购一方当事人在中国的市场占有率达到 25%。

虽未达到前款所述条件，但是应有竞争关系的境内企业、有关职能部门或者行业协会的请求，商务部或国家工商行政管理总局认为外国投资者并购涉及市场份额巨大，或者存在其他严重影响市场竞争等重要因素的，也可以要求外国投资者作出报告。

上述并购一方当事人包括与外国投资者有关联关系的企业。

第五十二条　外国投资者并购境内企业涉及本规定第五十一条所述情形之一，商务部和国家工商行政管理总局认为可能造成过度集中，妨害正当竞争、损害消费者利益的，应自收到规定报送的全部文件之日起 90 日内，共同或经协商单独召集有关部门、机构、企业以及其他利害关系方举行听证会，并依法决定批准或不批准。

第五十三条　境外并购有下列情形之一的，并购方应在对外公布并购方案之前或者报所在国主管机构的同时，向商务部和国家工商行政管理总局报送并购方案。商务部和国家工商行政管理总局应审查是否存在造成境内市场过度集中，妨害境内正当竞争、损害境内消费者利益的情形，并做出是否同意的决定：

（一）境外并购一方当事人在我国境内拥有资产 30 亿元人民币以上；

（二)境外并购一方当事人当年在中国市场上的营业额 15 亿元人民币以上；

（三）境外并购一方当事人及与其有关联关系的企业在中国市场占有率已经达到 20%；

（四）由于境外并购，境外并购一方当事人及与其有关联关系的企业在中国的市场占有率达到 25%；

（五）由于境外并购，境外并购一方当事人直接或间接参股境内相关行业的外商投资企业将超过 15 家。

第五十四条　有下列情况之一的并购，并购一方当事人可以向商务部和国家工商行政管理总局申请审查豁免：

（一）可以改善市场公平竞争条件的；

（二）重组亏损企业并保障就业的；

（三）引进先进技术和管理人才并能提高企业国际竞争力的；

（四）可以改善环境的。

第六章　附则

第五十五条　外国投资者在中国境内依法设立的投资性公司并购境内企业，适用本规定。

外国投资者购买境内外商投资企业股东的股权或认购境内外商投资企业增资的，适用现行外商投资企业法律、行政法规和外商投资企业投资者股权变更的相关规定，其中没有规定的，参照本规定办理。

外国投资者通过其在中国设立的外商投资企业合并或收购境内企业的，适用关于外商投资企业合并与分立的相关规定和关于外商投资企业境内投资的相关规定，其中没有规定的，参照本规定办理。

外国投资者并购境内有限责任公司并将其改制为股份有限公司的，或者境内公司为股份有限公司的，适用关于设立外商投资股份有限公司的相关规定，其中没有规定的，适用本规定。

第五十六条　申请人或申报人报送文件，应依照本规定对文件进行分类，并附文件目录。规定报送的全部文件应用中文表述。

第五十七条　被股权并购境内公司的中国自然人股东，经批准，可继续作为变更后所设外商投资企业的中方投资者。

第五十八条　境内公司的自然人股东变更国籍的，不改变该公司的企业性质。

第五十九条　相关政府机构工作人员必须忠于职守、依法履行职责，不得利用职务之便牟取不正当利益，并对知悉的商业秘密负有保密义务。

第六十条　香港特别行政区、澳门特别行政区和台湾地区的投资者并购境内其他地区的企业，参照本规定办理。

第六十一条　本规定自 2006 年 9 月 8 日起施行。

Schedule 2

The Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors

(The Measures for the Administration of Strategic Investment in Listed Companies by Foreign Investors, which have been formulated by the Ministry of Commerce, China Securities Regulatory Commission, State Administration of Taxation, State Administration for Industry and Commerce, and State Administration of Foreign Exchange, are hereby promulgated, and shall come into force after 30 days as of the promulgation.)

Article 1 With a view to regulating the strategic investment of foreign investors in A share listed companies (hereinafter referred to as the listed companies) after share-trading reform, maintaining the order of securities market, introducing advanced overseas management experiences, technologies and capital, and improving the corporate governance of the listed companies, as well as protecting the lawful rights and interests of the listed companies and their shareholders, the present Measures are formulated in light of the requirements of the Guiding Opinions on Share-trading Reform of Listed Companies, and in accordance with the state laws and regulations on the supervision over foreign-funded companies and listed companies, as well as the Interim Provisions for Foreign Investors to Merge Domestic Enterprises.

Article 2 The present Measures shall be applicable to the acts of foreign investors (hereinafter referred to as the investors), who obtain the A share stock of the listed companies that have completed the share-trading reform and the newly listed companies after the share-trading reform through a scale of medium and long-term strategic merger investment (hereinafter referred to as the strategic investment).

Article 3 The investors may make strategic investment in the listed companies in accordance with the present Measures upon the approval of the Ministry of Commerce.

Article 4 The following principles shall be followed in the strategic investment:

1. Abiding by the state laws, regulations, and the relevant industrial policies, and not impairing national economic security and public interests;

2. Sticking to the principle of openness, justness and fairness, maintaining the lawful rights and interests of the listed companies and their shareholders, and accepting the supervision of the government and the general public, and the judicial and arbitration jurisdictions of China;

3. Encouraging medium and long-term investment, and maintaining the normal order of the securities market, not making sensationalism; and

4. Not obstructing fair competition, or resulting in excessive concentration of

the relevant products markets, or elimination or restriction of competition.

Article 5 An investor shall comply with the following requirements when making strategic investment:

1. It obtains the A share stock of a listed company by way of transfer under an agreement or directional issuance of new shares by the listed company or by any other means as prescribed by any state law or regulation;

2. The investment may be made by stages, the proportion of shares obtained by it after completing initial investment shall be no lower than 10% of the shares having been issued by the company, unless there are special provisions in a special industry or it is approved by the competent departments;

3. The A share stock of a listed company obtained by it shall not be transferred within 3 years;

4. For the industry for which there are clear provisions by any law or regulation on the proportion of shares held by a foreign investor, the proportion of shares of the aforesaid industries held by an investor shall comply with the relevant provisions; for any fields to which foreign investment is prohibited by any law or regulation, the investor shall not make investment in any listed company in the aforesaid field; and

5. In case any state-owned shareholder of a listed company is involved, it shall comply with the relevant provisions on state-owned assets administration.

Article 6 An investor shall comply with the following requirements:

1. It is a foreign legal person or other organization that is established and operated according to law, with sound finance, good credit standing, and mature management experiences;

2. Its total overseas paid-in capital shall be no less than USD 100 million or the total overseas paid-in capital under its management shall be no less than USD 500 million; or the total overseas paid-in capital of its overseas parent company is no less than USD 100 million or the total overseas paid-in capital under the management of its parent company shall be no less than USD 500 million;

3. It has sound governance structure and sound internal control system, and criterions for management acts; and

4. It (including its parent company) has no records of grave penalties by any regulatory institution both home and abroad within the past three years.

Article 7 In case the strategic investment is made by way of directional issuance of a listed company, it shall be handled in light of the following procedures:

1. The board of directors of the listed company adopts the resolutions on directional issuance of new shares to investors and amendments of the draft of the articles of association of the company;

2. The shareholders' meeting of the listed company adopts the resolutions on directional issuance of new shares to investors and amendments of the articles of association of the company;

3. The listed company signs a directional issuance contract with the investor;

4. The listed company submits the relevant application documents to the Ministry of Commerce in accordance with Article 12 of the present Measures, if there is any special provision, it shall be followed;

5. After obtaining the letter of principle reply of the Ministry of Commerce for the strategic investment in the listed company by an investor, the listed company shall submit the application documents for directional issuance to China Securities Regulatory Commission (hereinafter referred to as the CSRC), and the CSRC shall grant approval according to law; and

6. After completing the directional issuance, the listed company shall obtain the certificate of approval for foreign-funded enterprises at the Ministry of Commerce, and go through alteration registration at the administrative department of industry and commerce upon the certificate of approval.

Article 8 In case any strategic investment is made by way of transfer under an agreement, it shall be handled in light of the following procedures:

1. The board of directors of a listed company adopts the resolutions on the strategic investment of an investor by way of transfer under an agreement;

2. The shareholders' meeting of a listed company adopts the resolutions on the strategic investment of an investor by way of transfer under an agreement;

3. The transferor signs a share transfer agreement with the investor;

4. The investor submits the relevant application documents to the Ministry of Commerce in accordance with Article 12 of the present Measures, if there is any special provision, it shall be followed;

5. If any investor takes stake in a listed company, it shall go through the formalities for confirmation of share transfer at the securities exchange after it has obtained the aforesaid approval, and apply for going through registration and transfer formalities at the securities depository and clearing institution, and report to the CSRC for archival filing; and

6. After completing the transfer under an agreement, the listed company shall obtain the certificate of approval for foreign-funded enterprises at the Ministry of Commerce, and go through alteration registration at the administrative department of industry and commerce upon the certificate of

approval.

Article 9 In case an investor intends to actually control a listed company by way of transfer under an agreement, it shall, after obtaining the approval in light of the procedures of items (1) through (4) of Article 8, submit the report on the acquisition of a listed company and the relevant documents to the CSRC, and go through the formalities for confirmation of the share transfer at the stock exchange after the CSRC has made examination and has no dissent, and apply for going through formalities for registration and transfer at the securities depository and clearing institution. After completing the aforesaid formalities, it shall make handling in accordance with item (6) of Article 8.

Article 10 An investor shall, when making strategic investment in listed companies, fulfill its obligations of report, announcement, and other statutory obligations in accordance with the Securities Law and the relevant provisions of the CSRC.

Article 11 If an investor continues making strategic investment in the listed companies in which it holds shares, it shall handle it in light of the ways and procedures as prescribed in the present Measures.

Article 12 A listed company or investor shall submit the following documents to the Ministry of Commerce:

1. Application Letter for Strategic Investment (For the format, please see Annex I);

2. Strategic Investment Scheme (For the format, please see Annex II);

3. Directional issuance contract or share transfer agreement;

4. Opinions of a recommendation institution (in case of a directional issuance) or legal opinions;

5. The letter of commitment for holding shares incessantly by the investor;

6. Statements of the investor on its having no records of grave punishment by any regulatory institution both home and abroad within three years, and statements on whether it has any other record of non-grave penalties;

7. The registration certificate of the investor that has been notarized and certified according to law, and the identity certificate of the legal representative (or the authorized representative);

8. The statements of assets and liabilities of the investor in recent three years, which have been audited by a certified accountant;

9. The documents to be submitted as prescribed in the aforesaid items (1), (2), (3), (5), and (6) shall be signed by the legal representative of the investor or its authorized representative, if the documents are signed by the authorized

representative, the power of attorney signed by the legal representative and the corresponding notarized or certified documents shall be submitted; and

10. Other documents as prescribed by the Ministry of Commerce.

Except the documents as listed in items (7) and (8) in the preceding paragraph, the originals of the Chinese versions of other documents shall also be submitted, and the original and Chinese translation of the documents as listed in items (7) and (8) shall also be submitted.

The Ministry of Commerce shall give principle reply within 30 days after it has received all the aforesaid documents, and the valid period of the principle reply shall be 180 days.

Article 13 Any foreign company (parent company) meeting the provisions of Article 6 of the present Measures may make strategic investment through its wholly owned overseas subsidiaries (investors), the investors shall, apart from submitting the documents as listed in Article 9 of the present Measures, submit the letter of irrevocable commitment of the parent company on assuming joint and several liabilities for the investment acts of the investors to the Ministry of Commerce.

