How Measures for Security Review of Foreign Investment Impacts Foreign Institution's Investment in Financial Areas

By Sandra Lu

U.S. blacklisted more than 60 Chinese companies on December 18, 2020.

Subsequently, China issued the *Measures for Security Review of Foreign Investment* (the "**Security Review Measures**") on December 19, 2020. The Security Review Measures was jointly formulated by the Development and Reform Commission of the People's Republic of China ("**NDRC**") and the Ministry of Commerce, and will come into force on January 18, 2021.

The Security Review Measures subjects foreign investment that will or may threaten the national security to a security review leading by the office of working mechanism of the foreign investment security review (the "**Security Review Office**").

The Security Review Measures outlines a mechanism subjecting foreign investors to the pre-investment report to the Security Review Office if such foreign investor is to obtain the actual controlling power of the invested entity with the proposed investment falling within the scope of "core financial services".

Starting from April 1, 2020, qualified foreign financial institutions may set up wholly owned securities companies and mutual fund management companies (the "**FMC**") in China. Meanwhile, certain foreign shareholders of joint venture securities companies or joint venture fund management companies (the "**JV WMC**") proposing to step up their shareholding ratio from 49% to 51%, or even 100%. Besides, since July 20, 2019, there are foreign market players setting up controlled wealth management companies (the "**WMC**") with commercial banks, whether completed or under preparation, to carry out wealth management business in China.

Whereas, issue left open is whether it will amount to "investment in core financial services" for foreign investors if they have the .

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controlling power in securities companies, FMC or WMC by establishment or acquisition, and accordingly shall initiate a pre-investment report to the Security Review Office? Below are tips worth reference per our communication with relevant authorities:

1. "Core financial services" is not referring to specific industries or sectors. A foreign investor is not necessarily subject to pre-investment security report even the investment is "financial-related". Whereas, the Security Review Office will decide whether the security review is needed on a case-by-case basis, depending on various parameters, including the investment scale, backgrounds of the actual controller, target clients, etc. Foreign investors are encouraged to submit a written consultation letter to the working email of the Security Review Office, i.e., wzgz@ndrc.gov.cn, their answers will be reverted within 15 working days. To get more clear answer, it is suggested to specify details of the proposed investment, e.g., profile of the foreign investor (the actual controller and shareholding, investment scale, etc.), and landscape in China (investment target, proposed business, target clients, etc.).

2. Provided that the final discretion is left to the Security Review Office, relevant regulators (like CSRC, CBIRC) may remind the foreign investor when going through regulatory formalities if the regulator views the project to be reportable to the Security Review Office.

3. The aforementioned replies have no legal effect, please be prudent when using such replies.

   The following materials shall be submitted to the Security Review Office for security review:

   (1) Application report, which shall specify the name, place of domicile and business scope of the foreign investor, as well as basic information of investment, and other information as the Security Review Office may require;

   (2) Investment plan;

   (3) Statement on whether the foreign investment will impact the national security;

   (4) Other materials as the Security Review Office may be require.

The foreign investment security review is categorized into the general review and special review. The general review will be completed within 30 working days; the special review will be completed within 60 working days, subject to any special circumstances where the special review may be extended. The foreign investor shall not carry out the investment before the completion of the security review.

Before the Security Review Measures officially comes into force, we will share with you first-hand feedbacks from regulators and governmental authorities regarding the foreign investment security review.

Further, as stipulated by the Security Review Measures, for foreign investments into stocks of PRC companies made through exchanges, CSRC will jointly formulate further implementation rules with the Security Review Office if such foreign investment will or may impact the national security of China. This is to say, investments into the Chinese stock market through QFI or Stock Connect may also be subject to security review in the future.

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