Article 14 An investor shall open a foreign exchange account within 15 days from the day of principle reply of the Ministry of Commerce according to the relevant provisions on foreign investment and merger. For the foreign exchange capital remitted from overseas by an investor for the use of strategic investment, the investor shall, in accordance with the relevant provisions on foreign exchange control, open a special foreign exchange account (of the category of merger) for the use of foreign investor at the foreign exchange administration at the place of registration of the listed company, the formalities for settlement of foreign exchange on the capital within the account and the write-off of the account shall be handled in accordance with the relevant provisions on foreign exchange control.

Article 15 An investor may go through the relevant formalities at the securities depository and clearing institution upon the strength of the document of approval of the Ministry of Commerce for strategic investment in listed companies by it and its effective identity certificate.

For the non-tradable shares held by an investor before the share-trading reform of a listed company or the shares held by it before the listed company makes public issuance for the first time, the securities depository and clearing institution may open a securities account for the investor upon its application.

A securities depository and clearing institution shall formulate the corresponding provisions in accordance with the present Measures.

Article 16 An investor shall start up its strategic investment act within 15 days from the date of settling the foreign exchange for the capital, and shall complete the strategic investment within 180 days from the day of principle reply.

If an investor fails to complete the strategic investment in light of the strategic

investment scheme within the prescribed time limit, the principle reply of the examination and approval organ shall be invalidated automatically. The investor shall, within 45 days from the day when the principle reply is invalidated, purchase foreign exchange for the RMB capital obtained from exchange settlement upon the approval of the foreign exchange administration and remit it out of China.

Article 17 After completing strategic investment, a listed company shall obtain the certificate of approval for foreign-funded enterprises at the Ministry of Commerce upon the strength of the following documents within 10 days:

1. Application letter;

2. Letter of principle reply of the Ministry of Commerce;

3. The shareholding certificate issued by the securities depository and clearing institution;

4. Business license of the listed company and the identity certificate of its legal representative; and

5. Articles of association of the listed company.

   The Ministry of Commerce shall, within 5 days from the day of receiving all the aforesaid documents, issue the certificate of approval for foreign-funded enterprises, with the "foreign-funded joint stock company (merger of A shares) "noted in it.

   If an investor obtains 25% or more shares of a single listed company and promises to hold no less than 25% shares within 10 years, the Ministry of Commerce shall note the "foreign-funded joint stock company (merger of A shares of 25% or more)" in its certificate of approval for foreign-funded enterprises issued by it.

Article 18 A listed company shall, within 30 days from the day of issuance of the certificate of approval for a foreign-funded enterprise, apply for handling alteration registration on the type of company to the administrative department of industry and commerce, and submit the following documents:

1. The application letter for alteration signed by the legal representative of the company;

2. The certificate of approval for foreign-funded enterprises;

3. The shareholding certificate issued by the securities depository and clearing institution;

4. The lawful business opening certificate that has been notarized and certified; and

5. Other documents that shall be submitted as prescribed by the State

Administration for Industry and Commerce.

In case the listed company makes alteration upon approval, the administrative department of industry and commerce shall note "foreign-funded joint stock company (merger of A shares)" in the column of enterprise type of the business license, if an investor makes strategic investment and obtains 25% or more shares of a single listed company and promises to hold no less than 25% shares within 10 years, it shall note "foreign-funded joint stock company (merger of A shares of 25% or more)".

Article 19 A listed company shall, within 30 days from the day of issuance of the business license of a foreign-funded enterprise, go through the relevant formalities at the departments of taxation, customs, foreign exchange control, and other relevant departments. The administrative department of foreign exchange shall note "foreign-funded joint stock company (merger of A shares)" in the foreign exchange registration certificate issued by it. If an investor makes strategic investment and obtains 25% or more shares of a single listed company and promises to hold no less than 25% shares within 10 years, the administrative department of foreign exchange shall note "foreign-funded joint stock company (merger of A shares of 25% or more)" in the foreign exchange registration certificate.

Article 20 Apart from the following circumstances, an investor shall not make securities trading (excluding B share trading):

1. The A share stock of a listed company held by the investor for making strategic investment may be sold after the expiry of shareholding period in its promise;

2. In case the investor makes purchase by offer in accordance with the relevant provisions of the Securities Law, it may purchase the shares sold by A share shareholders of the listed company within the period of the offer;

3. The non-tradable shares held by the investor before the share-trading reform of a listed company may be sold after the share-trading reform is completed and the expiration of the time limit for sale prohibition;

4. The shares held by the investor before the public issuance of a listed company for the first time may be sold after the expiration of the time limit for sale prohibition; and

5. Before the expiry of the share holding period as promised by an investor, if there is necessity to transfer its shares due to its bankruptcy, liquidation, or mortgage, or other special reasons, it may transfer its shares upon the approval of the Ministry of Commerce.

Article 21 In case an investor reduces its shares, which makes the foreign capital share of a listed company less than 25%, the listed company shall make archival filing within 10 days to the Ministry of Commerce, and go through the relevant formalities for alteration of the certificate of approval for foreign-funded enterprises.

In case an investor reduces its shares, which makes the foreign capital share of a listed company less than 10%, and the investor is not a single largest shareholder, the listed company shall put it on archives at the examination and approval organ and go through the relevant formalities for writing off the certificate of approval for foreign-funded enterprises within 10 days.

Article 22 In case an investor reduces its shares, which makes the foreign capital share of a listed company less than 25%, the listed company shall go through alteration registration at the administrative department of industry and commerce within 30 days from the day when the certificate of approval for foreign-funded enterprises is altered, and the administrative department of industry and commerce shall change the enterprise type in the business license into "foreign-funded joint stock company (merger of A shares)". The listed company shall go through registration on foreign exchange alteration at the administrative department of foreign exchange within 30 days from the day when the business license is altered, and the administrative department of foreign exchange shall note "foreign-funded joint stock company (merger of A shares)" in the foreign exchange registration certificate.

In case an investor reduces its shares, which makes the foreign capital share of a listed company less than 10%, and the investor is not a single largest shareholder, the listed company shall go through alteration registration at the administrative department of industry and commerce within 30 days from the day when the certificate of approval for foreign-funded enterprises is written off, and the enterprise type shall be altered into a joint stock company. The listed company shall go through formalities for writing off its foreign exchange registration at the administrative department of foreign exchange within 30 days from the day when the business license is altered.

Article 23 In case a parent company makes strategic investment through its wholly-owned overseas subsidiaries and completes the investment on schedule, it shall report to the Ministry of Commerce before it transfers the aforesaid overseas subsidiaries, and file an application in light of the procedures as listed in the present Measures. The new transferee shall still comply with the conditions as prescribed in the present Measures, undertake all the rights and obligations of the parent company and its subsidiaries in the listed company, and fulfill its obligations of reporting to the CSRC, making public notice, and other statutory obligations.

Article 24 In case an investor assigns the shares of a listed company held by it through A share market, it may make application for remitting out the foreign exchange it has purchased to the administration of foreign exchange at the place of registration of the listed company upon the strength of the following documents:

1. Written application;

2. The documents of approval for exchange settlement approved by the administration of foreign exchange on the capital within the special foreign exchange account (category of merger) opened for the use of a foreign investor to make strategic investment;

3. The document of approval issued by the Ministry of Commerce for alteration of the stock right structure of the listed company; and

4. The certificate documents of relevant securities transaction issued by a securities brokerage institution.

Article 25 A listed company in which an investor holds less than 25% of its shares shall follow the relevant provisions on borrowing foreign loans by domestic Chinese-funded enterprises when it borrows foreign loans.

Article 26 The functionaries of the relevant government organizations shall be dedicated to their work, fulfill their obligations according to law, and shall not seek for improper interests by taking advantage of their duties, and shall have the obligation of keeping confidential the business secrets they know.

Article 27 The present Measures shall be referred to as analogy for the strategic investment made by the investors of Hong Kong Special Administrative Region, Macao Special Administrative Region, and Taiwan Region.

Article 28 The present Measures shall be implemented 30 days as of the date of promulgation.

外国投资者对上市公司战略投资管理办法

第一条　为了规范股权分置改革后外国投资者对A股上市公司（以下简称上市公司）进行战略投资，维护证券市场秩序，引进境外先进管理经验、技术和资金，改善上市公司治理结构，保护上市公司和股东的合法权益，按照《关于上市公司股权分置改革的指导意见》的要求，根据国家有关外商投资、上市公司监管的法律法规以及《外国投资者并购境内企业暂行规定》，制定本办法。

第二条　本办法适用于外国投资者（以下简称投资者）对已完成股权分置改革的上市公司和股权分置改革后新上市公司通过具有一定规模的中长期战略性并购投资（以下简称战略投资），取得该公司A股股份的行为。

第三条　经商务部批准，投资者可以根据本办法对上市公司进行战略投资。

第四条　战略投资应遵循以下原则：

（一）遵守国家法律、法规及相关产业政策，不得危害国家经济安全和社会公共利益；

（二）坚持公开、公正、公平的原则，维护上市公司及其股东的合法权益，接受政府、社会公众的监督及中国的司法和仲裁管辖；

（三）鼓励中长期投资，维护证券市场的正常秩序，不得炒作；

（四）不得妨碍公平竞争，不得造成中国境内相关产品市场过度集中、排除或限制竞争。

第五条　投资者进行战略投资应符合以下要求：

（一）以协议转让、上市公司定向发行新股方式以及国家法律法规规定的其他方式取得上市公司A股股份；

（二）投资可分期进行，首次投资完成后取得的股份比例不低于该公司已发行股份的百分之十，但特殊行业有特别规定或经相关主管部门批准的除外；

（三）取得的上市公司A股股份三年内不得转让；

（四）法律法规对外商投资持股比例有明确规定的行业，投资者持有上述行业股份比例应符合相关规定；属法律法规禁止外商投资的领域，投资者不得对上述领域的上市公司进行投资；

（五）涉及上市公司国有股股东的，应符合国有资产管理的相关规定。

第六条　投资者应符合以下要求：

（一）依法设立、经营的外国法人或其他组织，财务稳健、资信良好且具有成熟的管理经验；

（二）境外实有资产总额不低于1亿美元或管理的境外实有资产总额不低于5亿美元；或其母公司境外实有资产总额不低于1亿美元或管理的境外实有资产总额不低于5亿美元；

（三）有健全的治理结构和良好的内控制度，经营行为规范；

（四）近三年内未受到境内外监管机构的重大处罚（包括其母公司）。

第七条　通过上市公司定向发行方式进行战略投资的，按以下程序办理：

（一）上市公司董事会通过向投资者定向发行新股及公司章程修改草案的决议；

（二）上市公司股东大会通过向投资者定向发行新股及修改公司章程的决议；

（三）上市公司与投资者签订定向发行的合同；

（四）上市公司根据本办法第十二条向商务部报送相关申请文件，有特殊规定的从其规定；

（五）在取得商务部就投资者对上市公司进行战略投资的原则批复函后，上市公司向中国证监会报送定向发行申请文件，中国证监会依法予以核准；

（六）定向发行完成后，上市公司到商务部领取外商投资企业批准证书，并凭该批准证书到工商行政管理部门办理变更登记。

第八条　通过协议转让方式进行战略投资的，按以下程序办理：

（一）上市公司董事会通过投资者以协议转让方式进行战略投资的决议；

（二）上市公司股东大会通过投资者以协议转让方式进行战略投资的决议；

（三）转让方与投资者签订股份转让协议；

（四）投资者根据本办法第十二条向商务部报送相关申请文件，有特殊规定的从其规定；

（五）投资者参股上市公司的，获得前述批准后向证券交易所办理股份转让确认手续、向证券登记结算机构申请办理登记过户手续，并报中国证监会备案；

（六）协议转让完成后，上市公司到商务部领取外商投资企业批准证书，并凭该批准证书到工商行政管理部门办理变更登记。

第九条　投资者拟通过协议转让方式构成对上市公司的实际控制，按照第八条第（一）、（二）、（三）、（四）项的程序获得批准后，向中国证监会报送上市公司收购报告书及相关文件，经中国证监会审核无异议后向证券交易所办理股份转让确认手续、向证券登记结算机构申请办理登记过户手续。完成上述手续后，按照第八条第（六）项办理。

第十条　投资者对上市公司进行战略投资，应按《证券法》和中国证监会的相关规定履行报告、公告及其他法定义务。

第十一条　投资者对其已持有股份的上市公司继续进行战略投资的，需按本办法规定的方式和程序办理。

第十二条　上市公司或投资者应向商务部报送以下文件：

（一）战略投资申请书（格式见附件 1）；

（二）战略投资方案（格式见附件 2）；

（三）定向发行合同或股份转让协议；

（四）保荐机构意见书（涉及定向发行）或法律意见书；

（五）投资者持续持股的承诺函；

（六）投资者三年内未受到境内外监管机构重大处罚的声明，以及是否受到其他非重大处罚的说明；

（七）经依法公证、认证的投资者的注册登记证明、法定代表人（或授权

代表）身份证明；

（八）经注册会计师审计的该投资者近三年来的资产负债表；

（九）上述（一）、（二）、（三）、（五）、（六）项中规定提交的文件均需经投资者法定代表人或其授权代表签署，由授权代表签署的还应提交经法定代表人签署的授权书及相应的公证、认证文件；

（十）商务部规定的其他文件。

前款所列文件，除第七项、第八项所列文件外，必须报送中文本原件，第七项、第八项所列文件应报送原件及中文译件。

商务部收到上述全部文件后应在 30 日内作出原则批复，原则批复有效期 180 日。

第十三条　符合本办法第六条规定的外国公司（“母公司”）可以通过其全资拥有的境外子公司（“投资者”）进行战略投资，投资者除提交本办法第十二条所列文件外，还应向商务部提交其母公司对投资者投资行为承担连带责任的不可撤销的承诺函。

第十四条　投资者应在商务部原则批复之日起 15 日内根据外商投资并购的相关规定开立外汇账户。投资者从境外汇入的用于战略投资的外汇资金，应当根据外汇管理的有关规定，到上市公司注册所在地外汇局申请开立外国投资者专用外汇账户（收购类），账户内资金的结汇及账户注销手续参照相关外汇管理规定办理。

第十五条　投资者可以持商务部对该投资者对上市公司进行战略投资的批准文件和有效身份证明，向证券登记结算机构办理相关手续。

对于投资者在上市公司股权分置改革前持有的非流通股份或在上市公司首次公开发行前持有的股份，证券登记结算机构可以根据投资者申请为其开立证券账户。

证券登记结算机构应根据本管理办法制定相应规定。

第十六条　投资者应在资金结汇之日起 15 日内启动战略投资行为，并在原则批复之日起 180 日内完成战略投资。

投资者未能在规定时间内按战略投资方案完成战略投资的，审批机关的原则批复自动失效。投资者应在原则批复失效之日起 45 日内，经外汇局核准后将结汇所得人民币资金购汇并汇出境外。

第十七条　战略投资完成后，上市公司应于 10 日内凭以下文件到商务部领取外商投资企业批准证书：

（一）申请书；

（二）商务部原则批复函；

（三）证券登记结算机构出具的股份持有证明；

（四）上市公司营业执照和法定代表人身份证明；

（五）上市公司章程。

商务部在收到上述全部文件之日起 5 日内颁发外商投资企业批准证书，加注“外商投资股份公司（A 股并购）”。

如投资者取得单一上市公司 25%或以上股份并承诺在 10 年内持续持股不

低于25%，商务部在颁发的外商投资企业批准证书上加注“外商投资股份公司（A股并购25%或以上）”。

第十八条　上市公司应自外商投资企业批准证书签发之日起30日内，向工商行政管理机关申请办理公司类型变更登记，并提交下列文件：

（一）公司法定代表人签署的申请变更申请书；

（二）外商投资企业批准证书；

（三）证券登记结算机构出具的股份持有证明；

（四）经公证、认证的投资者的合法开业证明；

（五）国家工商行政管理总局规定应提交的其他文件。

经核准变更的，工商行政管理机关在营业执照企业类型栏目中加注“外商投资股份公司（A股并购）”字样，其中，投资者进行战略投资取得单一上市公司25%或以上股份并承诺在10年内持续持股不低于25%的，加注“外商投资股份公司（A股并购25%或以上）”。

第十九条　上市公司应自外商投资企业营业执照签发之日起30日内，到税务、海关、外汇管理等有关部门办理相关手续。外汇管理部门在所颁发的外汇登记证上加注“外商投资股份公司（A股并购）”。如投资者进行战略投资取得单一上市公司25%或以上股份并承诺在10年内持续持股不低于25%的，外汇管理部门在外汇登记证上加注“外商投资股份公司（A股并购25%或以上）”。

第二十条　除以下情形外，投资者不得进行证券买卖（B股除外）：

（一）投资者进行战略投资所持上市公司A股股份，在其承诺的持股期限届满后可以出售；

（二）投资者根据《证券法》相关规定须以要约方式进行收购的，在要约期间可以收购上市公司A股股东出售的股份；

（三）投资者在上市公司股权分置改革前持有的非流通股份，在股权分置改革完成且限售期满后可以出售；

（四）投资者在上市公司首次公开发行前持有的股份，在限售期满后可以出售；

（五）投资者承诺的持股期限届满前，因其破产、清算、抵押等特殊原因需转让其股份的，经商务部批准可以转让。

第二十一条　投资者减持股份使上市公司外资股比低于25%，上市公司应在10日内向商务部备案并办理变更外商投资企业批准证书的相关手续。

投资者减持股份使上市公司外资股比低于10%，且该投资者非为单一最大股东，上市公司应在10日内向审批机关备案并办理注销外商投资企业批准证书的相关手续。

第二十二条　投资者减持股份使上市公司外资股比低于25%，上市公司应自外商投资企业批准证书变更之日起30日内到工商行政管理机关办理变更登记，工商行政管理机关在营业执照上企业类型调整为“外商投资股份公司（A股并购）”。上市公司应自营业执照变更之日起30日内到外汇管理部门办理变更外汇登记，外汇管理部门在外汇登记证上加注“外商投资股份公司（A股并购）”。

投资者减持股份使上市公司外资股比低于10%，且投资者非为单一最大股

东，上市公司自外商投资企业批准证书注销之日起30日内到工商行政管理机关办理变更登记，企业类型变更为股份有限公司。上市公司应自营业执照变更之日起30日内到外汇管理部门办理外汇登记注销手续。

第二十三条　母公司通过其全资拥有的境外子公司进行战略投资并已按期完成的，母公司转让上述境外子公司前应向商务部报告，并根据本办法所列程序提出申请。新的受让方仍应符合本办法所规定的条件，承担母公司及其子公司在上市公司中的全部权利和义务，并依法履行向中国证监会报告、公告及其他法定义务。

第二十四条　投资者通过A股市场将所持上市公司股份出让的，可凭以下文件向上市公司注册所在地外汇局申请购汇汇出：

（一）书面申请；

（二）为战略投资目的所开立的外国投资者专用外汇账户（收购类）内资金经外汇局核准结汇的核准件；

（三）证券经纪机构出具的有关证券交易证明文件。

第二十五条　投资者持股比例低于25%的上市公司，其举借外债按照境内中资企业举借外债的有关规定办理。

第二十六条　相关政府机构工作人员必须忠于职守、依法履行职责，不得利用职务便利牟取不正当利益，并对知悉的商业秘密负有保密义务。

第二十七条　香港特别行政区、澳门特别行政区、台湾地区的投资者进行战略投资，参照本办法办理。

第二十八条　本办法自发布之日起30日后施行。

Schedule 3

Interim Provisions on Restructuring State Owned Enterprises ("SOEs") with Foreign Investment

(*NB: This is not a definitive translation*)

Promulgated by the State Economic and Trade Commission, Ministry of Finance, the State General Administration of Industry and Commerce, and the State Administration of Foreign Exchange.

Article 1. This set of Regulations, formulated in line with the Corporate Law of the People's Republic of China, the Contract Law of the People's Republic of China, and the related laws and regulations of the State on foreign investment and on management of state assets, is designed to instruct and standardize the acts of reforming State owned enterprises with foreign investment, to promote the strategic reformation in the national economy, accelerate the pace of establishing a modern enterprise system for the SOEs, and safeguard social stability.

Article 2. This set of Regulations shall be applied to acts of reforming SOEs or corporate companies in which the State has stakes (excluding financial enterprises and publicly listed companies) or transforming them into foreign funded enterprises in the form of companies with foreign investment (hereinafter referred to as reforming SOEs with foreign investment).

Article 3. Reforming SOEs with foreign investment mentioned in this set of Regulations include:

1. State stake holders of SOEs transferring all or part of the stakes to foreign companies, enterprises or other economic organizations or individuals (hereinafter referred to as foreign investors) and the enterprises being reformed into foreign invested ones;

2. State stake holders of corporate enterprises transferring all or part of the stakes held to foreign investors, and the enterprises being reformed into foreign invested ones;

3. Domestic creditors of SOEs transferring creditors' rights to foreign investors and the enterprises being reformed into foreign invested ones;

4. SOEs or corporate enterprises in which the State has stakes selling all or a major part of their assets to foreign investors and foreign investors setting up foreign invested enterprises independently with the assets purchased or jointly with the sellers;

5. SOEs or corporate enterprises in which the State has stakes attracting foreign investment through expanding the quantity of their shares and the enterprises being reformed into foreign invested ones.

Article 4. SOEs and corporate enterprises mentioned in items 1, 2, 3, and 5 of article 3 of this set of Regulations are termed as reformed enterprises.

State owned property rights within SOEs and State owned stakes in corporate enterprises are termed as State owned property rights and holders of State owned property rights and of state owned stakes are termed as holders of State owned property rights.

Holders of State owned property rights refer to departments authorized by the State or institutions authorized by the State to make investment, or enterprises holding State owned assets and other economic organizations.

Holders of State owned property rights, creditors of SOEs transferring creditors' rights, and enterprises selling assets are termed as the reforming party.

Article 5. The reforming party shall select foreign investors meeting the following terms and conditions:

1. Having operational qualifications and technological level required by the reformed enterprises;

2. Having sound business reputation and management capacity;

3. Having sound financial status and economic strength.

The reforming party shall request foreign investors to propose their regrouping programme to improve the corporate management structure and promote the sustainable development of the enterprises and the programme shall include development of new products, technological renovation and related investment plan, and Regulations to be adopted to strengthen enterprise management.

Article 6. The following principles shall be observed in reforming SOEs with foreign investment:

1. Abiding by the State laws and regulations and safeguarding national economic security;

2. Conforming to the requirements of the industrial policies of the State. Foreign investors are not allowed to participate in the reforming of enterprises (including enterprises directly or indirectly owned by them) whose business scopes fall within the prohibited categories for foreign investment. Enterprises whose shares are controlled directly or indirectly by the Chinese sides shall remain so after being reformed.

3. Conducive to the economic structural adjustment and to promoting the optimized allocation of State owned assets;

4. Stressing the introduction of advanced technologies and managerial experiences, establishing a standard corporate management structure, and promotion of technological advance and structural upgrading of enterprises;

5. Adhering to the principles of being open, fair, just, honest and faithful, prevention of wastage of State owned assets, avoiding, evading or abandoning the creditors' rights of banks and other creditors; not harming the lawful benefits of workers, and protecting the lawful benefits of foreign investors;

6. Promoting fair competition and not contributing to market monopoly;

Article 7. In cases where the property rights of a SOE or a wholly state owned company are transferred, or two or more SOEs are transferred, or the state owned stakes within limited liability companies, set up by two or more state owned investors, are transferred, the reforming party shall solicit opinions from the congress of workers and staff of the to-be reformed enterprises in advance. In cases of transferring state owned stakes of a corporate enterprise, consent should be obtained from the shareholders of the to-be reformed enterprise. In cases of transferring creditors' rights of a SOE, consent from the holder of the state owned property rights of the to-be reformed enterprise should be obtained. In the case of an enterprise selling all or a major part of its assets, consent should be obtained from the holders of the state owned assets within the enterprise or from the shareholders meeting, and creditors shall be informed to that effect.

Article 8. The following terms and conditions shall be satisfied when reforming a SOE with foreign investment:

1. Prior to reforming the SOE, holders of the state owned assets within the enterprise shall organize the to-be reformed enterprise to check the assets, identify the property rights, disentangle the creditors' rights and debts, hire qualified intermediaries to conduct financial auditing, and conduct assets evaluations in line with the provisions of Regulations Governing the Evaluation of State Assets (No. 91 Order of the State Council), Regulations on the Issues of the Administration of State Assets Evaluation (No. 14 Decree of the Ministry of Finance), and other relevant regulations;

2. In cases where the right to control the enterprise is transferred or all or a major part of the operational assets are to be sold to foreign investors after reformation, the reforming party and the reformed enterprise shall formulate an appropriate programme for disposing of workers, which shall be reviewed and adopted by the congress of workers and staff. The reformed enterprise shall pay off the salaries owed to the workers, funds raised having not been reimbursed, social securities fee owed and other fees with the existing assets. Two-way choices shall be offered by the reformed enterprise to the workers and staff. Workers retained shall sign or modify their labour contracts according to laws. Compensation shall be paid to workers whose labour contracts have been terminated. Social securities fees shall be paid off in one lump-sum for workers that are to be transferred to social securities institutions, and the capital needed for this, shall be deducted from the net

assets of the reformed enterprise before reform takes place, or paid as a priority from the earnings obtained by holders of the state owned property rights from transferring the state owned property rights.

3. In cases where reform is undertaken by means of selling assets, the creditors rights and liabilities of the enterprise shall be borne by the original enterprise. Where other means are adopted for the reform, the enterprise's creditors' rights and liabilities shall be borne by the enterprise reformed. In cases where mortgaged or pledged state owned property rights or assets are transferred, the relevant provisions of the Guarantee Law of the People's Republic of China shall be observed. The successor of the debt shall sign an agreement on the disposal of creditors rights and liabilities with creditors.

4. The reforming party shall publicize the information of its reforming, solicit foreign investors extensively, and investigate into the qualifications, reputation, financial status, management capacity, safeguard for payment, and quality of operators of foreign investors. Middle and long-term investors that could bring advanced technologies, managerial experiences and have highly industrial relevance shall be selected as a priority.

   The reforming party and foreign investors shall, upon request from each other, provide relevant information honestly and in a detailed manner, and no misleading and cheating activities are allowed. In addition, they also have an obligation to maintain confidentiality.

5. In cases where reform is conducted by means of transferring state owned property rights or selling assets, the reforming party shall prioritize the method of public bidding in identifying foreign investors and transfer price. In cases where public bidding is adopted in the transfer, relevant formalities shall be honoured according to the law. Relevant information concerning the state owned property rights to be transferred or assets to be sold shall be publicized. Open operation is also requested for contractual transfer.

   The reforming party and foreign investors shall, irrespective of the way of transfer, sign transfer agreements according to the relevant provisions of the State and this set of Regulations. The transfer agreement shall include the basic information of the transfer of State owned property rights, disposal of workers, disposal of creditors' rights and liabilities, transfer ratio, transfer price, ways and terms of payment, delivery of property rights, reform of enterprise, and clauses to that effect.

Article 9. The following procedures shall be followed in reforming SOEs with foreign investment:

1. The reforming party (a reforming party shall be identified if there are more than two reforming parties) shall file application with the economic and trade administration at the same level for reforming. The reforming application documents shall include feasibility studies, information of the reforming party and the reformed enterprises, information of foreign investors (including the financial report of the latest three years audited by a certified

public accountant and market shares of products or services of similar enterprises under the actual control of the foreign investors inside China), reforming plan (including disposal of workers, disposal of creditors' rights and liabilities, and enterprise reforming plan), business scope and structure of stock rights of the to-be reformed enterprises (including enterprises directly or indirectly owned).

The economic and trade administration, upon receiving applications, shall conduct examination and verification according to the power delegated by the Rules Governing Direction of Foreign Investment and related laws and regulations. In cases where the enterprises are under the direct control of the Central Government and their wholly owned or controlled enterprises are being reformed, or the reformed enterprises hold stocks of publicly listed companies directly or indirectly, or the total enterprise's assets are no less than US$30 million after being reformed, the application for reforming shall be examined and verified by the economic and trade administration under the State Council. A hearing shall be conducted in cases where there is the likelihood of causing a monopoly or hindering fair competition.

The economic and trade administration shall make a decision on whether or not to approve the application within 45 days upon receiving the application for reform. In cases where a hearing is requested, the decision shall be made in three months.

In cases where the State has other provisions concerning the utilization of foreign investment by industries, within which the reformed enterprises or enterprises directly or indirectly owned by the reformed enterprises fall, and changes to the nature of state stakes are triggered by the changes in the property rights of holders of state stakes in publicly listed companies, the provisions shall be abided by.

2. Transfer agreement signed between the reforming party and foreign investors shall be submitted for approval according to the relevant provisions of the Circular on Issuing the Provisional Regulations on the Enterprises' State Owned Assets and Financial Administration (No. 325, 2001, Caiqi) issued by the Ministry of Finance.

   The transfer agreement shall be accompanied by the registration certificate of state owned property rights, information of the ratification or record filing of the auditing and assets evaluation reports of the reformed enterprises, disposal plan of workers, agreement on creditors' rights and liabilities, plan of enterprise reform, related decisions made by the reforming party and the reformed enterprises, opinion or decision made by the congress of workers and staff of the reformed enterprises.

3. The reforming party or the reformed enterprises shall handle the examination and approval procedures of foreign invested enterprises according to laws on the strength of the approval documents of the reforming application and transfer agreement. In cases where the enterprises are reformed into limited stock companies, the relevant provisions of the Corporate Law of the

People's Republic of China shall be followed when handling the relevant formalities.

4. After being reformed, the enterprises or the investors shall go to the original registration authority with power to register foreign invested enterprises, or the local registration authority with power to register foreign invested enterprises, with the approval documents mentioned in paragraphs 1 and 3 of this article, to handle the registration formalities. In cases where the enterprises are reformed into limited stock companies, the relevant provisions of the Corporate Law of the People's Republic of China shall be followed when handling the relevant formalities.

5. The reforming party shall, on the strength of the approval documents for reforming application and transfer agreement, registration proof for foreign investment and foreign exchange, and other related documents, handle the formalities involved in the delivery of state owned property rights and in the registration of modification to the state owned property rights, in line with the relevant regulations. It should entrust a certified public accountant to produce a capital assessment report according to the law. In cases where the land used by the enterprises was previously transferred by the State to the enterprises, the enterprises shall handle the examination and approval and transfer formalities of land use right according to the law.

6. Foreign exchange income of the reforming party from transferring State owned property rights, creditors' rights or selling assets may be settled according to the approval documents for the reforming application and transfer agreement and other relevant documents, subject to approval by the foreign exchange administration.

   In cases where the reformed enterprises are reformed with foreign investment by means of issuing more shares and expanding their capital, the enterprises may, subject to approval by the foreign exchange administration, open foreign exchange capital account to retain the foreign capital inputted by foreign investors.

7. The reforming application, transfer agreement and their approval documents involving key State enterprises, debt-to-equity enterprises approved by the State, and enterprises categorized as restricted types in the Guiding Catalogue of Industries for Foreign Investment, whose registered capital is below a certain level and which are to be examined and approved by the local economic and trade administration and financial administration, shall be submitted to the economic and trade administration and the financial administration under the State Council respectively for record filing.

Article 10. Foreign investors shall pay the transfer money or contribute capital with freely convertible currencies remitted in from overseas or other lawful property rights. They may also use the net profits in RMB obtained within China from their investment or other lawful property rights to pay the transfer money or contribute capital, subject to approval by the foreign exchange administration. Other lawful property rights, mentioned above, include:

1. Property from the foreign investors obtained from other foreign invested enterprises established inside China due to the enterprises' liquidation, transfer of stock rights, pre-recovered investment, and reduction in investment;

2. State owned property rights or assets purchased by foreign investors from SOEs or corporate enterprises in which the State has stakes;

3. Creditors' rights purchased by foreign investors from the creditors of SOEs;

4. Other means of capital contribution specified in laws and regulations.

When conducting capital assessment for foreign investors, certified public accountants shall follow the capital assessment procedures and issue capital assessment reports according to the provisions of the Circular on Further Strengthening the Work of Capital Assessment of Foreign Invested Enterprises and the Registration System Governing Foreign Investment and Foreign Exchange (No. 1017, 2002, Caikuai) issued by the Ministry of Finance and the State Administration of Foreign Exchange.

Article 11. In cases where reform is undertaken through transfer, foreign investors shall normally pay off the total money requested within three months starting from the day of receiving the business license of the foreign invested enterprises. If they have difficulties in so doing, they are requested to pay 60% of the total money specified within six months upon receiving the business license and provide a guarantee for the remainder, according to law and pay it off within one year.

Article 12. In cases where the right to control an enterprise has been transferred after transferring the State owned property rights, or all or the major assets of an enterprise have been sold to foreign investors, the reforming party is entitled to the right to find out and monitor the production and operation and financial status of the enterprises reformed before the foreign investors have paid off the total money requested. Foreign investors and reformed enterprises shall provide convenience to the reforming party accordingly.

Article 13. Earnings from transferring State owned property rights and assets shall be collected by the reforming party and managed and used according to the related provisions of the financial administration under the State Council.

Article 14. Foreign investors may remit the net profits earned from the reformed enterprises, earnings from transferring stakes, money obtained at the expiration or termination of the business term of enterprises, and other lawful incomes abroad according to the law. They may also reinvest the money earned inside China, subject to approval by the foreign exchange administrations.

Article 15. In the course of reforming SOEs with foreign investment, taxation policies shall be implemented according to the provisions of the taxation laws and administrative regulations of the State, and fee charging policies according to the Circular on the Reduction and Exemption of Relevant Fees to be Collected in the

Course of Implementing Reform and Regrouping of Enterprises issued jointly by the State Economic and Trade Commission, the Ministry of Inspection, Ministry of Finance, Ministry of Audit, and the Office in Charge of Combating Malpractices under the State Council (No. 1077 of 1998 Jijiafei).

Article 16. In cases where the reforming party and staff of the reformed enterprises go beyond their power, neglect their duties, or collaborate with foreign investors, embezzle money and engage in corrupt practices, and harm the lawful benefits of the State, creditors and workers, the related competent departments shall impose administrative punishments on them according to the law. In cases where the violation has constituted a crime, the criminal responsibilities shall be investigated.

Article 17. In cases where governmental staff in charge of examination and approval violate this set of Regulations, approve without permission or abuse their powers to seek personal gain, harm the lawful benefits of the State creditors and workers, the related competent departments shall investigate into the administrative liabilities of the persons directly responsible for the violation and the persons held liable according to the delegated power for administration of officials. In cases where the violation has constituted a crime, the criminal responsibilities shall be investigated.

Article 18. This set of Regulations shall be referred to in cases of investment from Hong Kong SAR, Macao SAR, and Taiwan Region and enterprises set up by them participating in the reformation of SOEs.

Article 19. The State Economic and Trade Commission, Ministry of Finance, the State General Administration of Industry and Commerce, and the State Administration of Foreign Exchange are entitled to the interpretation right of this set of Regulations.

Article 20. This set of Regulations shall enter into force as of January 1, 2003.

利用外资改组国有企业暂行规定

第一条　为引导和规范利用外资改组国有企业的行为，促进国有经济的战略性改组，加快国有企业建立现代企业制度的步伐，维护社会稳定，根据《中华人民共和国公司法》、《中华人民共和国合同法》和国家有关外商投资及国有资产管理的法律法规规定，制定本规定。

第二条　本规定适用于利用外资将国有企业、含国有股权的公司制企业（金融企业和上市公司除外）改制或设立为公司制外商投资企业的行为（以下简称利用外资改组国有企业）。

第三条　本规定所称利用外资改组国有企业包括下列情形：（一）国有企业的国有产权持有人将全部或部分产权转让给外国公司、企业和其它经济组织或个人（以下简称外国投资者），企业改组为外商投资企业；（二）公司制企业的国有股权持有人将全部或部分国有股权转让给外国投资者，企业改组为外商投资企业；（三）国有企业的境内债权人将持有的债权转给外国投资者，企业改组为外商投资企业；（四）国有企业或含有国有股权的公司制企业将企业的全部或主要资产出售给外国投资者，外国投资者以所购买的资产独自或与出售资产的企业等共同设立外商投资企业；（五）国有企业或含国有股权的公司制企业通过增资扩股吸收外国投资者投资，将该企业改组为外商投资企业。

第四条　本规定第三条所述（一）、（二）、（三）、（五）项情形的国有企业和公司制企业称为被改组企业。

国有企业的国有产权、公司制企业的国有股权统称为国有产权。国有产权持有人、国有股权持有人统称为国有产权持有人。

国有产权持有人是指国家授权的部门或国家授权投资的机构、持有国有资本的企业及其它经济组织。国有产权持有人、转让债权的国有企业债权人、出售资产的企业统称为改组方。

第五条　改组方应当选择具备下列条件的外国投资者：（一）具有被改组企业所需的经营资质和技术水平；（二）具有良好的商业信誉和管理能力；（三）具有良好的财务状况和经济实力。

改组方应当要求外国投资者提出改善企业治理结构和促进企业持续发展的重整方案，重整方案内容应当包括新产品开发、技术改造及相关投资计划、加强企业管理的措施等。

第六条　利用外资改组国有企业应当遵循下列原则：（一）遵守国家法律法规，保证国家经济安全；（二）符合国家产业政策要求。企业（包括其直接或间接持股的企业）经营范围属于《外商投

资产业指导目录》禁止外商投资产业的，外国投资者不得参与改组；须由中方控股或相对控股的企业，改组后应当保持中方控股或相对控股地位；（三）有利于经济结构调整，促进国有资本优化配置；（四）注重引进先进技术和管理经验，建立规范的公司治理结构，推动企业技术进步和产业升级；（五）坚持公开、公平、公正、诚实信用的原则，防止国有资产流失，不得逃废、悬空银行及其它债权人的债权，不得损害职工的合法权益，保护外国投资者的合法权益；

（六）促进公平竞争，不得导致市场垄断。

第七条　转让国有企业产权或国有独资公司和两个以上的国有企业或其它两个以上的国有投资主体投资设立的有限责任公司的国有股权的，改组方应当事先征求被改组企业职工代表大会的意见。转让公司制企业国有股权，应当经过被改组企业股东会同意。转让国有企业债权的，应当经过被改组企业国有产权持有人同意。企业出售全部或主要资产的，应当事先征得企业国有产权持有人或股东会的同意，并通知债权人。

第八条　利用外资改组国有企业应当符合下列要求：

（一）企业改组前，国有产权持有人应当组织被改组企业进行资产清查、产权界定、债权债务清理，聘请具备资格的中介机构进行财务审计，按照《国有资产评估管理办法》（国务院令第 91 号）、《国有资产评估管理若干问题的规定》（财政部令第 14 号）等有关规定进行资产评估。评估结果按照规定核准或备案后，作为确定国有产权、资产价格的依据。

（二）改组后企业控制权转移或企业的全部或主要经营资产出售给外国投资者的，改组方和被改组企业应当制定妥善安置职工的方案，并应当经职工代表大会审议通过。被改组企业应当以现有资产清偿拖欠职工的工资、未退还的集资款、欠缴的社会保险费等各项费用。被改组企业与职工实行双向选择。对留用职工要依法重新签订或变更劳动合同。对解除劳动合同的职工要依法支付经济补偿金，对移交社会保险机构的职工要依法一次性缴足社会保险费，所需资金从改组前被改组企业净资产抵扣，或从国有产权持有人转让国有产权收益中优先支付。

（三）以出售资产方式进行改组的，企业债权债务仍由原企业承继；以其它方式改组的，企业债权债务由改组后的企业承继。转让已抵押或质押的国有产权、资产的，应当符合《中华人民共和国担保法》的有关规定。债务承继人应当与债权人签订相关的债权债务处置协议。

（四）改组方应当公开发布改组信息，广泛地征集外国投资者，对外国投资者的资质、信誉、财务状况、管理能力、付款保障、经营者素质等进行调查。优先选择能带来先进技术和管理经验、产业关联度高的中长期投资者。

改组方和外国投资者应当应对方的合理要求，如实、详尽地提供有关信息资料，不得有误导和欺诈行为，并承担相应保密义务。

（五）企业改组以转让国有产权或出售资产方式进行的，改组方应当优先采用公开竞价方式确定外国投资者及转让价格。采用公开竞价方式转让，应当依法履行有关手续，并将拟转让国有产权或拟出售资产的相关情况予以公告。采取协议转让的，也应当公开运作。

不论采取何种转让方式，改组方与外国投资者均应当按照国家有关规定和本规定签订转让协议。转让协议内容应当主要包括转让国有产权的基本情况、职工安置、债权债务处置、转让比例、转让价格、付款方式及付款条件、产权交割事项以及企业重整等条款。

第九条　利用外资改组国有企业应当按下列程序办理：

（一）改组方（两个以上的改组方应当确定一个改组方）应当向同级经济贸易主管部门提出改组申请。改组申请材料应当附可行性研究报告、改组方和被改组企业的情况、外国投资者的情况（包括经注册会计师审计的最近三年的财务报告和在中国境内拥有实际控制权的同行业企业产品或服务的市场占有率）、改组方案（包括职工安置、债权债务处置和企业重整方案）、改组后的企业（包括其直接或间接持股的企业）的经营范围和股权结构等文件。

接受申请的经济贸易主管部门应当依照《指导外商投资方向规定》的权限和有关法律法规进行审核。中央企业及其全资或具有控制权的企业进行改组的、被改组企业直接或间接持有上市公司股权的、改组后的企业资产总额不低于3000万美元的，由国务院经济贸易主管部门审核；对可能导致市场垄断、妨碍公平竞争的，在审核前组织听证。经济贸易主管部门在收到改组申请材料后45天内应当做出是否同意的批复；需要听证的，在3个月内做出是否同意的批复。

国家对被改组企业及其直接或间接持股的企业所属行业利用外资以及上市公司国有股权持有人因产权变动引起所持国有股性质发生变化另有规定的，依照其规定。

（二）改组方和外国投资者签订的转让协议应当按照财政部《关于印发〈企业国有资本与财务管理暂行办法〉的通知》（财企〔2001〕325号）的有关规定报批。转让协议经批准后生效。

转让协议应当附国有产权登记证、被改组企业的审计及资产评估报告核准或备案情况、职工安置方案、债权债务协议、企业重整方案、改组方及被改组企业的有关决议、被改组企业职工代表大会的意见或决议等文件。

（三）改组方或被改组企业应当凭改组申请和转让协议的批准文件依法办理外商投资企业的审批手续；改组后的企业为股份有限公司的，依照《中华人民共和国公司法》的有关规定办理。

（四）改组后的企业或投资者应当持本条（一）、（三）项的批准文件按照登记管理法规规定向具有外商投资企业登记权的原登记机关或住所地具有外商投资企业登记权的登记机关办理登记手续；

改组后的企业为股份有限公司的，依照《中华人民共和国公司法》的有关规定办理。

（五）改组方应当凭改组申请和转让协议的批准文件、外资外汇登记证明及有关文件，按照有关规定办理国有产权交割手续和权属变更登记手续，并委托注册会计师依法出具验资报告。改组后的企业用地原为国有划拨土地的，应当依法办理土地使用权审批和出让手续。

（六）改组方转让国有产权、债权或出售资产的外汇资金收入，应当凭改组申请和转让协议的批准文件及有关文件报外汇管理部门批准后结汇。

被改组企业通过增资扩股方式吸收外国投资者投资进行改组的，经外汇管理部门批准，可以开立外汇资本金帐户保留外国投资者投入的外汇资金。

（七）限额以下由地方经济贸易主管部门和财政主管部门审批的涉及国家重点企业、国家批准的债转股企业和属于《外商投资产业指导目录》限制类产业的企业的改组申请、转让协议及其批准文件，应当分别报国务院经济贸易主管部门、国务院财政主管部门备案。

第十条　外国投资者应当以境外汇入的可自由兑换货币或其它合法财产权益支付转让价款或出资。经外汇管理部门批准，也可以用在中国境内投资获得的人民币净利润或其它合法财产权益支付转让价款或出资。上述其它合法财产权益包括：

（一）外国投资者来源于中国境内举办的其它外商投资企业因清算、股权转让、先行回收投资、减资等所得的财产；

（二）外国投资者收购国有企业或含国有股权的公司制企业的国有产权或资产；

（三）外国投资者收购国有企业的债权人的债权；

（四）法律法规规定的其它出资方式。

注册会计师在为外国投资者办理验资时，应当按照财政部、国家外汇管理局《关于进一步加强外商投资企业验资工作和健全外资外汇登记制度的通知》（财会〔2002〕1017号）的规定履行验资程序、出具验资报告。

第十一条　以转让方式进行改组的，外国投资者一般应当在外商投资企业营业执照颁发之日起3个月内支付全部价款。确有困难的，应当在营业执照颁发之日起6个月内支付价款总额的60%以上，其余款项应当依法提供担保，在一年内付清。

第十二条　国有产权转让后企业控制权转移或企业的全部或主要经营资产出售给外国投资者的，在外国投资者付清全部价款前，改组方有权了解、监督改组后的企业的生产经营及财务状况，外国投资者和改组后的企业应当给予相应的便利。

外国投资者在以收购的资产投资设立外商投资企业之前，不得以上述资产开展经营活动。

第十三条　国有产权、资产转让收益由改组方收取，按照国务院财政主管部门有关规定管理和使用。

第十四条　外国投资者从改组后的企业分得的净利润、股权转让所得收入、企业经营期满或终止时分得的资金以及其它合法收入，可以依法汇出境外。经外汇管理部门批准，也可以用于境内再投资。

第十五条　在利用外资改组国有企业过程中，税收政策按照国家有关税收的法律、行政法规的规定执行，收费政策按照国家计委、国家经贸委、监察部、财政部、审计署、国务院纠风办《关于对企业实施改革改组改造过程中的有关收费实行减免的通知》（计价费〔1998〕1077号）的规定执行。

第十六　条改组方和被改组企业人员超越权限、玩忽职守或与外国投资者私下串通、贪污受贿，损害国家、债权人和职工合法权益的，由有关部门依法给予行政处罚和处分；构成犯罪的，依法追究刑事责任。

第十七条　负责审批的政府机关工作人员违反本规定，擅自批准或在审批中以权谋私，损害国家、债权人和职工合法权益的，由有关部门按干部管理权限，追究直接责任者和主管人员的行政责任；构成犯罪的，依法追究刑事责任。

第十八条　香港特别行政区、澳门特别行政区、台湾地区的投资者和已设立的外商投资企业参与国有企业改组的，参照本规定执行。

第十九条　本规定由国家经济贸易委员会、财政部、国家工商行政管理总局、国家外汇管理局负责解释。

第二十条　本规定自2003年1月1日起施行。

Schedule 4

Interim Measures for the Management of the Transfer of the State-owned Property Right of Enterprises

(*NB: This is not a definitive translation*)

Chapter 1 General Provisions

Article 1 With a view to standardizing the transfer of State-owned property rights of enterprises, strengthening the supervision and management of the transactions of State-owned property rights of enterprises, promoting the reasonable flow of State assets for enterprises and the strategic adjustment of the layout and structure of the economy of State-owned enterprises and preventing the loss of State assets for/of enterprises, these regulations are enacted in accordance with the Provisional Regulations on Supervision and Management of State-owned Assets of Enterprises and relevant national laws and administrative regulations.

Article 2 These regulations shall apply to the transfer of State-owned property rights of enterprises by the State assets supervisory authorities and enterprises holding state-owned capital (hereinafter collectively referred to as "the Transferor") to legal persons, natural persons or other organizations within the territory of China (hereinafter collectively referred to as "the Transferee") upon payment.

As for the transfer of State-owned property rights of enterprises by enterprises in the financial sector and listed companies, relevant national regulations shall apply.

The State-owned property rights of enterprises herein refer to the rights and interests formed by multiform investment of the State in enterprises, enjoyable rights and interests formed by various investments of State-owned enterprises and those held by the State and other rights and interests held to be State-owned according to law.

Article 3 The transfer of State-owned property rights of enterprises shall be subject to national laws, administrative regulations and policies, contribute to the strategic adjustment of the layout and structure of State-owned economy, promote the optimal allocation of state-owned capital, and be carried out according to the principles of openness, fairness and impartiality and shall protect the lawful rights and interests of the State and other parties concerned.

Article 4 The transfer of State-owned property rights of enterprises shall be publicly carried out by property right transaction agencies established according to law and not be restricted by region, industry, capital contribution or subordinate relationship. Where national laws and administrative regulations otherwise provide, such provisions shall apply.

Article 5 The transfer of State-owned property rights of enterprises may be carried out by auction, competitive tendering, agreement and in other manners specified by national laws and administrative regulations.

Article 6 The ownership of the transferred State-owned property rights of enterprises shall be clear. The State-owned property rights of enterprises whose ownership is not clear or involves any dispute shall not be transferred. The transfer of State-owned property rights of enterprises taken as security interest shall be subject to the relevant provisions of the Guarantee Law of the People's Republic of China.

Article 7 State assets supervisory authorities shall be responsible for the supervision and management of the transfer of State-owned property rights of enterprises.

Chapter 2 Supervision and Management of Transfer of State-owned property rights of enterprises

Article 8 State assets supervisory authorities shall perform the following responsibilities for the supervision of the transfer of State-owned property rights of enterprises:

(I) To formulate regulations on the supervision of transfer of State-owned property rights of enterprises according to the provisions of relevant national laws and administrative regulations;

(II) To decide on or approve the transfer of State-owned property rights of enterprises of the Invested Enterprises, review and examine the transfer of important property rights and report to the people's government of the same level for approval;

(III) To select and confirm the property right transaction agency engaged in the transactions of State-owned property rights of enterprises;

(IV) To supervise and inspect the transactions of State-owned property rights of enterprises;

(V) To collect, consolidate, analyze and report the information about the transfer of State-owned property rights of enterprises;

(VI) Other supervision responsibilities assigned by the government of the same level.

The Invested Enterprises herein refer to the enterprises for which State assets supervisory authorities perform the responsibilities of investor under the authorization of the State Council, the people's governments of provinces, autonomous regions and municipalities directly under central government and the people's governments at the level of the city divided into districts or autonomous prefecture.

Article 9 The Invested Enterprises shall perform the following responsibilities in respect of the transfer of State-owned property rights of enterprises:

(I) To formulate the regulations on the transfer of State-owned property

rights of enterprises of affiliated enterprises according to the relevant national regulations and submit such to State assets supervisory authorities for record;

(II) To decide whether the transfer of State-owned property rights of enterprises contributes to the enhancement of core competitiveness of enterprises, promotes their sustainable development and maintain social stabilization;

(III) To review and examine the transfer of important State-owned property rights of enterprises of important subsidiaries and decide on the transfer of State-owned property rights of enterprises of other subsidiaries;

(IV) To report the transfer of State-owned property rights of enterprises to State assets supervisory authorities.

Article 10 For the transfer of State-owned property rights of enterprises, a property right transaction agency may be chosen according to the following basic qualifications:

(I) Complying with the relevant national laws, administrative regulations, rules and policies on the transactions of State-owned property rights of enterprises;

(II) Performing the responsibilities of property right transaction agency and strictly examining the qualification and eligibility of transaction subjects of State-owned property rights of enterprises;

(III) Openly disclosing information about property right transactions according to the relevant national regulations and being able to regularly report the particulars about the transactions of State-owned property rights of enterprises to State assets supervisory authorities;

(IV) Having corresponding trading venue, channels for releasing of information and profession personnel and being able to satisfy the requirements of the transactions of State-owned property rights of enterprises;

(V) The property right transaction is standardized and there are neither consecutive transactions following the splitting of State-owned property rights of enterprises for three consecutive years nor there are other records of violation of laws or regulations.

Chapter 3 Procedure of Transfer of State-owned property rights of enterprises

Article 11 Before the transfer of State-owned property rights of enterprises, feasibility study shall be properly conducted. The proposal for the transfer of State-owned property rights of enterprises shall be examined according to internal

decision making procedures and a written resolution shall be adopted.

The proposal for the transfer of property rights of wholly State-owned enterprises shall be examined at the general manager's work meeting. The proposals for the transfer of property rights of wholly State-owned companies shall be examined by their boards of directors. Where no board of director is established, such proposals shall be examined at the general manager's work meeting. Where lawful rights and interests of employees are involved, the opinions of the staff and workers' congress of the enterprises holding the subject matter of transfer shall be heard. The proposals for the matters including the placement of staff and workers shall be discussed and adopted at staff and workers' congress.

Article 12 After the transfer of State-owned property rights of enterprises is approved or decided upon according to the approval procedure specified in these regulations, the Transferor shall organize appraisal of properties and funds of the enterprises holding the subject matter of the transfer according to relevant regulations, prepare balance sheet and detailed list of assets to be handed over according to the result of the appraisal of properties and funds and entrust certified public accountants with full audit (including the audit of the legal representatives of the enterprises holding the subject matter of transfer for their vacating posts according to the relevant national regulations). The losses of assets shall be determined and written off after verification according to the relevant national regulations.

Where the Transferor no longer has controlling position as the result of the transfer of the State-owned property rights of the Invested Enterprises, the State assets supervisory authorities at the same level shall organize the appraisal of properties and funds and entrust intermediary organizations with relevant services.

Intermediary organizations shall provide services independently and justly according to law. Enterprises and individuals shall not interfere with the normal works of intermediary organizations.

Article 13 On basis of the appraisal of properties and funds and account audit, the Transferor shall entrust an asset appraisal agency that has relevant qualification with asset appraisal in accordance with the relevant national regulations. After being approved or put on records, the appraisal report shall be taken as the reference for determining the price of the transferred State-owned property rights of enterprises.

When the transaction price is lower than 90% of the appraisal report during property right transaction, the transaction shall be suspended and shall not be proceeded until the consent of relevant property right transfer approval authority is obtained.

Article 14 The Transferor shall entrust a property right transaction agency with publishing the announcement of transfer of property rights on publicly issued economic or financial newspapers and periodicals at provincial level or above and the website of the property right transaction agency, openly disclose the information about the transfer of State-owned property rights of enterprises and extensively solicit transferees. The period of announcement of transfer of property rights shall

be 20 working days.

The information about the transfer of State-owned property rights of enterprises disclosed by the Transferor shall include the following contents:

(I) The basic information about the subject matter of transfer;

(II) The composition of the property right of the enterprise holding the subject matter of transfer;

(III) The internal decision on and approval of the transfer of property rights;

(IV) The main audited financial indicators of the enterprise holding the subject matter of transfer for the recent period;

(V) The information about the approval of the asset appraisal of the enterprise holding the subject matter of transfer or the submission of asset appraisal report for record;

(VI) The basic qualification that the Transferee should have;

(VII) Other matters needed to be disclosed.

Article 15 When soliciting the Transferee, the Transferor may specify prerequisites of transfer in respect of the qualification, business reputation, operation, financial position, management ability and asset scale of the Transferee.

The Transferee shall generally have the following qualifications:

(I) Having good financial position and paying ability;

(II) Having good commercial standing;

(III) Where the Transferee is a natural person, it shall have complete capacity for discharging civil obligations;

(IV) Other qualification specified by national laws and administrative regulations.

Article 16 Where the Transferee is a legal person, natural person or other organization in foreign countries, Hong Kong Special Administrative Region, Macao Special Administrative Region and Taiwan, its acquisition of State-owned property rights of enterprises shall be subject to the Regulations on Guide to Foreign Investment Direction promulgated by the State Council and other relevant regulations.

Article 17 Where two or more transferees are found to be interested through public solicitation, the Transferor shall consult with the property right transaction agency and carry out property right transaction by auction or competitive tendering

according to the actual conditions of the subject matter of transfer.

Where State-owned property rights of enterprises are transferred by auction, the transfer shall be carried out in accordance with the Auction Law of the People's Republic of China and relevant regulations.

Where State-owned property rights of enterprises are transferred by competitive tendering, the transfer shall be carried out in accordance with the relevant national regulations.

After the transfer of State-owned property rights of enterprises is concluded, the Transferor and the Transferee shall enter into the contract for the transfer of property rights and obtain the certificate of property right transaction issued by the property right transaction agency.

Article 18 Where only one transferee is found to be interested through open and public solicitation or the approval of State assets supervisory authorities is obtained in accordance with the relevant regulations, the manner of transfer on basis of agreement may be adopted.

Where the manner of transfer on basis of agreement is adopted, the Transferor shall fully consult with the Transferee, initial the contract for the transfer of property rights after properly handling relevant matters involved in the transfer according to law and conduct examination according to the procedure specified in Article 11 hereof.

Article 19 The contract for the transfer of State-owned property rights of enterprises shall include the following main contents:

(I) The name and domicile of the Transferor and the Transferee;

(II) The basic information about the State-owned property rights of the enterprise holding the subject matter of transfer;

(III) The proposal for the placement of the concerned employees of the enterprise holding the subject matter of transfer;

(IV) The proposal for the disposal of the concerned creditor's rights and debts of the enterprise holding the subject matter of transfer;

(V) The transfer manner, transfer price, payment time and mode and payment terms;

(VI) Matters concerning the delivery of property rights;

(VII) Relevant expenses and taxes incurred by the transfer;

(VIII) The manner of settlement of contractual disputes;

(IX) The liability for breach of contract of the parties to the contract;

(X) The conditions for the modification and termination of the contract;

(XI) Other terms deemed by the Transferor and Transferee as necessary.

Where the Transferor no longer has the controlling position as the result of the transfer of State-owned property rights of enterprises, the Transferor shall consult with the Transferee and offer proposal for reorganization of the enterprise, including the proposal for the prior placement of the employees of the enterprise holding the subject matter of transfer under same conditions, when entering into the contract for the transfer of property rights.

Article 20 The Transferee shall make full payment for the transfer of State-owned property rights of enterprises according to the terms of the contract for the transfer of property rights.

In principle, the payment for the transfer shall be made in one lump sum. Where the amount is relatively large and it is really difficult to make payment in one lump sum, the manner of payment by installments may be adopted. Where the manner of payment by installments is adopted, the first installment shall not be less than 30% of the total price and shall be paid within 5 working days from the effective date of the contract. The Transferee shall provide legal guarantee for the balance and pay the Transferor the interest accrued in the payment period at the rate of bank loan in the same period. The payment period shall not exceed one year.

Article 21 Where the transfer of State-owned property rights of enterprises is related to the transfer of State-owned land use right or the right of prospecting Mineral deposits or the right of mining formed by the State capital contribution, relevant formalities shall be separately follow through in accordance with the relevant national regulations.

Article 22 Where the Transferor no longer has controlling position as the result of the transfer of State-owned property rights of enterprises, the Transferor shall properly handle the labour relationship with staff and workers, settle the wages of staff and workers, social insurance premiums and other relevant expenses defaulted by the enterprise holding the subject matter of transfer and ensure the continuation of social insurance relationship of the enterprise's staff and workers according to the relevant policies and regulations.

Article 23 The net proceeds from the transfer of State-owned property rights of enterprises shall be disposed in accordance with the relevant national regulations.

Article 24 After the transfer of State-owned property rights of enterprises is concluded, the Transferor and the Transferee shall timely go through relevant formalities of property right registration in accordance with the relevant national regulations by presenting the certificate of property right transaction issued by the property right transaction agency.

Chapter 4 Approval Procedure of the transfer of State-owned property rights of enterprises

Article 25 State assets supervisory authorities shall decide on the transfer of State-owned property rights of enterprises of the Invested Enterprises. Where the State no longer has controlling position as the result of the transfer of State-owned property rights of enterprises, such transfer shall be subject to the approval of the people's government at the same level.

Article 26 The Invested Enterprises shall decide on the transfer of State-owned property rights of enterprises of their subsidiaries. The transfer of important State-owned property rights of important subsidiaries shall be subject to the countersigning of State assets supervisory authorities at the same level and the approval of relevant financial department. Where any matter concerning social, public administration subject to governmental examination and approval is involved, the transfer shall be reported to relevant governmental department for examination and approval in advance.

Article 27 Where the transfer of State-owned property rights of enterprises is related to the change of the nature of the State-owned shares of listed companies or the transfer of their actual control, such transfer shall be subject to national laws and administrative regulations and the regulations of relevant supervisory department at the same time.

Where the State otherwise provides for the management of the transfer of state-owned equity of non-listed joint stock limited companies, such provisions shall apply.

Article 28 Before deciding on or approving the transfer of State-owned property rights of enterprises, the following written documents shall be examined:

(I) The resolution document about the transfer of State-owned property rights of enterprises;

(II) The proposal for the transfer of State-owned property rights of enterprises;

(III) The registration certificates of property rights of State assets of the Transferor and the enterprise holding the subject matter of transfer;

(IV) The legal opinion issued by an law office;

(V) The basic qualification that the Transferee should have;

(VI) Other documents required by the approval authority.

Article 29 The proposal for the transfer of State-owned property rights of enterprises shall contain the following:

(I) The basic information about the State-owned property rights of the enterprise holding the subject matter of transfer;

(II) Relevant feasibility study materials of the transfer of State-owned property rights of the enterprise;

(III) The proposal for the placement of the staff and workers of the enterprise holding the subject matter of transfer that has been examined by local labour guarantee administrative department;

(IV) The proposal for the disposal of the concerned creditor's rights and debts of the enterprise holding the subject matter of transfer, including the debts owed to staff and workers;

(V) The proposal for disposition of the proceeds from the transfer of State-owned property rights of enterprises;

(VI) The main content of the announcement of the transfer of State-owned property rights of enterprises.

Where the Transferor no longer has the controlling position as the result of the transfer of State-owned property rights of enterprises, relevant creditor's rights and debts agreement consented to by the financial institution and the resolution of staff and workers' congress in respect of the proposal for the placement of staff and workers shall be attached.

Article 30 Where the Transferee is subject to special requirements in key industries and fields of national economy, an enterprise may transfer State-owned property rights of enterprises to its affiliated enterprises on basis of agreement during asset reorganization after the approval of State assets supervisory authorities at provincial level or above.

Article 31 Where the Transferor and the Transferee adjust the proportion of the transfer of property rights or there is material change of the proposal for the transfer of State-owned property rights of enterprises after the transfer of State-owned property rights of enterprises is approved or decided on, the application for transfer shall be submitted again for approval according to the relevant regulations.

Chapter 5 Legal Liability

Article 32 Where the Transferor, the enterprise holding the subject matter of transfer or the Transferee commits one of the following acts during the transfer of State-owned property rights of enterprises, State assets supervisory authorities or relevant approval authorities of the transfer of State-owned property rights of enterprises shall require the Transferor to terminate the transfer of property rights. When necessary, such authorities shall bring an action in the people's court according to law to confirm the invalidity of the transfer:

(I) Failure to carry out transaction in property right transaction agency according to the relevant provisions of these regulations;

(II) The Transferor or the enterprise holding the subject matter of transfer

fails to implement corresponding internal decision making procedure and approval procedure or transfers State-owned property rights of enterprises beyond its authority or without permission;

(III) The Transferor or the enterprise holding the subject matter of transfer intentionally conceals the assets to be included in the appraisal scope or provides intermediary organization with false accounting information so as to cause the distortion of the result of audit and appraisal and its failure of audit and appraisal causes the loss of State assets;

(IV) The Transferor and the Transferee collude and transfer State-owned property rights of enterprises at low price so as to cause the loss of State assets;

(V) The Transferor or the enterprise holding the subject matter of transfer fails to properly place staff and workers, continue social insurance relationship, settle the debts owed to staff and workers and pay the social insurance premiums in arrears and infringe upon the lawful rights and interests of staff and workers;

(VI) The Transferor fails to settle the creditor's rights and debts of the enterprise holding the subject matter of transfer, illegally transfers creditor's rights or avoid the responsibility for debt settlement. Where State-owned property rights of enterprises are taken as security, the State-owned property rights of enterprises are transferred without the consent of the security right owner.

(VII) The Transferee affects the choice of the Transferor and the signing of the contract for the transfer of property rights by means of fraud, concealment, etc.;

(VIII) The Transferees maliciously collude and force down price during bidding and auction for the transfer of property rights so as to cause the loss of State assets.

State assets supervisory authorities or relevant enterprise shall give warning to the persons directly in charge and other persons directly responsible of the Transferor or the enterprise holding the subject matter of transfer that has committed any of the above acts according to the authority of personnel management. If the circumstances are serious, such persons shall be given disciplinary punishment. In case of loss of State assets, such persons shall bear liability for compensation. Where the Transferee is liable for the loss of State assets, it shall compensate the Transferor for economic loss according to law. If a crime is constituted, such persons shall be transferred to judicial authorities and investigated for criminal liability according to law.

Article 33 Where an intermediary organization practices against the relevant regulations during the audit, appraisal and legal services in respect of the transfer of State-owned property rights of enterprises, national assets supervisory authorities

shall notify its industrial authorities in charge of relevant information and suggest the imposition of corresponding penalty. If the circumstances are serious, State assets supervisory authorities may require relevant enterprise no longer to entrust such intermediary organization with the services in respect of the transfer of State-owned property rights of enterprises.

Article 34 Where a property right transaction agency practices fraud or neglect its duties during any transaction of State-owned property rights of enterprises and harms national interest or the lawful rights and interests of the parties to the transaction, the persons directly responsible shall be held liable according to law. State assets supervisory authorities shall no longer appoint such agency to provide services in respect of the transaction of State-owned property rights of enterprises.

Article 35 Where the approval authorities in charge of the transfer of State-owned property rights of enterprises and their relevant personnel approve any transfer of State-owned property rights of enterprises against these regulations and without permission or abuse their power for personal gains in approval and cause the loss of State assets, relevant department shall give them disciplinary punishment within cadre administration authority. If a crime is constituted, they shall be transferred to judicial authorities and investigated for criminal liability according to law.

Chapter 6 Supplementary Provisions

Article 36 Regulations on the transfer of State-owned property rights of enterprises of overseas enterprises shall be separately enacted.

Article 37 The transfer of State-owned property rights of enterprises held by an entity that has not separated governmental functions from corporate ones and other entities shall be subject to the approval of the financial department in charge with reference to these regulations for implementation.

Article 38 The State-owned Assets Supervision and Administration Commission under the State Council shall be responsible for the interpretation of these regulations. Where relevant department is involved, relevant department of the State-owned Assets Supervision and Administration Commission shall be responsible for the interpretation.

Article 39 These regulations shall be effective as of 1 February, 2004.

企业国有产权转让管理暂行办法

第一章　　总　则

第一条　　为规范企业国有产权转让行为，加强企业国有产权交易的监督管理，促进企业国有资产的合理流动、国有经济布局和结构的战略性调整，防止企业国有资产流失，根据《企业国有资产监督管理暂行条例》和国家有关法律、行政法规的规定，制定本办法。

第二条　　国有资产监督管理机构、持有国有资本的企业（以下统称转让方）将所持有的企业国有产权有偿转让给境内外法人、自然人或者其它组织（以下统称受让方）的活动适用本办法。

金融类企业国有产权转让和上市公司的国有股权转让，按照国家有关规定执行。

本办法所称企业国有产权，是指国家对企业以各种形式投入形成的权益、国有及国有控股企业各种投资所形成的应享有的权益，以及依法认定为国家所有的其它权益。

第三条　　企业国有产权转让应当遵守国家法律、行政法规和政策规定，有利于国有经济布局和结构的战略性调整，促进国有资本优化配置，坚持公开、公平、公正的原则，保护国家和其它各方合法权益。

第四条　　企业国有产权转让应当在依法设立的产权交易机构中公开进行，不受地区、行业、出资或者隶属关系的限制。国家法律、行政法规另有规定的，从其规定。

第五条　　企业国有产权转让可以采取拍卖、招投标、协议转让以及国家法律、行政法规规定的其它方式进行。

第六条　　转让的企业国有产权权属应当清晰。权属关系不明确或者存在权属纠纷的企业国有产权不得转让。被设置为担保物权的企业国有产权转让，应当符合《中华人民共和国担保法》的有关规定。

第七条　　国有资产监督管理机构负责企业国有产权转让的监

督管理工作。

第二章　企业国有产权转让的监督管理

第八条　国有资产监督管理机构对企业国有产权转让履行下列监管职责：

（一）按照国家有关法律、行政法规的规定，制定企业国有产权交易监管制度和办法；

（二）决定或者批准所出资企业国有产权转让事项，研究、审议重大产权转让事项并报本级人民政府批准；

（三）选择确定从事企业国有产权交易活动的产权交易机构；

（四）负责企业国有产权交易情况的监督检查工作；

（五）负责企业国有产权转让信息的收集、汇总、分析和上报工作；

（六）履行本级政府赋予的其它监管职责。

本办法所称所出资企业是指国务院，省、自治区、直辖市人民政府，设区的市、自治州级人民政府授权国有资产监督管理机构履行出资人职责的企业。

第九条　所出资企业对企业国有产权转让履行下列职责：

（一）按照国家有关规定，制定所属企业的国有产权转让管理办法，并报国有资产监督管理机构备案；

（二）研究企业国有产权转让行为是否有利于提高企业的核心竞争力，促进企业的持续发展，维护社会的稳定；

（三）研究、审议重要子企业的重大国有产权转让事项，决定其它子企业的国有产权转让事项；

（四）向国有资产监督管理机构报告有关国有产权转让情况。

第十条　企业国有产权转让可按下列基本条件选择产权交易机构：

（一）遵守国家有关法律、行政法规、规章以及企业国有产权交易的政策规定；

（二）履行产权交易机构的职责，严格审查企业国有产权交易主体的资格和条件；

（三）按照国家有关规定公开披露产权交易信息，并能够定期向国有资产监督管理机构报告企业国有产权交易情况；

（四）具备相应的交易场所、信息发布渠道和专业人员，能够满足企业国有产权交易活动的需要；

（五）产权交易操作规范，连续3年没有将企业国有产权拆细后连续交易行为以及其它违法、违规记录。

第三章　企业国有产权转让的程序

第十一条　企业国有产权转让应当做好可行性研究，按照内部决策程序进行审议，并形成书面决议。

国有独资企业的产权转让，应当由总经理办公会议审议。国有独资公司的产权转让，应当由董事会审议；没有设立董事会的，由总经理办公会议审议。涉及职工合法权益的，应当听取转让标的企业职工代表大会的意见，对职工安置等事项应当经职工代表大会讨论通过。

第十二条　按照本办法规定的批准程序，企业国有产权转让事项经批准或者决定后，转让方应当组织转让标的企业按照有关规定开展清产核资，根据清产核资结果编制资产负债表和资产移交清册，并委托会计师事务所实施全面审计（包括按照国家有关规定对转让标的企业法定代表人的离任审计）。资产损失的认定与核销，应当按照国家有关规定办理。

转让所出资企业国有产权导致转让方不再拥有控股地位的，由同级国有资产监督管理机构组织进行清产核资，并委托社会中介机构开展相关业务。

社会中介机构应当依法独立、公正地执行业务。企业和个人不得干预社会中介机构的正常执业行为。

第十三条　在清产核资和审计的基础上，转让方应当委托具有相关资质的资产评估机构依照国家有关规定进行资产评估。评估报告经核准或者备案后，作为确定企业国有产权转让价格的参考依据。

在产权交易过程中，当交易价格低于评估结果的90%时，应当暂停交易，在获得相关产权转让批准机构同意后方可继续进行。

第十四条　转让方应当将产权转让公告委托产权交易机构刊登在省级以上公开发行的经济或者金融类报刊和产权交易机构的网站上，公开披露有关企业国有产权转让信息，广泛征集受让方。产权转让公告期为20个工作日。

转让方披露的企业国有产权转让信息应当包括下列内容：

（一）转让标的的基本情况；

（二）转让标的企业的产权构成情况；
（三）产权转让行为的内部决策及批准情况；
（四）转让标的企业近期经审计的主要财务指标数据；
（五）转让标的企业资产评估核准或者备案情况；
（六）受让方应当具备的基本条件；
（七）其它需披露的事项。

第十五条　在征集受让方时，转让方可以对受让方的资质、商业信誉、经营情况、财务状况、管理能力、资产规模等提出必要的受让条件。

受让方一般应当具备下列条件：
（一）具有良好的财务状况和支付能力；
（二）具有良好的商业信用；
（三）受让方为自然人的，应当具有完全民事行为能力；
（四）国家法律、行政法规规定的其它条件。

第十六条　受让方为外国及我国香港特别行政区、澳门特别行政区、台湾地区的法人、自然人或者其它组织的，受让企业国有产权应当符合国务院公布的《指导外商投资方向规定》及其它有关规定。

第十七条　经公开征集产生两个以上受让方时，转让方应当与产权交易机构协商，根据转让标的的具体情况采取拍卖或者招投标方式组织实施产权交易。

采取拍卖方式转让企业国有产权的，应当按照《中华人民共和国拍卖法》及有关规定组织实施。

采取招投标方式转让企业国有产权的，应当按照国家有关规定组织实施。

企业国有产权转让成交后，转让方与受让方应当签订产权转让合同，并应当取得产权交易机构出具的产权交易凭证。

第十八条　经公开征集只产生一个受让方或者按照有关规定经国有资产监督管理机构批准的，可以采取协议转让的方式。

采取协议转让方式的，转让方应当与受让方进行充分协商，依法妥善处理转让中所涉及的相关事项后，草签产权转让合同，并按照本办法第十一条规定的程序进行审议。

第十九条　企业国有产权转让合同应当包括下列主要内容：

（一）转让与受让双方的名称与住所；
（二）转让标的企业国有产权的基本情况；
（三）转让标的企业涉及的职工安置方案；
（四）转让标的企业涉及的债权、债务处理方案；
（五）转让方式、转让价格、价款支付时间和方式及付款条件；
（六）产权交割事项；
（七）转让涉及的有关税费负担；
（八）合同争议的解决方式；
（九）合同各方的违约责任；
（十）合同变更和解除的条件；
（十一）转让和受让双方认为必要的其它条款。

转让企业国有产权导致转让方不再拥有控股地位的，在签订产权转让合同时，转让方应当与受让方协商提出企业重组方案，包括在同等条件下对转让标的企业职工的优先安置方案。

第二十条　企业国有产权转让的全部价款，受让方应当按照产权转让合同的约定支付。

转让价款原则上应当一次付清。如金额较大、一次付清确有困难的，可以采取分期付款的方式。采取分期付款方式的，受让方首期付款不得低于总价款的30%，并在合同生效之日起5个工作日内支付；其余款项应当提供合法的担保，并应当按同期银行贷款利率向转让方支付延期付款期间利息，付款期限不得超过1年。

第二十一条　转让企业国有产权涉及国有划拨土地使用权转让和由国家出资形成的探矿权、采矿权转让的，应当按照国家有关规定另行办理相关手续。

第二十二条　转让企业国有产权导致转让方不再拥有控股地位的，应当按照有关政策规定处理好与职工的劳动关系，解决转让标的企业拖欠职工的工资、欠缴的各项社会保险费以及其它有关费用，并做好企业职工各项社会保险关系的接续工作。

第二十三条　转让企业国有产权取得的净收益，按照国家有关规定处理。

第二十四条　企业国有产权转让成交后，转让和受让双方应当凭产权交易机构出具的产权交易凭证，按照国家有关规定及时办理相关产权登记手续。

第四章　企业国有产权转让的批准程序

第二十五条　国有资产监督管理机构决定所出资企业的国有产权转让。其中，转让企业国有产权致使国家不再拥有控股地位的，应当报本级人民政府批准。

第二十六条　所出资企业决定其子企业的国有产权转让。其中，重要子企业的重大国有产权转让事项，应当报同级国有资产监督管理机构会签财政部门后批准。其中，涉及政府社会公共管理审批事项的，需预先报经政府有关部门审批。

第二十七条　转让企业国有产权涉及上市公司国有股性质变化或者实际控制权转移的，应当同时遵守国家法律、行政法规和相关监管部门的规定。

对非上市股份有限公司国有股权转让管理，国家另有规定的，从其规定。

第二十八条　决定或者批准企业国有产权转让行为，应当审查下列书面文件：

（一）转让企业国有产权的有关决议文件；

（二）企业国有产权转让方案；

（三）转让方和转让标的企业国有资产产权登记证；

（四）律师事务所出具的法律意见书；

（五）受让方应当具备的基本条件；

（六）批准机构要求的其它文件。

第二十九条　企业国有产权转让方案一般应当载明下列内容：

（一）转让标的企业国有产权的基本情况；

（二）企业国有产权转让行为的有关论证情况；

（三）转让标的企业涉及的、经企业所在地劳动保障行政部门审核的职工安置方案；

（四）转让标的企业涉及的债权、债务包括拖欠职工债务的处理方案；

（五）企业国有产权转让收益处置方案；

（六）企业国有产权转让公告的主要内容。

转让企业国有产权导致转让方不再拥有控股地位的，应当附送

经债权金融机构书面同意的相关债权债务协议、职工代表大会审议职工安置方案的决议等。

第三十条　对于国民经济关键行业、领域中对受让方有特殊要求的，企业实施资产重组中将企业国有产权转让给所属控股企业的国有产权转让，经省级以上国有资产监督管理机构批准后，可以采取协议转让方式转让国有产权。

第三十一条　企业国有产权转让事项经批准或者决定后，如转让和受让双方调整产权转让比例或者企业国有产权转让方案有重大变化的，应当按照规定程序重新报批。

第五章　法律责任

第三十二条　在企业国有产权转让过程中，转让方、转让标的企业和受让方有下列行为之一的，国有资产监督管理机构或者企业国有产权转让相关批准机构应当要求转让方终止产权转让活动，必要时应当依法向人民法院提起诉讼，确认转让行为无效。

（一）未按本办法有关规定在产权交易机构中进行交易的；

（二）转让方、转让标的企业不履行相应的内部决策程序、批准程序或者超越权限、擅自转让企业国有产权的；

（三）转让方、转让标的企业故意隐匿应当纳入评估范围的资产，或者向中介机构提供虚假会计资料，导致审计、评估结果失真，以及未经审计、评估，造成国有资产流失的；

（四）转让方与受让方串通，低价转让国有产权，造成国有资产流失的；

（五）转让方、转让标的企业未按规定妥善安置职工、接续社会保险关系、处理拖欠职工各项债务以及未补缴欠缴的各项社会保险费，侵害职工合法权益的；

（六）转让方未按规定落实转让标的企业的债权债务，非法转移债权或者逃避债务清偿责任的；以企业国有产权作为担保的，转让该国有产权时，未经担保权人同意的。

（七）受让方采取欺诈、隐瞒等手段影响转让方的选择以及产权转让合同签订的；

（八）受让方在产权转让竞价、拍卖中，恶意串通压低价格，造成国有资产流失的。

对以上行为中转让方、转让标的企业负有直接责任的主管人员和其它直接责任人员，由国有资产监督管理机构或者相关企业按照

人事管理权限给予警告，情节严重的，给予纪律处分，造成国有资产损失的，应当负赔偿责任；由于受让方的责任造成国有资产流失的，受让方应当依法赔偿转让方的经济损失；构成犯罪的，依法移送司法机关追究刑事责任。

第三十三条　　社会中介机构在企业国有产权转让的审计、评估和法律服务中违规执业的，由国有资产监督管理机构将有关情况通报其行业主管机关，建议给予相应处罚；情节严重的，可要求企业不得再委托其进行企业国有产权转让的相关业务。

第三十四条　　产权交易机构在企业国有产权交易中弄虚作假或者玩忽职守，损害国家利益或者交易双方合法权益的，依法追究直接责任人员的责任，国有资产监督管理机构将不再选择其从事企业国有产权交易的相关业务。

第三十五条　　企业国有产权转让批准机构及其有关人员违反本办法，擅自批准或者在批准中以权谋私，造成国有资产流失的，由有关部门按照干部管理权限，给予纪律处分；构成犯罪的，依法移送司法机关追究刑事责任。

第六章　　附　则

第三十六条　　境外企业国有产权转让管理办法另行制定。

第三十七条　　政企尚未分开的单位以及其它单位所持有的企业国有产权转让，由主管财政部门批准，具体比照本办法执行。

第三十八条　　本办法由国务院国有资产监督管理委员会负责解释；涉及有关部门的，由国资委商有关部门解释。

第三十九条　　本办法自二〇〇四年二月一日起施行。

February 2009

Please note that this memorandum is for general information purposes only. Specific legal advice should be sought in relation to any particular situation..